

S.B.A. No. 570
Case No. 67
Award No. 46

SHOP CRAFTS SPECIAL BOARD OF ADJUSTMENT NO. 570

ESTABLISHED UNDER

AGREEMENT DATED SEPTEMBER 25, 1964

CHICAGO, ILLINOIS - JULY 10, 1967

PARTIES
TO
DISPUTE:

System Federation No. 103
Railway Employes' Department
AFL-CIO Electrical Workers
and
The New York Central Railroad Company

STATEMENT
OF
CLAIM:

1. That the Carrier violated Article I, of the Mediation Agreement dated September 25, 1964 when it made a change in its operations in September 1965, transferring certain work from Mott Haven Yard, New York, to Grand Central Terminal, New York, which adversely affected Electrical Workers, and refused to apply the protective conditions of Article I to the Electrical Workers affected in conformity with the aforementioned Agreement.
2. That accordingly, the Carrier be directed to apply the benefits and protective oonditions provided for in Article I of the September 25, 1964 Agreement to all the Electrical Workers adversely affected by the transfer of the terminal servicing of electrical work on train 15, 17, 25, 57 and 59 from Mott Haven Yard to Grand Central Terminal.

FINDINGS:

In mentioning that for more than 30 years Mott Haven Yard and Grand Central Terminal (together with Highbridge and West 30th Street) comprise a single seniority district for Electrical Workers in the Car Department at New York City, Carrier argues that the transfer on September 18, 1965 of the terminal servicing of five trains from Mott Haven Yard to Grand Central Terminal, being no different than previous work force changes affecting this craft, does not constitute a "transfer of work" within the meaning of Article I, Section 2, of the September 25, 1964 Agreement. To put it another way, Carrier

insists that the one seniority district covering said four locations in New York City, accompanied by the right to change work locations through exercise of seniority for advertised vacancies and/or displacement of junior employees, stands to bar the Electrical Workers from the protection afforded by the September 25, 1964 Agreement.

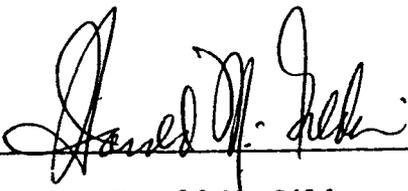
Significantly, with respect to its Machinists, Carmen, Upholsterers, Sheet Metal Workers and Laborers, for whom separate seniority rosters are maintained at Mott Haven and Grand Central; the Carrier readily acknowledges that the September 25, 1964 Agreement is brought into play since for those employes the aforesaid change in operations did involve a transfer of work between seniority districts.

It so happens, however, that nothing in the language of Article I of the September 25, 1964 Agreement relieves Carrier from the obligation to afford protective benefits to employees adversely affected thereby in instances when the transfer of work is confined to a single seniority district. It follows that once it is established that any of the Electrical Workers (during the span of the protective period) are adversely affected as a result of the transfer of the servicing of five trains to Grand Central they will be on the same footing, from the standpoint of eligibility to protective benefits preserved in Article I, as employees in the other shop crafts who work under labor contracts which specify separate seniority districts. The fact of the matter is that the respective different contractual seniority arrangements do not operate to deprive one craft of benefits of the September 25, 1964 Agreement that are extended to employees in other crafts who are deprived of employment or placed in a worse position with respect to compensation and rules governing working conditions as a result of one of the causes listed in Article I, Section 2.

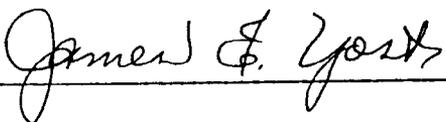
AWARD:

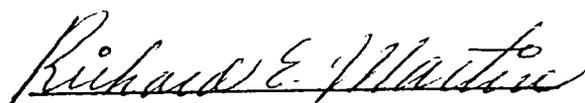
1. That Carrier violated Article I of the Mediation Agreement dated September 25, 1964, in the transfer of terminal servicing of five trains from Mott Haven Yard to Grand Central Terminal, New York, when it refused to apply the protective conditions of Article I to those of its Electrical Workers who are adversely affected by said change in operations.
2. That the Carrier forthwith shall apply the protective conditions provided for in Article I of the September 25, 1964 Agreement to those of its Electrical Workers who become furloughed or who are placed in a worse position with respect to compensation and rules governing working conditions as a result of the transfer of the terminal servicing of electrical work on trains 15, 17, 25, 57 and 59 from Mott Haven Yard to Grand Central Terminal, in accordance with the above findings.

Adopted at Chicago, Illinois July 10, 1967.



Harold M. Gilden





Employee Members

Carrier Members

SPECIAL BOARD OF ADJUSTMENT NO. 570

Established Under

Agreement of September 25, 1964

Chicago, Illinois - *August 16* 1968

PARTIES
TO
DISPUTE

System Federation No. 122
Railway Employes' Department
AFL-CIO, Electrical Workers
and
The Pullman Company

STATEMENT
OF CLAIM:

That furloughed Electrician J. L. Bryant, Jr., formerly employed at Baltimore, Maryland, is entitled to the protective conditions of Article I of the Agreement dated July 19, 1966, including the advance notice provided for in Article I, Section 4, of said Agreement.

FINDINGS: Prior to October 30, 1966, the Pullman Company employed one Electrician at Baltimore to service its cars on Line 6171 (Baltimore-Cincinnati) and Line 6165 (Baltimore-Chicago). On that date these Lines were shortened, as per notice of September 21 from the C & O - B & O Railroad, by changing their eastern terminus from Baltimore to Washington. At that time the position of Electrician Bryant was discontinued and he was placed on furlough. Subsequently the Company offered to transfer him to Washington with full seniority and displacement rights and with no provision for payment of protection benefits to any employes, if both the Washington and Baltimore electricians were agreeable. This offer was declined as being not in keeping with the July 19, 1966 Agreement.

The Organization contends that the Claimant was deprived of employment as a result of changes in the operation of the Company involving a transfer of work from Baltimore to Washington and the abandonment of electrical maintenance services

in Baltimore, and that the present case is therefore governed by Section 2 of Article I of the July 19, 1966 Agreement.

The Company contends that there was no transfer of work out of Baltimore, because the electrical work at Baltimore simply disappeared; that there was no abandonment of services on October 30, because the Baltimore District of the Company had already been closed down as an operating point on August 1; that the action taken was solely the result of a decline of the Company's business at Baltimore, and hence is governed by Section 3 of Article I, if any part of the July 19, 1966 Agreement is applicable; that the Company was not obligated to give the advance notice set forth in Article I, Section 4, because (a) the reasons for the change were not among those listed in Section 2, (b) the change was not inaugurated by the Company but forced upon it by the C & O - B & O Railroads, and (c) the Company itself had much less than sixty days' notice of the change; and that the claim is validated by the Company's offer to integrate the Claimant into the Washington seniority roster.

It seems clear that in this instance the Claimant was deprived of employment because of changes in the operations of the Company that involved abandonment and discontinuance of electrical maintenance service at Baltimore. Although the Company had earlier discontinued the use of Baltimore as an operating point, it continued to provide service to its cars on these two lines through its employment there of the Claimant until October 30--at which time this service was discontinued. There was not only a discontinuance of this work at Baltimore, but also a transfer of it to Washington. It is not a matter of speculation, but of obvious fact, that the maintenance work that was needed at the end of the line in Baltimore was, after October 30, equally needed at Washington, regardless of whether it required an additional electrician at that point or could be performed by the electricians

already employed there. This change of operations does not appear to be the result of a decline in the Company's business. The slight shortening of these two runs can hardly have caused any significant decline in that business, and in any case the Company has not sustained its burden of proof that it did cause such a decline. For these reasons we conclude that Section 2 of Article I is applicable to this instance.

We also conclude that advance notice was required as provided in Section 4. The fact that the Company did not initiate the change in operations of its own volition but as a result of a change in schedules of the Carriers is irrelevant, since the Agreement does not provide for any such distinction. Nor does the Agreement provide for exception when the Company has short notice of its need to change its operations. Its shortness of notice from the Carriers is a matter of its relationships with them, and does not alter its obligation to provide the Claimant with the required notice or payment in lieu thereof. Indeed, Section 2 specifically lists "involuntary discontinuance of contracts."

Finally, the Company claims that the Organization's refusal of its offer to transfer the Claimant to Washington with full seniority and displacement rights fulfilled any obligation it might have. It states that this offer was compatible with the principle enunciated in Article I, Section 11. That Section, however, deals with instances covered by Section 2, where protective benefits are granted. But in this case the Company has consistently denied the applicability of Section 2, and its offer specifically excluded any provision for payment of protective benefits. We therefore conclude that this Company offer has no effect upon the merits of this case.

The Organization requests that this Board order the Company to pay Claimant a separation allowance as set forth in Article I, Section 7. Since such

S.B.A. No. 570
Award No. 102
Case No. 131

payment is based on certain prerequisites which have not yet occurred, the Board declines to make such separate, explicit order a part of its Award.

A W A R D

Claim sustained. Electrician J. L. Bryant, Jr., is entitled to the protective conditions of Article I of the July 19, 1966 Agreement, including the advance notice provided for in Section 4 of said Article.

Adopted at Chicago, Illinois, *August 16* 1968

W. H. McPherson
W. H. McPherson, Neutral Member

W. S. Masgell

W. S. Masgell

M. E. Parks
Carrier Members

Paul J. Marshall

Richard E. Martin
Employe Members

30A

SPECIAL BOARD OF ADJUSTMENT NO. 570

Established Under

Agreement of September 25, 1964

Chicago, Illinois, July 30 , 1969

PARTIES
TO
DISPUTE:

System Federation No. 30
Railway Employes' Department
AFL-CIO - Carmen

and

The Baltimore and Ohio Railroad Company

STATEMENT
OF CLAIM:

What protection are Carmen S. Ringo, Albert Kadet, Jalmer T. Luoma, D. T. Nocide, Jr., Raymond A. Ams, O. J. Jylanki, E. O. Hines, R. A. Torkko, L. L. Kempf, William Dominish, V. M. Kasari, J. J. Csupick, M. J. Kapostasy, and S. J. Zurinko entitled to under the provisions of Article I of the September 25, 1964 Agreement?

FINDINGS:

Case No. 31, involving the same parties, and filed with Special Board of Adjustment No. 570 on January 30, 1967. requested an adjudication of the following dispute:

"The Provisions of Article I of the Mediation Agreement Case No. A-7030 were not complied with when the Baltimore and Ohio Railroad Company (hereinafter referred to as the Carrier) discontinued its contract with the Toledo, Lorain & Fairport Company to load its lake coal at Fairport Harbor, Painesville, Ohio and the technological change resulted in (a) Transfer of work and (b) Abandonment, discontinuance for six months or more, or consolidation of facilities or service or portions thereof."

On October 24, 1967 this Board adopted Award No. 55 sustaining the above claim. In finding that "there was a definite abandonment, discontinuance... or consolidation of facilities or services or portions thereof, within the meaning of Article I, Section 2, of the Agreement of September 25, 1964", the Board said:

"In view of the above Findings the Special Board concludes that it has no alternative but to uphold the claim under Section 2, of Article I, of the Agreement, and to hold that under Section 4, thereof the claimants were entitled to the required sixty-days' notice, and that during any deprivation of employment within the period by which the sixty days' notice was abbreviated, they are entitled to pay at their former regular rate, less any outside earnings."

This Board is now asked to decide what protection, if any, the named claimants may be entitled to under Article I, of the September 25, 1964 Agreement. In making such a determination, this Board will not be enforcing Award No. 55. It will merely adjudicate the protective rights, if any, that claimants are entitled to after Carrier complied with the Section 4 notice. That there has been an "abandonment, discontinuance for 6 months or more, or consolidation of facilities or services and actions thereof," as provided in Article I, Section 2b was answered in the affirmative in Award No. 55.

The basic issue before the Board is whether each of the claimant "shall not be regarded as deprived of employment" because of his "failure to obtain a position available to him in the exercise of his seniority rights in accordance with existing rules and agreements" as provided in Article I, Section 3 of the September 25, 1964 Agreement. The same Section 3 also provides the following:

"In any dispute over whether an employee is deprived of employment or placed in a worse position with respect to his compensation and rules governing working conditions due to causes listed in Section 2 hereof or whether it is due to the causes listed in Section 3 hereof, the burden of proof shall be on the carrier."

Carrier states that it is not now possible to reconstruct what would have happened to each employe if it had served proper notice under Article I, Section 4 of the Agreement, but it "can state...without reservation that all those furloughed at Fainesville would have been offered employment at other points on the property and would have been denied any request for separation and for coordinated payments." Aside from the fact that this is a mere conjecture, an assertion and not evidence

it is no fault of the claimants that Carrier failed to comply with Article I, Section 4; they had no knowledge of any vacancies to which they may then have been entitled to "according with existing rules and agreements."

Rule 28 of the agreement between the Shop Crafts and this Carrier says that, "Seniority of employes in each craft covered by this agreement shall be confined to the point employed in each" of stated departments. One of the seniority points in the Central Region is Painesville (including Charden and Fairport) Ohio. Claimants' seniority rights were in Painesville. There is no rule in that agreement permitting carmen to displace junior carmen at another point or district. Seniority and displacement rights are confined to the carmen's point or district which for the claimants, was Painesville.

Carrier has offered no evidence that either on May 25, 1965 or on any other date before or after the issuance of Award No. 55 was there a vacancy in the Painesville seniority district which any of the claimants could have displaced a junior carman. As a matter of fact all carman jobs at Painesville were abolished at the close of the tour of duty on May 25, 1965.

If there were junior carmen employed by the Carrier they were in other seniority districts. Carrier says that there were such junior carmen at Cleveland, De Forest Junction, Hazelton and Willard and after May 25, 1965 at other "points on the property." Such junior carmen, says the Carrier, were helpers and apprentices whom the claimants could have displaced under Rule 161, (Article III) of the June 4, 1953 National Agreements which reads as follows:

"In the event of not being able to employ carmen with four years' experience, regular and helper apprentices will be advanced to carmen in accordance with their seniority. If more men are needed helpers will be promoted. If this does not provide sufficient men to do the work, men who have had experience in the use of tools may be employed. They will not be retained in service when four year carmen become available."

This is not a seniority rule. It does not modify the explicit seniority rule 28. It merely authorizes the Carrier to promote apprentices and helpers and to hire experienced employes when carmen with four years experience are not available. It does not give a furloughed

man with four years or more experience the right to displace helpers and apprentices anywhere in the Carrier's system.

In Award No. 114 this Special Board of Adjustment No. 570 had occasion to consider a comparable seniority issue. The rule in that basic Schedule Agreement read:

"(b) Seniority rights of employees covered by this agreement will be confined to point employed."

In sustaining the claim, this Board said:

"The Board finds that the Claimants possessed only seniority at the point where they were employed (Chester, Illinois) and had no seniority to exercise when they were furloughed at the point where they were then currently employed."

Here, too, the claimants had no seniority to exercise when they were furloughed at Painesville. This principle was previously enunciated in First Division Award No. 5008.

Carrier cites Awards Nos. 24, 83, 90 and 91 to support their position that the claim should be denied. In Award No. 24 Carrier needed Claimant's services and he "turned a deaf ear to Carrier's oral and written requests." In Award No. 83 the claimant actually bid and was assigned to a position but he failed to report for work because he had a better position elsewhere. The seniority rules in the basic agreement applied in Awards 90 and 91 were different from those in this case. None of these awards are applicable to the case at hand.

It has been firmly established that had the Carrier served proper notice under Article I, Section 4 prior to May 25, 1965 that claimants would have been entitled to monthly dismissal allowances as provided in Article I, Section 6, and that each of them would then have exercised the option to resign and accept a lump sum separation allowance as provided in Article I, Section 7, in lieu of other protective benefits in the agreement. Carrier has not met the burden of proof to the contrary.

Claimant M. J. Kapostasy was recalled by the Carrier to work at Painesville on May 5, 1967. He is entitled to protective benefits provided for in Article I, Section 5.

Claimant, S. J. Zurinko was also recalled by the Carrier to work at Painesville. The date of his recall is not clear in the record. It says April 3, 1965, but that is obviously erroneous. Nonetheless, he too is entitled to protective benefits provided for in Article I, Section

Carrier alleges that because Claimants' William Dominish and J. J. Csupick were furloughed prior to May 25, 1965, "Award No. 55 can have no application to them." Award No. 55 does not adjudicate the claims of any specific individuals. It covered all employees at Painesville. Dominish and Csupick were such employees on furlough and as such they were "placed in a worse position with respect to compensation and rules governing working conditions" as provided in Article I, Section 2. They are entitled to protective benefits under the September 25, 1964 Agreement.

This Board has no right or power to enforce Award No. 55. All rights and benefits accruing to the Claimants in this case are in addition to the benefits adjudicated to them in Award No. 55.

AWARD

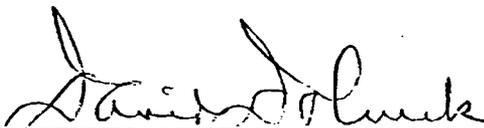
Claimants, M. J. Kapostasy and S. J. Zurinko are each entitled to protective benefits under Article I, Section 5 of the September 25, 1964 Agreement.

Claimants, Carmen S. Ringo, Albert Kadet, Jalmer T. Luoma, T. Nocide, Jr., Raymond Adams, O. J. Jylanki, E. O. Hines, R. A. Torkko, William Dominish and V. M. Kasari are each entitled to a separation allowance as provided in Article I, Section 7 of the September 25, 1964 Agreement in lieu of other protective benefits in said Agreement.

Claim of L. L. Kemp denied.

At Chicago, Illinois, July 30, 1969.

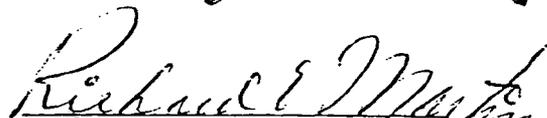
See attached dissent


David Dolnick - Neutral

ATM Bairdwood

Paul Marshall


Carrier Members


Employee Members

DISSENT OF CARRIER MEMBERS

This award is erroneous in all of its conclusions which are completely unsupported by the record.

This is not a new case and it should not have been treated as such. The dispute involves the application of the findings in Award No. 55 and the question here posed by the employes completely reopened the matter for additional findings. This case should have been dismissed since Award No. 55 of this Board, which has exclusive jurisdiction, was final and binding. There are no provisions contained in the September 25, 1964 Agreement with respect to interpretation of awards. As specifically stated in Section 15 of Article VI of the Agreement - -

"Decisions of the Board shall be final and binding upon the parties to the dispute."

This Board did not have authority to decide the question as posed by the employes.

In addition to the above, the most glaring errors perpetrated by the neutral are as follows:

1 - The employes' statement of facts begins "On May 25, 1965, the Carrier abandoned its car repair shop at Painesville, Ohio and laid off the Claimants." However, two of the claimants were laid off prior thereto - William Dominish - furloughed March 12, 1965 and J. J. Csupick - furloughed February 18, 1965. Despite this, the neutral awards these two claimants protective benefits.

2 - On Page 2 the neutral states:

"Carrier states that it is not now possible to

reconstruct what would have happened to each employe if it had served proper notice under Article I, Section 4 of the Agreement, but it 'can state . . . without reservation that all those furloughed at Painesville would have been offered employment at other points on the property and would have been denied any request for separation and for coordinated payments.' Aside from the fact that this is a mere conjecture, an assertion and not evidence it is no fault of the claimants that Carrier failed to comply with Article I, Section 4; they had no knowledge of any vacancies to which they may then have been entitled to 'according with existing rules and agreements.'" (emphasis added)

This is an inconceivable statement because in the carrier's submission, and discussion with the neutral, it was pointed out that claimants were informed by the local chairman at Painesville and by individual letters addressed to them notifying them of openings available to them through the exercise of seniority at Cleveland, Ohio - a distance of 29 miles from Painesville. Mr. L. L. Kempf exercised his seniority rights and worked at Cleveland, Ohio.

3 - The neutral mentions Rule 28 and Rule 161 (Article III of the June 4, 1953 National Agreement) of the schedule agreement. Nowhere does he mention Rule 26 which reads:

Preference to Work at Nearest
Point for Furloughed Employees

"When reducing forces, if men are needed at any other point they will be given preference to transfer to nearest point; with privilege of returning to home station when force is increased, such transfer to be made without expense to the Company. Seniority to govern all cases." (emphasis added)

This rule was brought to the attention of the neutral but was completely ignored. Obviously, the neutral could not have reached this erroneous award if he had considered Rule 26. Failure of the claimants to take positions under this rule by displacing upgraded helpers and apprentices constituted a failure to exercise their seniority rights within the meaning of Section 3 of Article I of the September 25, 1964 Agreement.

The Award is manifestly erroneous and we dissent.

H. F. M. Braidwood
H. F. M. BRAIDWOOD

W. R. Harris
W. R. HARRIS

SPECIAL BOARD OF ADJUSTMENT NO. 570

ESTABLISHED UNDER

AGREEMENT OF SEPTEMBER 25, 1964

Chicago, Illinois - October 6, 1972

PARTIES
TO
DISPUTE:

System Federation No. 121
Railway Employees' Department
AFL-CIO - Electrical Workers
and
The Union Terminal Company (Dallas)

QUESTION
AT
ISSUE:

Does Special Board of Adjustment Award No. 253 preclude Claimant, John H. Clark, from selecting, at his option, to resign and accept a lump sum separation allowance consistent with the formula set forth in Article I of the September 25, 1964 Agreement?

DISCUSSION
AND
FINDINGS:

Case No. 265, involving the same parties, was adjudicated by Special Board of Adjustment No. 570 in Award No. 253 issued on January 6, 1972. In that case, The Union Terminal Company, hereinafter referred to as the "Carrier", alleged that the "claimant was laid off on March 15, 1968, at the close of the heating season in the same manner as in previous years and that none of the operational changes listed in Section 2 of Article I of the September 25, 1964 Agreement occurred at that time or at any time prior or subsequent thereto which had any effect on the fact that claimant was furloughed. Since claimant was not furloughed as a result of any of the operational changes listed in Section 2 of Article I, claimant is not entitled to protective benefits provided in Article I." Further in its submission to the Board, Carrier made the following allegation:

"In order to prevail, the Employes must show in this case that Claimant was deprived of employment or placed in a worse position with respect to his compensation and rules governing work conditions as a result of one of the changes in operations listed in Section 2."

In its findings, the Board in Award No. 253 said:

"There is no question that the Steam Power Plant was closed on April 24, 1968, and has

not operated since that date. This was not a cutback of forces in the power plant resulting from a decline in carrier's business. It was a complete abandonment."

Award No. 253 reads:

"1. The Union Terminal Company, Dallas, Texas, violated Article I, Section 4, of the September 25, 1964 Agreement, when they failed to give sixty (60) days written notice of the abolishment of job held by Power Plant Engineer, John H. Clark, prior to March 15, 1968.

2. The Union Terminal Company also violated Article I, Section 6 of the September 25, 1964 Agreement, when they failed to afford the protective benefits to Power Plant Engineer, John H. Clark, who was furloughed on March 15, 1968, with only five working days notice.

3. During any deprivation of employment of the Claimant, John H. Clark, within the period by which the required sixty (60) days notice was abbreviated, Carrier shall compensate said Claimant at his regular straight time rate for all hours lost on such working days, less his earnings during that period.

4. Claimant shall be accorded employe protective benefits as provided in Article I, Section 6 of the September 25, 1964 Agreement."

On January 10, 1972, four days after the adoption of Award No. 253, the General Chairman wrote to the Carrier asking whether or not the Carrier will apply the award. Carrier replied on January 25, 1972, detailing the payments due the claimant thereunder. Claimant, John H. Clark, wrote to the Carrier on January 27, 1972, enclosing a copy of a letter to him dated January 10, 1972, from the General Chairman authorizing the Claimant to negotiate with the Carrier for a settlement of Award No. 253. He requested an appointment for that purpose.

On January 31, 1972, the General Chairman wrote to the Carrier rejecting Carrier's computations contained in the letter of January 25, 1972, and said:

". . . Further under the terms and conditions of the September 25, 1964 Agreement when the Carrier has complied with Article I, Section 6 in offering Mr. Clark a monthly dismissal allowance, then Clark may make an option under Article I, Section 7 of the September 25, 1964 Agreement to the effect that he may resign and (in lieu of all other benefits provided for in this agreement) accept a lump sum separation allowance provided for in accordance with Section 9 of the Washington Job Protection Agreement of May 1936, which is quoted under Section 7 of Article I of the September 25, 1964 Agreement."

Carrier's reply of February 10, 1972, disagreed with the General Chairman's interpretation of Award No. 253. And the General Chairman wrote on February 14, 1972, that the issue will be submitted to "the Railway Employees' Department for assistance in having the proper application of this Award applied on the property." On February 27, 1972, the Claimant wrote to the Carrier as follows:

"Please refer to Award No. 253 wherein the claim in my behalf was sustained; therefore, in line with Section 7, at this time I would like to accept my separation allowance in full in accordance with Section 9 of the so called Washington Job Protection Agreement of May 1936."

A conference was held on March 9, 1972. In confirming the discussions at the conference, the General Chairman wrote on March 13, 1972, that it was also his "position that since the Board ruled that Section 6 of Article I of the September 25, 1964 Agreement had been violated then Section 7 of Article I of the September 25, 1964 Agreement is applicable in the decision of this Award No. 253." Carrier also confirmed the conference in a letter dated March 20, 1972, which, in part, contained the following:

"I pointed out to you that the Award was retroactive in nature and required Carrier to pay a coordination allowance dating back to May 1968. His obligation to resign and demand a lump sum settlement should have been made at the time he was affected . . . not 3 years and 9 months later after the Award had sustained a monthly coordination allowance.

I also pointed out to you that no claim for a lump sum settlement was handled on the property, nor was such a claim contained in the claim submitted to SBA 570. Certainly such a claim cannot be considered at this late date."

Carrier contends (1) that this Board has no jurisdiction to adjudicate this claim because "the question of a lump sum separation allowance was never raised during the handling of the claim involved in Award No. 253 on the property prior to submission of that claim to the Board," (2) that this Board cannot rule that Award No. 253 does or does not permit Claimant to exercise the option for separation pay because Award No. 253 did not consider that issue, and (3) that the option under Article I, Section 7 should have been exercised when the Claimant was furloughed on March 15, 1968.

Award No. 253 did not consider the application of Article I, Section 7. That issue was not before the Board. Claimant had not then requested a lump sum separation allowance. It had not then been raised on the property. All of Carrier's defenses depend on the interpretation of Article I, Section 7. When was the Claimant obliged to exercise his option for separation allowance? If the Claimant was obliged to exercise that option on or about March 15, 1968, when he was furloughed, then this Board must deny the claim. If on the other hand, the Claimant may exercise the option within a reasonable time after January 6, 1972, when Award No. 253 was issued, then the claim must be sustained. This Board has jurisdiction to adjudicate this issue, which is the essence of claim No. 385.

This is a case of first impression. Although the Agreement has been in effect for nearly eight years, this Board has not been asked to consider and adjudicate this precise issue. At least neither party has cited any relevant precedent.

The relevant part of Article I, Section 7 of the September 25, 1964 Agreement reads as follows:

"Any employee eligible to receive a monthly dismissal allowance under Section 6 hereof may, at his option at the time he becomes eligible, resign and (in lieu of other benefits and protections provided in this agreement) accept in a lump sum a separation allowance determined in accordance with the provisions of Section 9 of the Washington Job Protection Agreement of May, 1936 . . ."

Had the Carrier acknowledged that the Claimant was entitled to a monthly dismissal allowance under Section 6, when the Claimant was furloughed on March 15, 1968, there could have been no question that he would then have become eligible to exercise his option under Section 7. And he would have been required to exercise that option within a reasonable time thereafter and before he accepted a monthly dismissal allowance under Section 6. An employe who is deprived of employment as a result of the changes set out in Article I, Section 2 becomes eligible for protective benefits. He simultaneously becomes eligible to an option for a separation allowance, which he must exercise with due diligence.

But this Carrier had contended that the Claimant had not been furloughed on March 15, 1968, for any of the reasons in Article I, Section 2 and that he was, therefore, not eligible to receive a monthly dismissal allowance under Article I, Section 6. A dispute arose whether the furlough was a result of any of the conditions in Section 2, including "abandonment." That was the essence of the dispute in Case No. 265, adjudicated in Award No. 253.

Of course, the Claimant could have exercised his option under Section 7 and could have presented that issued to the Board in Case No. 265. Had he done so, he would have had to resign his position. A lump sum separation allowance under Section 7 is payable only upon the resignation of the eligible employe.

It is too much to expect an employe to resign and forfeit years of accumulated seniority when the Carrier firmly contends that his furlough did not result from any of the conditions in Article I, Section 2. If he had resigned and if the Board thereafter sustained the Carrier's position, the Claimant would never again have any reason to expect to be called for work by the Carrier. His employment would have been completely terminated. His years of accumulated seniority would have become a nullity. And he may then have been of an age when employment elsewhere would be difficult to obtain. ✓

That rigid construction of the language in Article I, Section 7 cannot have been the intent of the parties. If that was so, it would be an open invitation to every Carrier to deny protective benefits to many employes in the hope that they would resign, and if the claim was denied, have no further obligation under the schedule agreement. It could result in perpetrating conditions far beyond the purpose and intent of the September 25, 1964 Agreement.

Claimant became eligible to a lump sum separation allowance under Article I, Section 7 of the September 25, 1964 Agreement on January 6, 1972, when Award No. 253 was issued. It was then that he also became

eligible to monthly benefits under Section 6. Until then he was deprived of the eligibility by the Carrier. A Carrier may not deny an employe protective benefits under Article I of that Agreement and at the same time expect that employe to exercise his option under Section 7 and resign his position. This is the only fair, reasonable and proper interpretation of the meaning and intent of Article I, Section 7 when read and applied to the reasons and purposes of the September 25, 1964 Agreement.

AWARD

Special Board of Adjustment Award No. 253 does not preclude Claimant, John H. Clark, from electing, at his option, to resign and accept a lump sum separation allowance consistent with the formula set forth in Article I of the September 25, 1964 Agreement.

Adopted at Chicago, Illinois, October 6, 1972.

David Dolnick
NEUTRAL MEMBER

Mc Dissent
E. T. Horsley

Edward P. Eter

W. M. Braidwood
CARRIER MEMBERS

C. E. Wheeler
EMPLOYEE MEMBERS

SPECIAL BOARD OF ADJUSTMENT NO. 570

Established Under

Agreement of September 25, 1964

Chicago, Illinois, May 30, 1973

PARTIES
TO
DISPUTE:

System Federation No. 3
Railway Employees' Department, AFL-CIO
Sheet Metal Workers

and

Kansas City Terminal Railway Co.

STATEMENT
OF CLAIM:

Are Sheet Metal Workers C. E. Bruce and J. M. Carey entitled to the benefits of Article I of the September 25, 1964 Agreement, including advance notice pursuant to Section 4 of said Agreement when they were deprived of employment at Kansas City, MO. when Carrier transferred and discontinued its passenger trains Nos. 117, 118 and Nos. 19 and 20, and proposed transfer and discontinuance of trains Nos. 9 and 10.

FINDINGS:

The Carrier in this case, the Kansas City Terminal Railway Company, is a depot and terminal Company which provides services to twelve trunk line railroads having operations in Kansas City. It operates the Union Station and its business consists, in part, of maintaining and operating facilities for servicing and switching of passenger equipment. The individual railroads curtailed the number of trains going into the depot resulting in the abolishment of the jobs and furloughing of claimants in this case.

The issue is whether claimants are entitled to the Job Protection benefits of Article I of the September 1964 Agreement. Were claimants deprived of their jobs because of operational changes or because of a decline in Carrier's business?

This case is similar to Award No. 153 of this Board, wherein it was stated:

"In Article I matters, the Board will determine the primary cause of lay-offs or dislocations by weighing on a case to case basis the extent of operational change against the degree of business decline. In resolving that issue, Section 3 squarely places the

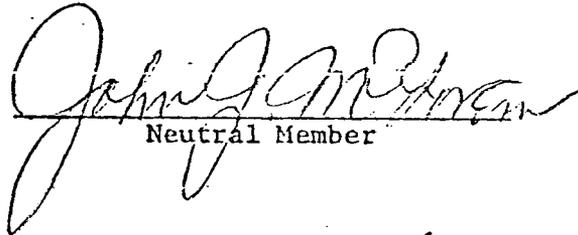
burden of proof upon Carrier. That this requirement as to proof is not to be regarded lightly is attested to by such prior holdings of this Board as Awards 100 and 113. We affirm those Awards and believe they have merit, particularly in this sensitive area where the Agreement's main thrust is to afford protective benefits to employes."

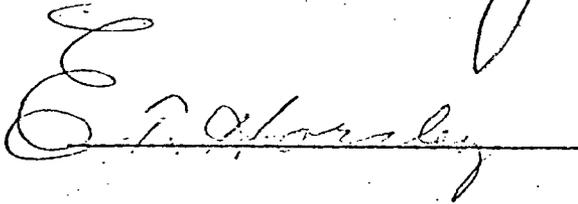
We agree with that Award and find that in the instant claim Carrier has not met its burden of proof to show that its actions come within the purview of Article I, Section 3. We therefore find Carrier in violation of Article I, and will sustain the claim.

AWARD

Claim sustained.

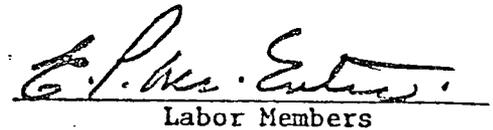
Adopted at Chicago, Illinois, May 30, 1973.


Neutral Member






Carrier Members


Labor Members

S.B.A. No. 570
Award No. 385
Case No. 420

SPECIAL BOARD OF ADJUSTMENT NO. 570

ESTABLISHED UNDER

AGREEMENT OF SEPTEMBER 25, 1964

Chicago, Illinois - June 30, 1975

PARTIES

International Association of Machinists & Aerospace
Workers

TO

and

DISPUTE

The Union Pacific Railroad Company

STATEMENT

OF

CLAIM

Machinists Joseph S. Pavich, Russell L. Hylan, John S. Vallinch, Richard Duff, C. A. Ellis, B. Swanger and Royal Shipley are entitled to the protective benefits as provided under the provisions of Article I of the September 25, 1964 Agreement.

FINDINGS:

The record does not support the contention that Claimants should have accepted less favorable protective conditions than those that the Implementing Agreement preserved to Carrier's Shop Craft employees holding jobs that were abolished effective April 4, 1971.

Patently, whether Machinist's jobs were eliminated in April, 1971 rather than a few weeks later, the fact remains that transfer of this work, either to the diesel facility at North Platte, Nebraska, or to various other of Carrier's shop locations, was none the less, the underlying cause responsible for Claimants losing their jobs at Council Bluffs, Iowa. Since Claimants' furloughs on May 13 and June 2, 1971, respectfully, were just as attributable to the factor of "transfer of work", as were the furloughs on April 4, 1971, they should similarly have served to make Claimants eligible for the identical benefits that were given to their co-workers a month or so earlier.

It cannot be denied that the claims of B. E. Swanger and Royal D. Shipley were neither withdrawn or otherwise disposed of, subsequent to their filing on May 28, 1971, and thereafter they continued to remain current and pending. From a review of the correspondence between the parties and the discussions held with respect to the claims filed on behalf of Pavich, Hylan, Vallinch, Duff and Ellis, it is

perfectly obvious that no useful purpose would have been served by continuing to mention in each and every instance that the ongoing negotiations also had reference to the similar claims by Swanger and Shipley. In the instant circumstances the handling on the property of the two claims did not contravene either the Railway Labor Act or Article VI, Section 9 of the September 25, 1964 Agreement, and therefore, the Carrier's contentions to the contrary are rejected.

Claimants did not forfeit their rights to protection by refusing to accept employment at North Platte under the conditions which were attached to said offer, namely, the removal of their names from the Council Bluffs seniority roster coupled to an understanding that their seniority dates at Council Bluffs would not be dovetailed with the seniority dates held by employees on the Machinists seniority roster at North Platte. Suffice it to say, Article I, Section 3 of the Agreement of September 25, 1964, does not contemplate that the surrender and permanent loss of substantial seniority credits would be a prerequisite to eligibility for an available position.

So long as C. A. Ellis retains his standing on the UP Machinist's roster at Council Bluffs, his employment at that location by the C&NW does not deprive him of the protection afforded by the September 25, 1964 Agreement.

AWARD

Claims sustained in accordance with the above findings.

Adopted at Chicago, Illinois June 30, 1975.

Harold M. Gilden

Harold M. Gilden
Neutral Member

We dissent

W. B. Jones

W. B. Jones

G. R. DeHague

G. R. DeHague

F. M. Braidwood

F. M. Braidwood

C. E. Wheeler

C. E. Wheeler

G. M. Youhn

G. M. Youhn

E. P. McEntee

E. P. McEntee

Carrier Members

Labor Members

SPECIAL BOARD OF ADJUSTMENT NO. 570

ESTABLISHED UNDER

AGREEMENT OF SEPTEMBER 25, 1964

Chicago, Illinois - November 10, 1976

PARTIES
TO
DISPUTE:

(System Federation No. 76
(Railway Employes' Department, AFL-CIO
(Electrical Workers
(
(VS
(CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
(COMPANY

STATEMENT OF
CLAIM:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company violated Article I of the September 25, 1964 Agreement when it refused to make applicable the protection set forth in Sections 6 and 7 of said Article I to Electricians Kenneth L. Stone, Max M. Gruell, Russell M. Shandy and Electrician Helper, Fred L. Raihl, who were furloughed January 10, 1975 at Deer Lodge, Montana.
2. That accordingly, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to grant the protective benefits provided in Article I, Sections 6 and 7 of the September 25, 1964 Agreement to each of the aforementioned Claimants effective as of the date their jobs were abolished and they were furloughed, which was January 10, 1975.

FINDINGS:

Under date of October 15, 1974, Carrier forwarded to the General Chairman of the Organization a 60-day notice under Article I, Section 4 of the September 25, 1964 National Agreement that certain enumerated position would be abolished at Deer Lodge, Montana. The reasons proffered by the Carrier was the curtailment of operations at the Deer Lodge roundhouse as a result of the retirement of electric locomotives on Carrier's Lines West. On October 29, 1974, a second 60-day notice was issued by Carrier advising of an additional number of job abolishments at Deer Lodge due to the retirement of electric locomotives. Claimants were included in the latter notice.

It is the Organization's position that the Claimants' jobs were abolished due to Carrier's abandonment of electric locomotives at Deer Lodge. This, according to the Organization, was a change in the operations of the Carrier encompassed by Article I, Section 2 of the September 25, 1964 Agreement, and inasmuch as Claimants were deprived of employment as a result, they thereby were entitled to the protective benefits provided for in Section 6 and Section 7 of said Agreement.

The Carrier argues that Claimants were not deprived of employment nor placed in a worse position with respect to compensation and rules governing working conditions as a result of the January 10, 1975 force reduction at Deer Lodge, Montana. They were offered positions in their respective craft or class at other locations on Carrier's property but refused to accept said positions. Accordingly, pursuant to Article I, Section 3 of the September 25, 1964 Agreement, Carrier insists that the Claimants were not considered as being deprived of employment and were thus not entitled to the protective benefits of Article 6 and 7.

It is undisputed that Claimants had seniority only at the Deer Lodge Shops, and thus they would be placed at the bottom of the seniority roster at any other point at which they accepted employment. It is also undisputed that, pursuant to Article I, Section 3, an employee shall not be regarded as deprived of employment or placed in a worse position with respect to his compensation and rules governing working conditions due to "failure to obtain a position available to him in the exercise of his seniority rights in accordance with existing rules or agreements." The framers of Article I, Section 3 clearly intended that if an employee is deprived of employment as a result of one of the causes listed in Section 2 of Article I, and he can exercise his seniority to a position elsewhere on Carrier's property then he is required to do so. However, in the instant dispute, Claimants had seniority only at the Deer Lodge Shops and thus could not exercise their seniority to a position elsewhere. Simply stated they had no seniority to exercise. They could not, therefore, be considered as deprived of employment for failure to exercise their seniority as per article I, Section 3.

We have carefully examined the Awards of this Board cited by the Carrier in support of their position that rejection of job offers by employees in related circumstances deprives said employees of the protective benefits of Article I. Yet in all those

Awards positions were available to the employees in the exercise of their seniority. Such was not the case here, however. Accordingly, we consider those Awards inapposite to the dispute at hand.

Based on the foregoing, we find that the claim must be sustained.

AWARD: Claim sustained.

Adopted at Chicago, Illinois, Nov. 10, 1976

Carrier is ordered to make the within Award effective on or before 30 days from the date here.

Was dissent

Robert M. O'Brien
Robert M. O'Brien, Neutral Member

G. M. Youden
Carrier Member

J. C. Clements
Labor Member

J. C. Carter
Carrier Member

W. J. Beck
Labor Member

W. B. Jones
Carrier Member

C. C. Wheeler
Labor Member

AWARD NO. 164
Case No. SG-27-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) New York, Susquehanna and Western Railroad Company
TO THE) and
DISPUTE) Brotherhood of Railroad Signalmen

ISSUE: Claim that Carrier improperly abolished positions held by Assistant Signalman William Penn, Assistant Maintainer Edward Nieweglowski and Signalman James T. Walsh, and should now be required to allow them all compensation and other benefits due under the provisions of the February 7, 1965 Agreement.

OPINION OF BOARD: Although a time-limit issue arising out of this claim has been submitted to the Third Division by the Employees, the Employees stipulate that they do not seek double compensation. In any event, the matter is before this Committee on its merits and not on the time-limit question.

The three Claimants are protected employees. They were furloughed without compensation at different times during the first half of 1968. Carrier's defense was that a decline in business and a weak financial position necessitated these actions.

However, Article I, Section 3, which permits a reduction in the number of protected employees, provides a specific method for calculating the allowable percentage reduction. These procedures were not followed by Carrier. Indeed, Carrier submitted none of the calculations specifically required by Article I, Section 3.

Under the February 7, 1965, Agreement, Carriers are not permitted to lay off protected employees without compensation simply because business has fallen off, unless the average percentage decline "of both operating revenue and net revenue ton miles in any 30-day period" has exceeded 5% "compared with the average of the same period for the years 1963 and 1964." Then,

AWARD NO. 164
Case No. SG-27-E

and only then, under this provision employees may be laid off commensurate with that percentage decline. Having utterly failed to comply with this method by which there may be a reduction in force of protected employees, Carrier had no contractual authority to furlough the Claimants.

A W A R D

Claim sustained.


Milton Friedman
Neutral Member

Washington, D. C.
December 8, 1969

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES)
TO)
DISPUTE)
Brotherhood of Railway, Airline & Steamship Clerks,
Freight Handlers, Express and Station Employes
and
Missouri-Kansas-Texas Railroad Company

QUESTIONS
AT ISSUE:

(1) Did B. L. Carr qualify as a protected employe under the provisions of Article I, Section I, of the February 7, 1965 Agreement?

(2) Did the carrier violate the provisions of the February 7, 1965 Agreement, particularly Article I, Section I, when it failed to return B. L. Carr, Stower-Crane Operator, San Antonio, Texas, to compensated service on or before March 1, 1965 and continues to refuse to return him to such service?

(3) Did the carrier violate the provisions of Article I, Section 3 when it refused to restore B. L. Carr to active service, on the basis that it had suffered a decline in business without first restoring him to active service and thereafter giving the employes affected five (5) days notice of reduction in forces as required by the current schedule agreement?

(4) If the answers to questions 1, 2 and 3 are in the affirmative is B. L. Carr now due the difference between what he earned as an extra man and the normal rate of compensation of the position he held on October 1, 1964 (plus subsequent wage increases) in accordance with Article IV, Section I during the entire period March 1, to and including December 31, 1965?

(5) If the answers to questions 1 and 2 are in the affirmative and the answer to question 3 is in the negative is B. L. Carr entitled to the difference in what he earned and the average monthly compensation of the position he held on October 1, 1964, (plus subsequent wage increases) during such months when the average of both the gross operating revenue and net revenue ton miles of the carrier did not fall below 5% over the corresponding months in the base years 1963 and 1964?

OPINION
OF BOARD:

On October 1, 1964, Claimant was regularly assigned to Stower-Crane Operator position at San Antonio. In addition, he had two or more years of an employment relationship, as well as fifteen or more days of compensated service during 1964. On this basis, the Organization contends that Claimant is a protected employe pursuant to Article I, Section I, of the February 7, 1965 National Agreement.

The Carrier, however, argues that he did not qualify as a protected employee inasmuch as Claimant was displaced on October 9, 1964, by a senior employee, whose job was abolished. The Carrier, therefore, insists that Claimant lost his protected status due to his failure to perform any service during the months of November and December, 1964. Admittedly, at the time that Claimant was furloughed, he filed his name and address in accordance with the rules and indicated his availability for all extra work.

The Carrier stresses that under the November 24, 1965 Interpretations - - as explained in approximately fourteen pages of its submission - - a protected employee loses his protection if he fails to work an average of seven days during each of the months in which he is furloughed. In fact, it chides the Organization as follows: "but no where in its ex parte submission, has the Organization contended that Carrier's position with respect to the agreed interpretation is in error. This amounts to a tacit agreement that the Carrier's position is correct."

We would simply refer the Carrier to Award No. 14, dated December 19, 1967, the pertinent portion of which provides as follows:

"The mere fact that he was furloughed on November 30, 1964 and performed no further service until March 15, 1965 does not place him in a different category than any other employee in active service who worked continuously after October 1, 1964. He was not a furloughed employee on October 1, 1964."
Also see Award Nos. 19 and 127.

The second defense relied on by the Carrier is based on that portion of Article I, Section 3, permitting it to reduce its forces in the event of a decline in business in excess of 5% pursuant to the formula contained therein. Inasmuch as the Claimant had previously been furloughed in October, 1964 - - and not returned to active service on or before March 1, 1965 - - it could refrain from recalling him during those months in 1965, due to said decline in business.

The Organization counters, of course, with that portion of Article I, Section 3, which provides that, "(A)dvance notice of any such force reduction shall be given as required by the current Schedule Agreements - - ." On the property, Rule 17 of the effective Agreement, provides that not less than five working days advance notice be given in reduction of forces or abolishment of positions. Thus, the thrust of the Organization's argument herein is directed at the failure of the Carrier to give advance notice.

Are the requirements of the February 7, 1965 National Agreement mere rhetoric? What is the significance of Article I, Section 1, wherein it is said, " - - - such employees who are on furlough as of the date of this Agreement will be returned to active service before March 1, 1965 - - - "? What is the significance of Article I, Section 3, wherein it is stated that, "(A)dvance notice of any such force reduction shall be given - - - "? (Underline added).

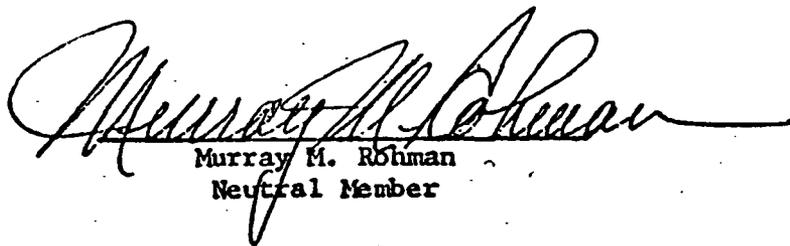
In seeking answers to these questions, we quote from Page 5, of the Carrier's Submission:

"In the interpretation of contracts it is not to be assumed that the parties thereto have included therein language that is mere surplusage and has no meaning. On the other hand, it is to be assumed that the parties ascribed a definite meaning to the language used by them, otherwise different language, or no language at all, would have been used."

We could not have expressed this thought any clearer nor more accurately. We wholeheartedly concur. Predicated on our analysis, we find that the Carrier failed to restore Claimant to active service prior to March 1, 1965. We further find that the Carrier has failed to give the required notice pursuant to Article I, Section 3.

AWARD

The answer to Questions (1), (2), (3) and (4) is in the affirmative.


Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
April 20, 1970

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES)
TO)
DISPUTE)
Brotherhood of Railway, Airline & Steamship Clerks,
Freight Handlers, Express and Station Employees
and
Missouri-Kansas-Texas Railroad Company

QUESTIONS
AT ISSUE: (1) Did B. L. Carr qualify as a protected employe under the provisions of Article I, Section I, of the February 7, 1965 Agreement?

(2) Did the carrier violate the provisions of the February 7, 1965 Agreement, particularly Article I, Section I, when it failed to return B. L. Carr, Stower-Crane Operator, San Antonio, Texas, to compensated service on or before March 1, 1965 and continues to refuse to return him to such service?

(3) Did the carrier violate the provisions of Article I, Section 3 when it refused to restore B. L. Carr to active service, on the basis that it had suffered a decline in business without first restoring him to active service and thereafter giving the employes affected five (5) days notice of reduction in forces as required by the current schedule agreement?

(4) If the answers to questions 1, 2 and 3 are in the affirmative is B. L. Carr now due the difference between what he earned as an extra man and the normal rate of compensation of the position he held on October 1, 1964 (plus subsequent wage increases) in accordance with Article IV, Section I during the entire period March 1, to and including December 31, 1965?

(5) If the answers to questions 1 and 2 are in the affirmative and the answer to question 3 is in the negative is B. L. Carr entitled to the difference in what he earned and the average monthly compensation of the position he held on October 1, 1964, (plus subsequent wage increases) during such months when the average of both the gross operating revenue and net revenue ton miles of the carrier did not fall below 5% over the corresponding months in the base years 1963 and 1964?

OPINION
OF BOARD:

On October 1, 1964, Claimant was regularly assigned to Stower-Crane Operator position at San Antonio. In addition, he had two or more years of an employment relationship, as well as fifteen or more days of compensated service during 1964. On this basis, the Organization contends that Claimant is a protected employee pursuant to Article I, Section I, of the February 7, 1965 National Agreement.

M

The Carrier, however, argues that he did not qualify as a protected employee inasmuch as Claimant was displaced on October 9, 1964, by a senior employee, whose job was abolished. The Carrier, therefore, insists that Claimant lost his protected status due to his failure to perform any service during the months of November and December, 1964. Admittedly, at the time that Claimant was furloughed, he filed his name and address in accordance with the rules and indicated his availability for all extra work.

The Carrier stresses that under the November 24, 1965 Interpretations - - as explained in approximately fourteen pages of its submission - - a protected employee loses his protection if he fails to work an average of seven days during each of the months in which he is furloughed. In fact, it chides the Organization as follows: "but no where in its ex parte submission, has the Organization contended that Carrier's position with respect to the agreed interpretation is in error. This amounts to a tacit agreement that the Carrier's position is correct."

We would simply refer the Carrier to Award No. 14, dated December 19, 1967, the pertinent portion of which provides as follows:

"The mere fact that he was furloughed on November 30, 1964 and performed no further service until March 15, 1965 does not place him in a different category than any other employee in active service who worked continuously after October 1, 1964. He was not a furloughed employee on October 1, 1964."

Also see Award Nos. 19 and 127.

The second defense relied on by the Carrier is based on that portion of Article I, Section 3, permitting it to reduce its forces in the event of a decline in business in excess of 5% pursuant to the formula contained therein. Inasmuch as the Claimant had previously been furloughed in October, 1964 - - and not returned to active service on or before March 1, 1965 - - it could refrain from recalling him during those months in 1965, due to said decline in business.

The Organization counters, of course, with that portion of Article I, Section 3, which provides that, "(A)dvance notice of any such force reduction shall be given as required by the current Schedule Agreements - - ." On the property, Rule 17 of the effective Agreement, provides that not less than five working days advance notice be given in reduction of forces or abolishment of positions. Thus, the thrust of the Organization's argument herein is directed at the failure of the Carrier to give advance notice.

Are the requirements of the February 7, 1965 National Agreement mere rhetoric? What is the significance of Article I, Section 1, wherein it is said, " - - - such employees who are on furlough as of the date of this Agreement will be returned to active service before March 1, 1965 - - - "? What is the significance of Article I, Section 3, wherein it is stated that, "(A)dvance notice of any such force reduction shall be given - - - "? (Underline added).

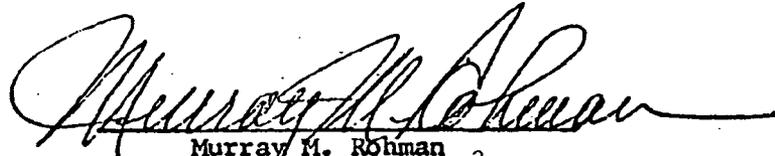
In seeking answers to these questions, we quote from Page 5, of the Carrier's Submission:

"In the interpretation of contracts it is not to be assumed that the parties thereto have included therein language that is mere surplusage and has no meaning. On the other hand, it is to be assumed that the parties ascribed a definite meaning to the language used by them, otherwise different language, or no language at all, would have been used."

We could not have expressed this thought any clearer nor more accurately. We wholeheartedly concur. Predicated on our analysis, we find that the Carrier failed to restore Claimant to active service prior to March 1, 1965. We further find that the Carrier has failed to give the required notice pursuant to Article I, Section 3.

AWARD

The answer to Questions (1), (2), (3) and (4) is in the affirmative.


Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
April 20, 1970

Player retains right to manage plant except as restricted by collective bargaining contract, and there is no contract provision or past practice covering subject of down-bidding and rates of pay.

Appearance: For the company — Charles E. Handy, labor counsel, Bert Kohn, labor relations manager, Frank Scottino, director of test facilities. For the union — Joe D. Medley, assistant general chairman, Bobby Wheeler, A. J. Rose, and Eugene Le Duc, committeemen.

DOWN BIDDING

The Grievance and Its Background
WEISENBERGER, Arbitrator. — Cooper Air Motive, Inc., herein referred to as the Company, is engaged in aircraft engine testing activities at its plant in Dallas, Texas. Airline District 146, International Association of Machinists and Aerospace Workers, herein referred to as the Union, is the exclusive collective bargaining representative for the aircraft engine mechanics (and others) at the Dallas, Texas, plant. The current and applicable collective bargaining agreement became effective November 18, 1973, and will remain in effect until November 18, 1978.

Two of the job classifications under the collective bargaining agreement are Mechanic and Test Cell Operator. Both of these jobs require a jet aircraft mechanic. The mechanic classification has a current rate range of \$3.81 to \$5.36 per hour. The test cell operator classification has a current rate range of \$4.61 to \$6.61 per hour. Both of these classifications have automatic \$0.05 per hour increases each ninety (90) days up to a certain point with merit increases after that.

The collective bargaining agreement contains a provision for posting of job vacancies and employee bidding for those vacancies. Even though the mechanics classification is a "lower classification" than the test cell operator classification, both the Company and the Union agree that an employee can bid down from test cell operator in one department to mechanic in a separate department. This is what the grievant did. His pay rate as a test cell operator fell somewhere within the mechanic rate range but was more than the lowest rate for his new job. The Company slotted him in at a pay rate in an amount less than his prior rate as a test cell operator.

The Union contends that the grievant is entitled to keep his old pay rate since it falls within the rate range of the lower job classification to which he is moving.

The Company contends that it has the right to slot the grievant in at a pay rate based upon the grievant's seniority and ability without regard to his prior pay rate in the higher classification.

The grievance could not be resolved and proceeded to arbitration.

OPINION

Though both the Company and the Union cited several provisions in the collective bargaining agreement as having a bearing on the issue before this arbitrator, none of these provisions even vaguely refer to down bidding and rates of pay. Though the Company argued that past practice supported their actions in this case at the hearing involved, presented returning to the bargaining unit and reductions in force which have no bearing on down bidding.

Evidently, the reason why this grievance is one of first impression even though both parties admit that down bidding has been allowed for some time is because until the last contract negotiations, mechanic was a higher classification than test cell operator.

The Company and the Union admit that when a person is hired off the street into the mechanic classification, he does not necessarily start at the lowest pay rate for that classification. Rather, the Company assigns that new hire a pay rate based upon ability and experience. This right of the Company, though admitted by the Union, is not set out in the contract.

This arbitrator cannot write contract provisions for the parties. If a subject is not covered in the collective bargaining agreement and is not conclusively determined by the past practice of the parties, most arbitrators hold that the Company is at liberty to unilaterally make a decision and take action. This is based upon the basic right of the Company to manage the plant and the fact that all rights of the Company to so manage unless restricted by the collective bargaining agreement remain solely in management. Such is the case in this arbitration.

AWARD

For the reasons set forth above, the grievance is denied.

SONIC KNITTING INDUSTRIES, INC.

Decision of Arbitrator

In re SONIC KNITTING INDUSTRIES, INC. and INTERNATIONAL LADIES GARMENT WORKERS' UNION, LOCAL 600-601, May 23, 1975. Final Opinion September 8, 1975. Arbitrator: David M. Helfeld.

PLANT REMOVAL

—Union recognition clause — Discontinuance of union membership ▶ 4.01 ▶ 117.42 ▶ 24.907

Employer violated union recognition clause of contract when, following relocation of its knitting operations to another plant, (a) its vice president told employees desiring to leave union to see company lawyer, instead of advising them to find their own lawyer or seek advice from NLRB office, (b) employer allowed employees to visit new plant during working hours and collect signatures for union-security deauthorization petition, (c) supervisor gave time off with pay to employees who made such plant visit, and (d) employer paid probationary employees higher than minimum wage rate and gave them benefits of company medical plan. Employer's action directly and indirectly discouraged membership in union.

ARBITRATION

—Damages — Pending deauthorization petition — Authority of arbitrator ▶ 94.553

Arbitrator has authority to award damages and other relief to union due to employer's discouragement of union membership under contract authorizing arbitrator to grant "relief as he may deem proper," notwithstanding employer's contention that union is powerless to seek remedy until NLRB makes determination on employees' union-security grievance and NLRB petition are clearly separable and can be decided in different forums; (2) parties intended to exercise "remedial flexibility."

—Relief for contract violation — Applicable law ▶ 94.559 ▶ 24.902

Under contract stating that "award of the arbitrator shall be final and binding," provided that it "conforms to law," arbitrator applies decisions of U.S. and Puerto Rican Supreme Courts in field of collective bargaining law in determining nature of relief to be awarded to union as result of contract violation by Puerto Rico-based employer, notwithstanding employer's contention that standing employer's contention that

"law" in contract means Civil Code of Puerto Rico, general principles enunciated in treaties such as McCormick's "Damages," and supporting jurisprudence. (1) Parties intended to apply developing labor law to contract, particularly jurisprudence which has developed under Section 301 of Taft-Hartley Act; (2) civil code of Puerto Rico and its jurisprudence, while not completely irrelevant, are at most secondary or tertiary source.

—Preliminary cease and desist order — Continuation ▶ 24.907 ▶ 94.559

Arbitrator finalizes preliminary order directing employer to cease and desist from discouraging membership in union in violation of union recognition clause of parties' contract. It appearing that some employees who are asked to join union or to fill out medical plan forms consult company supervisors before acting and that efforts to recruit new members of union proved fruitless. Employer is directed to post notices of arbitrator's decision.

CONTRACTS

—Violation of union recognition clause — Remedy ▶ 94.559 ▶ 9.58 ▶ 116.404

Employer that discouraged membership in union in violation of union recognition clause of contract is ordered to make following payments to union: (1) sum equivalent to union dues which union did not receive because it found presenting employees into joining union counterproductive despite presence of union-shop clause in parties' contract; (2) sum representing employer's contribution to health and welfare trust funds that employer did not contribute for newly-hired personnel; (3) reimbursement for fees paid by union to its attorney and labor consultant, which in final analysis, were costs essential to union's "self-defense," and (4) \$10,000 in consequential damages to compensate union for its loss of bargaining power and of capacity to represent employees effectively, for union's present uncertain status as collective bargaining representative, and for energy, time, and cost it will have to invest to recover its standing as collective bargaining representative. However, union is not entitled to damages for union dues and health and welfare trust fund contributions that it allegedly would have received for next contract term but for employer's contract violation, since it is not possible at present time to measure damages in terms of

funds lost dues or trust fund contributions.

Appearances: For the company - Sautil Miguel Falou, for the union - Sautilago Paz, Jr., Vincent Rotolo.

CONTRACT VIOLATION

Background

HELFFELD, Arbitrator. - The contractual relations of the parties are the result of a recognition strike which took place in 1972 and which ended with the signing of a three year collective agreement beginning August 28, 1972. The Union, International Ladies' Garment Workers' Union, Local 601, obtained terms in the Agreement which are customary for this industry, including a standard union shop clause. The Company, Sonic Knitting Industries Inc., is part of a vertically integrated complex of companies which bears the name "Caribbean Leisurewear". The complex, through its companies, produces leisurewear for the market, beginning with texturizing and knitting operations, and ending with the final garment for sale to the consuming public.

At its productive peak in Puerto Rico, Caribbean Leisurewear employed 1,400 which declined to 500 in 1974, rising again to 1,000 in April of 1975. Sonic Knitting Industries, Inc. is the only company within the Caribbean Leisurewear complex which is ununionized. Its employment has fluctuated toward the end of 1974 there were less than a dozen employees, by March 20, 1975, there were at least 34, and by the time of the hearings in this case 57 were carried on the payroll.

On November 15, 1974, the Company notified the Union of its intention to relocate its Hato Rey knitting operations in "new facilities adjacent to the town of Morovis". As a result of discussions between the parties, the Union sent the Company a letter, dated December 4, 1974, embodying the terms of their understanding with respect to the Company's relocation plan. Under that understanding the Company agreed to compensate with severance pay those of its Hato Rey employees who found it impossible to move their families to Morovis, and to assist those who could with a payment of \$175 to offset the cost of moving. Most of the Company's Hato Rey employees chose to accept the severance pay option. Only three relocated in the Morovis area, one being a me-

chanic and two knitters who subsequently were promoted to supervisory rank. Six remained at Sonic's plant in Hato Rey, assigned to printing and stamping operations.

Sonic relocated its knitting machines in a part of the building in which Morovis Texturing carries out its operations, thus permitting the knitters to move directly to the knitting stage in the same plant. All or almost all of the knitters hired by Sonic in Morovis had previously worked for Morovis Texturing, and were at the time of hiring by Sonic laid off employees of Morovis Texturing. As newly hired employees of Sonic they had the status of probationary employees, were paid at an initial rate of \$1.90 an hour, and received the benefits of the medical plan which had formerly covered them when they were employees of Morovis Texturing.

At sometime late in January or early in February the employees of Sonic in Hato Rey, acting in concert, decided they no longer wished to be represented by the Union. On February 13, 1975, Manuel Acevedo, an employee of Sonic in Hato Rey, on behalf of himself and others filed a UD petition, seeking the withdrawal of the union shop authority as embodied in the Agreement between the parties. As a result of the Joint Conference held on February 20, 1975 at the regional offices of the N.L.R.B., the UD petition was amended both in terms of the unit comprising the objective relating to the petition's phraseology and in terms of the parties. The election was held at Sonic's Hato Rey and Morovis plants on March 20, 1975, with the following results: 27 in favor of deauthorizing the union shop authorization, 6 for its retention and one ballot challenged. On March 27, 1975, the Union filed with the Board its objections to Company conduct affecting the results of the election. The Union's objections are presently pending, awaiting decision by the Board's Regional Director in Puerto Rico.

On March 31, 1975, the Union initiated this arbitration proceeding under Article XXII of the Agreement. Hearings were held on April 15, 19 and 24, 1975, and briefs were simultaneously filed with the Arbitrator on May 9, 1975.

Issue

The terms of the dispute submitted to arbitration by the Union, were accepted by the Company.

"Did the Employer violate Article II

(Union Recognition) by engaging in conduct which had the purpose and effect of discouraging membership in the Union.

If the Arbitrator decides there has been no violation of Article II of the Agreement, that would end the case. If on the other hand a violation is found, the Arbitrator would then have to determine the scope of his remedial power and whether and how to exercise it, assuming that he is authorized to fashion an appropriate remedy.

The Union's Position

The Union claims that the Company following the relocation of its knitting operations to Morovis, has acted through its agents to directly or indirectly discourage membership in the Union in violation of its contractual obligations as set forth in Article II of the Agreement. Specifically, the Union charges the following: that the Company has long been hostile to the Union, that the Company did not fully notify the Union that it would relocate its knitting operations in the Morovis Texturing plant, that Company supervisors encouraged the anti-Union movement among employees in the Hato Rey plant, that the Company's attorney assisted the men who led the movement to deauthorize the union shop, that those same men were given time off with pay to visit the Sonic plant in Morovis for the purpose of collecting signatures for the UD petition, that Morovis employees who refused to sign were questioned by Company supervisors in Company offices, that Morovis employees were promised a raise, a day off with pay, and a party if the Union lost the UD election, that former Morovis Texturing employees were hired by Sonic as probationary employees at \$1.90 an hour, which is 30 cents above what the Agreement requires and received the benefits of the Company's medical plan, despite the fact the Agreement provides that during the trial period probationary employees are not covered by the Agreement's medical plan, that two of Sonic's Hato Rey employees who relocated to the Morovis area were promoted to supervisors in order to weaken the Union's bargaining power, that prior to the UD elections Company supervisors campaigned against the Union, that following the election results all three shifts were given time off with pay, and that there was a post election victory celebration by the employees

in which Company supervisors participated.

The Company's Position

The Company denies that it has engaged in any acts or conduct which had the purpose or effect of discouraging membership in the Union, and further denies having acted in any way which might constitute a violation of Article II of the Agreement.

Opinion

Preliminary Considerations

There is a threshold issue involving the jurisdictional scope of the Arbitrator's authority which should be decided at the outset of this opinion. Company counsel in his brief (p. 10) argues:

It is respectfully submitted that neither the Collective Bargaining Agreement nor the submission agreement, provides for a specific remedy in the instant situation. Under these circumstances the arbitrator may only act within the framework of his jurisdictional authority. Sanchez and Burch Biscuit Co., 42 LA 260 (1964). It would be up to the Union to seek subsequently a specific remedy if any is appropriate and even then, any such attempt by the Union could only be made after the National Labor Relations Board finally decides the Union deauthorization controversy.

If these contentions were to be accepted, it would mean that the Arbitrator's authority was limited to only one question: Did the Company violate Article II of the Agreement? To that question only a yes or no answer could be given, nothing more, since according to the Company the Arbitrator lacks jurisdiction to determine an appropriate remedy.

Company counsel's contentions are in error on all counts.

First, Article XXII of the Agreement defines the remedial authority of the Arbitrator in the broadest possible terms: "The award of the Arbitrator shall be final and binding, provided to conform to law. In addition to granting such other relief as he may deem proper, the award of the Arbitrator may contain provisions directing or restraining acts and conduct of the parties." Clearly, under Article XXII the Arbitrator is authorized to fashion the "relief he may deem proper." Remedial flexibility, rather than specificity, is the remedial norm adopted by the Agreement.

Second, with respect to the terms of the dispute submitted to arbitration, they must be read within the

text of the Union's letter to the Arbitrator of March 31, 1975, initiating this arbitration proceeding, a copy of which was sent to the Company and its attorney. The letter specifically refers to Article XXII in paragraph one, and in the final paragraph directs the Arbitrator: "You are respectfully requested to proceed as soon as possible in conformance with the provisions of Article XXII of the agreement." The references to Article XXII put the Company on notice that the Arbitrator was to proceed in accordance with the full range of his authority. Even had the letter of submission not included specific references to Article XXII, it is implicit in all submissions to arbitration, unless explicitly specified to the contrary that the arbitrator is to decide the dispute, including the appropriate remedy. For example, when the parties submit to arbitration whether an employee has been discharged for just cause, it is understood that the arbitrator, if he decides that the discharge was unjustified, is empowered to determine the appropriate remedy, even though the submission says nothing at all about remedy. Any other approach would lead to an overly technical approach to interpretation to the entire spirit of the arbitration process and the purposes it is intended to fulfill. On this question, see the reference to *Asbestos Workers v. Leona Lee Corp.*, infra at p. _____.

In this case there is no need to imply the Arbitrator's remedial authority by the Company's remedy authorization. The Company's letter notified arbitration that this submission agreement was to be processed in accordance with the Arbitrator's authority as defined in Article XXII. Consequently, *Shulze and Burch Biscuit Co.*, 42 LA 260 (1964), cited in the Company's brief, is inapposite. That case involved a union security discharge. Neither the scope of the arbitrator's remedial powers as defined in the collective bargaining contract, nor the context within which the dispute was submitted to arbitration, are analogous to the Arbitration clause and the submission agreement in this arbitration proceeding.

Third, under Article XXII of the Agreement, if the Arbitrator decides the basic claim in favor of the complaining party, he then proceeds to fashion the appropriate remedy which, if not respected by the other party, is subject to subsequent litigation. "Any such award may be en-

forced by appropriate proceedings in law or in equity."

Fourth, there is no basis for the Company's claim that the Union is powerless to seek a remedy in this case until the National Labor Relations Board "finally decides the Union deauthorization controversy." This is so because the two cases are clearly decided separately in different forums. In the dispute submitted to arbitration the question at issue is whether the Company engaged in conduct which had the purpose and effect of discouraging membership in the Union, whereas in the matter of objections to the deauthorization election the question to be decided by the Board is whether the Employer so acted as to vitiate the possibilities of a free and fair election by its employees. Using NLRB phraseology, this arbitration dispute is the equivalent of a practice case, whereas the UD proceeding involves a dispute over the conditions under which an election was held. It is true that the witnesses, testimony in both cases overlap, but the record of the deauthorization controversy, outside of the formal comments, has not been made a part of the record in this arbitration proceeding. The Arbitrator should of course take note of the UD case, of the results of the election, and of the fact that objections have been presented and are awaiting an NLRB decision, but that is all. It would be improper for the Arbitrator to stay his hand pending the outcome of the NLRB decision, for the obvious reason that no matter how the Board decides, his responsibility is to resolve the dispute submitted to him for decision. This means to resolve the issue in its entirety, including the dispute in its appropriate remedy. Indeed, this approach is clearly in harmony with the Taft-Hartley Act's policy of favoring arbitration, Section 203(d), and the Supreme Court's and National Labor Relations Board's jurisprudence in this field. See, e.g., *United Steelpipers of America v. Enterprise Wheel and Car Corp.*, 363 U.S. 593, 46 LRRM 2423, 34 LA 569 (1960); *Spielberg Manufacturing Co.*, 112 NLRB 1086, 36 LRRM 1152 (1955); *Collver Insulated Wire Co.*, 192 NLRB 837, 77 LRRM 1931 (1971), and generally, *Nash*. "The NLRB and Arbitration: Some Impressions of the Practical Effect of the Board's Practical Effect Upon Arbitrators and Arbitration", Arbitration—1974, Proceedings of the

Twenty-Seventh Annual Meeting of the National Academy of Arbitrators, p. 106 (1975); Brown, "The National Labor Policy, the NLRB and Arbitration", Proceedings of the Twenty-First Annual Meetings of the National Academy of Arbitrators, p. 83 (1968). See also Elkouri and Elkouri, *How Arbitration Works* 334-38 (BNA, Inc. 1974).

There is a second threshold question which should be noted prior to reaching the merits. Avilda Morales and Sr. Martinez Pou, both NLRB officials, were potential witnesses of importance in this arbitration proceeding. Avilda Morales, in her capacity as Field Examiner, presided over the Joint Conference in the UD case and at the time of the arbitration hearings was investigating the objections to the deauthorization election, while Martinez Pou as Information Officer received and advised the delegation of Sonic Hato Rey employees who wished to eliminate the Union. Their testimony conceivably could have had decisive weight in this case. Because of the difficulties and delays inherent in any effort to have them testify—it requires a dispensation by the NLRB—the Union and the Company both waived their right to call these two witnesses. In the light of the joint waiver by the parties, it is appropriate for the Arbitrator to decide this case without their testimony.

Factors Discouraging Union Membership For Which The Company Is Not Responsible.

Prior to evaluating the conduct of the Company and its officials toward the Union, it is important to recognize that there were several significant factors at work, for which the Company cannot be held responsible, tending to weaken the Union and its capacity to retain the loyalty of existing members and to attract new membership. First, account should be taken of overall economic conditions in the clothing industry and the impact on Caribbean Leisurwear's employment which dropped from a high of 1,400 to a low of 500 in 1974. Sonic in particular was hard hit. Second, there was the decision to relocate Sonic's knitting operations in Morovis for economic reasons. Only six printers remained at the Hato Rey plant, three others relocated to the Morvits area, while the remainder, all members of the Union, chose to accept severance pay. Third, the relocation decision of the Company must have engendered deep feelings of insecurity on the part of the six employees who

remained at the Hato Rey plant. These feelings were enhanced by layoffs of two to three weeks during the latter part of January, 1975. Even when they worked, three of the six, with the Union's permission, were assigned tasks which were not part of their normal work routine. Their sense of insecurity must also have deepened over the decision to relocate them from the fifth to the first floor of the building occupied by Caribbean Leisurwear. There they found a general environment hostile to unions in which they were a few among a mass of non-union employees.

It would have been entirely natural then, if the six Union members who continued to work for Sonic in Hato Rey, came to feel that their job security outweighed loyalty to their Union, and that to assure the former they would have been prepared to scrap the latter. It is reasonable to assume that men living under such deep and persistent conditions of job insecurity, without a long tradition of union loyalty, might take the initiative to disassociate themselves from their union, if they felt that this would help to secure their jobs, or in the alternative, would be very receptive to any signal from their supervisors that the Company would prefer to have no union.

A similar analysis applies to Sonic employees working in the Morovis Plant. Of the three who relocated from the Hato Rey plant, two became supervisors, thus leaving only one Union member in the Morovis Knitting operation. All, or almost all the newly hired employees had formerly been employed by Morovis Texturing and had little or no union experience. Morovis Texturing was and is a non-union shop. Prior to being hired new employees had passed through varying periods of unemployment. They too, like their fellow workers in Hato Rey, would be inclined to prefer job security over union membership if they should come to feel that a choice had to be made between the two. Toward the Union they would tend to be skeptical and pragmatic and would be inclined to ask: "What can the Union do to protect my job and to provide benefits in addition to what we already have? Clearly, to convince these men to reflect the Union would not be difficult. They might well make such a decision through discussions among themselves, or the decisive factor might be their perception of what their supervisors wanted.

to What Extent Was the Company Responsible for Discouraging Union Membership?

Under the conditions previously described, the Union was especially vulnerable to dissolution through loss of its membership. The critical question in this controversy can be cast in the language of Article II of the Agreement between the parties: Did the Company or any of its agents "directly or indirectly discourage membership in the Union?" To answer that question it will be necessary to determine whether the Union was able to substantiate its charges with sufficient probative evidence, how many essential facts are not in dispute and what significance should be attributed to those facts, the relative reliability of the witnesses and, finally, what states with regard to the conduct of Company officials and agents.

At the outset it should be recognized that the Union failed to prove a number of its contentions. For example, the claim that the Company had a history of hostility to the Union which was reflected in the record of labor relations experience, simply was not substantiated. From the testimony of the Union's own business agent it appears that labor relations were quite normal in the period prior to the relocation of Sonic to Morovis. Similarly, the Union's contention does not stand up that it was not fully advised as to the location in Morovis to which Sonic would be moving. The Company's letter of November 15, 1975 (U-X-2), states the precise location in terms of the number of the highway and the exact kilometer marking. Hence, the Union cannot argue that it failed to receive adequate notice of precisely where Sonic's knitting operation was to be relocated.

There are other elements of the Union's case which were inaccurate or unsubstantiated by sufficiently probative evidence. For example, there was Union testimony to the effect that following the union deauthorization election, the men were given two and a half days off with pay, when the fact proven in the hearing was one day off with pay. Similarly there was a good deal of Union testimony, all based on hearsay, that Company officials had promised employees a ten cent an hour increase if the Union were defeated in the election, but the supporting evidence on this point was entirely unconvincing. In like manner, the Union failed to prove that

and they received full pay as if they had remained on the job working for the Company's attitude toward the Union had been in doubt before, after that decision by a Company supervisor, the six Sonic employees in Hato Rey could only have drawn one reasonable inference: that the Company favored the movement they were leading to oust the Union.

Fourth, when the Hato Rey delegation appeared in Morovis during working hours, to collect signatures for the UD petition and to speak against the Union, this in itself must have discouraged membership in the Union on the part of probationary employees of Sonic at Morovis. Fifth, membership in the Union was discouraged by the Company's decision to pay probationary employees \$1.90 an hour, well above the minimum rate called for by the Agreement. Sixth, it was also discouraged by Sonic's decision to grant the probationary employees the benefits of the Company's medical plan in force for the employees of Morovis Texturing. From a close reading, the I.L.G.W.U. medical plan appears to be somewhat superior to the two plans offered by the Company, but it would be unrealistic to assume that Sonic's employees in Morovis had bothered to make a careful comparison. From their testimony at the hearing, it appears that they considered the Company's plans to be more favorable. At the wage rate they were being paid, and with the medical benefits they were receiving, benefits which they could not receive under the Agreement until their probationary period had terminated, Sonic's newly hired employees were readily susceptible to the argument why belong to the Union when you can do as well or better without it, and not have to pay dues?

Clearly, the Company's decision as to beginning salary for probationary employees and the decision to grant probationary employees medical benefits, undercut the Agreement, causing it to lose most of its attraction to the men, and thereby inevitably discouraged membership in the Union. These then are the undisputed facts and the inferences which in my opinion can be reasonably drawn from those facts. There are in addition other inferences concerning Company policy toward the Union, which rest on less solid evidentiary ground, but which nonetheless appear to be justified in the light of the testimony and my appraisal of the witnesses' credibility. No credible explanation was given, for example, for the sharp

change in attitude from Union supporters to complete rejection by Sonic's Hato Rey employees, other than the hostile anti-union environment in which they found themselves and their growing sense of job insecurity. Those two factors by themselves alone are unlikely to have caused the six employees to coalesce into a movement to oust the Union. Most probably some signal of the Company's preference was transmitted to them. It need not have been action of a forceful nature; just enough of a sign to get them moving, followed by just enough support to reinforce their decision to oust the Union. Whether, for example, Company counsel actually nodded his head at the Joint Conference on the UD petition to advise the petitioning employees how to respond to the Hearing Examiner's question, is not decisive. A nod is an ephemeral gesture, and whether made or not is difficult to prove. Assuming there was no nod, what was important to the petitioning employee was Company counsel's presence, his intervention on important issues, and as he perceived it, that Company Counsel saved the petition from being dismissed. To the employees concerned, it was the Company's lawyer who saved the day thus confirming what they already knew, that the Company preferred to have no union.

Similarly, I find it unnecessary to determine precisely whether in Morovis supervisors questioned each and every employee who refused to sign the UD petition, or whether the Company's payroll clerk systematically visited the men while they were working at their machines to urge them to vote against the Union. I do credit the Union business agent's testimony to the effect that at one stage in his talks with Sonic's probationary employees at Morovis, he found them to be friendly and receptive and that shortly before the UD election their mood changed. They were, undoubtedly, far more skeptical of the Union than the business agent possibly could suppose, but for the mood to change so sharply, the most likely explanation is that Company supervisors or agents managed to transmit the Company's preference. There are a number of grounds to support that conclusion. First, I found the testimony of Personnel Director Luis A. Correa not to be credible. On cross examination he stated that he did not know if payroll clerk Rivera had campaigned against the Union, or whether non-signers of the UD petition

called to the office to explain their position, or why the delegation of Sonic Hato Rey employees was violating the plant. His responses were, in my opinion, less than candid. He denied categorically that he had promised the men a day off if the Union lost the election, and yet it was to him they went to request the day off after the election returns were in so that they could celebrate the fact, in his words, that the "Employer has won the elections" ("El patrono ha ganado las elecciones").

Second, equally unbelievable was the testimony on cross examination of Company payroll clerk José Rivera. After denying that he had ever made an anti-union vote, he stated that he worked till 4 p.m. in his office on the day of the election before finding out the results because he had no interest in the outcome. He had denied knowledge of the visits of the Sonic Hato Rey delegation to Morovis.

From their demeanor on the witness stand, and the way they responded to questions, I am convinced that both Correa and Rivera did manage to convey the Company's preference for a non-union shop through a certain amount of questioning and hortatory remarks at a critical stage prior to the election. On these points, I credit Business Agent Otero's testimony, although not necessarily in all of its details. I regard it as altogether improbable that he fabricated a story out of whole cloth on Correa's and Rivera's behavior, or that his informants were unmitigated fabricators.

The Company's preferences can also be inferred from the readiness with which management officials responded favorably to the petition for a day off with pay for all three shifts, and from the fact that various Company supervisors joined in the victory celebration which, according to the testimony, was considered a victory of the Employer over the Union. It is altogether improbable that the Union was reached without the Company conveying its anti-union preferences to its employees at some earlier stage.

Did the Company's Conduct Constitute a Violation of Article II of the Agreement?

In the light of the factual findings taken as a whole, and the inferences drawn from those findings, only an affirmative response is possible. The Company and its agents directly and

indirectly discouraged membership in the Union. The weight of the evidence demonstrates that their conduct had the purpose and effect of discouraging union membership. It also constitutes what in my opinion would probably have been found to be violations of several sections of the Taft-Hartley Act, had the Union opted to bring this case before the NLRB. Specifically, the Company's conduct would appear to have been in violation of Sections 7, 8(a)(1) and 8(a)(3) of the Taft-Hartley Act. See, e.g., Board cases cited in the Union's brief Condon Transport, Inc., 211 NLRB No. 37, 87 LRRM 1127 (1974); Quality Transport Inc., 211 NLRB No. 27, 87 LRRM 1058 (1974); and Texas Elec. Coop., Inc., 187 NLRB 10, 80 LRRM 1319 (1972), all of which contain elements which can be compared to the conduct of the Company in this arbitration proceeding.

The Arbitrator has consulted NLRB decisions as well as national and Puerto Rican jurisprudence, for two reasons: as legitimate sources of guidance and insight, and to avoid conflict with national or Puerto Rican labor policies. It should be understood, however, that the opinion and award in this case ultimately rest on the merits of the pertinent provisions of the Agreement adopted by the parties. Indeed, Article XXII so instructs the Arbitrator, and going further, even enjoins him from utilizing as precedent prior awards rendered under the Agreement.

What Constitutes Appropriate Relief?

In determining what constitutes appropriate relief, it should be remembered that the decline of the Union's power and prestige is the consequence of two sets of causal factors, the first consisting of conditions beyond the Company's control, the second consisting of acts and expressions for which the Company must bear full responsibility. It is also important to recognize, when shaping appropriate remedies, that as a consequence of the Company's conduct not only have Sonic's employees been discouraged from remaining or becoming members of the Union, they appear to have strongly committed themselves against the Union. This was clearly reflected in the testimony and demeanor of the many witnesses called by the Company during the hearing. They have not only rejected the Union, they are hostile to it. This should

be contrasted with their attitudes and expressions before the anti-Union campaign which, with Company support, proved to be so effective.

On this point I credit Business Agent David Otero, without necessarily accepting all of his testimony. He described many conversations, the general mood toward the Union, and how it changed sharply and suddenly. To rebut the content of those conversations, the Company called a considerable number of employee-witnesses who systematically denied Otero's testimony. I found their testimony to be uniformly of doubtful credibility. They impressed me as men who had committed themselves fully in favor of the Employer and against the Union, and who were prepared to say whatever would support their cause.

It is that sense of passionate commitment which makes the problem of shaping an appropriate remedy so difficult. Ironically, the harder the Union presses for a strong remedy, the more intransigent the men may become in their opposition to the Union. And yet there is no doubt that the Company has violated Article II of the Agreement, and that it is entitled to relief. Indeed, the basic question involved in this case is whether respect is to be accorded to the civilizing principle of the obligation of contract. This concretely means two forms of relief: first, for the Union to be made whole to the extent that may be possible; second, for damages to be awarded for the harm that has been done.

How then can those two remedial objectives best be achieved? In response to that question the Arbitrator has sought guidance from all possible sources: from the remedial experience of the NLRB, from mainland and Puerto Rican arbitration awards and from the decisions of federal, state and Puerto Rican courts. One remedy which would clearly be appropriate is a cease and desist order, enjoining the Company and its agents from continuing to discourage membership in the Union. It is the traditional solution used both by the NLRB and by the Puerto Rico Labor Relations Board to remedy unfair labor practices. It is also specifically authorized by Section XXII of the Agreement. "The award of the Arbitrator may contain provisions directing or restraining acts and conduct of the parties."

That same language would cover

an award ordering the Company to post notices, and to distribute letters, informing its employees that it had breached Article II of the Agreement and that in the future it would abide by its contractual obligations. In my judgment this remedy is appropriate, but before passing on the precise wording of the notice and letter, the Company should have the opportunity to be heard, especially since this would be, to my knowledge, the first time in Puerto Rico that this type of remedy has been effectuated through an arbitration award. Accordingly, the Union will be directed to draft a proposed notice and letter, to be submitted to Company counsel prior to the hearing which will be convened to resolve this and the remedial questions involving liquidated damages and the Union's claim for litigation costs and attorney's fees.

On the issue of the arbitrator's authority to award damages there have been but a few reported cases. The decisive question, as might be expected, turns on whether the collective bargaining agreement specifically, or by implication, authorizes the arbitrator to award damages. See, e.g., the awards in the following arbitration cases: *Leona Lee Corp.*, 80 LA 1310 (1972); *Pinehaven Sanitarium, Inc.*, 49 LA 991 (1967); *Savoy Laundry and Linen Supply, Inc.*, 48 LA 760 (1967); and *July Lynn Frocks, Inc.*, 37 LA 360 (1961).

At the level of the courts, note should be taken of the following cases upholding arbitration decisions which had awarded damages: *Beiger v. Leonard Workman Co.*, 86 LRRM 2315 (DC SNY 1973); *Joint Board v. Seneca, Inc.*, 69 LRRM 2142 (DC Mass., 1968); *Matter of Judy Bond*, 234 N.Y.S. 2d 375, 53 LRRM 2533 (NY Sup. Ct. 1962). It should be noted that in each of these three cases the arbitrator's award of damages rested on the authority of a specific contractual clause. In contrast, the Federal District Court, for the Western District of Texas has taken the position in a recent Section 301 case that arbitrators should be accorded latitude and flexibility in shaping remedies:

Federal Case Law requires that an Arbitrator have latitude and flexibility in applying remedies for breach of collective bargaining agreements. Since each and every alternative cannot be covered for breach of contract in a collective bargaining agreement, an Arbitrator chosen by both parties should have wide latitude in awarding damages. This Court finds that the Arbitrator's award of \$25,000 for loss of bargaining power and goodwill of the plaintiff does not exceed

Arbitrator's jurisdiction in this cause of action.

See *Asbestos Workers v. Leona Lee Corp.*, 84 LRRM 2165, 2171 (DC WTex. 1973), upholding the arbitrator's award in *Leona Lee Corp.*, supra.

Note should also be taken of the Puerto Rican Jurisprudence in this field. See, e.g., *Colón Molinary v. Autoridad de Acueductos*, decided by the Supreme Court of Puerto Rico, December 19, 1974. Case No. 74-184.

As in the matter of the notice and letter, the Union is directed to itemize and spell out the criteria it has utilized in making its claims for damages, in a memorandum, to be submitted to Company counsel prior to the hearing which is to be scheduled to resolve all pending remedial questions. This procedure has been adopted by the Arbitrator to assure that whatever relief may finally be awarded will be in accord with the equitable spirit embodied in Article XXII of the Agreement.

PRELIMINARY AWARD

(1) The Arbitrator is herewith rendering an initial opinion and a preliminary award. The present award is not to be understood as being final, since the Arbitrator has decided to retain jurisdiction over the parties until all pending remedial questions have been resolved.

(2) The Company and its agents are directed to cease and desist from engaging in any acts which directly or indirectly have the purpose or effect of discouraging membership in the Union.

(3) Not later than June 8, 1975, the Union is directed to file with the Company and the Arbitrator two documents:

(a) a proposed draft of a notice to be posted, which is also to be sent in letter form to all Company employees, concerning the Company's failure to abide by Article II of the Agreement and its promise to do so in the future; and

(b) a memorandum listing all damages claimed and the criteria utilized to estimate damages.

(4) On June 10, 1975, at 5:00 p.m., a hearing will be held at the Colegio de Abogados, Miramar, San Juan, to consider all remedial questions arising under paragraph (3) supra. Oral argument and testimonial evidence, if needed, will be received.

(5) Following the hearing on pending remedial questions, the Arbitrator

will render a final opinion and award in this case.

FINAL OPINION (September 8, 1975)

Findings of Fact Since the April 24 Hearing

Since the last hearing of April 24, 1975, which was followed by the preliminary Opinion and Award of May 23, 1975, testimonial and documentary evidence has been presented for the record which additionally confirm two major conclusions reached in the preliminary Opinion: first, the Company did directly and indirectly discourage membership in the Union and, second, the effects of that discouragement have been deep, abiding and pervasive. Testimony and documents presented at the June 10 and July 14, 1975 hearings also serve to complicate what was already recognized as a complex question, what constitutes appropriate relief in this case?

In this final Opinion and Award, the additional findings of fact will be set forth *seriatim*, to be followed by sections on the meaning of "conform to law" and on the factors and considerations utilized to determine appropriate relief.

1. On February 3, 1975, thirteen employees of Sonic Knitting in Morovis signed cards authorizing the Union to act as their exclusive representative for purposes of collective bargaining.

2. Since that date Union organizers and business agents have been unable to convince any Company employee to sign such cards or, after finishing their probationary period, to authorize the check-off of union dues, or to fill out the information forms for the medical plan.

3. All efforts by Angel Diaz, the Union's business agent assigned to the Company's Morovis plant, in his visits of April 30, June 12, 23, 26 and 30, and July 8, 1975, have resulted in total failure: not a single employee has signed a check-off authorization or filled out the medical plan application.

4. The Company has been transmitting to the Union the dues of seven employees, six at its Hato Rey plant and one at Morovis, who are old members of the Union and who had previously authorized the automatic deduction of their union dues. For those seven employees the Company is also sending to the Union the remittance on total chargeable payroll, as required by the Agreement, to be

SONIC KNITTING INDUSTRIES, INC.

converted into various trust funds: Health and Welfare, Supplementary Unemployment Benefits, Retirement, and Vacation. It has not done so for newly hired employees who have successfully completed their probationary period.

5. As of July 24, 1975, the Company had hired a total of 46 new employees, most of whom had finished the probationary period, or were close to doing so.

6. Gross salaries paid by the Company at Morovis for employees in the bargaining unit, in the period for the week ended December 28, 1974 to June 28, 1975, amounted to approximately \$85,000.

7. At the July 14, 1975 hearing Company counsel stated that he would advise his client to make the remittances to the Union's several trust funds as required by the Agreement.

8. Although the Agreement establishes a union shop in Article III and Article V provides for check-off "subject to the requirements of law for written authorizations", the Union has not insisted that the Company dismiss those post-probationary employees who have refused to either join the Union or to pay their dues.

9. In response to the Union's request for reconsideration of June 10, 1975, the N.L.R.B. Regional Director issued on June 26 a Second Supplemental Decision and Order Dismissing Petition of Company employees who had petitioned for an election to deauthorize the union shop clause in the Agreement.

The Regional Director held: "a petition obtained through Employer permission therefore and paid working time is tainted." Accordingly, he revoked the prior Supplemental Decision and Certification of Results of Election, nullified the election, and dismissed the UD petition.

10. One June 30, 1975, the Union's Regional Director formally wrote to the Company's President: "We desire to meet and confer with you at an early date for the purpose of negotiating a new agreement." The Agreement between the parties fixes August 27, 1975, as the expiration date.

11. On July 11, 1975, the Union filed unfair labor practice charges with the NLRB against the Company, alleging violations of Section 8(a)(1)(3) and (5) of the Taft-Hartley act.

As of the date of this Opinion and Award, the Arbitrator has no knowledge of whether negotiations have started or are in process between the parties, nor what action, if any, has

been taken by NLRB in response to the unfair practice charges. The Arbitrator's Award Must "Conform to Law"

In the preliminary Opinion and Award, at page 13, it was explained why consideration had been given to administrative and case law.

The Arbitrator has consulted NLRB decisions as well as national and Puerto Rican jurisprudence, for two reasons: as legitimate sources of guidance and insight and to avoid rendering an award which would conflict with national or Puerto Rican labor policies. It should be understood, however, that the Opinion and Award in this case ultimately rest on the merits of the hearing record in the light of pertinent provisions of the Agreement adopted by the parties. Indeed, Article XXII so instructs the Arbitrator, and going further, even enjoins him from utilizing as precedent prior awards rendered under the Agreement.

In view of the legal questions raised by the parties, especially in the Company's brief, it is necessary to clarify the term "conform to law", which in Article XXII of the Agreement qualifies the arbitrator's remedial powers. The arbitrator's award "shall be final and binding", provided it "conform(s) to law." Clearly then, when the arbitrator determines what is appropriate relief, he must act within the limits of the law.

The critical question, of course, is what did the parties intend by "conform to law"? From the citations and argument in its brief the Company's answer is clear enough: "law" means the law of the Civil Code of Puerto Rico, general principles to be found in such treatises as McCormick on "Damages", and supporting jurisprudence. The Union, on the other hand, grounds its case on principles derived from arbitration awards, NLRB opinions and case law involving arbitration and collective bargaining agreements. The Union's brief is barren of reference to the Civil Code while the Company only refers to arbitration or case law cited by the Union, or by the Arbitrator. In his preliminary Opinion and Award, to refute or distinguish away their relevance to the instant case.

Assuming for the sake of argument that the Company's interpretation of "conform to law" is sound, how would its approach work out when applied to the facts in this case? The only Civil Code provision specifically cited by the Company is Sec. 1080:

The losses and damages for which a debtor in good faith is liable, are those foreseen or which may have been fore-

seen, at the time of constituting the obligation, and which may be a necessary consequence of its nonfulfillment. In case of fraud, the debtor shall be liable for all those which clearly may originate from the nonfulfillment of the obligation.

Gonzalez Meza v. Dannenmiller Coffee Co., 48 DPR 608 (1935), is cited as supporting jurisprudence. Without considering at this point the appropriateness of this particular section of the Civil Code to a dispute arising under a collective bargaining agreement, or whether a 1935 case involving the sale of coffee is relevant precedent, if the Union were confined to Civil Law principles, it could make the argument the "losses and damages" it has incurred by the Company's anti-union conduct could have been foreseen at the time of signing the Agreement in August 1972. The Union could also plausibly contend that it has been the victim of fraud (dolus), and that therefore the Company should pay consequential damages. See Secs. 1054 and 1055. The argument might also be made that Sec. 1802 applies to this case.

A person who by an act or omission causes damage to another through fault or negligence shall be obliged to repair the damage so done.

and by way of analogy the Union might assert that it is in the same position as the owner of a business which has been wrongfully attached and who is therefore entitled to damages caused to the good name of his business and for the mental anguish and moral damages he has suffered. See Feliciano v. Mercantil Cedeno, S. en C., 81 DPR 146 (1962). See also Maymi v. Banco Popular, 63 DPR 538 (1944).

To be sure, if the Company's approach is sound, the Union must prove the existence and extent of damages. Perez v. Sampedro, 86 DPR 526 (1962), not in a speculative way, but with reasonable certainty though not necessarily with mathematical precision. Masa Torres v. Autoridad de las Fuentes Fluviales, 96 DPR 856 (1968); Prado v. Quiliones, 78 DPR, 322 (1955); Ind. Co. 60 DPR 852 (1942), the degree of precision required depending on the circumstances of the case. The Company's approach depends of course on the soundness of the analogy it seeks to draw between breach of obligation of a Civil Law contract and the breach of obligation it has committed under the collective agreement. Similarly, if the analogy is made

to a contract for the performance of services, *Sures de Olivas y Cia. v. J. Matlenzo*, 13 DPR 294 (1907), damages are limited only to those shown to have been already caused up to the time of the complaint, but if the Feliciano and Maymi cases are considered more relevant precedent, consequential damages are appropriate.

If the attempt to fit this arbitration case within the principles and jurisprudence of the Civil Law results in strained analysis, that is only to be expected. The Civil Code of Puerto Rico, after all, is a nineteenth century document, traceable back to Spain, and to the Napoleonic Code which basically reflects the social and economic realities of the early part of the last century. Neither the Code nor the jurisprudence arising under it have much to do with the relationships and problems which have developed under collective bargaining contracts over the past forty years. This is true not only of the Civil Law, but also of the Common Law of Contracts in the United States. It is for that reason that in recent years courts in the United States have recognized that collective bargaining agreements are to a large degree sui generis. That is why, when you consult the latest edition of Williston on Contracts, you find that a special section has been added under the heading, "The Remedies for Breach of Labor Agreements". See Jaeger, Third Edition, Sec. 1362 (1968), which should be compared with McCormick on Damages, a 1930 treatise. See also, Dobbs, Handbook on the Law of Remedies (1973). What American courts have in fact done is to fashion a special body of legal principles for resolving litigation involving disputes arising under collective agreements. They have taken to heart and acted on the approach espoused by Archibald Cox in Law and the National Labor Policy (1960).

Unless the law is once again to fall to meet the needs of men, the principles determining legal rights and duties under collective bargaining agreements should not be imposed by the courts from above because of precedents learned in other contexts; the governing principles must be drawn out of the institutions of labor relations and shaped to their needs (p. 85) and by Harry Shulman, Reason, Contract and Law in Labor Relations, 68 Harv. L. Rev. 989 (1955). See also Cox, The Legal Nature of Collective Bargaining Agreements, 57 Mich. L. Rev. 1 (1958).

This does not mean that the Civil Code and its jurisprudence are completely irrelevant to resolving cases involving breaches of collective agreements, but they are at most a secondary or tertiary source, when more direct relevant sources fail to provide guidance. Nor does it mean that there is no overlap between certain basic principles to be found in the old Civil Law and similar principles which have been incorporated, with varying degrees of modification, into the newer and fast-developing law of collective bargaining. Under both bodies of law, for example, the party who alleges a breach of obligation and consequential damages must prove his case. Proof of causation and the constituent elements for measuring damages will, inevitably, vary depending on the nature of the legal category and the ends it is intended to serve within the legal system.

Returning to the question of the intent of the parties, it is altogether improbable that in using the term "conform to law", they intended to incorporate the Civil Code into the Agreement. On this there is evidence in the margin of the Agreement itself, relating to the "conform to law" phraseology: "Attorney for the employer wants to add some language re Section 301. The Union will review and consider." It is altogether more probable, and I so hold, that if the parties thought at all about the concrete content of "conform to law", what they had in mind was the developing labor law of contract, and more particularly, the jurisprudence which has developed under Section 301 of the Taft-Hartley Act.

Sec. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Beginning in 1957, the Supreme Court in *Textile Workers' Union v. Lincoln Mills*, 353 U.S. 448, 456, 40 LRRM 2113, 2116, formally started the process of shaping a new system of norms to guide the courts in resolving suits for violation of collective agreements.

The question then is, what is the substantive law to be applied in suits under Sec. 301(a)? We conclude that the

substantive law to apply in suits under Sec. 301(a) is federal law, which the courts must fashion from the policy of our national labor laws.

and made clear that resort might be had to state law as well, under certain conditions:

But state law, if compatible with the purpose of Sec. 301, may be resorted to in order to find the rule that will best effectuate the federal policy. . . . Any state law applied, however, will not be absorbed as federal law and will not be an independent source of private rights. Id at p. 457, 40 LRRM p. 2116.

Unless the parties to a collective agreement expressly contract to the contrary, it must be assumed that a term like "conform to law", in an industry within the jurisdiction of the Taft-Hartley Act, refers to federal law as it has developed under Section 301. Indeed, such an inference would appear to be compelled by the Supreme Court's opinion in *Teamsters, Chauffeurs, Warehousemen and Helpers Local 174 v. Lucas Flour Co.*, 369 U.S. 95, 103-4, 49 LRRM 2717, 2720-21 (1962):

It was apparently the theory of the Washington court that although *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 40 LRRM 2113, 2120 (1957), requires the federal courts to fashion from the policy of our national labor laws a body of federal law for the enforcement of collective bargaining agreements, nonetheless, the courts of the states remain free to apply individualized local rules when called upon to enforce such agreements. This view cannot be accepted. The dimensions of Sec. 301 require the conclusion that substantive principles of federal labor law must be paramount in the area covered by the statute. Comprehensive is inherent in the process by which the law is to be formulated under the mandate of *Lincoln Mills*, requiring issues raised in suits of a kind covered by Sec. 301 to be decided according to the precepts of federal labor policy.

More important, the subject matter of Sec. 301(a) is peculiarly one that calls for uniform law. The possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements. Because neither party could be certain of the rights which it had obtained or conceded, the process of negotiating an agreement would be made immeasurably more difficult by the necessity of trying to formulate contract provisions in such a way as to contain the same meaning under two or more systems of law which might some day be invoked in enforcing the contract. Once the collective bargain was made, the possibility of conflicting substantive interpretation under competing

Legal systems would tend to stimulate and prolong disputes as to its interpretation. Indeed, the existence of possibly conflicting legal concepts might substantially impede the parties' willingness to agree to contract terms providing for final arbitral or judicial resolution of disputes.

The importance of the area which would be effected by separate systems of substantive law makes the need for a single body of federal law particularly compelling. The ordering and adjusting of competing interests through a process of free and voluntary collective bargaining is the keystone of the federal scheme to promote industrial peace. State law which frustrates the effort of Congress to stimulate the smooth functioning of that process thus strikes at the very core of federal labor policy. With due regard to the many factors federal interests in this area, we cannot but conclude that in enacting Sec. 301 Congress intended doctrines of federal labor law uniformly to prevail over inconsistent local rules.

Consequently, when exercising concurrent jurisdiction, state courts must apply the federal law on collective bargaining agreements which may be stated in *Lincoln Mills*, supra, include compatible state principles of law. In the case of Puerto Rico there appears to be general compatibility between insular labor legislation and jurisprudence and federal principles which have developed under Section 301. In part (5) of the Declaration of Public Policy of the Labor Relations Act of Puerto Rico, 29 LFRS Sec. 82, since 1945:

All existing collective bargaining contracts, as well as those hereafter executed, are hereby declared to be instruments for the promotion of the public policy of the Government of Puerto Rico in its efforts to develop production to the maximum; and it is declared that as such they are vested with a public interest. The exercise of the rights and the performance of the obligations by the parties to such collective bargaining contracts are therefore subject to such reasonable regulations as may be necessary to effectuate the public policies of this subchapter.

The act, in Sec. 69(1)(f) and (2)(a), makes it an unfair practice for either party "to violate the terms of a collective bargaining contract, including an agreement to accept an arbitration award," and clothes the Labor Relations Board with the necessary powers to remedy violations.

The Labor Relations Act, thus is in substantial harmony with federal public policy on labor contract violations and on the question of the role of arbitration as an integral part of that

policy. Section 201(b) of the Taft-Hartley Act specifically makes it the policy of the United States to promote peaceful settlement of issues through collective bargaining, including voluntary arbitration, as does Puerto Rico's Labor Relations Act. In support of the policy embodied in Section 201(b), the Supreme Court has consistently and systematically favored and buttressed the voluntary arbitration process, most notably in the *Steelworkers Trilogy*: *Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 46 LRRM 34 LA 559 (1960); *v. Warrior and Gulf Co.*, 363 U.S. 574, 46 LRRM 2423, 34 LA 561 (1960); and *v. Enterprise Corp.*, 363 U.S. 583, 46 LRRM 2416, 34 LA 569 (1960). This has meant, concretely, deciding doubtful arbitrability questions in favor of the arbitration process, and strengthening the authority of the arbitrator, especially his power to formulate remedies. As Justice Douglas phrased the Court's position in *Enterprise Corp.*:

When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations. The draftsman may never have thought of what specific remedy should be awarded to meet a particular contingency. Nevertheless an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. (p. 597, 46 LRRM p. 2423, 34 LA p. 570)

In *Enterprise Corp.* the Court went so far as to uphold an award of back pay and reinstatement after an agreement's expiration date on the theory that the award might "be read as embodying a construction of the agreement." (p. 598)

Inescapably, then, "conform to law" in the Agreement between the parties must mean following Supreme Court jurisprudence. Specifically, the arbitrator's award must draw "its essence from the collective bargaining agreement", and he may "look for guidance from many sources". Those sources include relevant decisions of the United States and Puerto Rican Supreme Courts in the field of collective bargaining law, lower court and administrative agency decisions in the

same field, and the awards and the writings of distinguished labor arbitrators. To illustrate with two concrete examples: *Asbestos Workers v. Procedure in Labor Arbitration*, Cn. XIV (1973); *Elkouri and Elkouri, How Arbitration Works* 241-49, 351-60 (BNA 1974).

The Remedy of "Directing or Restraining Acts and Conduct"

The quoted language is from Article XXII of the Agreement. It is a particularly appropriate basis for fashioning remedies, using as a model the experience of the NLRB and the Labor Relations Board of Puerto Rico. Testimony and evidence presented at the June 10 and July 14, 1975 hearings confirm the soundness of the "directing and restraining" remedies adopted in the preliminary Opinion and Award. Supra, p. 10. From Business Agent Angel Diaz' testimony, it is clear that some employees who are asked to join the Union, or to fill out the medical plan forms, still respond that before acting they want to consult Company supervisors. Even more to the point, since February 3, 1975, when thirteen Morovis employees signed Union authorization cards, all efforts to secure additional signatures have been fruitless. Thus, it is clear the effects of the Company's discouragement of Union membership, in violation of Article II of the Agreement, still remain deep, abiding and total. Hence the preliminary remedy directing the Company to cease and desist from violating Article II will now be made final.

For the cease and desist order to have impact, it is essential that the Company's employees be fully informed of this arbitrator's Opinion and Award. That can be accomplished by directing the Company to post notices and to notify each employee by letter of the essential findings and remedial action ordered by the arbitrator. The purpose would be to inform and assure all employees that they are free to decide whether they wish to become members of the Union, without incurring any risk of reprisals. Whether the notice and personal letters will prove effective in overcoming the union discouraging acts of the Company, only experience can tell. The notice and letter, in English and Spanish, are attached infra, following the remedies set forth in the Award.

Damages for Union Dues Not Received Until August 27, 1975

The Company has been deducting and transmitting the union dues of

employees at its Hato Rey plant, and of one employee at Morovis, all seven being older employees who prior to December of 1974 had been Union members and who had authorized the check-off of their dues. No newly hired employees of the 46 taken on at Morovis since January of 1975 has had his dues checked-off after completing the twelve week trial period in the case of knitters and eight weeks in the case of all other employees. This is explained by the fact that no newly hired employee has joined the Union and authorized the check-off of dues after completing the trial period. The Union could have forced the issue, under Articles III and V of the Agreement, requiring that dues check-off authorization cards be signed, or insisting that the Company discharge those employees who refused. This the Union chose not to do, recognizing that pressuring employees in that way would be counterproductive. Under these circumstances what constitutes appropriate relief? That question in turn rests on another: Who is responsible for the difficulty the Union has been experiencing in convincing the employees to become members and to authorize the payment of union dues? On that the hearing record is entirely clear. But for the union-discouraging acts and attitudes of the Company's officials and agents the Union in all probability would have continued to win over to membership newly hired Morovis employees, as it had been able to do up to February 3, 1975. For breach of its obligations under Article II of the Agreement it is accordingly appropriate relief for the Union whole to be ordered to make the damages are tangible, concrete, readily calculated, and it is entirely proper that the Company be held accountable for the consequences of the breach of its contractual obligations. Since the record demonstrates that the Union has been actively trying to serve the Company's employees, there is no basis for mitigating the amount which should be ordered paid in lieu of union dues.

Employer Contributions to the Health and Welfare Fund

Article XIV of the Agreement provides that the Employer will make contributions to the Health and Welfare trust fund, based on certain percentages of its total gross monthly payroll, on behalf of all covered em-

ployees who have completed their trial periods. The latter trust fund receives monthly contributions for health and welfare, supplementary unemployment, retirement, and vacation benefits. As in the case of union dues, the Company has been contributing for seven employees, but for none of the newly hired personnel. In contrast to the check-off, where the Company could rely on Section 8(a)(3) of the Taft-Hartley Act, it has no justification for the failure to contribute to the Health and Welfare funds. This was recognized by the Company's attorney at the July 14, 1975 hearing. Indeed, the Company's continued failure to contribute to the trust funds constitutes additional acts of discouragement of Union membership. Accordingly, it is entirely proper that the Company be ordered to fill out the "Remittance Report" on total chargeable payroll, covering the contributions for all the funds therein included, for the period January 1 to August 27, 1975, and to remit the total payment due under Article XIV. It is paid, since no mitigating circumstances were shown to exist which justify any reduction.

Reimbursement for Litigation Expenses

Litigation expenses claimed as damages by the Union include the costs of the arbitration proceeding itself, and fees paid to its attorney and labor consultant for preparing and presenting the Union's case. There is no margin for interpretation with respect to the question of how the arbitrator's fee is to be paid. Article XXII states: "His fee shall be borne equally by the parties." To shift any part of the arbitrator's fee to the losing party would constitute an impermissible amendment of the Agreement, and hence cannot be entertained.

What of the \$1,950 in fees paid by the Union to its attorney and labor consultant? Would reimbursement constitute appropriate relief? In *Leona Lee Corp.*, supra '84 LREM at p. 2167, the arbitrator held that attorney's fees were not a "proper element of damages" though interestingly enough, he did order the defendant company to reimburse the union in the amount of \$9,050.96 to cover all other litigation costs resulting from the arbitration, including the arbitrator's fee. On review, the Federal District Court, following the Supreme Court's approach in *Enterprise Corp.*, refused to alter the arbi-

trator's award on the question of litigation costs, since to do so "would exceed its jurisdiction in this matter." It went on to say, "The Court is not to look at the merits of the case, but to determine whether the Arbitrator had exceeded his authority." Id. 84 LRRM at p. 2171. In contrast, the Supreme Court of Puerto Rico has adopted the position that it is appropriate for an arbitrator to award attorneys fees, in the "exercise of his sound discretion," in a disciplinary case in which the grievant is totally exonerated. *Colon Mohrari*, supra at p. 22. For the Court's underlying reasoning, see id. at p. 21.

"Sound discretion", in my judgment, supports reimbursement of litigation costs in this case, other than the arbitrator's fee. If this were an ordinary dispute arising under the Agreement, for example, a dispute over discipline in which, typically, equities can be found on both sides, "sound discretion" would usually leave to each party the burden of paying their respective attorney's fees on the theory that such costs are an integral part of the cost of administering a collective agreement. But the instant case is totally different in kind. Here the Union has not been required to bear an expense arising from ordinary contract administration. What is involved in this case is a cost not basically of administration but of the very survival of the Union. What the Company did was to take advantage of circumstances and of a period when the Union was most vulnerable to discourage employees from becoming members. In a very real sense, it acted with bad faith after the Union had cooperated fully with the Company's plan to transfer the bulk of its operations to Morovis. Accordingly, appropriate relief should include reimbursement of the fees paid by the Union to its attorney and to its labor consultant which, in final analysis, were costs incurred as essential to its self-defense.

Compensation for the Loss of Union Dues and Trust Fund Contributions for the Three Year Period Beginning September 1975.

The Union claims damages for union dues and Health and Welfare trust fund contributions it would have received for the next three years, but for the union-discouragement conduct of the Company. The amount of its claim is based on an estimate of an average of 40 employees over a three year period whose dues would have amounted to \$8,640 and on total

chargeable payroll which would have produced \$15,000 in trust fund contributions. The crucial words are "would have", since the Union's claim rests on the premise that but for the Company's breach of obligation, Sonic employees at Morovis would have joined the Union, a three year agreement would have been signed, and during that period there would be an average of 40 employees and sufficient payroll to generate \$15,000 in trust fund contributions.

Of all the damage claims, these two are the most difficult to decide. There is no way of predicting the number of employees or the payroll of the Company over the next three years, or even whether the Company will remain in business during that entire period. Even assuming that a reasonably accurate forecast has been made by the Union, it would still be necessary to reduce the \$8,640 claimed in dues and the \$15,000 trust fund contribution by some appreciable amount. Since the underlying premise of the two claims is that it would no longer be representing Sonic Knitting employees, the Union would be performing no services nor providing any benefits. Hence, the Union would only be entitled to its losses after subtracting the estimated cost of services and benefits from the \$8,640 dues claim and the \$15,000 trust contribution.

Estimating damages in that way is only justified if it is assumed that the Company's discouragement of Union membership has had "permanent" and "irreversible" effects as the Union claims in its briefs and as it did during the hearings. The Union's second brief on damages speaks, for example, of "permanent hostility" and "permanent block". A very strong case to demonstrate the hopelessness of its cause was presented during the first three hearing sessions. However, in the last hearing session there was contradictory Union testimony on this point. The Union's Business Agent painted a picture of total failure and hopelessness while its Regional Director testified that the Union could surmount its present difficulties. Which estimate turns out to be more accurate depends on at least two variables: the effectiveness of the remedies awarded in this proceeding, and the outcome of any remedies which may result from the unfair practice charges now pending before the NLRB. If the Union's Regional Director is correct in his forecast, no damages

net losses in dues or trust fund contributions could be considered proper relief, since there would then be no such losses. The company's obligation to pay dues is not in dispute. At this point in time there is no way to predict with confidence whether the effects of the Company's breach of obligation can be overcome, and whether a collective bargaining relationship can once again be established between the parties. This is not to say that the Company's breach of obligation under Article II has not had injurious effects on the Union which extend beyond the August 27, 1975 termination date of the Agreement. The Company's breach, as the facts in the record demonstrate, has assuredly continued to have harmful consequences, but it is simply not possible at this time to measure the damages in terms of future lost dues or trust fund contributions.

Compensation for Loss of Bargaining Power and the Capacity to Represent Employees Effectively

Though any effort at this time to estimate potential net losses in dues and trust fund contributions may be entirely speculative, there is no doubt that the Company's violation of Article II of the Agreement has in fact adversely affected the reputation, prestige and bargaining power of the Union, and may continue to do so on into the unforeseeable future. This is an outcome which the Company could have foreseen when it agreed not to discourage union membership, and certainly constitutes the outcome it intended to achieve through the acts of its agents and officials. But for the Company's acts, the Union would most probably have had no difficulty in winning the confidence and support of the Morovis employees and would it now be struggling to survive as their collective bargaining representative, nor find it necessary to rely on arbitration or the NLRB for remedies which may, or may not, turn out to be effective.

Though the fact situations are not entirely similar, this case and *Asbestos Workers v. Leona Lee Corp.*, 84 LRRM 2165 (1973), do have two significant elements in common. In both there is the element of bad faith and in both damages can be characterized as involving "the loss of bargaining power, the capacity to represent employees effectively and the impairment of prestige and reputation." See *id.* at p. 2171. For such harmful consequences Judge Wood of the U.S.

On the latter point, it should be noted that in *Leona Lee* it took six years before a final decision was reached at the level of the Federal District Court. There is of course no precise measurement possible of the four elements of damages suffered by the Union, and from which in all likelihood it will continue to suffer. Damages of that kind can only be approximated in money terms by the arbitrator, if the parties include such remedial powers. As I interpret "proper relief" in the Agreement, it does encompass an award for consequential damages, to compensate for the four types of injury listed above, injuries resulting from the Company's discouragement of union membership. Under the circumstances and merits of this case, an award of \$10,000 in my judgment constitutes appropriate relief.

With respect to the other claims of the Union, it would be inappropriate to grant relief. The Union claims \$10,000 in liquidated damages for loss of prestige, reputation, and capacity to effectively organize and represent the employees of Caribbean Leisurewear, Inc., and of its affiliates other than Sonic Knitting Industries, and \$5,000 on the basis of a similar claim involving employees generally in this industry. Since the hearing record is barren of proof to support these two claims, both must be dismissed as unsubstantiated by evidence.

FINAL AWARD

(1) The Company and its agents are directed to cease and desist from engaging in any acts which directly or indirectly have the purpose or effect of discouraging membership in the Union.

(2) The Company is directed to post a notice, and send a letter and a copy of the notice, to each of its employees, containing the essence of the Arbitrator's Opinion and Award, as embodied in the notice and letter drafted in English and Spanish, which are attached to this Award. The Spanish versions will be posted and sent to the employees. The notice and letter will be signed by the Company's highest supervisors in charge of its Morovis and Haco Rey plants.

(3) The Company is directed to make the following payments to the Union:

- (a) An amount in lieu of union

* [E.D. NOTE: Notice and letter are omitted.]

dues, for all employees newly hired since December of 1974 who have successfully passed their respective probationary periods, equivalent to the dues which would have been checked-off up to August 27, 1975, but for the Company's discouragement of union membership.

(b) The amount owed for contributions to the trust funds under Article XVII of the Agreement, for the period January 1 to August 27, 1975, accompanied by the monthly remittance reports duly filled out.

(c) Reimbursement for litigation expenses in the amount of \$1,950.

(d) \$10,000.00 in liquidated damages for the Union's loss of bargaining power and consequential injuries.

(4) The remaining claims of the Union for damages are denied.

TECUMSEH PRODUCTS CO.

Decision of Arbitrator

In re **TECUMSEH PRODUCTS COMPANY, LAUSON ENGINE DIVISION and INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS**. LODGE 1259, FMCS Case No. 75K/15639, September 8, 1975

Arbitrator: Lewis E. Solomon, selected by parties through procedures of Federal Mediation & Conciliation Service

LAYOFF

—Short layoff of all unit employees—Decline in work orders—Seniority rights ▶ 117.1138 ▶ 115.307

Employer violated seniority rights of all bargaining unit employees during successive one- and two-day shutdowns caused by decline in work orders under contract requiring both employer and union to agree to reduced workweek before seniority employees are laid off in order to maintain working forces. (1) Contract requires employer to resort to layoff procedures and to give senior employees opportunity to perform available work and that provision rejects a "share of the work" program; (2) while employer contends that separate contract provision gives it right to lay off all employees due to "changes in customer requirements," provision applies only to "unforeseen, unpredictable, unplanned and unanticipated conditions," which present economic condition is not.

Appearances: For the company —

109 LA 647
penation. Benefits are provided during this period, the basis of payment will be as shown above less the Workers' Compensation Benefits.

Paraphrasing, the words "on duty" are also found in Section 4 (Reporting of Robbery) and Section 5 (Assault and Robbery Life Insurance).

As a point in developing its contractual construction argument, the UTU noted that the words "on duty" were not in Section 2. The MTA argued that a reasonable reading of Article 39 as a whole only provided for "unprovoked attack pay" when the Bus Operator was "on duty."

As to the historical context for this language, the parties stipulated the relevant language has been the "same" since the '70s. There was no testimony as to bargaining history.

Factual Summary

The facts of this case have already been developed in the Statement of the Matter portion of this decision; thus they need not be restated. These facts were not in dispute; thus, it was not necessary for the Grievant to testify.

The MTA attempted to develop through the testimony of Bethel a "past practice argument"; however, Bethel's testimony clearly established the facts in the instant case were of first impression and there existed no "past practice" to shed interpretive light on the contract provisions as applied to these facts.

Discussion

As just indicated, the issue as presented in this case is one of first impression. In summary, the salient facts were as follows:

- 1) the Grievant was on MTA's property;
2) an "unprovoked" attack and robbery took place on the MTA's property;
3) the Grievant was injured as a result of the unprovoked attack;
4) the unprovoked attack and robbery took place before the Grievant's "sign-on" time of 4:30 a.m. and
5) the Grievant received Workers' Compensation Benefits as a result of the injuries sustained in the unprovoked attack.

Do these facts support the payment of the "unprovoked attack pay" as provided for in Article 39 and, more specifically, Section 2 of Article 39? What happened to the Grievant was truly an unfortunate incident, as Bethel stated in his denial of the initial claim filed by the UTU on the Grievant's behalf on October 4, 1995. It was "physically" and "psychologically traumatic" to say the least; however,

the core issue is whether the above undisputed facts support the payment of the contractual "unprovoked attack pay".

The simple thrust of MTA's position was that the incident did not take place "on duty"; thus, the Grievant is not entitled to the pay as requested.

The fundamental position of the UTU was that Section 2 did not contain the qualifying language "on duty"; thus, the Grievant should be paid accordingly. The UTU further developed an argument that seemed to contend, at least in the instant case, that Section 2 should be read as co-extensive with the coverage of Workers' Compensation; thus, the Grievant should be considered as entitled to the unprovoked attack pay. Factually, the UTU developed these arguments from factual findings 1, 2, 3 and 5, while the MTA developed its primary argument from factual finding 4.

To answer the issue as presented, a two step analysis must be taken.

Section 2 and first, should "on duty" be read into second, if the answer is "yes," then was the Grievant "on duty" at the time of the unprovoked attack. Obviously, if the answer is "no," then the Grievant would be entitled to the "unprovoked attack pay" as no inquiry as to "on duty" would be necessitated.

A maxim of construction is that an agreement be read as a whole as well as each section within that agreement. A corollary maxim of construction is that provisions must be read in context. The context of Article 39 is an employee's safety relative to robbery and unprovoked attacks.

[1] A reimbursement scheme is outlined in Section 1 in event of robbery or unprovoked attack and this reimbursement or replacement approach is clearly and expressly linked to incidents while "on duty."

Following Section 1 is Section 2 which provides for the payment for time lost as a result of "such" robbery or unprovoked attack. Applying the rules of construction, this "such" seems to relate to what was stated in Section 1; thus, as the Arbitrator has already indicated, this serves as a word bridge between Section 1 and Section 2 to the extent that "on duty" must be implied in Section 2's payment for lost time. Thus, arguments to the contrary notwithstanding, "on duty" must be read as a condition in effecting payment for lost time as found in Section 2.

[2] Was the Grievant "on duty" at the time of the unprovoked attack? At the time of the incident, the Grievant had not signed on; thus, the Grievant

was not "on duty." To conclude otherwise would have an amendatory effect to the language of Article 39. The Arbitrator, unlike the statutory mandate to the WCAB, and the courts to construe California's Workers' Compensation law "liberally," must ascertain the intent of the parties and give effect to that intent.

The language at issue was reasonably susceptible to more than one interpretation; thus, extrinsic evidence could have been referenced. However, in the instant case, there was no extrinsic evidence; thus, the Arbitrator was left with the bare language. Using the maxims of construction, the Arbitrator concluded that the parties determined to draw the contractual line of eligibility for lost time pay for an unprovoked attack at "on duty" not walking to the front door of the Division office to "sign-on" and commence working!

Therefore, grievance U96-32 will be denied.

AWARD

Based on this evidence, record as a whole, it is the AWARD of this Arbitrator that

The Grievant is not entitled to "unprovoked attack pay" under Article 39 for the incident of September 19, 1995; therefore, the grievance is denied.

Decision of Arbitrator

In re LAILAW TRANSIT, INC. and INTERNATIONAL BROTHERHOOD OF TEAMSTERS GENERAL TEAMSTERS LOCAL 959, FMCS Case No. 96/9833, October 27, 1997

Arbitrator: Robert W. Landau, selected by parties through procedures of the Federal Mediation and Conciliation Service

BACK PAY

1. Third-step answer - \$93.45
Improperly-suspended employee is entitled to back pay for 30 days after end of suspension during which he did not return to work, where rea. manager agreed in step-three decision to pay grievant for that day, step-three determination was unilateral award of back pay.

2. Rebid bus routes - \$118,806

Improperly-suspended school bus driver is entitled to back pay for work he was denied when he was not allowed to rebid routes during his suspension, where em-

ployer did not have just cause to suspend grievant, collective-bargaining contract permitted drivers to rebid without mention of disciplinary action or any other precondition, and grievant had seniority to win bid for regular route.

3. FMLA leave - \$118,806 - \$116,201 - \$94,553

Family and Medical Leave Act (FMLA) issues are arbitrable in determining whether improperly-suspended school bus driver is entitled to back pay for time he was on FMLA leave for half of day, since arbitrator has authority to consider and apply external law such as FMLA, absent any express prohibition in collective-bargaining contract.

4. FMLA leave - \$118,806 - \$116,201 - \$94,553

Improperly-suspended school bus driver is entitled to back pay for period he took leave for four hours per day, even though collective-bargaining contract stated drivers forfeit routes if they are unable to perform entire route, where driver should not be penalized for exercising his FMLA rights inasmuch as contract also stated that any part of it that conflicts with federal law shall be considered invalid.

5. Interest - \$118,807

Improperly-suspended school bus driver is entitled to interest on back pay from date of first rescheduled arbitration hearing, where employer paid little attention to union's repeated requests to resume arbitration after initial arbitration hearing, union was forced to file NLRB complaint before employer agreed to resume proceedings, em- ployer failed to appear at next scheduled hearing and did not provide satisfactory justification, it failed to comply with own step-three answer by not paying back wages to driver for half of suspension period and not lifting his special education restriction, grievant was forced to wait more than additional year to receive back-pay award because of employer's dilatory and bad faith conduct.

Appearances: For the employer - Ronn English, director of human resources. For the union - James A. Witt, general counsel.

FMLA LEAVE

Factual and Procedural Background

LANDAU, Arbitrator. - Grievant H.L. was employed as a school bus driver by Laidlaw Transit, Inc. At the beginning of the 1995-96 school year, H.L.'s regular assignment was to drive a special education bus. On October 31, 1995, H.L. and another employee were placed on a fact-finding suspension pending the Company's investiga-

tion of various incidents of alleged interpersonal conflict between H... and the other employees.

On November 8, 1995, while H... was still on suspension, Laidlaw conducted a rebid of the driver routes pursuant to the collective bargaining agreement. Although H... expressed interest in rebidding for his special education route, he was not permitted to participate in the rebid process.

On November 14, 1995, H... was issued a notice of disciplinary action by his supervisor finding that he had engaged in "inappropriate interpersonal interactions with a co-worker." As a penalty, H... was suspended from 10:42 a.m. on October 31 through November 14, 1995. One-half of the suspension period was to be without pay, the other half with pay. In addition, H... was barred from driving special education routes for the remainder of the school year. H... was to return to active duty status on November 15.

The Union grieved the disciplinary action against H... on November 16, 1995. H... returned to work on November 17, 1995. When H... returned to work, he was designated as a "standby" driver and was not allowed to drive special education routes. As a standby driver, H... was guaranteed the contract minimum of two hours of work in the morning and two hours of work in the afternoon. Previously when H... had driven a special education route, he had worked an average of approximately eight (8) hours per day.

On December 11, 1995, H... informed his supervisor that he had a family medical problem involving his daughter's high-risk pregnancy and requested not to work in the mornings under the Family and Medical Leave Act (FMLA). The supervisor granted H...s request and they agreed he would report for duty at 1:00 p.m. each day. H... remained on FMLA leave in the mornings and worked as a standby driver in the afternoons from December 11, 1995 until the end of the school year on June 7, 1996.

On January 17, 1996, Laidlaw's Alaska area manager issued his Step 3 decision on H...s grievance. The area manager concurred with the discipline imposed by H...s immediate supervisor with the following exceptions: (1) H...s restriction from driving special education routes was lifted, and (2) H... was to receive back pay for three additional days of work missed during the suspension. However, Laidlaw never paid H... for any of the suspended days and did not allow him to drive a special education route for the rest of the school year.

When the parties were unable to resolve H...s grievance at Step 3, the matter proceeded to arbitration. The arbitration hearing began on May 17, 1996, but could not be finished in one day. The parties agreed to resume the hearing on July 10, 1996. However, the hearing did not continue on that date because of a claimed personal emergency by Laidlaw's representative. Over the next few months, the Union made several attempts to contact Laidlaw's representative to reschedule the hearing but was unsuccessful. In May 1997, the Union filed an unfair labor practice charge with the National Labor Relations Board seeking to compel Laidlaw to complete the arbitration of the H... grievance. The charge was ultimately withdrawn after the parties mutually agreed to resume the hearing on September 18-19, 1997.

On September 18, 1997, Laidlaw did not appear at the scheduled continuation of the arbitration hearing. After communicating telephonically with Laidlaw's Anchorage representative, the arbitrator delayed the resumption of the hearing until the following day. On September 19, Laidlaw again did not appear at the scheduled hearing time. Shortly after the hearing had commenced on an ex parte basis, Laidlaw's representative telephoned from California and agreed to participate in the hearing telephonically. During the ensuing discussion between the parties and the arbitrator, Laidlaw agreed to withdraw its claim that just cause existed for the discipline imposed on H... The arbitrator then limited the scope of the hearing to the issue of the appropriate remedy.

Relevant Contract Provision

ARTICLE 14 ROUTE PICKS, CHARTERS, AND OPEN RUNS

14.02 All regularly scheduled routes shall be open for bid on a seniority basis on the 21st of August of each year, unless the Company otherwise notifies employees. On the designated day, employees may bid on routes in person. The Employer reserves the right to add or delete stops from routes in order to facilitate scheduling or for economic considerations. In November, on a date mutually agreed to between the Company and the Union, a rebid of drivers will take place to realign routes due to any additions or deletions that may have taken place. Any routes that have a change of driver will retain the attendant on that route for a period of one (1) week to help familiarize the new driver with the new route. After that one (1) week, the attendants will rebid. Only those routes that have changed drivers as a result of the rebid shall be subject to a dry run. Routes shall be posted to bid in accordance

with bus size; however, bus size may be subject to change. The Company shall post all routes with the approximate number of hours. A driver who successfully bids a particular route must be available to perform the entire route or forfeit the route.

Issues

At the initial arbitration hearing on May 17, 1996, the parties submitted the following joint issue statement:

- 1. Did Laidlaw Transit, Inc. have just cause to suspend the employment of H... from 10:42 a.m. on October 31, 1995 through November 14, 1995, and deny him the ability to drive special education routes for the remainder of the school year?
2. If just cause did not exist, what is the appropriate remedy?

At the resumption of the hearing on September 19, 1997, Laidlaw withdrew its claim that just cause existed for the discipline imposed on H... and the Union amended its grievance to include a claim for interest on any back pay awarded to H... Accordingly, the arbitrator formulates the issues to be decided as follows:

- 1. What is the appropriate amount of back pay to be awarded to the grievant?
2. Should interest be included in the back pay award?

Positions of the Parties

1. Union

The Union argues that H... is entitled to back pay consisting of the difference between what he would have earned driving his special education route from October 31, 1995 until the end of the school year, and what he was actually paid as a standby driver during that period. Laidlaw's withdrawal of its just cause claim means that H... is entitled to back pay for the entire period of his suspension. In addition, since there was no just cause to restrict H... from rebidding his special education route, he is entitled to back pay for that work through the end of the school year.

When H... was granted FMLA leave in December 1995, he was entitled to work on a reduced leave schedule for the remainder of the school year without forfeiting his special education route. Under the FMLA, an eligible employee is entitled to a total of 12 weeks of leave. Since H... took only mornings off during his FMLA leave, his total leave taken was less than 12 weeks. According to the Union, the contract language providing that drivers who are not available to perform their entire route must forfeit the route cannot validly be applied to H... in this situation. The collective bar-

gaining agreement cannot be applied in a manner that waives or restricts an employee's rights under the FMLA.

The Union also requests that interest be included in the back pay award as a result of Laidlaw's bad faith and undue delay in processing this grievance. Laidlaw failed to cooperate in the rescheduling of the arbitration hearing, forcing the Union to file an NLRB complaint. Laidlaw also failed to appear at the scheduled September 18 arbitration hearing without good cause. Further evidence of the Company's bad faith was its failure to pay H... for half of the suspension period as provided in the initial disciplinary action, and to lift his special education restriction as set forth in the Step 3 decision. The Union proposes that interest on H...s back pay award should begin July 10, 1996, the date of the first rescheduled arbitration hearing at which Laidlaw failed to appear.

2. Employer

It is difficult to determine exactly what Laidlaw's position is because the Company did not present detailed arguments at the arbitration hearing nor did it submit a posthearing brief. As best as the arbitrator can determine, Laidlaw's position on the back pay award to H... consists of three primary elements: First, the Company does not appear to contest that H... is entitled to back pay for the period of his suspension. Second, Laidlaw questions H...s eligibility to rebid for his special education route on November 8 since he was suspended on that date. Third, Laidlaw asserts that H... forfeited his special education route when he voluntarily took FMLA leave in December 1995 because he was not available to drive the entire route under Section 14.02 of the contract. Therefore, H...s back pay award should be limited to the period of his suspension only. Laidlaw did not present any arguments regarding the inclusion of interest on the back pay award.

Discussion

1. Back Pay

At the September 1997 arbitration hearing, Laidlaw withdrew its claim that there was just cause for the disciplinary action against H... Absent a showing of just cause, the disciplinary action should be rescinded and H... should be made whole for any losses suffered as a result of the discipline. The appropriate remedy includes, at a minimum, back pay for the entire pe-

rod of H's suspension from 10:42 a.m. on October 31 through November 14, 1995.

(1) The parties appear to dispute whether H is entitled to back pay for November 15 and 16, 1995. Laidlaw argued that H could have returned to work on those two days but chosen to make himself unavailable. However, Laidlaw's argument is negated by its Step 3 decision in January 1996 that H should receive back pay for the additional days missed beyond the original suspension. The Step 3 determination by Laidlaw's Alaska area manager was a unilateral award of back pay to H for the additional days of work missed. Nothing in the Step 3 decision suggests it was a bilateral "settlement offer" requiring acceptance by H or the Union. Accordingly, H is entitled to back pay for November 15 and 16, 1995.

(2) The arbitrator is unpersuaded that H was precluded from the November 8 rebid for his special education route due to his suspension. Section 14.02 of the agreement permits drivers to rebid their routes each November on the basis of seniority without mention of disciplinary action or any other preconditions. Since Laidlaw did not show just cause to discipline H or restrict him from driving special education routes, he was entitled to participate in the November 8 rebid of driver routes. Even H's immediate supervisor conceded that H should have been allowed to rebid his route. Moreover, according to H's uncontradicted testimony, if he had been permitted to rebid his special education route, he would have received the route because he had more seniority than the driver who was actually selected. H further testified that after he obtained FMLA leave in December 1995, he could have driven his special education route in the afternoon for the remainder of the school year. Laidlaw formally recognized H's entitlement to drive special education routes when it lifted his restriction in its Step 3 decision in January 1996.

(3) The next question is whether H's FMLA leave precludes him from receiving back pay from December 11, 1995 through the end of the school year. Despite Laidlaw's assertion that any FMLA issues are not arbitrable as part of this grievance, the arbitrator finds that the effect of H's FMLA leave on his entitlement to back pay is clearly arbitrable. There is no dispute that H was entitled to take FMLA leave, and Laidlaw properly granted his request for this leave. Rather, the question is whether H's FMLA leave

precluded him from receiving back pay for his special education route under Section 14.02 of the agreement. This is fundamentally a question of contract interpretation which clearly falls within the arbitrator's jurisdiction. Absent any express prohibition in the parties' contract, the arbitrator has the authority to consider and apply external law such as the FMLA. See Elkouri & Elkouri, *How Arbitration Works*, at 517-18 (5th ed. 1997).

Under the Family and Medical Leave Act, 29 U.S.C. §2601 et seq. (1993), an eligible employee is entitled to take up to 12 weeks of unpaid leave during any 12-month period. 29 U.S.C. §2612(b)(1). When an employee is placed on a reduced leave schedule, as H was, only the leave actually taken is counted toward the 12-week total to which the employee is entitled. 29 C.F.R. §825.205(a). As noted by the Union, H's average workday of eight (8) hours was reduced to four (4) hours when he went on FMLA leave, meaning that he used one-half week of FMLA leave for each calendar week worked. At this rate, H was entitled to take FMLA leave for up to 24 calendar weeks, which more than covered the period from December 11, 1995 through the end of the school year on June 7, 1996. Therefore, H was clearly eligible to take FMLA leave during the time that he did.

(4) Section 14.02 of the contract states in part: "A driver who successfully bids a particular route must be available to perform the entire route or forfeit the route." The arbitrator concludes that this forfeiture provision may not be applied to an employee who is on approved leave, including FMLA leave. As a general matter, language in collective bargaining agreements should be interpreted in a manner consistent with applicable external law. Any interpretation of the contract which conflicts with rights granted by external law should be avoided. See Schoonhoven, ed., *Fairweather's Practice and Procedure in Labor Arbitration*, at 421-22 (3rd ed. 1991) (hereinafter *Fairweather's Practice and Procedure*). Here, the savings clause in Section 31.01 of the contract specifically states that "fairly part of this Agreement which conflicts with applicable City, State or Federal laws or regulations shall be considered invalid." This language clearly expresses the parties' intent that the contract should be interpreted harmoniously with external law. It would be improper, therefore, to penalize H under the collective bargaining agreement for exercising his rights under the FMLA. See 29 C.F.R. § 825.220(c) (employees

cannot be forced to waive their FMLA rights or "trade off the right to take FMLA leave against some other benefit offered by the employer).

For the foregoing reasons, the arbitrator concludes that H is entitled to a back pay award consisting of the wages and benefits he would have earned driving his usual special education route from October 31, 1995 through June 7, 1996 less the wages he was actually paid as a standby driver during this period and any other applicable deductions required by law. The Union sought but was unable to obtain time records to establish the precise amount of back pay due. The Union estimated the amount H would have earned driving his special education route, less what he actually earned as a standby driver, as follows:

\$688.86	Wages lost between 10/31/95 through 11/16/95.
\$126.62	Wages lost from 11/17/95 until 12/11/95 when FMLA leave granted.
\$2,729.58	Wages lost from 12/11/95 through 5/7/96.
\$3,493.76	Total wages lost.

Laidlaw did not submit any time records or other evidence to contradict the Union's back pay estimate. The arbitrator accepts the Union's estimate as a reasonable approximation of the back pay owed to H with one important modification. From December 11, 1995 through June 7, 1996, the Union estimated that H would have worked 5.0 hours each afternoon as a special education driver. In its post-hearing brief, however, the Union conceded that after H went on FMLA leave, his average workday as a special education driver would have been reduced from 8 hours to 4 hours per day. Under this approved FMLA leave, H reported for standby duty at 1:00 p.m. each day, which coincided with the afternoon start time of his special education route. Based on the evidence and argument presented by the Union, the arbitrator finds that it is more likely that H would have worked closer to 4.0 hours rather than 5.0 hours each afternoon as a special education driver. Accordingly, the Union's back pay estimate should be reduced by 1.0 hour for each day worked between December 11, 1995 and June 7, 1996. This amount is calculated as follows:

1.0 hour @ \$10.40/hr x 106 days = \$1,102.40.
--

This amount is deducted from the Union's estimate of wages lost as follows:

\$3,493.76 - \$1,102.40 = \$2,391.36.

Accordingly, H's back pay award is \$2,391.36.

2. Interest

Although most arbitrators generally decline to include interest on monetary awards, some arbitrators have done so where special circumstances exist, such as an employer's arbitrary, dilatory or bad faith conduct. *Fairweather's Practice and Procedure*, at 385-37. In this case, the arbitrator finds that special circumstances exist justifying the inclusion of interest on H's back pay award.

(5) Section 10.01 of the contract declares the "desire of the parties to promote harmony between the Company and its employees to eliminate industrial disputes and to stabilize labor relations." Section 10.01 of the contract states that the "purpose of the grievance and arbitration procedure is to provide for the organized, speedy, and equitable adjustment of grievances." Here Laidlaw appears to have egregiously failed to cooperate in processing this grievance, thereby delaying its ultimate resolution by more than a year. After the initial arbitration hearing in May 1996, it appears the Company paid little attention to the Union's repeated requests to resume arbitration. Ultimately, the Union was forced to file an NLRB complaint before Laidlaw agreed to resume arbitration proceedings. Once a new arbitration date was scheduled in September 1997, Laidlaw failed to appear at the scheduled hearing and did not provide a satisfactory justification to the arbitrator. Furthermore, Laidlaw failed to comply with its own disciplinary action by not paying back wages to H for half of the suspension period, and by not lifting his special education restriction pursuant to the Step 3 decision. Because of Laidlaw's dilatory and bad faith conduct, the grievant was forced to wait more than an additional year to receive his back pay award. Therefore, it is appropriate to include interest on the back pay award.

The Union proposes that interest on H's back pay award should begin July 10, 1996, the date of the first rescheduled arbitration hearing at which Laidlaw did not appear, and should be assessed at the rate 10.5% per year pursuant to Alaska Statute 09.30.070. Laidlaw has not advanced any arguments in opposition to the Union's request, and the arbitrator does not find the request to be unreasonable under the circumstances.

AWARD

The grievance is sustained. Laidlaw

did not show just cause for the disciplinary action taken against H. on November 14, 1995. Therefore, the disciplinary action is rescinded. As a remedy, H. is awarded back pay for lost wages in the amount of \$2,391.36, plus any applicable benefits, less any deductions required by law. Interest shall be assessed on the back pay award at the rate of 10.5% per year from July 10, 1996, until paid.

GREIF BROS. CORP. -

Decision of Arbitrator
 In re GREIF BROS. CORPORATION, (Western Division, St. Gabriel, Louisiana) and INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 406, November 25, 1997
 Arbitrator: Barry J. Baroni

DISCHARGE

1. **Insubordination - 118.6521 - 118.6527**

Employer had just cause to discharge employee, who was on temporary assignment and who refused to follow supervisor's instructions to stop testing work and unload truck, despite contention that grievant would have disregarded her direct supervisor's order if she had unloaded truck, where if employee disagreed with order, she should have consulted with her direct supervisor; if possible, or at least tried to ask questions about order, and if not given satisfactory response, done work under protest; employee had received earlier warning for trying to give other employees instructions and not keeping her opinions to herself.

2. **Insubordination - 118.6521 - 118.6527**

Shop steward who was discharged for refusing supervisor's order to unload truck was not victim of union animus, where reason steward resisted order was that she wanted premium pay for unloading truck, but was not going to be given that pay.

3. **Refusing reinstatement - Insubordination - 118.615 - 118.6521**

Discharged employee's refusal to accept reinstatement offered by employer without conditions she requested amounted to unwarranted demand of conditions upon which she would return to work, where her first condition—for complete job description and lead-person pay—would require management to change conditions in effect at plant for many years, and second condition—that she be returned to her old job—would require that another employee be displaced with result that grievant would get job to which she had no contractual claim.

Appearances: For the employer — Lawrence A. Ratcliffe, vice president, director of human resources; Mark Morgan, plant manager; Ernestine Senter, supervisor-safety. For the union — Mark A. Sweet, attorney; Felix H. Johnson, Jr., assistant business manager; Daria Long, operator; Henry Colbert, union steward.

REFUSING REINSTATEMENT

Issue

BARONI, Arbitrator: — The parties were unable to reach consensus on a stipulation of the issue. They each submitted separate issue proposals and agreed to allow the arbitrator to consider these separate issue proposals and to then frame the issue. The arbitrator frames the issue, as follows:

"Did just cause exist for the termination? If not, what is the proper remedy?"

Background and Facts

During the morning of October 24, 1996, Grievant, a Production Worker at the Company's St. Gabriel plant, was issued an assignment by Supervisor Ernestine Senter. Grievant initially refused to accept the assignment, but later performed the task. During the afternoon that same day, October 24th, Senter directed Grievant to stop her UN testing work and unload a truck. Grievant refused the assignment, which she had performed many times in the past. When confronted with the question, "Are you refusing to unload the truck?", Grievant answered, "Yes, I am not going to unload the truck." Senter then instructed Grievant to perform the job or punch out, which she eventually did. On October 29, 1996, a letter was sent to Grievant stating:

"Because of your years of service your termination for refusing to follow a supervisor's order on October 24, 1996 is being converted to a two-day suspension without pay. You are to return to work at the beginning of the day shift on October 30, 1996. You are expected to complete all duties as assigned by a supervisor failure to follow the supervisor's order will not be tolerated by the Company. If you have a grievance follow the procedure. Any additional warnings can result in further discipline up to and including termination.

In yet, another letter of the same October 29th date, a formal two-day suspension was issued, with the stipulation that "any additional warnings can result in termination." The Union, by certified mail, issued a letter of October 29th stating that Grievant would come back to work only if one of two conditions are met:

"1. (Grievant) would accept her old job back (UN Testing), only if she would receive, in writing, a complete job description including a clearly defined chain of supervisors and Lead Person's pay.

"2. (Grievant) would accept her old job of running the decoder and unloading steel. This is the position that she held previous to being offered the UN Testing job.

By letter of October 31, 1996, the Company notified Grievant, as follows:

"Because you did not return to work at 7:00 am on 10/30/96, we assumed the enclosed conditions for your employment were not acceptable. . . . Your termination for insubordination on 10/24/96 is therefore, still in effect.

An attempt was made to settle the grievance in house, to no avail, and the Union elected to waive all steps in the arbitration procedure and go directly to arbitration. The entire matter now comes before this neutral arbitrator for final resolution.

Relevant Contract Provisions

ARTICLE 2, Section 2.02— . . . The right to manage its business and affairs and all parts thereof; . . . to terminate employees and other rights accruing to any employee under this Agreement shall be lost, forfeited, and cancelled and the employee shall be terminated if any of the following occur:

A. The employee quits or is dismissed for cause from employment.

ARTICLE 24, Section 24.01— Any employee who has completed the probationary period and is transferred from his or her regular job, for the company's convenience, shall be paid as follows: . . . (emphasis added)

Parties' Positions

The COMPANY POSITION can be summarized, as follows:

Grievant admitted she refused the assignment and there are no mitigating circumstances for her insubordination. Grievant should have filed a grievance and performed the task. The rules prescribe termination without official warning as appropriate in the case of a willful refusal to follow instructions. Grievant merely escaped disciplinary warnings on her record. Grievant took matters in her own hands and refused the Company's offer of reinstatement by making outrageous demands upon, which would have had a disruptive affect not in retaliation for protected concerted Union activity. The Company did not act arbitrarily or capricious and the termination should be upheld. The grievance should be denied.

The UNION POSITION can be summarized, as follows:

Just cause did not exist for the termination. The Employer did not give Grievant forewarning of, or knowledge of, the possible consequences of her conduct. Grievant had no reason to know that she was violating a specific Company rule when she re-

fused a conflicting order of Senter, who was not her supervisor. There was no evidence that Management consulted with Grievant's supervisor Marcello before terminating her. She had no reason to believe that continuing loyalty to her supervisor, Marcello, would result in termination. There is evidence of Union animus against Grievant, a Union steward who was outspoken. The termination was out of line with Grievant's long period of dedicated service to the Company. The grievance should be sustained and Grievant returned to her previous position with the Company and made whole, including back pay from October 24, 1996.

Discussion and Opinion

Although refusals to obey lawful orders of Management cannot be condoned and usually warrant discipline, extenuating circumstances are taken into consideration by arbitrators in either removing or reducing discipline assessments. For example, an employee's work record or length of service could be instrumental in reducing the degree of discipline assessed (Arbitrator Stauchohar in 84-1 ARB 8220). Also the "reasonableness" of the work order (Dallas, in 84-2 ARB 8564) and the lack of warnings for previous violations (Williams, in 68-1 ARB 8015) have been factors relied upon by arbitrators in reducing discipline. In fact, arbitrators have found discharge too severe for an employee's refusal to follow orders where a "pattern of insubordination" has not been established or where the employee had a legitimate excuse for the refusal (See Arbitrators Scheiber, in 69-1 ARB 8380; Kabaker, in 71-1 ARB 8033). Finally, arbitrators have reduced or removed discipline assessments where it is found that selective enforcement or discrimination occurred (Modjeska, in 84-1 ARB 8035).

Extenuating Circumstances

(1) Union counsel argues that had Grievant followed the order of Supervisor Senter, on October 24th, she would have been in disregard of the order of her direct supervisor, Marcello Cornejo. She took the firm position that she did not have to follow the instructions of another supervisor, since supervision at the Company does not work as a team. Evidence provided by Plant Manager Mark Morgan established the fact that Management does work as a team and depending on the business needs of the Company, employees are given temporary assignments on a daily basis. Morgan stated that "temporary transfers are about one of two per day." Grievant should have done what fellow employee Daria Long testified she would have done,

1010 is not eligible for increased pension benefits, as she claims.

Mrs. Galbraith is claiming a benefit available to steel workers on 8-1-86, as per the new steelworker contract. Mrs. Galbraith is not a steelworker, but a member of OPEIU Local 28. Her contract is effective until 12-31-86. As in the past, any contractual changes or improvements would be written into any new OPEIU contract effective with its commencement.

This has always been our practice! It must be noted, that steelworkers retiring in the months prior to the new steelworker contract did not receive the benefit increase. As they were regulated by the contract in effect at the time of retirement [sic]. Mrs. Galbraith's situation was the same. She is not eligible for any increased benefits.

Thus, the Employer claimed that any benefits tied to the Basic Steel Contract would have to be negotiated into the OPEIU Local 28 agreement before they went into effect, while the Union maintained that any changes in the Basic Steel Contract should have been automatically incorporated into its collective agreement with the Steelworkers. No adjustment of this dispute proved possible and it was, accordingly, appealed to the instant arbitration.

Position of OPEIU, Local 28

1. The OPEIU argues that the parties' contract states that employees "shall be covered by the same Pension Plan as the Basic Steel Contract..." It maintains that the bargaining unit employees gave up certain benefits to achieve that Pension Plan and the Employer has no right to unilaterally withdraw it. After the 1986 Basic Steel contract increased pension benefits the grievant was entitled to that higher level without resort to renegotiating the OPEIU contract.

2. Moreover, the Union contends that other provisions in the parties' collective agreement provide benefits which were also tied to the Basic Steel contract such as the vacation bonus and COLA. It asserts that OPEIU employees received these benefits in exactly the same way and at exactly the same times as specified in that Contract. Also, it points out that when the Basic Steel Contract terminated the vacation bonus and COLA, OPEIU employees also ceased receiving them, even though its 1983 collective agreement was still in effect. The Employer did not renegotiate the contract in order to rescind those benefits, the Union contends.

3. The OPEIU further maintains that the purpose of the April, 1985 pension meeting held by Local 1010 was simply a ratification of the terms of the collective agreement. It claims that the Employer only raised pension

benefits to the levels reflected at that time under the Basic Steel Contract.

4. Finally, the Union states that it was the grievant in this case that suffered injury as a result of the Steelworkers' unilaterally adopted pension plan. When the Basic Steel Contract increased pension levels in August of 1988, those new amounts should have automatically been paid to any OPEIU, Local 28 member retiring after that point in time, the Union contends. As grievant Galbraith retired in September of 1986, the Union asserts, she had such an entitlement.

Position of the Employer (USWA, Local 1010)

1. The Employer argued that the grievant was denied nothing. It maintains that at the April, 1985 meeting, pension benefits were raised unilaterally by Local 1010 to \$17.50 instead of the prior amount of \$11.75. According to the Employer, there was no direct challenge by the Union to its actions. Indeed, it asserts that Local 25 was invited to the meeting, but chose not to attend.

2. Moreover, it claims that the pension was put into effect by a prior administration that took away pension benefits. The Employer states that it should not be held responsible for the actions of its predecessors.

3. Finally, according to the Employer, it was its past practice to incorporate any changes in the Basic Steel Contract into its agreement with OPEIU only after renegotiation. It claimed that the old agreement was effective until December 31, 1986, and thus the grievant was not entitled to any increased pension amount.

Opinion

The parties' most recent collective bargaining agreement was effective January 1, 1983, and expired December 31, 1985. However, it was stipulated that this agreement has been extended to the present time pending further negotiations.

The instant grievance arose when Ellen Galbraith, an OPEIU Local 28 member, retired in September of 1986, but was not paid at the level of pension benefits specified under the Basic Steel Contract which had gone into effect on August 1, 1986. Article IV, Section 8, of the collective agreement between the USWA, Local 1010 and OPEIU, Local 28, covering pension payments reads as follows:

"Each employee shall be covered by the same Pension Plan as in [the] Basic Steel Contract with years of service from date of hire to their credit. This shall be an irrevocable trust.

This agreement between the parties with respect to pensions shall be set forth in printed form with respect thereto" (emphasis supplied).

If there is any one arbitral principle which is respected by arbitrators, it is the rule of contract interpretation which states that clear contract language should not be disturbed, to alter or amend unambiguous contract language is to exceed an arbitrator's powers. The provisions of Article IV, Section 8, constitute an example of such clear contract language. There can be no doubt of the meaning of the words "Each employee shall be covered by the same Pension Plan as in [the] Basic Steel Contract..." It plainly states that bargaining unit employees are entitled to the identical pension plan as exists under the Basic Steel formula.

The only issue, therefore, is whether OPEIU employees automatically receive the results of any negotiated changes in the Basic Steel Contract (where their agreement is tied to it), even though the parties' agreement may already be in effect. There were at least two other provisions in the collective agreement (other than pensions) which were also tied to Basic Steel, namely, vacation bonus and COLA. Unrebutted testimony by the Union witness established that vacation bonuses were granted by the Employer in accordance with the Basic Steel Contract. However, when the vacation bonus was eliminated from that Contract, the Employer also ceased paying the bonus even though it was eliminated effective August 1, 1986 and the parties' collective agreement was still in force (stipulation). Another benefit, the COLA, was also stopped at the same time that the Basic Steel Contract dropped the benefit. Again, the parties' agreement was in effect at the time. However, while the COLA remained in force, the Employer made payments on the dates specified in the Basic Steel Contract. Clearly, therefore, the Employer saw no need to renegotiate the elimination of these benefits as they existed in tandem with Basic Steel. Instead, it automatically increased, decreased, or eliminated the benefit depending on the outcome of Basic Steel negotiations and the resulting contract. These actions belie the Employer's position that a practice existed whereby it would renegotiate benefits from Basic Steel into the parties' collective agreement.

Why the Employer did not apply that same logic to pensions is inexplicable at best, given that the vacation bonus, COLA, and pension clause all utilize the words "the same as" the Basic Steel Contract. Identical con-

tract language must, however, be interpreted consistently. When the Basic Steel pension benefits were raised approximately \$26 effective August 1, 1986, the Employer should have automatically incorporated that change into its own pension plan. Thus, Galbraith should have received that additional increment upon her retirement in September of 1986.

The Employer's argument that it had leave to have benefit levels at variance with those in Basic Steel, based on the fact that OPEIU members did not attend the April, 1985, meeting, is inapposite. It cannot unilaterally change the clear terms of the collective bargaining agreement. When pension benefits are to be the "same as" those existing in Basic Steel, the Employer is obligated to insure that that level of benefits are received by the employees.

Moreover, Galbraith was the first employee to be affected by the August 1, 1986, change in the Basic Steel pension formula. Two other employees had failed to grieve when they retired while the pension amount of \$17.50 was in effect under the Employer's own plan. However, at the time, that was also the pension benefit specified in the Basic Steel Contract and so they had no basis for filing a grievance as they were not disadvantaged in any way.

It is, of course, unfair that the current administration of Local 1010 should be blamed for the actions of a prior administration which allowed pension benefits to slip below the Basic Steel levels. Unfortunately, they must bear the burden of the contractual violation caused by their predecessors despite the evidence of good faith attempts on their part to correct the situation.

AWARD

The grievance is sustained. Galbraith is to be paid approximately \$26 more than her current pension level multiplied by years of service, retroactive to her retirement date. Pension benefits must be changed immediately upon changes that may be made in the Basic Steel Contract.

VT. DEPT. OF CORRECTIONS -

Decision of Arbitrators

In re VERMONT DEPARTMENT OF CORRECTIONS and GARY WARREN, Grievant, Case No. 82-69, June 10, 1987

VT. DEPT. OF CORRECTIONS

Vermont Labor Relations Board:
Charles H. McHugh, chairperson; William G. Kemsley Sr.; Catherine L. Frank

REMEDY

— Back pay — Interest >100.07

Improperly discharged state employee is entitled to simple interest on back pay, at rate allowed by law for forbearance for use of money, calculated from date paychecks were first issued after discharge until date employee receives back pay.

— Back pay >100.07

Back pay award for improperly discharged state employee does not include fees he paid for bankruptcy proceedings, absent proof that bankruptcy filing was due to loss of job.

— Back pay — Attorney's fees >94,559 >94,708 >100.07

Vermont Labor Relations Board lacks authority to award attorneys' fees to improperly discharged state employee.

Appearances: For the employer — Michael Seibert, assistant attorney general. For the grievant — Susan Dole, attorney.

INTEREST ON BACK PAY

McHUGH, Arbitrator: — At issue here is a dispute over backpay due Grievant as a result of his improper dismissal. On March 26, 1987, subsequent to a Vermont Supreme Court decision in this matter, the Labor Relations Board issued a Memorandum and Order reinstating Grievant with backpay to his position as correctional officer at the Woodstock Community Correctional Center, 10 VLRB 65. The Board left the case open for the purpose of determining the backpay and other benefits due Grievant from the date of his improper discharge until his reinstatement.

On May 7, 1987, Grievant and the State of Vermont, Department of Corrections ("Employer") filed a factual stipulation on backpay and other benefits but informed the Board they were unable to resolve the following issues and submitted them to the Board for decision:

- 1) whether interest should be added to Grievant's backpay award, and if so, from what date and at what rate;
- 2) whether interest, if appropriate, should be compounded or calculated as simple interest; and

3) whether Grievant's fees for bankruptcy proceedings should be added to his backpay award.

Interest on Backpay Award. The Employer contends the Board should reconsider its practice with respect to awarding interest on backpay awards. The Employer raises various issues in this regard, each of which will be discussed in turn.

First, the Employer contends that, absent some specific authorization either by statute or by the collective bargaining agreement, the Board lacks the authority to grant any award of interest on a backpay award.

In calculating a backpay award, the monetary compensation awarded shall correspond to specific monetary losses suffered; the award should be limited to the amount necessary to make the employee "whole". Grievance of Goddard, 4 VLRB 189 at 190-191 (1981), cf. Kelley v. Day Care Center, Inc., 141 Vt. 608 at 615-616 (1982). To make Grievant "whole" in this case is to place him in the position he would have been in had he not been improperly dismissed. Grievance of Benoit, 8 VLRB 165, 188.

We conclude that adding interest to the backpay award is necessary to make Grievant "whole" for income losses suffered as a result of his dismissal. By awarding interest, we are not imposing a penalty or punishment on management, but are simply compensating Grievant for the loss of the use of the money represented by the wages not paid to Grievant because of his improper discharge. Grievance of Benoit, supra, at 188 (1985), cf. Vermont Structural Steel Corp. v. Buckman, 131 Vt. 144 (1973).

The Employer next contends that if the Board does award interest, the Board should reconsider whether its practice of awarding interest at a 12 percent rate is appropriate. The State contends that there is no legal requirement on the Board to impose a 12 percent rate of interest and that an award at that rate will restore Grievant to a better place than where he would have been if he had not been dismissed.

It has been the practice of the Board to award the legal rate of interest calculated at the legal rate allowed for forbearance for use of money, which is 12 percent pursuant to 9 VSA §41(a). We agree with the Employer that the Board is not bound to award the legal rate of interest. However, in the exercise of our discretion, we believe the most appropriate rate to apply as one element of making the employee "whole" is the legal rate determined by

BLUE GRASS COOPERAGE CO.

the legislature for "forbearance for use of money".

Finally with respect to payment of interest, the Employer contends that it should be required to pay interest only from the date of this Order of the Board, which will be the first time the Employer will be ordered to pay any sum certain to Grievant.

As indicated above, in awarding interest we are simply compensating Grievant for the loss of the use of the wages not paid to Grievant because of his improper discharge. Grievant would have had use of any such wages on the first date paychecks were issued after his dismissal. Thus, interest liability should commence on that date. It logically follows that interest continues to run until Grievant receives his backpay.

Calculation of Interest: In determining whether interest should be compounded or calculated as simple interest, we conclude it is appropriate to apply the more accepted method of simple interest which is used in civil cases.

Bankruptcy Proceedings Fees: Grievant contends that the fees he paid for bankruptcy proceedings should be paid by the Employer since he would not have considered filing for bankruptcy if he was not improperly discharged. However, Grievant presented no evidence to demonstrate bankruptcy filing was due to loss of his job. Absent such evidence, we conclude it is inappropriate to require the State to reimburse Grievant for fees he paid for bankruptcy proceedings.

In his memorandum of law, Grievant renewed his request for attorney fees. We adhere to the view stated in our March 26, 1987, decision in this matter that to so order would be in excess of our authority under law.

ORDER

Now therefore, based on the foregoing reasons and consistent with the Board's Order of March 26, 1987, in this matter, it is hereby ORDERED:

1. The terms and conditions of paragraphs 1-3 of the Board's Order of March 26, 1987, and the terms and conditions of the parties' stipulation of May 7, 1987, are incorporated herein by reference and the parties are ordered to comply therewith;

2. The Employer shall, forthwith, pay to Grievant an amount representing back pay, which sum shall be calculated in accordance with the provisions of this order and which sum was \$31,531.35 as of May 15, 1987;

3. Grievant shall not be reimbursed for \$75.00 he paid in 1983 and 1984 for bankruptcy proceedings; and

4. The State shall restore Grievant to all benefits in accordance with the parties' stipulation, as though he had not been dismissed.

BLUE GRASS COOPERAGE CO. —

Decision of Arbitrator

In re BLUE GRASS COOPERAGE COMPANY and NATIONAL INDEPENDENT COOPERS UNION, INC., FMCS Case No. 86E/16081, May 22, 1987

Arbitrator: Stanley H. Sergeant Jr., selected by parties through procedures of Federal Mediation and Conciliation Service

WORKING CONDITIONS

— Bereavement leave — 'Consecutive days' — Past practice >24,366 >116,202

Employees who had taken bereavement leave on Thursday, which was followed by three-day holiday, are not entitled to bereavement leave on next Monday or Tuesday, despite past instances of leave being granted under same circumstances, where contract unambiguously grants "three consecutive days' leave" at time of the death or burial. Absent further qualification, term "consecutive days" must mean both working and non-work days.

Appearances: For the company — Larry E. Forrester; A. H. Zimlich. For the union — I. Joel Froot; William E. Kennedy; Jack Stevenson; Herbert L. Hansbrough; William L. Hardin; Billy G. Life; Richard L. Rust.

BEREAVEMENT LEAVE

Nature of the Case

SERGEANT, Arbitrator: — This labor arbitration arose pursuant to the grievance and arbitration provisions of a Collective Bargaining Agreement between Blue Grass Cooperage Company and the National Independent Coopers Union, Inc. It concerns a grievance which was filed on January 10, 1986, on behalf of four employees, Marvin Hollin, Norman Duval, Gary Lester and Jack Hillis. The thrust of

WATAUGA INDUSTRIES

the former plan but obviously the parties by practice have adopted and incorporated this maximum into their scheme of benefits. In the handbooks distributed to employees, both plans make reference to deductibles (that amount of charges paid by the employee and not the carrier), and proposals aside, these remained the same in the new plan. Additionally, the new plan stated "Individual Out-Of-Pocket Maximum" as \$500.00. The question now becomes, does this maximum apply to all amounts over usual and customary charges? While the handbook says NO, the Company has said YES, and this ambiguity must be construed against the Company as well as promissory estoppel.

Ignorance of the provisions of an agreement by parties to that agreement is not an excuse upon which a claim or defense may be based. Where, however, an agreement between party A and B incorporated by reference the terms of a contract between B and a third party C, the B-C contract binds A only if the terms of the agreement reflect A's real and constructive knowledge of the terms, or if A agreed to be bound no matter what the terms of the B-C contract were. Here, the weight of credible evidence is on the side of the Union that the intent of the parties was to insure all costs beyond \$500.00 after the employee had this amount of out of pocket expense in a calendar year. The old and new handbooks demonstrate that deductibles were to apply to scheduled benefits, and this maximum per family would be limited to \$300.00. The use of the word "individual" in tandem with "out of pocket" lends only to the conclusion that the Company would cover all other expense and claims occurred. By specifically excluding Psychiatric Care from this out of pocket limitation, the parties intended this maximum on medical expenses only, and they must have contemplated expenses beyond those scheduled medical expenses described as usual and customary.

Promissory estoppel applies, first where a promisor has made a promise, which was the type of a promise which would foreseeably induce the promisee to rely or take some action based upon the promise. Secondly, that the promisee did reasonable rely upon the promise. Third, as a result of reliance on the promise, the promisee has suffered some detriment. Fourth,

For all the foregoing reasons, the Arbitrator makes the following Award.

AWARD

Grievance granted. The Company is to pay grievant the sum of \$54.00. The Arbitrator will retain jurisdiction over this matter for a period of 45 days to determine any disputes as to grievant's amount of out of pocket medical expenses. In the event grievant is unable to establish out of pocket medical expenses in excess of \$500.00 prior to submission of the disputed claim within 45 days of this Award, the claim of grievant shall be void.

NATIONAL RAILROAD PASSENGER CORP.

95 LA 617

NATIONAL RAILROAD PASSENGER CORP. —

Decision of Public Law Board

In re NATIONAL RAILROAD PASSENGER CORP and AMTRAK SERVICE WORKERS COUNCIL, NMB Case No. 67, System Docket No. ASWC-D-2069 390-08-080-D, March 3, 1990 *

Public Law Board: Jesse Simons, Neutral chairman; L. D. Miller, carrier member, Joel M. Parker, employee member

DISCHARGE

— Passenger complaint — Unprofessional conduct — Burden of proof >118.646 >94.60509 >103.50

Just cause did not exist to discharge male sleeping-car attendant who admitted having sexual intercourse with female passenger while on duty, where conduct violated rule requiring "professional manner" toward public, but record demonstrates that sexual relations were consensual, carrier failed to show that conduct was indecent, discourteous, or immoral, and it failed to prove any of specific charges that grievant "mistreated," "assaulted," or "raped" passenger.

— Employer investigation — Notice of charges — Passenger complaint >118.646 >118.305 >118.306 >103.655

Railroad breached duty to make "fair and impartial investigation" and provide "known documents to be entered into evidence" when it discharged sleeping-car attendant for violation of rule against discourteous or indecent conduct, where evidence of charges failed to state specific type, scope or nature of alleged misconduct, hearing officer refused postponement request grounded on absence of only witness who could have presented probative testimony and on union's need to review evidentiary documents furnished 10 minutes prior to hearing, and he failed to inquire into circumstances surrounding employer's late production of documents.

EVIDENCE

— Discharge — Employer investigation — Passenger complaint >118.646 >118.306 >94.60525 >103.655

Carrier-appointed hearing officer's findings and decision are disregarded in proceeding arising from sleeping-car attendant's termination on charges that he "mistreated," "assaulted," and "raped" female passenger, where officer failed to support finding that grievant conducted himself in "discourteous, unprofessional and

* Motion for summary judgment seeking enforcement of this and related award is pending. C.A. No. 90 CV 2738, D.C. S.D.N.Y.

indecent manner," failed to make express, affirmative finding on any of specific charges, and based decision that charges had been "proven" on vague, unsworn accusation.

— Discharge — Passenger complaint — Prior ruling >118.646 >94.60559 >103.50

Finding that mere presence of non-complaining passenger in railroad employee's room after 2 a.m. violated rule against conduct that would subject carrier "to criticism and loss of good will" and justified discharge has no bearing on proceeding arising from discharge of sleeping-car attendant who had on-duty consensual sexual relations with passenger, where rule is not asserted in present case, and rationale of prior award—that "someone would have criticized" carrier if conduct were known to passengers—is too broad to serve as general standard.

— Discharge — Passenger complaint — Criminal charges >118.643 >103.50 >94.60505

In proceeding arising from sleeping-car attendant's discharge following on-duty consensual sexual relations with passenger, public law board declines to consider state court's dismissal without prejudice of criminal charges arising out of same incident, where dismissal occurred after charged grievant, conducted investigation, made findings, discharged grievant, and denied appeals.

REMEDY

— Reduction of penalty — Back pay — Interest — Damages >118.806 >118.807 >118.646 >24.707 >103.50

Discharge of male sleeping-car attendant who had on-duty consensual sexual relations with female passenger is reduced to 90-day suspension, and he is entitled to simple interest at 11 percent on back pay for remainder of off-work period, where carrier proved only that grievant's conduct was unprofessional, unprovoked charges of mistreatment, assault, and rape damaged grievant's name and reputation, and employer's investigation was flawed by numerous egregious procedural violations.

— Expenses of arbitration >94.65 >118.306 >103.50

Union is entitled to reimbursement for reasonable expenses incurred in representing unjustly discharged railroad employee at investigative hearing, on appeal, and in present proceeding, where it suffered damages attributable to carrier's egregious breaches of duty to provide fair and impartial investigation and to furnish known documents to be entered into evidence.

PASSENGER COMPLAINT

Claim of Amtrak Service Workers Council

SIMONS, Arbitrator: —

- 1) The Carrier acted in an arbitrary, capricious and unjust manner and in violation of Rule 19 of the Agreement, when by notice of October 27, 1988 it assessed a discipline against Train Attendant S., termination from his employ.
- 2) The Carrier shall now reinstate S. to service with seniority rights unimpaired and compensate him an amount equal to what he could have earned including but not limited to daily wages and overtime, had discipline not been assessed.
- 3) The Carrier shall now expunge the charges and discipline from the Claimant's record.
- 4) The Carrier shall now reimburse S. for any amounts paid by him for medical, surgical or dental expenses to the extent that such payments would be payable by the current insurance provided by the Carrier.

Findings

S., Claimant, was a Train Attendant with a seniority date of June 6, 1983 and, at all times pertinent here, was assigned at Chicago, Illinois. By letter to Claimant dated April 25, 1988, Carrier charged him with misconduct, and the Charge and related Specifications are quoted in full as follows:

Alleged violation of Rule "F," sections 1, 2 & 3 which state:

(F) Employee Conduct:

1. All employees are required to conduct themselves in a courteous and professional manner in dealing with the public and other Amtrak Employees.
2. Employees will not assault, threaten, harass, intimidate, fight or participate in any activity which could cause bodily injury to other employees or members of the public while on duty or on Amtrak property, or using Amtrak equipment.
3. Conduct involving dishonesty, immorality or indecency is prohibited.

Specifications:

1. In that while working as a sleeping car attendant on Train #2878 car 2830, April 20, 1988 you allegedly mistreated a female passenger in Room #8 on the 2830 car the night of April 20, 1988.
2. You allegedly assaulted and raped the female passenger in Room #8 of the 2830 car, Train #2878 the night of April 20, 1988.

On October 20, 1988, Carrier-appointed Disciplinary Investigator Hearing Officer, hereafter "DIHO," John Anderson conducted a hearing for the purpose of "investigating" the above-quoted Charge. Claimant was present for part of said hearing. He was represented during the entire hearing by his Union representative. A transcript of this Disciplinary Investigative Hearing, hereafter "DIH," was prepared and copies supplied to Claimant, the Organization and Carrier. It was supplied to this Board, along with some six Company Exhibits and three Union Exhibits.

By letter dated October 27, 1988, DIHO J. A. Anderson informed Claimant, Carrier and the Organization of his findings, and copy of his letter was supplied this Board. The findings of DIHO Anderson are quoted in full:

The following findings are based on the evidence compiled at your investigation:

1. At all times in question in this Case Rule F (1, 2 & 3) of the Amtrak Rules of Conduct was in effect and applicable to you as it is to all Amtrak employees.
2. The charge against you was substantiated primarily but not exclusively, through the testimony of and documents presented by Amtrak Police Officer, Dennis Phillips. Such evidence established that you conducted yourself in a discourteous, unprofessional and indecent manner in dealing with a female passenger on train #8 on the date in question.
3. The testimony and documentation presented by Officer Phillips revealed that you were named in a criminal proceeding as having assaulted and raped a female passenger on the date as cited above. The documentation provided by Officer Phillips revealed that you admitted to having sexual intercourse with this passenger and that a DNA test confirmed this.
4. Although you absented yourself from your investigation prior to addressing the charge against you, your interests were protected by your union representation. Mr. Danby, however, was not able to refute the evidence as presented by Mr. Phillips nor was he able to produce any evidence to disprove the charge as cited above.

Clearly all evidence presented at your investigation showed a total disregard on your part of acceptable Amtrak employee conduct and exhibited the type of behavior that is in direct violation of the rules as cited above.

Based on the foregoing findings and on the hearing record as a whole, it is my decision that the charge as cited above has been proven.

On p. 2 of the same October 27, 1988 letter, over the signature of Regional Director — Passenger Services — Midwest, A. L. McLaurin, terminated Claimant's employment with Amtrak, stating, in pertinent part:

Based on the decision of the Hearing Officer as stated above and taking into account your past discipline record, you are assessed Termination of your employment with the National Railroad Passenger Corporation effective this date.

The Organization, by letter dated October 31, 1988 to C. B. Thomas, Senior Director — Labor Contract Administrator, appealed the findings and Decision of DIHO Anderson, and the discharge determination of A. L. McLaurin. This letter set forth the Organization's Claim, as quoted on p. 1 herein. The Organization, in its letter, also stated the following:

The transcript reveals that neither the findings nor the discipline was supported by the evidence presented at the investiga-

tion. (Our assertion regarding the discipline is made without in any way waiving our contention of the innocence of S.) Further, the investigation was not conducted in a fair and impartial manner.

By letter dated November 22, 1988, K. T. Safstrom, Division Manager — Labor Relations, responded to the Organization's Appeal letter of October 31, 1988, stating in pertinent part:

S. received a fair and impartial investigation. Testimony and evidence presented proved the charges that served as basis for this investigation. Based on the seriousness of the proven offense dismissal represents the only appropriate action by the company.

I deny your appeal for reasons stated. By letter dated December 12, 1988, the Organization appealed K. T. Safstrom's denial of its Claim in behalf of Claimant to L. D. Miller, Director, Amtrak Labor Relations, and in this letter, the Organization stated, in pertinent part:

As we stressed in conference, S. was not charged with having had sex on the train. The charges alleged that S. mistreated, "assaulted and raped" an Amtrak passenger. At the investigation, Amtrak failed to substantiate any of these allegations.

Without conceding their accuracy or the propriety of finding S. guilty of "having had" sexual intercourse with [the] passenger, we contend that the court records presented by the Company do not prove the charges that were brought against S. In fact, they are not an admission that S. had sex with the passenger. The word "seduced" has meanings that do not include sexual intercourse. We would also call to your attention the fact that being arrested is not itself a crime and that the matter of rape has not been resolved in a court of law.

The Company did not produce the passenger who was allegedly mistreated, abused and raped. Neither did the Company present any statement from the passenger in question or even present any witness who had spoken to her. The Company presented a Z. (the Company Nurse) as an expert witness in regard to a DNA test. Z. was not involved in any of the testing process and Z. claimed to be expert based on having been raped herself. Based on such testimony, we can only suppose that Z. would be prejudiced against S. from the beginning. It must be kept in mind that the actual results of the test were never presented at the hearing.

We would also call your attention to the "Maddess letter," which shows the unbalanced state of the passenger who has supposedly made allegations against S.

By letter dated February 24, 1989 to Mr. Parker, Vice Chairman of the Organization, Mr. L. D. Miller, after quoting the Charge and related Specifications, stated, in pertinent part:

This case was discussed in conference on January 27, 1989 by you and Mr. T. M. Jackson of my staff.

Our examination of the record discloses that claimant was given a fair and impartial investigation, his guilt was established by substantial evidence, and the discipline assessed was commensurate with the seriousness of the offense.

We do not agree with the organization's contention that the charges were not proved. There is ample evidence of record that conclusively establishes claimant failed to conduct himself in a professional manner and engaged in sexual intercourse with a passenger while on duty. In particular, the document appearing in the record as Exhibit C, pages 2 and 3, further identified as Motion and Affidavit for Warrant, contains the following information:

Officer Jeff Fender of the Williston Police Department had contacted the victim, Q., who advised that she was raped twice by a black male known to her as "S." and that he was the room attendant for her sleeper. S. was employed by Amtrak on that particular train and was assigned to that particular train.

On April 22, 1988, S. was contacted by the Fargo, North Dakota Police Department. After being advised of his rights per Miranda and waiving same, S. gave a voluntary statement wherein he admitted that he was the room attendant for the victim, being in her room at her request for assistance, but denied having sexual intercourse with her.

On April 21, 1988, at about 10:30 p.m., the victim was examined in Williston, North Dakota, by Dr. Dean Strinden at Mercy Hospital, where a rape kit was obtained for specimen samples. Indications were that sexual intercourse had occurred. Additionally, the Doctor observed bruising of the right anterior shoulder, which the victim indicates occurred when she attempted to push the defendant away. Chester A. Park, Forensic Scientist with the Washington State Patrol Crime Laboratory, Spokane, Washington, indicated upon examination of vaginal swabs that sexual intercourse did occur.

Pursuant to a search warrant issued by the Lincoln County Superior Court in May 1988, a search was conducted pursuant to Illinois law on the person of S. for blood samples and public hair. Those samples along with vaginal swabs taken from the victim were submitted to Lifecodes Corporation, Valhalla, New York, for DNA-PRINT pattern analysis. The DNA-PRINT pattern obtained from DNA isolated from the sample of the defendant's blood matched the pattern obtained from DNA isolated from the vaginal swab sticks obtained by Dr. Strinden from the victim.

The Carrier also rejects the organization's contentions that the proceedings are flawed due to the fact that the passenger herself did not appear, and that the passenger was in an "unbalanced state," according to a document which the organization presented at the hearing. First, the carrier attempted to arrange for the passenger to testify, but was not successful. Moreover, claimant's actions were clearly documented in court records which were entered as evidence, and these documents constitute the basis for the charges.

Claimant was present for part of the investigation, but did not deny either the charges or his conduct on the night in ques-

tion. His refusal to answer questions put to him concerning the incident, and his departure from the investigation prior to its conclusion, were actions taken by him at his own peril.

Similarly the carrier rejects the objection raised by the organization pertaining to the calling of Mr. and Mrs. J. Hendrickson to testify. The organization has failed to show that they were material witnesses, or that they could offer more than hearsay information; since they were not material witnesses, the company was under no procedural obligation to arrange for their appearance as witnesses. If claimant and the organization felt that Hendrickson's evidence would have aided in claimant's defense, they had the right and the responsibility to produce them as witnesses or to obtain a statement from them and entering the same into the record.

For the reasons discussed above and for those advanced in previous correspondence, and conferences your appeal in this matter is denied in its entirety.

Thereafter, this dispute was docketed with this Board and heard and argued before the Board on June 27, 1989 in New York City.

The Board has taken the unusual step of quoting in full the written views of the Parties because they contain the most accurate and complete statement of their respective positions.

Opinion of the Board

This Opinion has been prepared based on Board review of the transcript of the October 20, 1988 DIH and all the attached Exhibits; the Findings and Decision of DIHO Anderson dated October 27, 1988; the Termination Decision of A.L. McLaurin; the correspondence between the Parties pursuant to Section 19(i) and (j) all of which has been previously quoted in whole or in pertinent part, and the oral argument advanced at the Board meeting in April 1989. The Opinion is divided into two sections. The first deals with the merits of this dispute; the second deals with certain procedural matters.

The Merits: With two exceptions, discussed later, the Charge against Claimant and its related Specifications are clear and specific. In summary form, Carrier charged Claimant with violation of Rule F, Sections 1, 2 and 3 (not quoted to conserve space) and, in its "Specifications," alleged that on April 20, 1988 he: (a) "allegedly mistreated a female passenger in Room 8 in Car 2380 Train 28/8," and

The DIH transcript reflects some confusion between Mr. & Mrs. Hendrickson and Mr. & Mrs. Madonia in that the latter were only the Board, designated Union Exhibit 3. The Board has no knowledge of the letter of Mr. & Mrs. Hendrickson, except the fragmentary reference to it in the DIH transcript.

(b) "allegedly assaulted and raped the same female passenger in the previously-mentioned Room and Train.

It is the judgment of the Board that Carrier failed, with one exception, to provide proof or evidence, as measured by any standard, including the standard of proof as measured by a preponderance of the evidence, of its Charges and related Specifications against Claimant. The grounds for this conclusion follow.

Attention is focused first on the Findings and "Decision" of DIHO Anderson, which the Board finds so gravely flawed as to require their rejection.

In Paragraph 2 of his Findings, Mr. Anderson found that Claimant conducted himself in a "discourteous, unprofessional and indecent manner in dealing with a female passenger on Train 8 on the date in question." Rule F-1 indeed requires courteous and professional conduct by employees on duty, and Rule F-3 prohibits indecent conduct by employees. But the DIHO did not state any specific finding or express act on which to base the above three conclusions.

Of even greater importance—and the Board gives the greatest possible emphasis—is that in Paragraph 2, and in the two immediately following paragraphs, no finding was made that Claimant actually committed any one of the three acts he was expressly charged with in the Specifications, namely, "mistreatment," "assault," and "rape" of a passenger.

In Paragraph 3, DIHO Anderson "found" that:

(A) Officer Phillips presented testimony and documentation that Claimant was "named" in a criminal proceeding as having assaulted and raped a female passenger.

(B) Officer Phillips' documentation "revealed that [Claimant] admitted to having sexual intercourse with this passenger and that a DNA test confirmed this."

The DIHO Finding in (A) above to the effect that Claimant was "named" in a criminal proceeding is true. However, being named is not evidence of wrongdoing by Claimant, nor is it proof of the validity of any of the specific acts of misconduct Carrier charged; namely, mistreatment, assault, rape. For Claimant to have been named, that is accused, is not proof of anything, except that someone has made an accusation against him.

The DIHO based his decision that the Charge, and its two related Specifications against Claimant had been "proven," exclusively on an accusation, one, which so far as the Record is concerned, was not even sworn to. Moreover, the DIHO based his conclusion

on an accusation contained in an affidavit, which, on its face is vague and diffuse. This, standing alone, persuades the Board that Carrier failed to provide probative evidence of any weight whatsoever that Claimant committed the acts of mistreatment, assault and rape.

The DIHO Finding in Paragraph (B) above is entirely misleading for the reasons which follow.

The above summarized affidavit, provided its assertions were validated by probative evidence, merely constitute proof that Claimant had sexual intercourse with a female named G. Charge. Carrier provided hearsay evidence only. It did not provide any probative evidence in the form of testimony or affidavits properly notarized regarding the critical allegations in the affidavit bearing on Claimant's conduct even though one or the other could have been obtained. For example, even the DNA-PRINT pattern was hearsay. It could have readily been given probative weight and accepted into evidence if it had been properly signed and notarized.

Second, the DIHO found that Claimant "admitted having sexual intercourse with this passenger." The Record reveals that, in the extradition hearing in the Chicago Municipal Court, in the transcript of said hearing, at p. 3, Claimant said:

"Before DIHO Anderson was a transcript of a hearing of the Municipal Court of Chicago concerning an Arrest Warrant issued by a court in the State of Washington and an affidavit submitted to that court signed by a deputy prosecuting attorney for Lincoln County, Washington State. This affidavit stated that the Assistant D.A. believes that the Lincoln County Sheriff received information that a rape had occurred on the Amtrak train traveling through Lincoln County, Washington. This Sheriff contacted the Williston, North Dakota Police Department, which apparently had also been advised that a rape had occurred on April 21 somewhere between Pasco and Spokane, Washington. A Williston police officer, who was advised that she had been raped by a black man, who was the attendant in the Amtrak car where her room was located.

This affidavit further states that in Williston, North Dakota on April 21, G. was given a vaginal examination by a qualified physician who used a rape kit for specimens; that there were indications that sexual intercourse had occurred; that in May 1988 samples of Claimant's blood and pubic hair were submitted to the State of Washington, D.V.I. with vaginal swabs, were submitted to D.V.I. PRINT pattern analysis; that the analysis revealed that the DNA-PRINT pattern of Claimant's blood matched the pattern obtained from the DNA isolated from the vaginal swab sticks used in the examination of G.

"And, I never raped her, she seduced me, your Honor, she seduced me, I never seduced her."

Mr. Anderson notes this "admission" of Claimant having sexual intercourse with a passenger; in a sentence coming immediately after the sentence that "Claimant had been named in a criminal proceeding as having assaulted and raped a female passenger." This necessarily has to be viewed in the context of the contractually provided appeal procedures.

From its past experience, the Board has gathered the impression that those charged with the duty of responding to Union Appeals made pursuant to Rule 19(i) and (j) are at times less than diligent; first, in their examination of the Record assembled in DIHs; and, second, in their analysis to ascertain if the Record evidence constitutes probative grounds for the DIHO's Findings and Conclusions; and, third, making certain that the evidence, and Findings based thereon, constitute proof of the specific Charges and related Specifications as written.

Just as the Board has this impression, so, too, the Board sees reasonable grounds for assuming that Mr. Anderson had the same view. Proof of this seems obvious because of the vast gulf between the DIHO's Findings and Decision, and the Charges and Specifications as specifically drawn. Further illustration is the extraordinary statement in para. 5 of Mr. Anderson's Findings that "all the evidence . . . presented showed . . . when the Record makes clear that no evidence whatsoever was presented that Claimant had committed the specific acts charged; and by the DIHO's further statement in para. 6 of his Findings that the Charge "had been proven," when, in fact, the Record demonstrates only that Claimant had consensual sexual relations with a passenger.

Mr. Anderson could not help but recognize that the Specifications (assault, rape and mistreatment) had not been proven, but were merely accusations. This Board is perplexed as to what possible reason he could have had for not so stating, and finds such omission a serious flaw.

From the Record it would have been both reasonable and possible for the DIHO to have concluded that Claimant had consensual sexual relations with a passenger while on duty on Carrier property and that such conduct could be viewed as "discourteous, unprofessional and indecent" in violation of Rule F, Sections 1 & 3, depending on further proof being presented.

Mr. Anderson, by not explicitly stating that the Specifications had not been proven and by failing to explicitly state what misconduct was, in part, actually proven, and by judicious placement of Claimant's "admission," and by stating that the "Charge as cited has been proven," created a fiction unrelated and not grounded in probative evidence and thus violated Carrier's express obligation in Rule 19(a) to conduct an investigation in a "fair and impartial" manner.

Therefore, this Board will disregard the DHO's Findings and Decision because both disregard the fact that all the Specifications were not proven, and because Mr. Anderson improperly glossed over that fact by his silence, and because he stated that the Charge had been proven, when in fact, in virtually all respects, it had not.

Having so concluded, the Board further concludes that it has three options: First, reversing Carrier's decision and reinstating Claimant because of Carrier's failure to provide proof of any of the Specifications and because of various procedural flaws to be reviewed later herein; Second, remanding the matter back to Carrier for preparation of new Charges and another DHO conducted by a DHO other than Mr. Anderson; or, Third, deciding whether or not consensual sexual relations between Claimant and passenger G, while on Carrier property constitutes violation of the Rule F-1 employment requirement that employee conduct be "courtous" and "professional" to ward passengers and the Rule F-3 prohibition against "indecent" employee conduct toward passengers, and if the Board concludes that it does, and despite Carrier's failure to prove the Specifications, as written, then deciding whether or not such constitutes just cause for dismissal.

After considerable reflection, the Board has adopted the latter option primarily in the interests of expeditiousness. Noting that Claimant was discharged on October 18, 1988, a little over a year ago, the Board further notes that adoption of such course will curtail Claimant's further loss of earnings and limit Carrier's back pay liability.

Solely in the interests of brevity, the Board has not here addressed in depth the contractual propriety of DHO Findings and Conclusions which do not contain specific allegations on which expressly defined conduct in violation of the "Code of Professional Conduct" but which instead contain Findings and Conclusions of other forms of misconduct not in the Specifications but submitted under the express words in the Rules cited in the Notice as having been allegedly violated.

Having so concluded, the Board turns its attention hereafter to the issue of whether Claimant's consensual sexual intercourse with a female passenger on April 20, 1988 was violative of the Rule F-1 employee requirement to "conduct themselves in a courtous and professional manner" and of Rule F-3, which prohibits employees from "conduct involving indecency" and, if it does, is discharge an appropriate discipline for such violation?

The Board is fully persuaded that Claimant engaged in consensual sexual intercourse with a female passenger while on Company property during his tour but not absent from his duty assignment, and further concludes that such conduct is highly "unprofessional" conduct, in violation of the Rule F-1 requirement, and further finds that it constitutes disciplineable misconduct.

The record disclose no evidence whatsoever that Claimant's conduct toward the passenger was discourteous, and the DHO did not cite any act of discourtesy. Thus, the Board concludes that Carrier has failed to meet its burden to provide proof that Claimant's unprofessional act of misconduct was discourteous. It seems possible that Messrs. Gilles, who signed the original Notice, and Bradley the Charging Officer, Anderson, McLaurin, Salsstrom, and Miller are of the view that consensual sexual intercourse by a male employee with a female passenger while on duty, and on Carrier property, is a discourteous act. The Board does not share that view, because of Carrier's failure to supply any proof whatsoever.

Professional conduct is indeed a vague term irrespective of the type of occupation or work assignment. However, for employees who perform direct personal services, there is probably a consensus that engaging in consensual sexual intercourse while on duty with one among those they constitute unprofessional behavior. Many professional organizations, including a few unions establish codes of conduct and penalize offending members. The Organization, to the Board's knowledge, has not done so. However, Carrier has issued and distributed (Manual A) "General Rules for Service Employees Working On Board," nor cited or referred to in this dispute in any way. Nonetheless, the Board notes that F-1 of this manual has been amended to read "sexual relations with passengers," and "occupying seats with passengers." Carrier has thus established as the norm that employee fraternization with passengers is prohibited conduct. This, the Board finds to be solid grounds for concluding that Claimant's intimacy with passenger G, was unprofessional conduct because it consisted of a level of fraternization which was not consistent with the "Code of Professional Conduct" and "acting with passengers." Director of Labor Relations L. D. Miller, in his letter of February 24, 1989 to the Organization denying its appeal, quotes a number of paragraphs of Asst. Prosecuting Atty. Shepherd's affidavit. A portion of said quotation follows: "...the Doctor observing the following conduct: right anterior shoulder, which the victim indicates occurred when she attempted to push the defendant away." The Board, at the least, regards this as questionable evidence and seems highly improbable, on its face, as allegedly indicated, that in "pushing defendant away," the bruise to the front of her shoulder occurred. The cause of the bruise on G's shoulder is probably known. If remembered, only to her. In any event, this evidence does not prove rape and does not establish a "proof" that the bruise caused it, or that he acted "discourteously" to G.

with discharge of a male employee for consensual sexual relations with a female while on duty and on company property, either with a fellow employee or a transient stranger. Similarly, the airlines' computerized index of arbitration awards also proved fruitless.

The Parties to this dispute were requested to submit to the Board any PLB or NLAB decisions dealing with either an exact or similar set of circumstances. The Union submitted none, and Carrier submitted 19.

Of the 19 Awards submitted by Carrier, 18 are inapposite because in them the specific misconduct charged is not solely consensual sexual relations between an on-duty employee and a female passenger, and/or because the charges disposed of consist of solicitation for sexual favors or touching of an intimate nature, being in a darkened compartment with a passenger or a fellow employee. The 18 determinations reviewed are listed as follows:

PLB No.	Case No.	Date	Neutral
2445	38	July 31, 1981	J. Simons
2445	13	Oct 23, 1980	J. Simons
3103	167	Nov 02, 1987	T. P. Sharp
3516	91	Sep 09, 1989	L. Yagoda
3577	17	Dec 17, 1984	(Unreliable)
2286	125	Aug 30, 1984	J. H. Carwell
3103	194	Aug 30, 1987	T. P. Sharp
3158	5	Undated	R. E. Dennis
3158	5	Undated	R. E. Dennis
2445	6	May 20, 1980	J. Simons
2445	7	May 20, 1980	J. Simons
2445	17	Aug 08, 1980	J. Simons
2445	21	Nov 10, 1980	J. Simons
2445	22	Nov 10, 1980	J. Simons
2445	25	Feb 27, 1981	J. Simons
Natl R.R. Adjust. Bd. 4th Div.	4520	Mar 28, 1987	E. Mueselg
4287	4521	Mar 26, 1987	E. Mueselg
4287	60	Jun 27, 1989	J. Simons

The 19th Award submitted by Carrier, Public Law Board 3577 No. 73, dated December 2, 1985 with Mr. Nicolas Zumas serving as Neutral, comes close to, but however is not on point with the facts and circumstances of the instant matter in that no charge was made, no proof was presented, and no determination was made that Claimant, while on duty engaged in consensual sexual relations with a passenger.

Rather, in its Award, Board 3577 found that the mere presence of a non-complaining passenger in Claimant's room after 2:00 AM was violative of Amtrak's Rule 1. This Rule requires employees to act "in such a manner that the Company will not be subjected to criticism and loss of good will."

ever of any discourteous act by Claimant against G, and because of the lack of any Carrier argument that Claimant's actions were discourteous.

Turning to the issue of whether or not Claimant's having consensual sexual relations with a female passenger was "conduct involving indecency," the Board finds itself perplexed.

In the last century, when Hawthorne wrote *The Scarlet Letter*, one presumes that, though heterosexual consensual intercourse among adults was not uncommon, it was not as common as it has become today. The Board further assumes that then it was probably viewed as "indecent conduct" by a majority in 1888-89, except for a few zealots, the majority of the community seems to have become more tolerant and, in all probability, no longer views consensual sexual relations between adults of the opposite sex as "indecent conduct." These days, many major television shows, Hollywood motion pictures and numerous view it. Presently, this appears to cause little if any outcry or protest as to their "indecency," even when married persons are shown, sometimes in considerable detail, breaking their vows of fidelity. While the Board acknowledges and respects the view of Messrs. Gilles, Bradley, Anderson, McLaurin, Salsstrom, and Miller that Claimant's misconduct constitutes "conduct involving indecency," it cannot agree with them.

In addition, that Claimant's unprofessional conduct occurred behind a closed door, and in private, compels the further conclusion that it does not meet one of the essential elements of an act of indecency; namely, that it be performed in public view, or in a situation where it could have been publicly viewed.

Having concluded that Claimant's misconduct consists solely of unprofessional behavior, attention is turned to the question of whether discharge of Claimant was appropriate, i.e., whether the scope or weight of the misconduct warrants discharge and whether it meets the just cause standard.

Search of COH and LAR did not uncover any arbitration awards dealing with the defendant away. The Board, at the least, regards this as questionable evidence and seems highly improbable, on its face, as allegedly indicated, that in "pushing defendant away," the bruise to the front of her shoulder occurred. The cause of the bruise on G's shoulder is probably known. If remembered, only to her. In any event, this evidence does not prove rape and does not establish a "proof" that the bruise caused it, or that he acted "discourteously" to G.

and that employees whose actions open the Corporation to criticism "will not be retained." Board 3577, in its decision, while not passing "moral judgment" on Claimant, held that:

"... if other passengers had knowledge that a 16-year-old female was in the Claimant's room, it seems highly likely that someone would have criticized the Corporation for allowing such conduct... it is reasonable to assume that some people would be offended." (Italics supplied)

Therefore, Board 3577 concluded that Claimant's dismissal was for just cause, even though the passenger did not complain, and in an affidavit stated that she suggested going to Claimant's room, and that Claimant's behavior toward her was "never... other than respectful and friendly."

Mr. Zimas is a highly respected arbitrator and an experienced Neutral in the adjudication of railroad disputes, and though Decision No. 73 is not binding on this Board, it deserves respect and consideration.

First, it is noted that the matter before this Board, is distinguished from that before Board 3577 because no Rule 1 violation was charged here. Second, this Board finds that the rationale underlying the cited Award, namely, that if known to passengers "someone would have criticized the Corporation" seems an overly broad and unreasonable construction of Amtrak Rule 1. For that reason, and because it is well established that the favorite sport of passengers on aircraft, ships, buses and trains is to complain, and that the longer the trip is, the more complaints there are and the louder they become, this Board cannot endorse the view set forth in Decision No. 73. Such conclusion is reached even though it is the Board's view that the mere presence at 2:00 A.M. of a non-complaining female in an employee's room seems an act of disciplinary misconduct but of less magnitude than engaging in consensual sexual relations with a female passenger. Moreover, this Board notes that if Carrier, other Boards and Neutrals were to adopt as a general standard that misconduct if known to passengers, would lead to the result that "someone would... criticize the Corporation," and is therefore disciplinary misconduct, it would, in all likelihood, and over time lead to virtual decimation of the ranks of Amtrak employees in all crafts.

That only one Award emerged from these research efforts which was close to being opposite, strongly suggests that discharge for consensual sexual relations by an employee while on duty is exceedingly rare, and/or is rarely

submitted to arbitration, or if such discharges were, they were not published.

Though Carrier proved that Claimant's conduct was indeed unprofessional, it did not prove that he committed the acts set forth in the Specifications, namely, mistreatment, assault and rape. Nor did it prove discourtesy, or immoral or indecent conduct. In light of that failure of proof, Claimant's past record and his total service, the Board concludes that his discharge was excessive, disproportionate to the scope of his proven misconduct, and therefore it was not for "just cause."

Having so concluded, the Board will direct reinstatement of Claimant in the same title effective three months subsequent to his discharge, namely, January 27, 1989, and that he be paid a sum equal to what he would have been paid, including overtime, from January 27, 1989 to the actual date of his return to employment, minus any earnings during that period; and that his personnel records be modified to reflect that he was suspended from October 27, 1988 to January 27, 1989 for unprofessional conduct, i.e., having consensual sexual intercourse with a female passenger while on duty and on Carrier property, and that a copy of this entire Opinion and Award be placed permanently in his personnel file. The Board further will direct that Claimant's seniority be adjusted in accordance with the customary procedure followed for suspension, and that it reflect an increment in service-time for the period January 27, 1989 to the date of his actual return to employment.

The Board deliberately made no reference to and gave no consideration to the fact that at its June 1989 hearing it learned from the Union designee on the Board that the criminal charges against Claimant had been dismissed without prejudice. This course was prompted by the Board's desire, when considering this Appeal on the merits, to put itself in the same basic position as Carrier, and all of its previously named representatives who were responsible for the Charges against Claimant, its investigation and presentation, the conduct of the DIH and the Findings and Conclusion of the DIHO, the determination to dismiss Claimant and the denial of his Rule 19(f) and (j) Appeals. All of these events occurred before the April 24, 1989 decision of The Superior Court of Washington State for Lincoln County to dismiss without prejudice the criminal

ed, firm contractual grounds for total reversal or remand because they constitute a clear violation of Carrier's obligation, when disciplining or dismissing an employee, to provide a "fair and impartial investigation," as specified in 19(a), and to provide discovery in 19(e).

The undersigned is the prosecuting attorney for Lincoln County, State of Washington, and as such I am familiar with the case file and expected testimony to be presented if this matter should be tried. This matter should be dismissed for lack of sufficient evidence to meet the State's burden of proof. This matter is based upon expected evidence under ER 808(b) and ER 809(a)(2). Further, various accounts of the incident given by the alleged victim are somewhat inconsistent. Statements given by witnesses expected to be called by the defendant are inconsistent with those offered by the alleged victim with regard to surrounding circumstances but generally consistent with one another. In short, the alleged victim's testimony in this matter is ripe for impeachment. A thorough review of statements and interviews with witnesses leaves the undersigned with no doubt that reasonable doubt would be found. Sexual intercourse has been admitted by the defendant. However, consent is the critical issue. (Italics supplied.)

The above, conclusively demonstrated the gross error of the DIHO's Findings in Paragraph No. 1:

"The charge against you was *substantiated* primarily, but not exclusively, through the testimony of Officer Phillips. Such evidence established that you conducted your indecent manner in dealing with a female passenger..." (Italics supplied.)

The above quoted Affidavit and Motion, together with the large number of errors of logic and fact in the immediately preceding paragraph of DIHO Anderson, all serve to fortify the Board in three of its previously stated conclusions: first, to disregard the DIHO's Findings and Determination, and second, that Carrier has provided proof only that Claimant's misconduct consisted of unprofessional behavior, and third, that Claimant's misconduct did not reach the level of impropriety justifying discharge for "just cause."

Procedural Issues: In prior Opinions and Awards, this Board has noted various procedural flaws of Carrier's Rule 19 contractual obligations. In the instant matter, the nature and number of such flaws compels extensive review in the interest of avoidance of their repetition in the future and to assure that a just result emerges from the Board's review of Claimant's Appeal.

Viewing the procedural errors committed in this matter in their entirety justifies two conclusions: first, they are a textbook example of procedural improprieties; and, second, they could well have provided, as previously not-

ed, firm contractual grounds for total reversal or remand because they constitute a clear violation of Carrier's obligation, when disciplining or dismissing an employee, to provide a "fair and impartial investigation," as specified in 19(a), and to provide discovery in 19(e).

Rule 19(b) provides that when Carrier decides that discipline is warranted, Carrier is required to give written notice to the employee and his Union representative "of the specific charges and the reasons for the intended imposition of discipline." Such notice was supplied and it asserted that Rule F-1, 2, and 3 were alleged to have been violated. The "Specifications" of said Rule violation are clear with two exceptions: first, failure to state the type, scope or act of alleged "mistreatment" of the passenger; and, second, failure to state the nature or scope of conduct alleged to be dishonest, immoral or indecent. Thus, the Notice was seriously flawed because of lack of specificity.

This written "Notice of Formal Investigation," hereafter, "Notice," is dated April 25, 1988, some five days after the events occurred which gave rise to the Notice. It is important to note that the Record does not disclose the date, source or form of the information received by General Supervisor Chicago Crewbase J. E. Gillies on which he grounded his crafting of the Specifications alleging mistreatment, assault and rape of a female by Claimant. The original Notice sets May 2, 1988 as the date of the formal investigation. Carrier's Exhibit B, dated May 26, 1988, a letter from Mr. Gillies to Claimant and the Organization, postpones the hearing from May 2, 1988 to June 15, 1988. On October 7, 1988, DIHO Anderson issued a "Notice of Postponement," rescheduling the hearing from June 15, 1988 to October 20, 1988.

The Affidavit of R. B. Shepard, Deputy Prosecuting District Attorney of Lincoln County, State of Washington, is dated September 26, 1988, as was the Washington Arrest Warrant. This affidavit relates that on April 21, 1988, the Williston, North Dakota Police had been notified that a rape had occurred on April 21, 1988; states that the "victim" was G.; that on April 21, 1988 G. was examined at Mercy Hospital by Dr. D. Strinden, who indicated that sexual intercourse had occurred and observed "bruising of [her] right anterior shoulder."

The Organization, by letter dated May 13, 1988 and by letter dated May 31, 1988, both addressed to Mr. Gillies,

NATIONAL RAILROAD PASSENGER CORP.

requested all documentation relating to Charges against Claimant. The Record contains no information as to whether or not Mr. Gilles responded to those letters.

However, the transcript of the October 20, 1988 DIH, at pp. 5-8, states as follows:

UNION REP. DANBY: Mr. Hearing Officer, the organization would like to raise an objection in regard to the notice. Before doing so, we would like to make a request for a postponement. Only fifteen minutes ago, we were presented with documentation under our discovery rule, Rule 19.

And we don't believe that presenting material ten minutes before the scheduled time of investigation affords us an opportunity to refute any material presented.

Inasmuch as the organization needs an opportunity to review and investigate the material, we are requesting a postponement of this investigation, reiterating the postponement which we requested both yesterday and again early this morning before this investigation was begun.

MR. ANDERSON: Well, to answer your objection, I'm going to ask Mr. Bradley several questions as to the production of his evidence and then I'm going to make a ruling as to whether or not we'll continue.

Mr. Bradley, when did the company become aware of this material you have supplied Mr. Danby with?

MR. BRADLEY: The information I supplied Mr. Danby, I obtained this morning, approximately about 8:30.

MR. ANDERSON: Concerning this discovery question that Mr. Danby has developed here today, is it the company's position that you have supplied Mr. Danby with everything that he has requested from you as to your knowledge?

MR. ANDERSON: As to my knowledge, I've supplied him with what I had that was going to be presented.

MR. ANDERSON: And seeing as how today is October 20th and the original notice of charge is April 25, 1988, Mr. Danby, I would consider that a large amount of time.

MR. DANBY: Mr. Hearing Officer, we would like to call to your attention that Mr. Bradley apparently received the material from company officers.

The material has been in the possession of the company for a considerably longer time than it has been in the possession of Mr. Bradley. Now the company cannot just simply pass it between one officer and another and then pretend that this is the first instance the company actually received the material.

But once again, the spirit of Rule 19 is that we will be afforded an opportunity to review material. Discovery means just that, the ability to review the material and advance the investigation. Ten minutes is not sufficient time.

For that reason, we stand by our request for postponement.

MR. ANDERSON: Nevertheless, Mr. Danby, Mr. Bradley has been appointed as the charging officer in this case. He has told us he has given you everything he had in his possession prior to receiving this affidavit this morning. I feel

the company has acted in good faith in the development of this case.

And for that reason, coupled with the extended length of time this case has been postponed, I would overrule your objection. We are going to continue at this time.

MR. DANBY: We continue only under protest.

At Tr. 25, Dennis E. Phillips, Detective for the Criminal Investigation Division of Amtrak Police, stated that on April 22, 1988 he was assigned to investigate the instant matter and, at Tr. 31, testified that on October 11, 1988 he had received the three documents he then read into the Record, which were marked as Company Exhibit C, which consisted of an Arrest Warrant for Claimant issued by The Superior Court, State of Washington; a Motion and an Affidavit for Warrant for Probable Cause, signed by the Deputy Prosecuting Attorney, dated September 26, 1988 seeking to arrest and detain Claimant; and a court ordered Arrest Warrant for Claimant.

In the DIH transcript, at p. 32, the Organization's representative reiterated his request for an adjournment, stating:

We only had ten minutes before the beginning of this hearing. We had no opportunity to contact anyone in that jurisdiction to find out what this documentation is all about and to be able to respond with other documentation if that can be found.

And so for that reason, we reiterate our request for postponement of this investigation.

MR. ANDERSON: Mr. Danby, I've already ruled on the objection that you insist on raising.

The company is going to stand by the ruling that I made on your objection. We are going to continue with the investigation and this piece of evidence here, whether or not it means anything to the case, as I said will be up to me to determine.

At Tr. 37, the Organization's representative again requested a postponement until after a court decision on the criminal Claimant. At that point, Claimant stated he was not a rapist; that Exhibit C, which had just been read into the record was "trumped up," and departed the Hearing. DIHO Anderson then stated, "... we are going to continue with this investigation and will do so in absentia." The Organization's representative again requested an adjournment "... until we can arrange for the hearing," which request was denied.

Following this, Amtrak Detective Phillips read into the record a 5-page transcript of a hearing conducted by the Chicago Municipal Court which honored the Washington Warrant, set a bond of \$60,000, and assigned a public defender to Claimant. This transcript was accepted into evidence.

NATIONAL RAILROAD PASSENGER CORP.

At Tr. 45, the Organization's representative again asked for a postponement as the above was presented to the Union only "last night," and the Union needed to review and investigate it. DIHO Anderson again denied the request.

The above summary of events demonstrates failure by Carrier of its Rule 19(e) obligation to "provide ... known documents to be entered into evidence at the investigation," and its Rule 19(a) obligation to provide a fair and impartial investigation.

The Specification section in the April 25 Notice sets forth details which ultimately surfaced in the September 1988 written Affidavit of the Washington State Deputy Prosecuting Attorney. These details were known by the Williston and/or Fargo, North Dakota Police Departments on April 21 and 22, 1988. They were known by Mr. Gilles on April 25, 1988 by some means and in some form unknown to the Board. In violation of Rule 19(e), the existence of the Affidavit only became known to the Organization the night before and was only put in its hands some ten minutes before the DIH on October 20, 1988.

More specifically, the preceding chronological recitation justifies the conclusions that Carrier, through its representatives, John B. Gilles, who signed the Notice, received the two May 1988 letters from the Organization requesting all documentation; through James F. Bradley, who, at the DIH, acted as the Charging Officer, by opposing postponement; and John Anderson as DIHO, by not granting requested postponements, violated the Rule 19(e) requirement that Carrier provide the Union, prior to the DIH, this failure from April to October 1988 denied Claimant the contractually required "fair and impartial investigation" pursuant to Rule 19(a), and constituted a violation by Carrier of its mandated obligation.

Equally and as fully justified as the preceding, are the Rule 19 violations of DIHO Anderson: by his refusal to grant the Organization a postponement

Does the above summary constitute a discharge by Carrier of its Rule 19(e) obligation to the Union, or does it constitute a violation of the Notice, of representatives of both Parties to provide all ... known documents related to the employees' alleged offense(s)? The Record does not disclose if such meeting occurred, or if it did, the substance of the meeting. The only form of the information supplied to Mr. Gilles which was the basis for his April 25, 1988 written Notice, and what portion, if any, was supplied by Carrier to the Organization. Thus, the Board, other than merely raising this question, will make no further reference to Rule 19(e).

ment to review and investigate Carrier Exhibits C & D; his failure to inquire into when and by whom said documents were received by Carrier, and when and in what form they came into the hands of John B. Gilles. These failures, in the Board's view, are egregious in light of Anderson's knowledge on October 20, 1988, the date of the DIH that the originally scheduled date of the DIH was May 2, 1988, and because Anderson did not cure, but aided in, the violations of Gilles and Bradley of the Rule 19(e) requirement. Thus, Anderson violated Carrier's contractual obligation under Rule 19(a) to provide a fair and impartial investigation. Moreover, his refusal to grant a postponement is, on its face, not only a violation of Carrier's 19(a) obligation to conduct a fair and impartial investigative hearing, but is so grossly unfair as to shock the conscience.

Additionally, the identical improper behavior of Gilles and Bradley noted above was repeated by their failure to provide the Organization in advance of the DIH with copies of two letters received by Carrier; one from Mr. Hendrickson and the other from Mr. Hendrickson and Mrs. Maddess, the letter carrying a notation dated May 18, 1988. This, despite the Organization's two letters in May requesting all documents, and despite the fact that the Organization's May 31st letter, which specifically named Hendrickson and Maddess.

DIHO Anderson subsequently again twice refused the Organization's request for postponement. The first postponement motion was grounded on the absence of both Maddess and Hendrickson as witnesses; whose presence had been requested by the Union; and the second was based on the fact that the Union had not been provided, in advance, with copies of the letters of the Mr. & Mrs. Maddess and Hendrickson. To obtain the full flavor of these two requests for postponement and the two denials, the DIH transcript is quoted at pp. 17-22.

MR. DANBY: Mr. Hearing Officer before continuing, we notice that witnesses that were requested by the organization are not present at the investigation.

We would like to make known our original request for those witnesses and once again, request their presence and request a postponement for their being secured.

We would like to present as an exhibit, our letter to Mr. Gilles [sic] in regard to asking for their presence here today.

The issue of subpoena powers is not relevant here but both -- all of the witnesses mentioned have indicated their willingness to come here to this investigation if the company will provide for their presence.

We would also like to note that the company has more often provided for the presence of witnesses from some distance away,

When those witnesses were to give testimony against an employee.

These witnesses would come here today or at some date in the future then to give testimony on behalf of S. So we believe that the burden is on the company then to present all relevant witnesses.

MR. ANDERSON: Well, Mr. Bradley, I'm going to have to ask you if you have received a copy.

MR. BRADLEY: I received a copy of that letter and I read through the information that the witnesses had supplied and it would have been, as far as I'm concerned, hearsay.

It would not have stated what actually took place as they were in their room, and the - G - was in her room.

However, we did try and have G - be here present for this investigation. We sent her two certified letters to her attorney, which we got no response.

MR. ANDERSON: Okay, well, I think you've had an addressing of your objection here, Mr. Danby, and the company has made it plain the production of witnesses you feel need to be here really had no bearing on the case. That is what Mr. Bradley is telling us.

MR. DANBY: Did you wish to take a short recess? Someone is knocking at your door.

MR. ANDERSON: I'm going to address this objection first.

MR. DANBY: We would like to make it clear that one of the witnesses has indicated that there were statements made by G - the following morning remarking that she had a particularly good night's sleep, on the evening that she is allegedly assaulted, been assaulted and raped by S -.

We believe that such a statement made by an accusing witness or by G - is absolutely relevant. It is in no way hearsay testimony. If you now wish to tell us that that's hearsay and our objection has been addressed, we can't do anything to force you to call these witnesses. But we believe that's relevant material in this investigation.

Further, these witnesses have testimony to give in regard to the mental state of G - who apparently is an unbalanced person, a person in need of serious psychiatric care.

MR. ANDERSON: Mr. Danby, I understand the statements you are making but they are amounting to testimony on the record.

We want to have testimony supplied by witnesses. We don't need testimony supplied by a charging officer or by a union representative.

I'm willing to address your objection. MR. DANBY: Our argument, we need testimony from witnesses and these are the witnesses who have testimony to give. So our objection is the company should proceed only when these witnesses are present, since they are willing to appear.

MR. ANDERSON: Well, let me ask you this. Did you make any attempt to have these people here on behalf of S - ?

MR. DANBY: I have spoken to these people. They said they do not have the financial wherewithal to come here on their own from California and from Oregon. But that they would be willing to come if the company supplied transportation and lodging. As it does for adverse witnesses.

And we wish to call to your attention that the company has provided, apparently for the transportation and lodging of the charging officer and apparently for the witness or witnesses here today.

MR. ANDERSON: Well, I think you can certainly understand the company's position being these people had nothing to do with the case.

Certainly not going to transport them here to have testimony for something on the company feels has no bearing on the charge.

MR. DANBY: We have explained why they have direct testimony to give, Mr. Hearing Officer.

MR. ANDERSON: I'm going to take your discovery request as presented to Mr. Gillis. We will enter it as an exhibit, Employee Exhibit No. 1.

However, we are going to continue with the investigation and your objection to the discovery process is overruled.

The second excerpt from the DIH transcript starts at p. 49 and runs to p. 53, and consists of examination of Amtrak Detective Phillips by the Organization's representative at the DIH.

Q. Have you had an opportunity to directly speak to the witnesses that were mentioned by the organization, a Mr. Maddess and - pardon me -

Could I borrow back the Organization's Exhibit No. 1 - Mr. Maddess or Mr. and Mrs. Hendrickson?

A. No, I did not.

Q. Were you, in fact, even presented with the organization's request that witnesses be called named Hendrickson or Maddess?

A. No, I did not get involved in the company hearing, inter-office problems.

Q. Now that you know that a Mr. and Mrs. Hendrickson have testified or given testimony that they spoke to the woman following the alleged rape and that she had remarked she had a particularly good night's sleep, now that you know that, will you be interviewing them?

A. They may have already been interviewed by another officer.

Q. Would you have any of that information here today?

A. I don't have it with me, no. Another officer may have.

Q. Mr. Hearing Officer, we would request a postponement until the officer has had an opportunity to at least interview these people and find out if they have relevant testimony to give at this investigation.

MR. BRADLEY: Mr. Anderson, I object. Like I said, I have read written copies of their statements and their only knowledge was that as far as they knew, they did not know what had taken place inside Ms. G -'s room.

There would have been no way that they could have testified to that fact unless they themselves were in the room, which they were not.

They were in their own compartment, which each compartment has doors and everything else. So there is no way they would know.

We did not feel that we would pay the expense and bring them here unless they had pertinent information to the case.

MR. DANBY: Mr. Hearing Officer, this is the first we've heard that the company has

been presented with written statements from the Hendricksons or Mr. Maddess. This material has not been presented to the organization. Rule 19 requires its presentation to the organization.

We would ask that this material be presented to us so we might review these so-called written statement that the charging officer said that he's had an opportunity to read.

MR. ANDERSON: First of all, Mr. Danby, and I'm going to address this to Mr. Danby.

Let's not get in the habit here of answering each other's objections. I will take care of that, addressing the objections.

I've already ruled upon one objection you made, Mr. Danby, about the presentation of either of these letters that this couple has provided Mr. Bradley or Mr. Bradley's summation as to whether or not these statements or their appearance on the train means anything to the case.

We've had a ruling on that already and the ruling is that the company has felt that their appearance here and their statements mean nothing to the case.

The company has decided to not have them appear here today based upon that reason and I can't argue with the charging officer making the case as the sees fit.

Now we've had a ruling on this and I've already overruled your objection concerning that. So that ruling is going to stand concerning this.

MR. DANBY: We now raise, though, an objection that this company has not provided us the material that they say they have in their possession.

MR. ANDERSON: That material is irrelevant. The company has already decided that the testimony and the appearance of those witnesses are not relevant to the charges against S -.

So whether or not this documentation means anything in the case, obviously means nothing to the charging officer.

With that in mind, I'm going to overrule your objection and we are going to continue.

It is the Board's view, first, that Carrier generally is under no express contractual obligation to have exculpatory witnesses, such as Maddess and Hendrickson, present as witnesses even though they were willing to come, provided that their expenses were paid; and, second, that Carrier is under no express contractual obligation to pay their expenses.

However, Carrier is obligated under Rule 19(a) to conduct, before disciplining an employee, a "fair and impartial investigation," which Carrier has in part elected to conduct in the form of a hearing conducted by a Hearing Officer appointed by it. Thus, the conduct of the Hearing itself, and that of the Hearing Officer are required by this Rule to meet reasonable standards of fairness and impartiality.

In the instant matter, however, the Board views the failure of Carrier to have at least Mr. Maddess present at

the hearing, and the failure of the DIHO to postpone the hearing so as to take his testimony constitutes a breach of its Rule 19(a) obligation. The reasons for this judgment follow.

When the letter of Mr. & Mrs. Maddess is read in its entirety, it is clear that it alone, and the Maddesses, come the closest to presenting a direct account of the events of April 20th. They were capable of providing the only probative evidence of the truth or lack thereof of the Charge and its related Specifications. It was gross error for Mr. Anderson to, in effect, express the belief that only the direct view of events is relevant. In this case, hearing, or not hearing sounds indicative of mistreatment, assault and rape were indeed highly relevant and probative.

Carrier had the letter of Mr. & Mrs. Maddess from May 1968 to October 1968 in its possession. It contains statements clearly of exculpatory weight. That they were not interviewed in person by Carrier, and that both Bradley and Anderson viewed the written and possible spoken word of the Maddesses as irrelevant hearsay are, in the Board's view, violative of Rule 19(a). Such views, and the actions they lead to, are also shocking to the conscience, violative of rules of fairness, and demonstrate that both permitted partisanship to overcome their duty to be fair, impartial and to get at the truth.

Mr. Maddess has been employed by Weyerhaeuser Co. for 27 years, the last 16 of which he was assigned to Personnel, Labor Relations, Safety and Administration, and is age 54. This suggests that he would have been an ideal witness, whose testimony about the absence of noise coming from a room across the aisle would be vital to the conduct of a fair and impartial investigatory hearing of allegations of rape, assault and mistreatment. Messrs. Anderson and Bradley did not hold that view, but one quite the opposite, and thus the motion for postponement was denied.

Carrier, in the Board's view, bears full responsibility for not supplying the Union in advance with a copy of the Maddesses' letter. In the Board's judgment, it also bears the responsibility for not calling the Maddesses, as

No comment is made about the Hendrickson letter because it was not provided to the Board. In marked contrast to its failure to call Mr. and Mrs. Maddess as witnesses, the Board finds in the search for the stipulated facts, uncharacteristic in the Board's view, that it offers to cover all of her expenses. By contrast and eloquently speaking for themselves are: first, Charg-

the only persons, other than Claimant and G., who had direct knowledge of the circumstances surrounding the April 20, 1988 events — namely, not hearing any sounds normally associated with rape, assault and mistreatment.

To that extent, Carrier breached its Rule 19(a) contractual obligation to provide a "fair and impartial investigation," and its Rule 19(e) obligation to provide requested information prior to the DIH. The Record suggests, but does not clearly establish, that the original decision(s) to not call the Madlunas as witnesses and to not give the Union a copy of the letter in advance of the Hearing were made either by Mr. John Gillies or Charging Officer J. E. Bradley. Whoever made those decisions did not serve Carrier well, but implicated Carrier in the above two contract violations, and also committed acts of gross unfairness to Claimant, thus undermining the validity of the investigative process.

The Board finds incomprehensible, given their sophistication, training, and experience, the failure of Mr. K. T. Safstrom and Mr. L. D. Miller to see the procedural flaws previously enumerated herein when they reviewed the Record in consequence of the Organization's Appeals pursuant to Rule 19(f) and (g) and their related failure to take appropriate action. Their failures achieve signal importance because the Organization, in its letters of Appeal and in its Claim, alleged Rule 19 violations, and because in the Board's judgment, the Record reveals its claims of Rule 19 violations are valid.

There are other procedural flaws violative of the Agreement, but in the interest of not making more lengthy an already too lengthy Opinion and Award, the Board has not addressed them.

In closing, the Board notes, without comment, that the DIH opened at 10:03 A.M. and was concluded at 11:20 A.M., and that that DIH transcript consists of 76 pages. Approximately one third of the transcript consists of a wholly unnecessary reading into the Record of all of Carrier's Exhibits C and D and some ten pages of the testi-

ing Officer Bradley's work, when he said that "We did not fairly pay the expenses and bring them Mr. & Mrs. Madlunas they had pertinent information to the case." Second, DHO Anderson, who said "the ruling is that the Company has felt that their appearance and their statements mean nothing to the case. This Company has decided to not have them appear. That reason, and I can't argue with the Charging Officer making the case as he sees it."

mony of Nurse Z. — "explaining" the function of a rape kit and DNA-PRINT pattern studies.

Having concluded that Carrier violated Rule 19(a) and (e), the Board turns to the question of an appropriate remedy for said breaches, acting under the rubric that for every breach of contract a remedy is required, and noting that the Agreement and Section 3 of the Railway Labor Act in no way prohibits or limits the remedial power of a Public Law Board.

The Board draws a portion of its authority to fashion a remedy for violations of Rule 19(a) and (e) from Rule 19(f) of the Agreement which provides that "... appeal from the decision of the Director of Labor Relations must be made to a proper tribunal, as established under the provisions of the Railway Labor Act..." and from Rule 18(c) of the Agreement, which states:

"A claim or grievance that is disallowed after appeal to the Director of Labor Relations may be referred to a Public Law Board established under the provisions of Section 3, Second of the Railway Labor Act."

Section 3, Second of the Railway Labor Act, 45 USC Section 163, in defining the authority of PLEBs and Special Law Boards, in pertinent part, states:

"... Any two members of the board shall be competent to render an award. Such awards shall be final and binding upon both parties to the dispute and if in favor of the petitioner, shall direct the other party to comply therewith on or before the day named. Compliance with such awards shall be enforceable by proceedings in the United States district courts in the same manner and subject to the same provisions that apply to proceedings for enforcement of compliance with awards of the Adjustment Board..."

Having established the Board's contractual and statutory authority to award a remedy for Carrier's Rule 19 violations, there appears to be two remedies which seem reasonably related and appropriate. Such violations, though procedural in nature, are nonetheless vital because they constitute critical due process protection to employees when their jobs or substantive rights are at stake.

"Under Rule 19(a) and (e), Carrier has committed itself to be the provider and protector of certain employee due process rights. This is in sharp contrast to the typical arbitration procedure under collective bargaining agreements in the form of case, jointly selected arbitrators, "surprises" are made, and advance discovery grant postponements. Similarly fairness and impartiality are assured by the well established traditions of arbitration, the public record of arbitration awards, and the right of either party, when used with gross bias, to simply dispense with the services of offending arbitrators or, in the alternative, to seek relief via judicial process.

the date of his actual reinstatement to work; and, second, to compensate him for the damages he incurred because Carrier sullied his name and reputation, as described previously. This is rare in arbitration. However, the Board turns to the NLRB for guidance. The NLRB invariably awards simple interest on back pay awards for unlawful discharge and the Board finds this appropriate here. Thus, the Board will direct, as remedy for its breach of Rule 19(a) and (e), that Carrier pay to Claimant as compensation for these damages a sum equal to 11% per annum simple interest on the principal amount of back pay, after deducting for earnings but before deducting for taxes.

As the second area of remedy, the Board notes that the Organization incurred damages, which, in the Board's view, are attributable to Carrier's breach of its Article 19 obligations. They can be readily computed. They consist of the reasonable expenses incurred of the reasonable expenses in preparing for and representing Claimant at the October 1988 DIH, in preparing its letters of Appeal and in representing Claimant pursuant to Rule 19(f) and (g) and to this Board. Though it is rare that in arbitration an employer is directed to reimburse a Union for reasonable expenses incurred in representing employees, nonetheless, in egregious circumstances, it has occurred and has been sustained in the Federal Court.

Therefore, the Board will direct the Organization to prepare a schedule of its reasonable expenses, inclusive of time expended in representing Claimant as described above, and submit same to Carrier, and Carrier will be directed to reimburse the Organization for such reasonable expenses. The Board will retain jurisdiction for one year from the date of this Award and will, in the event Carrier and the Organization are in disagreement as to the accuracy and reasonableness of the amount claimed, conduct a hearing upon written request of either Party, and adjudicate said dispute.

AWARD

Having reviewed the transcript of the hearing conducted by DHO Anderson and the attached exhibits, and having reviewed the arguments of

"See 91 LA 77 for a 1987 arbitration award directing payment of 16% interest in addition to back pay and reimbursement of Union for reasonable legal expenses. See 853 F.2d 58 [129 LRRM 2041] (2nd Cir. 1988), cert. denied 483 U.S. 994, 129 LRRM 3072 (1988), confirming 91 LA 77 (1987).

As noted, the need for an Award containing remedies rests on the conclusion that Claimant and the Organization suffered damages as a consequence of Carrier's failure to discharge its obligations under Rule 19(a) and (e). Therefore, both are entitled, not to punitive, but to compensatory damages which are distinguishable from and are in addition to a typical back-pay Award.

The Board previously concluded that Claimant's discharge was not for just cause and was disproportionate to his proven misconduct. It directed his reinstatement to employment effective October 27, 1988, the date of his discharge. The Board has also directed that Claimant receive back pay beginning ninety (90) days after the date of his discharge, namely, January 19, 1989, to the date of his return to work, minus any earnings. The 90 days are to be viewed as a disciplinary suspension for unprofessional conduct. Thus, the Board has compensated Claimant with wages that he would have earned had he not been discharged without just cause.

But, the Board notes that Claimant was deprived of the use of the monies he would otherwise have had at his disposal had he not been improperly discharged. Moreover, to one extent or another, Claimant's name and reputation were sullied by Carrier's allegation that he had mistreated, assaulted and raped a female passenger. His name and reputation were further sullied by Carrier's DHO's erroneous Findings and his conclusion that the Charge against Claimant "... evinced substantiated" and that the "... evidence established that [he] conducted himself in a discourteous ... and indecent manner in dealing with a female passenger," and that "clearly all the evidence presented ... showed a total disregard ... of acceptable Amtrak employee conduct and exhibited the type of behavior that is in direct violation of the rules cited." His name and reputation were further sullied by Carrier's endorsement of the above Findings and Conclusions expressed by its decision to discharge him without just cause, and by its refusal to reinstate him despite his Appeals under Rule 19(f) and (g).

The Board is persuaded that an appropriate remedy for Carrier's numerous egregious breaches of 19(a) and (e) of the Agreement, previously described, are: to compensate Claimant for Carrier's denial to him of timely use of the monies that are to be paid to him for the period January 20, 1988 to

both Parties, the Board has concluded as follows:

Claim Sustained in Part:

1. Carrier failed to provide proof of Charge and Specifications contained in the Notice of Hearing dated April 25, 1988 and therefore Carrier is directed forthwith to reinstate Claimant to employment with an effective date of October 27, 1988, and to accord him all benefits he would have been entitled to receive had he not been unjustly discharged.

2. Carrier provided proof that Claimant engaged in consensual sexual intercourse with a female passenger on Train 2830, Car 2830 on April 20, 1988, which act constitutes disciplinary misconduct and for which there is to be deducted from Claimant's back pay award described below a sum equal to the wages that he would have earned for the ninety (90) days from October 27, 1988 to January 27, 1989.

3. Carrier is to pay Claimant forthwith a sum equal to what he would have earned from January 27, 1989 to the date of his actual return to employment.

4. Because of Carrier's numerous egregious violations of Rule 19(a) and (e) of the Agreement which damaged Claimant and the Organization as described herein, Carrier is directed to pay:

A. Claimant, a sum equal to 11% simple interest on the total amount of the back pay directed in 3. above, to be calculated before deducting for all taxes.

B. The Organization, a sum equal to the reasonable expenses incurred by the Organization in representing Claimant, as described on p. 50 herein, and the Organization is to prepare a detailed written schedule of said expenses.

5. This Board will retain jurisdiction of this matter from one year from the date of this Award against the possibility that disagreements arise between Carrier and the Organization regarding the specific calculations of back pay and regarding the reasonableness and/or accuracy of the Organization's schedule of expenses referred to in 4.B above upon written request of either Party to the Board Chairman, who will convene the Board to hear and decide such disagreements.

ETHYL CORP. --

Decision of Arbitrator

In re ETHYL CORP. HOUSTON PLANT, Pasadena, Texas and OIL CHEMICAL, & ATOMIC WORKERS

ETHYL CORP.

one of which the Grievant attended. On January 1, 1988, random drug testing under the Policy started. On November 30, 1988, the Grievant was selected, at random, to undergo a drug test and he tested positive for marijuana. A second test was sent to a different laboratory, and again tested positive. He was, therefore, suspended and sent for counseling. In order to return to work, the Grievant had to test negative which he eventually did on December 1988 and therefore was returned to work.

In order to return to work, he also had to sign an untitled form which is referred to as a Return-to-Work agreement which he did sign. Part of this agreement made him subject to periodic drug testing. (The Grievant as a result of the Incident just described filed a grievance against the Company which the Union withdrew on July 27, 1989).

The Grievant took a couple of drug tests in January and June 1988--both of which resulted in a negative evaluation. On October 18, 1988, he was tested again. This time the first test proved to be positive; the second test, checked at a different laboratory, proved negative. Because of the inconsistency in the results the Company doctor voided the test and the Grievant was paid for the time he had been suspended while awaiting the report from the laboratory concerning the second test.

On October 30, 1989, a Company supervisor picked the Grievant up while he was at work and took him without warning for another test. The Company laboratory found that the urine sample had a specific gravity below 1.005 which the Company doctor had set earlier as being the minimum necessary for a test to be valid.

As a result, the Grievant had to have his urine analyzed a number of times and each time the urine was outside the acceptable range. He left at 4 pm at the end of his scheduled work day as he had arranged earlier with his supervisor because of personal reasons. He had also arranged with his supervisor before these tests that he would have to stay home the following day for the same personal reasons.

The Company contacted him during his day off and told him that he would have to report to the Medical Office to continue taking the tests until he gave a urine sample which fell within the guidelines.

When the Grievant reported back to work on November 1, the Grievant's supervisor told him to remain at the Medical Office until he gave an adequate sample and that he would be

paid for the time spent there. When the Grievant declared that he would only give one sample, the supervisor told him that if he did not stay at Medical until he gave an adequate sample, he could be disciplined, including termination. The Grievant then asked that a Union representative be present and when the Union representative did arrive, the supervisor repeated what he had told the Grievant about having to stay in Medical until a satisfactory sample was given and what could happen to the Grievant if he did not carry out this order.

The Grievant gave one sample at Medical which still did not satisfy the specific gravity requirements and he then left the Medical Office. The Company, as a result, suspended the Grievant. The Company then held a meeting at which the Grievant and a Union representative were present. They discussed what had taken place and the Company decided to terminate the Grievant "for insubordination in refusing to follow a supervisor's order, refusing and failing to comply with the Substance Abuse Policy and Procedures and [for] his violation of the return-to-work agreement."

Company's Position

The Company argues that the Grievant "openly, flagrantly and premeditatedly refused to give more than one urine sample... [and] by so doing took it upon himself to deliberately defy the drug testing program at the plant... By doing so he also violated the time-honored principle of 'obey now and grieve later', if he felt he was being wronged."

The Company first discusses the requirement that the urine have a minimum specific gravity. The Company doctor had decided that the minimum specific gravity was needed or otherwise the urine would be so diluted that a laboratory "would not accurately detect if there were drugs in the urine". The Company notes that other workers, besides the Grievant, have had to give more than one sample of urine because of a lack of volume or inadequate specific gravity. The employees were paid, even overtime if necessary, while the tests were being taken and no employee, other than the Grievant, had ever complained.

The Company argues that the nurse had told the Grievant during the first series of tests to stop drinking so much but that the Grievant refused to listen to the nurse and continued to drink the water. The Company feels that it was to the Grievant's "advantage..."

would be awarded back pay. By using such language, he could anticipate that a substantial penalty would be forthcoming.

Even in Featherite Mfg. Co., Inc., 74 LA 1101 (Bothwell, 1980) back pay was not ordered for similar reasons. The penalty is lengthy, almost a year's suspension, it must be impressed upon B. that his conduct of July 11, 1988 must not recur. It was just this point that caused Arbitrator Davies in a similar type supervisor-abuse situation to set aside a discharge, but to sustain a no back pay award that amounted to approximately a nine months suspension in Globe Weis, 76 LA 194 (1981).

Finally, in reaching this result, the Arbitrator did listen carefully to the testimony of Business Agent Rodney Bult. As to some experiences that he had had while in the plant concerning K.'s alleged propensity to use profanity. The incidents involved were in 1986. They certainly are too remote in evaluating a situation occurring on July 11, 1988. Likewise, the Arbitrator has recognized that K. did respond by referring to B. as "you-son-of-a-bitch." But as noted, though it was not a civil response, one can appreciate that the response was provoked by B.'s actions. It is for these reasons that this testimony was not relevant to the issues under review here.

The award that follows is based upon the above analysis.

AWARD

The grievance is granted in part and denied in part in that B. is hereby reinstated with full seniority to his previous position at the Keebler Company, Grand Rapids plant but without back pay.

DAYCO PRODUCTS INC. - Decision of Arbitrator

In re DAYCO PRODUCTS INC. and UNITED RUBBER WORKERS LOCAL 662, FMCS Case No. 89-02302, May 22, 1989

Pursuant to Article 15 of the parties' 1986-1988 Collective Bargaining Agreement upon which this decision was rendered, the parties have provided for a Board of Arbitration consisting of (1) one member representing the Company and one (1) member representing the Union; and (3) a third (3rd) decision member. The Union and the Arbitrator that they waived a conventional Board of Arbitration or participation of the Company and Union's representatives in this Opinion decision and were entitled to rely on the sole decision of the Arbitrator which the parties have agreed shall be binding on them.

Authority for the operation and administration of the Plan. Its decision shall be final except that where action is taken pursuant to the Grievance Procedure described in Article 9, the provisions thereof shall be controlling.

ARTICLE 4

ELIGIBILITY FOR PENSION

4.5 Notwithstanding any other provisions of the Non-Contributory Pension Plan, an Employee whose employment shall be terminated on or after the effective date of this Agreement shall be eligible for a Deferred Vested Pension as provided in Paragraph 5.4 of this Agreement if such Employee at the time of such termination of employment (a) shall have had a least ten (10) years of Vested Service Credit since his attained age sixty-five (65), and (c) shall not be eligible for or receiving any other type of Pension under the Plan based (in whole or in part) on Credited Service prior to the date of such termination. An Employee whose employment is terminated and who, based upon information then on file with the Employer, is entitled to a Deferred Vested Pension will be notified of his eligibility therefor.

ARTICLE 8

LUMP SUM PAYMENT

8.1 An Employee may elect to receive a Lump Sum Payment in accordance with the terms and conditions set forth in this Article 8.

8.2 The Company, under the Plan, will pay, subject to the conditions stated below, to any Employee having five (5) or more completed years of Credited Service, who is released from employment because of physical or mental inability to meet the requirements of his job or any other job to be may be transferred within the local plant and who is ineligible for any Pension under the Non-Contributory Pension Plan (other than a Deferred Vested Pension resulting from a termination occurring prior to January 1, 1976), a Lump Sum Payment on the basis of his years of Credited Service ending with such release, payable in a lump sum, as follows:

8.4 If operation at the local plant covered by this Agreement shall be completely and permanently discontinued while this Agreement is in force, the Company, with respect to those Employees whose employment is terminated as the result of such discontinuance of operation will pay to each of said Employees ineligible for a Pension under any pension plan of the Company (other than a Deferred Vested Pension with respect to a prior period of Vested Service Credit), and also ineligible for Lump Sum Payment under Paragraph 8.1 or 8.2 hereof, any cash amount (but no other benefit) which he would have been entitled to receive under Paragraph 8.2.

8.5 Notwithstanding the provisions of 8.1, 8.2 or 8.3 an Employee shall be ineligible for Lump Sum Payment if he is eligible for a Deferred Vested Pension with respect to any part or all of the same period of Vested Service Credit upon which the lump sum otherwise payable to him would be based, but he may become eligible to receive such

Lump Sum Payment by making an election in writing to receive the same in lieu of the Deferred Vested Pension based upon such period of Vested Service Credit. Such Written election must be made by the Employee thirty (30) days from the latest of the date of release, retirement, termination, or resignation, if a statement from the Company specifying the amount of his Deferred Vested Pension and his Lump Sum Payment, other than he shall be deemed forever to have waived his right to receive Lump Sum Payment in lieu of such Deferred Vested Pension.

8.6 The Company, under the Pension Plan, will pay a Lump Sum Payment to an Employee if:

(a) the Employee is on layoff and has recalled rights;

(b) the Employee's layoff was not the result of any of the circumstances specified in Section 4(b)(2) and (3) of Article 1 of the Agreement on Supplemental Unemployment Benefits dated September 29, 1979, between the Company, the International Union and the Local Unions, as may be amended or supplemented, or any successor agreement;

(c) the Employee's layoff has continued for at least one (1) year (except that recall to work for a period of less than three (3) months duration shall not be interrupt the running of the one-year period of continuous layoff and that the Company may determine on the basis of the Employee's prospects of reemployment by the Company to permit earlier application;

(d) the Employee has not received and is not eligible to receive a Lump Sum Payment under Paragraph 8.2 or 8.5 of this Pension Plan; and

(e) the Employee is eligible for a Deferred Vested Pension pursuant to Paragraph 4.5 and elects to receive the Lump Sum Payment in lieu of such Deferred Vested Pension.

The Lump Sum Payment for which an Employee is eligible under this Paragraph 8.6 shall be the Lump Sum Payment (but no other benefit) which he would have been entitled to receive under Paragraph 8.2, provided however, that the single sum value of an Employee's Deferred Vested Pension shall not be used in the calculation unless such Employee was on the Active Payroll on or after January 1, 1976. An Employee upon acceptance of a Lump Sum Payment pursuant to this Paragraph 8.6 shall be deemed to have terminated his seniority with the Company and shall be deemed to have forfeited any and all pension, insurance or other rights under any Pension Plan or other employee benefits plans financed by or to which the Company has contributed as an Employer.

8.7 An Employee by acceptance of a Lump Sum Payment thereby terminates his Vested Service Credit and Credited Service with the Company.

8.8 An election to receive a Lump Sum Payment may be made only by a notice in writing on a form provided by the Company. Such election is to be made:

(a) By an Employee who is released from employment for the reasons set forth in Paragraph 8.2, within thirty (30) days after his release.

(b) By an Employee who is released from employment for the reasons set forth in

DAYCO PRODUCTS INC.

Paragraph 8.5, during the period of Consecutive Weeks defined in this Paragraph 8.5; or

(c) By an Employee who is on layoff with recall rights, within thirty (30) days following the later of two (2) years from the date of his layoff or the day ending the period of Consecutive Weeks defined in this Paragraph 8.5.

For purposes of this Paragraph, a period of "Consecutive Weeks" shall be such period of consecutive weeks that immediately follow the last day the Employee was on the Active Payroll of the Company and the number of such weeks shall be equal to the maximum number of Credit Units the Employee may have in his Credit under the Supplemental Unemployment Benefits Plan. If an Employee does not file such election with the Plan Administrator as provided in this paragraph 8.9, he shall be forever deemed to have waived his rights to receive a Lump Sum Payment.

ARTICLE 9

APPEALS PROCEDURE

9.1 If any dispute other than a dispute referred to in Paragraph 9.2 shall arise between the Company and any Employees, Pensioner or former Employees who has retired during the life of this Plan, with reference to the application to him of this Plan or between any Local Union and the Company as to the interpretation or application of this Plan, such dispute shall, as the exclusive means of settlement be taken up as a grievance beginning with the step next preceding arbitration, and be thereafter handled in accordance with the Grievance Procedure provided for in the Bargaining Agreement and in the applicable Supplemental Agreement, except that if any such dispute arises during a period in which the Bargaining Agreement and the applicable Supplemental Agreement are not in effect, such dispute shall, as the exclusive means of settlement be referred by the Local Union President as a grievance to the Plant Manager, and if such dispute is not settled by these individuals, it may by agreement be referred to arbitration.

Facts of the Case

There is relatively little disagreement between the parties concerning the facts of this case. United Rubber Workers Local 622 has represented an appropriate bargaining unit of employees of Dayco Products, Inc. and its predecessors of many years. The Employer operates a plant in Springfield, Missouri producing belts for the automotive industry.

Currently, there is no collective bargaining agreement in effect between the parties. The most recent Agreement was effective between January 6, 1983 and April 1, 1986. The Grievance arose under the provisions of the 1983 Agreement and the portions relevant to this case are cited supra.

The parties traditionally negotiated pension provisions during their collec-

tive bargaining negotiations. Article XIII of the Agreement incorporates by reference the pension agreement which is the basis for the instant Grievance. Negotiations are conducted on a single plant basis and therefore the Agreement and concomitant Pension Plan Document apply only to the Company's Springfield facility.

The Grievance involves four (4) former employees of Dayco who sought a lump sum pension, under the provisions of the Pension Plan Document, after their employment was terminated for cause by the Company. All four employees had more than ten (10) years of service with the Company. There is no dispute that under Article 4.5 of the pension plan these employees are entitled to a deferred vested pension. The issue is whether these employees are entitled to a lump sum pension in lieu of the deferred pension. The Pension Plan Agreement provides for a lump sum payment if the employee makes a written request to receive said payment in lieu of a deferred pension within thirty (30) days of the employees' termination. The employees made such an election but eventually their requests were denied. The basis for the denial was premised upon the Company's interpretation of the Pension Plan Agreement which is contained in the arguments set forth in the "Company Position" infra.

Union Position

The Union presented evidence indicating that Grievant O. requested a lump sum payment of his pension subsequent to his termination. The evidence presented included a letter dated September 30, 1986, from Company Labor Relations Manager Carl Yendes notifying O. of his right to a deferred vested pension:

Dear O.:

This is to notify you of your eligibility for a Deferred Vested Pension from the Dayco Corporation Springfield Plant, as provided for in Article 4, Section 4.5 and elsewhere in the current Pension Plan Document. Please consult your copy of the Pension Plan document for details about the plan. A copy of the current document is enclosed.

Sincerely yours,
Carl S. Yendes
Labor Relations Manager

A letter dated October 10, 1986, from Assistant Personnel Manager Ken Carter to the Grievant indicated that he had calculated his vested pension and lump sum benefit:

Dear O.:

As you requested, I have calculated your Vested pension amount and your Lump Sum benefit.
Your Lump Sum benefit would be \$11,174.56 before taxes. Please let me know in writing which of these benefit you prefer.

If you decide on the Lump Sum benefit, you will need to come in to fill out some paperwork and bring me a copy of your birth certificate.

Sincerely yours,
Kenneth G. Carter
Assistant Personnel Manager

Per instructions by Company representatives the Grievant then used a designated form to request that his pension be paid in a lump sum. Assistant Personnel Manager Carter completed and signed the form for calculating lump sum pension benefits.

Testimony by Union President Ross indicated that he had discussed the matter of lump sum payment with Yendes on several occasions and that they agreed that the Grievant was eligible for a lump sum payment.

Union President Ross testified that Yendes and Carter handled all matters, including pensions, prior to the facts which gave rise to this Grievance. He said that calculations and approvals had always been handled on the local level.

Testimony by Ross indicated that he checked several times on the status of the lump sum payment and was told at one point, several months after the Grievant's original request, that the payment was in the mail.

The Union introduced written evidence of written requests submitted by Grievants S., G., and N., all pertaining for a lump sum payment of their pensions. Testimony introduced by the Union indicated that despite assurances by Company representatives no lump sum payments were made to the Grievants. Instead, in March of 1986, the Union was informed that the Company was taking the position that no lump sum payments were due.

The Union argues strongly that the denial of lump sum payment to the Grievants is a violation of Section 8.5 of the Agreement cited supra. This Section specifically states that employees have the option to receive a lump sum pension upon their termination. The Union relies heavily on the actions of Company representatives Yendes and Carter. These men were involved in negotiation of the Agreement and handled all employee matters at the Springfield plant. The Union argues that both Yendes and Carter informed the Grievant that they were entitled to a lump sum pension and processed the necessary paper work. All labor relations matters were handled on the local level including approximately 60 to 100 other pension matters.

The Union maintains strongly that the Company cannot claim that Yendes, Labor Relations Manager,

was without authority to make an agreement with the Grievant. The Union points to numerous arbitration decisions which stand for the premise that employers may be estopped from denying benefits to employees once they have been agreed to by agents of the employer. See, *Rayco Industries, Inc.*, 81 LA 1133 (Rohilk 1983); *Ferry-Morse Seed Co.*, 84 LA 75 (Duda 1984); *Town of Waterford*, 68 LA 735 (Sacks 1977); *Appleton Electric Co.*, 63 LA 669 (Sambower 1974).

The Union also argues that the Company is seeking a windfall profit in denying the requests for lump sum payment. The Union elicited testimony from Company witness Davis indicating that surviving spouses get one-half of the deferred vested pension at the appropriate retirement age. Grievant O. is now deceased and accordingly, his widow would receive only a reduced deferred pension sometime in the future.

In summary, the Union maintains that the Employer violated the Pension Plan Agreement by refusing to pay lump sum pensions to the four (4) Grievants. The Union requests that the Grievance be sustained and that the Company be ordered to make the Grievant whole, including interest from the date they submitted their requests for a lump sum pension. In addition, the Union requests that the Arbitrator retain jurisdiction of this matter to address any questions concerning remedy.

Company Position

The Company maintains that the alleged statements by Company representatives do not support the Union's position because the Agreement clearly provides that only the Pension Administration Committee has authority to make a final interpretation of the Pension Agreement. The Company introduced testimony indicating that all pension applications were sent from the Springfield plant to the corporate pension department in Dayton, Ohio for review and approval. The company maintains that Union President Ross knew this and therefore he is no more entitled to rely on representations made by Company officials Yendes and Carter than he would be to rely on casual comment by his immediate supervisor regarding pension matters. In support of its argument the Company points to *Moore v. Metropolitan Life Ins. Co.*, 856 F.2d 488 (3d Cir. 1988) which rejected a claim that written communications by employer representatives made a claimant eligible for benefits.

The Company relied upon the testimony of Noreen Davis, Dayco's Corporate Manager of Employee Benefits Programs, who specializes in pension matters for the company. It was Davis who determined that application for lump sum benefit was not appropriate for employees terminated for cause. Nevertheless, she decided to submit to the Pension Administration Committee the question of whether an employee terminated for cause was eligible for lump sum payment. The Committee ultimately denied the application of Grievant O. In addition, she presented the issue to the company's outside pension experts, who concurred with the Committee's decision that Section 8.5 did not provide a situation where an employee terminated for cause would be eligible for lump sum payment. Davis then informed Vendes that the lump sum would not be paid.

The Company argues that Section 8.5 of the Pension Plan Agreement is ambiguous when read in context of the Plan. They support this argument by pointing to Sections 8.2, 8.4, and 8.8 (cited supra) which detail when a lump sum is payable. The Company argues that the Plan clearly provides that lump sum payment was intended to be paid in three very limited circumstances: 1) disability of the employee; 2) plant closure; and 3) extended layoff. In addition, they argue that Section 8.5 does not state that a lump sum is payable to employees who are terminated for cause. Because of this ambiguity the Arbitrator should go beyond the four corners of the document and consider all available external evidence to determine correct interpretation of the language.

Testimony introduced by the Company suggests that the ambiguities in the Plan resulted from errors made when the language in the Dayco Plan was borrowed from the B.F. Goodrich Pension Agreement. Evidence submitted by the Company suggests that the Dayco Agreement was always negotiated subsequent to the B.F. Goodrich Agreement. Frequently, exact versions were borrowed from the Goodrich Agreement. The Company alleges that this was the case with the 1976 agreement which resulted in the ambiguity associated with Section 8.5. Specifically, the Company stated in their brief to the Arbitrator:

Following the lead of the 1976 Goodrich agreement, the 1976 Dayco agreement (joint exhibit 9) made the following revisions: 1) eliminated the benefit previously provided by Paragraph 8.1 and turned that paragraph into an introduction; 2) established layoff as a third condition for payment of lump sum by taking Goodrich Paragraph

8.4 and plugging it in as Dayco Paragraph 8.4; and 3) added the new procedural provision of Goodrich 9.9 into Dayco agreement as a new Paragraph 8.9. Significantly, however, unlike the Goodrich agreement from which it was copied, the 1976 Dayco agreement did not remove the preexisting procedural provision at paragraph 8.5. This error left two paragraphs, the old Paragraph 8.5 and the Paragraph 8.9, providing two different and contradictory procedures for application for lump sum. Thus, although it was absolutely clear in the 1970 and 1973 agreements that the sole purpose of Paragraph 8.5 was to provide the procedure for electing lump sum, the 1976 amendment left this section redundant and ambiguous.

Company witness Jack Harootunian, Human Resources Manager, testified as to how the transpositional errors were allowed to occur in the construction of the Plan. The Company argues using his testimony, that the Union representative who made the changes for the Dayco proposal incorrectly believed that it was necessary only to change the prefixes of the Goodrich cross-references from "8s" to "9s". However, the internal arrangement of the paragraphs of Goodrich Article 9 was different from the arrangement of the paragraphs in Dayco Article 8. As a result of this error by the drafter, the cross-reference to Paragraph 9.5 in the Goodrich Article 8 of the paragraphs in Dayco Article 8. As a result of this error by the drafter, the cross-reference to the Goodrich Agreement was changed to 8.5 when the language was inserted in Dayco Agreement. However, Goodrich Paragraph 9.5 concerns "plant closure". Therefore, the Company contends that it is clear that the Goodrich cross-reference to Section 9.5 should have been changed to Section 8.4 when the language was moved to the Dayco Agreement. Harootunian explained that similar transpositional errors occurred relating to Sections 8.6.

As part of its case the Company presented the affidavit of the Director of Labor Relations for Goodrich. The affidavit states that lump sum has never been payable to employees who resign or who are terminated. The Company maintains that this is conclusive proof of the intended meaning of the language in the Dayco Pension Plan Agreement.

In addition, the Company argues that past practice demonstrates that lump sum payment for termination for cause has never been accepted practice. There is no evidence that any employee terminated for cause ever received or applied for a lump sum payment.

In summary, the Company argues that the overwhelming weight of the

evidence shows that the parties intended for Article 8 of the Agreement to provide lump sum payments in only three specifically defined situations, not including termination of an employee for cause. All evidence concerning the parties' negotiation history, their past practice, and the practice under the Goodrich agreement affirmatively shows that Section 8.5 was not intended to establish termination for cause as an independent fourth ground for eligibility. Accordingly, the Company urges the Arbitrator to deny the Grievance.

Opinion

I.

This dispute can be regarded as either very simple or very complex. The Union would have the Arbitrator believe it to be very simple because the precise language of the Agreement seems to support the Union position. The Company casts the dispute in a more complex fashion because in order for the Arbitrator to uphold their position he would have to go beyond the four corners of the contract. Essentially, the Company calls for the abandonment of the parol-evidence rule because of ambiguity in the Pension Plan Document. When arbitrators fail to apply the parol-evidence rule in regard to discussion of collective bargaining agreements they must be cautious as to what evidence they allow to influence their opinion lest they be accused of rewriting the contract. I shall attempt to explain the weight I have accorded to the volume of material presented relating the ambiguity of the Plan in such a fashion that I can escape the insulting remark, "He rewrote our contract."

The crux of the Company argument is that the Union made a mistake in transposing the paragraphs from the Goodrich Agreement to the Dayco Agreement. Therefore the Union must bear the burden for creating this ambiguity. Neither common reason nor the facts support this argument. Both parties negotiated and signed the Agreement. The Company is the Plan administrator and would be expected to understand the full impact of any Agreement it signed. If the Company

The parol-evidence rule which assumes that all elements of a written agreement are the parties intended and may not be altered by subsequent oral statements, is generally applied in arbitration cases. However, if the contract is deemed to be ambiguous, evidence relating to precontract negotiations is frequently considered by arbitrators. Elkouri and Elkouri, *How Arbitration Works*, 412, 413, (4th ed. 1985).

believes they signed an Agreement which included a mistake, then it made a unilateral mistake. The consequences of a unilateral mistake are well documented in court decisions and arbitration awards:

The rule which has been hammered out through centuries of litigation is that if the alleged "mistake" is on the part of only one of the parties to the agreement, and is not so gross as to indicate to the opposite party that an error has been made, no relief can be afforded the mistaken party. *Arco Corporation*, 54 LA 1265, 1268 (Sembower, 1970).

As pointed out by the Union, there is no evidence of mutual mistake concerning Section 8.5. Union President Ross, who had negotiated the contract, testified that his interpretation of the language was that employees could receive lump sum pensions upon termination. He recalled no discussion to exclude employees who were terminated for cause. The Company presented no witnesses or evidence indicating that Section 8.5 was ever proposed for deletion, nor did they present any evidence suggesting that any proposal had been made to exclude employees terminated for cause.

In arguing for their interpretation of Section 8.5 the Company stated that this Section was clearly intended to be a procedural provision. This argument simply does not stand scrutiny. Sections 8.4 and 8.6 provide for situations where employees can receive lump sum pensions. It is not logical to assume that the parties would have negotiated a procedural article in between these two substantive articles. Article 8.5 clearly provides the substantive right for employees to elect a lump sum pay pension upon their termination.

Company witness Harootunian presented a detailed and plausible explanation as to how Section 8.5 became transposed from the Goodrich agreement. However, he was never a party to the negotiation and can provide no insight as to what the parties discussed or intended. Such testimony can be afforded very little weight in a matter of contract interpretation. The same can be said for much of Company's testimony. The affidavit from a representative of B.F. Goodrich alluding to the "spirit and intent" of the Goodrich agreement had no real bearing on the Dayco Agreement.

Testimony by Noreen Davis, Dayco's Corporate Manager of Employee Benefits Programs indicated that she had sought the opinion of outside experts on the lump sum issue. Cross examination revealed that the experts were from the same law firm representing

Dayco in the Grievance arbitration. Such expert opinion seems a bit self-serving to the Arbitrator. Cross examination revealed once again that the individuals offering their opinion on what the terms of the Agreement meant were not involved in negotiating the Agreement. The evidence demonstrates that those individuals most directly related to the negotiation of the Agreement and the handling of pension matters at the Springfield plant, Yendes and Carter, differed markedly in their interpretation of 8.5 from the Company witnesses presented at the Arbitration hearing.

The evidence demonstrates that Labor Relations Manager Yendes, an attorney, had been in the negotiations concerning the Pension Plan. He handled other pension matters for the Company and as an attorney one would assume that he was competent in the interpretation of contract language. I find myself in agreement with his original decision. The Grievants are entitled under section 8.5 of the Pension Plan Agreement to a lump sum payment of their pension benefits. The result is the same whether I limit myself to the four corners of the plan or include the extraneous evidence presented by the Company.

II.

Having decided that the Grievants are entitled to a lump sum payment of their pension benefits I will now address the Union argument that they are entitled to interest.

The Union acknowledges that it is unusual for arbitrators to award interest or monetary awards. However, they feel strongly that the facts of this case justify the assessment of interest. The Company delayed processing the initial request for lump sum payment for four months. They then challenged the jurisdiction of the permanent arbitrator and brought suit in Federal District Court to avoid having to arbitrate the Grievance. Losing at that level, the Company then appealed the District Court's decision to the Court of Appeals. On the eve of argument before the Eighth Circuit Court of Appeals, the Company withdrew its appeal. These actions by the Company have resulted in delaying payment to the Grievants for more than three (3) years. The Union points to numerous awards where arbitrators have awarded interest in order to provide a make whole remedy. See, *Cozzes, Inc.*, 80 LA 1059 (Kessoff 1983); *Milka Productions, Inc.*, 76 LA 1303 (Christophner 1981); *Hollander & Company*, 64 LA 816 (Sadtman 1975).

Without doubt, had the Grievants been given their lump sum payment at the time it was requested they could have been drawing interest on that amount for the past three years. Accordingly, the amount needed to make the Grievants whole can be easily calculated. The Union suggests that the interest be computed according to the formula used by the National Labor Relations Board in computing interest on backpay awards. This appears to an equitable formula and I will so order.

AWARD

The Grievances are sustained and the Company is ordered to make the Grievants whole, with interest, from the date they submitted their requests for a lump sum pension. Interest is to be calculated using the formula set forth in NLRB Series 8, as amended.

Since the award is to the Union, and they have requested that the Arbitrator retain jurisdiction for thirty (30) days to address any questions concerning remedy I will do so. Jurisdiction is retained for thirty (30) days from the time the parties receive this award.

In accord with Article VIII *Grievance Procedure*, Section 1, the expense of the impartial arbitrator appointed shall be borne equally by the Union and the Company.

ROGERS-WAYNE METAL PRODUCTS CO. —

Decision of Arbitrator

In re. ROGERS-WAYNE METAL PRODUCTS COMPANY INC (Mable Ind.) and INDEPENDENT WAYNE METAL PRODUCTS UNION, AAA Case No. 51 300 0556 88B, May 4, 1989

Arbitrator: Malcolm G. House

TRANSFER OF EMPLOYEES

— Voluntary transfer — Demotion
120.205 >119.801

Employer improperly demoted employee when it transferred him at his request, where employee assumed his grade and salary would remain the same, but employer failed to tell him he would suffer demotion in grade and reduction in salary because there were no job openings of same grade available.

JOB VACANCIES

— Posting requirements — Voluntary transfer >119.06 >120.01

Employer violated contract when it transferred employee to job it failed to post, despite employee's claim that no opening existed and it had to create position to accommodate employee's request for transfer, where employee performed real work assignments after his transfer, and contract requires posting of "new" jobs and "open" jobs.

Appearances: For the employer — John T. Bullock, attorney; Jim McCarver, plant manager; Jeff Isroff, vice president, administration; Richard D. Weyler, personnel & safety director. For the union — Keith P. Huffman, attorney; Rex Wolfe, union president.

VOLUNTARY TRANSFER

Nature of Dispute

HOUSE, Arbitrator: — [The nature of the dispute is: —]

"Wrongful demotion of Clyde Newnum. Clyde Newnum, a twenty-two (22) year employee, was classified as a Welder-Fitter, a Grade 8 employee at a pay rate of \$9.23 per hour. Clyde requested a transfer from the Cab Department to the Welding Department. Clyde made this request anticipating that he would retain his classification as a Grade 8 Welder-Fitter. After the transfer was complete, Clyde was informed that he had been demoted to a Grade 7 employee as a Class A Welder at a pay rate of \$8.98 hour. The Union contends that the Company could not transfer Clyde to a lower paying classification without informing Clyde and posting the opening for a Class A Welder as required in Article X of the Contract."

Remedy Sought

"Clyde seeks reinstatement to his Welder-Fitter status, back pay for all sums which he has lost by being paid as a Class A Welder and any and all just relief."

I. Statement of the Case

The applicable Agreement between the parties was entered into on November 1, 1984 and extended through October, 1988, through negotiations in the Fall of 1986. At that time wage increases were negotiated by the parties although the Labor Contract was not retroactive to include the new base rates.

A Clyde Newnum, the aggrieved employee, was initially employed by the Company in 1966 as a Class B Welder

classification. Subsequently, he qualified through the appropriate testing procedure for the Welder-Fitter classification in early 1970, and remained there until 1975, at which time he left the bargaining unit to become a member of supervision.

Thereafter, in 1981, Mr. Newnum returned to the bargaining unit as a Welder-Fitter due to a reduction in supervision caused by an economic downturn. He remained in that classification (Welder-Fitter, Labor Grade 8, at \$9.23 per hour) through July, 1988, while assigned to the Company's Ottawa and Cab Shop, Department 14. However, before leaving on his two week vacation in mid-July, Mr. Newnum had requested to be transferred from the Ottawa Cab Shop to the Welding Department. He had been told that his request would be granted, but was not told he would suffer a reduction in pay when transferred to the Welder A classification in Welding Department No. 9.

While on vacation the Grievant allegedly discovered from some source that his requested transfer would result in the reduction of his labor grade and hourly rate of pay. Upon his return to work, James McCarver, Plant manager, met with Mr. Newnum to explain that since the latter last worked in Welding Department No. 9 in August, 1986, the type of work had changed and that the welders no longer made, repaired and adjusted fixtures on a regular basis. Additionally, Mr. Newnum was told that fixture work was now contracted out, and that there was not enough of that type work to support a full-time or even a part-time Welder-Fitter position. Lastly, when work no longer existed in a classification, the Company was not obligated to permit employees to hold that classification.

Clyde Newnum, the aggrieved employee, filed the instant grievance and it was timely processed through the grievance procedure by the Union in keeping with the relevant terms and conditions of ARTICLE III - [Grievance Procedure And Arbitration], to the arbitration step without being satisfactorily resolved between the parties. On September 1, 1988, the Union submitted the following request to the Company:

"To: Wayne Metal Products Co. Inc.

RE: Clyde Newnum

The Union desires to arbitrate the issue of the elimination of the Welder-Fitter classification. Notice of the change of classification was not given to the Union and required by agreement of the Company and the Union. Further, Newnum was not told that he would be demoted from Welder-Fitter to Class A Welder when he was transferred."

On one occasion shortly before termination some 50 panels were blistered due to his failure to observe that the peg used to level the curtain coat-er head had slipped or been knocked out. His failure to clean the rods on his machine resulted in frequent work area clean and another employee had to do it. He frequently complained about his job and working conditions and suggested to other employees that they should quit the Company (three of the witnesses who gave this evidence are or were formerly members of the bargaining unit). He sought complaints from employees against Foreman Smith and attempted to get one employee to file a grievance against Smith for allegedly yelling at him. He suggested to one employee (Sanders) that he need not follow instructions given by Smith. It is extremely significant that in his own testimony Grievant either admitted or did not deny most of the above described acts.

The remaining issue, therefore, before the Arbitrator is whether the poor job performance and attitude set forth above constituted sufficient cause for discharge. After a careful review of all the evidence and a reading of many Arbitral Awards involving somewhat similar situations I have concluded that just cause existed for termination. While no single incident would in my view have been sufficient the cumulative effect of Grievant's actions over a substantial period of time did warrant the Company in discontinuing his employment. Caterpillar Tractor Company 64-2 ARB § 8859 (Erbs) (where the employee was discharged for consistently failing to follow instructions).

The Grievant's Supervisor concluded that his job performance had deteriorated to the point where continued employment was no longer justified; and that his attitude toward his work and the Company was having an adverse effect on the morale of other employees. The overwhelming preponderance of evidence sustains this conclusion. Evaluation of an employee's job performance and attitude necessarily rests initially with Management subject to challenge by the employee and Union on the ground that the Company's action is unreasonable, arbitrary or discriminatory. Here there is nothing to show that the Company acted in other than good faith and upon reasonable grounds. While Union Counsel indicated in his opening statement that the Company might have been moti-

vated by Grievant's Union activities there is no evidence in the record to support such charge. Under all the circumstances the Arbitrator would not be justified in interfering with the Company judgment.

Other arbitrators have upheld discharge for poor job performance which deteriorated to the point of unacceptability. Carnation Company, 72-2 ARB § 8463 (Oppenheim), or for a continuing poor attitude on the part of an employee which had an adverse effect on the morale of other employees. Steel Supply Company, 62-2 ARB § 8156 (Hon), or a combination of unsatisfactory job performance and poor attitude which made contribution on the job unacceptable. Carey Salt Company, 69-1 ARB § 8019 (Bothwell).

With reference to the Union's point that the Company had not given Grievant any prior written warning, it is sufficient to say that the Contract does not require either a prior warning or other progressive discipline prior to discharge for the kind of conduct involved here.

AWARD

For the reasons expressed I find that the Company had just cause to discharge Grievant and the Grievance must be denied.

SUNSHINE CONVALESCENT HOSP.—

Decision of Arbitrator

In re SUNSHINE CONVALESCENT HOSPITAL AND SERVICE AND HOSPITAL EMPLOYEES UNION, LOCAL 389, FMCS Case No. 74K/05417, February 27, 1974

Arbitrator: Melvin Lennard, selected by parties through procedures of Federal Mediation & Conciliation Service

VACATION PAY

—Computation—Date of hire v. contract date ▶ 116.153

Vacation pay for employees having more than one year or five years of continuous employment is to be computed from employees' date of hire, and not from effective date of contract, which will have expired by time employees have accrued enough seniority under latter computation to be entitled to vacation. Contract clearly states that for purposes of employees' personal benefits, seniority shall be determined by employees' date

of hire, and it is clear that vacation pay is one of employees' "personal benefits."

ARBITRATION

—Ex parte award ▶ 94.603
Arbitrator has jurisdiction to issue ex parte award in case in which employer did not appear in arbitration hearing, where company lawyer previously represented that his client was willing to proceed to arbitration and that it was not necessary for union to file court petition to compel arbitration. Employer cannot be permitted to play "fast and loose" with either judicial or arbitral process.

—Cost—Interest ▶ 94.65
Arbitrator directs employer that lost vacation-pay dispute with union to pay interest on vacation pay awarded to employees, reasonable attorney's fee to union, and one-half of arbitrator's fee, since history of employer's conduct in dealing with union regarding dispute provides sufficient basis for conclusion that its defense to claims for vacation pay was known by it to be without merit.

Appearances: For the company—None. For the union—Gerald Goldman (Levy, Van Bourg, and Hacker), attorney.

COMPUTATION

Findings

Lennard, Arbitrator:—I make the following findings:

(1) Service and Hospital Employees Union, Local 399, AFL-CIO, herein called "the union," won NLRB-conducted elections on April 1, 1970 and June 25, 1970 for the right to represent employees (whose jobs were and are in a described collective bargaining unit) of Sunshine Convalescent Hospital, herein sometimes called "the employer," at its private convalescent hospital located at 8825 Vans Avenue in the City of Paramount, California.

(2) The National Labor Relations Board on July 1, 1970 certified the union as the exclusive bargaining representative for the purpose of collective bargaining with respect to rates of pay, hours and conditions of employment for all dietary employees, housekeeping employees, maintenance employees, nurses and laundry employees employed by the employer at the facility described above.

(3) The employer refused to bargain. The union filed charges with the NLRB alleging such refusal. In June 1972, almost two years after the union was certified, the Hospital stated, through its attorney—a reput-

able practitioner—that it would bargain. Negotiations began in July 1972. An agreement was reached in about December, 1972. The employer refused to sign the agreement, except after insisting on unilateral changes. The union again filed charges with the NLRB. In April 1973, the employer (and the union) signed the agreement in the following month, for the term April 1, 1973 to March 31, 1974.

(4) The agreement contains the following provisions, among others:

"Article X—Vacations

1. Eligibility
A. After one year's continuous employment, an employee shall be entitled to receive one week's paid vacation. B. After 3 year's continuous employment, an employee shall be entitled to receive two week's paid vacation."

"Article IX—Seniority

2. Definition. Seniority is defined as the employee's length of service with the Company. For purposes of an employee's personal benefits, seniority shall be determined by the employee's date of hire. For purposes other than personal benefits, an employee's seniority shall be determined by the employee's length of service within a classification."

(5) The employer, speaking through its President, Sam Menlo, has refused to pay any vacation pay to a number of employees, although such employees have been in its employ more than one year or, in one or more instances, more than five years. Its justification for such refusal was that the seniority upon which benefits are based must be computed from April 1, 1973, the effective date of the contract. Accordingly, no employee—under that theory—will accrue a full year's seniority and, therefore, will not be entitled to any vacation pay until 12:01 a.m. April 1, 1974, by which time the present contract will have expired.

(6) The collective bargaining agreement between the parties contains an arbitration clause under which grievances that allege a violation of the agreement are subject to final and binding arbitration. (Article VII.)

(7) The union demanded arbitration of its dispute with the employer concerning the latter's alleged liability to pay vacation pay to ten named employees, as well as to a number of other employees whose names or claimed amounts were not yet verified.

The employer refused to arbitrate. Its attorney informed the union's attorneys that a court order compelling arbitration would first have to be obtained. When Attorney Susan D. Salisbury, of the law firm represent-

ing the union, informed him that the union would seek, and expected to receive, in addition, an order for attorney's fees and costs—and cited authorizes and her recent successful experience in this respect—the Hospital's attorney stated on December 20, 1973, after consulting with his client that "his client had changed his mind and was willing to proceed to arbitration and that it was not necessary to file the petition to compel arbitration in order to obtain his client's cooperation in arbitrating this dispute." (See Affidavit of Susan D. Salsoury, dated February 13, 1974, attached hereto.)

(8) Pursuant to his representation and promise, the employer's attorney did thereafter participate with the union's counsel in the selection of an arbitrator (myself) and in the mutual designation of a time and place for the hearing. He was authorized so to act by his client, and he had actual notice of the time and place of the hearing several weeks before its scheduled date.

(9) On February 12, 1974, at about 4:07 p.m., the day before the scheduled date of the hearing, the employer's attorney telephoned me and stated that as a courtesy, he wanted me to know he doubted that he or his client would appear at the hearing, and that he would also so notify Attorney Gerald Goldman, of the union's law firm. At 9:35 a.m. the following day, prior to the start of the hearing, Mr. Goldman's secretary did receive a phone call from the employer's counsel stating that neither he nor his client would appear. Mr. Goldman received further confirmation at 9:45 a.m. when the other lawyer told him, on the phone, that his client had not authorized him to appear, and he doubted that the client would appear either. The employer's attorney said "the hearing should proceed". The hearing did proceed. No one appeared at any time on behalf of the employer.

Conclusions

A. Assuming I have jurisdiction to proceed *ex parte*, I find that the merit of the dispute are wholly with the union. There is no doubt at all that vacation pay is one of an employee's "personal benefits", within the meaning of Article IX, and that therefore his length of service—in establishing eligibility for such personal benefits—is determined by his date of hire. The language of Article IX is explicit and clear. Therefore, every employee who had more than one year's conti-

nuous employment following his date of hire (rather than April 1, 1973) was entitled to one week's paid vacation; and every employee who had five such years after his date of hire was entitled to two weeks' paid vacation.

B. Although it may be true, or it may have been true in 1969, that an *ex parte* award can be confirmed under California law only if the absent party has been ordered by a court to arbitrate or if the arbitration agreement itself allows for an *ex parte* award, there is doubt that "federal law" is equally restrictive. The union in the present case has cited Sec. 1404.8 of the F.M.C.S. Regulations, as well as some cases to support its contention that federal law (more particularly cases brought pursuant to Sec. 301 of the Labor Management Relations Act) permits *ex parte* awards. But I do not believe it is necessary now to analyze them or to determine their applicability to the present dispute. For I am convinced that even under California law this employer could not validly complain that its appearance at the hearing was a prerequisite to the issuance of my award or that, in its absence, an order compelling arbitration was necessary. Its attorney, learning that the union was about to seek such an order together with attorney's fees and costs and that the union (citing authorities) had been successful in a recent similar endeavor against another employer, consulted his client and then informed the union's counsel that his client was willing to proceed to arbitration, and that it was not necessary to file a petition to compel arbitration in order to get his client's cooperation in arbitrating. Thereafter, such cooperation was fully forthcoming from an F.M.C.S. panel, in the informing in the selection of an arbitrator and in the designation of a time and place for the hearing—*until the day before the hearing*.

The employer has surely waived—or would be estopped from asserting—any provision of law that would otherwise allow it to say to the union, in effect: Yes, we told you two months ago that we would cooperate and would arbitrate, we told you it was not necessary to get an order compelling us to arbitrate because we did not want to sustain any liability for

* Legend: Arbitrating without Litigating: Sept.-Oct. 1965 The State Bar Journal (California) p. 582.

your attorney's fees and costs, you did refrain from getting such an order, and we did go through all the motions of arranging for the arbitration, but now that it's the day before the hearing we do not want to go ahead with the arbitration; you cannot obtain a valid award without a court's ordering us to arbitrate, so go ahead and get one, and we may arbitrate with you in three or four months (after our contract has expired); although we have misled you to your detriment, that's just too bad.

This employer cannot be permitted to play fast and loose with either the judicial or the arbitral process. I conclude that, in the circumstances of this dispute, I have jurisdiction to issue an *ex parte* award.

C. The history of this employer's conduct in dealing with this union provides a sufficient basis for my inference that its defense to the claims for vacation pay was known to it to be without merit; on the contrary, the defense was consistent with its prior dealings with this union: to delay compliance with its commitment or obligation until finally required by outside authority. In my opinion the loss caused thereby to the employees and to the union should be mitigated to the extent that is within my authority. Therefore, I am awarding not only the contractually-required vacation pay but also interest thereon, and a reasonable attorney's fee to the union; and also one-half of my own fee, pursuant to Article VII, sec. 4(6) of the contract.

AWARD

The undersigned arbitrator, having been designated in accordance with the agreement entered into by the above-named parties dated April 1, 1973 and having duly received the evidence and arguments presented herein, AWARDS:

I. The undersigned arbitrator has jurisdiction to issue this *ex parte* award.

II. The employer, Sunshine Convalescent Hospital, violated the collective bargaining agreement between the parties dated April 1, 1973 when it refused to pay any vacation pay to the employees named in the union's grievance dated September 28, 1973.

III. The employer violated the aforementioned agreement when it refused to pay vacation pay to other employees in the bargaining unit represented by the union although such employees

had continuous employment from their respective dates of hire of more than one year.

IV. The employer shall promptly pay to the employees named below the respective amounts set forth opposite their names as vacation pay due them in 1973, together with interest at 7% per annum thereon, computed from September 28, 1973 to the date of payment:

Berland Derosila	\$63.75
Louise Farness	130.00
Izona Boundry	69.38
Lena Calkin	67.50
Nadeen Victor	69.38
Mary McShan	67.50
Johnny Shipley	67.50
Deborah Carter	63.75
Asa Bushnell	84.38
Ofella Rubis	63.75

V. The employer shall promptly pay to all other employees the vacation pay due to them, plus 7% interest per annum thereon computed from September 28, 1973 to the date of payment, their eligibility therefor being based upon their continuous employment from their respective dates of hire.

VI. The employer shall promptly pay to the law firm of Levy, Van Bourg & Hackler, Suite 1020, 3550 Wilshire Boulevard, Los Angeles, California, the sum of \$375, as a reasonable attorneys' fee for services rendered to the union in preparing and presenting the instant case in arbitration.

VII. The employer shall promptly pay to the undersigned arbitrator the sum of \$375, representing one-half of his total fee, \$750, for professional services rendered in hearing and deciding the within dispute, and for preparation and executing this Award and the attached Opinion.

determined by physical examination, X-ray findings or laboratory testings, according to Dr. Fischer. This is the same thing as saying that he found no low back pain, nor did he get any complaints thereof from the Grievant. Knowing that the Grievant once had them, he cautions against doing something which might cause them again.

I don't intend to impugn the abilities or reputations of the doctors who made these reports. Before they can be persuasive enough to be determinative of the issue in this case, there must be more than mere conclusions. There must be facts presented to me from which I can concur in those conclusions. These reports do not do that.

I also have to take judicial notice of the fact that these doctors operate in a climate where there is an ever-present threat of malpractice action if they are wrong. This threat tends, and rightfully so, to make them cautious and guarded in their diagnosis and prognosis. It is better to find that he is able to work on a restricted basis rather than permitting him to return to work on an unrestricted basis, with the possibility ever present that he might injure himself.

Like the jury, I have to decide this matter on the basis of the evidence presented to me. I believe it shows that the Grievant has demonstrated that he can do the type of work required of him in the Wheaties Processing Department without any restrictions. If he had a disability, and I seriously doubt that he ever had one, his testimony, uncontradicted by persuasive evidence to the contrary, convinces me that he has recovered from his disability and is able to return to active duty. While I am inclined to give great credence to the opinions of medical experts, they have, in this case, failed to persuade me as to the validity of their conclusions.

AWARD

The disability pension of Marco Bakovic should be terminated and the applicable provisions of the Master Agreement should be effectuated.

JOHN MORRELL & CO. —

Decision of Arbitrator

In re JOHN MORRELL & COMPANY
and AMALGAMATED MEAT CUT.

TERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 304, FMCS Case No. 77K/06780, August 6, 1977

Arbitrator: Martin E. Conway, selected by parties through procedures of Federal Mediation & Conciliation Service

LEAVE OF ABSENCE

—Denial of personal leave — Justification ▶ 116:201 ▶ 118:25

Employer improperly established new policy denying employees' request for personal leave of absence where leave would affect its ability to meet production requirements or would necessitate hiring of replacements, notwithstanding employer's contention that vacation provision limiting number of employees who can go on vacation to 10 per cent of employees in department and allowing department to exceed 10 per cent figure if vacation can be granted without impairing orderly operation of department contemplates imposition of 10 per cent limitation on employees on leave of absence, since (1) leave-of-absence provision states that "leave of absence without pay will not be arbitrarily withheld," and although reference to "orderly operation of department" appears in both vacation and leave-of-absence provisions, employer did not attempt to demonstrate that any certain number of absences, leaves of absence, or vacation, or combination thereof, may reach cut-off point that triggers use of policy to refuse new request for leave of absence. (2) employer's view that hiring of any new employee is ground for denying leave of absence results in imposing contract conditions that otherwise do not exist, and (3) use of "changed conditions" as basis for new policy is valid argument in certain circumstances but is not appropriate basis for unilateral revision of established practice arising from contract language.

—Improper policy — Remedy — Punitive damages ▶ 118:25 ▶ 116:201

Union is entitled to punitive or exemplary damages, among other remedies, for corporate labor relations director establishment of new policy denying leave of absence that would affect ability to meet production requirement or would necessitate hiring of replacement, which policy is not permitted under contract, where director has thorough management experience, is sophisticated practitioner of labor relations arts, and knew what he was attempting to do, namely, to re-write contract in his own fashion and manner, notwithstanding requirement to bargain with union.

Appearance: For the company — Charles R. Welle (Shull, Marshall & Marks), attorney; Edward T. (Ted) Steadman, corporate director; labor relations; Ray B. Steele, operations manager; Lynn

JOHN MORRELL & CO.

A. Iverson, manager, employee relations; Robert F. Wehrkamp, employment manager. For the union — Robert S. Sugarman (Jacobs, Burns, Sugarman & Orlove), attorney; Frances Krier, local business representative; Richard Waggoner, local assistant business representative; Gary DeFew, local vice president; Jack D. Smith, steward.

DENIAL OF LEAVE

Fact Summary

CONWAY, Arbitrator: — This matter is a controversy with respect to the negotiated language of the Agreement between the parties respecting Leaves of Absence. In addition to language in the Contract, the parties have exchanged correspondence over the last five or so years which reveals the extent of agreement on the subject.

Past practice with respect to Leaves of Absence policy is based primarily upon a letter agreement of 3/24/72, ratified 5/9/72, issued by Mr. M. W. Hahn, then Personnel Director for John Morrell & Co. at Sioux Falls, South Dakota, introduced as Un. Ex. No. 8, as follows:

5. The 1972 Leaves of Absence (Hahn Agreement, entered into March 24, 1972 and ratified May 9, 1972) provides:

JOHN MORRELL & CO.
Sioux Falls South Dakota

Ratified 5/9/72

LEAVES OF ABSENCE

Requests for leaves of absence in conjunction with vacations or after vacations, filed by April 1, will be granted in line with seniority. After April 1 requests for vacation time will be given preference over any requests for leaves for open weeks on the vacation schedule even if the request for leave is made by an older employee.

If a request for leave is made by a younger employee for an open period on the schedule, that period ceases to be open if the leave is granted. But if a request for a leave and a request for a vacation are made at the same time for the same open period, the request for the vacation will have preference over the leave, regardless of the seniority of the employees involved.

In cases where employees relinquish weeks of vacation or leave, during periods when all the schedule is filled, the openings will be posted as in the past, and preference for these periods will be given to vacation requests in order of seniority. (Final approval of this arrangement is subject to ratification by the Union membership.)

M. W. Hahn
/s/H.
Personnel
Department

HWH:mjt
3/24/72
(Un. Ex. 8)

Mr. Hahn's letter explains the then existing agreement in rehandling requests for Leaves of Absence.

The Union asserts, and the Employer does not deny, that the Hahn letter was, in fact, an Agreement resulting from a disputed grievance on the subject of Leaves of Absence. An earlier letter by Mr. Hahn, dated December 28, 1971, on the subject of Leaves of Absence (Un. Ex. No. 9) was superseded, as follows:

J. A. ANDERSON
All Divisional men
All Foremen
December 28, 1971

Please Post

LEAVES OF ABSENCE

The master agreement provides for leaves of absence without pay beyond the regular vacation and the local agreement provides for leaves of absence without pay following vacations. In the past, for quite a few years, these leaves of absence had to be taken in conjunction with an employee's vacation.

Several years ago, at the request of the Union, we agreed on a trial basis to allow employees to take leaves of absence before using their vacation time. This worked out fairly well for a while, but with the ever increasing number of weeks of vacation in each year and with a substantial increase in requests for leaves of absence, it is necessary that this trial basis come to an end.

Consequently, effective January 1, 1972, no leaves of absence can be granted until an employee has used all of his vacation weeks. Special consideration will be given in cases of an emergency and special consideration may be given in periods of slack work.

PERSONNEL
DEPARTMENT

H. W. Hahn

HWH:mb

Union Counsel's Brief (footnote 3, page 6) explains, as follows:

The 1972 Hahn agreement was the agreement entered into as the resolution of a grievance the Union filed in response to a company position reflected in a notice it issued December 28, 1971 [Un. Ex. 9, R. 37-38]. The December 28, 1971 notice reflected a company posi-

tion that leaves of absence had to be taken in conjunction with an employee's vacation and that effective January 1, 1972, no leaves would be granted until an employee used all his vacation weeks. The 1972 Hahn agreement reflected a compromise resolution whereby in *inter alia* it was agreed that no leave would be granted until after an employee used all his vacation but that leaves would be granted "in conjunction with or after vacations" [Un. Ex. 9, R. 58-59].

The Hahn letters of 1972 and 1971 were unilaterally distinguished and modified by Mr. E. T. Steadman's undiscussed and non-negotiated letter of September 30, 1976, effective October 13, 1976, following significant ways:

- (a) hiring new employees,
- (b) training new employees,
- (c) affecting the Company's ability to operate and meet production requirements.

September 30, 1976
 Mr. Francis Krier
 Business Representative
 Local 304

Dear Mr. Krier:

It was recently brought to my attention that we are encountering difficulties under the Leave of Absence provisions of the contract which we must take immediate steps to correct.

During the week of September 13, 1976, we had 32 employees on leave of absence which necessitated the hiring of 15 new, inexperienced hourly employees.

During the week of September 20, 1976, we had 38 employees on leave of absence which necessitated the hiring of 21 new, inexperienced hourly employees.

During the week of September 27, 1976, we had 35 employees on leave of absence which necessitated the hiring of 7 new, inexperienced hourly employees.

During the week of October 4, 1976, 44 employees are scheduled for leaves of absence which will also necessitate the hiring of new, inexperienced employees.

Please be advised that effective October 18, 1976, personal leaves of absence will not be granted where it affects the Company's ability to operate and meet production requirements or where such leaves would necessitate the hiring or training of new employees as replacements.

We will, of course, continue to grant emergency leaves, military leaves, pregnancy leaves, and others which are provided for in the contract.

E. T. Steadman

[Editor's Note: Copies omitted.]

Personnel Labor Relations Mgr.

ETS:bdbs
 CC R. Wehrkamp
 L. Iverson
 Divisional Superintendents

The Steadman letter is the fundamental issue in this case.

Several grievances arose immediately after the October 18, 1976, deadline due to the refusal of the Company to grant requested Leaves of Absence.

Those grievances were processed and have come down to this Arbitration Matter as ancillary issues, in the Union's opinion, (primary issues in the Company's opinion) of the Company's breach of the agreed Leave of Absence contract language and past practice. They are stated in Company Exhibits 2, 3 and 4, (also Union Exhibits 4, 5 and 6). The Grievants are Leon J. Christiansen, Company Exhibit 2 (Union # 4), Dennis Zahrenhusen, Company Exhibit 3, (Union # 5), and Lyle Johnson, Company Exhibit 4, (Union # 6). (Copies attached).

The Company's argument (Brief, p. 1, 2) with respect to this arbitration issue would limit the matter to those three grievances, and apparently exclude the Steadman letter, even though the Company Brief actually argued the appropriateness and reasonableness of the terms of the Steadman letter throughout. The Union's view of this matter is that the heart of the problem is the Steadman letter of September 30, 1976, and the conditions contained therein. The grievances resulting after October 18, 1976, are just examples of the fundamental problem which must be dealt with as a whole and not narrowly.

On Page 1 of his Post-Hearing Brief, after a brief statement of the case, Union's Counsel states the issue as follows:

"Whether the Company breached the provisions, terms and conditions of the collective bargaining agreement relating to the leaves of absence program; and, if so, what should be the remedy (Un. Ex. 35)." Note 1.

Union's Note 1, (Bottom of Page 1, Brief) succinctly set forth the Union's view as follows:

"The Company neither objected to this statement of the issue at the hearing nor offered a counter-issue. Its counsel appeared, however, to attempt to narrow the scope of the issue to specific employee grievances reflected

in Union Exhibits 2, 4, 5 and 6. Any such arguing would be unwarranted and erroneous, and the attempt should not be permitted. The Union's notification in its December 27, 1976 letter, to arbitrate the Company's unilateral change in the Leave of Absence Program which was the cause of the noted grievance (Un. Ex. 31) was not challenged. To the contrary, the Company in its response accepted such notice and assured cooperation in expediting the matter (Un. Ex. 32). Further, Krier's testimony is undisputed that throughout the grievance processing the Company never denied the dispute had to be resolved on an overall basis and that from time to time Steadman stated that the arbitration would resolve the leaves of absence program (R. 150-151). Company counsel also acknowledged that Steadman's September 30, 1976 letter was of more significance than the individual grievances (R. 64). (Krier is Union's Bus. Rep.)

The issue as discussed in Employer's Brief (p. 1) is paraphrased and set forth in substance after the following heading:

The Issues for Determination

THE GRIEVANCES

Employer's Counsel refers to the three grievances filed by Christiansen, Zahrenhusen, and Lyle Johnson; (both Company and Union Exhibit Numbers) and the fact they were all filed on or about October 29, 1976, and that they all referred to a violation of Article or Section 82, paragraph or section A, page 32, of the Agreement. (set forth later in this opinion), and then states:

"The written grievances also stated that practice was changed, with the only explanation on two grievances that 'leave of absence was refused and on the third, that the sausage cooler department was to have, up to 25 persons gone on vacation or leave of absence per calendar week', under a claimed 'established practice'."

In the following paragraph the Company comments upon and sets forth in full the first step answer stated on the written grievances.

Employer's final paragraph (Brief) under the heading of issues states as follows:

"It is significant that thereafter throughout the processing of the grievances, the Union in stating its position made no other reference to specific contract language, and did not clearly state its position as to why the grievances should be sustained under contract language. The Company, on the other hand, clearly enunciated its position, not only in the Steadman letter to Krier of September 30, 1976 which set forth the administrative position of the Company, but also in each of its responses to Union contentions. (See Steadman letter to

Krier of 10/21/76, Union Ex. 24; Iverson letter to Waggoner of 11/8/76, Union Ex. 26; Steadman letter to Waggoner of 11/15/76, Union Ex. 27; and Wilson Bailey letter to Blankenbaker of 12/7/76, Union Ex. 30."

Employer's Brief then examines and refutes the Union's arguments under the heading, "THE UNION POSITION".

The Master (National) Contract, Provision (P. 35) of the Contract Booklet, Article XXI, titled "GRIEVANCE PROCEDURE", commencing with Paragraph No. 83(a), states there that,

"The grievance procedure now in effect at each plant . . . shall remain in effect, except as changed by local agreement."

Page 78 of the Contract Booklet, (The contracts on the Sioux Falls Plant Operations) states a local (Sioux Falls), grievance procedure, to-wit:

"87. All grievances handled through the Union, whether individual or group, shall be handled in the following manner: (First, Second, Third, Fourth, Fifth, and so on down through Paragraph 72 on Page 81, of the Contract Booklet, which paragraphs describe the procedure of processing the grievances.) Paragraph 69 (p. 81) states as follows:

"88. No grievance, with the exception of those pertaining to job rates, will be processed unless filed within 30 working days of the circumstance that provokes the grievance."

Nowhere on Page 78 or 79, all of which are part of Paragraph 67, is there any reference to a grievance requirement or definition being a written instrument signed by any employee, or group of employees. The gist of the language seems to mean that any verbal "disagreement" shall be dealt with as a grievance. Consequently I herewith determine that the Union's statement of the grievance as set forth above is appropriate and proper. The basis for so finding is the exchange of correspondence precipitated by Mr. Steadman's September 30, 1976 letter, particularly Mr. Krier's October 19, 1976 response (Union Exhibit No. 7, copy attached), taking exception to Mr. Steadman's conditions and characterizing the conditions as a . . . "violation of this contract", and a "unilateral change".

October 19, 1976
 Mr. Ted Steadman
 Personnel Labor Relations Manager
 John Morrell & Company
 1400 North Weber Ave.
 Sioux Falls, South Dakota 57101

Dear Mr. Steadman,

This is to confirm in writing the Union's previous verbally stated objections to the most

recent company position on leaves of absence as spelled out in your letter to myself dated Sept. 30, 1976.

Recent contract negotiations have concluded and there were no changes in the leave or absence provisions of the agreement.

As a matter of history, the company has attempted to change the leave of absence program without success, as early as 1972, that I reached and ratified by the membership on May 9, 1972, which was signed by Henry Hahn, Personnel Director. Subsequent to that, the Company attempted in 1973 contract negotiations to change the program, without success. There have been grievances in 1974 and in 1975 in which the Company again conceded to the Union position.

Again in 1976 contract negotiations, the Company demanded a change in the leave of absence program. The Company finally withdrew their demands and the contract was settled without any change in this provision.

Any unilateral change in this program at this time would be a violation of this contract. Again the Union requests that the Company live up to their past agreements concerning this matter.

With kindest personal regards, I remain,

Sincerely,

Francis Krier
Business Rep. &
Corresponding Sec.

FK/ik
c.c. McDonald
Waggoner
Iverson

Contract Provisions

1. Leaves of Absence. Page 69, (Local, Sioux Falls)

35. Leaves of absence without pay following vacations may be granted for good and sufficient reason on the basis of length of continuous service as follows:

- Under five (5) years - 2 weeks
- Over five (5) years and under ten (10) years - one month
- Over ten (10) years and under fifteen (15) years - two months
- Over fifteen (15) years - three months

36. If an employee desires a leave of absence with his vacation, he must submit the request for the leave of absence at the same time he indicates his vacation preference in order for his leave to take precedence over another employee's vacation. Employees desiring leaves of absence will be urged to take leaves of absence in conjunction with their vacation. Leaves of absence without pay will not be arbitrarily withheld, but the number of employees scheduled for vacations in any given week or weeks and the orderly operation of the department involved will be factors in granting such leaves.

2. Vacations. Page 70, (Local, Sioux Falls)

37. In order to obtain vacation preference in line with seniority, vacation requests must be submitted by April 1, inclusive, of each calendar year.

38. Because of the requirements of the business it is agreed that approximately ten percent (10%) of the persons in each department will be allowed on vacation at any one time. All departments will go beyond the ten percent in scheduling vacations if it can be done without impairing the orderly operation of the department.

39. Section XX, Leave of Absence, Pages 32, 33 and 35, (Master)

82(a). Leave of absence without pay beyond the regular vacation to which an Employee is entitled, will not be arbitrarily withheld. Such leave may be granted on the basis of length of continuous service not to exceed the following:

- Under five (5) years - two weeks
- Over five (5) years and under ten (10) years - one month
- Over ten (10) years and under fifteen (15) years - two months
- Over fifteen (15) years - three months

Sections 79, 80 and 81, will not be granted for the purpose of allowing an Employee to take another position temporarily, try out new work, or venture into business for himself.

- (c) * * * (Military Leave)
- (d) * * * (Funeral Leave)
- (e) An Employee granted an emergency leave of absence which has been requested by reason of unanticipated circumstances may elect to have this period treated as vacation if he has current year vacation entitlement remaining, and shall be paid in accordance with such election.

Section 80, Article XX (Master Agreement) discusses leaves of absence for Employees elected or appointed to a full-time position with the Union. Para. 81(a) and (b) does the same for employees elected to public office.

Union's Counsel points out in his Brief (p.4) that Article XXXIV of the Master Agreement is titled, "Preservation of Local Practices", and provides as follows under Section 106 thereof:

"Except as hereinafter noted, no existing local condition of employment which is subject to collective bargaining, providing to the Employees benefits or payments greater than those set forth in this Agreement, shall be considered to be changed by virtue of this Agreement, and such condition shall remain in effect unless changed by local agreement." (Page 51, Master Agreement.)

In his Brief (P. 5, Note 2) Item 4, (Reciting Contract Provisions) "The Local Agreement Vacations Provisions in pertinent part provide": Union's Counsel sets forth Sections 88 and 39 of the Local

Agreement (P. 70) and then comments as follows: "These above referenced contract provisions have remained unchanged in the contract at least since the 1967 agreement. At that time the following was added to the local Leaves of Absence Section 36 of the current agreement: (See contract language above).

The language revisions of 1967 added a little more flavor and meaning to the existing language on the subject, but still leave the interpretation of the total contract language subject to the practices of the parties. The contract language, with the 1967 additions, is explicit in past, but with some gaps.

4. Rights of Management. P. 7, (Master)

10. The Management of the plant and direction of the working force, including the right to hire, suspend or discharge for just cause, to assign to jobs, to transfer Employees within the plant, to increase and decrease the working force, to determine products to be handled, produced or manufactured, to establish schedules of production and the methods, processes and means of products or handling, is vested exclusively in the Company, provided this will not be used for the purpose of discrimination against any Employee or to avoid any of the provisions of this Agreement, or any local agreement.

11. The rights of Management, relating to the establishment and enforcement of standards of production, job loads and hours of operation of the local plants or any departments, now in effect at each local plant shall remain in effect except as may be modified by this Agreement or by local agreement.

Positions of Parties

A. Employer Position.

1. The Employer's Brief (p.1) refers in the second paragraph to the three specific grievances (Un. Exs. 4, 5 and 6) and requests a decision on all those three grievances;

"with the issue common to all three". Employer's Brief restates that those three leave of absence requests were denied, (Statement of the Case)

"... for the stated reason that if the Company granted the leaves it would have had to hire new employees as replacements and continues as follows:

"... The Company's position was based upon an expressed administrative determination (Co. Ex. 1) that such personal leaves of absence would not be granted where it would affect the Company's ability to operate and meet production requirements or where such leaves would necessitate the hiring or training of new employees as replacements"

2. The Company's Brief then, under the heading, "The Issues for Determination", argues (implies) that the written grievances referred to above are to be resolved by this Arbitration.

3. The Brief then refers to the recitation by the grievances of Article (Section) 82, paragraph or section A, (a) Page 32, as the language violated and quotes that section, (set forth above) and comments to the effect that such contract language reference does not refer to the precise language now allegedly violated. The Union's processing of the grievance never did clearly state (until now in arbitration) the erroneous contract language or practice interpretation.

4. The Company Brief also states (p.2) that,

"The written grievances also stated that practice was changed... with no satisfactory explanation of in what manner or why or how, etc. (referring to the Union position throughout the grievance process).

6. After reviewing the Company's first step answer to the grievances, the Company Brief states:

"It is significant that thereafter throughout the processing of the grievances, the Union in stating its position made no other references to specific contract language, and did not clearly state its position as to why the grievances should be sustained under contract language." further alleging that the Company's position (on the other hand) was set forth clearly and completely by its correspondence as follows:

(a) Steadman letter to Krier - September 30, 1976.

(b) Steadman letter to Krier (Un. Ex. 24) - October 21, 1976.

(c) Iverson letter to Waggoner (Un. Ex. 26) - November 8, 1976.

(d) Steadman letter to Waggoner (Un. Ex. 27) - November 15, 1976.

(e) Wilson Bailey letter to Blankenbaker (Un. Ex. 30) - December 7, 1976.

6. The Company Brief then reviews the Union Position. (Un. Ex. 35) and claims that even there, the Union fails to assert the Contract of practice violation with any specificity.

7. The Company Brief then states that Union's Counsel made an argument with regard to established past practice simply in the Company's opinion was simply Union Counsel's argument with no sufficient proof or foundation for establishing such alleged past practice.

8. Miscellaneous personal leaves of absence without pay are the issue in this

matter, not "Special" leaves, such as required for pregnancy, military duty, union business, emergencies, or other matters referred to at Art. XX, Sect. 79; 80(a), (b); 81(a), (b); and 82(b), (c), (d), and (e); (Master Agreement). Miscellaneous Personal Leaves of Absence, without pay, are provided for in Article 82(a) of the Master Agreement, and Articles 35 and 36 of the local contract. Personal leaves without pay, generally have been, (D) those taken as an extension of the Employee's last week of vacation, and (II) those taken after the Employee has returned from his last week of vacation, and not in conjunction therewith. (Emp.Br., p.4).

Employer's Brief then states (p.5), that: "Personal leaves of absence taken in conjunction with the last week of vacation ought not to be involved in this arbitration."

The Company Brief cites as a foundation for excluding such Leaves of Absence in conjunction with the last week of vacation, Mr. Steadman's letter of October 21, 1976, to Mr. Krier (Un. Ex. 24) and Mr. Hahn's letter of March 24, 1972, (Un. Ex. 8), and Mr. Steadman's letter of November 16, 1976, a third step grievance response to the three grievances at issue here (Un. Ex. 27).

9. Employer's Brief (p.5) then refers to Category II, Leaves of Absence (above) as follows:

"Personal leaves of absence taken after the Employee has returned to work from vacation are the subject of this arbitration. All three grievances are of this type." (Un. Ex. Nos. 4, 5 and 6)

Employer's Brief distinguishes such (Type II) Leaves (ahead of or after the vacation) from those taken in conjunction with the vacation (either before or after) and states, that the Union lumps the two types together, contending, "that Employees may always have such leaves if the ten percent rule set forth in the contract under Vacations (Article 39) is satisfied", (contrasting the confusion of the Union Position with the clarity of the Company Position stated in the correspondence).

Employer's Brief then recites Union Exhibit 32, a letter from Mr. Wilson Bailey to Mr. Krier, dated January 19, 1977, which states in part as follows:

"Miscellaneous personal leaves will also be granted when the plant is in a lay-off condition, i.e., when production requirements are such as to require a reduction in total plant workforce. Miscellaneous personal leaves of

absence cannot be granted when to do so would require hiring and training new employees. The Union's contention that leaves of absence must be granted to fill open spots in the vacation schedule to the 10% formula provided in Section 39 of the local agreement must be rejected, as there is no such contractual requirement for leaves of absence. (As you know Section 39 of the local agreement refers specifically to vacations.)"

10. The Company Brief then continues and cites the contract language which supports the Company position. That language includes the following:

(a) Article 82(a), Page 32, Master Agreement

(b) Articles 35 and 36 of the Sioux Falls Local Agreement, Page 69, 70

11. The heart of the Company argument for administratively refusing the requested leaves and for limiting the use as proposed in Mr. Steadman's September 30, 1976, letter is the language of Article 36 referring to the "orderly operation of the department" as a factor, together with or encompassed in, the number of employees scheduled for vacation in any given week or weeks, as the criteria for evaluating such leave requests. (Company Brief, p.6) The Company Brief states that the Article 39 language respecting a 10% limitation on vacations does not refer to leaves of absence and should not be read into the leave of absence criteria.

12. The Company Brief then goes on to contrast the actual contract language, as it views it, with the claimed past practices asserted by the Union. In support of its position that past practices can be considered applicable only when contract language is absent or is ambiguous or not understandable, the Company Brief (p.7) cites the case of Murphy Oil Company Co., 41 LA 206 (1963), as the clearest statement of a case similar to this one. Following is a quotation of Arbitrator Fred Witney's language in Murphy Oil as follows:

"Clear language must stand as the fundamental and the rock-bottom basis for contractual application." 41 LA at 209. (Citing at p. 210, other authorities consistent therewith.)

The Company's Brief, (p.8) states, the principle that:

"every leave of absence involves a discretionary grant, not (the) exercise of an absolute right by the employee."

Section 35 and 32(a) referring to Leaves of Absence uses the language, "may be granted". The Company Brief then argues that the language, "Leave of Ab-

sence will not be arbitrarily withheld" (Sect. 82(2), Sect. 86) does not abolish or prohibit the Employer's use of discretion in measuring the request against reasonable criteria (factors) for permitting a leave. Section 36 expressly recites that the factors are:

(a) The number of employees scheduled for vacations in any given week.

(b) The orderly operation of the department.

(c) "There will be factors in granting such leaves."

13. Another of the crucial arguments made by the Company with respect to the alleged agreement and past practice is the fact that operating conditions at the time the Hahn letters were issued are significantly different from this present time of summer and fall of 1976.

The Company was not hiring new employees at the time the Hahn letters were issued. But, in late summer, fall and early winter of 1976 the Company was hiring a large number of new employees. That difference in conditions permits the Company more discretion in the granting or refusal to grant leaves of absence. The Company Brief states (p.9, 10), that even though the Company had been traditionally lenient in granting personal leaves, the Company's future right was not waived or lost to be more restrictive and to establish new administrative criteria, under different operating conditions. The Company's decision to refuse Leaves of Absence, if to do so requires hiring new employees, is sound and in accord with all contract language.

14. As to the Union's argument that the Company attempted to change the leave of absence provisions in various negotiations for new contracts since 1964, and most specifically in the 1976 negotiations, and, therefore, the Company made a concession to the Union with respect to the Union's position on leaves of absence; the Company answers as follows:

(a) All such attempted negotiated changes were initiated by the Union asking for expanded leaves of absence rights.

(b) The Company uniformly responded with proposals of more restrictive language.

(c) The result was that there was no change in the leave of absence language in the contract.

In fact, the most significant aspect of attempted negotiated changes in leave of absence language was Mr. Krier's comment to Mr. Steadman during the 1976 negotiations that he (Mr. Krier) recognized that the Company had a problem

with the leave of absence program (Tr. 234, 11, 19-20 (Krier); Tr. 16 (Steadman)). The Company feels that the sum and substance of attempted negotiations changes in leave of absence language proves absolutely nothing in this matter.

15. The Company Brief (pp. 10-11) then recites the importance of economics and industrial practice on a policy of granting leaves of absence according to Union demands.

(a) The intent and purpose of Joint Exhibit 1 (labor agreement) is to "promote and improve the industrial and economic relationship between the Company and the Union" (Article II, P.3, at pp. 4-5)

(b) The Union's argument that the "preservation of local practices" clause, Article XXXIV of the Master Agreement, should not be considered as "raising local past practices to the level of expressed contract terms" (Company Brief, p.11)

16. Fringe benefits of all kinds amount to an approximate 50% cost factor (of the average weekly wage) in addition to the average weekly wage. (Tr. 41-42; Letter to Steadman from Arbitrator, 4/15/77). That fact, together with the extremely liberal vacation policies averaging four weeks per year per employee (Article XVIII, p. 27, Tr. 48-49) provide additional grounds for permitting the Employer to exercise its discretion regarding granting leaves of absence.

17. The Steadman letter of September 30, 1976, recites that:

"Personal leaves of absence will not be granted where it affects the Company's ability to operate and meet production requirements or where such leaves would necessitate the hiring or training of new employees as replacements."

This is the first instance in the Company's long history in Sioux Falls where it is hiring sizable numbers of new employees, due in large part to the granting of leaves of absence. The Union's only response to such economic factors is that they are not relevant here.

The Company Brief on Page 13 recites Murphy, supra, with respect to economic climate and economic conditions being an essential factor to be considered by the Employer's exercising discretionary power. In addition to general economic circumstances, the change of circumstances of new hires, (in this case no new hiring under the Hahn letters and extensive new hiring requirements behind the Steadman letter) by itself permits much greater discretion on the part of the Company.

Arbitrator Whitney writing in Murphy at 41 LA 210 states:

"Hence, the decision to abandon the previous policy was not based upon a Company whim, or motivated by a ruthless or arbitrary attitude. Instead, it was eliminated because of economic necessities and realities."

The above quote from Murphy applies perfectly to the facts involved in this instant matter.

18. The Company Brief (p.13) then urges a finding affirming the Company's decision to deny said three specific leaves of absence and the grievances resulting therefrom, and, in general, to find here for the Company. Following that declaration is the Company's proposed Findings of Fact.

19. The Company Brief, in conclusion, (p.15) states:

(1) It did not breach any term or condition of the collective bargaining agreement.

(2) The Union's demand for reimbursement of its costs, expenses and attorney's fees and time lost must be denied, due to the contract language requiring the parties to equally share the arbitration expenses, and further on the basis that the costs and expenses and "damages" so-to-speak, is significantly outside the jurisdiction of the arbitrator in matters of this kind.

B. Union Position.

1. The Union's Position is summarized and set forth quite specifically and adequately in the first two pages of its Post-Hearing Brief, as follows:

"1. The Union contends that the Company did breach the collective bargaining agreement in a substantial, material, and willful manner by unilaterally altering the established, agreed upon conditions, terms and provisions of the leaves of absence program; that this breach resulted in substantial detriment to employees wrongfully denied leaves of absence, and unless remedied, will continue to result in such detriment; that this breach was willful and in bad faith and has wrongfully caused the Union unnecessarily to expend substantial time and effort and incur substantial expenses in seeking to correct the violation.

2. The Union seeks a remedy, including: I. Retraction of the Company's changes in the leaves of absence program.

II. Reaffirmation of the established agreed upon leaves of absence program, including, *inter alia*, compliance with the March 24, 1972 agreement entered into by the parties, and ratified May 9, 1972.

III. Requirements that:

A. The Company grant requests for unpaid leaves of absence for periods of time contractually provided on the basis of length of continuous service (i) when the leave is to be taken in conjunction with and immediately following a paid vacation, and (ii) when the leave is to be

2. The Hahn letter of May 9, 1972, describes, in writing, the agreement reached by the parties at that time with respect to the scheduling of leaves of absence, both in conjunction with vacations and aside from vacations. The intent of the parties is expressed in that communication. Even if the language there is not totally crystal clear and inclusive, nevertheless a reading of the letter as a whole communication supports the Union's view in this grievance matter.

The history of Leaves of Absence prior to the May 9, 1972, Hahn letter is described in Footnote 3 of Union Brief (p.6) (previously recited).

3. The alleged, "administrative corrective action" which the Company took by Mr. Steadman's letter of September 30, 1976,

cannot, of course, either detract from the fact that it was a unilateral change in leave program or render proper such unilateral change, in spite of the Employer's "euphemistic characterization" of the change as "administrative".

4. One of the several significant unilateral changes made by the Company is its alleged power to postpone a review of requested Leaves of Absence until a week before the requested leave time, holding the leave request in abeyance until then. The decision will be granted or denied on the basis of the Company's then existing manpower requirements, and, in addition, ignoring seniority as a factor.

The effect of the Company delaying a decision until such time (a week prior to the requested time period) throws the plans of the Employee, making the request into turmoil and uncertainty and changes the past practice in this regard. Previously, such requests were ruled on at the time of the request, in accordance with seniority, and in accordance with open spots on the vacation and leave of absence schedule.

5. Another unilateral change of policy concerns leave requests made after the April 1st vacation scheduling deadline. These requests will be handled in the same fashion as above using the same criteria, even though open spots exist on the (vacation/leave of absence) schedule. The Company violation of past practice and agreed procedure is at least consistent, even if not defensible. Again, denials of the validly requested leave of absence will result if new hires are required. The Steadman policy and practice change is

clearly a breach of the established contract agreement and practice on both scores. The attempted justification, is without merit.

6. The Hahn letter of May 9, 1972, (resulting as it did from a grievance) sets forth the conditions by which leaves of absence will be evaluated, and is the primary statement of the parties' agreement and practice in that regard. The Preservation of Local Practices article of the Master Agreement (p.51, Art. XXXIV) obviously recognizes the validity of written communications between the parties ancillary to the Labor Agreement itself, which become part of the total Labor Agreement and binding upon both parties according to long established legal precedent which is so elemental and generally accepted that no citation of authority is required.

7. Considering the language of Sections 35 and 36 of the Local Agreement, wherein reference is made to leaves of absence, (a) "following vacations", and (b) "urging employees to take leaves in conjunction with vacations", (respectively), plus the language of the 1972 Hahn letter, referring to:

"Requests for leaves of absence in conjunction with vacations, or after vacations filed by April 1st, will be granted in line with seniority."

8. Mr. Krier's testimony was undisputed that all employees have previously (to Steadman's edit) had a right to a leave of absence either in conjunction with vacation or later. (At least since the issuance of the 1972 Hahn letter)

9. The only valid criteria for limiting leaves of absence is recited in the Hahn Agreement and the applicable contract language. (Secs. 35, 36 and 39, pp. 69, 70)

10. The procedure for requesting leaves of absence and vacations prior to April 1st and the granting of same depends upon seniority. Requests after April 1st are conditioned upon open periods in the vacation/leave of absence schedule, and the requirement that a vacation request takes priority over leaves of absence. [According to Mr. Krier's undisputed testimony, R. 46-47, 49-54, 142-145, 186-187, and 191-199; and Un.Ex.

18(a), (b) and (c), and 36, and also the Record, pp. 60-65, and 160-164.]

11. The language of Paragraph 39, on Page 70, of the agreement, together with the language of Par. 36 on Page 69, clearly establishes a criteria of permitting at least 10% of a department to be gone on vacation or leave of absence as a general rule, and more, if it does not, "impair the orderly operation of the department". The above contract language, plus the language of the Hahn letter of 1972, states with certainty the parties' intentions.

The phrase, "orderly operation of the department" was inserted in both Sections 36 and 39 in 1967. Until the Steadman letter of September 30, 1976, it was never used as a limiting factor. The 10% and beyond language (of Sect. 39) is also mutually agreed to contract language and was placed in the contract in 1967 also, and has been used as a criteria until Steadman's letter obviously contradicts Steadman's criteria.

The possibility of hiring new employees was a factor which certainly can be attributed to the parties (especially the Company) prior to agreeing to the 10% and beyond language of Paragraph 39 and the "orderly operation" phrase of Paragraph 36, both originating in 1967.

12. Even assuming, *arguendo* that an additional expense results from granting leaves of absence, this is a grievance arbitration matter, not an "interest" arbitration matter. Economic factors are not a justification for unilaterally changing established policy, and modifying an established beneficial condition. (In this regard, the Union Brief, p. 11, cites the cases of Ryder Truck Rental, Inc., 62 LA 1128; and Cushman & Sons, Inc., 37 LA 881, with respect to a "maintenance of benefits clause", and past practices.)

In Cushman, *Supra*, the Employer was ordered to pay the Union \$1500.00 as damages for discontinuing a practice of previously supplying free coffee.

13. The Company's Steadman policy, conditioning the granting of leaves of absence on hiring new employees, is specious for the reasons given by Operations Manager Steele in his testimony. He acknowledged that during any given week there are new employees somewhere in the plant, and numerous other factors affect efficiency and quality of production, not just hiring new employees.

14. The Company tried once before [by its directive from the personnel depart-

ment of March 21, 1976, (Un. Ex. 21c)] to limit leaves of absence in the same fashion as now. The resolution of that grievance (85-75) found the Company withdrawing its written directive. That decision came on a similar set of facts. The Company then, recognized the validity of the Hahn letter and retracted the use of criteria then identical to the "Steadman policy" here, emphasizing then in the strongest possible way (retraction) the validity of the Union position. The same result must occur here.

15. With respect to whether or not a prior resolution of a grievance has any precedent value, the Union refers to Mr. Krier's undisputed testimony that communications have been labeled, "on a no precedent basis", where appropriate, (R. 159-160, 207-208, and 240-241) and the parties have recognized that as controlling. No such condition has been attached to the 1975 problem, consequently, it is obviously of precedent value in this instant case, in full support of the Union position.

16. The history of recent contract negotiations wherein the Company attempted to change the leaves of absence practice and language and failed in so doing, also fully supports and argues eloquently for a finding in favor of the Union position here. Those contract negotiation instances included the following:

(a) 1973 negotiations; Company proposal made and withdrawn on August 30, 1973.

"All vacations should have preference over leaves of absence in arranging vacation schedules." (Un. Ex. 19, par-5)

(b) 1976 negotiations; Company proposal of September 10, 1976, (Un. Ex. 23). There were no changes in the leave of absence contract language or practice resulting from the 1976 negotiations. Both parties stipulated to that fact, which is reflected in the record. (Page 235, Volume I, and Pages 12 and 13, Volume II)

It would be a travesty to permit the Employer to gain a favorable result here, where it has imposed a unilateral condition outside the bargaining process, in the face of its attempted negotiated changes which failed.

17. Union Exhibit 37 contains attempts by the Union in Paragraphs 77, 78, 79, 83, 84 and 85, to gain improvement changes in the leave of absence benefit. Company Exhibit 1 contains the 1976 Union chain demands, particularly proposed changes in Paragraphs 35 and 36 of the local agreement. No adverse in-

ference can be concluded here against the Union's position due to such benefit improvement proposals, (all of which also failed, resulting in no change pro or con in the LOA practices or language).

18. This willful, bad faith violation by the Company ought to result in extraordinary remedies in favor of the Union as described on Pages 2 and 3 of the Union's Brief.

(a) Mr. Steadman's letter of September 30, 1976, changing LOA conditions unilaterally, was issued barely two weeks after negotiations between the parties had been concluded without any negotiated legal change of language.

(b) Mr. Steadman, in his testimony, (Vol. II, pp. 15-17) admitted, "we had been unsuccessful in resolving that issue (LOA's) with the Union."

Nevertheless, he issued his infamous September 30, 1976 letter on the subject. His breach of good faith, therefore, was blatant and willful, and constituted utter and total bad faith. (Un. Brief, p. 19)

(c) The Company has obviously undermined the clearly established vacation leave program to the detriment of many employees.

(d) The Union seeks monetary compensation and reimbursement for its costs and extension as described on Pages 2 and 3 of this brief. However, the Union, according to the testimony of Mr. Krier, (R. Vol. II, p. 238), withdraws its demand for reimbursement of arbitration expenses, agreeing that the expenses of the arbitrator, the transcript, and the hearing room rental should be split as required by contract language (Page 36, Paragraph 86)

(e) An Arbitrator like a District Court, has power to base an award for damages on equitable considerations and, also, to fashion an appropriate remedy as suggested here by the Union for purposes of enforcing contract rights. The Union, in that regard, cites *Fortez Mig. Co.*, 67 LA 934, p. 939; and *Alyeska Pipe Line v. Wilderness Society*, 95 S.Ct. 1612. 10 FEP Cases 826; where attorney's fees were awarded.

(f) Union Brief (P. 22) urges that "the Company be liable for the damages it caused the Union as a direct result of the Company's contract breach and pursuit of the matter this far. Such award should include the Union representative's lost-time salary or wages and expenses and attorney fees and expenses."

See *Sunshine Convalescent Hosp.*, 62 LA 276, where attorney's fees were awarded; and *California & Hawaiian Sugar Co.*, 59 LA 166, where the arbitrator awarded monetary damages, including attorney's fees in a similar bad faith situation.

Discussion and Analysis

There are at least two major issues to be dealt with here, as follows:

(a) Is the issue Mr. Steadman's letter? or Is it the three grievances of the individual employees?

(b) If the Union prevails, should the remedy be as requested by Union's Counsel in his Brief, or parts thereof, or should the remedy be limited to a finding with respect to the leave of absence language of the contract and the past practice of the parties?

With respect to the nature of the issue, I refer to the quite general language of the Grievance and Arbitration Provisions of the contract, particularly, the Master Agreement language, on pages 35 and 36, under the title, "Grievance Procedure", Article XXI, and, also, the grievance procedure of the local agreements section of the contract, beginning on Page 68. The only conditioning language regarding the arbitrator's authority is on Page 36, Paragraph 86, of the Master Agreement which states:

"In making such decision, the arbitrator shall be bound and governed by the provisions of this Agreement and of the applicable local agreement or agreements at the plants in which the grievance arose, and shall be restricted to the application of said agreements to the facts relevant to the grievance."

Similar language is found at pp. 79-80 of the local agreement under P. 67, wherein it states:

"Fifth. . . . In making said decision, the arbitrator shall be bound and governed by the provisions of the contract and restricted to its application to the facts presented to him involved in the grievance. . . . Neither phrase is particularly limiting upon the arbitrator after the fashion of some contracts which describe limitations in terms of his being unable to add to, subtract from, or modify the existing language of the agreement. I conclude and feel bound by the usual restrictions upon an arbitrator's authority, even though no such specific language is found in this contract. Stating that principle, nevertheless, leaves the arbitrator here ample room to fashion a judgment.

As to the issue, I find that Mr. Steadman's letter is the issue in this arbitration with the three specific grievances being adjunctive specific illustrations. My reasons for so finding are that there was ample communication (correspondence) between the parties beginning with Mr. Steadman's letter, and including Mr. Krier's reply and subsequent letters between the parties during the remainder

of 1976, culminating in Mr. Wilson Bailey's letter, to clearly establish that Mr. Steadman's September 30, 1976 letter on leaves of absence is the basis for the "Grievance" which was processed through arbitration here.

The language of the grievance procedure contemplates the broadest possible definition of a grievance. No restrictions appear in either section of the contract. Only the word, "Grievance", is used. No definition appears anywhere in the contract. If there were language in any manner stating that a grievance is a protest of a wrong suffered by some individual employee, in writing, signed by said individual employee, then I would very likely be compelled to agree with the Company view. In the absence of such language, and in the context of the facts, there is no question that Mr. Steadman's letter is the problem addressed by Mr. Krieger. In sufficiently clear, protest language. The processing of the matter likewise made Mr. Steadman's letter the primary issue, in fact, conceded to be by both parties as a result of the written and verbal discussions of the subject.

Mr. Steadman's letter of September 30, 1976 commences, referring to the Company,

"... encountering difficulties under the leave of absence provisions of the contract which we must take immediate steps to correct."

The following four paragraphs recite the number of employees (in parentheses) on leaves of absence during each week starting with September 13, 1976, (32), and including the following weeks of September 20, (38), September 27, (36), and October 4 (44). Mr. Steadman emphasized that each of those weeks required the hiring of new employees to the extent of 15, 21, and 7 (respectively) in addition to adjusting to the approved LOA's. The number of new hires for the week of October 4th, was not yet known on September 30th, the date of Mr. Steadman's letter. Mr. Steadman neglected to state the number of employees on vacation in each of the weeks. I assume the number on vacation may also have some effect on new hires.

In each case the new employees hired were described as, "inexperienced hourly employees". Mr. Steadman's letter of September 30th then states that LOA's will not be granted

... where it affects the Company's ability to operate and meet production requirements, or where such leaves would necessitate the

hiring or training of new employees as replacements."

The final paragraph of his letter states that emergency leaves will continue to be granted.

There is no reference in Mr. Steadman's letter acknowledging that the 10% limitation of vacations (and LOA's) found specifically under the vacation language of the contract at Section 39 on Page 70 applies. It seems to me that part of the contract language is certainly crucial in terms of Mr. Steadman's attempted restrictions imposed upon leaves of absence. The practice, acknowledged by the Company, (Mr. Hahn's letter of 1972) is that leaves of absence and vacations are scheduled together on the same schedule, referred to as a "vacation" schedule, even though each activity is a separate kind of activity and is treated somewhat differently in some respects, but is also treated similarly in other respects of contract language administration. The administration of vacations and LOA's attempts to specifically hold vacations, at least, within the ten percent limitation described in the contract for each department and obviously contemplates LOA's in addition to vacations, according to the argument of the Company's counsel. (Brief, p. 7) The final sentence of Section 39, on page 70, states as follows:

"All departments will go beyond the 10% in scheduling vacations, if it can be done without impairing the orderly operation of the department."

The above language is under the contract heading of VACATIONS as emphasized by the Employer's Brief, Page 7. The same reference to, "orderly operation of the department", occurs in Section 36 on Page 29 and 70, under the heading, LEAVES OF ABSENCE. The factors of, (a) orderly operation of the "department", and (b) the number of employees scheduled for vacations are to be considered in whether or not leaves of absence will be granted. (Section 36) However, the first clause of the same sentence imposing the above conditions states:

"Leaves of absence without pay will not be arbitrarily withheld."

Mr. Steadman's September 30th letter changing the practice did not even consider the language of the contract on these matters, an extremely serious oversight. Instead, Steadman's edict attempted to switch from the prescribed contract language as the limiting factors to a totally new condition basing the

granting of leaves of absence on whether or not the Company is required to hire additional employees. Hiring any new employees appears to be grounds for denying such leaves, in Mr. Steadman's view.

He, apparently, uses "new hires" synonymously with "orderly operation of the department" as a legitimate contract condition for disapproving requested LOA's. It is my specific finding that in so doing Mr. Steadman takes liberties with the contract language and puts into the contract words and, therefore, conditions which do not otherwise exist. He has no right to unilaterally do so.

It is not at all convincing to me that new hires, even to a minor extent such as his own reference to seven new hires in the week of September 27, 1976, is, in fact, the kind of extraordinary circumstance which permits him to impose a condition of prohibition upon leaves of absence. Apparently, Mr. Steadman might impose such a prohibition if only one new hire were to be put on the payroll. The fact is, Mr. Steadman's letter of September 30th plainly does not state an appropriate and permissible rationale for the conditions which he there imposes. Mr. Steadman's letter then is, per se, arbitrary, and contrary to the language of that part of Section 36, LEAVES OF ABSENCE, on Page 69 of the contract which states specifically that, "leaves of absence without pay will not be arbitrarily withheld. . . ." He did, in fact, arbitrarily withhold the leaves of absence in the case of these three grievants following the unwarranted and contractually illegal terms of his September 30, 1976 statement of policy.

The phrase, "orderly operation of the department" is, obviously, a part of the contract language in both Section 36, the LEAVES OF ABSENCE provisions and in the VACATION language, (Section 39). As such it is entitled to an attribution of some kind or sort of meaning. It does not give the Employer, Carte Blanche, however, to assert any kind of meaning to the term which it so wishes. The Company made no attempt, particularly in view of the 10% limitation, (which I believe is applicable both to LOA's and vacations) to demonstrate that any certain number of absences, leaves of absence, vacations, or a combination of both, or absences for sickness, (which may also require new hires) or for other unavoidable reasons, may reach any sort of cut-off point which reasonably triggers the in-

voicing of the policy to refuse new requests for LOA's. A Company rule or policy to be reasonable must be predicated on a reasonable standard.

There was no proof on the Company's part that the sausage cooler department, which is where all three of these grievants work, had excessive amounts of people away from the job either on vacations or leaves of absence at the time the requests were to be permitted. No mention was made by the Company of the application of the 10% rule to a department of 260 employees (25 may be out). Consequently, the Company failed to meet its burden of proof, that its imposition of new conditions is appropriate and reasonable under the established contract language. I find, therefore, that with respect to the "orderly operation of the department", the Company failed to make a case, by establishing a reasonable meaning for the term, especially in view of the other contract language.

Another aspect of the Company's argument is that fringe benefit costs continue for those employees on leaves of absence and presumably those employees on vacations. Testimony at the hearing stated that fringe benefit costs added 50% to actual wage rates. That was the only statement of testimony on that subject, however. There was no fleshing out of the arguments and no proof by which fringe benefit costs actually did, in fact, continue, when unpaid leaves of absence were granted. I am certainly unaware of the financial impact of fringe benefits with respect to the granting of leaves of absence (without pay). I believe that the company on that aspect of the matter also failed to make its case if it had one.

This plant has over 3000 total employees and approximately 2700 bargaining unit employees. There is no question that in a plant of this size there is obviously a certain amount of turnover and a certain amount of absenteeism for a variety of reasons. Where there is no shut-down period for vacations, and employees take vacations during the entire year, every (or any) department might require staffing adjustments at any given time, to some degree at least. That is not an extraordinary condition. It is a plain fact of operating the business.

The Company obviously must have contemplated replacing employees who leave its employment and obviously must have contemplated hiring a sufficient number of fill-in's for those on vacations.

The same considerations must also be attributable to Leaves of Absence, at least considering the 10% requirement stated in the contract. The Union argument (which is valid, in my opinion) is that both vacations and leaves of absence were handled under the 10% limit figure, according to past practice, and according to the 1972 Hahn Agreement. I do not agree with the statement on Page 7 of the Company's Brief that we have here a conflict between practice and so-called, "clear language" of the contract. The language is clear to an extent, but is also unclear on many issues. The exchange of correspondence and the practice of the parties in the past are legitimate explanations of and additions to express contract language for determining this issue and others like it.

I find that in all significant respects concerning the meaning of the practice and various elements of agreed language the arguments of the Union prevail over the arguments of the Employer.

Another factor which is significant in the total arena of this dispute is that Mr. E. T. Steadman, the Corporate Labor Relations Director for the Employer, is a thoroughly experienced professional with many years on the firing line. Mr. Steadman graduated from the University of Liverpool, and, was first employed with British Leyland Industries as a Management Trainee. He later went with Ford Motor Company as a Manager of Industrial Relations. He was Vice-President of Industrial Relations for United States Industries at Chicago, Illinois. He also worked as a Representative for Labor Relations Matters for a time and tool company at Wayne, Michigan. From 1973 to 1975, Mr. Steadman was the Corporate Director of Industrial Relations for Gateway Industries at Chicago, Illinois. After joining John Morrell, September of 1975, as Director of Personnel Relations at the Sioux Falls Plant, Mr. Steadman later became the Corporate Labor Relations Director for John Morrell and Co.

In addition to his management experience, Mr. Steadman spent five years with the United Auto Workers Union, (1960 to 1965) as a Vice-President of Local Union 157, Detroit, Michigan. The credentials and experiences which Mr. Steadman possesses make him a thoroughly experienced and sophisticated practitioner of Labor Relations arts, particularly from the employer's point of view, but not

without five years of comprehensive representation of wage workers, also. A very significant factor in my opinion, where we have a well-educated individual of obvious intelligence and negotiating skills, and an extensive background of heavy experience in Labor Relations, it is simply not within the realm of reality to hold him to anything but a high level of knowledge and insight into the factors of this dispute. Mr. Steadman obviously knew very well what he was attempting to do, that is, re-write the contract in his own fashion and manner, notwithstanding the requirement to bargain with the Union, and not withstanding the existing contract language.

The demand by the Union for punitive or exemplary damages here is entirely appropriate.

Before getting to an examination of those factors, however, permit me to make reference to the case of John Morrell & Company, H. H. Meyer Packing Co., Division and Meat Cutters' Local No. 7, FMCS Case No. 76K/17014, decided June 15, 1976, by Arbitrator Theodore K. High, reported at 66 LA 1116. That case was decided in favor of the Company on an issue of an alleged local agreement versus the national agreement, where Arbitrator High found that:

"(1) Memorandum of agreement between employer and international union purports to bind both international and local union and is controlling; (2) there is no evidence of any negotiations between parties locally over terms of denial, and optical professional union understood that international union was bargaining on its behalf in dental and optical benefits area."

The conclusion reached by Arbitrator High is the converse of the situation presented here. Arbitrator High concluded there:

"... that it was not the parties' intention to bargain locally over the terms of the dental and optical benefits, but, rather, the parties intended that this question be settled as part of the Master Agreement and that the parties locally would be bound thereby."

The parallel between the High case and this instant matter is a mirror reflection of a converse decision. Here the parties not only had local language which described the conditions but had a local past practice which added to the express contract language. The High Case is primarily important because it illustrates that the Company is not unaware of the problems of maintaining local practices.

Fundamental cases and principles with respect to past practices are fully discussed in Elkouri, "How Arbitration Works", BNA, 1973, and in numerous arbitration decisions. Nevertheless, for illustration, consider the significant case of Oconomowoc Canning Co. and IBA Local No. 695, (Wisconsin), FMCS Case No. 76K/10675, 68 LA 584, decided April 7, 1977, by Arbitrator Robert J. Mueller. The discussion of Arbitrator Mueller extensively reviews the basis for past practice determinations. This case, like the High Case, produced a decision favorable to the Employer. But, also, like the High Case presented a number of similarities which when viewed in the context of the facts of our instant case compel a contrary decision here. The discussion of past practices and the effect of a maintenance of conditions clause makes Arbitrator Mueller's decision interesting here. Oconomowoc Canning Co. could have been used by John Morrell here as precedent with respect to its "change of conditions" argument, but was not, obviously due to the timing problems, (the April 7, 1977 publishing date came after the Employer's Brief here.)

One or two other interesting cases ought to be mentioned in view of the potential punitive remedies suggested here. Those cases are: Kimberly-Clark Corp. and Paper Workers, Local 672, FMCS Case No. 73K/10421, decided October 24, 1973, by Arbitrator Gerry L. Fellman, reported at 61 LA 1094, which discusses unique remedies in the context of overtime equalization.

For a case contrary to imposing unique remedies, I suggest, Montgomery County Community Action Agency (Dayton, Ohio) and an individual employee grievant, decided July 11, 1974, by the respected arbitrator, Harry J. Dworkin, 62 LA 1278. Arbitrator Dworkin set forth some reasons why attorney's fees and other remedies should not be granted. There are exceptions here, however, to Arbitrator Dworkin's reasoning, in my view.

For a case contrary to that of Arbitrator Dworkin respecting fees and costs, see Sioux Tools, Inc. and IAM District Lodge 163, FMCS Case No. 73K/02916, decided October 26, 1973, by Arbitrator Duane L. Traynor, 61 LA 1076, wherein Arbitrator Traynor required that the employer pay 75% of the cost of the arbitration and that the Union pay the remaining 25%.

The Sioux Tools Case illustrates that an arbitrator may fashion an appropriate, unique remedy, where the contract language and the facts permit.

Having so found as to the issue, the facts and the arguments of the parties require a finding that Mr. Steadman's letter did unilaterally impose new conditions with respect to evaluating and denying requests for leaves of absence. The principal new condition - hiring new employees - is not in the Hahn letter, nor is it in the contract language, or in the practice of the parties, until Mr. Steadman's letter of September 30, 1976. That action by Mr. Steadman is by definition of terms, obviously an illegal unilateral introduction of conditions not mutually bargained between the parties and consequently a distortion of the existing mutual agreements and practices respecting Leaves of Absence.

The rationale of the Employer arguing, "changed conditions" as a basis for making new policy, as here, is a valid argument in certain circumstances, but this set of facts is not an appropriate situation for unilateral revision of an established practice resulting, in fact, from established language both in the contract and in an exchange of correspondence supplemental to the contract language. It is axiomatic that changes in matters which are within the parameters of bargaining cannot be changed unilaterally, but must be changed by mutual agreement. That rule is so basic that no citations are really necessary to illustrate authority.

The recent negotiations between the parties admittedly contained proposals by both parties to modify the Leave of Absence language of the contract and to modify the language of the "Hahn" letters and the prior past practice of the parties. It was stipulated at the hearing that those efforts resulted in no change either way to the existing contract language and to the corresponding understandings and practices. Consequently, I agree fully with the arguments of the Union, that Mr. Steadman's September 30, 1976, attempt to unilaterally change the conditions by which leaves of absence would be measured and granted, is without any question a willful and unique attempt to re-write the conditions unilaterally. I further find that such attempt on Mr. Steadman's part does, in fact, constitute bad faith as charged by the Union.

I do, therefore, here order that the Company rescind and renounce, particularly, the Steadman letter of September 30, 1976, but in addition, its other attempts earlier to unilaterally re-write the leave of absence conditions.

I hereby find and order that the Leaves Program shall be administered now, and in the future, according to the language of the present contract, supplemented by the Hahn Memorandum and the mutually understood past practice of the parties which existed prior to Mr. Steadman's September 30th distortion.

With respect to the unique remedies demanded by the Union, I do take note that in Note 14 to the Union's Brief on Page 21 of the Brief, the demand that the Employer be required to pay for the expenses of arbitration was withdrawn due to the fact that the contract language required that the parties share such expenses.

With respect to the other unique remedies demanded by the Union to include:

(a) The Union Representative's lost time and salary or wages, and expenses and attorney's fees and expenses [following Fortex Mfg. Co., 67 LA 934, p. 939 (Brief, p. 22); and referring to the cases of Alyeska Pipe Line v. Wilderness Society, 96 S.Ct. 1612, 10 FEP Cases 826; Sunshine Convalescent Hosp., 62 LA 276; California & Hawaiian Sugar Co., 59 LA 165,] and

(b) the remedies sought in the Union's Position statement on pp. 2 and 3 of the Brief; (set forth previously) An examination of such request is necessary.

I have already in this decision, immediately above, agreed with the Union's demanded remedy stated at Point 2, II, and now consider the other specific demands of Point 2, III, IV and V.

Before attempting to decide each of the remedy issues raised by the Union in its Brief, it is appropriate to observe that arbitrators do, in fact, have a unique power to fashion remedies. See the discussion in Practice and Procedure in Labor Arbitration, by Owen Fairweather, BNA, 1973, in Chapter XIV, titled, Remedies, page 277, wherein Mr. Fairweather extensively discusses the various kinds of remedial problems and sets forth as guidance excerpts from Court cases, arbitration decisions, and also from the AAA Rules on the subject, and other writings as appropriate authority. I refer particularly, to Footnote 10, p. 278, which states: (quoting the United States Supreme Court):

"It is apparent that in order to carry out the Congressional policy in favor of the arbitrability of labor disputes, arbitrators must be vested with broad power to fashion appropriate remedies in the cases before them. The need for such broad power has generally been recognized by the federal courts which have usually held that in the absence of restrictive language in a collective bargaining agreement the arbitrator has power to fashion a remedy appropriate to the case before him."

which quotation is, apparently, an excerpt from "Report of the Sixteenth Annual New York University Conference on Labor," pp. 275-276." (M.Kahn Ed. 1957), reported by Dannel under the specific heading, "Norris-LaGuardia and Injunctions in Labor Arbitration Cases". Other authority for the same general principle is also cited there including Law Review articles, a Labor Law Journal article, and the Arbitration Journal. Next immediately following is a reference to the case of Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 46 LRRM 2423 (1960), one of the Steelworkers' Trilogy cases, where the United States Supreme Court, commenting upon Section 301 lawsuits states that an arbitrator has powers to formulate remedies that are compatible with National Labor Policy.

"When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. (Italics provided) There the need is for flexibility in meeting a wide variety of situations. The draftsman may never have thought of what specific remedy should be awarded to meet a particular contingency." (Fairweather, supra, 279, 46 LRRM at 2425, Italics Emphasis added by Fairweather) Suffice it to say that an arbitrator does have a unique authority to fashion a remedy in spite of the fact that Fairweather, supra, points out later in his chapter on Remedies and Penalties, that "Arbitrators have generally been unwilling to award punitive or exemplary damages." (Page 303) For a general rule on the subject, Fairweather cites and quotes the well-known Arbitrator, Peter Seitz, writing in Publishers' Assn. of New York City, 37 LA 509, (Seitz, 1961), *id.* at 519-20, as follows:

"When and where punitive damages are awarded, I assume that the award would be based on the theory (a) of pure punishment (of the eye for an eye and a tooth for a tooth variety) or (b) of providing a deterrent to future similar insupportable conduct. I have never con-

sidered previously that retaliation was part of the arsenal of remedies normally available to an arbitrator and am unprepared, at this time, to grasp in my hand and to wield unflinchingly the avenging sword. It seems to me (although I am open to conviction to the contrary) that such blood-letting and sword-wielding might better be done in other tribunals and authorities than by arbitrators."

Following those comments, Fairweather, supra, reports (on Page 305, and following), some interesting cases which are closely parallel to our instant situation. Two cases involved Bethlehem Steel Co., reported at 31 LA 857, 858, by Arbitrator Ralph Seward, 1958, and at 37 LA 821, 824, by Arbitrator Rolf Valtin, 1961, involving a vacation pay dispute where the Union demanded additional vacation pay for the employees affected parallel to our demand here by the Union's Position (Brief, Page 3; Item 2, IV, A and B,) wherein the Union here requests that the Company be required to grant Leaves of Absence in excess of those normally available, preceding the individual's vacation period. In the Bethlehem Steel cases, Arbitrator Rolf Valtin ultimately granted double vacation pay following a warning issued earlier by Arbitrator Ralph Seward, (same facts) respecting the employer's violation by forcing vacations earlier than regularly scheduled. Arbitrator Seward had previously denied the double vacation pay remedy because he could not establish a "monetary value" for the grievants, "mental discomfort".

At the bottom of Page 305, Fairweather, supra, cited the case of Sidney Wanzer & Sons v. Milk Drivers Union, Local 753, reported at 249 F.Supp. 664, 671, 61 LRRM 2376, 2381 (N.D. Ill. 1966), and a similar line of cases, cited in the Wanzer decision. The Court in Wanzer refused to dismiss a claim for punitive or exemplary damages and in so doing observed that:

"Where the award is a uniquely effective device for changing a specific pattern of illegal conduct by a party before the court, it comes within the remedial purpose of the labor laws, even though the defendant may suffer as if he had been 'punished' for other reasons."

The Court in Wanzer also cautioned that: "Such an award is extraordinary and should be reserved for those labor-management situations which cannot be pacified by other remedies." (249 F.Supp. at 671, 61 LRRM at 2381). The Court in Wanzer did not rule on the facts, referring the case back to the trial court for that determination, but did note

that punitive damages are permissible under Section 301 of the Taft-Hartley Act. The Court in Wanzer also cited, (Note 5, Page 671, 61 LRRM at 2381) other cases supporting the view that:

"Although exemplary, (punitive) damages are usually tied to conduct that is characterized as 'willful' or 'outrageous'. Courts have long recognized that they may also be awarded for purposes of deterring."

Contrary to permitting punitive or exemplary damages, Federal Labor Law generally prefers to "supply remedies rather than punishments"; quoting Chief Judge Biggs, writing in United Shoe Workers of America, AFL-CIO, v. Brooks Shoe Mfg. Co., 298 F.2d 277, 49 LRRM 2346 (Third Circuit 1962).

All of the above references, together with the facts of this situation, not only permit, but compel that the employer here be required to suffer some reasonable penalties which hopefully have the effect of deterring him from exercising authority arbitrarily in the future.

I agree with the theory and rationale of the "obey and grieve rule", however, I hasten to observe that employers who put themselves in the position of unilaterally establishing extra-contractual, unreasonable, or arbitrary "administrative policies" as substitutes for agreed and settled language or practices and avoid or refuse to bargain with the Union on such matters, leave penalties as the only possible and appropriate pressure on their actions. As in this case, unless some penalty is imposed the employer breaks the bargaining and administration rules and suffers not one whit.

As appropriate exemplary damages, then, I find that this employer must pay to each of the three individual grievants named in this discussion, that amount of wages (earnings) which each would have given up due to their reasonable, requested unpaid leaves of absence denied them. The quid pro quo here, in my opinion, is that if these employees were willing to give up such earnings, the employer should suffer a penalty in like kind and amount for changing the policy arbitrarily and unilaterally, and denying those three individuals their contract rights.

I also herewith find that the statement of the Union's position on pages 2 and 3 of its Brief, particularly those conditions described under III, as requirements, are an accurate reflection of the past practice of the parties in this matter.

As to IV, (demanded compensation to the Union for its costs and expenses), I herewith order, that, excluding all direct arbitration costs agreed to by the parties in the arbitration procedure language of the contract; nevertheless, the Employer shall be liable to reimburse the Union for its costs and attorney's fees and expenses limited to my total billing to the parties, (which they will split, each pay one-half (1/2) of) or, the total costs (fees and expenses) of Mr. Wolfe's charges to the Employer for handling this case to receipt of this decision, whichever amount is the lesser.

CAHOKIA DOWNS, INC. —

Decision of Arbitrator

In re CAHOKIA DOWNS, INC. (East St. Louis, Ill.) and PARL-MUTUEL EMPLOYEES LOCAL 624, SERVICE EMPLOYEES INTERNATIONAL UNION, FMCS Case No. 77K11105, August 18, 1977

Arbitrator: S. Benton Davis, selected by parties in accordance with procedures of Federal Mediation & Conciliation Service

HOLIDAYS

—Premium pay — Veterans' Day — Federal or state holiday ▶ 115.71

Race track employees who worked on November 11, 1976, are entitled to premium pay for day under contract requiring payment of double-time for work on holidays and specifying Veterans' Day as holiday, despite employer's contention that Veterans' Day properly is observed under federal law on fourth Monday in October, where state in which employer is located celebrated Veterans' Day on November 11. (1) Precedent under prior agreements has no bearing on case; (2) race track, which is governed by state racing commission, is subject to holidays celebrated by state unless specific exemption is provided in contract

VETERANS' DAY

Preliminary

DAVIS, Arbitrator. — The Employer Representative presented a background

memorandum which was examined and agreed to by the Union Representative. This memorandum is quoted in part as follows:

"There are two thoroughbred racing operations in Southern Illinois. Both are located in the Metropolitan St. Louis area, on the East side. One is Fairmount Park, party to the bargaining Agreement herein, but not involved directly in the dispute. The other, thoroughbred racing plant is Cahokia Downs, a Delaware Corporation, one of the parties to the dispute.

.....
 "The members of Local 624, party to this dispute, sell wagering tickets on the competing horses. The 'Union Agreement' involved here is a determination of the condition of the employment by the Racetrack, of the pari-mutuel employees.

"It covers the work and operations of the Pari-Mutuel Department at the tracks. Part of that agreement is the definition of 'legal holidays' in Article V, Section G(2). That is the focus of our dispute here.

"The racing industry is closely regulated in Illinois. This is because it provides millions in revenue. As thus affected with the public interest, it has been closely watched by the Illinois Racing Board. The Board grants licenses annually to each of the tracks in Southern Illinois, above referred to, and sets those dates upon which racing will be held.

"The dates for racing that are granted specifically set out which holidays are racing days, and which are not. These dates are granted upon application by the licensee, or race tracks here. If the licensee, such as Cahokia Downs, determines that it ought to remain dark on certain dates, that is, to not race, then it so states in the application.

"The parties stipulate that all timely provisions of the Agreement have been complied with and that the issue is arbitrable.

Issue

The parties ask the Arbitrator to interpret Article V, Section G of the Agreement to determine whether employees subject to the Agreement should have been paid double time on Veterans' Day, November 11, 1976.

Contract Provision

The parties cite Section G and G2 of Article V of the Agreement:
 G. Employment on Sundays & Legal Holidays — Double Time: All Employees covered by this contract who work during running racing meetings on Sundays or Legal Holidays which may occur during the racing

meet, whether they fall on the dates assigned and/or celebrated on another day, shall be paid at the rate of double time for base pay of nine (9) races or less; also double time at the rate of pay specified in the contract for additional races after nine (9) races per day, and in addition, shall be paid double time for any extra assignment of Employees, i.e. selling daily doubles, cashing daily doubles, etc.

G.2. Legal Holidays shall be defined as New Years Day, Washington's Birthday, Lincoln's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day.

The Arbitrator in reaching his decision also utilized in addition the following provision of the Agreement:

ARTICLE IX: Scope and Terms of This Contract

This Agreement contains all the covenants, stipulations, and revisions agreed upon by the parties hereto, and no representative of either party has authority to make and none of the parties shall be bound by, any statement, representation or agreement reached prior to the signing of this Agreement or made during negotiations not set forth herein.

It is distinctly understood and agreed that all previous Agreements, whether oral or written, by and between the Employer and the Union are superseded by this Agreement.

Facts Established During This Hearing

1. Cahokia Downs, Inc. is a party to the Union Agreement with Pari-Mutuel Employees Local 624 of the Service Employees International Union. Other parties to the Agreement are: Fairmount Park Jockey Club, Inc. Southern Illinois Trotting Association, Inc. Mississippi Valley Trotting Association, Inc.

2. Cahokia Downs Inc. is subject to the jurisdiction and regulation of the Illinois Racing Commission.

3. The Track has complete autonomy in applying for racing dates, i.e. the Union cannot suggest or demand application for certain dates.

4. Dark days are days when no racing takes place. Monday is usually a dark day.

5. The Union notified the Employer by Mailgram confirming its position on 11/11/76.

This is a confirmation copy of a previously phone-delivered telegram. Members of Local 624 will be available for work November 11, 1976 Veterans Day the legal holiday as celebrated in the state of Illinois. Compliance with the terms of our contract is expected.

John Barger President, Local 624 Pari-mutuel Employees 7111 Sharon Belleville IL 62223.

Position of Employer

The Employer takes the position that Veterans' Day, as well as certain other holidays, has two observances in Illinois. One, that of the Federal Government and two, that of the State of Illinois.

Since this grievance revolves around Veterans' Day, which is observed by the Federal Government as the fourth Monday in October and by the State of Illinois on November 11, the Employer contends that the dispute should be settled on the basis of past practice. This past practice, as cited by the Employer, is that

In 1972 the Union took the October holiday as the legal holiday. That is to say, the members of Local 624 worked November 11th at regular pay.

The Employer states that the Holiday Double Pay provision of the 1972-73 contract and the current 1974-76 Agreement are the same and the Union should be held to the same administration in 1976 as in 1972.

The Employer further states: In the past, the Union has indicated that it was interpreting "legal holiday" and Veterans' Day to be the federally observed fourth Monday in October. They ought not, at this time, be allowed to vary the custom and practice they have adopted.

The Employer contends that had he known of the Union position on November 11 as Veterans' Day the Employer would have filed for a dark day on November 11, and that furthermore:

The Management would have cancelled racing on November 11, 1976, if it had known that the legal holiday rate of pay would have been in effect.

The Track normally does not run on Mondays unless it is a legal holiday. Such days as Labor Day, Fourth of July, or Memorial Day are run, but Columbus Day or Veterans' Day, as designated by the Federal Government, are dark days. This variation is due to the larger crowds in warmer weather and therefore a larger mutual handle and more revenue for the Track. The Employer contends that paying double time for Veterans' Day, November 11, 1976, would have resulted in a loss to the Employer.

The Employer presented as Exhibit 3 a letter from Jack Weaver, General Manager of Cahokia Downs, to Jack Barger, President of Local No. 624, fortifying the Employer's position of celebrating the

PENNSYLVANIA NEW YORK CENTRAL TRANSPORTATION COMPANY

Se. Western

Engine or Train Service Claim for Compensation Pursuant to Merger Protective Agreement

* Claim for Month of Feb, 1968.

(Fill out for each day. On days not worked show reasons therefor, i.e., rest day, vacation, holiday, sickness, job annulled, personal reasons, etc.)

C. DAILY RECORD OF WORK PERFORMED

Date	Terminal	Train No.	Crew or Job No.	Class of Service	Earnings	Date	Terminal	Train No.	Crew or Job No.	Class of Service	Earnings
1	JEFF	N88	1	Local	34.99	17	JEFF	N88	1	Local	
2	JEFF	N87	1	Local	52.48	18		Rest			
3		N88	1			19		N87	1	Local	52.67
4		Rest		Day		20		N88	1		
5		N87	1	Local	52.48	21		N87	1		
6		N88	1			22		N88	1		
7		N87	1			23		N87	1		
8		N88	1			24		N88	1		
9		N87	1			25		Rest			
10		N88	1			26		N87	1	Local	54.35
11		Rest		Day		27		N88	1		
12		N87	1	Local	52.64	28		N87	1		
13		N88	1			29		N88	1		
14		N87	1			30					
15		N88	1			31					
16		N87	1								
Earnings for 1st thru 16th					17	Earnings, 17th thru end of month					271.58
Earnings for 1st thru 16th						Earnings, 1st thru 16th					122.91
Total Earnings for Month (Enter at Item B(2))						Total Earnings for Month (Enter at Item B(2))					194.59

A. EMPLOYEE IDENTIFICATION

Name: T.M. Green Occupation: Industrial

Employe No.: 456356 Social Security Number: _____

RR Point to Receive Company Mail: Jeffersonville - Ind

Name of Prior Roster: _____ Roster Standing: _____

B. COMPENSATION EARNED - ADJUSTMENT CLAIMED

(1) Monthly Base Period Compensation Guarantee: \$ 798.85

(2) Total Earnings for Month: \$ 704.58

(3) ADJUSTMENT CLAIMED (Subtract B(2) from B(1)): \$ 95.07

(4) All Other Compensation Received From Company (M-2 Chargeable): \$ 184.98

(5) Number of Days this Month Applied for RR Unemployment Insurance: 22.36 \$ 162.62

I HEREBY CERTIFY THAT THIS INFORMATION IS TRUE AND CORRECT:

(Signature) T.M. Green

(Date) _____

* THIS FORM TO BE FILED WITHIN 60 DAYS FROM END OF MONTH FOR WHICH ADJUSTMENT IS CLAIMED

REMARKS: Back pay 22.36

I have never received a compensation statement. Earnings from the company. my record is N8-78-8 is on form-9999. I will find time to file.

PENN CENTRAL TRANSPORTATION COMPANY

Union Station
380 North High Street
Columbus, Ohio 43215

Name D. H. Bishop #635722

Date AUG 8 1972

Occupation F.N.R.

Prior Right Roster No. _____

Claim No. B-320-72

Location RIVERSIDE, O.

Social Security 310-12-0820

Dear Sir:

This refers to MPA-1 form submitted by you for the month of MARCH 1972 claiming 114.96 as adjustment due under the Merger Protective Agreement, which we have processed with the following result:

Amount of your protected rate (upgraded 11-1-70) — \$ 1126.38

Your total earnings and compensation for the month — \$ 951.79

REMARKS:

OFFSET OVER 14 HRS. \$42.47. 108391

The proper amount of adjustment due is \$ 174.34, and we have arranged for payment in Pay Period 86 (pay day AUG. 18 PAID). Any amount claimed in excess of this adjustment is hereby declined. In the event you received unemployment or sickness benefits from the Railroad Retirement Board during the month involved, the Retirement Board must recover such monies out of your guarantee payment (or out of your future earnings).

~~1291.88
48.79
1243.09
1083.91
58~~

~~1229.48
46.42
1183.06
1083.91
9915~~

Yours truly,

E. Gibson

E. Gibson
Superintendent-Labor Relations

PENN CENTRAL COMPANY

Division

Engine or Train Service Claim for Compensation Pursuant to Merger Protective Agreement

South West

19 72

Claim for Month of March

R-3 830-38

P-5-C 825.00

A. EMPLOYEE IDENTIFICATION

Name Bishop D.H. Occupation Engnr.
 Employee No. 635722 Social Security Number 310-2-0870
 Request to Receive Company Mail Reverse Binti. O
 Name of (PRR) _____ Roster Standing PE
 (NYC) 547

C. DAILY RECORD OF WORK PERFORMED

(Fill out for each day. On days not worked show reasons therefor, i.e., rest day, vacation, holiday, sickness, job annulled, personal reasons, etc.)

Date	Terminal No.	Train Crew or Job No.	Class of Service	Earnings
1	<u>BINTI</u>	<u>P-5-C</u>	<u>Yd.</u>	<u>42.22</u>
2	<u>"</u>	<u>S-5-C</u>	<u>"</u>	<u>42.22</u>
3	<u>off day</u>			
4	<u>off day</u>			
5	<u>"</u>	<u>P-5-B</u>	<u>"</u>	<u>42.22</u>
6	<u>"</u>	<u>P-5-B</u>	<u>"</u>	<u>42.22</u>
7	<u>"</u>	<u>S-5-B</u>	<u>"</u>	<u>42.22</u>
8	<u>"</u>	<u>S-5-C</u>	<u>"</u>	<u>42.22</u>
9	<u>"</u>	<u>S-5-C</u>	<u>"</u>	<u>42.22</u>
10	<u>off day</u>	<u>P-5-R</u>	<u>"</u>	
11	<u>off day</u>			
12	<u>"</u>	<u>P-5-F</u>	<u>"</u>	<u>42.22</u>
13	<u>"</u>	<u>P-5-R</u>	<u>"</u>	<u>42.22</u>
14	<u>"</u>	<u>P-5-C</u>	<u>"</u>	<u>42.22</u>
15	<u>"</u>	<u>P-5-C</u>	<u>"</u>	<u>42.22</u>
16	<u>"</u>	<u>P-5-C</u>	<u>"</u>	<u>42.22</u>
Earnings for 1st thru 16th				<u>497.35</u>

Date	Terminal No.	Train Crew or Job No.	Class of Service	Earnings
17	<u>BINTI</u>	<u>P-5-C</u>	<u>Yd.</u>	<u>42.22</u>
18	<u>"</u>	<u>P-5-C</u>	<u>"</u>	<u>42.22</u>
19	<u>P-11</u>	<u>P-5-C</u>	<u>"</u>	<u>42.22</u>
20	<u>"</u>	<u>P-5-C</u>	<u>"</u>	<u>42.22</u>
21	<u>off day</u>			
22	<u>off day</u>			
23	<u>"</u>	<u>P-5-C</u>	<u>"</u>	<u>42.22</u>
24	<u>"</u>	<u>P-5-C</u>	<u>"</u>	<u>42.22</u>
25	<u>"</u>	<u>P-5-C</u>	<u>"</u>	<u>42.22</u>
26	<u>"</u>	<u>P-5-C</u>	<u>"</u>	<u>42.22</u>
27	<u>"</u>	<u>P-5-C</u>	<u>"</u>	<u>42.22</u>
28	<u>off day</u>			
29	<u>off day</u>			
30	<u>"</u>	<u>P-5-C</u>	<u>"</u>	<u>42.22</u>
31	<u>off day</u>			
Earnings, 1st thru end of month				<u>497.35</u>
Earnings, 1st thru 16th				<u>497.35</u>
Total Earnings for Month (Enter at Item B(2))				<u>988.73</u>

B. COMPENSATION EARNED - ADJUSTMENT CLAIMED
 (1) Monthly Base Period Compensation Guarantee . . . \$ 1087.94
 (2) Total Earnings for Month . . . \$ 968.95
 (3) ADJUSTMENT CLAIMED (Subtract B(2) from B(1)) . . . \$ 114.96
 (4) All Other Compensation Received from Company (W-2 Chargeable) . . . \$ 0.00
 (5) Number of Days this Month Applied for RR Unemployment Insurance . . . None

I HEREBY CERTIFY THAT THIS INFORMATION IS TRUE AND CORRECT:
 (Signature) D. H. Bishop
 (Date) 4-2-72

THIS FORM TO BE FILED WITHIN 60 DAYS FROM END OF MONTH FOR WHICH ADJUSTMENT IS CLAIMED

REMARKS: Since some the youngest boys on the roster were not terminal you will notice I changed off days into off hrs.

D. H. Bishop #635722
NAME

MARCH 1972
MONTH

DATE	AMOUNT		
1	42.22		
2	42.22		
3			
4			
5	42.22		
6	42.22		
7	42.22		
8	42.22		
9	42.22		
10			
11			
12	42.22		
13	42.22		
14	Bumped by Hart		?
15	67.55 42.22		
16	54.09		
17	49.50		
18	42.22		
19	42.22		
20	42.22		
21			
22			
23	42.22		
24	42.22		
25	42.22		
26	42.22		
27	42.22		
28			
29			
30	46.02		
(31)			42.22

PENALTIES	

84

L.B. 42.22

EARNINGS 909.57

PENALTIES _____

GRAND TOTAL 951.79

909.57

PENN CENTRAL TRANSPORTATION COMPANY
MERGER PROTECTIVE AGREEMENT

SOUTHERN REGION

Cincinnati, Ohio

Location Sharon Yard

1/15/76

Name C. Stillings

E - F - (C) - B

Referring to your claim for compensation in the amount of \$ 483.78
submitted for the month of Nov, 1975 pursuant to the Merger
Protective Agreement.

Claim in the amount of \$ 483.78 (less any amount recovered by the Rail-
road Retirement Board) is being carried in your regular pay draft that you will
receive 1/23/76.

Difference being allowed and that claimed by you is the result of your - - - -

- () current guarantee being - - - - \$ _____.
- () having been paid more than shown received - - - - \$ _____.
- () not including earnings lost as a result of laying off - \$ _____.
- () not being available on rest days - - - - \$ _____.
- () lost earnings as a result of _____ \$ _____.

() not taking job _____ which was assigned to
a man junior to you.
From _____ this position earned \$ _____.
From _____ you earned \$ _____.
Therefore, you will be paid \$ _____.

Due to the foregoing reasons checked, your claim as submitted, is denied.

J. M. LeGates
Division Superintendent

PRINTED IN U.S.A.

RECEIVED

DEC 08 1975

SUPERINTENDENT
LANDS RELATION
INDIANAPOLIS, INDIANA

MPA - 1

Division

PENN CENTRAL TRANSPORTATION COMPANY

CINCINNATI

Engine or Train Service Claim For Compensation Pursuant to Merger Protective Agreement

* Claim for Month of November, 1975.

A. EMPLOYEE IDENTIFICATION

Name	Occupation
<u>C. STILLINGS</u>	<u>TRAINMAN</u>
Employee No.	Social Security Number
<u>478 874</u>	<u>311-14-4224</u>
RR Point to Receive Company Mail	
<u>ZAREVA, O.S.P., SHADONVILLE OHIO</u>	
Name of Prior Roster	Roster Standing
<u>PAB</u>	<u>52</u>

B. COMPENSATION EARNED - ADJUSTMENT CLAIMED

- (1) Monthly Base Period Compensation Guarantee . . . \$ 1633.54
- (2) Total Earnings for Month . . . \$ 1149.76
- (3) ADJUSTMENT CLAIMED (Subtract B(2) from B(1)) . . . \$ 483.78
- (4) All Other Compensation Received From Company (W-2 Chargeable) . . . \$ NONE
- (5) Number of Days this Month Applied for RR Unemployment Insurance NONE

I HEREBY CERTIFY THAT THIS INFORMATION IS TRUE AND CORRECT:

(Signature) Charles Stillings

(Date) 12-1-75

* THIS FORM TO BE FILED WITHIN 60 DAYS FROM END OF MONTH FOR WHICH ADJUSTMENT IS CLAIMED

C. DAILY RECORD OF WORK PERFORMED (Fill out for each day. On days not worked show reasons (therefor, i.e., rest-day, vacation, holiday, sickness, job annulled, personal reasons, etc.)

Date	Terminal	Train No.	Crew or Job No.	Class of Service	Earnings
1	SHADON-	RELIEF	DAY		
2	VILLE	RELIEF	DAY		
3		AHH1	H1B	YARD	5564
4		AHH1	H1B	YARD	5564
5		AHH1	H1B	YARD	5564
6		AHH1	H1B	YARD	5564
7		AHH1	H1B	YARD	5564
8		RELIEF	DAY		
9		RELIEF	DAY		
10		AHH1	H1B	YARD	5564
11		AHH1	H1B	YARD	5564
12		AHH1	H1B	YARD	5564
13		AHH1	H1B	YARD	5564
14		AHH1	H1B	YARD	5564
15		RELIEF	DAY		
16		RELIEF	DAY		
Earnings for 1st thru 16th					6391.4
Earnings for 17th thru end of month					510.62
Earnings, 1st thru 16th					6391.4
Total Earnings for Month (Enter at Item B(2))					1449.76

REMARKS:

PLEASE NOTE WORKED VETANS DAY THE 11TH! ALL SO OFF TWO DAYS
FOR THANKSGIVING 27TH AND 28TH
PLEASE CHECK AND CORRECT IF IN ERROR?

125

June 6, 1967

Messrs. S. T. Saunders
D. C. Bevan
A. J. Greenough ✓
D. E. Smucker
H. W. Large
J. B. Jones
A. P. Funkhouser

PA STATE ARCHIVES
350 North Street, Harrisburg, PA 17120-009F
PA Historical & Museum Commission

At the May 22 Budget Committee meeting, a memorandum was requested on severance allowances paid in 1967. A summary is attached showing January through May actual payments compared to 1966. Payments for the total year 1966 are also indicated.

Agreement dated October 5, 1964 with the Transport Workers Union provides employes with the option of receiving severance pay in those instances where work is being transferred to another seniority district and employes elect not to be transferred or exercise seniority locally. The allowance generally equals 360 days' pay in accordance with Section 9 of the Washington Job Protection Agreement of 1936. Of the total amount paid in 1967, T.W.U. members at Renovo received \$353,000. In July, 38 additional separation claims are expected, requiring approximately \$350,000. The remaining balance of \$122,000 was paid in connection with the partial closing of enginehouses at East Altoona and Pitcairn.

Arbitration Award 282 led to implementation of an Early Retirement Policy for engineers. Award 282 enables railroads to eliminate up to 90% of firemen from through and yard freight service. In order to make engineer positions available for firemen with more than ten years of service who have to be retained, the Company offers engineers severance allowance for early retirement. The allowance ranges from 100% of a year's pay, based on their average earnings for the previous 2 years, for engineers under 65 years of age to 50% of a year's pay at 69 years of age. Through May, engineers received \$138,000.

Under the National Mediation Agreement of February 7, 1965, with 7 non-operating unions, the Company is generally obligated to retain employes in service until eliminated by natural attrition i.e. resignation, death, retirement or dismissal for cause if they were in active service and had two years of service on October 1, 1964. Subsequent reductions in force resulted in a number of surplus employes whose termination of employment was acquired by payment of separation allowances. Maintenance of Way employes were paid \$70,600 during the first five months of 1967, of which \$45,000 was paid in May to seven crossing watchmen on the Pittsburgh Division. The positions were abolished in connection with installation of automatic signals.

001

~~John~~
as per own conv.

Mr Greenough -

✓

one correction.
← PATH did not employ these men
since West Side Ave. crossing
was closed and barricaded.
JWD 7

By a special agreement dated March 30, 1967, members of A.F.L. Shop
Craft Unions at Renovo received \$69,800 in May. This agreement is
similar to the agreement with T.W.U.

Payments to eight crossing watchmen who terminated employment with
P.R.R. due to the Aldene Plan amounted to \$60,800 in May. These
employees are now P.A.T.H. employees. In addition, \$8,900 was paid
to a ticket receiver clerk. In June, one additional ticket receiver
clerk is expected to claim severance pay. This should be the total
to be paid in connection with the Aldene Plan since twenty-two
station clerks and examiners affected by the plan have been placed
in other positions or are being retained by the Traffic Department
as ticket agents.

SIR
B. J. Relyea

- cc: Messrs. R. E. Franklin
- P. D. Fox
- B. S. Cole
- W. R. Gerstnecker
- W. S. Cook

Reproduction of an Original Record
Please Credit:
PA STATE ARCHIVES
350 North Street, Harrisburg, PA 17120-0098
PA Historical & Museum Commission

September 1, 1965

MEMORANDUM

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

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

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

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

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

Reproduction of an Original Record
Please Credit

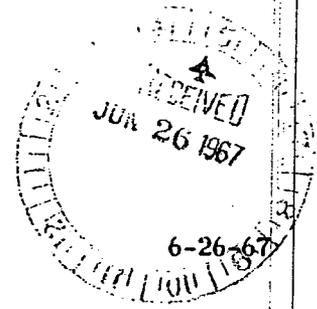
PA STATE ARCHIVES

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

recalled within 15 calendar days of the day upon which the "business index" rises to a continued level of less than 6 per cent decline. Thus, layoffs can be made either after actual results indicate a 6 per cent or more decline had been realized or on the basis of projections that indicate that an at least 6 per cent decline will occur within the coming thirty-day period. If layoffs are made on the basis of a projection, and the necessary decline level does not actually occur, the employees laid off without "justification" are entitled to full pay for the period during which they were laid off.

Reproduction of an Original Record
Please Credit
PA STATE ARCHIVES
350 North Street, Harrisburg, PA 17120-0090
PA Historical & Museum Commission

018



MR. SAUNDERS:

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

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

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

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

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


D. C. Bevan

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

Reproduction of an Original Record
Please Credit

PA STATE ARCHIVES

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

026

December 1, 1966



P. D. F.
W. R. G.

Wage Claim payments for the month of July, 1966, totaling \$66,966.71 were made as follows:

Eastern	\$15,601.94
Central	34,345.91
Western	11,190.06
Altoona	5,828.80

Three payments in excess of \$500.00 were made as follows:

Special Board of Adjustment 589 sustained the appeal of discipline by dismissal of Central Region Conductor E. C. Gronow, resulting in payment of \$6,635.02. The settlement represented the difference between the claimant's earnings while restricted to yard service and the average earnings of conductors in the Canton West Pool, computed from February 15, 1961, to August 8, 1961, and from December 6, 1961, to November 30, 1964.

A. L. Moore, Engineman, Central Region, was allowed payment of \$603.60 in lieu of four weeks' vacation in 1965 for service performed in 1964. (The claimant's dismissal from service and the ensuing delay in the processing of the vacation allowance prompted the Brotherhood to act on the former employe's behalf on a matter not generally considered a penalty claim.)

Western Region Clerk R. D. Frushour was awarded \$526.28 resulting from violations of Rule 4-A-9 (Employes called and not used). Settlement covered 75 three-hour calls at the rate of \$406.99 per month.

J. H. S.

cc: A. J. G.
D. E. S.
G. W. K.

W. R. G.

012

Reproduction of an Original Record
Request Credit:

PA STATE ARCHIVES

450 North Street, Harrisburg, PA 17120-0098
PA Historical & Museum Commission

065

COUNTY OF PASCOP

STATE OF FLORIDA)

SS:

AFFIDAVIT

I, MIRIAM TOMCZAK, being first duly sworn, do hereby depose and state as follows:

1. I am the widow of Clarence C. Tomczak.
2. My present address is 34408 Highway 54 West, Lot 96, Zephyrhills, Florida 33543.
3. My husband's date of birth was April 21, 1916.
4. My husband passed away on September 18, 1982.
5. My husband's Social Security number was 391-10-5053.
6. As a railroad employee, my husband worked as a brakeman.
7. My husband began working for the New York Central Railroad ("NYC") in January, 1946.
8. The railroad furloughed my husband in February, 1968.
9. At no time after the furlough did Penn Central offer my husband a permanent, full-time job.
10. Penn Central never provided my husband with any supplemental wage benefits.

11. Because of Penn Central's refusal to offer my husband a permanent, full-time job and/or provide him with supplemental wage benefits, he was forced to obtain other employment from approximately February, 1968 through December, 1969.

12. Compared to permanent, full-time employment with Penn Central, such other employment resulted in a substantial loss in wages and non-wage benefits.

13. My husband was recalled to work by Penn Central in or around December, 1969.

14. Although my husband worked for Penn Central from approximately 1969-1979, he was unable to obtain a permanent, full-time job with Penn Central during that period.

15. Compared to permanent, full-time employment with Penn Central, the employment referred to in the preceding paragraph resulted in a substantial loss in wages and non-wage benefits for my husband.

16. Between 1968 and 1979, my husband did not suffer any major illnesses or injuries that would have prevented him from performing his former job duties for Penn Central.

17. Contractual disputes aside, between 1968 and 1979 my husband was ready, willing, and able to work for Penn Central.

FURTHER AFFIANT SAYETH NAUGHT.

Miriam Tomczak
MIRIAM TOMCZAK

SWORN TO, BEFORE ME, and subscribed in my presence this 23rd
day of Jan, 1990.

Helen Ball
Notary Public, State of Florida
My Commission Expires Jan. 24, 1990
Bonded thru Troy, Faig - Insurance Inc.

COUNTY OF CUYAHOGA)
STATE OF OHIO)

SS:

A F F I D A V I T

I, CHRIST STEIMLE, JR., being first duly sworn, do hereby depose and state as follows:

1. My date of birth is October 22, 1927.
2. My Social Security number is 288-22-4006.
3. My present address is 12224 Lorain Avenue, Cleveland, Ohio 44111.
4. As a railroad employee, I have always worked as a brakeman or conductor.
5. I began working for the New York Central Railroad ("NYC") on August 1, 1951.
6. Prior to February 16, 1965, I was not asked by NYC or my union, the Brotherhood of Railroad Trainmen ("BRT")/United Transportation Union ("UTU"), whether I desired to work in the Collinwood freight yard.
7. I was not given the opportunity to vote on the 1965 "Top and Bottom" Agreement prior to its adoption.
8. I was not made aware of the existence of the 1965 "Top and Bottom" Agreement until after its adoption.
9. On or around February 21, 1968, I received a letter from A.B. Cravens, Transportation Superintendent, stating that I would be

furloughed, effective February 25, 1968, and directing me to report for work in the freight yard, in accordance with the 1965 Agreement.

10. Later, I was informed by NYC's successor, the Penn Central Company ("Penn Central"), that unless I reported for work in the freight yard and accepted a seniority date of September 10, 1964, I would forfeit all of my seniority.

11. Based on the above representation, I reported for work in the freight yard, and accepted a seniority date of September 10, 1964.

12. Based on my new seniority date of September 10, 1964, I was unable to obtain permanent, full-time employment in the freight yard until approximately 1984.

13. In or around 1984, I obtained permanent, full-time employment in the freight yard only under an agreement signed in 1969. That agreement provided for 2.46 percent (2.46%) of all jobs in the Cleveland Terminal District of the combined Railroad. Originally 2.46 percent (2.46%) translated into three, three-man jobs. This meant the creation of only nine (9) jobs for all of the approximately fifty (50) men on the NYC/CUT Roster No. 2106. It was not until approximately 1984 that I had enough seniority to even obtain one of those jobs.

14. Based on Penn Central's failure to provide me with permanent, full-time employment until approximately 1984, I was forced to drastically

change the lifestyle of myself and my family.

15. The work I did in the freight yard was unreasonably dangerous in comparison to the work I had been performing prior to my February 25, 1968, furlough. This was the result of two main factors:

(1) The other Plaintiffs and myself were provided no training as to the equipment and procedures used for handling railroad cars in the freight yard. The equipment and procedures differed substantially from those employed in the yards in which we had previously worked. Because freight yard work involved constant interaction with heavy machinery, this lack of training made the work unreasonably dangerous.

(2) The dangers were worsened by the refusal of the freight yard employees to assist us in any way. They were angered about having the other Plaintiffs and myself included on their roster under the 1965 "Top and Bottom" Agreement. Our presence on that roster meant that there would be fewer assignments, and thus, less income available for them. The freight yard workers resented this, and expressed their anger by sometimes being verbally abusive towards us, at other times refusing to communicate with us.

16. Despite having reported to the freight yard as I was instructed, accepted a seniority date of September 10, 1964, and exercised my seniority to the fullest extent possible, I have not received the benefits provided for in the 1964 Merger Protection Agreement, including permanent, full-time employment and supplementary wages.

FURTHER AFFIANT SAYETH NAUGHT.

Christ Steimle, Jr.
CHRIST STEIMLE, JR.

SWORN TO, BEFORE ME, and subscribed in my presence this 13th
day of January, 1990.

CARLA M. TRICARIGHE, Attorney
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.

Carla M. Tricarighe
Notary Public

COUNTY OF CUYAHOGA)

)

SS: A F F I D A V I T

STATE OF OHIO)

I, WALTER J. POTOSKY, being first duly sworn, do hereby depose and state as follows:

1. My date of birth is July 12, 1925.
2. My Social Security number is 274-20-1694.
3. My present address is 5965 Edgehill Drive, Parma Heights, Ohio 44130.
4. As a railroad employee, I have always worked as a switchtender, brakeman, conductor, or yardmaster.
5. I began working for the New York Central Railroad ("NYC") on June 22, 1946.
6. Prior to February 16, 1965, I was not asked by NYC or my union, the Brotherhood of Railroad Trainmen ("BRT")/United Transportation Union ("UTU"), whether I desired to work in the Collinwood freight yard.
7. I was not given the opportunity to vote on the 1965 "Top and Bottom Agreement" prior to its adoption.
8. I was not made aware of the existence of the 1965 Agreement until after its adoption.
9. On or around February 21, 1968, I received a letter from A.B. Cravens, Transportation Superintendent of the New York Central Railroad, stating that I would be furloughed, effective February 25, 1968, and

directing me to report for work in the freight yards, in accordance with the 1965 Agreement.

10. Under the 1965 Agreement, I would have been required, unfairly, to forfeit some eighteen (18) years of my seniority, and accept a seniority date of September 10, 1964. By accepting this seniority date, I consciously would have been placing myself outside the scope of the protection and benefits included in the 1964 Merger Protection Agreement. If I did not report to the freight yards, I would have lost ^{Prior} all of my seniority, ~~by~~ ^{UNDER} ~~operation of~~ the 1965 Agreement. *A. J. B. 244*

11. Had I accepted a seniority date of September 10, 1964, and reported to work in the freight yards, I would not have had enough seniority to gain a permanent, full-time job there.

12. Before and after the 1968 furlough, the railroad refused to acknowledge that: (1) I had been a New York Central Railroad employee since my hire in 1946; and (2) I was covered under the 1964 "Merger Protection Agreement". Coverage under this Agreement would have meant, amongst other benefits, a lifetime job guarantee. Without such coverage, there were no permanent, full-time jobs that were available to me.

13. Prior to and after the 1968 furlough, my co-workers tried, unsuccessfully, to obtain from the railroad confirmation of our status as New York Central employees/covered by the Merger Protection Agreement.

14. Given the above circumstances, I had no choice. Reporting for work in the freight yards would have meant accepting Penn Central's

position that: (1) I had never been a New York Central employee; (2) I was not entitled to keep/use my original seniority date; and (3) I was not covered under the Merger Protection Agreement.

15. My co-workers, George Gentile, Clarence Tomczak, and I, all had physical examinations and all reported to work at the Collinwood yard. We were informed that we were not on the roster and were not permitted to work under any agreement, under any circumstances.

16. Because of Penn Central's refusal to extend to me the job protections provided in the Merger Protection Agreement, I was forced to obtain other employment ^{OF JAN, 1964} ~~from approximately 1968~~ ^{of J.O. 1964} ~~present~~. During this time, I have worked for, among others, Alex Kanareff & Associates, Great Lakes Construction, and the City of North Olmsted. Compared to Penn Central employment, these other jobs resulted in a substantial loss in wages and non-wage benefits.

17. My co-worker, Harvey E. Doran, was immediately below me in seniority on the roster. He was furloughed for approximately twenty-two (22) months from February, 1968 through December, 1969. He reported for work in December, 1969, to fulfill a call back for the railroad. He stood for no job and was only eligible for work on the extra board as an extra man. In this position, he got approximately one (1) day of work a month from 1969 until the time of his death in 1972.

18. Penn Central has never provided me with any of the benefits provided for in the Merger Protection Agreement, including permanent, full-time employment and supplementary wages.

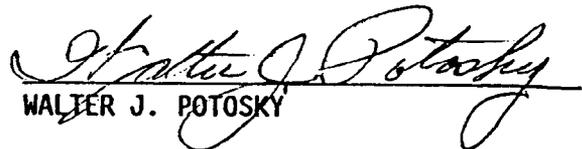
19. Because of Penn Central's refusal to employ me from approximately 1968-present, my pension from the Railroad Retirement Board will be significantly reduced.

20. Because of Penn Central's refusal to provide me with any non-wage benefits from approximately 1968-present, I was generally forced to forego such benefits or obtain them at my own expense.

21. Between 1968 and the present, I have not suffered any major illnesses or injuries that would have prevented me from performing my former job duties for Penn Central.

22. Contractual disputes aside, between 1968 and the present I have been, and still am, ready, willing, and able to work for Penn Central.

FURTHER AFFIANT SAYETH NAUGHT.


WALTER J. POTOSKY

SWORN TO, BEFORE ME, and subscribed in my presence this 25TH
day of January, 1990.


Notary Public

Linda Y. Young, Notary Public
state of Ohio - Cuyahoga County
My commission expires March 5, 1990

Exhibit 39
Litigation Expenses

Will be itemized at the hearing to conform with the
evidence

Exhibit 40
Attorney Fees

Will be presented at the hearing



CURRICULUM VITAE

May 2004

Harvey S. Rosen, Ph.D.

Business Address: BURKE, ROSEN & ASSOCIATES
2800 Euclid Avenue, Suite 300
Cleveland, OH 44115
Business Phone: (216) 566-9300
E-mail: h.rosen@burkerosen.com

Education:

B.B.A. Western Reserve University 1964
M.A. Western Reserve University
University of California Berkeley 1966
Ph.D. Case Western Reserve University 1969

Academic Experience:

1966 Lecturer, Western Reserve University
Lecturer, Cleveland State University
1967 - 1969 Instructor, Cleveland State University
1969 - 1973 Assistant Professor, Cleveland State University
1974 - 1993 Associate Professor, Cleveland State University
1993 - 1994 Retired Associate Professor
11/94- Associate Professor Emeritus
1999-Present Adjunct Associate Professor, John Carroll University

Professional Membership:

- American Economic Association
- National Association of Business Economists
- Ohio Association of Economists and Political Scientists
 - At Large Representative to the Executive Board 1995-96
- National Academy of Economic Arbitrators

Honors and Awards:

- Recipient of United States Government Fellowship for Graduate Education (NDEA), 1966-1969
- Runner-up - Dissertation Fellowship - Federal Reserve Bank of Cleveland, 1968
- Omicron Delta Epsilon - Honorary in Economics, 1965
- Beta Alpha Psi - Honorary in Accounting, 1964

Court and Governmental Appointments:

Franklin County Common Pleas Court as Class Economist – Georgia Pacific Litigation 2002
Hamilton County Common Pleas Court as Special Master – Bengals Litigation 2001
Hamilton County Common Pleas Court as Special Master – A & D Building Litigation 1997
Federal Court, Southern District of Ohio -- Pfizer Heart Valve 1994
Federal Bankruptcy Court, Cincinnati – Eagle– Pitcher Reorganization 1992
Hamilton County Common Pleas Court – BASF Chemical Plant Explosion 1992
Montgomery County Common Pleas Court - CSX Train Derailment, Miamisburg, OH 1991
Attorney General's Office, State of Ohio –
Innocent Victims of Crime Compensation Program 1983
State Court, Kentucky – Beverly Hills Supper Club Fire 1980
Federal Court, Southern District of Ohio – Beverly Hills Supper Club Fire 1980



Private Distributions:

Cincinnati Pressman Litigation	1984
Cincinnati Carriers Litigation	1997
Indian Creek Elevator	1993-94
Ohio Valley Fireworks	1998

Limited Fund/Fairness Hearing Analysis & Testimony:

Eagle-Pitcher
Acromed
Interneuron (Redux)
Telectronics
American Home Products (Pfen-fen)
Sulzer Medica
Microsoft (Consumer Case 2001)
UPS EV Settlement (2004)

Articles and Publications:

- 1993 "Valuing Educational Attainment as a Distributable Asset," Valuing Professional Practices and Licenses: A Guide For The Matrimonial Practitioner, Edited by Ronald L. Brown, Copyright 1993, Prentice Hall Law & Business, co-authored.
- 1991 Co-editor Handbook of Financial Planning for Divorce and Separation, 1992 Supplement, Ed. John Wiley & Sons, Inc., New York, NY, with J.F.B.
- "Uniform Child Support Guidelines", Financial Planning for Divorce and Separation, Crumbley Apostolov, Ed., second edition.
- 1990 Reprint, February 1990; "The Value of a Professional License" Family Advocate, American Bar Association, Summer, 1984, Vol. 7, No.1, with J.F.B. for use by the Indiana Judicial Center for distribution and application in a seminar to assist in understanding the valuations in closely-held corporations.
- "Economic Models of Valuation in Divorce Proceedings," Financial Planning for Divorce and Separation, Crumbley Apostolov, Ed. John Wiley & Sons, Inc., with J.F.B.
- 1987 "Using an Economist in Evaluating Claims," Settling Personal Injury Insurance Claims in, Professional Education Systems, Inc., 1987, co-authored.
- "Valuing Educational Attainment as a Distributable Asset," Expert Valuation of Professions: The Value of Law and Medical Degrees and Licenses Upon Divorce, Edited by Ronald L. Brown, Copyright 1987, Prentice Hall Law & Business, co-authored.
- 1986 "Settling Personal Injury Insurance Claims in Michigan," Professional Education Systems, Inc., Eau Claire, Wisconsin, November 5, 1986, co-authored.
- "Forecasting Enhanced Educational Attainment," FairShare Law and Business, Inc., Harcourt and Brace, Vol. 6, May, 1986, co-authored.
- 1985 "Economic Value of a Professional License," and "Basic Approach to Valuing Closely-Held Corporations," Reprinted in Contemporary Matrimonial Law Issues: A Guide to Divorce Economics and Practice, Edited by Foster & Brown, Law & Business, Harcourt, Brace & Jovanovich, New York, 1985.
- 1984 "Consumption & Family Size," Proceedings of the Industrial Relations Research Association, Spring, 1984, co-authored.

Articles and Publications: (Continued)

- 1984 "The Value of a Professional License," Family Advocate, American Bar Association, Summer, 1984, Vol 7, No. 1.
- 1983 "Taxes and Compensation for Lost Earnings-A Comment," The Journal of Legal Studies, Vol. 12, No. 1, January, 1983, co-authored.
- "ABC'S of Valuing Closely Held Corporations," FairShare, January 1983. Co-authored
- 1982 "Pseudo String Arrays," Hewlett Packard Basic Exchange, Vol. 3, No. 1, Spring, 1982.
- 1981 "Use of Experts to Establish and Quantify Standard of Living," proceedings of the Education Institute of American Academy of Matrimonial Lawyers, San Diego, California, 1981.
- 1974 "A New Technique for Obtaining Regional Employment Multipliers." Land Economics, January, 1974 co-authored with Vijay Mathur.
- "The Monetary Value of a Housewife: A Replacement Cost Approach." American Journal of Economics and Sociology, January, 1974. Reviewed in Luisella Goldschmidt-Clermont, Unpaid Work in the Household: A review of Economic Evaluation Methods. Geneva: International Labor Office, 1982.
- "The Use of Statistical Analysis for Performance Review," July 1974, in Personal Journal, co-authored with Howard Polster.
- 1973 "An Econometric Technique vs. Traditional Techniques for Obtaining Regional Employment Multipliers: A Comparative Study," Environment and Planning, June, 1973.
- 1972 "An Econometric Export Base Model: A New Technique" in London Papers on Regional Science, 1972; (A Publication of the British Section of the Regional Science Association), co-authored with Vijay Mathur.
- 1969 "A Euro-Dollar Primer," Central Economic Letter, Vol. 8, No. 5, July, 1969.
- "A Cleveland Area Business Index." Central Economic Letter, Vol. 8, No. 1, February, 1969.
- "Monetary Policy and Fluctuating Exchange Rates: The Canadian Experience," an abstract. The Financial Review, Spring, 1969.
- 1968 "The Dollar and Floating Exchange Rates." Central Economic Letter, Vol. 7, No. 12. December, 1968.

Speeches and Seminars:

- 1996 Ohio Society of Certified Public Accountants, Cleveland Chapter, Litigation Services Committee, "Damages", November 1996
- 1996 Trial Skills Tune-Up, Trial Fundamentals for Litigators of all Experience Levels to the Cincinnati Bar Association and The John W. Peck Cincinnati Chapter Association of the Federal Bar Association, November 1996.
- 1996 Potter Stewart Inn of Court "Projecting Economic Damages", March 26, 1996.
- 1990 Ohio Personal Injury Damages Seminar. "Working With an Economist" prepared for Professional Education Systems, Inc., April 1990.
- "Measuring Economic Damages in Wrongful Employment Discharge Cases" for Plaintiff Employment Lawyer's Association, October 25, 1990.
- 1988 "The Hedonic Value of Life," to Cleveland Trial Lawyers' Association, November, 1988.

Speeches and Seminars: (Continued)

- 1987 "Purchasing Power of Ohio Judges," Prepared for the . . . Select Committee . . . at the request of Ohio Judges. February 27, 1987, co-authored.
- "Evaluation of a Business," Ohio Association of Trial Lawyers, February 20, 1987, Columbus, Ohio, with James Wilsman and J.F.B.
- Federal Trial Practice Seminar prepared at the request of Federal Judge Manos, September 11, 1987, Cleveland, Ohio, with J.F.B.
- Mock Cross-Examination - Cleveland Area Civil Trial Attorneys Association, September 14, 1987.
- 1987 Ohio State Hearings on Ohio Insurance Crisis Tort Reform - Invited Testimony, April 9, 1987; April 22, 1987; May 14, 1987.
- 1986 Ohio State Senate Hearings on Ohio Insurance Crisis Tort Reform - Invited Testimony, March 19, 1986.
- 1985 "Consumption Patterns by Size of Family and Income", Eastern Economic Association, Pittsburgh, P.A., March 1985.
- 1984 "More Evidence on Consumption by Family Size", Eastern Economic Association, New York, March, 1984.
- 1983 "Consumption by Family Size: a Labor Relations Study", Presented to the Allied Social Science Association, San Francisco, December 1983.
- "Preliminary Evidence on Consumption by Family Size", Atlantic Economic Society, Philadelphia PA., October, 1983.
- "A Taxation Algorithm in Personal Injury Awards", Eastern Economic Association, Boston, March 1983.
- 1982 Discussants on "The Offset Method of Calculating Personal Injury Awards", Mid-Western Economic Association, Chicago, April 1982.
- "Taxation and Personal Injury Awards as a Result of the Liepel Decision.", Eastern Economic Association, Washington D.C., March 1982.
- 1981 "Use of Experts to Establish and Quantify Standard of Living," presented at the Education Institute of American Academy of Matrimonial Lawyers. San Diego, California, March, 1981.
- 1975 "Litigators, Computer Simulation and the Regulatory Process." (with co-authors) American Bar Association, Section on Litigation, National Institute, New York, New York, February 7, 1975.
- 1973 "An Econometric Technique vs. Traditional Techniques for Obtaining Regional Employment Multipliers: A Comparative Study," presented at the Monterey meeting of the Western Regional Science Association. Monterey, California, February, 1973.
- 1972 "The Economic Value of an Individual: A Methodology," presented to meetings of the Ohio Academy of Trial Lawyers.
- 1971 "An Econometric Export Base Model: A new Technique," (with Mathur) presented at meetings of the British Section of Regional Science Association, London, England, August 20, 1971.

Consulting Experience:

- 1968-1969 Economic Research Consultant. Central National Bank of Cleveland: Prepared newsletter, devised Cleveland area business index which was published monthly in the bank's newsletter.
- 1969-Present Called upon to provide economic expertise involving matters of economic damage determination and measurement. There have been cases covering business losses, anti-trust proceedings, discrimination, family law, personal injury and wrongful death.
- Have appeared and been qualified or been deposed as an expert witness in the states of Ohio, Michigan, Kentucky, West Virginia, Massachusetts, Maryland, District of Columbia, Pennsylvania, Louisiana, California, Rhode Island, Texas, New York, Nevada, Colorado, New Jersey, Illinois, Virginia, Tennessee, and Puerto Rico.
- 1995 Reviewer. Financial Practice and Education, Raj Aggarwal, John Carroll University, Editor. Financial Practice and Education has a responsibility to help prospective authors improve the quality of their research and its presentation. Therefore, the job of the reviewer is both to help the editor make accept/reject decisions and to provide the authors with suggestions for improvement of their research.

Selected Cases:

- 1973 The Thalidomide Case
1975 The Kent State Case
1979 The Sinking of the Edmund Fitzgerald
1980 The Beverly Hills Supper Club Fire
Swine Flu cases for the Justice Department of the Northern District of Ohio
1981 Pick 'N Pay Supermarket Anti-Trust Case (Cleveland & Lorain)
Asbestos Litigation (John Manville)
1982 The MGM Fire
1983 The Thurman Munson Crash
The Hyatt Kansas City Collapse
The Air Florida Crash
1984 The Dalkon Shield Case
The Pan American Crash Disaster
The Bendectin Case
The Bhopal India Case
1985 The Air Canada Air Disaster
1986 The Gander Cases - Arrow Air Disaster
1987 The LTV Bankruptcy-Oglebay Norton Case
The May Company-Supermarket Anti-Trust Case
The Home State Savings and Loan Company Case
The Fernald Nuclear Plant Case
1989 The Cincinnati Pipefitters Case
The WD40 Cases
1989 The Lockerbie, Scotland Case - Pan Am Flight 103
1990 Stark County Toxic Landfill Case
Miamisburg Train Derailment
1992 The BASF Explosion
USAir Los Angeles Crash
1993 Eagle Pitcher Bankruptcy
Pfizer Heart Valve, US formula
Mentor Corporation Breast Implant Litigation
USAir 405 Crash
USAir Beckley, West Virginia Crash
1994 Pfizer Heart Valve Foreign Fracture Panel, Co-Chair

Selected Cases: (Continued)

- 1994 Ernst & Young Age Discrimination Case
- 1996 The Protection Group (Toledo)
- 1996 Queen Village Pharmacy (Philadelphia)
- 1997 The Pension Benefit Guaranty Corporation (Cincinnati)
Acromed Orthopedic Bone Screw
- 1998 Ohio Valley Fireworks Litigation
Firestone Insurance Claim
Teletronics Corporation- Pacemaker J lead litigation
- 1999 Bogalusa Chemical Release- Gaylord
Phen-Fen Interneuron Corporation
- 2000 American Home Products Phen-Fen
Louisiana Smokers Litigation- Scott
- 2001 Sulzer Medica- Hip Implant Litigation
- 2002 Kodak Employment Case
State Alarm Litigation
- 2003 Worldwide Basketball/NCAA Litigation
Lucent Ponder Litigation
P&G/Amway Litigation Michigan Case
Thomas Kinkade Media Arts Trademark Case
International Paper
Lamson Sessions Contract Case
Dayton Power & Light Shareholder Litigation
- 2004 World Trade Center/Victims Compensation Fund
Louisiana Smokers Litigation- Smoke Cessation Program
UPS EV Settlement

**BROTHERHOOD RAILWAY CARMEN DIVISION
TRANSPORTATION-COMMUNICATIONS INTERNATIONAL UNION**

**WAGE RATE PROGRESSION CHART
(Revised: January 24, 2003)**

NWI=Negotiated Wage Increase COLA=Cost of Living Adjustment IBL=Imposed by Law GWI=General Wage Increase

DATE	ADJUSTMENT	INCREASE	MECHANIC RATE	FREIGHT RATE	HELPER RATE
Nov 1, 1956	NWI	.10	2.278	2.234	2.002
May 1, 1957	COLA	.03	2.308	2.264	2.032
Nov 1, 1957	NWI	.07	2.378	2.334	2.102
Nov 1, 1957	COLA	.05	2.428	2.384	2.152
May 1, 1958	COLA	.04	2.468	2.424	2.192
Nov 1, 1958	NWI	.07	2.538	2.494	2.262
Nov 1, 1958	COLA	.01	2.548	2.504	2.272
Nov 1, 1959	COLA	.03	2.578	2.534	2.302
May 1, 1960	COLA	.01	2.588	2.544	2.312
Jul 1, 1960	NWI	.05	2.638	2.594	2.362
Feb 1, 1962	NWI	.04	2.678	2.634	2.402
May 1, 1962	NWI	.0628	2.7408	2.6968	2.4648
Jan 1, 1964	NWI	.09	2.8308	2.7868	2.5548
Jan 1, 1965	NWI	.09	2.9208	2.8768	2.6448
Jan 1, 1966	NWI	.09	3.0108	2.9668	2.7348

PLAINTIFF'S
EXHIBIT
42

10:216 Pbl 8812

301 330 7672

FROM: TCU-IR

DATE	ADJUSTMENT	INCREASE	MECHANIC RATE	FREIGHT RATE	HELPER RATE
Jan 1, 1967	IBL	6%	3.1914	3.1448	2.8989
Apr 1, 1967	IBL	.05	3.2414	3.1948	2.8989
Oct 1, 1967	IBL	.05	3.2914	3.2448	2.8989
Apr 1, 1968	IBL	.05	3.3414	3.2948	2.8989
Jul 1, 1968	IBL	5%	3.5085	3.4595	3.0438
Oct 1, 1968	IBL	.05	3.5585	3.5095	3.0438
Jan 1, 1969	NWI	.0415	3.60	3.55	3.05
Jan 1, 1969	NWI	2%=.07	3.67	3.62	3.11
Jul 1, 1969	NWI	3%=.11	3.78	3.73	3.20
Jul 1, 1969	NWI	.05	3.83	3.78	-
Sep 1, 1969	NWI	.10	3.93	3.88	3.30
Jan 1, 1970	NWI	5%=.20	4.13	4.07	3.47
Apr 1, 1970	NWI	.04	4.17	4.11	3.51
Apr 24, 1970	NWI	.07	4.24	4.18	-
Aug 1, 1970	NWI	.04	4.28	4.22	3.55
Jan 1, 1971	NWI	.10	4.38	4.32	-
Apr 1, 1971	NWI	.15	4.53	4.47	-
Oct 1, 1971	NWI	.23	4.76	4.70	-
Apr 1, 1972	NWI	.24	5.00	4.94	-
Oct 1, 1972	NWI	.25	5.25	5.19	-

DATE	ADJUSTMENT	INCREASE	MECHANIC RATE	FREIGHT RATE	HELPER RATE
Apr 1, 1973	NWI	.25	5.50	5.44	-
Jan 1, 1974	NWI	4%=.22	5.72	5.66	-
Jan 1, 1975	NWI	10%=.57	6.29	6.23	-
Oct 1, 1975	NWI	5%=.31	6.60	6.54	-
Jan 1, 1976	NWI	.12	6.72	6.66	-
Apr 1, 1976	NWI	3%=.20	6.92	6.86	-
Jul 1, 1976	NWI	.12	7.04	6.98	-
Jan 1, 1977	NWI	.13	7.17	7.11	-
Jul 1, 1977	NWI	.18	7.35	7.29	-
Jul 1, 1977	NWI	4%=.28	7.63	7.57	-
Jan 1, 1978	NWI	.19	7.85	7.79	-
Apr 1, 1978	NWI	3%=.23	8.08	8.02	-
Jul 1, 1978	COLA	.19	8.27	8.21	-
Oct 1, 1978	NWI	2%=.16	8.43	8.37	-
Jan 1, 1979	COLA	.25	8.68	8.62	-
Jul 1, 1979	NWI	4%=.34	9.02	8.96	-
Jul 1, 1979	COLA	.25	9.27	9.21	-
Jan 1, 1980	COLA	.28	9.55	9.49	-
Jul 1, 1980	NWI	5%=.47	10.02	9.96	-
Jul 1, 1980	COLA	.27	10.29	10.23	-

DATE	ADJUSTMENT	INCREASE	MECHANIC RATE	FREIGHT RATE	HELPER RATE
Jan 1, 1981	COLA	.32	10.61	10.55	-
Apr 1, 1981	NWI	2%=.20	10.81	10.75	-
Jul 1, 1981	COLA	.32	11.13	11.07	-
Oct 1, 1981	NWI	3%=.31	11.44	11.38	-
Jan 1, 1982	COLA	.35	11.79	11.73	-
Jul 1, 1982	NWI	3%=.32	12.11	12.05	-
Jul 1, 1982	COLA	.22	12.33	12.27	-
Jan 1, 1983	COLA	.34	12.67	12.61	-
Jul 1, 1983	NWI	.33	13.00	12.94	-
Jan 1, 1984	COLA	.26	13.26	13.20	-
Dec 1, 1985	NWI	2%=.26	13.52	13.46	-
Dec 1, 1986	NWI	2.25%=.30	13.82	13.76	-
Dec 1, 1987	NWI	2.25%=.31	14.13	14.07	-
Jul 1, 1991	IBL	3%=.42	14.55	14.49	-
Jul 1, 1993	IBL	3%=.44	14.99	14.93	-
Jul 1, 1994	IBL	4%=.60	15.59	15.53	-
Nov 30, 1995	COLA	.09	15.68	15.62	-
Dec 1, 1995	NWI	3.5%=.55	16.23	16.17	-
Jul 1, 1996	NWI	1.75%=.28	16.51	16.45	-
Jul 1, 1997	NWI	3.5%=.58	17.09	17.03	-

**DAILY RATE OF PAY FOR YARD CONDUCTORS (FOREMEN) - YARD BRAKEMEN (HELPERS)
AND SWITCHTENDERS
October 1, 1950 through July 1, 1983**

EFFECTIVE DATE	YARD CONDUCTOR (FOREMAN)	YARD BRAKEMEN (HELPER)	SWITCHTENDERS
October 1, 1950	\$ 14.95	\$ 14.10	\$ 12.55
January 1, 1951	15.11	14.26	12.71
March 1, 1951	15.27	14.42	12.87
December 1, 1952	15.91	15.06	13.51
October 1, 1953	16.95	16.10	14.55
December 16, 1953	17.35	16.50	14.95
*June 1, 1955	17.60	NOT APPLICABLE	
October 1, 1955	18.44	17.34	15.79
December 1, 1955	19.42	18.15	16.29
November 1, 1956	20.42	19.15	17.29
November 1, 1957	20.82	19.55	17.69
November 1, 1958	21.22	19.25	18.09
May 1, 1960	22.58	21.31	19.45
July 1, 1960	23.04	21.74	19.85
March 1, 1961	23.50	22.18	20.24
May 7, 1964	24.80	23.20	21.20
July 12, 1964	26.55	24.64	22.64
August 12, 1966	27.88	25.87	23.77
January 1, 1968	28.58	26.52	24.36
July 1, 1968	29.98	27.85	25.61
January 1, 1969	30.58	28.41	26.12
July 1, 1969	31.50	29.26	26.90
January 1, 1970	33.08	30.72	28.25
November 1, 1970	35.64	33.28	30.81
April 1, 1971	37.07	34.61	32.04
October 1, 1971	38.92	36.34	33.64
April 1, 1972	40.87	38.16	35.32
October 1, 1972	42.91	40.07	37.09
January 1, 1973	45.11	42.27	39.29
April 1, 1973	45.91	43.07	40.09
January 1, 1974	47.75	44.79	41.69
January 1, 1975	52.53	49.27	45.86
October 1, 1975	55.16	51.73	48.15
January 1, 1976	56.12	52.69	49.11
April 1, 1976	57.77	54.24	50.55
July 1, 1976	58.73	55.20	51.51
January 1, 1977	59.77	56.24	52.55
July 1, 1977	63.56	59.89	56.05
January 1, 1978	65.08	61.41	57.57
April 1, 1978	66.95	63.17	59.22
July 1, 1978	68.47	64.69	60.74
October 1, 1978	69.78	65.93	61.90
January 1, 1979	71.78	67.93	63.90
July 1, 1979	76.58	72.58	68.39
January 1, 1980	78.82	74.82	70.63
July 1, 1980	84.82	80.62	76.22
January 1, 1981	87.38	83.18	78.78
April 1, 1981	89.03	84.75	80.26
July 1, 1981	91.59	87.31	82.82
October 1, 1981	94.12	89.71	85.09
January 1, 1982	96.92	92.51	87.89
July 1, 1982	101.29	96.75	91.99
January 1, 1983	104.01	99.47	94.71
July 1, 1983	106.70	102.02	97.12
January 1, 1984	108.78	104.10	99.20
November 1, 1985	109.86	105.13	100.18
January 1, 1986	112.04	107.21	102.16
July 1, 1986	113.71	108.80	103.68
January 1, 1987	116.25	111.22	105.99
July 1, 1987	117.98	112.87	107.36
January 1, 1988	120.61	115.39	109.96
July 1, 1991	124.23	118.85	113.26
July 1, 1993	127.96	122.42	116.66
July 1, 1994	133.08	127.32	121.33
**July 1, 1995	133.80	128.04	122.05
December 1, 1995	138.48	132.52	126.32
July 1, 1997	143.33	137.16	130.74
July 1, 1999	148.35	141.96	135.32

* Special Adjustment for Yard Conductors
** C-O-L-A Adjustment

UTU/R&S Dept.
October 1996

**BRAKEMAN'S
DAILY AND MILEAGE RATES OF PAY
LOCAL FREIGHT SERVICE**

Effective Date	Western Region		East & Southeast Region	
	Daily Rate	For miles in excess of 100	Daily Rate	For miles in excess of 100
October 1, 1950	\$11.42		\$11.47	
January 1, 1951	11.82		11.87	
March 1, 1951	12.02		12.07	
December 1, 1952	12.34		12.39	
October 1, 1953	13.38		13.43	
December 16, 1953	13.78		13.83	
October 1, 1955	14.62		14.67	
November 1, 1956	15.62		15.67	
November 1, 1957	16.18		16.23	
November 1, 1958	16.74		16.79	
May 1, 1960	18.10		18.15	
July 1, 1960	18.47		18.52	
March 1, 1961	18.83		18.88	
July 12, 1964	20.27	18.83*	20.32	18.88†
August 12, 1966	21.26	18.83	21.31	18.88
January 1, 1968	21.78	18.83	21.83	18.88
July 1, 1968	22.53	19.47	22.58	19.53
January 1, 1969	22.97	19.85	23.02	19.91
July 1, 1969	23.65	20.43	23.70	20.49
January 1, 1970	24.81	21.43	24.86	21.49
November 1, 1970	27.37	23.99	27.42	24.05
April 1, 1971	28.45	24.93	28.50	24.99
October 1, 1971	29.85	26.16	29.90	26.22
April 1, 1972	31.32	27.45	31.37	27.51
October 1, 1972	32.86	28.80	32.92	28.86
January 1, 1973	34.06	30.00	34.12	30.06
April 1, 1973	34.86	30.80	34.92	30.86
January 1, 1974	36.24	32.01	36.30	32.08
January 1, 1975	39.82	35.17	39.89	35.25
October 1, 1975	41.79	36.91	41.86	36.99
January 1, 1976	42.75	37.87	42.82	37.95
April 1, 1976	43.99	38.96	44.06	39.05
July 1, 1976	44.95	39.92	45.02	40.01
January 1, 1977	45.99	40.96	46.06	41.05
July 1, 1977	49.21	43.98	49.28	44.07
January 1, 1978	50.73	45.50	50.80	45.59
April 1, 1978	52.16	46.77	52.23	46.86
July 1, 1978	53.68	48.29	53.75	48.38
October 1, 1978	54.69	49.19	54.76	49.28
January 1, 1979	56.69	51.19	56.76	51.28
July 1, 1979	60.87	55.15	60.95	55.25
January 1, 1980	63.11	57.39	63.19	57.49
July 1, 1980	68.30	62.30	68.39	62.40
January 1, 1981	70.86	64.86	70.95	64.96
April 1, 1981	72.18	66.06	72.27	66.16
July 1, 1981	74.74	68.62	74.83	68.72
October 1, 1981	76.75	70.45	76.85	70.55
January 1, 1982	79.55	73.25	79.65	73.35
July 1, 1982	83.38	76.89	83.49	77.00
January 1, 1983	86.10	79.61	86.21	79.72
July 1, 1983	88.24	81.55	88.35	81.66
January 1, 1984	90.32	83.63	90.43	83.74
November 1, 1985	91.21	83.63	91.32	83.74
January 1, 1986	93.00	83.63	93.12	83.74
July 1, 1986	94.37	83.63	94.49	83.74
January 1, 1987	96.46	83.63	96.58	83.74
July 1, 1987	97.88	83.63	98.01	83.74
January 1, 1988	100.05	83.63	100.18	83.74
July 1, 1991	103.04	83.63	103.17	83.74
July 1, 1993	106.12	83.63	106.25	83.74
July 1, 1994	110.35	83.63	110.48	83.74
**July 1, 1995	111.07	83.63	111.20	83.74
December 1, 1995	114.94	86.54	115.08	86.66
July 1, 1997	118.95	89.55	119.09	89.68
July 1, 1999	123.10	92.67	123.24	92.80

* Special Adjustment for Road Conductors
** C-O-L-A Adjustment

UTU R&S Dept - October 1996

**Tax Rates and Maximum Taxable Earnings Under Social Security,
Railroad Retirement and Railroad Unemployment Insurance Programs**

Period	Maximum annual taxable earnings		Tax rate (percent)								
			Employer and employee, each				Self-employed person				
	OASDI	HI	Total	OASI	DI	HI	Total	OASI	DI	HI	
1937-1949.....	\$3,000	...	1.0	1.0	...	...	...	...	...	...	...
1950.....	3,000	...	1.5	1.5	...	...	...	...	...	...	...
1951-1953.....	3,600	...	1.5	1.5	...	...	2.25	2.25	...	...	...
1954.....	3,600	...	2.0	2.0	...	...	3.0	3.0	...	...	...
1955-1956.....	4,200	...	2.0	2.0	...	...	3.0	3.0	...	...	...
1957-1958.....	4,200	...	2.25	2.0	0.25	...	3.375	3.0	0.375	...	...
1959.....	4,800	...	2.5	2.25	0.25	...	3.75	3.375	0.375	...	...
1960-1961.....	4,800	...	3.0	2.75	0.25	...	4.5	4.125	0.375	...	...
1962.....	4,800	...	3.125	2.875	0.25	...	4.7	4.325	0.375	...	...
1963-1965.....	4,800	...	3.625	3.375	0.25	...	5.4	5.025	0.375	...	...
1966.....	6,600	\$6,600	4.2	3.5	0.35	0.35	6.15	5.275	0.525	0.35	...
1967.....	6,600	6,600	4.4	3.55	0.35	0.5	6.4	5.375	0.525	0.5	...
1968.....	7,800	7,800	4.4	3.325	0.475	0.6	6.4	5.0875	0.7125	0.6	...
1969.....	7,800	7,800	4.8	3.725	0.475	0.6	6.9	5.5875	0.7125	0.6	...
1970.....	7,800	7,800	4.8	3.65	0.55	0.6	6.9	5.475	0.825	0.6	...
1971.....	7,800	7,800	5.2	4.05	0.55	0.6	7.5	6.075	0.825	0.6	...
1972.....	9,000	9,000	5.2	4.05	0.55	0.6	7.5	6.075	0.825	0.6	...
1973.....	10,800	10,800	5.85	4.3	0.55	1.0	8.0	6.205	0.795	1.0	...
1974.....	13,200	13,200	5.85	4.375	0.575	0.9	7.9	6.185	0.815	0.9	...
1975.....	14,100	14,100	5.85	4.375	0.575	0.9	7.9	6.185	0.815	0.9	...
1976.....	15,300	15,300	5.85	4.375	0.575	0.9	7.9	6.185	0.815	0.9	...
1977.....	16,500	16,500	5.85	4.375	0.575	0.9	7.9	6.185	0.815	0.9	...
1978.....	17,700	17,700	6.05	4.275	0.775	1.0	8.1	6.01	1.09	1.0	...
1979.....	22,900	22,900	6.13	4.33	0.75	1.05	8.1	6.01	1.04	1.05	...
1980.....	25,900	25,900	6.13	4.52	0.56	1.05	8.1	6.2725	0.7775	1.05	...
1981.....	29,700	29,700	6.65	4.7	0.65	1.3	9.3	7.025	0.975	1.3	...
1982.....	32,400	32,400	6.7	4.575	0.825	1.3	9.35	6.8125	1.2375	1.3	...
1983.....	35,700	35,700	6.7	4.775	0.625	1.3	9.35	7.1125	0.9375	1.3	...
1984.....	37,800	37,800	7.0	5.2	0.5	1.3	14.0	10.4	1.0	2.6	...
1985.....	39,600	39,600	7.05	5.2	0.5	1.35	14.1	10.4	1.0	2.7	...
1986.....	42,000	42,000	7.15	5.2	0.5	1.45	14.3	10.4	1.0	2.9	...
1987.....	43,800	43,800	7.15	5.2	0.5	1.45	14.3	10.4	1.0	2.9	...
1988.....	45,000	45,000	7.51	5.53	0.53	1.45	15.02	11.06	1.06	2.9	...
1989.....	48,000	48,000	7.51	5.53	0.53	1.45	15.02	11.06	1.06	2.9	...
1990.....	51,300	51,300	7.65	5.6	0.6	1.45	15.3	11.2	1.2	2.9	...
1991.....	53,400	125,000	7.65	5.6	0.6	1.45	15.3	11.2	1.2	2.9	...
1992.....	55,500	130,200	7.65	5.6	0.6	1.45	15.3	11.2	1.2	2.9	...
1993.....	57,600	135,000	7.65	5.6	0.6	1.45	15.3	11.2	1.2	2.9	...
1994.....	60,600	No Limit	7.65	5.26	0.94	1.45	15.3	10.52	1.88	2.9	...
1995.....	61,200	No Limit	7.65	5.26	0.94	1.45	15.3	10.52	1.88	2.9	...
1996.....	62,700	No Limit	7.65	5.26	0.94	1.45	15.3	10.52	1.88	2.9	...
1997.....	65,400	No Limit	7.65	5.35	0.85	1.45	15.3	10.7	1.7	2.9	...
1998.....	68,400	No Limit	7.65	5.35	0.85	1.45	15.3	10.7	1.7	2.9	...
1999.....	72,600	No Limit	7.65	5.35	0.85	1.45	15.3	10.7	1.7	2.9	...
2000.....	76,200	No Limit	7.65	5.3	0.9	1.45	15.3	10.6	1.8	2.9	...
2001.....	80,400	No Limit	7.65	5.3	0.9	1.45	15.3	10.6	1.8	2.9	...
2002.....	84,900	No Limit	7.65	5.3	0.9	1.45	15.3	10.6	1.8	2.9	...
2003.....	87,000	No Limit	7.65	5.3	0.9	1.45	15.3	10.6	1.8	2.9	...
2004.....	87,900	No Limit	7.65	5.3	0.9	1.45	15.3	10.6	1.8	2.9	...
2005.....	90,000	No Limit	7.65	5.3	0.9	1.45	15.3	10.6	1.8	2.9	...
2006.....	94,200	No Limit	7.65	5.3	0.9	1.45	15.3	10.6	1.8	2.9	...
2007.....	97,500	No Limit	7.65	5.3	0.9	1.45	15.3	10.6	1.8	2.9	...
2008 and thereafter.....	(2)	No Limit	7.65	5.3	0.9	1.45	15.3	10.6	1.8	2.9	...

See footnotes at end of table.


**Tax Rates and Maximum Taxable Earnings Under Social Security,
 Railroad Retirement and Railroad Unemployment Insurance Programs, Continued**

Period	Railroad Retirement					Railroad Unemployment Insurance		Unemployment Repayment Tax [4]		Supplemental Annuities	
	Maximum earnings base [3]		Tax rate (percent) [3]			Maximum monthly taxable earnings	Employer tax rate [5] (percent)	Maximum taxable earnings	Employer tax rate (percent)	Period	Employer tax rate [6] (cents/hr.)
	Tier 1 [7]	Tier 2	Tier 1		Tier 2						
			Employer & employee each	Employer	Employee						
1937-8/39	\$ 300	...	2.75	...	...	...	...	...	11/1966-3/70	2
7/39-12/39	300	...	2.75	...	...	\$ 300	3.0	...	4/70-6/70	6
1940-1942	300	...	3.0	...	...	300	3.0	...	7/70-12/70	7
1943-1945	300	...	3.25	...	...	300	3.0	...	1/71-6/72	8
1946	300	...	3.5	...	...	300	3.0	...	7/72-12/74	7½
1947	300	...	5.75	...	...	300	3.0	...	1/75-12/75	8½
1948	300	...	5.75	...	...	300	0.5	...	1/76-12/76	12
1949-1951	300	...	6.0	...	...	300	0.5	...	1/77-12/77	12½
1952-8/54	300	...	6.25	...	...	300	0.5	...	1/78-12/78	12
7/54-12/54	350	...	6.25	...	...	350	0.5	...	1/79-12/80	12½
1955	350	...	6.25	...	...	350	0.5	...	1/81-12/81	14½
1956	350	...	6.25	...	...	350	1.5	...	1/82-12/82	17
1957	350	...	6.25	...	...	350	2.0	...	1/83-12/83	18½
1958	350	...	6.25	...	...	350	2.5	...	1/84-12/85	20
1/58-5/59	350	...	6.25	...	...	350	3.0	...	1/86-12/86	22½
6/59-12/59	400	...	6.75	...	...	400	3.75	...	1/87-12/87	24
1960-1961	400	...	6.75	...	...	400	3.75	...	1/88-6/91	26
1962	400	...	7.25	...	...	400	4.0	...	7/91-3/92	28½
1/63-10/63	400	...	7.25	...	...	400	4.0	...	4/92-12/93	31
11/63-12/64	450	...	7.25	...	...	400	4.0	...	1/94-12/94	30
1/65-9/65	450	...	8.125	...	...	400	4.0	...	1/95-12/95	33
10/65-12/65	450	...	7.125	...	...	400	4.0	...	1/96-12/96	34
1966	500	...	7.95	...	...	400	4.0	...	1/97-12/98	35
1967	550	...	8.65	...	...	400	4.0	...	1/99-12/99	27
1968	600	...	8.6	...	...	400	4.0	...	1/00-12/00	26½
1969-1970	650	...	9.55	...	...	400	4.0	...	1/01-12/01	26
1971	650	...	9.95	...	...	400	4.0	...		
1972	750	...	9.95	...	...	400	4.0	...		
1/1973-9/73	900	\$ 900	10.6	...	...	400	4.0	...		
10/73-12/73	900	900	9.85	9.5	...	400	4.0	...			
1974	1,100	1,100	5.85	9.5	...	400	4.0	...			
1975	1,175	1,175	5.85	9.5	...	400	4.0	...			
1976	1,275	1,275	5.85	9.5	...	400	5.5	...			
1977	1,375	1,375	5.85	9.5	...	400	8.0	...			
1978	1,475	1,475	6.05	9.5	...	400	8.0	...			
1979	1,600	1,575	6.13	9.5	...	400	7.0	...			
1980	2,158.33	1,700	6.13	9.5	...	400	5.5	...			
1/81-9/81	2,475	1,850	6.65	9.5	...	400	8.0	...			
10/81-12/81	2,475	1,850	6.65	11.75	2.0	400	8.0	...			
1982	2,700	2,025	6.7	11.75	2.0	400	8.0	...			
1983	2,975	2,225	6.7	11.75	2.0	400	8.0	...			
1984	3,150	2,350	(1) 7.0	12.75	2.75	600	8.0	...			
1985	39,600	29,700	7.05	13.75	3.5	600	8.0	...			
1/86-6/86	42,000	31,500	7.15	14.75	4.25	600	8.0	...			
7/86-12/86	42,000	31,500	7.15	14.75	4.25	600	8.0	\$3,500	4.3		
1987	43,800	32,700	7.15	14.75	4.25	600	8.0	7,000	4.7		
1988	45,000	33,600	7.51	16.1	4.9	600	8.0	7,000	6.0		
1989	48,000	35,700	7.51	16.1	4.9	710	8.0	710	4.0		
1990	51,300	38,100	7.65	16.1	4.9	745	8.0	745	4.0		

See footnotes at end of table.

**Tax Rates and Maximum Taxable Earnings Under Social Security,
Railroad Retirement and Railroad Unemployment Insurance Programs, Continued**

Period	Railroad Retirement					Railroad Unemployment Insurance			Unemployment Repayment Tax [4]		
	Maximum earnings base [3]		Tax rate (percent) [1]			Maximum monthly taxable earnings	Employer tax rate [5] (percent)	Surcharge or (pooled credit)	New employer tax rate (percent)	Maximum taxable earnings	Employer tax rate (percent)
	Tier 1 [7]	Tier 2	Tier 1 Employer & employee each	Tier 2							
				Employer	Employee						
1991	53,400	39,600	7.65	16.1	4.9	765	5.55 - 12.0	...	8.00	765	4.0
1992	55,500	41,400	7.65	16.1	4.9	785	3.10 - 12.0	(3.12)	8.00	785	4.0
1993	57,600	42,900	7.65	16.1	4.9	810	0.65 - 12.0	(5.31)	7.30	810	4.0
1994	60,600	45,000	7.65	16.1	4.9	840	0.65 - 12.0	(0.22)	6.06		
1995	61,200	45,300	7.65	16.1	4.9	850	0.65 - 12.0	...	4.15		
1996	62,700	46,500	7.65	16.1	4.9	865	0.65 - 12.0	...	2.31		
1997	65,400	48,600	7.65	16.1	4.9	890	0.65 - 12.0	...	1.16		
1998	68,400	50,700	7.65	16.1	4.9	925	2.15 - 12.0	1.5	0.85		
1999	72,600	53,700	7.65	16.1	4.9	970	2.15 - 12.0	1.5	0.92		
2000	78,200	56,700	7.65	16.1	4.9	1,005	0.65 - 12.0	...	1.67		
2001	84,200	59,700	7.65	16.1	4.9	1,050	2.15 - 12.0	1.5	2.59		
2002	84,900	63,000	7.65	15.6	4.9	1,100	3.15 - 12.0	2.5	2.71		
2003	87,000	64,500	7.65	14.2	4.9	1,120	3.15 - 12.0	2.5	2.36		
2004	87,900	65,100	7.65	13.1	4.9	1,130	2.15 - 12.0	1.5	2.38		
2005	89,000	66,600	7.65	12.6	4.4	1,150	2.15 - 12.0	1.5	3.43		
2006	94,200	69,900	7.65	12.6	4.4	1,195	2.15 - 12.0	1.5	4.03		
2007	97,500	72,600	7.65	12.1	3.9	1,230	2.15 - 12.0	1.5	3.75		
2008	102,000	75,000	7.65	[8]	[8]	[2]	[5]	[5]	[5]		

1. Beginning in 1984, employers received a credit of 0.3 percent in 1984. The self-employed received a credit of 2.7 percent in 1984, 2.3 percent in 1985 and 2.0 percent in 1986.
2. Based on average adjustments in proportion to increases in average earnings levels.
3. Earnings base is annual through 1994 and annual for 1985 and later. October 1, 1973 was the effective date for the allocation of railroad retirement taxes by tiers, subject to a moratorium for certain railroad labor organizations. The tier 1 tax rate was set equal to the current social security tax rate.
4. This surcharge was applied to employers until all pre-October 1985 loans from the Railroad Retirement Account were fully repaid with interest on June 29, 1993. Earnings bases are annual through 1988 and monthly for 1989-1993.
5. Taxes are paid only by employer. From 1948 through 1988, the rate for a calendar year was based on a graduated schedule depending on the preceding September 30 account balance (including administration fund). Except for certain commuter railroads, the rate for 1989-1990 was fixed at 8.0 percent. Beginning in 1991, each employer's rate is experience-based, with a minimum of 0.65 percent and a maximum of 12 percent, or 12.5 percent if a 3.5 percent surcharge applies due to a low account balance.
6. Taxes are paid only by employers. The supplemental annuity tax was repealed for calendar years after 2001.
7. Beginning in 1991, the portion of the tier 1 tax rate which does not exceed the social security HI tax rate is applied to earnings up to the HI maximum taxable amount. In 1993, a 1.45 percent tax applied to earnings up to \$135,000 and a 6.2 percent tax applied to earnings up to \$57,600.
8. Beginning in 2004, the tier 2 tax rate will be determined annually from a tax rate schedule based on the average account benefits ratio. The average account benefits ratio is the average for the 10 fiscal years preceding the calendar year of the ratio of the fair market value of the assets in the Railroad Retirement Account and the National Railroad Retirement Investment Trust as of the close of each fiscal year to the total benefits and administrative expenses paid from those accounts during the fiscal year. Employer tax rates can range from 8.2 percent to 22.1 percent. Employee tax rates can range from 0 percent to 4.9 percent.

10 Year T-Bill Interest Rates

Prime Interest Rates

Year	10 Year T-Bill Interest Rates			Prime Interest Rates				
	Rate	Quarterly Compounding		Rate	Quarterly Compounding			
1968	5.64%	0.0141	1.057604	5.76%	6.31%	0.0158	1.064633	6.46%
1969	6.67%	0.0167	1.068387	6.84%	7.95%	0.0199	1.0819	8.19%
1970	7.35%	0.0184	1.075551	7.56%	7.91%	0.0198	1.081467	8.15%
1971	6.16%	0.0154	1.063038	6.30%	5.72%	0.0143	1.058469	5.85%
1972	6.21%	0.0155	1.063561	6.36%	5.25%	0.0131	1.053519	5.35%
1973	6.85%	0.0171	1.07028	7.03%	8.01%	0.0200	1.082544	8.25%
1974	7.56%	0.0189	1.07777	7.78%	10.79%	0.0270	1.112378	11.24%
1975	7.99%	0.0200	1.082326	8.23%	7.86%	0.0196	1.080941	8.09%
1976	7.61%	0.0190	1.078299	7.83%	6.84%	0.0171	1.070171	7.02%
1977	7.42%	0.0186	1.07629	7.63%	6.82%	0.0171	1.069992	7.00%
1978	8.41%	0.0210	1.08679	8.68%	9.05%	0.0226	1.093624	9.36%
1979	9.43%	0.0236	1.097687	9.77%	12.66%	0.0316	1.1327	13.27%
1980	11.43%	0.0286	1.119293	11.93%	15.23%	0.0381	1.161188	16.12%
1981	13.92%	0.0348	1.146636	14.66%	18.86%	0.0472	1.202365	20.24%
1982	13.01%	0.0325	1.136586	13.66%	14.84%	0.0371	1.156916	15.69%
1983	11.10%	0.0278	1.115706	11.57%	10.79%	0.0270	1.112387	11.24%
1984	12.46%	0.0312	1.130544	13.05%	12.04%	0.0301	1.125943	12.59%
1985	10.62%	0.0266	1.110505	11.05%	9.93%	0.0248	1.103084	10.31%
1986	7.67%	0.0192	1.078934	7.89%	8.33%	0.0208	1.085938	8.59%
1987	8.39%	0.0210	1.086577	8.66%	8.20%	0.0205	1.084578	8.46%
1988	8.85%	0.0221	1.091481	9.15%	9.31%	0.0233	1.096431	9.64%
1989	8.49%	0.0212	1.087641	8.76%	10.87%	0.0272	1.113239	11.32%
1990	8.55%	0.0214	1.088281	8.83%	10.01%	0.0250	1.103912	10.39%
1991	7.86%	0.0197	1.080947	8.09%	8.46%	0.0212	1.087338	8.73%
1992	7.01%	0.0175	1.071964	7.20%	6.25%	0.0156	1.063995	6.40%
1993	5.87%	0.0147	1.060005	6.00%	6.00%	0.0150	1.061364	6.14%
1994	7.09%	0.0177	1.072807	7.28%	7.14%	0.0178	1.073284	7.33%
1995	6.57%	0.0164	1.067336	6.73%	8.83%	0.0221	1.091257	9.13%
1996	6.44%	0.0161	1.065972	6.60%	8.27%	0.0207	1.085309	8.53%
1997	6.35%	0.0159	1.065028	6.50%	8.44%	0.0211	1.087126	8.71%
1998	5.26%	0.0132	1.053647	5.36%	8.35%	0.0209	1.086192	8.62%
1999	5.65%	0.0141	1.057708	5.77%	7.99%	0.0200	1.082367	8.24%
2000	6.03%	0.0151	1.061677	6.17%	9.23%	0.0231	1.095574	9.56%
2001	5.02%	0.0126	1.051153	5.12%	6.91%	0.0173	1.070952	7.10%
2002	4.61%	0.0115	1.046903	4.69%	4.67%	0.0117	1.047575	4.76%
2003	4.01%	0.0100	1.040707	4.07%	4.12%	0.0103	1.041866	4.19%
2004	4.27%	0.0107	1.043389	4.34%	4.34%	0.0109	1.044121	4.41%
2005	4.29%	0.0107	1.043595	4.36%	6.19%	0.0155	1.0633	6.33%
2006	4.80%	0.0120	1.048871	4.89%	7.96%	0.0199	1.081975	8.20%
2007	4.68%	0.0117	1.047597	4.76%	8.12%	0.0203	1.083655	8.37%

01/2007, 8.25
02/2007, 8.25
03/2007, 8.25
04/2007, 8.25
05/2007, 8.25
06/2007, 8.25
07/2007, 8.25
08/2007, 8.25
09/2007, 8.03
10/2007, 7.74
11/2007, 7.50

01/2006, 4.42
02/2006, 4.57
03/2006, 4.72
04/2006, 4.99
05/2006, 5.11
06/2006, 5.11
07/2006, 5.09
08/2006, 4.88
09/2006, 4.72
10/2006, 4.73
11/2006, 4.60
12/2006, 4.56
01/2007, 4.76
02/2007, 4.72
03/2007, 4.56
04/2007, 4.69
05/2007, 4.75
06/2007, 5.10
07/2007, 5.00
08/2007, 4.67
09/2007, 4.52
10/2007, 4.53
11/2007, 4.15

Title:	Bank Prime Loan Rate						
Series ID:	MPRIME						
Source:	Board of Governors of the Federal Reserve System						
Release:	H.15 Selected Interest Rates						
Seasonal Adjustment:	Not Applicable						
Frequency:	Monthly						
Units:	Percent						
Date Range:	1949-01-01 to 2007-06-01						
Last Updated:	2007-07-03 9:36 AM CT						
Notes:	Averages of Daily Figures						
DATE	VALUE						EXP
1968-01-01	6.00	1.0600	0.058269				
1968-02-01	6.00	1.0600	0.058269				
1968-03-01	6.00	1.0600	0.058269				
1968-04-01	6.20	1.0620	0.060154				
1968-05-01	6.50	1.0650	0.062975				
1968-06-01	6.50	1.0650	0.062975				
1968-07-01	6.50	1.0650	0.062975				
1968-08-01	6.50	1.0650	0.062975				
1968-09-01	6.45	1.0645	0.062505				
1968-10-01	6.25	1.0625	0.060625				
1968-11-01	6.25	1.0625	0.060625				
1968-12-01	6.60	1.0660	0.063913	0.0612	1.0631		1.0631
1969-01-01	6.95	1.0695	0.067191				
1969-02-01	7.00	1.0700	0.067659				
1969-03-01	7.24	1.0724	0.069899				
1969-04-01	7.50	1.0750	0.072321				
1969-05-01	7.50	1.0750	0.072321				
1969-06-01	8.23	1.0823	0.079088				
1969-07-01	8.50	1.0850	0.08158				
1969-08-01	8.50	1.0850	0.08158				
1969-09-01	8.50	1.0850	0.08158				
1969-10-01	8.50	1.0850	0.08158				
1969-11-01	8.50	1.0850	0.08158				
1969-12-01	8.50	1.0850	0.08158	0.0765	1.0795		1.0795
1970-01-01	8.50	1.0850	0.08158				
1970-02-01	8.50	1.0850	0.08158				
1970-03-01	8.39	1.0839	0.080566				
1970-04-01	8.00	1.0800	0.076961				
1970-05-01	8.00	1.0800	0.076961				
1970-06-01	8.00	1.0800	0.076961				
1970-07-01	8.00	1.0800	0.076961				
1970-08-01	8.00	1.0800	0.076961				
1970-09-01	7.83	1.0783	0.075386				
1970-10-01	7.50	1.0750	0.072321				
1970-11-01	7.28	1.0728	0.070272				
1970-12-01	6.92	1.0692	0.066911	0.0761	1.0791		1.0791
1971-01-01	6.29	1.0629	0.061001				
1971-02-01	5.88	1.0588	0.057136				
1971-03-01	5.44	1.0544	0.052972				
1971-04-01	5.28	1.0528	0.051453				
1971-05-01	5.46	1.0546	0.053162				
1971-06-01	5.50	1.0550	0.053541				
1971-07-01	5.91	1.0591	0.057419				
1971-08-01	6.00	1.0600	0.058269				
1971-09-01	6.00	1.0600	0.058269				
1971-10-01	5.90	1.0590	0.057325				
1971-11-01	5.53	1.0553	0.053825				
1971-12-01	5.49	1.0549	0.053446	0.0557	1.0572		1.0572

1972-01-01	5.18	1.0518	0.050503				
1972-02-01	4.75	1.0475	0.046406				
1972-03-01	4.75	1.0475	0.046406				
1972-04-01	4.97	1.0497	0.048504				
1972-05-01	5.00	1.0500	0.04879				
1972-06-01	5.04	1.0504	0.049171				
1972-07-01	5.25	1.0525	0.051168				
1972-08-01	5.27	1.0527	0.051358				
1972-09-01	5.50	1.0550	0.053541				
1972-10-01	5.73	1.0573	0.055718				
1972-11-01	5.75	1.0575	0.055908				
1972-12-01	5.79	1.0579	0.056286	0.0511	1.0525		1.0525
1973-01-01	6.00	1.0600	0.058269				
1973-02-01	6.02	1.0602	0.058458				
1973-03-01	6.30	1.0630	0.061095				
1973-04-01	6.61	1.0661	0.064007				
1973-05-01	7.01	1.0701	0.067752				
1973-06-01	7.49	1.0749	0.072228				
1973-07-01	8.30	1.0830	0.079735				
1973-08-01	9.23	1.0923	0.088286				
1973-09-01	9.86	1.0986	0.094037				
1973-10-01	9.94	1.0994	0.094765				
1973-11-01	9.75	1.0975	0.093035				
1973-12-01	9.75	1.0975	0.093035	0.0771	1.0801		1.0801
1974-01-01	9.73	1.0973	0.092853				
1974-02-01	9.21	1.0921	0.088102				
1974-03-01	8.85	1.0885	0.084801				
1974-04-01	10.02	1.1002	0.095492				
1974-05-01	11.25	1.1125	0.10661				
1974-06-01	11.54	1.1154	0.109213				
1974-07-01	11.97	1.1197	0.113061				
1974-08-01	12.00	1.1200	0.113329				
1974-09-01	12.00	1.1200	0.113329				
1974-10-01	11.68	1.1168	0.110467				
1974-11-01	10.83	1.1083	0.102827				
1974-12-01	10.50	1.1050	0.099845	0.1025	1.1079		1.1079
1975-01-01	10.05	1.1005	0.095765				
1975-02-01	8.96	1.0896	0.085811				
1975-03-01	7.93	1.0793	0.076313				
1975-04-01	7.50	1.0750	0.072321				
1975-05-01	7.40	1.0740	0.07139				
1975-06-01	7.07	1.0707	0.068313				
1975-07-01	7.15	1.0715	0.06906				
1975-08-01	7.66	1.0766	0.073808				
1975-09-01	7.88	1.0788	0.075849				
1975-10-01	7.96	1.0796	0.076591				
1975-11-01	7.53	1.0753	0.0726				
1975-12-01	7.26	1.0726	0.070086	0.0757	1.0786		1.0786
1976-01-01	7.00	1.0700	0.067659				
1976-02-01	6.75	1.0675	0.065319				
1976-03-01	6.75	1.0675	0.065319				
1976-04-01	6.75	1.0675	0.065319				
1976-05-01	6.75	1.0675	0.065319				
1976-06-01	7.20	1.0720	0.069526				
1976-07-01	7.25	1.0725	0.069992				
1976-08-01	7.01	1.0701	0.067752				
1976-09-01	7.00	1.0700	0.067659				
1976-10-01	6.77	1.0677	0.065507				
1976-11-01	6.50	1.0650	0.062975				
1976-12-01	6.35	1.0635	0.061565	0.0662	1.0684		1.0684
1977-01-01	6.25	1.0625	0.060625				
1977-02-01	6.25	1.0625	0.060625				
1977-03-01	6.25	1.0625	0.060625				
1977-04-01	6.25	1.0625	0.060625				
1977-05-01	6.41	1.0641	0.062129				
1977-06-01	6.75	1.0675	0.065319				
1977-07-01	6.75	1.0675	0.065319				
1977-08-01	6.83	1.0683	0.066069				

1977-09-01	7.13	1.0713	0.068873				
1977-10-01	7.52	1.0752	0.072507				
1977-11-01	7.75	1.0775	0.074644				
1977-12-01	7.75	1.0775	0.074644	0.0660	1.0682		1.0682
1978-01-01	7.93	1.0793	0.076313				
1978-02-01	8.00	1.0800	0.076961				
1978-03-01	8.00	1.0800	0.076961				
1978-04-01	8.00	1.0800	0.076961				
1978-05-01	8.27	1.0827	0.079458				
1978-06-01	8.63	1.0863	0.082777				
1978-07-01	9.00	1.0900	0.086178				
1978-08-01	9.01	1.0901	0.086269				
1978-09-01	9.41	1.0941	0.089932				
1978-10-01	9.94	1.0994	0.094765				
1978-11-01	10.94	1.1094	0.103819				
1978-12-01	11.55	1.1155	0.109303	0.0866	1.0905		1.0905
1979-01-01	11.75	1.1175	0.111094				
1979-02-01	11.75	1.1175	0.111094				
1979-03-01	11.75	1.1175	0.111094				
1979-04-01	11.75	1.1175	0.111094				
1979-05-01	11.75	1.1175	0.111094				
1979-06-01	11.65	1.1165	0.110199				
1979-07-01	11.54	1.1154	0.109213				
1979-08-01	11.91	1.1191	0.112525				
1979-09-01	12.90	1.1290	0.121332				
1979-10-01	14.39	1.1439	0.134443				
1979-11-01	15.55	1.1555	0.144533				
1979-12-01	15.30	1.1530	0.142367	0.1192	1.1266		1.1266
1980-01-01	15.25	1.1525	0.141933				
1980-02-01	15.63	1.1563	0.145225				
1980-03-01	18.31	1.1831	0.168138				
1980-04-01	19.77	1.1977	0.180403				
1980-05-01	16.57	1.1657	0.153322				
1980-06-01	12.63	1.1263	0.118938				
1980-07-01	11.48	1.1148	0.108675				
1980-08-01	11.12	1.1112	0.105441				
1980-09-01	12.23	1.1223	0.11538				
1980-10-01	13.79	1.1379	0.129184				
1980-11-01	16.06	1.1606	0.148937				
1980-12-01	20.35	1.2035	0.185234	0.1417	1.1523		1.1523
1981-01-01	20.16	1.2016	0.183654				
1981-02-01	19.43	1.1943	0.17756				
1981-03-01	18.05	1.1805	0.165938				
1981-04-01	17.15	1.1715	0.158285				
1981-05-01	19.61	1.1961	0.179066				
1981-06-01	20.03	1.2003	0.182572				
1981-07-01	20.39	1.2039	0.185566				
1981-08-01	20.50	1.2050	0.18648				
1981-09-01	20.08	1.2008	0.182988				
1981-10-01	18.45	1.1845	0.169321				
1981-11-01	16.84	1.1684	0.155635				
1981-12-01	15.75	1.1575	0.146263	0.1728	1.1886		1.1886
1982-01-01	15.75	1.1575	0.146263				
1982-02-01	16.56	1.1656	0.153236				
1982-03-01	16.50	1.1650	0.152721				
1982-04-01	16.50	1.1650	0.152721				
1982-05-01	16.50	1.1650	0.152721				
1982-06-01	16.50	1.1650	0.152721				
1982-07-01	16.26	1.1626	0.150659				
1982-08-01	14.39	1.1439	0.134443				
1982-09-01	13.50	1.1350	0.126633				
1982-10-01	12.52	1.1252	0.117961				
1982-11-01	11.85	1.1185	0.111989				
1982-12-01	11.50	1.1150	0.108854	0.1384	1.1484		1.1484
1983-01-01	11.16	1.1116	0.1058				
1983-02-01	10.98	1.1098	0.10418				
1983-03-01	10.50	1.1050	0.099845				
1983-04-01	10.50	1.1050	0.099845				

1983-05-01	10.50	1.1050	0.099845				
1983-06-01	10.50	1.1050	0.099845				
1983-07-01	10.50	1.1050	0.099845				
1983-08-01	10.89	1.1089	0.103369				
1983-09-01	11.00	1.1100	0.10436				
1983-10-01	11.00	1.1100	0.10436				
1983-11-01	11.00	1.1100	0.10436				
1983-12-01	11.00	1.1100	0.10436	0.1025	1.1079		1.1079
1984-01-01	11.00	1.1100	0.10436				
1984-02-01	11.00	1.1100	0.10436				
1984-03-01	11.21	1.1121	0.10625				
1984-04-01	11.93	1.1193	0.112703				
1984-05-01	12.39	1.1239	0.116805				
1984-06-01	12.60	1.1260	0.118672				
1984-07-01	13.00	1.1300	0.122218				
1984-08-01	13.00	1.1300	0.122218				
1984-09-01	12.97	1.1297	0.121952				
1984-10-01	12.58	1.1258	0.118494				
1984-11-01	11.77	1.1177	0.111273				
1984-12-01	11.06	1.1106	0.1049	0.1137	1.1204		1.1204
1985-01-01	10.61	1.1061	0.10084				
1985-02-01	10.50	1.1050	0.099845				
1985-03-01	10.50	1.1050	0.099845				
1985-04-01	10.50	1.1050	0.099845				
1985-05-01	10.31	1.1031	0.098124				
1985-06-01	9.78	1.0978	0.093308				
1985-07-01	9.50	1.0950	0.090754				
1985-08-01	9.50	1.0950	0.090754				
1985-09-01	9.50	1.0950	0.090754				
1985-10-01	9.50	1.0950	0.090754				
1985-11-01	9.50	1.0950	0.090754				
1985-12-01	9.50	1.0950	0.090754	0.0947	1.0993		1.0993
1986-01-01	9.50	1.0950	0.090754				
1986-02-01	9.50	1.0950	0.090754				
1986-03-01	9.10	1.0910	0.087095				
1986-04-01	8.83	1.0883	0.084617				
1986-05-01	8.50	1.0850	0.08158				
1986-06-01	8.50	1.0850	0.08158				
1986-07-01	8.16	1.0816	0.078441				
1986-08-01	7.90	1.0790	0.076035				
1986-09-01	7.50	1.0750	0.072321				
1986-10-01	7.50	1.0750	0.072321				
1986-11-01	7.50	1.0750	0.072321				
1986-12-01	7.50	1.0750	0.072321	0.0800	1.0833		1.0833
1987-01-01	7.50	1.0750	0.072321				
1987-02-01	7.50	1.0750	0.072321				
1987-03-01	7.50	1.0750	0.072321				
1987-04-01	7.75	1.0775	0.074644				
1987-05-01	8.14	1.0814	0.078256				
1987-06-01	8.25	1.0825	0.079273				
1987-07-01	8.25	1.0825	0.079273				
1987-08-01	8.25	1.0825	0.079273				
1987-09-01	8.70	1.0870	0.083422				
1987-10-01	9.07	1.0907	0.08682				
1987-11-01	8.78	1.0878	0.084157				
1987-12-01	8.75	1.0875	0.083881	0.0788	1.0820		1.0820
1988-01-01	8.75	1.0875	0.083881				
1988-02-01	8.51	1.0851	0.081672				
1988-03-01	8.50	1.0850	0.08158				
1988-04-01	8.50	1.0850	0.08158				
1988-05-01	8.84	1.0884	0.084709				
1988-06-01	9.00	1.0900	0.086178				
1988-07-01	9.29	1.0929	0.088835				
1988-08-01	9.84	1.0984	0.093855				
1988-09-01	10.00	1.1000	0.09531				
1988-10-01	10.00	1.1000	0.09531				
1988-11-01	10.05	1.1005	0.095765				
1988-12-01	10.50	1.1050	0.099845	0.0890	1.0931		1.0931

1989-01-01	10.50	1.1050	0.099845				
1989-02-01	10.93	1.1093	0.103729				
1989-03-01	11.50	1.1150	0.108854				
1989-04-01	11.50	1.1150	0.108854				
1989-05-01	11.50	1.1150	0.108854				
1989-06-01	11.07	1.1107	0.10499				
1989-07-01	10.98	1.1098	0.10418				
1989-08-01	10.50	1.1050	0.099845				
1989-09-01	10.50	1.1050	0.099845				
1989-10-01	10.50	1.1050	0.099845				
1989-11-01	10.50	1.1050	0.099845				
1989-12-01	10.50	1.1050	0.099845	0.1032	1.1087		1.1087
1990-01-01	10.11	1.1011	0.08631				
1990-02-01	10.00	1.1000	0.09531				
1990-03-01	10.00	1.1000	0.09531				
1990-04-01	10.00	1.1000	0.09531				
1990-05-01	10.00	1.1000	0.09531				
1990-06-01	10.00	1.1000	0.09531				
1990-07-01	10.00	1.1000	0.09531				
1990-08-01	10.00	1.1000	0.09531				
1990-09-01	10.00	1.1000	0.09531				
1990-10-01	10.00	1.1000	0.09531				
1990-11-01	10.00	1.1000	0.09531				
1990-12-01	10.00	1.1000	0.09531	0.0954	1.1001		1.1001
1991-01-01	9.52	1.0952	0.090937				
1991-02-01	9.05	1.0905	0.086636				
1991-03-01	9.00	1.0900	0.086178				
1991-04-01	9.00	1.0900	0.086178				
1991-05-01	8.50	1.0850	0.08158				
1991-06-01	8.50	1.0850	0.08158				
1991-07-01	8.50	1.0850	0.08158				
1991-08-01	8.50	1.0850	0.08158				
1991-09-01	8.20	1.0820	0.078811				
1991-10-01	8.00	1.0800	0.076961				
1991-11-01	7.58	1.0758	0.073065				
1991-12-01	7.21	1.0721	0.069619	0.0812	1.0846		1.0846
1992-01-01	6.50	1.0650	0.062975				
1992-02-01	6.50	1.0650	0.062975				
1992-03-01	6.50	1.0650	0.062975				
1992-04-01	6.50	1.0650	0.062975				
1992-05-01	6.50	1.0650	0.062975				
1992-06-01	6.50	1.0650	0.062975				
1992-07-01	6.02	1.0602	0.058458				
1992-08-01	6.00	1.0600	0.058269				
1992-09-01	6.00	1.0600	0.058269				
1992-10-01	6.00	1.0600	0.058269				
1992-11-01	6.00	1.0600	0.058269				
1992-12-01	6.00	1.0600	0.058269	0.0808	1.0625		1.0625
1993-01-01	6.00	1.0600	0.058269				
1993-02-01	6.00	1.0600	0.058269				
1993-03-01	6.00	1.0600	0.058269				
1993-04-01	6.00	1.0600	0.058269				
1993-05-01	6.00	1.0600	0.058269				
1993-06-01	6.00	1.0600	0.058269				
1993-07-01	6.00	1.0600	0.058269				
1993-08-01	6.00	1.0600	0.058269				
1993-09-01	6.00	1.0600	0.058269				
1993-10-01	6.00	1.0600	0.058269				
1993-11-01	6.00	1.0600	0.058269				
1993-12-01	6.00	1.0600	0.058269	0.0583	1.0600		1.0600
1994-01-01	6.00	1.0600	0.058269				
1994-02-01	6.00	1.0600	0.058269				
1994-03-01	6.06	1.0606	0.058835				
1994-04-01	6.45	1.0645	0.062505				
1994-05-01	6.99	1.0699	0.067565				
1994-06-01	7.25	1.0725	0.069992				
1994-07-01	7.25	1.0725	0.069992				
1994-08-01	7.51	1.0751	0.072414				

1994-09-01	7.75	1.0775	0.074644				
1994-10-01	7.75	1.0775	0.074644				
1994-11-01	8.15	1.0815	0.078349				
1994-12-01	8.50	1.0850	0.08158	0.0689	1.0714		1.0714
1995-01-01	8.50	1.0850	0.08158				
1995-02-01	9.00	1.0900	0.086178				
1995-03-01	9.00	1.0900	0.086178				
1995-04-01	9.00	1.0900	0.086178				
1995-05-01	9.00	1.0900	0.086178				
1995-06-01	9.00	1.0900	0.086178				
1995-07-01	8.80	1.0880	0.084341				
1995-08-01	8.75	1.0875	0.083881				
1995-09-01	8.75	1.0875	0.083881				
1995-10-01	8.75	1.0875	0.083881				
1995-11-01	8.75	1.0875	0.083881				
1995-12-01	8.65	1.0865	0.082962	0.0846	1.0883		1.0883
1996-01-01	8.50	1.0850	0.08158				
1996-02-01	8.25	1.0825	0.079273				
1996-03-01	8.25	1.0825	0.079273				
1996-04-01	8.25	1.0825	0.079273				
1996-05-01	8.25	1.0825	0.079273				
1996-06-01	8.25	1.0825	0.079273				
1996-07-01	8.25	1.0825	0.079273				
1996-08-01	8.25	1.0825	0.079273				
1996-09-01	8.25	1.0825	0.079273				
1996-10-01	8.25	1.0825	0.079273				
1996-11-01	8.25	1.0825	0.079273				
1996-12-01	8.25	1.0825	0.079273	0.0795	1.0827		1.0827
1997-01-01	8.25	1.0825	0.079273				
1997-02-01	8.25	1.0825	0.079273				
1997-03-01	8.30	1.0830	0.079735				
1997-04-01	8.50	1.0850	0.08158				
1997-05-01	8.50	1.0850	0.08158				
1997-06-01	8.50	1.0850	0.08158				
1997-07-01	8.50	1.0850	0.08158				
1997-08-01	8.50	1.0850	0.08158				
1997-09-01	8.50	1.0850	0.08158				
1997-10-01	8.50	1.0850	0.08158				
1997-11-01	8.50	1.0850	0.08158				
1997-12-01	8.50	1.0850	0.08158	0.0810	1.0844		1.0844
1998-01-01	8.50	1.0850	0.08158				
1998-02-01	8.50	1.0850	0.08158				
1998-03-01	8.50	1.0850	0.08158				
1998-04-01	8.50	1.0850	0.08158				
1998-05-01	8.50	1.0850	0.08158				
1998-06-01	8.50	1.0850	0.08158				
1998-07-01	8.50	1.0850	0.08158				
1998-08-01	8.50	1.0850	0.08158				
1998-09-01	8.49	1.0849	0.081488				
1998-10-01	8.12	1.0812	0.078072				
1998-11-01	7.89	1.0789	0.075942				
1998-12-01	7.75	1.0775	0.074644	0.0802	1.0835		1.0835
1999-01-01	7.75	1.0775	0.074644				
1999-02-01	7.75	1.0775	0.074644				
1999-03-01	7.75	1.0775	0.074644				
1999-04-01	7.75	1.0775	0.074644				
1999-05-01	7.75	1.0775	0.074644				
1999-06-01	7.75	1.0775	0.074644				
1999-07-01	8.00	1.0800	0.076961				
1999-08-01	8.06	1.0806	0.077516				
1999-09-01	8.25	1.0825	0.079273				
1999-10-01	8.25	1.0825	0.079273				
1999-11-01	8.37	1.0837	0.080381				
1999-12-01	8.50	1.0850	0.08158	0.0769	1.0799		1.0799
2000-01-01	8.50	1.0850	0.08158				
2000-02-01	8.73	1.0873	0.083698				
2000-03-01	8.83	1.0883	0.084617				
2000-04-01	9.00	1.0900	0.086178				

2000-05-01	9.24	1.0924	0.088377				
2000-06-01	9.50	1.0950	0.090754				
2000-07-01	9.50	1.0950	0.090754				
2000-08-01	9.50	1.0950	0.090754				
2000-09-01	9.50	1.0950	0.090754				
2000-10-01	9.50	1.0950	0.090754				
2000-11-01	9.50	1.0950	0.090754				
2000-12-01	9.50	1.0950	0.090754	0.0883	1.0923		1.0923
2001-01-01	9.05	1.0905	0.086636				
2001-02-01	8.50	1.0850	0.08158				
2001-03-01	8.32	1.0832	0.07992				
2001-04-01	7.80	1.0780	0.075107				
2001-05-01	7.24	1.0724	0.069899				
2001-06-01	6.98	1.0698	0.067472				
2001-07-01	6.75	1.0675	0.065319				
2001-08-01	6.67	1.0667	0.06457				
2001-09-01	6.28	1.0628	0.060907				
2001-10-01	5.53	1.0553	0.053825				
2001-11-01	5.10	1.0510	0.049742				
2001-12-01	4.84	1.0484	0.047265	0.0669	1.0691		1.0691
2002-01-01	4.75	1.0475	0.046406				
2002-02-01	4.75	1.0475	0.046406				
2002-03-01	4.75	1.0475	0.046406				
2002-04-01	4.75	1.0475	0.046406				
2002-05-01	4.75	1.0475	0.046406				
2002-06-01	4.75	1.0475	0.046406				

, Instrument, "Bank prime loan"
 , Maturity, "Not applicable"
 , Frequency, "Annual"
 , Description, "Average majority prime rate charged by banks on short-term loans to business, quarterly"
 , Note, "Weekly figures are averages of 7 calendar days ending on Wednesday of the current week."
 , Note, "Annualized using a 360-day year or bank interest."
 , Note, "Rate posted by a majority of top 25 (by assets in domestic offices) insured U.S.-chartered banks."

DATE	PRIME NA
.956,	3.77
.957,	4.20
.958,	3.83
.959,	4.48
.960,	4.82
.961,	4.50
.962,	4.50
.963,	4.50
.964,	4.50
.965,	4.54
.966,	5.63
.967,	5.63
.968,	6.31
.969,	7.96
.970,	7.91
.971,	5.73
.972,	5.25
.973,	8.03
.974,	10.81
.975,	7.86
.976,	6.84
.977,	6.83
.978,	9.06
.979,	12.67
.980,	15.26
.981,	18.87
.982,	14.85
.983,	10.79
.984,	12.04
.985,	9.93
.986,	8.33
.987,	8.21
.988,	9.32
.989,	10.87
.990,	10.01
.991,	8.46
.992,	6.25
.993,	6.00
.994,	7.15
.995,	8.83
.996,	8.27
.997,	8.44
.998,	8.35
.999,	8.00
:000,	9.23
:001,	6.91
:002,	4.67
:003,	4.12
:004,	4.34
:005,	6.19
:006,	7.96

,Instrument,"U.S. government securities/Treasury constant maturities/Nominal"
,Maturity,"10-year"
,Frequency,"Annual"
,Description,"Market yield on U.S. Treasury securities at 10-year constant maturity, quoted or
,Note,"Yields on actively traded non-inflation-indexed issues adjusted to constant maturities.

DATE , TCMNOMY10

.962,	3.95
.963,	4.00
.964,	4.19
.965,	4.28
.966,	4.93
.967,	5.07
.968,	5.64
.969,	6.67
.970,	7.35
.971,	6.16
.972,	6.21
.973,	6.85
.974,	7.56
.975,	7.99
.976,	7.61
.977,	7.42
.978,	8.41
.979,	9.43
.980,	11.43
.981,	13.92
.982,	13.01
.983,	11.10
.984,	12.46
.985,	10.62
.986,	7.67
.987,	8.39
.988,	8.85
.989,	8.49
.990,	8.55
.991,	7.86
.992,	7.01
.993,	5.87
.994,	7.09
.995,	6.57
.996,	6.44
.997,	6.35
.998,	5.26
.999,	5.65
:000,	6.03
:001,	5.02
:002,	4.61
:003,	4.01
:004,	4.27
:005,	4.29
:006,	4.80

Group of 16.	Wage Rate		Hours		10 Yr Summary	10 Yr Adjusted	Prime Summary	Prime Adjusted
	<u>\$2,6968</u>	<u>\$2,7868</u>	Paid 63-64	% Std Yr				
Bilinsky	\$4,900.00	\$5,400.00	1,877.34	90.26%	\$ 34,196.37	\$ 30,864.49	\$ 52,860.96	\$ 47,710.50
Crtalic		\$4,905.13	1,760.13	84.62%	\$ 42,583.55	\$ 36,034.90	\$ 66,471.45	\$ 56,249.22
Foeking	\$3,567.41	\$5,229.54	1,599.69	76.91%	\$ 135,550.94	\$ 104,249.43	\$ 201,865.97	\$ 155,250.95
Gallagher	\$4,675.80	\$4,800.00	1,728.12	83.08%	\$ 54,933.73	\$ 45,640.40	\$ 86,630.76	\$ 71,975.13
Janke	\$4,900.00	\$4,800.00	1,769.69	85.08%	\$ 66,476.28	\$ 56,558.76	\$ 103,436.74	\$ 88,005.12
Jarabeck	\$4,900.00	\$5,259.64	1,852.15	89.05%	\$ 26,394.35	\$ 23,503.08	\$ 39,946.25	\$ 35,570.49
Kochenderf	\$4,900.00	\$5,386.86	1,874.98	90.14%	\$ 100,288.91	\$ 90,403.69	\$ 156,149.84	\$ 140,758.55
McLaughlin	\$4,900.00	\$5,115.10	1,826.22	87.80%	\$ 528,205.84	\$ 463,759.98	\$ 828,073.26	\$ 727,040.89
McNeeley	\$4,900.00	\$5,225.50	1,846.03	88.75%	\$ 70,404.93	\$ 62,485.35	\$ 108,242.65	\$ 96,066.86
Novotny	\$4,900.00	\$5,336.08	1,865.87	89.71%	\$ 32,865.68	\$ 29,482.24	\$ 51,295.29	\$ 46,014.56
Opalk	\$4,791.88	\$4,997.84	1,785.14	85.82%	\$ 146,827.43	\$ 126,013.01	\$ 229,069.66	\$ 196,596.48
Pentz	\$4,884.91	\$5,304.02	1,857.32	89.29%	\$ 77,198.97	\$ 68,934.19	\$ 119,155.10	\$ 106,398.57
Schreiner	\$4,827.49	\$4,878.42	1,770.31	85.11%	\$ 327,164.17	\$ 278,453.38	\$ 512,767.78	\$ 436,422.85
Scuba	\$4,900.00	\$5,308.15	1,860.86	89.46%	\$ 196,905.65	\$ 176,160.30	\$ 306,818.59	\$ 274,493.16
Sophner	\$4,866.76	\$5,381.48	1,867.85	89.80%	\$ 273,545.82	\$ 245,645.67	\$ 427,104.67	\$ 383,542.38
Sowinski	\$4,900.00	\$5,345.71	1,867.60	89.79%	\$ 134,250.73	\$ 120,541.46	\$ 208,634.05	\$ 187,328.98
			1,813.08	87.17%				



Master Summary Sheet Revised (Interest Thru 12/31/2007)

	Damages	10 Year Treasures	Bank Prime Loan
I. Group of 6.			
Bundy	10,793	\$ 187,955	\$ 294,615
Feldsher	10,759	\$ 185,306	\$ 289,849
Franz	10,473	\$ 183,384	\$ 287,750
O'Neil	10,406	\$ 181,226	\$ 284,068
Watjen	10,950	\$ 190,692	\$ 298,907
Wuliger	10,435	\$ 185,721	\$ 292,306
II. Group of 10.			
Acree	10,556	\$ 198,569	\$ 314,810
Benko	123,110	\$ 1,636,422	\$ 2,526,009
Day	48,267	\$ 746,341	\$ 1,168,628
Doran	12,210	\$ 216,987	\$ 341,696
Gastony	16,632	\$ 264,303	\$ 413,721
Gentile	7,562	\$ 138,687	\$ 219,239
Norris	50,156	\$ 783,138	\$ 1,223,886
Steimle	3,540	\$ 64,191	\$ 101,332
Tomczak	52,667	\$ 794,035	\$ 1,240,102
Uher	23,560	\$ 418,077	\$ 658,061
III. Group of 16.			
Bilinsky	2,293	\$ 34,196	\$ 52,861
Crtalic	2,959	\$ 42,584	\$ 66,471
Foecking	13,767	\$ 135,551	\$ 201,866
Gallagher	3,053	\$ 54,934	\$ 86,631
Janke	4,146	\$ 66,476	\$ 103,437
Jarabeck	3,557	\$ 26,394	\$ 39,946
Kochenderf	6,784	\$ 100,289	\$ 156,150
McLaughlin	34,433	\$ 528,206	\$ 828,073
McNeeley	5,146	\$ 70,405	\$ 108,243
Novotny	2,195	\$ 32,866	\$ 51,295
Opalk	9,469	\$ 146,827	\$ 229,070
Pentz	5,397	\$ 77,199	\$ 119,155



Schreiner	20,815	\$	327,164	\$	512,768
Scuba	12,892	\$	196,906	\$	306,819
Sophner	16,738	\$	273,546	\$	427,105
Sowinski	9,100	\$	134,251	\$	208,634

	Value
I. Loss of Separation Allowance	
A. Separation Allowance	\$ 10,793
Back Interest through 12/31/2007 (Interest Based on 10 Year Treasuries)	<u>\$ 177,162</u>
Total	\$ 187,955
B. Separation Allowance	
Back Interest through 12/31/2007 (Interest Based on Bank Prime Loan Rates)	<u>\$ 283,823</u>
Total	\$ 294,615



Table 2: Schedule Showing the Present Value of the Separation Allowance & Back Interest for David Bundy, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Value Lost Separation Allowance (a)	Back Interest (b)	Interest Rates (c)	Balance	Total Present Value of Back Interest
1969	(d) \$ 10,793	\$ 369	6.84%	\$ 11,162	\$ 369
1970		\$ 843	7.56%	\$ 12,005	\$ 843
1971		\$ 757	6.30%	\$ 12,762	\$ 757
1972		\$ 811	6.36%	\$ 13,573	\$ 811
1973		\$ 954	7.03%	\$ 14,527	\$ 954
1974		\$ 1,130	7.78%	\$ 15,657	\$ 1,130
1975		\$ 1,289	8.23%	\$ 16,946	\$ 1,289
1976		\$ 1,327	7.83%	\$ 18,273	\$ 1,327
1977		\$ 1,394	7.63%	\$ 19,667	\$ 1,394
1978		\$ 1,707	8.68%	\$ 21,373	\$ 1,707
1979		\$ 2,088	9.77%	\$ 23,461	\$ 2,088
1980		\$ 2,799	11.93%	\$ 26,260	\$ 2,799
1981		\$ 3,851	14.66%	\$ 30,111	\$ 3,851
1982		\$ 4,113	13.66%	\$ 34,224	\$ 4,113
1983		\$ 3,960	11.57%	\$ 38,183	\$ 3,960
1984		\$ 4,985	13.05%	\$ 43,168	\$ 4,985
1985		\$ 4,770	11.05%	\$ 47,938	\$ 4,770
1986		\$ 3,784	7.89%	\$ 51,722	\$ 3,784
1987		\$ 4,478	8.66%	\$ 56,200	\$ 4,478
1988		\$ 5,141	9.15%	\$ 61,342	\$ 5,141
1989		\$ 5,376	8.76%	\$ 66,718	\$ 5,376
1990		\$ 5,890	8.83%	\$ 72,607	\$ 5,890
1991		\$ 5,877	8.09%	\$ 78,485	\$ 5,877
1992		\$ 5,648	7.20%	\$ 84,133	\$ 5,648
1993		\$ 5,048	6.00%	\$ 89,181	\$ 5,048
1994		\$ 6,493	7.28%	\$ 95,674	\$ 6,493
1995		\$ 6,442	6.73%	\$ 102,117	\$ 6,442
1996		\$ 6,737	6.60%	\$ 108,854	\$ 6,737
1997		\$ 7,079	6.50%	\$ 115,932	\$ 7,079
1998		\$ 6,219	5.36%	\$ 122,152	\$ 6,219
1999		\$ 7,049	5.77%	\$ 129,201	\$ 7,049
2000		\$ 7,969	6.17%	\$ 137,170	\$ 7,969
2001		\$ 7,017	5.12%	\$ 144,186	\$ 7,017
2002		\$ 6,763	4.69%	\$ 150,949	\$ 6,763
2003		\$ 6,145	4.07%	\$ 157,094	\$ 6,145
2004		\$ 6,816	4.34%	\$ 163,910	\$ 6,816
2005		\$ 7,146	4.36%	\$ 171,055	\$ 7,146
2006		\$ 8,360	4.89%	\$ 179,415	\$ 8,360
2007	(e)	\$ 8,540	4.76%	\$ 187,955	\$ 8,540
					\$ 177,162

(a) The base Separation Allowance as calculated on Table 1.

(b) Back Interest calculated as compound interest based on interest rates from column (c). The 1969 interest is based on the 6 months remaining after Mr. Bundy separated from the railroad.

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file. Please note that they are adjusted to reflect quarterly compounding.

(d) The one time separation allowance should have been received in 1969.

(e) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 3: Schedule Showing the Present Value of the Separation Allowance & Back Interest for David Bundy, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year		Value Lost Separation Allowance (a)	Back Interest (b)	Interest Rates (c)	Balance	Total Present Value of Back Interest
1969	(d)	\$ 10,793	\$ 442	8.19%	\$ 11,235	\$ 442
1970			\$ 915	8.15%	\$ 12,150	\$ 915
1971			\$ 710	5.85%	\$ 12,860	\$ 710
1972			\$ 688	5.35%	\$ 13,549	\$ 688
1973			\$ 1,118	8.25%	\$ 14,667	\$ 1,118
1974			\$ 1,648	11.24%	\$ 16,315	\$ 1,648
1975			\$ 1,321	8.09%	\$ 17,636	\$ 1,321
1976			\$ 1,238	7.02%	\$ 18,873	\$ 1,238
1977			\$ 1,321	7.00%	\$ 20,194	\$ 1,321
1978			\$ 1,891	9.36%	\$ 22,085	\$ 1,891
1979			\$ 2,931	13.27%	\$ 25,016	\$ 2,931
1980			\$ 4,032	16.12%	\$ 29,048	\$ 4,032
1981			\$ 5,878	20.24%	\$ 34,926	\$ 5,878
1982			\$ 5,481	15.69%	\$ 40,407	\$ 5,481
1983			\$ 4,541	11.24%	\$ 44,948	\$ 4,541
1984			\$ 5,661	12.59%	\$ 50,609	\$ 5,661
1985			\$ 5,217	10.31%	\$ 55,826	\$ 5,217
1986			\$ 4,798	8.59%	\$ 60,624	\$ 4,798
1987			\$ 5,127	8.46%	\$ 65,751	\$ 5,127
1988			\$ 6,340	9.64%	\$ 72,092	\$ 6,340
1989			\$ 8,164	11.32%	\$ 80,255	\$ 8,164
1990			\$ 8,339	10.39%	\$ 88,595	\$ 8,339
1991			\$ 7,738	8.73%	\$ 96,332	\$ 7,738
1992			\$ 6,165	6.40%	\$ 102,497	\$ 6,165
1993			\$ 6,290	6.14%	\$ 108,787	\$ 6,290
1994			\$ 7,972	7.33%	\$ 116,759	\$ 7,972
1995			\$ 10,655	9.13%	\$ 127,414	\$ 10,655
1996			\$ 10,870	8.53%	\$ 138,284	\$ 10,870
1997			\$ 12,048	8.71%	\$ 150,332	\$ 12,048
1998			\$ 12,957	8.62%	\$ 163,289	\$ 12,957
1999			\$ 13,450	8.24%	\$ 176,739	\$ 13,450
2000			\$ 16,892	9.56%	\$ 193,630	\$ 16,892
2001			\$ 13,739	7.10%	\$ 207,369	\$ 13,739
2002			\$ 9,865	4.76%	\$ 217,234	\$ 9,865
2003			\$ 9,095	4.19%	\$ 226,329	\$ 9,095
2004			\$ 9,986	4.41%	\$ 236,315	\$ 9,986
2005			\$ 14,959	6.33%	\$ 251,274	\$ 14,959
2006			\$ 20,598	8.20%	\$ 271,872	\$ 20,598
2007	(e)		\$ 22,743	8.37%	\$ 294,615	\$ 22,743
						\$ 283,823

(a) The base Separation Allowance as calculated on Table 1.

(b) Back Interest calculated as compound interest based on interest rates from column (c). The 1969 interest is based on the 6 months remaining after Mr. Bundy separated from the railroad.

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) The one time separation allowance should have been received in 1969.

(e) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

James Feldsher Summary Sheet Revised

	Value
I. Loss of Separation Allowance	
A. Separation Allowance	\$ 10,759
Back Interest through 12/31/2007 (Interest Based on 10 Year Treasuries)	<u>\$ 174,546</u>
Total	\$ 185,306
B. Separation Allowance	
Back Interest through 12/31/2007 (Interest Based on Bank Prime Loan Rates)	<u>\$ 279,089</u>
Total	\$ 289,849

Table 2: Schedule Showing the Present Value of the Separation Allowance & Back Interest for James Feldsher, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Value Lost Separation Allowance (a)	Back Interest (b)	Interest Rates (c)	Balance	Total Present Value of Back Interest
1969	(d) \$ 10,759	\$ 245	6.84%	\$ 11,005	\$ 245
1970		\$ 831	7.56%	\$ 11,836	\$ 831
1971		\$ 746	6.30%	\$ 12,582	\$ 746
1972		\$ 800	6.36%	\$ 13,382	\$ 800
1973		\$ 940	7.03%	\$ 14,322	\$ 940
1974		\$ 1,114	7.78%	\$ 15,436	\$ 1,114
1975		\$ 1,271	8.23%	\$ 16,707	\$ 1,271
1976		\$ 1,308	7.83%	\$ 18,015	\$ 1,308
1977		\$ 1,374	7.63%	\$ 19,389	\$ 1,374
1978		\$ 1,683	8.68%	\$ 21,072	\$ 1,683
1979		\$ 2,058	9.77%	\$ 23,131	\$ 2,058
1980		\$ 2,759	11.93%	\$ 25,890	\$ 2,759
1981		\$ 3,796	14.66%	\$ 29,686	\$ 3,796
1982		\$ 4,055	13.66%	\$ 33,741	\$ 4,055
1983		\$ 3,904	11.57%	\$ 37,645	\$ 3,904
1984		\$ 4,914	13.05%	\$ 42,560	\$ 4,914
1985		\$ 4,703	11.05%	\$ 47,263	\$ 4,703
1986		\$ 3,731	7.89%	\$ 50,993	\$ 3,731
1987		\$ 4,415	8.66%	\$ 55,408	\$ 4,415
1988		\$ 5,069	9.15%	\$ 60,477	\$ 5,069
1989		\$ 5,300	8.76%	\$ 65,777	\$ 5,300
1990		\$ 5,807	8.83%	\$ 71,584	\$ 5,807
1991		\$ 5,795	8.09%	\$ 77,379	\$ 5,795
1992		\$ 5,569	7.20%	\$ 82,947	\$ 5,569
1993		\$ 4,977	6.00%	\$ 87,924	\$ 4,977
1994		\$ 6,402	7.28%	\$ 94,326	\$ 6,402
1995		\$ 6,352	6.73%	\$ 100,678	\$ 6,352
1996		\$ 6,642	6.60%	\$ 107,319	\$ 6,642
1997		\$ 6,979	6.50%	\$ 114,298	\$ 6,979
1998		\$ 6,132	5.36%	\$ 120,430	\$ 6,132
1999		\$ 6,950	5.77%	\$ 127,380	\$ 6,950
2000		\$ 7,856	6.17%	\$ 135,236	\$ 7,856
2001		\$ 6,918	5.12%	\$ 142,154	\$ 6,918
2002		\$ 6,667	4.69%	\$ 148,821	\$ 6,667
2003		\$ 6,058	4.07%	\$ 154,880	\$ 6,058
2004		\$ 6,720	4.34%	\$ 161,600	\$ 6,720
2005		\$ 7,045	4.36%	\$ 168,645	\$ 7,045
2006		\$ 8,242	4.89%	\$ 176,886	\$ 8,242
2007	(e)	\$ 8,419	4.76%	\$ 185,306	\$ 8,419
					\$ 174,546

(a) The base Separation Allowance as calculated on Table 1.

(b) Back Interest calculated as compound interest based on interest rates from column (c). The 1969 interest is based on the 4 months remaining after Mr. Feldsher separated from the railroad.

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) The one time separation allowance should have been received in 1969.

(e) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 3: Schedule Showing the Present Value of the Separation Allowance & Back Interest for James Feldsher, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year		Value Lost Separation Allowance (a)	Back Interest (b)	Interest Rates (c)	Balance	Total Present Value of Back Interest
1969	(d)	\$ 10,759	\$ 294	8.19%	\$ 11,053	\$ 294
1970			\$ 900	8.15%	\$ 11,953	\$ 900
1971			\$ 699	5.85%	\$ 12,652	\$ 699
1972			\$ 677	5.35%	\$ 13,330	\$ 677
1973			\$ 1,100	8.25%	\$ 14,430	\$ 1,100
1974			\$ 1,622	11.24%	\$ 16,051	\$ 1,622
1975			\$ 1,299	8.09%	\$ 17,351	\$ 1,299
1976			\$ 1,218	7.02%	\$ 18,568	\$ 1,218
1977			\$ 1,300	7.00%	\$ 19,868	\$ 1,300
1978			\$ 1,860	9.36%	\$ 21,728	\$ 1,860
1979			\$ 2,883	13.27%	\$ 24,611	\$ 2,883
1980			\$ 3,967	16.12%	\$ 28,578	\$ 3,967
1981			\$ 5,783	20.24%	\$ 34,361	\$ 5,783
1982			\$ 5,392	15.69%	\$ 39,753	\$ 5,392
1983			\$ 4,468	11.24%	\$ 44,221	\$ 4,468
1984			\$ 5,569	12.59%	\$ 49,790	\$ 5,569
1985			\$ 5,133	10.31%	\$ 54,923	\$ 5,133
1986			\$ 4,720	8.59%	\$ 59,643	\$ 4,720
1987			\$ 5,044	8.46%	\$ 64,687	\$ 5,044
1988			\$ 6,238	9.64%	\$ 70,925	\$ 6,238
1989			\$ 8,032	11.32%	\$ 78,957	\$ 8,032
1990			\$ 8,205	10.39%	\$ 87,161	\$ 8,205
1991			\$ 7,613	8.73%	\$ 94,774	\$ 7,613
1992			\$ 6,065	6.40%	\$ 100,839	\$ 6,065
1993			\$ 6,188	6.14%	\$ 107,027	\$ 6,188
1994			\$ 7,843	7.33%	\$ 114,870	\$ 7,843
1995			\$ 10,483	9.13%	\$ 125,353	\$ 10,483
1996			\$ 10,694	8.53%	\$ 136,046	\$ 10,694
1997			\$ 11,853	8.71%	\$ 147,900	\$ 11,853
1998			\$ 12,748	8.62%	\$ 160,647	\$ 12,748
1999			\$ 13,232	8.24%	\$ 173,879	\$ 13,232
2000			\$ 16,618	9.56%	\$ 190,498	\$ 16,618
2001			\$ 13,516	7.10%	\$ 204,014	\$ 13,516
2002			\$ 9,706	4.76%	\$ 213,720	\$ 9,706
2003			\$ 8,948	4.19%	\$ 222,667	\$ 8,948
2004			\$ 9,824	4.41%	\$ 232,492	\$ 9,824
2005			\$ 14,717	6.33%	\$ 247,208	\$ 14,717
2006			\$ 20,265	8.20%	\$ 267,473	\$ 20,265
2007	(e)		\$ 22,375	8.37%	\$ 289,849	\$ 22,375
						\$ 279,089

(a) The base Separation Allowance as calculated on Table 1.

(b) Back Interest calculated as compound interest based on interest rates from column (c). The 1969 interest is based on the 4 months remaining after Mr. Feldsher separated from the railroad.

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) The one time separation allowance should have been received in 1969.

(e) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Phillip Frantz Summary Sheet Revised

Value

I. Loss of Separation Allowance

A. Separation Allowance	\$	10,473
Back Interest through 12/31/2007 (Interest Based on 10 Year Treasuries)	\$	<u>172,912</u>
Total	\$	183,384
B. Separation Allowance	\$	10,473
Back Interest through 12/31/2007 (Interest Based on Bank Prime Loan Rates)	\$	<u>277,278</u>
Total	\$	287,750

Table 2: Schedule Showing the Present Value of the Separation Allowance & Back Interest for Phillip Franz, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year		Value Lost Separation Allowance (a)	Back Interest (b)	Interest Rates (c)	Balance	Total Present Value of Back Interest
1969	(d)	\$ 10,473	\$ 418	6.84%	\$ 10,890	\$ 418
1970			\$ 823	7.56%	\$ 11,713	\$ 823
1971			\$ 738	6.30%	\$ 12,452	\$ 738
1972			\$ 791	6.36%	\$ 13,243	\$ 791
1973			\$ 931	7.03%	\$ 14,174	\$ 931
1974			\$ 1,102	7.78%	\$ 15,276	\$ 1,102
1975			\$ 1,258	8.23%	\$ 16,534	\$ 1,258
1976			\$ 1,295	7.83%	\$ 17,828	\$ 1,295
1977			\$ 1,360	7.63%	\$ 19,188	\$ 1,360
1978			\$ 1,665	8.68%	\$ 20,854	\$ 1,665
1979			\$ 2,037	9.77%	\$ 22,891	\$ 2,037
1980			\$ 2,731	11.93%	\$ 25,622	\$ 2,731
1981			\$ 3,757	14.66%	\$ 29,379	\$ 3,757
1982			\$ 4,013	13.66%	\$ 33,391	\$ 4,013
1983			\$ 3,864	11.57%	\$ 37,255	\$ 3,864
1984			\$ 4,863	13.05%	\$ 42,118	\$ 4,863
1985			\$ 4,654	11.05%	\$ 46,773	\$ 4,654
1986			\$ 3,692	7.89%	\$ 50,465	\$ 3,692
1987			\$ 4,369	8.66%	\$ 54,834	\$ 4,369
1988			\$ 5,016	9.15%	\$ 59,850	\$ 5,016
1989			\$ 5,245	8.76%	\$ 65,095	\$ 5,245
1990			\$ 5,747	8.83%	\$ 70,842	\$ 5,747
1991			\$ 5,734	8.09%	\$ 76,576	\$ 5,734
1992			\$ 5,511	7.20%	\$ 82,087	\$ 5,511
1993			\$ 4,926	6.00%	\$ 87,013	\$ 4,926
1994			\$ 6,335	7.28%	\$ 93,348	\$ 6,335
1995			\$ 6,286	6.73%	\$ 99,634	\$ 6,286
1996			\$ 6,573	6.60%	\$ 106,207	\$ 6,573
1997			\$ 6,906	6.50%	\$ 113,113	\$ 6,906
1998			\$ 6,068	5.36%	\$ 119,181	\$ 6,068
1999			\$ 6,878	5.77%	\$ 126,059	\$ 6,878
2000			\$ 7,775	6.17%	\$ 133,834	\$ 7,775
2001			\$ 6,846	5.12%	\$ 140,680	\$ 6,846
2002			\$ 6,598	4.69%	\$ 147,278	\$ 6,598
2003			\$ 5,995	4.07%	\$ 153,274	\$ 5,995
2004			\$ 6,650	4.34%	\$ 159,924	\$ 6,650
2005			\$ 6,972	4.36%	\$ 166,896	\$ 6,972
2006			\$ 8,156	4.89%	\$ 175,052	\$ 8,156
2007	(e)		\$ 8,332	4.76%	\$ 183,384	\$ 8,332
						\$ 172,912

(a) The base Separation Allowance as calculated on Table 1.

(b) Back Interest calculated as compound interest based on interest rates from column (c). The 1969 interest is based on the 7 months remaining after Mr. Franz separated from the railroad.

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file. Please note that they are adjusted to reflect quarterly compounding.

(d) The one time separation allowance should have been received in 1969.

(e) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 3: Schedule Showing the Present Value of the Separation Allowance & Back Interest for Phillip Franz, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year		Value Lost Separation Allowance (a)	Back Interest (b)	Interest Rates (c)	Balance	Total Present Value of Back Interest
1969	(d)	\$ 10,473	\$ 500	8.19%	\$ 10,973	\$ 500
1970			\$ 894	8.15%	\$ 11,867	\$ 894
1971			\$ 694	5.85%	\$ 12,561	\$ 694
1972			\$ 672	5.35%	\$ 13,233	\$ 672
1973			\$ 1,092	8.25%	\$ 14,325	\$ 1,092
1974			\$ 1,610	11.24%	\$ 15,935	\$ 1,610
1975			\$ 1,290	8.09%	\$ 17,225	\$ 1,290
1976			\$ 1,209	7.02%	\$ 18,434	\$ 1,209
1977			\$ 1,290	7.00%	\$ 19,724	\$ 1,290
1978			\$ 1,847	9.36%	\$ 21,571	\$ 1,847
1979			\$ 2,862	13.27%	\$ 24,433	\$ 2,862
1980			\$ 3,938	16.12%	\$ 28,371	\$ 3,938
1981			\$ 5,741	20.24%	\$ 34,113	\$ 5,741
1982			\$ 5,353	15.69%	\$ 39,465	\$ 5,353
1983			\$ 4,435	11.24%	\$ 43,901	\$ 4,435
1984			\$ 5,529	12.59%	\$ 49,430	\$ 5,529
1985			\$ 5,095	10.31%	\$ 54,525	\$ 5,095
1986			\$ 4,686	8.59%	\$ 59,211	\$ 4,686
1987			\$ 5,008	8.46%	\$ 64,219	\$ 5,008
1988			\$ 6,193	9.64%	\$ 70,412	\$ 6,193
1989			\$ 7,973	11.32%	\$ 78,385	\$ 7,973
1990			\$ 8,145	10.39%	\$ 86,530	\$ 8,145
1991			\$ 7,557	8.73%	\$ 94,088	\$ 7,557
1992			\$ 6,021	6.40%	\$ 100,109	\$ 6,021
1993			\$ 6,143	6.14%	\$ 106,252	\$ 6,143
1994			\$ 7,787	7.33%	\$ 114,038	\$ 7,787
1995			\$ 10,407	9.13%	\$ 124,445	\$ 10,407
1996			\$ 10,616	8.53%	\$ 135,062	\$ 10,616
1997			\$ 11,767	8.71%	\$ 146,829	\$ 11,767
1998			\$ 12,655	8.62%	\$ 159,484	\$ 12,655
1999			\$ 13,136	8.24%	\$ 172,621	\$ 13,136
2000			\$ 16,498	9.56%	\$ 189,119	\$ 16,498
2001			\$ 13,418	7.10%	\$ 202,537	\$ 13,418
2002			\$ 9,636	4.76%	\$ 212,173	\$ 9,636
2003			\$ 8,883	4.19%	\$ 221,055	\$ 8,883
2004			\$ 9,753	4.41%	\$ 230,809	\$ 9,753
2005			\$ 14,610	6.33%	\$ 245,419	\$ 14,610
2006			\$ 20,118	8.20%	\$ 265,537	\$ 20,118
2007	(e)		\$ 22,213	8.37%	\$ 287,750	\$ 22,213
						\$ 277,278

(a) The base Separation Allowance as calculated on Table 1.

(b) Back Interest calculated as compound interest based on interest rates from column (c). The 1969 interest is based on the 7 months remaining after Mr. Franz separated from the railroad.

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.
Please note that they are adjusted to reflect quarterly compounding.

(d) The one time separation allowance should have been received in 1969.

(e) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Thomas O'Neil Summary Sheet Revised

	Value
I. Loss of Separation Allowance	
A. Separation Allowance	\$ 10,406
Back Interest through 12/31/2007 (Interest Based on 10 Year Treasuries)	<u>\$ 170,819</u>
Total	\$ 181,226
B. Separation Allowance	\$ 10,406
Back Interest through 12/31/2007 (Interest Based on Bank Prime Loan Rates)	<u>\$ 273,662</u>
Total	\$ 284,068

Table 2: Schedule Showing the Present Value of the Separation Allowance & Back Interest for Thomas O'Neil, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Value Lost Separation Allowance (a)	Back Interest (b)	Interest Rates (c)	Balance	Total Present Value of Back Interest
1969	(d) \$ 10,406	\$ 356	6.84%	\$ 10,762	\$ 356
1970		\$ 813	7.56%	\$ 11,575	\$ 813
1971		\$ 730	6.30%	\$ 12,305	\$ 730
1972		\$ 782	6.36%	\$ 13,087	\$ 782
1973		\$ 920	7.03%	\$ 14,007	\$ 920
1974		\$ 1,089	7.78%	\$ 15,096	\$ 1,089
1975		\$ 1,243	8.23%	\$ 16,339	\$ 1,243
1976		\$ 1,279	7.83%	\$ 17,618	\$ 1,279
1977		\$ 1,344	7.63%	\$ 18,963	\$ 1,344
1978		\$ 1,646	8.68%	\$ 20,608	\$ 1,646
1979		\$ 2,013	9.77%	\$ 22,621	\$ 2,013
1980		\$ 2,699	11.93%	\$ 25,320	\$ 2,699
1981		\$ 3,713	14.66%	\$ 29,033	\$ 3,713
1982		\$ 3,965	13.66%	\$ 32,998	\$ 3,965
1983		\$ 3,818	11.57%	\$ 36,817	\$ 3,818
1984		\$ 4,806	13.05%	\$ 41,623	\$ 4,806
1985		\$ 4,600	11.05%	\$ 46,222	\$ 4,600
1986		\$ 3,649	7.89%	\$ 49,871	\$ 3,649
1987		\$ 4,318	8.66%	\$ 54,188	\$ 4,318
1988		\$ 4,957	9.15%	\$ 59,146	\$ 4,957
1989		\$ 5,184	8.76%	\$ 64,329	\$ 5,184
1990		\$ 5,679	8.83%	\$ 70,008	\$ 5,679
1991		\$ 5,667	8.09%	\$ 75,675	\$ 5,667
1992		\$ 5,446	7.20%	\$ 81,121	\$ 5,446
1993		\$ 4,868	6.00%	\$ 85,989	\$ 4,868
1994		\$ 6,261	7.28%	\$ 92,249	\$ 6,261
1995		\$ 6,212	6.73%	\$ 98,461	\$ 6,212
1996		\$ 6,496	6.60%	\$ 104,957	\$ 6,496
1997		\$ 6,825	6.50%	\$ 111,782	\$ 6,825
1998		\$ 5,997	5.36%	\$ 117,779	\$ 5,997
1999		\$ 6,797	5.77%	\$ 124,575	\$ 6,797
2000		\$ 7,683	6.17%	\$ 132,259	\$ 7,683
2001		\$ 6,765	5.12%	\$ 139,024	\$ 6,765
2002		\$ 6,521	4.69%	\$ 145,545	\$ 6,521
2003		\$ 5,925	4.07%	\$ 151,470	\$ 5,925
2004		\$ 6,572	4.34%	\$ 158,042	\$ 6,572
2005		\$ 6,890	4.36%	\$ 164,932	\$ 6,890
2006		\$ 8,060	4.89%	\$ 172,992	\$ 8,060
2007	(e)	\$ 8,234	4.76%	\$ 181,226	\$ 8,234
					\$ 170,819

(a) The base Separation Allowance as calculated on Table 1.

(b) Back Interest calculated as compound interest based on interest rates from column (c). The 1969 interest is based on the 6 months remaining after Mr. O'Neil separated from the railroad.

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file. Please note that they are adjusted to reflect quarterly compounding.

(d) The one time separation allowance should have been received in 1969.

(e) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 3: Schedule Showing the Present Value of the Separation Allowance & Back Interest for Thomas O'Neil, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year		Value Lost Separation Allowance (a)	Back Interest (b)	Interest Rates (c)	Balance	Total Present Value of Back Interest
1969	(d)	\$ 10,406	\$ 426	8.19%	\$ 10,833	\$ 426
1970			\$ 882	8.15%	\$ 11,715	\$ 882
1971			\$ 685	5.85%	\$ 12,400	\$ 685
1972			\$ 664	5.35%	\$ 13,064	\$ 664
1973			\$ 1,078	8.25%	\$ 14,142	\$ 1,078
1974			\$ 1,589	11.24%	\$ 15,731	\$ 1,589
1975			\$ 1,273	8.09%	\$ 17,005	\$ 1,273
1976			\$ 1,193	7.02%	\$ 18,198	\$ 1,193
1977			\$ 1,274	7.00%	\$ 19,472	\$ 1,274
1978			\$ 1,823	9.36%	\$ 21,295	\$ 1,823
1979			\$ 2,826	13.27%	\$ 24,120	\$ 2,826
1980			\$ 3,888	16.12%	\$ 28,008	\$ 3,888
1981			\$ 5,668	20.24%	\$ 33,676	\$ 5,668
1982			\$ 5,284	15.69%	\$ 38,960	\$ 5,284
1983			\$ 4,379	11.24%	\$ 43,339	\$ 4,379
1984			\$ 5,458	12.59%	\$ 48,797	\$ 5,458
1985			\$ 5,030	10.31%	\$ 53,828	\$ 5,030
1986			\$ 4,626	8.59%	\$ 58,453	\$ 4,626
1987			\$ 4,944	8.46%	\$ 63,397	\$ 4,944
1988			\$ 6,113	9.64%	\$ 69,511	\$ 6,113
1989			\$ 7,871	11.32%	\$ 77,382	\$ 7,871
1990			\$ 8,041	10.39%	\$ 85,423	\$ 8,041
1991			\$ 7,461	8.73%	\$ 92,884	\$ 7,461
1992			\$ 5,944	6.40%	\$ 98,828	\$ 5,944
1993			\$ 6,064	6.14%	\$ 104,892	\$ 6,064
1994			\$ 7,687	7.33%	\$ 112,579	\$ 7,687
1995			\$ 10,274	9.13%	\$ 122,853	\$ 10,274
1996			\$ 10,480	8.53%	\$ 133,333	\$ 10,480
1997			\$ 11,617	8.71%	\$ 144,950	\$ 11,617
1998			\$ 12,494	8.62%	\$ 157,444	\$ 12,494
1999			\$ 12,968	8.24%	\$ 170,412	\$ 12,968
2000			\$ 16,287	9.56%	\$ 186,699	\$ 16,287
2001			\$ 13,247	7.10%	\$ 199,945	\$ 13,247
2002			\$ 9,512	4.76%	\$ 209,458	\$ 9,512
2003			\$ 8,769	4.19%	\$ 218,227	\$ 8,769
2004			\$ 9,628	4.41%	\$ 227,855	\$ 9,628
2005			\$ 14,423	6.33%	\$ 242,278	\$ 14,423
2006			\$ 19,861	8.20%	\$ 262,139	\$ 19,861
2007	(e)		\$ 21,929	8.37%	\$ 284,068	\$ 21,929
						\$ 273,662

(a) The base Separation Allowance as calculated on Table 1.

(b) Back Interest calculated as compound interest based on interest rates from column (c). The 1969 interest is based on the 6 months remaining after Mr. O'Neil separated from the railroad.

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.
Please note that they are adjusted to reflect quarterly compounding.

(d) The one time separation allowance should have been received in 1969.

(e) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Robert Watjen Summary Sheet Revised

	Value
I. Loss of Separation Allowance	
A. Separation Allowance	\$ 10,950
Back Interest through 12/31/2007 (Interest Based on 10 Year Treasuries)	<u>\$ 179,742</u>
Total	\$ 190,692
B. Separation Allowance	
Separation Allowance	\$ 10,950
Back Interest through 12/31/2007 (Interest Based on Bank Prime Loan Rates)	<u>\$ 287,957</u>
Total	\$ 298,907

Table 2: Schedule Showing the Present Value of the Separation Allowance & Back Interest for Robert Watjen, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year		Value Lost Separation Allowance (a)	Back Interest (b)	Interest Rates (c)	Balance	Total Present Value of Back Interest
1969	(d)	\$ 10,950	\$ 374	6.84%	\$ 11,324	\$ 374
1970			\$ 856	7.56%	\$ 12,180	\$ 856
1971			\$ 768	6.30%	\$ 12,948	\$ 768
1972			\$ 823	6.36%	\$ 13,771	\$ 823
1973			\$ 968	7.03%	\$ 14,739	\$ 968
1974			\$ 1,146	7.78%	\$ 15,885	\$ 1,146
1975			\$ 1,308	8.23%	\$ 17,193	\$ 1,308
1976			\$ 1,346	7.83%	\$ 18,539	\$ 1,346
1977			\$ 1,414	7.63%	\$ 19,953	\$ 1,414
1978			\$ 1,732	8.68%	\$ 21,685	\$ 1,732
1979			\$ 2,118	9.77%	\$ 23,803	\$ 2,118
1980			\$ 2,840	11.93%	\$ 26,643	\$ 2,840
1981			\$ 3,907	14.66%	\$ 30,549	\$ 3,907
1982			\$ 4,173	13.66%	\$ 34,722	\$ 4,173
1983			\$ 4,018	11.57%	\$ 38,740	\$ 4,018
1984			\$ 5,057	13.05%	\$ 43,797	\$ 5,057
1985			\$ 4,840	11.05%	\$ 48,637	\$ 4,840
1986			\$ 3,839	7.89%	\$ 52,476	\$ 3,839
1987			\$ 4,543	8.66%	\$ 57,019	\$ 4,543
1988			\$ 5,216	9.15%	\$ 62,235	\$ 5,216
1989			\$ 5,454	8.76%	\$ 67,689	\$ 5,454
1990			\$ 5,976	8.83%	\$ 73,665	\$ 5,976
1991			\$ 5,963	8.09%	\$ 79,628	\$ 5,963
1992			\$ 5,730	7.20%	\$ 85,358	\$ 5,730
1993			\$ 5,122	6.00%	\$ 90,480	\$ 5,122
1994			\$ 6,588	7.28%	\$ 97,068	\$ 6,588
1995			\$ 6,536	6.73%	\$ 103,604	\$ 6,536
1996			\$ 6,835	6.60%	\$ 110,439	\$ 6,835
1997			\$ 7,182	6.50%	\$ 117,621	\$ 7,182
1998			\$ 6,310	5.36%	\$ 123,931	\$ 6,310
1999			\$ 7,152	5.77%	\$ 131,083	\$ 7,152
2000			\$ 8,085	6.17%	\$ 139,168	\$ 8,085
2001			\$ 7,119	5.12%	\$ 146,286	\$ 7,119
2002			\$ 6,861	4.69%	\$ 153,148	\$ 6,861
2003			\$ 6,234	4.07%	\$ 159,382	\$ 6,234
2004			\$ 6,915	4.34%	\$ 166,297	\$ 6,915
2005			\$ 7,250	4.36%	\$ 173,547	\$ 7,250
2006			\$ 8,481	4.89%	\$ 182,028	\$ 8,481
2007	(e)		\$ 8,664	4.76%	\$ 190,692	\$ 8,664
						\$ 179,742

(a) The base Separation Allowance as calculated on Table 1.

(b) Back Interest calculated as compound interest based on interest rates from column (c). The 1969 interest is based on the 6 months remaining after Mr. Watjen separated from the railroad.

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file. Please note that they are adjusted to reflect quarterly compounding.

(d) The one time separation allowance should have been received in 1969.

(e) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 3: Schedule Showing the Present Value of the Separation Allowance & Back Interest for Robert Watjen, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year	Value Lost Separation Allowance (a)	Back Interest (b)	Interest Rates (c)	Balance	Total Present Value of Back Interest
1969	(d) \$ 10,950	\$ 448	8.19%	\$ 11,398	\$ 448
1970		\$ 929	8.15%	\$ 12,327	\$ 929
1971		\$ 721	5.85%	\$ 13,048	\$ 721
1972		\$ 698	5.35%	\$ 13,746	\$ 698
1973		\$ 1,135	8.25%	\$ 14,881	\$ 1,135
1974		\$ 1,672	11.24%	\$ 16,553	\$ 1,672
1975		\$ 1,340	8.09%	\$ 17,893	\$ 1,340
1976		\$ 1,256	7.02%	\$ 19,148	\$ 1,256
1977		\$ 1,340	7.00%	\$ 20,489	\$ 1,340
1978		\$ 1,918	9.36%	\$ 22,407	\$ 1,918
1979		\$ 2,973	13.27%	\$ 25,380	\$ 2,973
1980		\$ 4,091	16.12%	\$ 29,471	\$ 4,091
1981		\$ 5,964	20.24%	\$ 35,435	\$ 5,964
1982		\$ 5,560	15.69%	\$ 40,996	\$ 5,560
1983		\$ 4,607	11.24%	\$ 45,603	\$ 4,607
1984		\$ 5,743	12.59%	\$ 51,346	\$ 5,743
1985		\$ 5,293	10.31%	\$ 56,639	\$ 5,293
1986		\$ 4,867	8.59%	\$ 61,507	\$ 4,867
1987		\$ 5,202	8.46%	\$ 66,709	\$ 5,202
1988		\$ 6,433	9.64%	\$ 73,142	\$ 6,433
1989		\$ 8,283	11.32%	\$ 81,424	\$ 8,283
1990		\$ 8,461	10.39%	\$ 89,885	\$ 8,461
1991		\$ 7,850	8.73%	\$ 97,736	\$ 7,850
1992		\$ 6,255	6.40%	\$ 103,990	\$ 6,255
1993		\$ 6,381	6.14%	\$ 110,371	\$ 6,381
1994		\$ 8,088	7.33%	\$ 118,460	\$ 8,088
1995		\$ 10,810	9.13%	\$ 129,270	\$ 10,810
1996		\$ 11,028	8.53%	\$ 140,298	\$ 11,028
1997		\$ 12,224	8.71%	\$ 152,522	\$ 12,224
1998		\$ 13,146	8.62%	\$ 165,668	\$ 13,146
1999		\$ 13,645	8.24%	\$ 179,313	\$ 13,645
2000		\$ 17,138	9.56%	\$ 196,451	\$ 17,138
2001		\$ 13,939	7.10%	\$ 210,390	\$ 13,939
2002		\$ 10,009	4.76%	\$ 220,399	\$ 10,009
2003		\$ 9,227	4.19%	\$ 229,626	\$ 9,227
2004		\$ 10,131	4.41%	\$ 239,757	\$ 10,131
2005		\$ 15,177	6.33%	\$ 254,934	\$ 15,177
2006		\$ 20,898	8.20%	\$ 275,832	\$ 20,898
2007	(e)	\$ 23,075	8.37%	\$ 298,907	\$ 23,075
					\$ 287,957

(a) The base Separation Allowance as calculated on Table 1.

(b) Back Interest calculated as compound interest based on interest rates from column (c). The 1969 interest is based on the 6 months remaining after Mr. Watjen separated from the railroad.

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) The one time separation allowance should have been received in 1969.

(e) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Anna Mae Wuliger Summary Sheet Revised

	Value
I. Loss of Separation Allowance	
A. Separation Allowance	\$ 10,435
Back Interest through 12/31/2007 (Interest Based on 10 Year Treasuries)	\$ 175,287
Total	\$ 185,721
B. Separation Allowance	\$ 10,435
Back Interest through 12/31/2007 (Interest Based on Bank Prime Loan Rates)	\$ 281,872
Total	\$ 292,306

Table 2: Schedule Showing the Present Value of the Separation Allowance & Back Interest for Anna Mae Wuliger, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Value Lost Separation Allowance (a)	Back Interest (b)	Interest Rates (c)	Balance	Total Present Value of Back Interest
1969	(d) \$ 10,435	\$ 595	6.84%	\$ 11,029	\$ 595
1970		\$ 833	7.56%	\$ 11,863	\$ 833
1971		\$ 748	6.30%	\$ 12,610	\$ 748
1972		\$ 802	6.36%	\$ 13,412	\$ 802
1973		\$ 943	7.03%	\$ 14,354	\$ 943
1974		\$ 1,116	7.78%	\$ 15,471	\$ 1,116
1975		\$ 1,274	8.23%	\$ 16,744	\$ 1,274
1976		\$ 1,311	7.83%	\$ 18,055	\$ 1,311
1977		\$ 1,377	7.63%	\$ 19,433	\$ 1,377
1978		\$ 1,687	8.68%	\$ 21,120	\$ 1,687
1979		\$ 2,063	9.77%	\$ 23,183	\$ 2,063
1980		\$ 2,766	11.93%	\$ 25,948	\$ 2,766
1981		\$ 3,805	14.66%	\$ 29,753	\$ 3,805
1982		\$ 4,064	13.66%	\$ 33,817	\$ 4,064
1983		\$ 3,913	11.57%	\$ 37,730	\$ 3,913
1984		\$ 4,925	13.05%	\$ 42,655	\$ 4,925
1985		\$ 4,714	11.05%	\$ 47,369	\$ 4,714
1986		\$ 3,739	7.89%	\$ 51,108	\$ 3,739
1987		\$ 4,425	8.66%	\$ 55,533	\$ 4,425
1988		\$ 5,080	9.15%	\$ 60,613	\$ 5,080
1989		\$ 5,312	8.76%	\$ 65,925	\$ 5,312
1990		\$ 5,820	8.83%	\$ 71,745	\$ 5,820
1991		\$ 5,808	8.09%	\$ 77,552	\$ 5,808
1992		\$ 5,581	7.20%	\$ 83,133	\$ 5,581
1993		\$ 4,988	6.00%	\$ 88,122	\$ 4,988
1994		\$ 6,416	7.28%	\$ 94,538	\$ 6,416
1995		\$ 6,366	6.73%	\$ 100,903	\$ 6,366
1996		\$ 6,657	6.60%	\$ 107,560	\$ 6,657
1997		\$ 6,994	6.50%	\$ 114,555	\$ 6,994
1998		\$ 6,145	5.36%	\$ 120,700	\$ 6,145
1999		\$ 6,965	5.77%	\$ 127,666	\$ 6,965
2000		\$ 7,874	6.17%	\$ 135,540	\$ 7,874
2001		\$ 6,933	5.12%	\$ 142,473	\$ 6,933
2002		\$ 6,682	4.69%	\$ 149,155	\$ 6,682
2003		\$ 6,072	4.07%	\$ 155,227	\$ 6,072
2004		\$ 6,735	4.34%	\$ 161,962	\$ 6,735
2005		\$ 7,061	4.36%	\$ 169,023	\$ 7,061
2006		\$ 8,260	4.89%	\$ 177,283	\$ 8,260
2007	(e)	\$ 8,438	4.76%	\$ 185,721	\$ 8,438
					\$ 175,287

(a) The base Separation Allowance as calculated on Table 1.

(b) Back Interest calculated as compound interest based on interest rates from column (c). The 1969 interest is based on the 10 months remaining after Ms. Wuliger separated from the railroad.

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file. Please note that they are adjusted to reflect quarterly compounding.

(d) The one time separation allowance should have been received in 1969.

(e) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 3: Schedule Showing the Present Value of the Separation Allowance & Back Interest for Anna Mae Wuliger, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year	Value Lost Separation Allowance (a)	Back Interest (b)	Interest Rates (c)	Balance	Total Present Value of Back Interest
1969	(d) \$ 10,435	\$ 712	8.19%	\$ 11,147	\$ 712
1970		\$ 908	8.15%	\$ 12,055	\$ 908
1971		\$ 705	5.85%	\$ 12,760	\$ 705
1972		\$ 683	5.35%	\$ 13,443	\$ 683
1973		\$ 1,110	8.25%	\$ 14,552	\$ 1,110
1974		\$ 1,635	11.24%	\$ 16,188	\$ 1,635
1975		\$ 1,310	8.09%	\$ 17,498	\$ 1,310
1976		\$ 1,228	7.02%	\$ 18,726	\$ 1,228
1977		\$ 1,311	7.00%	\$ 20,036	\$ 1,311
1978		\$ 1,876	9.36%	\$ 21,912	\$ 1,876
1979		\$ 2,908	13.27%	\$ 24,820	\$ 2,908
1980		\$ 4,001	16.12%	\$ 28,821	\$ 4,001
1981		\$ 5,832	20.24%	\$ 34,653	\$ 5,832
1982		\$ 5,438	15.69%	\$ 40,090	\$ 5,438
1983		\$ 4,506	11.24%	\$ 44,596	\$ 4,506
1984		\$ 5,617	12.59%	\$ 50,213	\$ 5,617
1985		\$ 5,176	10.31%	\$ 55,389	\$ 5,176
1986		\$ 4,760	8.59%	\$ 60,149	\$ 4,760
1987		\$ 5,087	8.46%	\$ 65,236	\$ 5,087
1988		\$ 6,291	9.64%	\$ 71,527	\$ 6,291
1989		\$ 8,100	11.32%	\$ 79,626	\$ 8,100
1990		\$ 8,274	10.39%	\$ 87,900	\$ 8,274
1991		\$ 7,677	8.73%	\$ 95,577	\$ 7,677
1992		\$ 6,116	6.40%	\$ 101,694	\$ 6,116
1993		\$ 6,240	6.14%	\$ 107,934	\$ 6,240
1994		\$ 7,910	7.33%	\$ 115,844	\$ 7,910
1995		\$ 10,572	9.13%	\$ 126,416	\$ 10,572
1996		\$ 10,784	8.53%	\$ 137,200	\$ 10,784
1997		\$ 11,954	8.71%	\$ 149,154	\$ 11,954
1998		\$ 12,856	8.62%	\$ 162,010	\$ 12,856
1999		\$ 13,344	8.24%	\$ 175,354	\$ 13,344
2000		\$ 16,759	9.56%	\$ 192,113	\$ 16,759
2001		\$ 13,631	7.10%	\$ 205,744	\$ 13,631
2002		\$ 9,788	4.76%	\$ 215,532	\$ 9,788
2003		\$ 9,023	4.19%	\$ 224,555	\$ 9,023
2004		\$ 9,908	4.41%	\$ 234,463	\$ 9,908
2005		\$ 14,841	6.33%	\$ 249,304	\$ 14,841
2006		\$ 20,437	8.20%	\$ 269,741	\$ 20,437
2007	(e)	\$ 22,565	8.37%	\$ 292,306	\$ 22,565
					\$ 281,872

(a) The base Separation Allowance as calculated on Table 1.

(b) Back Interest calculated as compound interest based on interest rates from column (c). The 1969 interest is based on the 10 months remaining after Ms. Wuliger separated from the railroad.

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.
Please note that they are adjusted to reflect quarterly compounding.

(d) The one time separation allowance should have been received in 1969.

(e) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Jack Acree Summary Sheet Revised

	Value
I. Loss of Displacement Allowance, Benefits, & Back Interest	
A. Displacement Allowance (Interest Based on 10 Year Treasuries)	\$ 9,681
Pension Benefits	\$ 875
Back Interest through 12/31/2007	<u>\$ 188,013</u>
Total	\$ 198,569
B. Displacement Allowance (Interest Based on Bank Prime Loan Rates)	\$ 9,681
Pension Benefits	\$ 875
Back Interest through 12/31/2007	<u>\$ 304,254</u>
Total	\$ 314,810

Table 3: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Jack Acree, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 8,355	\$ 481	5.76%	\$ 8,836	\$ 481
1969	\$ 2,201	\$ 755	6.84%	\$ 11,792	\$ 755
1970		\$ 891	7.56%	\$ 12,683	\$ 891
1971		\$ 800	6.30%	\$ 13,483	\$ 800
1972		\$ 857	6.36%	\$ 14,340	\$ 857
1973		\$ 1,008	7.03%	\$ 15,347	\$ 1,008
1974		\$ 1,194	7.78%	\$ 16,541	\$ 1,194
1975		\$ 1,362	8.23%	\$ 17,903	\$ 1,362
1976		\$ 1,402	7.83%	\$ 19,304	\$ 1,402
1977		\$ 1,473	7.63%	\$ 20,777	\$ 1,473
1978		\$ 1,803	8.68%	\$ 22,580	\$ 1,803
1979		\$ 2,206	9.77%	\$ 24,786	\$ 2,206
1980		\$ 2,957	11.93%	\$ 27,743	\$ 2,957
1981		\$ 4,068	14.66%	\$ 31,811	\$ 4,068
1982		\$ 4,345	13.66%	\$ 36,156	\$ 4,345
1983		\$ 4,184	11.57%	\$ 40,340	\$ 4,184
1984		\$ 5,266	13.05%	\$ 45,606	\$ 5,266
1985		\$ 5,040	11.05%	\$ 50,646	\$ 5,040
1986		\$ 3,998	7.89%	\$ 54,643	\$ 3,998
1987		\$ 4,731	8.66%	\$ 59,374	\$ 4,731
1988		\$ 5,432	9.15%	\$ 64,806	\$ 5,432
1989		\$ 5,680	8.76%	\$ 70,485	\$ 5,680
1990		\$ 6,222	8.83%	\$ 76,708	\$ 6,222
1991		\$ 6,209	8.09%	\$ 82,917	\$ 6,209
1992		\$ 5,967	7.20%	\$ 88,884	\$ 5,967
1993		\$ 5,333	6.00%	\$ 94,218	\$ 5,333
1994		\$ 6,860	7.28%	\$ 101,077	\$ 6,860
1995		\$ 6,806	6.73%	\$ 107,884	\$ 6,806
1996		\$ 7,117	6.60%	\$ 115,001	\$ 7,117
1997		\$ 7,478	6.50%	\$ 122,479	\$ 7,478
1998		\$ 6,571	5.36%	\$ 129,050	\$ 6,571
1999		\$ 7,447	5.77%	\$ 136,497	\$ 7,447
2000		\$ 8,419	6.17%	\$ 144,916	\$ 8,419
2001		\$ 7,413	5.12%	\$ 152,329	\$ 7,413
2002		\$ 7,145	4.69%	\$ 159,473	\$ 7,145
2003		\$ 6,492	4.07%	\$ 165,965	\$ 6,492
2004		\$ 7,201	4.34%	\$ 173,166	\$ 7,201
2005		\$ 7,549	4.36%	\$ 180,715	\$ 7,549
2006		\$ 8,832	4.89%	\$ 189,547	\$ 8,832
2007 (d)		\$ 9,022	4.76%	\$ 198,569	\$ 9,022
					\$ 188,013

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file. Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 4: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Jack Acree, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 8,355	\$ 540	6.46%	\$ 8,895	\$ 540
1969	\$ 2,201	\$ 909	8.19%	\$ 12,005	\$ 909
1970		\$ 978	8.15%	\$ 12,983	\$ 978
1971		\$ 759	5.85%	\$ 13,742	\$ 759
1972		\$ 735	5.35%	\$ 14,477	\$ 735
1973		\$ 1,195	8.25%	\$ 15,672	\$ 1,195
1974		\$ 1,761	11.24%	\$ 17,434	\$ 1,761
1975		\$ 1,411	8.09%	\$ 18,845	\$ 1,411
1976		\$ 1,322	7.02%	\$ 20,167	\$ 1,322
1977		\$ 1,412	7.00%	\$ 21,579	\$ 1,412
1978		\$ 2,020	9.36%	\$ 23,599	\$ 2,020
1979		\$ 3,132	13.27%	\$ 26,731	\$ 3,132
1980		\$ 4,309	16.12%	\$ 31,039	\$ 4,309
1981		\$ 6,281	20.24%	\$ 37,321	\$ 6,281
1982		\$ 5,856	15.69%	\$ 43,177	\$ 5,856
1983		\$ 4,852	11.24%	\$ 48,029	\$ 4,852
1984		\$ 6,049	12.59%	\$ 54,078	\$ 6,049
1985		\$ 5,575	10.31%	\$ 59,653	\$ 5,575
1986		\$ 5,126	8.59%	\$ 64,779	\$ 5,126
1987		\$ 5,479	8.46%	\$ 70,258	\$ 5,479
1988		\$ 6,775	9.64%	\$ 77,033	\$ 6,775
1989		\$ 8,723	11.32%	\$ 85,756	\$ 8,723
1990		\$ 8,911	10.39%	\$ 94,667	\$ 8,911
1991		\$ 8,268	8.73%	\$ 102,936	\$ 8,268
1992		\$ 6,587	6.40%	\$ 109,523	\$ 6,587
1993		\$ 6,721	6.14%	\$ 116,244	\$ 6,721
1994		\$ 8,519	7.33%	\$ 124,762	\$ 8,519
1995		\$ 11,385	9.13%	\$ 136,148	\$ 11,385
1996		\$ 11,615	8.53%	\$ 147,762	\$ 11,615
1997		\$ 12,874	8.71%	\$ 160,636	\$ 12,874
1998		\$ 13,846	8.62%	\$ 174,482	\$ 13,846
1999		\$ 14,371	8.24%	\$ 188,854	\$ 14,371
2000		\$ 18,049	9.56%	\$ 206,903	\$ 18,049
2001		\$ 14,680	7.10%	\$ 221,583	\$ 14,680
2002		\$ 10,542	4.76%	\$ 232,125	\$ 10,542
2003		\$ 9,718	4.19%	\$ 241,843	\$ 9,718
2004		\$ 10,670	4.41%	\$ 252,513	\$ 10,670
2005		\$ 15,984	6.33%	\$ 268,497	\$ 15,984
2006		\$ 22,010	8.20%	\$ 290,508	\$ 22,010
2007 (d)		\$ 24,302	8.37%	\$ 314,810	\$ 24,302
					\$ 304,254

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Edward Benko Summary Sheet Revised

	Value
I. Loss of Displacement Allowance, Benefits, & Back Interest	
A. Displacement Allowance (Interest Based on 10 Year Treasuries)	\$ 108,822
Pension Benefits	\$ 14,288
Back Interest through 12/31/2007	<u>\$ 1,513,312</u>
Total	\$ 1,636,422
B. Displacement Allowance (Interest Based on Bank Prime Loan Rates)	\$ 108,822
Pension Benefits	\$ 14,288
Back Interest through 12/31/2007	<u>\$ 2,402,898</u>
Total	\$ 2,526,009

Table 3: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Edward Benko, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 8,834	\$ 509	5.76%	\$ 9,343	\$ 509
1969	\$ 6,265	\$ 1,067	6.84%	\$ 16,675	\$ 1,067
1970	\$ 5,602	\$ 1,683	7.56%	\$ 23,961	\$ 1,683
1971	\$ 7,109	\$ 1,959	6.30%	\$ 33,028	\$ 1,959
1972	\$ 10,109	\$ 2,742	6.36%	\$ 45,878	\$ 2,742
1973	\$ 13,334	\$ 4,161	7.03%	\$ 63,374	\$ 4,161
1974	\$ 13,807	\$ 6,002	7.78%	\$ 83,183	\$ 6,002
1975	\$ 16,734	\$ 8,226	8.23%	\$ 108,143	\$ 8,226
1976	\$ 18,079	\$ 9,883	7.83%	\$ 136,106	\$ 9,883
1977	\$ 19,670	\$ 11,884	7.63%	\$ 167,660	\$ 11,884
1978	\$ 3,567	\$ 14,861	8.68%	\$ 186,088	\$ 14,861
1979		\$ 18,178	9.77%	\$ 204,266	\$ 18,178
1980		\$ 24,368	11.93%	\$ 228,634	\$ 24,368
1981		\$ 33,526	14.66%	\$ 262,160	\$ 33,526
1982		\$ 35,807	13.66%	\$ 297,967	\$ 35,807
1983		\$ 34,477	11.57%	\$ 332,444	\$ 34,477
1984		\$ 43,398	13.05%	\$ 375,842	\$ 43,398
1985		\$ 41,532	11.05%	\$ 417,374	\$ 41,532
1986		\$ 32,945	7.89%	\$ 450,320	\$ 32,945
1987		\$ 38,987	8.66%	\$ 489,307	\$ 38,987
1988		\$ 44,762	9.15%	\$ 534,069	\$ 44,762
1989		\$ 46,807	8.76%	\$ 580,876	\$ 46,807
1990		\$ 51,280	8.83%	\$ 632,156	\$ 51,280
1991		\$ 51,171	8.09%	\$ 683,327	\$ 51,171
1992		\$ 49,175	7.20%	\$ 732,502	\$ 49,175
1993		\$ 43,954	6.00%	\$ 776,456	\$ 43,954
1994		\$ 56,532	7.28%	\$ 832,987	\$ 56,532
1995		\$ 56,090	6.73%	\$ 889,078	\$ 56,090
1996		\$ 58,654	6.60%	\$ 947,732	\$ 58,654
1997		\$ 61,629	6.50%	\$ 1,009,361	\$ 61,629
1998		\$ 54,149	5.36%	\$ 1,063,510	\$ 54,149
1999		\$ 61,373	5.77%	\$ 1,124,884	\$ 61,373
2000		\$ 69,380	6.17%	\$ 1,194,263	\$ 69,380
2001		\$ 61,090	5.12%	\$ 1,255,354	\$ 61,090
2002		\$ 58,880	4.69%	\$ 1,314,234	\$ 58,880
2003		\$ 53,499	4.07%	\$ 1,367,732	\$ 53,499
2004		\$ 59,344	4.34%	\$ 1,427,076	\$ 59,344
2005		\$ 62,214	4.36%	\$ 1,489,290	\$ 62,214
2006		\$ 72,783	4.89%	\$ 1,562,073	\$ 72,783
2007 (d)		\$ 74,349	4.76%	\$ 1,636,422	\$ 74,349
					\$ 1,513,312

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 4: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Edward Benko, through 12/31/2007. (Based on the Bank Prime Loan Rates)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 8,834	\$ 571	6.46%	\$ 9,405	\$ 571
1969	\$ 6,265	\$ 1,283	8.19%	\$ 16,953	\$ 1,283
1970	\$ 5,602	\$ 1,838	8.15%	\$ 24,393	\$ 1,838
1971	\$ 7,109	\$ 1,842	5.85%	\$ 33,344	\$ 1,842
1972	\$ 10,109	\$ 2,326	5.35%	\$ 45,778	\$ 2,326
1973	\$ 13,334	\$ 4,879	8.25%	\$ 63,991	\$ 4,879
1974	\$ 13,807	\$ 8,743	11.24%	\$ 86,541	\$ 8,743
1975	\$ 16,734	\$ 8,359	8.09%	\$ 111,635	\$ 8,359
1976	\$ 18,079	\$ 9,102	7.02%	\$ 138,816	\$ 9,102
1977	\$ 19,670	\$ 11,093	7.00%	\$ 169,579	\$ 11,093
1978	\$ 3,567	\$ 16,211	9.36%	\$ 189,357	\$ 16,211
1979		\$ 25,128	13.27%	\$ 214,484	\$ 25,128
1980		\$ 34,572	16.12%	\$ 249,057	\$ 34,572
1981		\$ 50,400	20.24%	\$ 299,457	\$ 50,400
1982		\$ 46,990	15.69%	\$ 346,446	\$ 46,990
1983		\$ 38,936	11.24%	\$ 385,383	\$ 38,936
1984		\$ 48,536	12.59%	\$ 433,919	\$ 48,536
1985		\$ 44,730	10.31%	\$ 478,649	\$ 44,730
1986		\$ 41,134	8.59%	\$ 519,783	\$ 41,134
1987		\$ 43,962	8.46%	\$ 563,745	\$ 43,962
1988		\$ 54,363	9.64%	\$ 618,108	\$ 54,363
1989		\$ 69,994	11.32%	\$ 688,102	\$ 69,994
1990		\$ 71,502	10.39%	\$ 759,604	\$ 71,502
1991		\$ 66,343	8.73%	\$ 825,946	\$ 66,343
1992		\$ 52,856	6.40%	\$ 878,803	\$ 52,856
1993		\$ 53,926	6.14%	\$ 932,729	\$ 53,926
1994		\$ 68,354	7.33%	\$ 1,001,083	\$ 68,354
1995		\$ 91,356	9.13%	\$ 1,092,439	\$ 91,356
1996		\$ 93,195	8.53%	\$ 1,185,634	\$ 93,195
1997		\$ 103,300	8.71%	\$ 1,288,934	\$ 103,300
1998		\$ 111,096	8.62%	\$ 1,400,029	\$ 111,096
1999		\$ 115,316	8.24%	\$ 1,515,345	\$ 115,316
2000		\$ 144,827	9.56%	\$ 1,660,172	\$ 144,827
2001		\$ 117,793	7.10%	\$ 1,777,965	\$ 117,793
2002		\$ 84,586	4.76%	\$ 1,862,551	\$ 84,586
2003		\$ 77,977	4.19%	\$ 1,940,529	\$ 77,977
2004		\$ 85,618	4.41%	\$ 2,026,146	\$ 85,618
2005		\$ 128,255	6.33%	\$ 2,154,401	\$ 128,255
2006		\$ 176,608	8.20%	\$ 2,331,009	\$ 176,608
2007 (d)		\$ 195,000	8.37%	\$ 2,526,009	\$ 195,000
					\$ 2,402,898

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Ken Day Summary Sheet Revised

	Value
I. Loss of Displacement Allowance, Benefits, & Back Interest	
A. Displacement Allowance (Interest Based on 10 Year Treasuries)	\$ 43,468
Pension Benefits	\$ 4,799
Back Interest through 12/31/2007	<u>\$ 698,074</u>
Total	\$ 746,341
B. Displacement Allowance (Interest Based on Bank Prime Loan Rates)	\$ 43,468
Pension Benefits	\$ 4,799
Back Interest through 12/31/2007	<u>\$ 1,120,361</u>
Total	\$ 1,168,628

Table 3: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Ken Day, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 6,821	\$ 393	5.76%	\$ 7,214	\$ 393
1969	\$ 5,598	\$ 876	6.84%	\$ 13,689	\$ 876
1970	\$ 2,977	\$ 1,259	7.56%	\$ 17,925	\$ 1,259
1971	\$ 6,766	\$ 1,556	6.30%	\$ 26,247	\$ 1,556
1972	\$ 6,564	\$ 2,085	6.36%	\$ 34,896	\$ 2,085
1973	\$ 11,313	\$ 3,248	7.03%	\$ 49,457	\$ 3,248
1974	\$ 8,228	\$ 4,486	7.78%	\$ 62,171	\$ 4,486
1975		\$ 5,118	8.23%	\$ 67,289	\$ 5,118
1976		\$ 5,269	7.83%	\$ 72,558	\$ 5,269
1977		\$ 5,535	7.63%	\$ 78,093	\$ 5,535
1978		\$ 6,778	8.68%	\$ 84,871	\$ 6,778
1979		\$ 8,291	9.77%	\$ 93,162	\$ 8,291
1980		\$ 11,114	11.93%	\$ 104,275	\$ 11,114
1981		\$ 15,291	14.66%	\$ 119,566	\$ 15,291
1982		\$ 16,331	13.66%	\$ 135,897	\$ 16,331
1983		\$ 15,724	11.57%	\$ 151,621	\$ 15,724
1984		\$ 19,793	13.05%	\$ 171,414	\$ 19,793
1985		\$ 18,942	11.05%	\$ 190,357	\$ 18,942
1986		\$ 15,026	7.89%	\$ 205,382	\$ 15,026
1987		\$ 17,781	8.66%	\$ 223,164	\$ 17,781
1988		\$ 20,415	9.15%	\$ 243,579	\$ 20,415
1989		\$ 21,348	8.76%	\$ 264,926	\$ 21,348
1990		\$ 23,388	8.83%	\$ 288,314	\$ 23,388
1991		\$ 23,338	8.09%	\$ 311,652	\$ 23,338
1992		\$ 22,428	7.20%	\$ 334,080	\$ 22,428
1993		\$ 20,046	6.00%	\$ 354,127	\$ 20,046
1994		\$ 25,783	7.28%	\$ 379,910	\$ 25,783
1995		\$ 25,582	6.73%	\$ 405,492	\$ 25,582
1996		\$ 26,751	6.60%	\$ 432,243	\$ 26,751
1997		\$ 28,108	6.50%	\$ 460,351	\$ 28,108
1998		\$ 24,696	5.36%	\$ 485,047	\$ 24,696
1999		\$ 27,991	5.77%	\$ 513,038	\$ 27,991
2000		\$ 31,643	6.17%	\$ 544,681	\$ 31,643
2001		\$ 27,862	5.12%	\$ 572,543	\$ 27,862
2002		\$ 26,854	4.69%	\$ 599,397	\$ 26,854
2003		\$ 24,400	4.07%	\$ 623,797	\$ 24,400
2004		\$ 27,066	4.34%	\$ 650,863	\$ 27,066
2005		\$ 28,374	4.36%	\$ 679,237	\$ 28,374
2006		\$ 33,195	4.89%	\$ 712,432	\$ 33,195
2007 (d)		\$ 33,909	4.76%	\$ 746,341	\$ 33,909
					\$ 698,074

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file. Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 4: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Ken Day, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 6,821	\$ 441	6.46%	\$ 7,262	\$ 441
1969	\$ 5,598	\$ 1,053	8.19%	\$ 13,914	\$ 1,053
1970	\$ 2,977	\$ 1,376	8.15%	\$ 18,267	\$ 1,376
1971	\$ 6,766	\$ 1,464	5.85%	\$ 26,496	\$ 1,464
1972	\$ 6,564	\$ 1,769	5.35%	\$ 34,829	\$ 1,769
1973	\$ 11,313	\$ 3,809	8.25%	\$ 49,951	\$ 3,809
1974	\$ 8,228	\$ 6,538	11.24%	\$ 64,717	\$ 6,538
1975		\$ 5,238	8.09%	\$ 69,955	\$ 5,238
1976		\$ 4,909	7.02%	\$ 74,864	\$ 4,909
1977		\$ 5,240	7.00%	\$ 80,104	\$ 5,240
1978		\$ 7,500	9.36%	\$ 87,604	\$ 7,500
1979		\$ 11,625	13.27%	\$ 99,229	\$ 11,625
1980		\$ 15,994	16.12%	\$ 115,223	\$ 15,994
1981		\$ 23,317	20.24%	\$ 138,540	\$ 23,317
1982		\$ 21,739	15.69%	\$ 160,279	\$ 21,739
1983		\$ 18,013	11.24%	\$ 178,293	\$ 18,013
1984		\$ 22,455	12.59%	\$ 200,748	\$ 22,455
1985		\$ 20,694	10.31%	\$ 221,441	\$ 20,694
1986		\$ 19,030	8.59%	\$ 240,472	\$ 19,030
1987		\$ 20,339	8.46%	\$ 260,810	\$ 20,339
1988		\$ 25,150	9.64%	\$ 285,960	\$ 25,150
1989		\$ 32,382	11.32%	\$ 318,342	\$ 32,382
1990		\$ 33,079	10.39%	\$ 351,422	\$ 33,079
1991		\$ 30,693	8.73%	\$ 382,114	\$ 30,693
1992		\$ 24,453	6.40%	\$ 406,568	\$ 24,453
1993		\$ 24,948	6.14%	\$ 431,516	\$ 24,948
1994		\$ 31,623	7.33%	\$ 463,139	\$ 31,623
1995		\$ 42,265	9.13%	\$ 505,404	\$ 42,265
1996		\$ 43,115	8.53%	\$ 548,520	\$ 43,115
1997		\$ 47,790	8.71%	\$ 596,310	\$ 47,790
1998		\$ 51,397	8.62%	\$ 647,707	\$ 51,397
1999		\$ 53,349	8.24%	\$ 701,057	\$ 53,349
2000		\$ 67,003	9.56%	\$ 768,059	\$ 67,003
2001		\$ 54,496	7.10%	\$ 822,555	\$ 54,496
2002		\$ 39,133	4.76%	\$ 861,688	\$ 39,133
2003		\$ 36,075	4.19%	\$ 897,763	\$ 36,075
2004		\$ 39,610	4.41%	\$ 937,373	\$ 39,610
2005		\$ 59,336	6.33%	\$ 996,708	\$ 59,336
2006		\$ 81,705	8.20%	\$ 1,078,414	\$ 81,705
2007 (d)		\$ 90,215	8.37%	\$ 1,168,628	\$ 90,215
					\$ 1,120,361

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Harvey Doran Summary Sheet Revised

	Value
I. Loss of Displacement Allowance, Benefits, & Back Interest	
A. Displacement Allowance (Interest Based on 10 Year Treasuries)	\$ 11,158
Pension Benefits	\$ 1,052
Back Interest through 12/31/2007	<u>\$ 204,777</u>
Total	\$ 216,987
B. Displacement Allowance (Interest Based on Bank Prime Loan Rates)	\$ 11,158
Pension Benefits	\$ 1,052
Back Interest through 12/31/2007	<u>\$ 329,486</u>
Total	\$ 341,696

Table 3: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Harvey Doran, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 4,185	\$ 241	5.76%	\$ 4,426	\$ 241
1969	\$ 5,020	\$ 646	6.84%	\$ 10,092	\$ 646
1970	\$ -	\$ 762	7.56%	\$ 10,855	\$ 762
1971	\$ 3,005	\$ 874	6.30%	\$ 14,733	\$ 874
1972		\$ 936	6.36%	\$ 15,670	\$ 936
1973		\$ 1,101	7.03%	\$ 16,771	\$ 1,101
1974		\$ 1,304	7.78%	\$ 18,075	\$ 1,304
1975		\$ 1,488	8.23%	\$ 19,563	\$ 1,488
1976		\$ 1,532	7.83%	\$ 21,095	\$ 1,532
1977		\$ 1,609	7.63%	\$ 22,704	\$ 1,609
1978		\$ 1,971	8.68%	\$ 24,675	\$ 1,971
1979		\$ 2,410	9.77%	\$ 27,085	\$ 2,410
1980		\$ 3,231	11.93%	\$ 30,316	\$ 3,231
1981		\$ 4,445	14.66%	\$ 34,762	\$ 4,445
1982		\$ 4,748	13.66%	\$ 39,510	\$ 4,748
1983		\$ 4,572	11.57%	\$ 44,081	\$ 4,572
1984		\$ 5,755	13.05%	\$ 49,836	\$ 5,755
1985		\$ 5,507	11.05%	\$ 55,343	\$ 5,507
1986		\$ 4,368	7.89%	\$ 59,712	\$ 4,368
1987		\$ 5,170	8.66%	\$ 64,881	\$ 5,170
1988		\$ 5,935	9.15%	\$ 70,817	\$ 5,935
1989		\$ 6,206	8.76%	\$ 77,023	\$ 6,206
1990		\$ 6,800	8.83%	\$ 83,823	\$ 6,800
1991		\$ 6,785	8.09%	\$ 90,608	\$ 6,785
1992		\$ 6,521	7.20%	\$ 97,129	\$ 6,521
1993		\$ 5,828	6.00%	\$ 102,957	\$ 5,828
1994		\$ 7,496	7.28%	\$ 110,453	\$ 7,496
1995		\$ 7,438	6.73%	\$ 117,890	\$ 7,438
1996		\$ 7,777	6.60%	\$ 125,668	\$ 7,777
1997		\$ 8,172	6.50%	\$ 133,840	\$ 8,172
1998		\$ 7,180	5.36%	\$ 141,020	\$ 7,180
1999		\$ 8,138	5.77%	\$ 149,158	\$ 8,138
2000		\$ 9,200	6.17%	\$ 158,357	\$ 9,200
2001		\$ 8,100	5.12%	\$ 166,458	\$ 8,100
2002		\$ 7,807	4.69%	\$ 174,265	\$ 7,807
2003		\$ 7,094	4.07%	\$ 181,359	\$ 7,094
2004		\$ 7,869	4.34%	\$ 189,228	\$ 7,869
2005		\$ 8,249	4.36%	\$ 197,477	\$ 8,249
2006		\$ 9,651	4.89%	\$ 207,128	\$ 9,651
2007 (d)		\$ 9,859	4.76%	\$ 216,987	\$ 9,859
					\$ 204,777

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file. Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 4: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Harvey Doran, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 4,185	\$ 270	6.46%	\$ 4,455	\$ 270
1969	\$ 5,020	\$ 776	8.19%	\$ 10,252	\$ 776
1970	\$ -	\$ 835	8.15%	\$ 11,087	\$ 835
1971	\$ 3,005	\$ 824	5.85%	\$ 14,916	\$ 824
1972		\$ 798	5.35%	\$ 15,714	\$ 798
1973		\$ 1,297	8.25%	\$ 17,011	\$ 1,297
1974		\$ 1,912	11.24%	\$ 18,923	\$ 1,912
1975		\$ 1,532	8.09%	\$ 20,454	\$ 1,532
1976		\$ 1,435	7.02%	\$ 21,890	\$ 1,435
1977		\$ 1,532	7.00%	\$ 23,422	\$ 1,532
1978		\$ 2,193	9.36%	\$ 25,615	\$ 2,193
1979		\$ 3,399	13.27%	\$ 29,014	\$ 3,399
1980		\$ 4,677	16.12%	\$ 33,690	\$ 4,677
1981		\$ 6,818	20.24%	\$ 40,508	\$ 6,818
1982		\$ 6,356	15.69%	\$ 46,864	\$ 6,356
1983		\$ 5,267	11.24%	\$ 52,131	\$ 5,267
1984		\$ 6,566	12.59%	\$ 58,697	\$ 6,566
1985		\$ 6,051	10.31%	\$ 64,747	\$ 6,051
1986		\$ 5,564	8.59%	\$ 70,312	\$ 5,564
1987		\$ 5,947	8.46%	\$ 76,259	\$ 5,947
1988		\$ 7,354	9.64%	\$ 83,612	\$ 7,354
1989		\$ 9,468	11.32%	\$ 93,080	\$ 9,468
1990		\$ 9,672	10.39%	\$ 102,753	\$ 9,672
1991		\$ 8,974	8.73%	\$ 111,727	\$ 8,974
1992		\$ 7,150	6.40%	\$ 118,877	\$ 7,150
1993		\$ 7,295	6.14%	\$ 126,171	\$ 7,295
1994		\$ 9,246	7.33%	\$ 135,418	\$ 9,246
1995		\$ 12,358	9.13%	\$ 147,776	\$ 12,358
1996		\$ 12,607	8.53%	\$ 160,382	\$ 12,607
1997		\$ 13,974	8.71%	\$ 174,356	\$ 13,974
1998		\$ 15,028	8.62%	\$ 189,384	\$ 15,028
1999		\$ 15,599	8.24%	\$ 204,983	\$ 15,599
2000		\$ 19,591	9.56%	\$ 224,574	\$ 19,591
2001		\$ 15,934	7.10%	\$ 240,508	\$ 15,934
2002		\$ 11,442	4.76%	\$ 251,950	\$ 11,442
2003		\$ 10,548	4.19%	\$ 262,498	\$ 10,548
2004		\$ 11,582	4.41%	\$ 274,079	\$ 11,582
2005		\$ 17,349	6.33%	\$ 291,429	\$ 17,349
2006		\$ 23,890	8.20%	\$ 315,319	\$ 23,890
2007 (d)		\$ 26,378	8.37%	\$ 341,696	\$ 26,378
					\$ 329,486

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Joseph Gastony Summary Sheet Revised

	Value
I. Loss of Displacement Allowance, Benefits, & Back Interest	
A. Displacement Allowance (Interest Based on 10 Year Treasuries)	\$ 15,110
Pension Benefits	\$ 1,522
Back Interest through 12/31/2007	<u>\$ 247,671</u>
Total	\$ 264,303
B. Displacement Allowance (Interest Based on Bank Prime Loan Rates)	\$ 15,110
Pension Benefits	\$ 1,522
Back Interest through 12/31/2007	<u>\$ 397,089</u>
Total	\$ 413,721

Table 3: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Joseph Gastony, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 3,134	\$ 181	5.76%	\$ 3,314	\$ 181
1969	\$ 870	\$ 286	6.84%	\$ 4,471	\$ 286
1970	\$ 1,246	\$ 432	7.56%	\$ 6,148	\$ 432
1971	\$ 3,718	\$ 622	6.30%	\$ 10,489	\$ 622
1972	\$ 4,207	\$ 934	6.36%	\$ 15,629	\$ 934
1973	\$ 3,457	\$ 1,341	7.03%	\$ 20,428	\$ 1,341
1974		\$ 1,589	7.78%	\$ 22,017	\$ 1,589
1975		\$ 1,813	8.23%	\$ 23,829	\$ 1,813
1976		\$ 1,866	7.83%	\$ 25,695	\$ 1,866
1977		\$ 1,960	7.63%	\$ 27,655	\$ 1,960
1978		\$ 2,400	8.68%	\$ 30,056	\$ 2,400
1979		\$ 2,936	9.77%	\$ 32,992	\$ 2,936
1980		\$ 3,936	11.93%	\$ 36,927	\$ 3,936
1981		\$ 5,415	14.66%	\$ 42,342	\$ 5,415
1982		\$ 5,783	13.66%	\$ 48,125	\$ 5,783
1983		\$ 5,568	11.57%	\$ 53,694	\$ 5,568
1984		\$ 7,009	13.05%	\$ 60,703	\$ 7,009
1985		\$ 6,708	11.05%	\$ 67,411	\$ 6,708
1986		\$ 5,321	7.89%	\$ 72,732	\$ 5,321
1987		\$ 6,297	8.66%	\$ 79,029	\$ 6,297
1988		\$ 7,230	9.15%	\$ 86,259	\$ 7,230
1989		\$ 7,560	8.76%	\$ 93,819	\$ 7,560
1990		\$ 8,282	8.83%	\$ 102,101	\$ 8,282
1991		\$ 8,265	8.09%	\$ 110,366	\$ 8,265
1992		\$ 7,942	7.20%	\$ 118,308	\$ 7,942
1993		\$ 7,099	6.00%	\$ 125,407	\$ 7,099
1994		\$ 9,131	7.28%	\$ 134,538	\$ 9,131
1995		\$ 9,059	6.73%	\$ 143,597	\$ 9,059
1996		\$ 9,473	6.60%	\$ 153,071	\$ 9,473
1997		\$ 9,954	6.50%	\$ 163,025	\$ 9,954
1998		\$ 8,746	5.36%	\$ 171,770	\$ 8,746
1999		\$ 9,913	5.77%	\$ 181,683	\$ 9,913
2000		\$ 11,206	6.17%	\$ 192,889	\$ 11,206
2001		\$ 9,867	5.12%	\$ 202,756	\$ 9,867
2002		\$ 9,510	4.69%	\$ 212,265	\$ 9,510
2003		\$ 8,641	4.07%	\$ 220,906	\$ 8,641
2004		\$ 9,585	4.34%	\$ 230,491	\$ 9,585
2005		\$ 10,048	4.36%	\$ 240,539	\$ 10,048
2006		\$ 11,755	4.89%	\$ 252,295	\$ 11,755
2007 (d)		\$ 12,008	4.76%	\$ 264,303	\$ 12,008
					\$ 247,671

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file. Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 4: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Joseph Gastony, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 3,134	\$ 203	6.46%	\$ 3,336	\$ 203
1969	\$ 870	\$ 345	8.19%	\$ 4,551	\$ 345
1970	\$ 1,246	\$ 472	8.15%	\$ 6,269	\$ 472
1971	\$ 3,718	\$ 584	5.85%	\$ 10,571	\$ 584
1972	\$ 4,207	\$ 791	5.35%	\$ 15,569	\$ 791
1973	\$ 3,457	\$ 1,570	8.25%	\$ 20,597	\$ 1,570
1974		\$ 2,315	11.24%	\$ 22,911	\$ 2,315
1975		\$ 1,854	8.09%	\$ 24,766	\$ 1,854
1976		\$ 1,738	7.02%	\$ 26,504	\$ 1,738
1977		\$ 1,855	7.00%	\$ 28,359	\$ 1,855
1978		\$ 2,655	9.36%	\$ 31,014	\$ 2,655
1979		\$ 4,116	13.27%	\$ 35,129	\$ 4,116
1980		\$ 5,662	16.12%	\$ 40,792	\$ 5,662
1981		\$ 8,255	20.24%	\$ 49,046	\$ 8,255
1982		\$ 7,696	15.69%	\$ 56,743	\$ 7,696
1983		\$ 6,377	11.24%	\$ 63,120	\$ 6,377
1984		\$ 7,950	12.59%	\$ 71,069	\$ 7,950
1985		\$ 7,326	10.31%	\$ 78,395	\$ 7,326
1986		\$ 6,737	8.59%	\$ 85,132	\$ 6,737
1987		\$ 7,200	8.46%	\$ 92,333	\$ 7,200
1988		\$ 8,904	9.64%	\$ 101,237	\$ 8,904
1989		\$ 11,464	11.32%	\$ 112,701	\$ 11,464
1990		\$ 11,711	10.39%	\$ 124,411	\$ 11,711
1991		\$ 10,866	8.73%	\$ 135,277	\$ 10,866
1992		\$ 8,657	6.40%	\$ 143,934	\$ 8,657
1993		\$ 8,832	6.14%	\$ 152,767	\$ 8,832
1994		\$ 11,195	7.33%	\$ 163,962	\$ 11,195
1995		\$ 14,963	9.13%	\$ 178,925	\$ 14,963
1996		\$ 15,264	8.53%	\$ 194,188	\$ 15,264
1997		\$ 16,919	8.71%	\$ 211,107	\$ 16,919
1998		\$ 18,196	8.62%	\$ 229,303	\$ 18,196
1999		\$ 18,887	8.24%	\$ 248,190	\$ 18,887
2000		\$ 23,720	9.56%	\$ 271,911	\$ 23,720
2001		\$ 19,293	7.10%	\$ 291,203	\$ 19,293
2002		\$ 13,854	4.76%	\$ 305,057	\$ 13,854
2003		\$ 12,772	4.19%	\$ 317,829	\$ 12,772
2004		\$ 14,023	4.41%	\$ 331,851	\$ 14,023
2005		\$ 21,006	6.33%	\$ 352,858	\$ 21,006
2006		\$ 28,926	8.20%	\$ 381,783	\$ 28,926
2007 (d)		\$ 31,938	8.37%	\$ 413,721	\$ 31,938
					\$ 397,089

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

George Gentile Summary Sheet Revised

	Value
I. Loss of Displacement Allowance, Benefits, & Back Interest	
A. Displacement Allowance (Interest Based on 10 Year Treasuries)	\$ 6,923
Pension Benefits	\$ 639
Back Interest through 12/31/2007	<u>\$ 131,125</u>
Total	\$ 138,687
B. Displacement Allowance (Interest Based on Bank Prime Loan Rates)	\$ 6,923
Pension Benefits	\$ 639
Back Interest through 12/31/2007	<u>\$ 211,677</u>
Total	\$ 219,239

Table 3: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for George Gentile, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 4,126	\$ 238	5.76%	\$ 4,364	\$ 238
1969	\$ 2,758	\$ 487	6.84%	\$ 7,608	\$ 487
1970	\$ -	\$ 575	7.56%	\$ 8,183	\$ 575
1971	\$ 630	\$ 556	6.30%	\$ 9,369	\$ 556
1972	\$ 48	\$ 599	6.36%	\$ 10,015	\$ 599
1973		\$ 704	7.03%	\$ 10,719	\$ 704
1974		\$ 834	7.78%	\$ 11,553	\$ 834
1975		\$ 951	8.23%	\$ 12,504	\$ 951
1976		\$ 979	7.83%	\$ 13,483	\$ 979
1977		\$ 1,029	7.63%	\$ 14,511	\$ 1,029
1978		\$ 1,259	8.68%	\$ 15,771	\$ 1,259
1979		\$ 1,541	9.77%	\$ 17,312	\$ 1,541
1980		\$ 2,065	11.93%	\$ 19,377	\$ 2,065
1981		\$ 2,841	14.66%	\$ 22,218	\$ 2,841
1982		\$ 3,035	13.66%	\$ 25,253	\$ 3,035
1983		\$ 2,922	11.57%	\$ 28,175	\$ 2,922
1984		\$ 3,678	13.05%	\$ 31,853	\$ 3,678
1985		\$ 3,520	11.05%	\$ 35,372	\$ 3,520
1986		\$ 2,792	7.89%	\$ 38,165	\$ 2,792
1987		\$ 3,304	8.66%	\$ 41,469	\$ 3,304
1988		\$ 3,794	9.15%	\$ 45,262	\$ 3,794
1989		\$ 3,967	8.76%	\$ 49,229	\$ 3,967
1990		\$ 4,346	8.83%	\$ 53,575	\$ 4,346
1991		\$ 4,337	8.09%	\$ 57,912	\$ 4,337
1992		\$ 4,168	7.20%	\$ 62,080	\$ 4,168
1993		\$ 3,725	6.00%	\$ 65,805	\$ 3,725
1994		\$ 4,791	7.28%	\$ 70,596	\$ 4,791
1995		\$ 4,754	6.73%	\$ 75,349	\$ 4,754
1996		\$ 4,971	6.60%	\$ 80,320	\$ 4,971
1997		\$ 5,223	6.50%	\$ 85,543	\$ 5,223
1998		\$ 4,589	5.36%	\$ 90,133	\$ 4,589
1999		\$ 5,201	5.77%	\$ 95,334	\$ 5,201
2000		\$ 5,880	6.17%	\$ 101,214	\$ 5,880
2001		\$ 5,177	5.12%	\$ 106,391	\$ 5,177
2002		\$ 4,990	4.69%	\$ 111,381	\$ 4,990
2003		\$ 4,534	4.07%	\$ 115,915	\$ 4,534
2004		\$ 5,029	4.34%	\$ 120,945	\$ 5,029
2005		\$ 5,273	4.36%	\$ 126,217	\$ 5,273
2006		\$ 6,168	4.89%	\$ 132,386	\$ 6,168
2007 (d)		\$ 6,301	4.76%	\$ 138,687	\$ 6,301
					\$ 131,125

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file. Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 4: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for George Gentile, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 4,126	\$ 267	6.46%	\$ 4,393	\$ 267
1969	\$ 2,758	\$ 586	8.19%	\$ 7,736	\$ 586
1970	\$ -	\$ 630	8.15%	\$ 8,366	\$ 630
1971	\$ 630	\$ 526	5.85%	\$ 9,522	\$ 526
1972	\$ 48	\$ 512	5.35%	\$ 10,082	\$ 512
1973		\$ 832	8.25%	\$ 10,915	\$ 832
1974		\$ 1,227	11.24%	\$ 12,141	\$ 1,227
1975		\$ 983	8.09%	\$ 13,124	\$ 983
1976		\$ 921	7.02%	\$ 14,045	\$ 921
1977		\$ 983	7.00%	\$ 15,028	\$ 983
1978		\$ 1,407	9.36%	\$ 16,435	\$ 1,407
1979		\$ 2,181	13.27%	\$ 18,616	\$ 2,181
1980		\$ 3,001	16.12%	\$ 21,616	\$ 3,001
1981		\$ 4,374	20.24%	\$ 25,991	\$ 4,374
1982		\$ 4,078	15.69%	\$ 30,069	\$ 4,078
1983		\$ 3,379	11.24%	\$ 33,448	\$ 3,379
1984		\$ 4,213	12.59%	\$ 37,661	\$ 4,213
1985		\$ 3,882	10.31%	\$ 41,543	\$ 3,882
1986		\$ 3,570	8.59%	\$ 45,113	\$ 3,570
1987		\$ 3,816	8.46%	\$ 48,929	\$ 3,816
1988		\$ 4,718	9.64%	\$ 53,647	\$ 4,718
1989		\$ 6,075	11.32%	\$ 59,722	\$ 6,075
1990		\$ 6,206	10.39%	\$ 65,928	\$ 6,206
1991		\$ 5,758	8.73%	\$ 71,686	\$ 5,758
1992		\$ 4,588	6.40%	\$ 76,274	\$ 4,588
1993		\$ 4,680	6.14%	\$ 80,954	\$ 4,680
1994		\$ 5,933	7.33%	\$ 86,887	\$ 5,933
1995		\$ 7,929	9.13%	\$ 94,816	\$ 7,929
1996		\$ 8,089	8.53%	\$ 102,904	\$ 8,089
1997		\$ 8,966	8.71%	\$ 111,870	\$ 8,966
1998		\$ 9,642	8.62%	\$ 121,512	\$ 9,642
1999		\$ 10,009	8.24%	\$ 131,521	\$ 10,009
2000		\$ 12,570	9.56%	\$ 144,091	\$ 12,570
2001		\$ 10,224	7.10%	\$ 154,314	\$ 10,224
2002		\$ 7,341	4.76%	\$ 161,656	\$ 7,341
2003		\$ 6,768	4.19%	\$ 168,424	\$ 6,768
2004		\$ 7,431	4.41%	\$ 175,855	\$ 7,431
2005		\$ 11,132	6.33%	\$ 186,986	\$ 11,132
2006		\$ 15,328	8.20%	\$ 202,314	\$ 15,328
2007 (d)		\$ 16,925	8.37%	\$ 219,239	\$ 16,925
					\$ 211,677

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

George Norris Summary Sheet Revised

	Value
I. Loss of Displacement Allowance, Benefits, & Back Interest	
A. Displacement Allowance (Interest Based on 10 Year Treasuries)	\$ 45,200
Pension Benefits	\$ 4,957
Back Interest through 12/31/2007	<u>\$ 732,982</u>
Total	\$ 783,138
B. Displacement Allowance (Interest Based on Bank Prime Loan Rates)	\$ 45,200
Pension Benefits	\$ 4,957
Back Interest through 12/31/2007	<u>\$ 1,173,730</u>
Total	\$ 1,223,886

Table 3: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for George Norris, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 7,967	\$ 459	5.76%	\$ 8,426	\$ 459
1969	\$ 8,031	\$ 1,125	6.84%	\$ 17,582	\$ 1,125
1970	\$ 3,999	\$ 1,630	7.56%	\$ 23,212	\$ 1,630
1971	\$ 4,972	\$ 1,777	6.30%	\$ 29,960	\$ 1,777
1972	\$ 7,764	\$ 2,398	6.36%	\$ 40,122	\$ 2,398
1973	\$ 7,757	\$ 3,365	7.03%	\$ 51,245	\$ 3,365
1974	\$ 4,375	\$ 4,326	7.78%	\$ 59,945	\$ 4,326
1975	\$ 5,291	\$ 5,371	8.23%	\$ 70,607	\$ 5,371
1976		\$ 5,528	7.83%	\$ 76,135	\$ 5,528
1977		\$ 5,808	7.63%	\$ 81,944	\$ 5,808
1978		\$ 7,112	8.68%	\$ 89,055	\$ 7,112
1979		\$ 8,700	9.77%	\$ 97,755	\$ 8,700
1980		\$ 11,662	11.93%	\$ 109,417	\$ 11,662
1981		\$ 16,044	14.66%	\$ 125,461	\$ 16,044
1982		\$ 17,136	13.66%	\$ 142,597	\$ 17,136
1983		\$ 16,499	11.57%	\$ 159,097	\$ 16,499
1984		\$ 20,769	13.05%	\$ 179,866	\$ 20,769
1985		\$ 19,876	11.05%	\$ 199,742	\$ 19,876
1986		\$ 15,766	7.89%	\$ 215,508	\$ 15,766
1987		\$ 18,658	8.66%	\$ 234,166	\$ 18,658
1988		\$ 21,422	9.15%	\$ 255,588	\$ 21,422
1989		\$ 22,400	8.76%	\$ 277,988	\$ 22,400
1990		\$ 24,541	8.83%	\$ 302,529	\$ 24,541
1991		\$ 24,489	8.09%	\$ 327,018	\$ 24,489
1992		\$ 23,534	7.20%	\$ 350,551	\$ 23,534
1993		\$ 21,035	6.00%	\$ 371,586	\$ 21,035
1994		\$ 27,054	7.28%	\$ 398,641	\$ 27,054
1995		\$ 26,843	6.73%	\$ 425,484	\$ 26,843
1996		\$ 28,070	6.60%	\$ 453,554	\$ 28,070
1997		\$ 29,494	6.50%	\$ 483,047	\$ 29,494
1998		\$ 25,914	5.36%	\$ 508,961	\$ 25,914
1999		\$ 29,371	5.77%	\$ 538,333	\$ 29,371
2000		\$ 33,203	6.17%	\$ 571,535	\$ 33,203
2001		\$ 29,236	5.12%	\$ 600,771	\$ 29,236
2002		\$ 28,178	4.69%	\$ 628,949	\$ 28,178
2003		\$ 25,603	4.07%	\$ 654,552	\$ 25,603
2004		\$ 28,400	4.34%	\$ 682,952	\$ 28,400
2005		\$ 29,773	4.36%	\$ 712,725	\$ 29,773
2006		\$ 34,832	4.89%	\$ 747,557	\$ 34,832
2007 (d)		\$ 35,581	4.76%	\$ 783,138	\$ 35,581
					\$ 732,982

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file. Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 4: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for George Norris, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 7,967	\$ 515	6.46%	\$ 8,482	\$ 515
1969	\$ 8,031	\$ 1,352	8.19%	\$ 17,865	\$ 1,352
1970	\$ 3,999	\$ 1,781	8.15%	\$ 23,645	\$ 1,781
1971	\$ 4,972	\$ 1,673	5.85%	\$ 30,291	\$ 1,673
1972	\$ 7,764	\$ 2,037	5.35%	\$ 40,092	\$ 2,037
1973	\$ 7,757	\$ 3,950	8.25%	\$ 51,799	\$ 3,950
1974	\$ 4,375	\$ 6,313	11.24%	\$ 62,486	\$ 6,313
1975	\$ 5,291	\$ 5,486	8.09%	\$ 73,263	\$ 5,486
1976		\$ 5,141	7.02%	\$ 78,404	\$ 5,141
1977		\$ 5,488	7.00%	\$ 83,892	\$ 5,488
1978		\$ 7,854	9.36%	\$ 91,746	\$ 7,854
1979		\$ 12,175	13.27%	\$ 103,921	\$ 12,175
1980		\$ 16,751	16.12%	\$ 120,671	\$ 16,751
1981		\$ 24,420	20.24%	\$ 145,091	\$ 24,420
1982		\$ 22,767	15.69%	\$ 167,858	\$ 22,767
1983		\$ 18,865	11.24%	\$ 186,723	\$ 18,865
1984		\$ 23,517	12.59%	\$ 210,240	\$ 23,517
1985		\$ 21,672	10.31%	\$ 231,912	\$ 21,672
1986		\$ 19,930	8.59%	\$ 251,842	\$ 19,930
1987		\$ 21,300	8.46%	\$ 273,142	\$ 21,300
1988		\$ 26,339	9.64%	\$ 299,482	\$ 26,339
1989		\$ 33,913	11.32%	\$ 333,395	\$ 33,913
1990		\$ 34,644	10.39%	\$ 368,039	\$ 34,644
1991		\$ 32,144	8.73%	\$ 400,182	\$ 32,144
1992		\$ 25,610	6.40%	\$ 425,792	\$ 25,610
1993		\$ 26,128	6.14%	\$ 451,920	\$ 26,128
1994		\$ 33,119	7.33%	\$ 485,038	\$ 33,119
1995		\$ 44,263	9.13%	\$ 529,302	\$ 44,263
1996		\$ 45,154	8.53%	\$ 574,456	\$ 45,154
1997		\$ 50,050	8.71%	\$ 624,506	\$ 50,050
1998		\$ 53,827	8.62%	\$ 678,333	\$ 53,827
1999		\$ 55,872	8.24%	\$ 734,205	\$ 55,872
2000		\$ 70,171	9.56%	\$ 804,376	\$ 70,171
2001		\$ 57,072	7.10%	\$ 861,448	\$ 57,072
2002		\$ 40,983	4.76%	\$ 902,432	\$ 40,983
2003		\$ 37,781	4.19%	\$ 940,213	\$ 37,781
2004		\$ 41,483	4.41%	\$ 981,696	\$ 41,483
2005		\$ 62,141	6.33%	\$ 1,043,837	\$ 62,141
2006		\$ 85,569	8.20%	\$ 1,129,406	\$ 85,569
2007 (d)		\$ 94,480	8.37%	\$ 1,223,886	\$ 94,480
					\$ 1,173,730

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Christ Steimle Summary Sheet Revised

	Value
I. Loss of Displacement Allowance, Benefits, & Back Interest	
A. Displacement Allowance (Interest Based on 10 Year Treasuries)	\$ 3,239
Pension Benefits	\$ 301
Back Interest through 12/31/2007	<u>\$ 60,651</u>
Total	\$ 64,191
B. Displacement Allowance (Interest Based on Bank Prime Loan Rates)	\$ 3,239
Pension Benefits	\$ 301
Back Interest through 12/31/2007	<u>\$ 97,792</u>
Total	\$ 101,332

Table 3: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Christ Steimle, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 1,834	\$ 106	5.76%	\$ 1,940	\$ 106
1969	\$ 1,109	\$ 209	6.84%	\$ 3,258	\$ 209
1970	\$ -	\$ 246	7.56%	\$ 3,504	\$ 246
1971	\$ 596	\$ 258	6.30%	\$ 4,358	\$ 258
1972		\$ 277	6.36%	\$ 4,636	\$ 277
1973		\$ 326	7.03%	\$ 4,961	\$ 326
1974		\$ 386	7.78%	\$ 5,347	\$ 386
1975		\$ 440	8.23%	\$ 5,787	\$ 440
1976		\$ 453	7.83%	\$ 6,241	\$ 453
1977		\$ 476	7.63%	\$ 6,717	\$ 476
1978		\$ 583	8.68%	\$ 7,300	\$ 583
1979		\$ 713	9.77%	\$ 8,013	\$ 713
1980		\$ 956	11.93%	\$ 8,968	\$ 956
1981		\$ 1,315	14.66%	\$ 10,284	\$ 1,315
1982		\$ 1,405	13.66%	\$ 11,688	\$ 1,405
1983		\$ 1,352	11.57%	\$ 13,041	\$ 1,352
1984		\$ 1,702	13.05%	\$ 14,743	\$ 1,702
1985		\$ 1,629	11.05%	\$ 16,372	\$ 1,629
1986		\$ 1,292	7.89%	\$ 17,664	\$ 1,292
1987		\$ 1,529	8.66%	\$ 19,194	\$ 1,529
1988		\$ 1,756	9.15%	\$ 20,950	\$ 1,756
1989		\$ 1,836	8.76%	\$ 22,786	\$ 1,836
1990		\$ 2,012	8.83%	\$ 24,797	\$ 2,012
1991		\$ 2,007	8.09%	\$ 26,804	\$ 2,007
1992		\$ 1,929	7.20%	\$ 28,733	\$ 1,929
1993		\$ 1,724	6.00%	\$ 30,457	\$ 1,724
1994		\$ 2,218	7.28%	\$ 32,675	\$ 2,218
1995		\$ 2,200	6.73%	\$ 34,875	\$ 2,200
1996		\$ 2,301	6.60%	\$ 37,176	\$ 2,301
1997		\$ 2,417	6.50%	\$ 39,594	\$ 2,417
1998		\$ 2,124	5.36%	\$ 41,718	\$ 2,124
1999		\$ 2,407	5.77%	\$ 44,125	\$ 2,407
2000		\$ 2,722	6.17%	\$ 46,847	\$ 2,722
2001		\$ 2,396	5.12%	\$ 49,243	\$ 2,396
2002		\$ 2,310	4.69%	\$ 51,553	\$ 2,310
2003		\$ 2,099	4.07%	\$ 53,651	\$ 2,099
2004		\$ 2,328	4.34%	\$ 55,979	\$ 2,328
2005		\$ 2,440	4.36%	\$ 58,419	\$ 2,440
2006		\$ 2,855	4.89%	\$ 61,274	\$ 2,855
2007 (d)		\$ 2,916	4.76%	\$ 64,191	\$ 2,916
					\$ 60,651

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file. Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 4: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Christ Steimle, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 1,834	\$ 119	6.46%	\$ 1,953	\$ 119
1969	\$ 1,109	\$ 251	8.19%	\$ 3,313	\$ 251
1970	\$ -	\$ 270	8.15%	\$ 3,583	\$ 270
1971	\$ 596	\$ 244	5.85%	\$ 4,423	\$ 244
1972		\$ 237	5.35%	\$ 4,660	\$ 237
1973		\$ 385	8.25%	\$ 5,045	\$ 385
1974		\$ 567	11.24%	\$ 5,612	\$ 567
1975		\$ 454	8.09%	\$ 6,066	\$ 454
1976		\$ 426	7.02%	\$ 6,491	\$ 426
1977		\$ 454	7.00%	\$ 6,946	\$ 454
1978		\$ 650	9.36%	\$ 7,596	\$ 650
1979		\$ 1,008	13.27%	\$ 8,604	\$ 1,008
1980		\$ 1,387	16.12%	\$ 9,991	\$ 1,387
1981		\$ 2,022	20.24%	\$ 12,013	\$ 2,022
1982		\$ 1,885	15.69%	\$ 13,898	\$ 1,885
1983		\$ 1,562	11.24%	\$ 15,460	\$ 1,562
1984		\$ 1,947	12.59%	\$ 17,407	\$ 1,947
1985		\$ 1,794	10.31%	\$ 19,201	\$ 1,794
1986		\$ 1,650	8.59%	\$ 20,851	\$ 1,650
1987		\$ 1,764	8.46%	\$ 22,615	\$ 1,764
1988		\$ 2,181	9.64%	\$ 24,796	\$ 2,181
1989		\$ 2,808	11.32%	\$ 27,603	\$ 2,808
1990		\$ 2,868	10.39%	\$ 30,472	\$ 2,868
1991		\$ 2,661	8.73%	\$ 33,133	\$ 2,661
1992		\$ 2,120	6.40%	\$ 35,253	\$ 2,120
1993		\$ 2,163	6.14%	\$ 37,417	\$ 2,163
1994		\$ 2,742	7.33%	\$ 40,159	\$ 2,742
1995		\$ 3,665	9.13%	\$ 43,824	\$ 3,665
1996		\$ 3,739	8.53%	\$ 47,562	\$ 3,739
1997		\$ 4,144	8.71%	\$ 51,706	\$ 4,144
1998		\$ 4,457	8.62%	\$ 56,163	\$ 4,457
1999		\$ 4,626	8.24%	\$ 60,789	\$ 4,626
2000		\$ 5,810	9.56%	\$ 66,598	\$ 5,810
2001		\$ 4,725	7.10%	\$ 71,324	\$ 4,725
2002		\$ 3,393	4.76%	\$ 74,717	\$ 3,393
2003		\$ 3,128	4.19%	\$ 77,845	\$ 3,128
2004		\$ 3,435	4.41%	\$ 81,280	\$ 3,435
2005		\$ 5,145	6.33%	\$ 86,425	\$ 5,145
2006		\$ 7,085	8.20%	\$ 93,509	\$ 7,085
2007 (d)		\$ 7,823	8.37%	\$ 101,332	\$ 7,823
					\$ 97,792

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Clarence Tomaczak Summary Sheet Revised

	Value
I. Loss of Displacement Allowance, Benefits, & Back Interest	
A. Displacement Allowance (Interest Based on 10 Year Treasuries)	\$ 47,230
Pension Benefits	\$ 5,437
Back Interest through 12/31/2007	<u>\$ 741,369</u>
Total	\$ 794,035
B. Displacement Allowance (Interest Based on Bank Prime Loan Rates)	\$ 47,230
Pension Benefits	\$ 5,437
Back Interest through 12/31/2007	<u>\$ 1,187,435</u>
Total	\$ 1,240,102

Table 3: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Clarence Tomczak, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 9,203	\$ 530	5.76%	\$ 9,733	\$ 530
1969	\$ 9,974	\$ 1,348	6.84%	\$ 21,055	\$ 1,348
1970	\$ 4,352	\$ 1,919	7.56%	\$ 27,326	\$ 1,919
1971	\$ 5,461	\$ 2,067	6.30%	\$ 34,854	\$ 2,067
1972	\$ 5,133	\$ 2,542	6.36%	\$ 42,528	\$ 2,542
1973	\$ -	\$ 2,989	7.03%	\$ 45,517	\$ 2,989
1974	\$ 7,161	\$ 4,097	7.78%	\$ 56,775	\$ 4,097
1975	\$ -	\$ 4,674	8.23%	\$ 61,449	\$ 4,674
1976	\$ -	\$ 4,811	7.83%	\$ 66,260	\$ 4,811
1977	\$ 5,250	\$ 5,456	7.63%	\$ 76,966	\$ 5,456
1978	\$ 5,944	\$ 7,196	8.68%	\$ 90,106	\$ 7,196
1979	\$ 189	\$ 8,821	9.77%	\$ 99,115	\$ 8,821
1980		\$ 11,824	11.93%	\$ 110,939	\$ 11,824
1981		\$ 16,268	14.66%	\$ 127,207	\$ 16,268
1982		\$ 17,375	13.66%	\$ 144,581	\$ 17,375
1983		\$ 16,729	11.57%	\$ 161,310	\$ 16,729
1984		\$ 21,058	13.05%	\$ 182,368	\$ 21,058
1985		\$ 20,153	11.05%	\$ 202,521	\$ 20,153
1986		\$ 15,986	7.89%	\$ 218,507	\$ 15,986
1987		\$ 18,918	8.66%	\$ 237,425	\$ 18,918
1988		\$ 21,720	9.15%	\$ 259,144	\$ 21,720
1989		\$ 22,712	8.76%	\$ 281,856	\$ 22,712
1990		\$ 24,882	8.83%	\$ 306,739	\$ 24,882
1991		\$ 24,830	8.09%	\$ 331,568	\$ 24,830
1992		\$ 23,861	7.20%	\$ 355,429	\$ 23,861
1993		\$ 21,327	6.00%	\$ 376,757	\$ 21,327
1994		\$ 27,431	7.28%	\$ 404,187	\$ 27,431
1995		\$ 27,217	6.73%	\$ 431,404	\$ 27,217
1996		\$ 28,461	6.60%	\$ 459,865	\$ 28,461
1997		\$ 29,904	6.50%	\$ 489,769	\$ 29,904
1998		\$ 26,274	5.36%	\$ 516,043	\$ 26,274
1999		\$ 29,780	5.77%	\$ 545,823	\$ 29,780
2000		\$ 33,665	6.17%	\$ 579,488	\$ 33,665
2001		\$ 29,643	5.12%	\$ 609,131	\$ 29,643
2002		\$ 28,570	4.69%	\$ 637,701	\$ 28,570
2003		\$ 25,959	4.07%	\$ 663,660	\$ 25,959
2004		\$ 28,795	4.34%	\$ 692,455	\$ 28,795
2005		\$ 30,188	4.36%	\$ 722,643	\$ 30,188
2006		\$ 35,316	4.89%	\$ 757,959	\$ 35,316
2007 (d)		\$ 36,076	4.76%	\$ 794,035	\$ 36,076
					\$ 741,369

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 4: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Clarence Tomczak, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 9,203	\$ 595	6.46%	\$ 9,798	\$ 595
1969	\$ 9,974	\$ 1,619	8.19%	\$ 21,391	\$ 1,619
1970	\$ 4,352	\$ 2,097	8.15%	\$ 27,840	\$ 2,097
1971	\$ 5,461	\$ 1,947	5.85%	\$ 35,248	\$ 1,947
1972	\$ 5,133	\$ 2,161	5.35%	\$ 42,542	\$ 2,161
1973	\$ -	\$ 3,512	8.25%	\$ 46,053	\$ 3,512
1974	\$ 7,161	\$ 5,980	11.24%	\$ 59,195	\$ 5,980
1975	\$ -	\$ 4,791	8.09%	\$ 63,986	\$ 4,791
1976	\$ -	\$ 4,490	7.02%	\$ 68,476	\$ 4,490
1977	\$ 5,250	\$ 5,160	7.00%	\$ 78,886	\$ 5,160
1978	\$ 5,944	\$ 7,942	9.36%	\$ 92,773	\$ 7,942
1979	\$ 189	\$ 12,336	13.27%	\$ 105,297	\$ 12,336
1980		\$ 16,973	16.12%	\$ 122,270	\$ 16,973
1981		\$ 24,743	20.24%	\$ 147,013	\$ 24,743
1982		\$ 23,069	15.69%	\$ 170,082	\$ 23,069
1983		\$ 19,115	11.24%	\$ 189,197	\$ 19,115
1984		\$ 23,828	12.59%	\$ 213,025	\$ 23,828
1985		\$ 21,960	10.31%	\$ 234,985	\$ 21,960
1986		\$ 20,194	8.59%	\$ 255,179	\$ 20,194
1987		\$ 21,583	8.46%	\$ 276,761	\$ 21,583
1988		\$ 26,688	9.64%	\$ 303,450	\$ 26,688
1989		\$ 34,362	11.32%	\$ 337,812	\$ 34,362
1990		\$ 35,103	10.39%	\$ 372,915	\$ 35,103
1991		\$ 32,570	8.73%	\$ 405,485	\$ 32,570
1992		\$ 25,949	6.40%	\$ 431,433	\$ 25,949
1993		\$ 26,474	6.14%	\$ 457,908	\$ 26,474
1994		\$ 33,557	7.33%	\$ 491,465	\$ 33,557
1995		\$ 44,850	9.13%	\$ 536,315	\$ 44,850
1996		\$ 45,752	8.53%	\$ 582,067	\$ 45,752
1997		\$ 50,713	8.71%	\$ 632,780	\$ 50,713
1998		\$ 54,541	8.62%	\$ 687,321	\$ 54,541
1999		\$ 56,612	8.24%	\$ 743,933	\$ 56,612
2000		\$ 71,100	9.56%	\$ 815,034	\$ 71,100
2001		\$ 57,828	7.10%	\$ 872,862	\$ 57,828
2002		\$ 41,526	4.76%	\$ 914,388	\$ 41,526
2003		\$ 38,282	4.19%	\$ 952,670	\$ 38,282
2004		\$ 42,032	4.41%	\$ 994,703	\$ 42,032
2005		\$ 62,965	6.33%	\$ 1,057,667	\$ 62,965
2006		\$ 86,703	8.20%	\$ 1,144,370	\$ 86,703
2007 (d)		\$ 95,732	8.37%	\$ 1,240,102	\$ 95,732
					\$ 1,187,435

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Frank Uher Summary Sheet Revised

	Value
I. Loss of Displacement Allowance, Benefits, & Back Interest	
A. Displacement Allowance (Interest Based on 10 Year Treasuries)	\$ 21,538
Pension Benefits	\$ 2,022
Back Interest through 12/31/2007	<u>\$ 394,517</u>
Total	\$ 418,077
B. Displacement Allowance (Interest Based on Bank Prime Loan Rates)	\$ 21,538
Pension Benefits	\$ 2,022
Back Interest through 12/31/2007	<u>\$ 634,501</u>
Total	\$ 658,061

Table 3: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Frank Uher, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 8,046	\$ 464	5.76%	\$ 8,510	\$ 464
1969	\$ 7,769	\$ 1,113	6.84%	\$ 17,392	\$ 1,113
1970	\$ 4,091	\$ 1,623	7.56%	\$ 23,106	\$ 1,623
1971	\$ 2,710	\$ 1,627	6.30%	\$ 27,442	\$ 1,627
1972	\$ 945	\$ 1,804	6.36%	\$ 30,191	\$ 1,804
1973		\$ 2,122	7.03%	\$ 32,313	\$ 2,122
1974		\$ 2,513	7.78%	\$ 34,826	\$ 2,513
1975		\$ 2,867	8.23%	\$ 37,693	\$ 2,867
1976		\$ 2,951	7.83%	\$ 40,645	\$ 2,951
1977		\$ 3,101	7.63%	\$ 43,745	\$ 3,101
1978		\$ 3,797	8.68%	\$ 47,542	\$ 3,797
1979		\$ 4,644	9.77%	\$ 52,186	\$ 4,644
1980		\$ 6,225	11.93%	\$ 58,412	\$ 6,225
1981		\$ 8,565	14.66%	\$ 66,977	\$ 8,565
1982		\$ 9,148	13.66%	\$ 76,125	\$ 9,148
1983		\$ 8,808	11.57%	\$ 84,934	\$ 8,808
1984		\$ 11,088	13.05%	\$ 96,021	\$ 11,088
1985		\$ 10,611	11.05%	\$ 106,632	\$ 10,611
1986		\$ 8,417	7.89%	\$ 115,049	\$ 8,417
1987		\$ 9,961	8.66%	\$ 125,009	\$ 9,961
1988		\$ 11,436	9.15%	\$ 136,445	\$ 11,436
1989		\$ 11,958	8.76%	\$ 148,404	\$ 11,958
1990		\$ 13,101	8.83%	\$ 161,505	\$ 13,101
1991		\$ 13,073	8.09%	\$ 174,578	\$ 13,073
1992		\$ 12,563	7.20%	\$ 187,142	\$ 12,563
1993		\$ 11,229	6.00%	\$ 198,371	\$ 11,229
1994		\$ 14,443	7.28%	\$ 212,814	\$ 14,443
1995		\$ 14,330	6.73%	\$ 227,144	\$ 14,330
1996		\$ 14,985	6.60%	\$ 242,129	\$ 14,985
1997		\$ 15,745	6.50%	\$ 257,874	\$ 15,745
1998		\$ 13,834	5.36%	\$ 271,708	\$ 13,834
1999		\$ 15,680	5.77%	\$ 287,388	\$ 15,680
2000		\$ 17,725	6.17%	\$ 305,114	\$ 17,725
2001		\$ 15,607	5.12%	\$ 320,721	\$ 15,607
2002		\$ 15,043	4.69%	\$ 335,764	\$ 15,043
2003		\$ 13,668	4.07%	\$ 349,432	\$ 13,668
2004		\$ 15,161	4.34%	\$ 364,593	\$ 15,161
2005		\$ 15,894	4.36%	\$ 380,488	\$ 15,894
2006		\$ 18,595	4.89%	\$ 399,082	\$ 18,595
2007 (d)		\$ 18,995	4.76%	\$ 418,077	\$ 18,995
					\$ 394,517

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file. Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 4: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Frank Uher, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 8,046	\$ 520	6.46%	\$ 8,566	\$ 520
1969	\$ 7,769	\$ 1,338	8.19%	\$ 17,673	\$ 1,338
1970	\$ 4,091	\$ 1,773	8.15%	\$ 23,537	\$ 1,773
1971	\$ 2,710	\$ 1,535	5.85%	\$ 27,781	\$ 1,535
1972	\$ 945	\$ 1,537	5.35%	\$ 30,263	\$ 1,537
1973		\$ 2,498	8.25%	\$ 32,761	\$ 2,498
1974		\$ 3,682	11.24%	\$ 36,442	\$ 3,682
1975		\$ 2,950	8.09%	\$ 39,392	\$ 2,950
1976		\$ 2,764	7.02%	\$ 42,156	\$ 2,764
1977		\$ 2,951	7.00%	\$ 45,107	\$ 2,951
1978		\$ 4,223	9.36%	\$ 49,330	\$ 4,223
1979		\$ 6,546	13.27%	\$ 55,876	\$ 6,546
1980		\$ 9,007	16.12%	\$ 64,883	\$ 9,007
1981		\$ 13,130	20.24%	\$ 78,013	\$ 13,130
1982		\$ 12,241	15.69%	\$ 90,254	\$ 12,241
1983		\$ 10,143	11.24%	\$ 100,398	\$ 10,143
1984		\$ 12,644	12.59%	\$ 113,042	\$ 12,644
1985		\$ 11,653	10.31%	\$ 124,695	\$ 11,653
1986		\$ 10,716	8.59%	\$ 135,411	\$ 10,716
1987		\$ 11,453	8.46%	\$ 146,864	\$ 11,453
1988		\$ 14,162	9.64%	\$ 161,026	\$ 14,162
1989		\$ 18,234	11.32%	\$ 179,260	\$ 18,234
1990		\$ 18,627	10.39%	\$ 197,888	\$ 18,627
1991		\$ 17,283	8.73%	\$ 215,171	\$ 17,283
1992		\$ 13,770	6.40%	\$ 228,941	\$ 13,770
1993		\$ 14,049	6.14%	\$ 242,989	\$ 14,049
1994		\$ 17,807	7.33%	\$ 260,796	\$ 17,807
1995		\$ 23,799	9.13%	\$ 284,596	\$ 23,799
1996		\$ 24,279	8.53%	\$ 308,874	\$ 24,279
1997		\$ 26,911	8.71%	\$ 335,786	\$ 26,911
1998		\$ 28,942	8.62%	\$ 364,728	\$ 28,942
1999		\$ 30,041	8.24%	\$ 394,769	\$ 30,041
2000		\$ 37,730	9.56%	\$ 432,498	\$ 37,730
2001		\$ 30,687	7.10%	\$ 463,185	\$ 30,687
2002		\$ 22,036	4.76%	\$ 485,221	\$ 22,036
2003		\$ 20,314	4.19%	\$ 505,535	\$ 20,314
2004		\$ 22,305	4.41%	\$ 527,840	\$ 22,305
2005		\$ 33,412	6.33%	\$ 561,252	\$ 33,412
2006		\$ 46,009	8.20%	\$ 607,261	\$ 46,009
2007 (d)		\$ 50,800	8.37%	\$ 658,061	\$ 50,800
					\$ 634,501

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

William Bilinsky Summary Sheet Revised

	Value
I. Loss of Displacement Allowance, Benefits, & Back Interest	
A. Displacement Allowance (Interest Based on 10 Year Treasuries)	\$ 2,072
Pension Benefits	\$ 221
Back Interest through 12/31/2007	<u>\$ 31,903</u>
Total	\$ 34,196
B. Displacement Allowance (Interest Based on Bank Prime Loan Rates)	\$ 2,072
Pension Benefits	\$ 221
Back Interest through 12/31/2007	<u>\$ 50,568</u>
Total	\$ 52,861

Table 3: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for William Bilinsky, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1971	\$ 1,975	\$ 125	6.30%	\$ 2,100	\$ 125
1972	\$ -	\$ 133	6.36%	\$ 2,234	\$ 133
1973	\$ -	\$ 157	7.03%	\$ 2,390	\$ 157
1974	\$ -	\$ 186	7.78%	\$ 2,576	\$ 186
1975	\$ -	\$ 212	8.23%	\$ 2,788	\$ 212
1976	\$ -	\$ 218	7.83%	\$ 3,007	\$ 218
1977	\$ 318	\$ 254	7.63%	\$ 3,578	\$ 254
1978		\$ 311	8.68%	\$ 3,889	\$ 311
1979		\$ 380	9.77%	\$ 4,269	\$ 380
1980		\$ 509	11.93%	\$ 4,778	\$ 509
1981		\$ 701	14.66%	\$ 5,478	\$ 701
1982		\$ 748	13.66%	\$ 6,227	\$ 748
1983		\$ 720	11.57%	\$ 6,947	\$ 720
1984		\$ 907	13.05%	\$ 7,854	\$ 907
1985		\$ 868	11.05%	\$ 8,722	\$ 868
1986		\$ 688	7.89%	\$ 9,410	\$ 688
1987		\$ 815	8.66%	\$ 10,225	\$ 815
1988		\$ 935	9.15%	\$ 11,160	\$ 935
1989		\$ 978	8.76%	\$ 12,139	\$ 978
1990		\$ 1,072	8.83%	\$ 13,210	\$ 1,072
1991		\$ 1,069	8.09%	\$ 14,280	\$ 1,069
1992		\$ 1,028	7.20%	\$ 15,307	\$ 1,028
1993		\$ 919	6.00%	\$ 16,226	\$ 919
1994		\$ 1,181	7.28%	\$ 17,407	\$ 1,181
1995		\$ 1,172	6.73%	\$ 18,579	\$ 1,172
1996		\$ 1,226	6.60%	\$ 19,805	\$ 1,226
1997		\$ 1,288	6.50%	\$ 21,093	\$ 1,288
1998		\$ 1,132	5.36%	\$ 22,224	\$ 1,132
1999		\$ 1,283	5.77%	\$ 23,507	\$ 1,283
2000		\$ 1,450	6.17%	\$ 24,957	\$ 1,450
2001		\$ 1,277	5.12%	\$ 26,233	\$ 1,277
2002		\$ 1,230	4.69%	\$ 27,464	\$ 1,230
2003		\$ 1,118	4.07%	\$ 28,582	\$ 1,118
2004		\$ 1,240	4.34%	\$ 29,822	\$ 1,240
2005		\$ 1,300	4.36%	\$ 31,122	\$ 1,300
2006		\$ 1,521	4.89%	\$ 32,643	\$ 1,521
2007 (d)		\$ 1,554	4.76%	\$ 34,196	\$ 1,554
					\$ 31,903

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file. Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 4: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for William Bilinsky, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1971	\$ 1,975	\$ 116	5.85%	\$ 2,091	\$ 116
1972	\$ -	\$ 112	5.35%	\$ 2,203	\$ 112
1973	\$ -	\$ 182	8.25%	\$ 2,385	\$ 182
1974	\$ -	\$ 268	11.24%	\$ 2,653	\$ 268
1975	\$ -	\$ 215	8.09%	\$ 2,867	\$ 215
1976	\$ -	\$ 201	7.02%	\$ 3,069	\$ 201
1977	\$ 318	\$ 237	7.00%	\$ 3,623	\$ 237
1978		\$ 339	9.36%	\$ 3,963	\$ 339
1979		\$ 526	13.27%	\$ 4,488	\$ 526
1980		\$ 723	16.12%	\$ 5,212	\$ 723
1981		\$ 1,055	20.24%	\$ 6,267	\$ 1,055
1982		\$ 983	15.69%	\$ 7,250	\$ 983
1983		\$ 815	11.24%	\$ 8,065	\$ 815
1984		\$ 1,016	12.59%	\$ 9,080	\$ 1,016
1985		\$ 936	10.31%	\$ 10,017	\$ 936
1986		\$ 861	8.59%	\$ 10,877	\$ 861
1987		\$ 920	8.46%	\$ 11,797	\$ 920
1988		\$ 1,138	9.64%	\$ 12,935	\$ 1,138
1989		\$ 1,465	11.32%	\$ 14,400	\$ 1,465
1990		\$ 1,496	10.39%	\$ 15,896	\$ 1,496
1991		\$ 1,388	8.73%	\$ 17,284	\$ 1,388
1992		\$ 1,106	6.40%	\$ 18,390	\$ 1,106
1993		\$ 1,129	6.14%	\$ 19,519	\$ 1,129
1994		\$ 1,430	7.33%	\$ 20,949	\$ 1,430
1995		\$ 1,912	9.13%	\$ 22,861	\$ 1,912
1996		\$ 1,950	8.53%	\$ 24,811	\$ 1,950
1997		\$ 2,162	8.71%	\$ 26,973	\$ 2,162
1998		\$ 2,325	8.62%	\$ 29,298	\$ 2,325
1999		\$ 2,413	8.24%	\$ 31,711	\$ 2,413
2000		\$ 3,031	9.56%	\$ 34,742	\$ 3,031
2001		\$ 2,465	7.10%	\$ 37,207	\$ 2,465
2002		\$ 1,770	4.76%	\$ 38,977	\$ 1,770
2003		\$ 1,632	4.19%	\$ 40,609	\$ 1,632
2004		\$ 1,792	4.41%	\$ 42,400	\$ 1,792
2005		\$ 2,684	6.33%	\$ 45,084	\$ 2,684
2006		\$ 3,696	8.20%	\$ 48,780	\$ 3,696
2007 (d)		\$ 4,081	8.37%	\$ 52,861	\$ 4,081
					\$ 50,568

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Joseph Crtalic Summary Sheet Revised

	Value
I. Loss of Displacement Allowance, Benefits, & Back Interest	
A. Displacement Allowance (Interest Based on 10 Year Treasuries)	\$ 2,675
Pension Benefits	\$ 285
Back Interest through 12/31/2007	<u>\$ 39,624</u>
Total	\$ 42,584
B. Displacement Allowance (Interest Based on Bank Prime Loan Rates)	\$ 2,675
Pension Benefits	\$ 285
Back Interest through 12/31/2007	<u>\$ 63,512</u>
Total	\$ 66,471

Table 3: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Joseph Crtalic, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1972	\$ 1,820	\$ 116	6.36%	\$ 1,936	\$ 116
1973	\$ 1,139	\$ 216	7.03%	\$ 3,291	\$ 216
1974		\$ 256	7.78%	\$ 3,547	\$ 256
1975		\$ 292	8.23%	\$ 3,839	\$ 292
1976		\$ 301	7.83%	\$ 4,140	\$ 301
1977		\$ 316	7.63%	\$ 4,456	\$ 316
1978		\$ 387	8.68%	\$ 4,842	\$ 387
1979		\$ 473	9.77%	\$ 5,315	\$ 473
1980		\$ 634	11.93%	\$ 5,950	\$ 634
1981		\$ 872	14.66%	\$ 6,822	\$ 872
1982		\$ 932	13.66%	\$ 7,754	\$ 932
1983		\$ 897	11.57%	\$ 8,651	\$ 897
1984		\$ 1,129	13.05%	\$ 9,780	\$ 1,129
1985		\$ 1,081	11.05%	\$ 10,861	\$ 1,081
1986		\$ 857	7.89%	\$ 11,718	\$ 857
1987		\$ 1,015	8.66%	\$ 12,733	\$ 1,015
1988		\$ 1,165	9.15%	\$ 13,898	\$ 1,165
1989		\$ 1,218	8.76%	\$ 15,116	\$ 1,218
1990		\$ 1,334	8.83%	\$ 16,450	\$ 1,334
1991		\$ 1,332	8.09%	\$ 17,782	\$ 1,332
1992		\$ 1,280	7.20%	\$ 19,061	\$ 1,280
1993		\$ 1,144	6.00%	\$ 20,205	\$ 1,144
1994		\$ 1,471	7.28%	\$ 21,676	\$ 1,471
1995		\$ 1,460	6.73%	\$ 23,136	\$ 1,460
1996		\$ 1,526	6.60%	\$ 24,662	\$ 1,526
1997		\$ 1,604	6.50%	\$ 26,266	\$ 1,604
1998		\$ 1,409	5.36%	\$ 27,675	\$ 1,409
1999		\$ 1,597	5.77%	\$ 29,272	\$ 1,597
2000		\$ 1,805	6.17%	\$ 31,078	\$ 1,805
2001		\$ 1,590	5.12%	\$ 32,667	\$ 1,590
2002		\$ 1,532	4.69%	\$ 34,199	\$ 1,532
2003		\$ 1,392	4.07%	\$ 35,592	\$ 1,392
2004		\$ 1,544	4.34%	\$ 37,136	\$ 1,544
2005		\$ 1,619	4.36%	\$ 38,755	\$ 1,619
2006		\$ 1,894	4.89%	\$ 40,649	\$ 1,894
2007 (d)		\$ 1,935	4.76%	\$ 42,584	\$ 1,935
					\$ 39,624

(a) The Total, which includes the Displacement Allowance & Pension as calculated on the previous Table .

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file. Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 4: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Joseph Crtalic, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1972	\$ 1,820	\$ 97	5.35%	\$ 1,918	\$ 97
1973	\$ 1,139	\$ 252	8.25%	\$ 3,309	\$ 252
1974		\$ 372	11.24%	\$ 3,681	\$ 372
1975		\$ 298	8.09%	\$ 3,979	\$ 298
1976		\$ 279	7.02%	\$ 4,258	\$ 279
1977		\$ 298	7.00%	\$ 4,556	\$ 298
1978		\$ 427	9.36%	\$ 4,983	\$ 427
1979		\$ 661	13.27%	\$ 5,644	\$ 661
1980		\$ 910	16.12%	\$ 6,554	\$ 910
1981		\$ 1,326	20.24%	\$ 7,880	\$ 1,326
1982		\$ 1,237	15.69%	\$ 9,117	\$ 1,237
1983		\$ 1,025	11.24%	\$ 10,141	\$ 1,025
1984		\$ 1,277	12.59%	\$ 11,418	\$ 1,277
1985		\$ 1,177	10.31%	\$ 12,596	\$ 1,177
1986		\$ 1,082	8.59%	\$ 13,678	\$ 1,082
1987		\$ 1,157	8.46%	\$ 14,835	\$ 1,157
1988		\$ 1,431	9.64%	\$ 16,265	\$ 1,431
1989		\$ 1,842	11.32%	\$ 18,107	\$ 1,842
1990		\$ 1,882	10.39%	\$ 19,989	\$ 1,882
1991		\$ 1,746	8.73%	\$ 21,735	\$ 1,746
1992		\$ 1,391	6.40%	\$ 23,126	\$ 1,391
1993		\$ 1,419	6.14%	\$ 24,545	\$ 1,419
1994		\$ 1,799	7.33%	\$ 26,343	\$ 1,799
1995		\$ 2,404	9.13%	\$ 28,747	\$ 2,404
1996		\$ 2,452	8.53%	\$ 31,200	\$ 2,452
1997		\$ 2,718	8.71%	\$ 33,918	\$ 2,718
1998		\$ 2,923	8.62%	\$ 36,842	\$ 2,923
1999		\$ 3,035	8.24%	\$ 39,876	\$ 3,035
2000		\$ 3,811	9.56%	\$ 43,687	\$ 3,811
2001		\$ 3,100	7.10%	\$ 46,787	\$ 3,100
2002		\$ 2,226	4.76%	\$ 49,013	\$ 2,226
2003		\$ 2,052	4.19%	\$ 51,065	\$ 2,052
2004		\$ 2,253	4.41%	\$ 53,318	\$ 2,253
2005		\$ 3,375	6.33%	\$ 56,693	\$ 3,375
2006		\$ 4,647	8.20%	\$ 61,340	\$ 4,647
2007 (d)		\$ 5,131	8.37%	\$ 66,471	\$ 5,131
					\$ 63,512

(a) The Total, which includes the Displacement Allowance & Pension as calculated on the previous Table .

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Paul Foecking Summary Sheet Revised

	Value
I. Loss of Displacement Allowance, Benefits, & Back Interest	
A. Displacement Allowance (Interest Based on 10 Year Treasuries)	\$ 11,959
Pension Benefits	\$ 1,808
Back Interest through 12/31/2007	<u>\$ 121,784</u>
Total	\$ 135,551
B. Displacement Allowance (Interest Based on Bank Prime Loan Rates)	\$ 11,959
Pension Benefits	\$ 1,808
Back Interest through 12/31/2007	<u>\$ 188,099</u>
Total	\$ 201,866

Table 3: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Paul Foeking, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1969	\$ 447	\$ 31	6.84%	\$ 478	\$ 31
1970	\$ 1,018	\$ 113	7.56%	\$ 1,608	\$ 113
1971	\$ 1,717	\$ 210	6.30%	\$ 3,535	\$ 210
1972	\$ -	\$ 225	6.36%	\$ 3,759	\$ 225
1973	\$ 1,021	\$ 336	7.03%	\$ 5,116	\$ 336
1974	\$ -	\$ 398	7.78%	\$ 5,514	\$ 398
1975	\$ -	\$ 454	8.23%	\$ 5,968	\$ 454
1976	\$ -	\$ 467	7.83%	\$ 6,435	\$ 467
1977	\$ 2,491	\$ 681	7.63%	\$ 9,607	\$ 681
1978	\$ 630	\$ 888	8.68%	\$ 11,125	\$ 888
1979	\$ -	\$ 1,087	9.77%	\$ 12,212	\$ 1,087
1980	\$ -	\$ 1,457	11.93%	\$ 13,669	\$ 1,457
1981	\$ 211	\$ 2,035	14.66%	\$ 15,915	\$ 2,035
1982	\$ 2,633	\$ 2,533	13.66%	\$ 21,081	\$ 2,533
1983	\$ 3,601	\$ 2,856	11.57%	\$ 27,538	\$ 2,856
1984		\$ 3,595	13.05%	\$ 31,132	\$ 3,595
1985		\$ 3,440	11.05%	\$ 34,573	\$ 3,440
1986		\$ 2,729	7.89%	\$ 37,302	\$ 2,729
1987		\$ 3,229	8.66%	\$ 40,531	\$ 3,229
1988		\$ 3,708	9.15%	\$ 44,239	\$ 3,708
1989		\$ 3,877	8.76%	\$ 48,116	\$ 3,877
1990		\$ 4,248	8.83%	\$ 52,364	\$ 4,248
1991		\$ 4,239	8.09%	\$ 56,603	\$ 4,239
1992		\$ 4,073	7.20%	\$ 60,676	\$ 4,073
1993		\$ 3,641	6.00%	\$ 64,317	\$ 3,641
1994		\$ 4,683	7.28%	\$ 68,999	\$ 4,683
1995		\$ 4,646	6.73%	\$ 73,646	\$ 4,646
1996		\$ 4,859	6.60%	\$ 78,504	\$ 4,859
1997		\$ 5,105	6.50%	\$ 83,609	\$ 5,105
1998		\$ 4,485	5.36%	\$ 88,095	\$ 4,485
1999		\$ 5,084	5.77%	\$ 93,178	\$ 5,084
2000		\$ 5,747	6.17%	\$ 98,925	\$ 5,747
2001		\$ 5,060	5.12%	\$ 103,986	\$ 5,060
2002		\$ 4,877	4.69%	\$ 108,863	\$ 4,877
2003		\$ 4,431	4.07%	\$ 113,294	\$ 4,431
2004		\$ 4,916	4.34%	\$ 118,210	\$ 4,916
2005		\$ 5,153	4.36%	\$ 123,363	\$ 5,153
2006		\$ 6,029	4.89%	\$ 129,392	\$ 6,029
2007 (d)		\$ 6,159	4.76%	\$ 135,551	\$ 6,159
					\$ 121,784

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file. Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 4: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Paul Foecking, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1969	\$ 447	\$ 37	8.19%	\$ 484	\$ 37
1970	\$ 1,018	\$ 122	8.15%	\$ 1,624	\$ 122
1971	\$ 1,717	\$ 195	5.85%	\$ 3,536	\$ 195
1972	\$ -	\$ 189	5.35%	\$ 3,725	\$ 189
1973	\$ 1,021	\$ 392	8.25%	\$ 5,137	\$ 392
1974	\$ -	\$ 577	11.24%	\$ 5,715	\$ 577
1975	\$ -	\$ 463	8.09%	\$ 6,177	\$ 463
1976	\$ -	\$ 433	7.02%	\$ 6,611	\$ 433
1977	\$ 2,491	\$ 637	7.00%	\$ 9,739	\$ 637
1978	\$ 630	\$ 971	9.36%	\$ 11,340	\$ 971
1979	\$ -	\$ 1,505	13.27%	\$ 12,844	\$ 1,505
1980	\$ -	\$ 2,070	16.12%	\$ 14,915	\$ 2,070
1981	\$ 211	\$ 3,061	20.24%	\$ 18,186	\$ 3,061
1982	\$ 2,633	\$ 3,267	15.69%	\$ 24,086	\$ 3,267
1983	\$ 3,601	\$ 3,112	11.24%	\$ 30,798	\$ 3,112
1984		\$ 3,879	12.59%	\$ 34,677	\$ 3,879
1985		\$ 3,575	10.31%	\$ 38,251	\$ 3,575
1986		\$ 3,287	8.59%	\$ 41,538	\$ 3,287
1987		\$ 3,513	8.46%	\$ 45,052	\$ 3,513
1988		\$ 4,344	9.64%	\$ 49,396	\$ 4,344
1989		\$ 5,594	11.32%	\$ 54,990	\$ 5,594
1990		\$ 5,714	10.39%	\$ 60,704	\$ 5,714
1991		\$ 5,302	8.73%	\$ 66,006	\$ 5,302
1992		\$ 4,224	6.40%	\$ 70,230	\$ 4,224
1993		\$ 4,310	6.14%	\$ 74,539	\$ 4,310
1994		\$ 5,463	7.33%	\$ 80,002	\$ 5,463
1995		\$ 7,301	9.13%	\$ 87,302	\$ 7,301
1996		\$ 7,448	8.53%	\$ 94,750	\$ 7,448
1997		\$ 8,255	8.71%	\$ 103,005	\$ 8,255
1998		\$ 8,878	8.62%	\$ 111,883	\$ 8,878
1999		\$ 9,215	8.24%	\$ 121,099	\$ 9,215
2000		\$ 11,574	9.56%	\$ 132,673	\$ 11,574
2001		\$ 9,413	7.10%	\$ 142,086	\$ 9,413
2002		\$ 6,760	4.76%	\$ 148,846	\$ 6,760
2003		\$ 6,232	4.19%	\$ 155,077	\$ 6,232
2004		\$ 6,842	4.41%	\$ 161,919	\$ 6,842
2005		\$ 10,249	6.33%	\$ 172,169	\$ 10,249
2006		\$ 14,114	8.20%	\$ 186,283	\$ 14,114
2007 (d)		\$ 15,583	8.37%	\$ 201,866	\$ 15,583
					\$ 188,099

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

John Gallagher Summary Sheet Revised

	Value
I. Loss of Displacement Allowance, Benefits, & Back Interest	
A. Displacement Allowance (Interest Based on 10 Year Treasuries)	\$ 2,787
Pension Benefits	\$ 266
Back Interest through 12/31/2007	<u>\$ 51,880</u>
Total	\$ 54,934
B. Displacement Allowance (Interest Based on Bank Prime Loan Rates)	\$ 2,787
Pension Benefits	\$ 266
Back Interest through 12/31/2007	<u>\$ 83,577</u>
Total	\$ 86,631

Table 3: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for John Gallagher, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1969	\$ 3,053	\$ 209	6.84%	\$ 3,262	\$ 209
1970		\$ 246	7.56%	\$ 3,509	\$ 246
1971		\$ 221	6.30%	\$ 3,730	\$ 221
1972		\$ 237	6.36%	\$ 3,967	\$ 237
1973		\$ 279	7.03%	\$ 4,246	\$ 279
1974		\$ 330	7.78%	\$ 4,576	\$ 330
1975		\$ 377	8.23%	\$ 4,953	\$ 377
1976		\$ 388	7.83%	\$ 5,341	\$ 388
1977		\$ 407	7.63%	\$ 5,748	\$ 407
1978		\$ 499	8.68%	\$ 6,247	\$ 499
1979		\$ 610	9.77%	\$ 6,857	\$ 610
1980		\$ 818	11.93%	\$ 7,675	\$ 818
1981		\$ 1,125	14.66%	\$ 8,801	\$ 1,125
1982		\$ 1,202	13.66%	\$ 10,003	\$ 1,202
1983		\$ 1,157	11.57%	\$ 11,160	\$ 1,157
1984		\$ 1,457	13.05%	\$ 12,617	\$ 1,457
1985		\$ 1,394	11.05%	\$ 14,011	\$ 1,394
1986		\$ 1,106	7.89%	\$ 15,117	\$ 1,106
1987		\$ 1,309	8.66%	\$ 16,426	\$ 1,309
1988		\$ 1,503	9.15%	\$ 17,928	\$ 1,503
1989		\$ 1,571	8.76%	\$ 19,500	\$ 1,571
1990		\$ 1,721	8.83%	\$ 21,221	\$ 1,721
1991		\$ 1,718	8.09%	\$ 22,939	\$ 1,718
1992		\$ 1,651	7.20%	\$ 24,590	\$ 1,651
1993		\$ 1,475	6.00%	\$ 26,065	\$ 1,475
1994		\$ 1,898	7.28%	\$ 27,963	\$ 1,898
1995		\$ 1,883	6.73%	\$ 29,846	\$ 1,883
1996		\$ 1,969	6.60%	\$ 31,815	\$ 1,969
1997		\$ 2,069	6.50%	\$ 33,884	\$ 2,069
1998		\$ 1,818	5.36%	\$ 35,701	\$ 1,818
1999		\$ 2,060	5.77%	\$ 37,762	\$ 2,060
2000		\$ 2,329	6.17%	\$ 40,091	\$ 2,329
2001		\$ 2,051	5.12%	\$ 42,141	\$ 2,051
2002		\$ 1,977	4.69%	\$ 44,118	\$ 1,977
2003		\$ 1,796	4.07%	\$ 45,914	\$ 1,796
2004		\$ 1,992	4.34%	\$ 47,906	\$ 1,992
2005		\$ 2,088	4.36%	\$ 49,995	\$ 2,088
2006		\$ 2,443	4.89%	\$ 52,438	\$ 2,443
2007 (d)		\$ 2,496	4.76%	\$ 54,934	\$ 2,496
					\$ 51,880

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file. Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 4: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for John Gallagher, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1969	\$ 3,053	\$ 250	8.19%	\$ 3,304	\$ 250
1970		\$ 269	8.15%	\$ 3,573	\$ 269
1971		\$ 209	5.85%	\$ 3,782	\$ 209
1972		\$ 202	5.35%	\$ 3,984	\$ 202
1973		\$ 329	8.25%	\$ 4,313	\$ 329
1974		\$ 485	11.24%	\$ 4,797	\$ 485
1975		\$ 388	8.09%	\$ 5,186	\$ 388
1976		\$ 364	7.02%	\$ 5,550	\$ 364
1977		\$ 388	7.00%	\$ 5,938	\$ 388
1978		\$ 556	9.36%	\$ 6,494	\$ 556
1979		\$ 862	13.27%	\$ 7,356	\$ 862
1980		\$ 1,186	16.12%	\$ 8,542	\$ 1,186
1981		\$ 1,729	20.24%	\$ 10,270	\$ 1,729
1982		\$ 1,612	15.69%	\$ 11,882	\$ 1,612
1983		\$ 1,335	11.24%	\$ 13,217	\$ 1,335
1984		\$ 1,665	12.59%	\$ 14,881	\$ 1,665
1985		\$ 1,534	10.31%	\$ 16,416	\$ 1,534
1986		\$ 1,411	8.59%	\$ 17,826	\$ 1,411
1987		\$ 1,508	8.46%	\$ 19,334	\$ 1,508
1988		\$ 1,864	9.64%	\$ 21,198	\$ 1,864
1989		\$ 2,400	11.32%	\$ 23,599	\$ 2,400
1990		\$ 2,452	10.39%	\$ 26,051	\$ 2,452
1991		\$ 2,275	8.73%	\$ 28,326	\$ 2,275
1992		\$ 1,813	6.40%	\$ 30,139	\$ 1,813
1993		\$ 1,849	6.14%	\$ 31,988	\$ 1,849
1994		\$ 2,344	7.33%	\$ 34,333	\$ 2,344
1995		\$ 3,133	9.13%	\$ 37,466	\$ 3,133
1996		\$ 3,196	8.53%	\$ 40,662	\$ 3,196
1997		\$ 3,543	8.71%	\$ 44,205	\$ 3,543
1998		\$ 3,810	8.62%	\$ 48,015	\$ 3,810
1999		\$ 3,955	8.24%	\$ 51,970	\$ 3,955
2000		\$ 4,967	9.56%	\$ 56,936	\$ 4,967
2001		\$ 4,040	7.10%	\$ 60,976	\$ 4,040
2002		\$ 2,901	4.76%	\$ 63,877	\$ 2,901
2003		\$ 2,674	4.19%	\$ 66,551	\$ 2,674
2004		\$ 2,936	4.41%	\$ 69,488	\$ 2,936
2005		\$ 4,399	6.33%	\$ 73,886	\$ 4,399
2006		\$ 6,057	8.20%	\$ 79,943	\$ 6,057
2007 (d)		\$ 6,688	8.37%	\$ 86,631	\$ 6,688
					\$ 83,577

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Gus Janke Summary Sheet Revised

	Value
I. Loss of Displacement Allowance, Benefits, & Back Interest	
A. Displacement Allowance (Interest Based on 10 Year Treasuries)	\$ 3,776
Pension Benefits	\$ 370
Back Interest through 12/31/2007	<u>\$ 62,330</u>
Total	\$ 66,476
B. Displacement Allowance (Interest Based on Bank Prime Loan Rates)	\$ 3,776
Pension Benefits	\$ 370
Back Interest through 12/31/2007	<u>\$ 99,291</u>
Total	\$ 103,437

Table 3: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Gus Janke, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1969	\$ 477	\$ 33	6.84%	\$ 510	\$ 33
1970	\$ 1,059	\$ 119	7.56%	\$ 1,688	\$ 119
1971	\$ 1,748	\$ 217	6.30%	\$ 3,653	\$ 217
1972	\$ 861	\$ 287	6.36%	\$ 4,801	\$ 287
1973		\$ 337	7.03%	\$ 5,138	\$ 337
1974		\$ 400	7.78%	\$ 5,538	\$ 400
1975		\$ 456	8.23%	\$ 5,993	\$ 456
1976		\$ 469	7.83%	\$ 6,463	\$ 469
1977		\$ 493	7.63%	\$ 6,956	\$ 493
1978		\$ 604	8.68%	\$ 7,559	\$ 604
1979		\$ 738	9.77%	\$ 8,298	\$ 738
1980		\$ 990	11.93%	\$ 9,288	\$ 990
1981		\$ 1,362	14.66%	\$ 10,650	\$ 1,362
1982		\$ 1,455	13.66%	\$ 12,104	\$ 1,455
1983		\$ 1,401	11.57%	\$ 13,505	\$ 1,401
1984		\$ 1,763	13.05%	\$ 15,268	\$ 1,763
1985		\$ 1,687	11.05%	\$ 16,955	\$ 1,687
1986		\$ 1,338	7.89%	\$ 18,293	\$ 1,338
1987		\$ 1,584	8.66%	\$ 19,877	\$ 1,584
1988		\$ 1,818	9.15%	\$ 21,695	\$ 1,818
1989		\$ 1,901	8.76%	\$ 23,597	\$ 1,901
1990		\$ 2,083	8.83%	\$ 25,680	\$ 2,083
1991		\$ 2,079	8.09%	\$ 27,759	\$ 2,079
1992		\$ 1,998	7.20%	\$ 29,756	\$ 1,998
1993		\$ 1,786	6.00%	\$ 31,542	\$ 1,786
1994		\$ 2,296	7.28%	\$ 33,838	\$ 2,296
1995		\$ 2,279	6.73%	\$ 36,117	\$ 2,279
1996		\$ 2,383	6.60%	\$ 38,500	\$ 2,383
1997		\$ 2,504	6.50%	\$ 41,003	\$ 2,504
1998		\$ 2,200	5.36%	\$ 43,203	\$ 2,200
1999		\$ 2,493	5.77%	\$ 45,696	\$ 2,493
2000		\$ 2,818	6.17%	\$ 48,515	\$ 2,818
2001		\$ 2,482	5.12%	\$ 50,996	\$ 2,482
2002		\$ 2,392	4.69%	\$ 53,388	\$ 2,392
2003		\$ 2,173	4.07%	\$ 55,561	\$ 2,173
2004		\$ 2,411	4.34%	\$ 57,972	\$ 2,411
2005		\$ 2,527	4.36%	\$ 60,499	\$ 2,527
2006		\$ 2,957	4.89%	\$ 63,456	\$ 2,957
2007 (d)		\$ 3,020	4.76%	\$ 66,476	\$ 3,020
					\$ 62,330

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file. Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 4: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Gus Janke, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1969	\$ 477	\$ 39	8.19%	\$ 516	\$ 39
1970	\$ 1,059	\$ 128	8.15%	\$ 1,704	\$ 128
1971	\$ 1,748	\$ 202	5.85%	\$ 3,654	\$ 202
1972	\$ 861	\$ 242	5.35%	\$ 4,757	\$ 242
1973		\$ 393	8.25%	\$ 5,149	\$ 393
1974		\$ 579	11.24%	\$ 5,728	\$ 579
1975		\$ 464	8.09%	\$ 6,192	\$ 464
1976		\$ 434	7.02%	\$ 6,626	\$ 434
1977		\$ 464	7.00%	\$ 7,090	\$ 464
1978		\$ 664	9.36%	\$ 7,754	\$ 664
1979		\$ 1,029	13.27%	\$ 8,783	\$ 1,029
1980		\$ 1,416	16.12%	\$ 10,199	\$ 1,416
1981		\$ 2,064	20.24%	\$ 12,262	\$ 2,064
1982		\$ 1,924	15.69%	\$ 14,187	\$ 1,924
1983		\$ 1,594	11.24%	\$ 15,781	\$ 1,594
1984		\$ 1,988	12.59%	\$ 17,768	\$ 1,988
1985		\$ 1,832	10.31%	\$ 19,600	\$ 1,832
1986		\$ 1,684	8.59%	\$ 21,284	\$ 1,684
1987		\$ 1,800	8.46%	\$ 23,085	\$ 1,800
1988		\$ 2,226	9.64%	\$ 25,311	\$ 2,226
1989		\$ 2,866	11.32%	\$ 28,177	\$ 2,866
1990		\$ 2,928	10.39%	\$ 31,105	\$ 2,928
1991		\$ 2,717	8.73%	\$ 33,821	\$ 2,717
1992		\$ 2,164	6.40%	\$ 35,986	\$ 2,164
1993		\$ 2,208	6.14%	\$ 38,194	\$ 2,208
1994		\$ 2,799	7.33%	\$ 40,993	\$ 2,799
1995		\$ 3,741	9.13%	\$ 44,734	\$ 3,741
1996		\$ 3,816	8.53%	\$ 48,550	\$ 3,816
1997		\$ 4,230	8.71%	\$ 52,780	\$ 4,230
1998		\$ 4,549	8.62%	\$ 57,329	\$ 4,549
1999		\$ 4,722	8.24%	\$ 62,051	\$ 4,722
2000		\$ 5,930	9.56%	\$ 67,982	\$ 5,930
2001		\$ 4,823	7.10%	\$ 72,805	\$ 4,823
2002		\$ 3,464	4.76%	\$ 76,269	\$ 3,464
2003		\$ 3,193	4.19%	\$ 79,462	\$ 3,193
2004		\$ 3,506	4.41%	\$ 82,968	\$ 3,506
2005		\$ 5,252	6.33%	\$ 88,220	\$ 5,252
2006		\$ 7,232	8.20%	\$ 95,452	\$ 7,232
2007 (d)		\$ 7,985	8.37%	\$ 103,437	\$ 7,985
					\$ 99,291

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Joseph Jarabeck Summary Sheet Revised

	Value
I. Loss of Displacement Allowance, Benefits, & Back Interest	
A. Displacement Allowance (Interest Based on 10 Year Treasuries)	\$ 3,239
Pension Benefits	\$ 318
Back Interest through 12/31/2007	<u>\$ 22,837</u>
Total	\$ 26,394
B. Displacement Allowance (Interest Based on Bank Prime Loan Rates)	\$ 3,239
Pension Benefits	\$ 318
Back Interest through 12/31/2007	<u>\$ 36,389</u>
Total	\$ 39,946

Table 3: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Joseph Jarabeck, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1970	\$ 1,050	\$ 79	7.56%	\$ 1,130	\$ 79
1971	\$ -	\$ 71	6.30%	\$ 1,201	\$ 71
1972	\$ 452	\$ 105	6.36%	\$ 1,758	\$ 105
1973		\$ 124	7.03%	\$ 1,881	\$ 124
1974		\$ 146	7.78%	\$ 2,027	\$ 146
1975		\$ 167	8.23%	\$ 2,194	\$ 167
1976		\$ 172	7.83%	\$ 2,366	\$ 172
1977		\$ 181	7.63%	\$ 2,547	\$ 181
1978		\$ 221	8.68%	\$ 2,768	\$ 221
1979		\$ 270	9.77%	\$ 3,038	\$ 270
1980		\$ 362	11.93%	\$ 3,400	\$ 362
1981		\$ 499	14.66%	\$ 3,899	\$ 499
1982		\$ 533	13.66%	\$ 4,432	\$ 533
1983		\$ 513	11.57%	\$ 4,944	\$ 513
1984		\$ 645	13.05%	\$ 5,590	\$ 645
1985		\$ 618	11.05%	\$ 6,208	\$ 618
1986		\$ 490	7.89%	\$ 6,698	\$ 490
1987		\$ 580	8.66%	\$ 7,277	\$ 580
1988		\$ 666	9.15%	\$ 7,943	\$ 666
1989		\$ 696	8.76%	\$ 8,639	\$ 696
1990		\$ 763	8.83%	\$ 9,402	\$ 763
1991		\$ 761	8.09%	\$ 10,163	\$ 761
1992		\$ 731	7.20%	\$ 10,895	\$ 731
1993		\$ 654	6.00%	\$ 11,548	\$ 654
1994		\$ 841	7.28%	\$ 12,389	\$ 841
1995		\$ 834	6.73%	\$ 13,223	\$ 834
1996		\$ 872	6.60%	\$ 14,096	\$ 872
1997		\$ 917	6.50%	\$ 15,012	\$ 917
1998		\$ 805	5.36%	\$ 15,818	\$ 805
1999		\$ 913	5.77%	\$ 16,730	\$ 913
2000		\$ 1,032	6.17%	\$ 17,762	\$ 1,032
2001		\$ 909	5.12%	\$ 18,671	\$ 909
2002		\$ 876	4.69%	\$ 19,547	\$ 876
2003		\$ 796	4.07%	\$ 20,342	\$ 796
2004		\$ 883	4.34%	\$ 21,225	\$ 883
2005		\$ 925	4.36%	\$ 22,150	\$ 925
2006		\$ 1,083	4.89%	\$ 23,233	\$ 1,083
2007 (d)		\$ 1,106	4.76%	\$ 24,339	\$ 1,106
					\$ 22,837

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 4: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Joseph Jarabeck, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1970	\$ 1,050	\$ 86	8.15%	\$ 1,136	\$ 86
1971	\$ -	\$ 66	5.85%	\$ 1,202	\$ 66
1972	\$ 452	\$ 89	5.35%	\$ 1,743	\$ 89
1973		\$ 144	8.25%	\$ 1,886	\$ 144
1974		\$ 212	11.24%	\$ 2,098	\$ 212
1975		\$ 170	8.09%	\$ 2,268	\$ 170
1976		\$ 159	7.02%	\$ 2,427	\$ 159
1977		\$ 170	7.00%	\$ 2,597	\$ 170
1978		\$ 243	9.36%	\$ 2,840	\$ 243
1979		\$ 377	13.27%	\$ 3,217	\$ 377
1980		\$ 519	16.12%	\$ 3,736	\$ 519
1981		\$ 756	20.24%	\$ 4,492	\$ 756
1982		\$ 705	15.69%	\$ 5,197	\$ 705
1983		\$ 584	11.24%	\$ 5,781	\$ 584
1984		\$ 728	12.59%	\$ 6,509	\$ 728
1985		\$ 671	10.31%	\$ 7,180	\$ 671
1986		\$ 617	8.59%	\$ 7,797	\$ 617
1987		\$ 659	8.46%	\$ 8,456	\$ 659
1988		\$ 815	9.64%	\$ 9,272	\$ 815
1989		\$ 1,050	11.32%	\$ 10,322	\$ 1,050
1990		\$ 1,073	10.39%	\$ 11,394	\$ 1,073
1991		\$ 995	8.73%	\$ 12,389	\$ 995
1992		\$ 793	6.40%	\$ 13,182	\$ 793
1993		\$ 809	6.14%	\$ 13,991	\$ 809
1994		\$ 1,025	7.33%	\$ 15,016	\$ 1,025
1995		\$ 1,370	9.13%	\$ 16,387	\$ 1,370
1996		\$ 1,398	8.53%	\$ 17,785	\$ 1,398
1997		\$ 1,550	8.71%	\$ 19,334	\$ 1,550
1998		\$ 1,666	8.62%	\$ 21,001	\$ 1,666
1999		\$ 1,730	8.24%	\$ 22,730	\$ 1,730
2000		\$ 2,172	9.56%	\$ 24,903	\$ 2,172
2001		\$ 1,767	7.10%	\$ 26,670	\$ 1,767
2002		\$ 1,269	4.76%	\$ 27,939	\$ 1,269
2003		\$ 1,170	4.19%	\$ 29,108	\$ 1,170
2004		\$ 1,284	4.41%	\$ 30,393	\$ 1,284
2005		\$ 1,924	6.33%	\$ 32,316	\$ 1,924
2006		\$ 2,649	8.20%	\$ 34,965	\$ 2,649
2007 (d)		\$ 2,925	8.37%	\$ 37,891	\$ 2,925
					\$ 36,389

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Edwin Kochenderf Summary Sheet Revised

	Value
I. Loss of Displacement Allowance, Benefits, & Back Interest	
A. Displacement Allowance (Interest Based on 10 Year Treasuries)	\$ 6,132
Pension Benefits	\$ 652
Back Interest through 12/31/2007	<u>\$ 93,505</u>
Total	\$ 100,289
B. Displacement Allowance (Interest Based on Bank Prime Loan Rates)	\$ 6,132
Pension Benefits	\$ 652
Back Interest through 12/31/2007	<u>\$ 149,366</u>
Total	\$ 156,150

Table 3: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Edwin Kochenderf, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1971	\$ 2,689	\$ 170	6.30%	\$ 2,859	\$ 170
1972	\$ 1,822	\$ 298	6.36%	\$ 4,978	\$ 298
1973	\$ 2,141	\$ 500	7.03%	\$ 7,620	\$ 500
1974	\$ 131	\$ 603	7.78%	\$ 8,354	\$ 603
1975		\$ 688	8.23%	\$ 9,042	\$ 688
1976		\$ 708	7.83%	\$ 9,750	\$ 708
1977		\$ 744	7.63%	\$ 10,494	\$ 744
1978		\$ 911	8.68%	\$ 11,404	\$ 911
1979		\$ 1,114	9.77%	\$ 12,519	\$ 1,114
1980		\$ 1,493	11.93%	\$ 14,012	\$ 1,493
1981		\$ 2,055	14.66%	\$ 16,067	\$ 2,055
1982		\$ 2,194	13.66%	\$ 18,261	\$ 2,194
1983		\$ 2,113	11.57%	\$ 20,374	\$ 2,113
1984		\$ 2,660	13.05%	\$ 23,034	\$ 2,660
1985		\$ 2,545	11.05%	\$ 25,579	\$ 2,545
1986		\$ 2,019	7.89%	\$ 27,598	\$ 2,019
1987		\$ 2,389	8.66%	\$ 29,987	\$ 2,389
1988		\$ 2,743	9.15%	\$ 32,731	\$ 2,743
1989		\$ 2,869	8.76%	\$ 35,599	\$ 2,869
1990		\$ 3,143	8.83%	\$ 38,742	\$ 3,143
1991		\$ 3,136	8.09%	\$ 41,878	\$ 3,136
1992		\$ 3,014	7.20%	\$ 44,892	\$ 3,014
1993		\$ 2,694	6.00%	\$ 47,585	\$ 2,694
1994		\$ 3,465	7.28%	\$ 51,050	\$ 3,465
1995		\$ 3,438	6.73%	\$ 54,488	\$ 3,438
1996		\$ 3,595	6.60%	\$ 58,082	\$ 3,595
1997		\$ 3,777	6.50%	\$ 61,859	\$ 3,777
1998		\$ 3,319	5.36%	\$ 65,178	\$ 3,319
1999		\$ 3,761	5.77%	\$ 68,939	\$ 3,761
2000		\$ 4,252	6.17%	\$ 73,191	\$ 4,252
2001		\$ 3,744	5.12%	\$ 76,935	\$ 3,744
2002		\$ 3,608	4.69%	\$ 80,543	\$ 3,608
2003		\$ 3,279	4.07%	\$ 83,822	\$ 3,279
2004		\$ 3,637	4.34%	\$ 87,459	\$ 3,637
2005		\$ 3,813	4.36%	\$ 91,272	\$ 3,813
2006		\$ 4,461	4.89%	\$ 95,732	\$ 4,461
2007 (d)		\$ 4,557	4.76%	\$ 100,289	\$ 4,557
					\$ 93,505

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file. Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 4: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Edwin Kochenderf, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1971	\$ 2,689	\$ 157	5.85%	\$ 2,846	\$ 157
1972	\$ 1,822	\$ 250	5.35%	\$ 4,919	\$ 250
1973	\$ 2,141	\$ 583	8.25%	\$ 7,642	\$ 583
1974	\$ 131	\$ 874	11.24%	\$ 8,647	\$ 874
1975		\$ 700	8.09%	\$ 9,347	\$ 700
1976		\$ 656	7.02%	\$ 10,003	\$ 656
1977		\$ 700	7.00%	\$ 10,703	\$ 700
1978		\$ 1,002	9.36%	\$ 11,705	\$ 1,002
1979		\$ 1,553	13.27%	\$ 13,259	\$ 1,553
1980		\$ 2,137	16.12%	\$ 15,396	\$ 2,137
1981		\$ 3,116	20.24%	\$ 18,511	\$ 3,116
1982		\$ 2,905	15.69%	\$ 21,416	\$ 2,905
1983		\$ 2,407	11.24%	\$ 23,823	\$ 2,407
1984		\$ 3,000	12.59%	\$ 26,823	\$ 3,000
1985		\$ 2,765	10.31%	\$ 29,589	\$ 2,765
1986		\$ 2,543	8.59%	\$ 32,131	\$ 2,543
1987		\$ 2,718	8.46%	\$ 34,849	\$ 2,718
1988		\$ 3,361	9.64%	\$ 38,209	\$ 3,361
1989		\$ 4,327	11.32%	\$ 42,536	\$ 4,327
1990		\$ 4,420	10.39%	\$ 46,956	\$ 4,420
1991		\$ 4,101	8.73%	\$ 51,057	\$ 4,101
1992		\$ 3,267	6.40%	\$ 54,325	\$ 3,267
1993		\$ 3,334	6.14%	\$ 57,658	\$ 3,334
1994		\$ 4,225	7.33%	\$ 61,884	\$ 4,225
1995		\$ 5,647	9.13%	\$ 67,531	\$ 5,647
1996		\$ 5,761	8.53%	\$ 73,292	\$ 5,761
1997		\$ 6,386	8.71%	\$ 79,678	\$ 6,386
1998		\$ 6,868	8.62%	\$ 86,545	\$ 6,868
1999		\$ 7,128	8.24%	\$ 93,674	\$ 7,128
2000		\$ 8,953	9.56%	\$ 102,627	\$ 8,953
2001		\$ 7,282	7.10%	\$ 109,908	\$ 7,282
2002		\$ 5,229	4.76%	\$ 115,137	\$ 5,229
2003		\$ 4,820	4.19%	\$ 119,957	\$ 4,820
2004		\$ 5,293	4.41%	\$ 125,250	\$ 5,293
2005		\$ 7,928	6.33%	\$ 133,178	\$ 7,928
2006		\$ 10,917	8.20%	\$ 144,096	\$ 10,917
2007 (d)		\$ 12,054	8.37%	\$ 156,150	\$ 12,054
					\$ 149,366

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Patrick McLaughlin Summary Sheet Revised

	Value
I. Loss of Displacement Allowance, Benefits, & Back Interest	
A. Displacement Allowance (Interest Based on 10 Year Treasuries)	\$ 31,032
Pension Benefits	\$ 3,401
Back Interest through 12/31/2007	<u>\$ 493,773</u>
Total	\$ 528,206
B. Displacement Allowance (Interest Based on Bank Prime Loan Rates)	\$ 31,032
Pension Benefits	\$ 3,401
Back Interest through 12/31/2007	<u>\$ 793,640</u>
Total	\$ 828,073

Table 3: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Patrick McLaughlin, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 7,065	\$ 407	5.76%	\$ 7,472	\$ 407
1969	\$ 7,830	\$ 1,047	6.84%	\$ 16,349	\$ 1,047
1970	\$ 1,044	\$ 1,314	7.56%	\$ 18,707	\$ 1,314
1971	\$ 2,294	\$ 1,324	6.30%	\$ 22,325	\$ 1,324
1972	\$ 3,918	\$ 1,668	6.36%	\$ 27,911	\$ 1,668
1973	\$ 5,671	\$ 2,360	7.03%	\$ 35,942	\$ 2,360
1974	\$ -	\$ 2,795	7.78%	\$ 38,737	\$ 2,795
1975	\$ -	\$ 3,189	8.23%	\$ 41,926	\$ 3,189
1976	\$ -	\$ 3,283	7.83%	\$ 45,209	\$ 3,283
1977	\$ -	\$ 3,449	7.63%	\$ 48,658	\$ 3,449
1978	\$ 6,611	\$ 4,797	8.68%	\$ 60,066	\$ 4,797
1979		\$ 5,868	9.77%	\$ 65,933	\$ 5,868
1980		\$ 7,865	11.93%	\$ 73,799	\$ 7,865
1981		\$ 10,822	14.66%	\$ 84,620	\$ 10,822
1982		\$ 11,558	13.66%	\$ 96,178	\$ 11,558
1983		\$ 11,128	11.57%	\$ 107,306	\$ 11,128
1984		\$ 14,008	13.05%	\$ 121,315	\$ 14,008
1985		\$ 13,406	11.05%	\$ 134,720	\$ 13,406
1986		\$ 10,634	7.89%	\$ 145,355	\$ 10,634
1987		\$ 12,584	8.66%	\$ 157,939	\$ 12,584
1988		\$ 14,448	9.15%	\$ 172,387	\$ 14,448
1989		\$ 15,108	8.76%	\$ 187,496	\$ 15,108
1990		\$ 16,552	8.83%	\$ 204,048	\$ 16,552
1991		\$ 16,517	8.09%	\$ 220,565	\$ 16,517
1992		\$ 15,873	7.20%	\$ 236,438	\$ 15,873
1993		\$ 14,187	6.00%	\$ 250,625	\$ 14,187
1994		\$ 18,247	7.28%	\$ 268,872	\$ 18,247
1995		\$ 18,105	6.73%	\$ 286,977	\$ 18,105
1996		\$ 18,932	6.60%	\$ 305,910	\$ 18,932
1997		\$ 19,893	6.50%	\$ 325,803	\$ 19,893
1998		\$ 17,478	5.36%	\$ 343,281	\$ 17,478
1999		\$ 19,810	5.77%	\$ 363,091	\$ 19,810
2000		\$ 22,394	6.17%	\$ 385,485	\$ 22,394
2001		\$ 19,719	5.12%	\$ 405,204	\$ 19,719
2002		\$ 19,005	4.69%	\$ 424,210	\$ 19,005
2003		\$ 17,268	4.07%	\$ 441,478	\$ 17,268
2004		\$ 19,155	4.34%	\$ 460,633	\$ 19,155
2005		\$ 20,081	4.36%	\$ 480,714	\$ 20,081
2006		\$ 23,493	4.89%	\$ 504,207	\$ 23,493
2007 (d)		\$ 23,999	4.76%	\$ 528,206	\$ 23,999
					\$ 493,773

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file. Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 4: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Patrick McLaughlin, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 7,065	\$ 457	6.46%	\$ 7,522	\$ 457
1969	\$ 7,830	\$ 1,257	8.19%	\$ 16,610	\$ 1,257
1970	\$ 1,044	\$ 1,438	8.15%	\$ 19,092	\$ 1,438
1971	\$ 2,294	\$ 1,250	5.85%	\$ 22,636	\$ 1,250
1972	\$ 3,918	\$ 1,421	5.35%	\$ 27,975	\$ 1,421
1973	\$ 5,671	\$ 2,777	8.25%	\$ 36,424	\$ 2,777
1974	\$ -	\$ 4,093	11.24%	\$ 40,517	\$ 4,093
1975	\$ -	\$ 3,279	8.09%	\$ 43,796	\$ 3,279
1976	\$ -	\$ 3,073	7.02%	\$ 46,870	\$ 3,073
1977	\$ -	\$ 3,281	7.00%	\$ 50,150	\$ 3,281
1978	\$ 6,611	\$ 5,314	9.36%	\$ 62,075	\$ 5,314
1979		\$ 8,237	13.27%	\$ 70,312	\$ 8,237
1980		\$ 11,333	16.12%	\$ 81,645	\$ 11,333
1981		\$ 16,522	20.24%	\$ 98,168	\$ 16,522
1982		\$ 15,404	15.69%	\$ 113,572	\$ 15,404
1983		\$ 12,764	11.24%	\$ 126,336	\$ 12,764
1984		\$ 15,911	12.59%	\$ 142,247	\$ 15,911
1985		\$ 14,663	10.31%	\$ 156,910	\$ 14,663
1986		\$ 13,485	8.59%	\$ 170,395	\$ 13,485
1987		\$ 14,412	8.46%	\$ 184,806	\$ 14,412
1988		\$ 17,821	9.64%	\$ 202,627	\$ 17,821
1989		\$ 22,945	11.32%	\$ 225,573	\$ 22,945
1990		\$ 23,440	10.39%	\$ 249,012	\$ 23,440
1991		\$ 21,748	8.73%	\$ 270,761	\$ 21,748
1992		\$ 17,327	6.40%	\$ 288,088	\$ 17,327
1993		\$ 17,678	6.14%	\$ 305,766	\$ 17,678
1994		\$ 22,408	7.33%	\$ 328,174	\$ 22,408
1995		\$ 29,948	9.13%	\$ 358,122	\$ 29,948
1996		\$ 30,551	8.53%	\$ 388,673	\$ 30,551
1997		\$ 33,864	8.71%	\$ 422,537	\$ 33,864
1998		\$ 36,419	8.62%	\$ 458,956	\$ 36,419
1999		\$ 37,803	8.24%	\$ 496,759	\$ 37,803
2000		\$ 47,477	9.56%	\$ 544,236	\$ 47,477
2001		\$ 38,615	7.10%	\$ 582,850	\$ 38,615
2002		\$ 27,729	4.76%	\$ 610,579	\$ 27,729
2003		\$ 25,562	4.19%	\$ 636,142	\$ 25,562
2004		\$ 28,067	4.41%	\$ 664,209	\$ 28,067
2005		\$ 42,044	6.33%	\$ 706,253	\$ 42,044
2006		\$ 57,895	8.20%	\$ 764,149	\$ 57,895
2007 (d)		\$ 63,925	8.37%	\$ 828,073	\$ 63,925
					\$ 793,640

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Robert McNeeley Summary Sheet Revised

	Value
I. Loss of Displacement Allowance, Benefits, & Back Interest	
A. Displacement Allowance (Interest Based on 10 Year Treasuries)	\$ 4,576
Pension Benefits	\$ 570
Back Interest through 12/31/2007	<u>\$ 65,259</u>
Total	\$ 70,405
B. Displacement Allowance (Interest Based on Bank Prime Loan Rates)	\$ 4,576
Pension Benefits	\$ 570
Back Interest through 12/31/2007	<u>\$ 103,097</u>
Total	\$ 108,243

Table 3: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Robert McNeeley, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 1,123	\$ 65	5.76%	\$ 1,188	\$ 65
1969	\$ 932	\$ 145	6.84%	\$ 2,264	\$ 145
1970	\$ 1,227	\$ 264	7.56%	\$ 3,755	\$ 264
1971	\$ -	\$ 237	6.30%	\$ 3,992	\$ 237
1972	\$ -	\$ 254	6.36%	\$ 4,245	\$ 254
1973	\$ -	\$ 298	7.03%	\$ 4,544	\$ 298
1974	\$ -	\$ 353	7.78%	\$ 4,897	\$ 353
1975	\$ 26	\$ 405	8.23%	\$ 5,328	\$ 405
1976	\$ -	\$ 417	7.83%	\$ 5,745	\$ 417
1977	\$ -	\$ 438	7.63%	\$ 6,184	\$ 438
1978	\$ -	\$ 537	8.68%	\$ 6,720	\$ 537
1979	\$ -	\$ 656	9.77%	\$ 7,377	\$ 656
1980	\$ -	\$ 880	11.93%	\$ 8,257	\$ 880
1981	\$ -	\$ 1,211	14.66%	\$ 9,468	\$ 1,211
1982	\$ 1,614	\$ 1,514	13.66%	\$ 12,595	\$ 1,514
1983	\$ 224	\$ 1,483	11.57%	\$ 14,303	\$ 1,483
1984		\$ 1,867	13.05%	\$ 16,170	\$ 1,867
1985		\$ 1,787	11.05%	\$ 17,957	\$ 1,787
1986		\$ 1,417	7.89%	\$ 19,374	\$ 1,417
1987		\$ 1,677	8.66%	\$ 21,052	\$ 1,677
1988		\$ 1,926	9.15%	\$ 22,978	\$ 1,926
1989		\$ 2,014	8.76%	\$ 24,991	\$ 2,014
1990		\$ 2,206	8.83%	\$ 27,198	\$ 2,206
1991		\$ 2,202	8.09%	\$ 29,399	\$ 2,202
1992		\$ 2,116	7.20%	\$ 31,515	\$ 2,116
1993		\$ 1,891	6.00%	\$ 33,406	\$ 1,891
1994		\$ 2,432	7.28%	\$ 35,838	\$ 2,432
1995		\$ 2,413	6.73%	\$ 38,251	\$ 2,413
1996		\$ 2,524	6.60%	\$ 40,775	\$ 2,524
1997		\$ 2,652	6.50%	\$ 43,426	\$ 2,652
1998		\$ 2,330	5.36%	\$ 45,756	\$ 2,330
1999		\$ 2,641	5.77%	\$ 48,397	\$ 2,641
2000		\$ 2,985	6.17%	\$ 51,382	\$ 2,985
2001		\$ 2,628	5.12%	\$ 54,010	\$ 2,628
2002		\$ 2,533	4.69%	\$ 56,543	\$ 2,533
2003		\$ 2,302	4.07%	\$ 58,845	\$ 2,302
2004		\$ 2,553	4.34%	\$ 61,398	\$ 2,553
2005		\$ 2,677	4.36%	\$ 64,075	\$ 2,677
2006		\$ 3,131	4.89%	\$ 67,206	\$ 3,131
2007 (d)		\$ 3,199	4.76%	\$ 70,405	\$ 3,199
					\$ 65,259

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 4: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Robert McNeeley, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 1,123	\$ 73	6.46%	\$ 1,195	\$ 73
1969	\$ 932	\$ 174	8.19%	\$ 2,301	\$ 174
1970	\$ 1,227	\$ 287	8.15%	\$ 3,816	\$ 287
1971	\$ -	\$ 223	5.85%	\$ 4,039	\$ 223
1972	\$ -	\$ 216	5.35%	\$ 4,255	\$ 216
1973	\$ -	\$ 351	8.25%	\$ 4,606	\$ 351
1974	\$ -	\$ 518	11.24%	\$ 5,124	\$ 518
1975	\$ 26	\$ 417	8.09%	\$ 5,567	\$ 417
1976	\$ -	\$ 391	7.02%	\$ 5,957	\$ 391
1977	\$ -	\$ 417	7.00%	\$ 6,374	\$ 417
1978	\$ -	\$ 597	9.36%	\$ 6,971	\$ 597
1979	\$ -	\$ 925	13.27%	\$ 7,896	\$ 925
1980	\$ -	\$ 1,273	16.12%	\$ 9,169	\$ 1,273
1981	\$ -	\$ 1,855	20.24%	\$ 11,024	\$ 1,855
1982	\$ 1,614	\$ 1,983	15.69%	\$ 14,621	\$ 1,983
1983	\$ 224	\$ 1,668	11.24%	\$ 16,514	\$ 1,668
1984		\$ 2,080	12.59%	\$ 18,594	\$ 2,080
1985		\$ 1,917	10.31%	\$ 20,511	\$ 1,917
1986		\$ 1,763	8.59%	\$ 22,273	\$ 1,763
1987		\$ 1,884	8.46%	\$ 24,157	\$ 1,884
1988		\$ 2,330	9.64%	\$ 26,487	\$ 2,330
1989		\$ 2,999	11.32%	\$ 29,486	\$ 2,999
1990		\$ 3,064	10.39%	\$ 32,550	\$ 3,064
1991		\$ 2,843	8.73%	\$ 35,393	\$ 2,843
1992		\$ 2,265	6.40%	\$ 37,658	\$ 2,265
1993		\$ 2,311	6.14%	\$ 39,969	\$ 2,311
1994		\$ 2,929	7.33%	\$ 42,898	\$ 2,929
1995		\$ 3,915	9.13%	\$ 46,812	\$ 3,915
1996		\$ 3,994	8.53%	\$ 50,806	\$ 3,994
1997		\$ 4,427	8.71%	\$ 55,232	\$ 4,427
1998		\$ 4,761	8.62%	\$ 59,993	\$ 4,761
1999		\$ 4,941	8.24%	\$ 64,934	\$ 4,941
2000		\$ 6,206	9.56%	\$ 71,140	\$ 6,206
2001		\$ 5,048	7.10%	\$ 76,188	\$ 5,048
2002		\$ 3,625	4.76%	\$ 79,813	\$ 3,625
2003		\$ 3,341	4.19%	\$ 83,154	\$ 3,341
2004		\$ 3,669	4.41%	\$ 86,823	\$ 3,669
2005		\$ 5,496	6.33%	\$ 92,319	\$ 5,496
2006		\$ 7,568	8.20%	\$ 99,887	\$ 7,568
2007 (d)		\$ 8,356	8.37%	\$ 108,243	\$ 8,356
					\$ 103,097

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Andrew Novotny Summary Sheet Revised

	Value
I. Loss of Displacement Allowance, Benefits, & Back Interest	
A. Displacement Allowance (Interest Based on 10 Year Treasuries)	\$ 1,975
Pension Benefits	\$ 220
Back Interest through 12/31/2007	<u>\$ 30,671</u>
Total	\$ 32,866
B. Displacement Allowance (Interest Based on Bank Prime Loan Rates)	\$ 1,975
Pension Benefits	\$ 220
Back Interest through 12/31/2007	<u>\$ 49,101</u>
Total	\$ 51,295

Table 3: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Andrew Novotny, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 264	\$ 15	5.76%	\$ 279	\$ 15
1969	\$ -	\$ 19	6.84%	\$ 298	\$ 19
1970	\$ 995	\$ 98	7.56%	\$ 1,391	\$ 98
1971	\$ -	\$ 88	6.30%	\$ 1,479	\$ 88
1972	\$ -	\$ 94	6.36%	\$ 1,573	\$ 94
1973	\$ 500	\$ 146	7.03%	\$ 2,219	\$ 146
1974	\$ -	\$ 173	7.78%	\$ 2,391	\$ 173
1975	\$ -	\$ 197	8.23%	\$ 2,588	\$ 197
1976	\$ -	\$ 203	7.83%	\$ 2,791	\$ 203
1977	\$ -	\$ 213	7.63%	\$ 3,004	\$ 213
1978	\$ 435	\$ 298	8.68%	\$ 3,737	\$ 298
1979		\$ 365	9.77%	\$ 4,102	\$ 365
1980		\$ 489	11.93%	\$ 4,592	\$ 489
1981		\$ 673	14.66%	\$ 5,265	\$ 673
1982		\$ 719	13.66%	\$ 5,984	\$ 719
1983		\$ 692	11.57%	\$ 6,677	\$ 692
1984		\$ 872	13.05%	\$ 7,548	\$ 872
1985		\$ 834	11.05%	\$ 8,382	\$ 834
1986		\$ 662	7.89%	\$ 9,044	\$ 662
1987		\$ 783	8.66%	\$ 9,827	\$ 783
1988		\$ 899	9.15%	\$ 10,726	\$ 899
1989		\$ 940	8.76%	\$ 11,666	\$ 940
1990		\$ 1,030	8.83%	\$ 12,696	\$ 1,030
1991		\$ 1,028	8.09%	\$ 13,724	\$ 1,028
1992		\$ 988	7.20%	\$ 14,711	\$ 988
1993		\$ 883	6.00%	\$ 15,594	\$ 883
1994		\$ 1,135	7.28%	\$ 16,730	\$ 1,135
1995		\$ 1,127	6.73%	\$ 17,856	\$ 1,127
1996		\$ 1,178	6.60%	\$ 19,034	\$ 1,178
1997		\$ 1,238	6.50%	\$ 20,272	\$ 1,238
1998		\$ 1,088	5.36%	\$ 21,359	\$ 1,088
1999		\$ 1,233	5.77%	\$ 22,592	\$ 1,233
2000		\$ 1,393	6.17%	\$ 23,985	\$ 1,393
2001		\$ 1,227	5.12%	\$ 25,212	\$ 1,227
2002		\$ 1,183	4.69%	\$ 26,395	\$ 1,183
2003		\$ 1,074	4.07%	\$ 27,469	\$ 1,074
2004		\$ 1,192	4.34%	\$ 28,661	\$ 1,192
2005		\$ 1,249	4.36%	\$ 29,911	\$ 1,249
2006		\$ 1,462	4.89%	\$ 31,372	\$ 1,462
2007 (d)		\$ 1,493	4.76%	\$ 32,866	\$ 1,493
					\$ 30,671

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 4: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Andrew Novotny, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 264	\$ 17	6.46%	\$ 281	\$ 17
1969	\$ -	\$ 23	8.19%	\$ 304	\$ 23
1970	\$ 995	\$ 106	8.15%	\$ 1,405	\$ 106
1971	\$ -	\$ 82	5.85%	\$ 1,487	\$ 82
1972	\$ -	\$ 80	5.35%	\$ 1,567	\$ 80
1973	\$ 500	\$ 171	8.25%	\$ 2,238	\$ 171
1974	\$ -	\$ 251	11.24%	\$ 2,489	\$ 251
1975	\$ -	\$ 201	8.09%	\$ 2,690	\$ 201
1976	\$ -	\$ 189	7.02%	\$ 2,879	\$ 189
1977	\$ -	\$ 202	7.00%	\$ 3,081	\$ 202
1978	\$ 435	\$ 329	9.36%	\$ 3,845	\$ 329
1979		\$ 510	13.27%	\$ 4,356	\$ 510
1980		\$ 702	16.12%	\$ 5,058	\$ 702
1981		\$ 1,023	20.24%	\$ 6,081	\$ 1,023
1982		\$ 954	15.69%	\$ 7,035	\$ 954
1983		\$ 791	11.24%	\$ 7,826	\$ 791
1984		\$ 986	12.59%	\$ 8,812	\$ 986
1985		\$ 908	10.31%	\$ 9,720	\$ 908
1986		\$ 835	8.59%	\$ 10,555	\$ 835
1987		\$ 893	8.46%	\$ 11,448	\$ 893
1988		\$ 1,104	9.64%	\$ 12,552	\$ 1,104
1989		\$ 1,421	11.32%	\$ 13,973	\$ 1,421
1990		\$ 1,452	10.39%	\$ 15,425	\$ 1,452
1991		\$ 1,347	8.73%	\$ 16,772	\$ 1,347
1992		\$ 1,073	6.40%	\$ 17,846	\$ 1,073
1993		\$ 1,095	6.14%	\$ 18,941	\$ 1,095
1994		\$ 1,388	7.33%	\$ 20,329	\$ 1,388
1995		\$ 1,855	9.13%	\$ 22,184	\$ 1,855
1996		\$ 1,892	8.53%	\$ 24,076	\$ 1,892
1997		\$ 2,098	8.71%	\$ 26,174	\$ 2,098
1998		\$ 2,256	8.62%	\$ 28,430	\$ 2,256
1999		\$ 2,342	8.24%	\$ 30,772	\$ 2,342
2000		\$ 2,941	9.56%	\$ 33,713	\$ 2,941
2001		\$ 2,392	7.10%	\$ 36,105	\$ 2,392
2002		\$ 1,718	4.76%	\$ 37,823	\$ 1,718
2003		\$ 1,583	4.19%	\$ 39,406	\$ 1,583
2004		\$ 1,739	4.41%	\$ 41,145	\$ 1,739
2005		\$ 2,604	6.33%	\$ 43,749	\$ 2,604
2006		\$ 3,586	8.20%	\$ 47,335	\$ 3,586
2007 (d)		\$ 3,960	8.37%	\$ 51,295	\$ 3,960
					\$ 49,101

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Martin Opalk Summary Sheet Revised

	Value
I. Loss of Displacement Allowance, Benefits, & Back Interest	
A. Displacement Allowance (Interest Based on 10 Year Treasuries)	\$ 8,575
Pension Benefits	\$ 894
Back Interest through 12/31/2007	<u>\$ 137,358</u>
Total	\$ 146,827
B. Displacement Allowance (Interest Based on Bank Prime Loan Rates)	\$ 8,575
Pension Benefits	\$ 894
Back Interest through 12/31/2007	<u>\$ 219,601</u>
Total	\$ 229,070

Table 3: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Martin Opalk, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 946	\$ 55	5.76%	\$ 1,001	\$ 55
1969	\$ 1,347	\$ 161	6.84%	\$ 2,508	\$ 161
1970	\$ -	\$ 189	7.56%	\$ 2,698	\$ 189
1971	\$ 2,162	\$ 306	6.30%	\$ 5,166	\$ 306
1972	\$ 3,018	\$ 520	6.36%	\$ 8,704	\$ 520
1973	\$ 1,268	\$ 701	7.03%	\$ 10,672	\$ 701
1974	\$ -	\$ 830	7.78%	\$ 11,502	\$ 830
1975	\$ 729	\$ 1,007	8.23%	\$ 13,238	\$ 1,007
1976		\$ 1,037	7.83%	\$ 14,274	\$ 1,037
1977		\$ 1,089	7.63%	\$ 15,363	\$ 1,089
1978		\$ 1,333	8.68%	\$ 16,697	\$ 1,333
1979		\$ 1,631	9.77%	\$ 18,328	\$ 1,631
1980		\$ 2,186	11.93%	\$ 20,514	\$ 2,186
1981		\$ 3,008	14.66%	\$ 23,522	\$ 3,008
1982		\$ 3,213	13.66%	\$ 26,735	\$ 3,213
1983		\$ 3,093	11.57%	\$ 29,828	\$ 3,093
1984		\$ 3,894	13.05%	\$ 33,722	\$ 3,894
1985		\$ 3,726	11.05%	\$ 37,449	\$ 3,726
1986		\$ 2,956	7.89%	\$ 40,405	\$ 2,956
1987		\$ 3,498	8.66%	\$ 43,903	\$ 3,498
1988		\$ 4,016	9.15%	\$ 47,919	\$ 4,016
1989		\$ 4,200	8.76%	\$ 52,119	\$ 4,200
1990		\$ 4,601	8.83%	\$ 56,720	\$ 4,601
1991		\$ 4,591	8.09%	\$ 61,311	\$ 4,591
1992		\$ 4,412	7.20%	\$ 65,724	\$ 4,412
1993		\$ 3,944	6.00%	\$ 69,667	\$ 3,944
1994		\$ 5,072	7.28%	\$ 74,740	\$ 5,072
1995		\$ 5,033	6.73%	\$ 79,772	\$ 5,033
1996		\$ 5,263	6.60%	\$ 85,035	\$ 5,263
1997		\$ 5,530	6.50%	\$ 90,565	\$ 5,530
1998		\$ 4,858	5.36%	\$ 95,423	\$ 4,858
1999		\$ 5,507	5.77%	\$ 100,930	\$ 5,507
2000		\$ 6,225	6.17%	\$ 107,155	\$ 6,225
2001		\$ 5,481	5.12%	\$ 112,636	\$ 5,481
2002		\$ 5,283	4.69%	\$ 117,919	\$ 5,283
2003		\$ 4,800	4.07%	\$ 122,719	\$ 4,800
2004		\$ 5,325	4.34%	\$ 128,044	\$ 5,325
2005		\$ 5,582	4.36%	\$ 133,626	\$ 5,582
2006		\$ 6,530	4.89%	\$ 140,156	\$ 6,530
2007 (d)		\$ 6,671	4.76%	\$ 146,827	\$ 6,671
					\$ 137,358

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file. Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 4: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Martin Opalk, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 946	\$ 61	6.46%	\$ 1,007	\$ 61
1969	\$ 1,347	\$ 193	8.19%	\$ 2,547	\$ 193
1970	\$ -	\$ 207	8.15%	\$ 2,754	\$ 207
1971	\$ 2,162	\$ 287	5.85%	\$ 5,204	\$ 287
1972	\$ 3,018	\$ 440	5.35%	\$ 8,662	\$ 440
1973	\$ 1,268	\$ 820	8.25%	\$ 10,749	\$ 820
1974	\$ -	\$ 1,208	11.24%	\$ 11,957	\$ 1,208
1975	\$ 729	\$ 1,027	8.09%	\$ 13,712	\$ 1,027
1976		\$ 962	7.02%	\$ 14,675	\$ 962
1977		\$ 1,027	7.00%	\$ 15,702	\$ 1,027
1978		\$ 1,470	9.36%	\$ 17,172	\$ 1,470
1979		\$ 2,279	13.27%	\$ 19,450	\$ 2,279
1980		\$ 3,135	16.12%	\$ 22,586	\$ 3,135
1981		\$ 4,571	20.24%	\$ 27,156	\$ 4,571
1982		\$ 4,261	15.69%	\$ 31,417	\$ 4,261
1983		\$ 3,531	11.24%	\$ 34,948	\$ 3,531
1984		\$ 4,401	12.59%	\$ 39,350	\$ 4,401
1985		\$ 4,056	10.31%	\$ 43,406	\$ 4,056
1986		\$ 3,730	8.59%	\$ 47,136	\$ 3,730
1987		\$ 3,987	8.46%	\$ 51,123	\$ 3,987
1988		\$ 4,930	9.64%	\$ 56,053	\$ 4,930
1989		\$ 6,347	11.32%	\$ 62,400	\$ 6,347
1990		\$ 6,484	10.39%	\$ 68,884	\$ 6,484
1991		\$ 6,016	8.73%	\$ 74,900	\$ 6,016
1992		\$ 4,793	6.40%	\$ 79,694	\$ 4,793
1993		\$ 4,890	6.14%	\$ 84,584	\$ 4,890
1994		\$ 6,199	7.33%	\$ 90,783	\$ 6,199
1995		\$ 8,285	9.13%	\$ 99,067	\$ 8,285
1996		\$ 8,451	8.53%	\$ 107,519	\$ 8,451
1997		\$ 9,368	8.71%	\$ 116,886	\$ 9,368
1998		\$ 10,075	8.62%	\$ 126,961	\$ 10,075
1999		\$ 10,457	8.24%	\$ 137,418	\$ 10,457
2000		\$ 13,134	9.56%	\$ 150,552	\$ 13,134
2001		\$ 10,682	7.10%	\$ 161,234	\$ 10,682
2002		\$ 7,671	4.76%	\$ 168,904	\$ 7,671
2003		\$ 7,071	4.19%	\$ 175,976	\$ 7,071
2004		\$ 7,764	4.41%	\$ 183,740	\$ 7,764
2005		\$ 11,631	6.33%	\$ 195,371	\$ 11,631
2006		\$ 16,016	8.20%	\$ 211,386	\$ 16,016
2007 (d)		\$ 17,683	8.37%	\$ 229,070	\$ 17,683
					\$ 219,601

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

L.S. Pentz Summary Sheet Revised

	Value
I. Loss of Displacement Allowance, Benefits, & Back Interest	
A. Displacement Allowance (Interest Based on 10 Year Treasuries)	\$ 4,824
Pension Benefits	\$ 573
Back Interest through 12/31/2007	<u>\$ 71,802</u>
Total	\$ 77,199
B. Displacement Allowance (Interest Based on Bank Prime Loan Rates)	\$ 4,824
Pension Benefits	\$ 573
Back Interest through 12/31/2007	<u>\$ 113,758</u>
Total	\$ 119,155

Table 3: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for L.S. Pentz, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1969	\$ 513	\$ 35	6.84%	\$ 548	\$ 35
1970	\$ 950	\$ 113	7.56%	\$ 1,611	\$ 113
1971	\$ -	\$ 102	6.30%	\$ 1,713	\$ 102
1972	\$ 1,417	\$ 199	6.36%	\$ 3,329	\$ 199
1973	\$ 482	\$ 268	7.03%	\$ 4,078	\$ 268
1974	\$ -	\$ 317	7.78%	\$ 4,395	\$ 317
1975	\$ 2,035	\$ 529	8.23%	\$ 6,960	\$ 529
1976		\$ 545	7.83%	\$ 7,505	\$ 545
1977		\$ 573	7.63%	\$ 8,078	\$ 573
1978		\$ 701	8.68%	\$ 8,779	\$ 701
1979		\$ 858	9.77%	\$ 9,636	\$ 858
1980		\$ 1,150	11.93%	\$ 10,786	\$ 1,150
1981		\$ 1,582	14.66%	\$ 12,367	\$ 1,582
1982		\$ 1,689	13.66%	\$ 14,057	\$ 1,689
1983		\$ 1,626	11.57%	\$ 15,683	\$ 1,626
1984		\$ 2,047	13.05%	\$ 17,731	\$ 2,047
1985		\$ 1,959	11.05%	\$ 19,690	\$ 1,959
1986		\$ 1,554	7.89%	\$ 21,244	\$ 1,554
1987		\$ 1,839	8.66%	\$ 23,083	\$ 1,839
1988		\$ 2,112	9.15%	\$ 25,195	\$ 2,112
1989		\$ 2,208	8.76%	\$ 27,403	\$ 2,208
1990		\$ 2,419	8.83%	\$ 29,822	\$ 2,419
1991		\$ 2,414	8.09%	\$ 32,236	\$ 2,414
1992		\$ 2,320	7.20%	\$ 34,556	\$ 2,320
1993		\$ 2,074	6.00%	\$ 36,630	\$ 2,074
1994		\$ 2,667	7.28%	\$ 39,297	\$ 2,667
1995		\$ 2,646	6.73%	\$ 41,943	\$ 2,646
1996		\$ 2,767	6.60%	\$ 44,710	\$ 2,767
1997		\$ 2,907	6.50%	\$ 47,617	\$ 2,907
1998		\$ 2,554	5.36%	\$ 50,172	\$ 2,554
1999		\$ 2,895	5.77%	\$ 53,067	\$ 2,895
2000		\$ 3,273	6.17%	\$ 56,340	\$ 3,273
2001		\$ 2,882	5.12%	\$ 59,222	\$ 2,882
2002		\$ 2,778	4.69%	\$ 62,000	\$ 2,778
2003		\$ 2,524	4.07%	\$ 64,523	\$ 2,524
2004		\$ 2,800	4.34%	\$ 67,323	\$ 2,800
2005		\$ 2,935	4.36%	\$ 70,258	\$ 2,935
2006		\$ 3,434	4.89%	\$ 73,692	\$ 3,434
2007 (d)		\$ 3,507	4.76%	\$ 77,199	\$ 3,507
					\$ 71,802

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file. Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 4: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for L.S. Pentz, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1969	\$ 513	\$ 42	8.19%	\$ 555	\$ 42
1970	\$ 950	\$ 123	8.15%	\$ 1,627	\$ 123
1971	\$ -	\$ 95	5.85%	\$ 1,723	\$ 95
1972	\$ 1,417	\$ 168	5.35%	\$ 3,308	\$ 168
1973	\$ 482	\$ 313	8.25%	\$ 4,102	\$ 313
1974	\$ -	\$ 461	11.24%	\$ 4,563	\$ 461
1975	\$ 2,035	\$ 534	8.09%	\$ 7,133	\$ 534
1976		\$ 501	7.02%	\$ 7,633	\$ 501
1977		\$ 534	7.00%	\$ 8,168	\$ 534
1978		\$ 765	9.36%	\$ 8,932	\$ 765
1979		\$ 1,185	13.27%	\$ 10,118	\$ 1,185
1980		\$ 1,631	16.12%	\$ 11,748	\$ 1,631
1981		\$ 2,377	20.24%	\$ 14,126	\$ 2,377
1982		\$ 2,217	15.69%	\$ 16,342	\$ 2,217
1983		\$ 1,837	11.24%	\$ 18,179	\$ 1,837
1984		\$ 2,290	12.59%	\$ 20,469	\$ 2,290
1985		\$ 2,110	10.31%	\$ 22,578	\$ 2,110
1986		\$ 1,940	8.59%	\$ 24,519	\$ 1,940
1987		\$ 2,074	8.46%	\$ 26,593	\$ 2,074
1988		\$ 2,564	9.64%	\$ 29,157	\$ 2,564
1989		\$ 3,302	11.32%	\$ 32,459	\$ 3,302
1990		\$ 3,373	10.39%	\$ 35,831	\$ 3,373
1991		\$ 3,129	8.73%	\$ 38,961	\$ 3,129
1992		\$ 2,493	6.40%	\$ 41,454	\$ 2,493
1993		\$ 2,544	6.14%	\$ 43,998	\$ 2,544
1994		\$ 3,224	7.33%	\$ 47,222	\$ 3,224
1995		\$ 4,309	9.13%	\$ 51,532	\$ 4,309
1996		\$ 4,396	8.53%	\$ 55,928	\$ 4,396
1997		\$ 4,873	8.71%	\$ 60,801	\$ 4,873
1998		\$ 5,241	8.62%	\$ 66,041	\$ 5,241
1999		\$ 5,440	8.24%	\$ 71,481	\$ 5,440
2000		\$ 6,832	9.56%	\$ 78,312	\$ 6,832
2001		\$ 5,556	7.10%	\$ 83,869	\$ 5,556
2002		\$ 3,990	4.76%	\$ 87,859	\$ 3,990
2003		\$ 3,678	4.19%	\$ 91,537	\$ 3,678
2004		\$ 4,039	4.41%	\$ 95,576	\$ 4,039
2005		\$ 6,050	6.33%	\$ 101,626	\$ 6,050
2006		\$ 8,331	8.20%	\$ 109,957	\$ 8,331
2007 (d)		\$ 9,198	8.37%	\$ 119,155	\$ 9,198
					\$ 113,758

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Robert Schreiner Summary Sheet Revised

	Value
I. Loss of Displacement Allowance, Benefits, & Back Interest	
A. Displacement Allowance (Interest Based on 10 Year Treasuries)	\$ 18,830
Pension Benefits	\$ 1,985
Back Interest through 12/31/2007	<u>\$ 306,349</u>
Total	\$ 327,164
B. Displacement Allowance (Interest Based on Bank Prime Loan Rates)	\$ 18,830
Pension Benefits	\$ 1,985
Back Interest through 12/31/2007	<u>\$ 491,953</u>
Total	\$ 512,768

Table 3: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Robert Schreiner, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 5,223	\$ 301	5.76%	\$ 5,524	\$ 301
1969	\$ 3,755	\$ 635	6.84%	\$ 9,914	\$ 635
1970	\$ 971	\$ 822	7.56%	\$ 11,708	\$ 822
1971	\$ 2,387	\$ 889	6.30%	\$ 14,984	\$ 889
1972	\$ 3,476	\$ 1,173	6.36%	\$ 19,633	\$ 1,173
1973	\$ 2,010	\$ 1,521	7.03%	\$ 23,163	\$ 1,521
1974	\$ -	\$ 1,801	7.78%	\$ 24,965	\$ 1,801
1975	\$ 69	\$ 2,061	8.23%	\$ 27,094	\$ 2,061
1976	\$ -	\$ 2,121	7.83%	\$ 29,216	\$ 2,121
1977	\$ -	\$ 2,229	7.63%	\$ 31,445	\$ 2,229
1978	\$ 1,231	\$ 2,836	8.68%	\$ 35,511	\$ 2,836
1979	\$ 1,693	\$ 3,634	9.77%	\$ 40,838	\$ 3,634
1980		\$ 4,872	11.93%	\$ 45,710	\$ 4,872
1981		\$ 6,703	14.66%	\$ 52,413	\$ 6,703
1982		\$ 7,159	13.66%	\$ 59,571	\$ 7,159
1983		\$ 6,893	11.57%	\$ 66,464	\$ 6,893
1984		\$ 8,677	13.05%	\$ 75,141	\$ 8,677
1985		\$ 8,303	11.05%	\$ 83,444	\$ 8,303
1986		\$ 6,587	7.89%	\$ 90,031	\$ 6,587
1987		\$ 7,795	8.66%	\$ 97,825	\$ 7,795
1988		\$ 8,949	9.15%	\$ 106,775	\$ 8,949
1989		\$ 9,358	8.76%	\$ 116,132	\$ 9,358
1990		\$ 10,252	8.83%	\$ 126,385	\$ 10,252
1991		\$ 10,230	8.09%	\$ 136,615	\$ 10,230
1992		\$ 9,831	7.20%	\$ 146,447	\$ 9,831
1993		\$ 8,788	6.00%	\$ 155,234	\$ 8,788
1994		\$ 11,302	7.28%	\$ 166,536	\$ 11,302
1995		\$ 11,214	6.73%	\$ 177,750	\$ 11,214
1996		\$ 11,727	6.60%	\$ 189,477	\$ 11,727
1997		\$ 12,321	6.50%	\$ 201,798	\$ 12,321
1998		\$ 10,826	5.36%	\$ 212,624	\$ 10,826
1999		\$ 12,270	5.77%	\$ 224,894	\$ 12,270
2000		\$ 13,871	6.17%	\$ 238,765	\$ 13,871
2001		\$ 12,214	5.12%	\$ 250,978	\$ 12,214
2002		\$ 11,772	4.69%	\$ 262,750	\$ 11,772
2003		\$ 10,696	4.07%	\$ 273,446	\$ 10,696
2004		\$ 11,864	4.34%	\$ 285,310	\$ 11,864
2005		\$ 12,438	4.36%	\$ 297,748	\$ 12,438
2006		\$ 14,551	4.89%	\$ 312,300	\$ 14,551
2007 (d)		\$ 14,864	4.76%	\$ 327,164	\$ 14,864
					\$ 306,349

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 4: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Robert Schreiner, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 5,223	\$ 338	6.46%	\$ 5,561	\$ 338
1969	\$ 3,755	\$ 763	8.19%	\$ 10,079	\$ 763
1970	\$ 971	\$ 900	8.15%	\$ 11,951	\$ 900
1971	\$ 2,387	\$ 838	5.85%	\$ 15,176	\$ 838
1972	\$ 3,476	\$ 998	5.35%	\$ 19,650	\$ 998
1973	\$ 2,010	\$ 1,788	8.25%	\$ 23,448	\$ 1,788
1974	\$ -	\$ 2,635	11.24%	\$ 26,083	\$ 2,635
1975	\$ 69	\$ 2,117	8.09%	\$ 28,268	\$ 2,117
1976	\$ -	\$ 1,984	7.02%	\$ 30,252	\$ 1,984
1977	\$ -	\$ 2,117	7.00%	\$ 32,369	\$ 2,117
1978	\$ 1,231	\$ 3,146	9.36%	\$ 36,746	\$ 3,146
1979	\$ 1,693	\$ 5,101	13.27%	\$ 43,539	\$ 5,101
1980		\$ 7,018	16.12%	\$ 50,557	\$ 7,018
1981		\$ 10,231	20.24%	\$ 60,788	\$ 10,231
1982		\$ 9,539	15.69%	\$ 70,327	\$ 9,539
1983		\$ 7,904	11.24%	\$ 78,231	\$ 7,904
1984		\$ 9,853	12.59%	\$ 88,083	\$ 9,853
1985		\$ 9,080	10.31%	\$ 97,163	\$ 9,080
1986		\$ 8,350	8.59%	\$ 105,514	\$ 8,350
1987		\$ 8,924	8.46%	\$ 114,438	\$ 8,924
1988		\$ 11,035	9.64%	\$ 125,473	\$ 11,035
1989		\$ 14,208	11.32%	\$ 139,681	\$ 14,208
1990		\$ 14,515	10.39%	\$ 154,196	\$ 14,515
1991		\$ 13,467	8.73%	\$ 167,663	\$ 13,467
1992		\$ 10,730	6.40%	\$ 178,393	\$ 10,730
1993		\$ 10,947	6.14%	\$ 189,340	\$ 10,947
1994		\$ 13,876	7.33%	\$ 203,215	\$ 13,876
1995		\$ 18,545	9.13%	\$ 221,760	\$ 18,545
1996		\$ 18,918	8.53%	\$ 240,678	\$ 18,918
1997		\$ 20,969	8.71%	\$ 261,647	\$ 20,969
1998		\$ 22,552	8.62%	\$ 284,199	\$ 22,552
1999		\$ 23,409	8.24%	\$ 307,608	\$ 23,409
2000		\$ 29,399	9.56%	\$ 337,007	\$ 29,399
2001		\$ 23,911	7.10%	\$ 360,918	\$ 23,911
2002		\$ 17,171	4.76%	\$ 378,089	\$ 17,171
2003		\$ 15,829	4.19%	\$ 393,918	\$ 15,829
2004		\$ 17,380	4.41%	\$ 411,298	\$ 17,380
2005		\$ 26,035	6.33%	\$ 437,333	\$ 26,035
2006		\$ 35,851	8.20%	\$ 473,184	\$ 35,851
2007 (d)		\$ 39,584	8.37%	\$ 512,768	\$ 39,584
					\$ 491,953

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Paul Scuba Summary Sheet Revised

	Value
I. Loss of Displacement Allowance, Benefits, & Back Interest	
A. Displacement Allowance (Interest Based on 10 Year Treasuries)	\$ 11,703
Pension Benefits	\$ 1,188
Back Interest through 12/31/2007	<u>\$ 184,014</u>
Total	\$ 196,906
B. Displacement Allowance (Interest Based on Bank Prime Loan Rates)	\$ 11,703
Pension Benefits	\$ 1,188
Back Interest through 12/31/2007	<u>\$ 293,927</u>
Total	\$ 306,819

Table 3: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Paul Scuba, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 1,764	\$ 102	5.76%	\$ 1,866	\$ 102
1969	\$ -	\$ 128	6.84%	\$ 1,994	\$ 128
1970	\$ -	\$ 151	7.56%	\$ 2,144	\$ 151
1971	\$ 1,944	\$ 258	6.30%	\$ 4,346	\$ 258
1972	\$ 7,992	\$ 784	6.36%	\$ 13,122	\$ 784
1973	\$ 486	\$ 956	7.03%	\$ 14,565	\$ 956
1974	\$ -	\$ 1,133	7.78%	\$ 15,697	\$ 1,133
1975	\$ 705	\$ 1,350	8.23%	\$ 17,753	\$ 1,350
1976		\$ 1,390	7.83%	\$ 19,143	\$ 1,390
1977		\$ 1,460	7.63%	\$ 20,603	\$ 1,460
1978		\$ 1,788	8.68%	\$ 22,391	\$ 1,788
1979		\$ 2,187	9.77%	\$ 24,579	\$ 2,187
1980		\$ 2,932	11.93%	\$ 27,511	\$ 2,932
1981		\$ 4,034	14.66%	\$ 31,545	\$ 4,034
1982		\$ 4,309	13.66%	\$ 35,853	\$ 4,309
1983		\$ 4,148	11.57%	\$ 40,002	\$ 4,148
1984		\$ 5,222	13.05%	\$ 45,224	\$ 5,222
1985		\$ 4,997	11.05%	\$ 50,221	\$ 4,997
1986		\$ 3,964	7.89%	\$ 54,186	\$ 3,964
1987		\$ 4,691	8.66%	\$ 58,877	\$ 4,691
1988		\$ 5,386	9.15%	\$ 64,263	\$ 5,386
1989		\$ 5,632	8.76%	\$ 69,895	\$ 5,632
1990		\$ 6,170	8.83%	\$ 76,065	\$ 6,170
1991		\$ 6,157	8.09%	\$ 82,223	\$ 6,157
1992		\$ 5,917	7.20%	\$ 88,140	\$ 5,917
1993		\$ 5,289	6.00%	\$ 93,429	\$ 5,289
1994		\$ 6,802	7.28%	\$ 100,231	\$ 6,802
1995		\$ 6,749	6.73%	\$ 106,980	\$ 6,749
1996		\$ 7,058	6.60%	\$ 114,038	\$ 7,058
1997		\$ 7,416	6.50%	\$ 121,453	\$ 7,416
1998		\$ 6,516	5.36%	\$ 127,969	\$ 6,516
1999		\$ 7,385	5.77%	\$ 135,354	\$ 7,385
2000		\$ 8,348	6.17%	\$ 143,702	\$ 8,348
2001		\$ 7,351	5.12%	\$ 151,053	\$ 7,351
2002		\$ 7,085	4.69%	\$ 158,138	\$ 7,085
2003		\$ 6,437	4.07%	\$ 164,575	\$ 6,437
2004		\$ 7,141	4.34%	\$ 171,716	\$ 7,141
2005		\$ 7,486	4.36%	\$ 179,202	\$ 7,486
2006		\$ 8,758	4.89%	\$ 187,959	\$ 8,758
2007 (d)		\$ 8,946	4.76%	\$ 196,906	\$ 8,946
					\$ 184,014

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file. Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 4: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Paul Scuba, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 1,764	\$ 114	6.46%	\$ 1,878	\$ 114
1969	\$ -	\$ 154	8.19%	\$ 2,032	\$ 154
1970	\$ -	\$ 166	8.15%	\$ 2,198	\$ 166
1971	\$ 1,944	\$ 242	5.85%	\$ 4,384	\$ 242
1972	\$ 7,992	\$ 662	5.35%	\$ 13,038	\$ 662
1973	\$ 486	\$ 1,116	8.25%	\$ 14,641	\$ 1,116
1974	\$ -	\$ 1,645	11.24%	\$ 16,286	\$ 1,645
1975	\$ 705	\$ 1,375	8.09%	\$ 18,366	\$ 1,375
1976		\$ 1,289	7.02%	\$ 19,655	\$ 1,289
1977		\$ 1,376	7.00%	\$ 21,031	\$ 1,376
1978		\$ 1,969	9.36%	\$ 23,000	\$ 1,969
1979		\$ 3,052	13.27%	\$ 26,052	\$ 3,052
1980		\$ 4,199	16.12%	\$ 30,251	\$ 4,199
1981		\$ 6,122	20.24%	\$ 36,373	\$ 6,122
1982		\$ 5,708	15.69%	\$ 42,081	\$ 5,708
1983		\$ 4,729	11.24%	\$ 46,810	\$ 4,729
1984		\$ 5,895	12.59%	\$ 52,705	\$ 5,895
1985		\$ 5,433	10.31%	\$ 58,139	\$ 5,433
1986		\$ 4,996	8.59%	\$ 63,135	\$ 4,996
1987		\$ 5,340	8.46%	\$ 68,475	\$ 5,340
1988		\$ 6,603	9.64%	\$ 75,078	\$ 6,603
1989		\$ 8,502	11.32%	\$ 83,579	\$ 8,502
1990		\$ 8,685	10.39%	\$ 92,264	\$ 8,685
1991		\$ 8,058	8.73%	\$ 100,323	\$ 8,058
1992		\$ 6,420	6.40%	\$ 106,743	\$ 6,420
1993		\$ 6,550	6.14%	\$ 113,293	\$ 6,550
1994		\$ 8,303	7.33%	\$ 121,595	\$ 8,303
1995		\$ 11,096	9.13%	\$ 132,692	\$ 11,096
1996		\$ 11,320	8.53%	\$ 144,012	\$ 11,320
1997		\$ 12,547	8.71%	\$ 156,559	\$ 12,547
1998		\$ 13,494	8.62%	\$ 170,053	\$ 13,494
1999		\$ 14,007	8.24%	\$ 184,060	\$ 14,007
2000		\$ 17,591	9.56%	\$ 201,651	\$ 17,591
2001		\$ 14,308	7.10%	\$ 215,958	\$ 14,308
2002		\$ 10,274	4.76%	\$ 226,233	\$ 10,274
2003		\$ 9,471	4.19%	\$ 235,704	\$ 9,471
2004		\$ 10,399	4.41%	\$ 246,103	\$ 10,399
2005		\$ 15,578	6.33%	\$ 261,682	\$ 15,578
2006		\$ 21,451	8.20%	\$ 283,133	\$ 21,451
2007 (d)		\$ 23,685	8.37%	\$ 306,819	\$ 23,685
					\$ 293,927

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

George Sophner Summary Sheet Revised

	Value
I. Loss of Displacement Allowance, Benefits, & Back Interest	
A. Displacement Allowance (Interest Based on 10 Year Treasuries)	\$ 15,252
Pension Benefits	\$ 1,486
Back Interest through 12/31/2007	<u>\$ 256,808</u>
Total	\$ 273,546
B. Displacement Allowance (Interest Based on Bank Prime Loan Rates)	\$ 15,252
Pension Benefits	\$ 1,486
Back Interest through 12/31/2007	<u>\$ 410,367</u>
Total	\$ 427,105

Table 3: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for George Sophner, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 1,495	\$ 86	5.76%	\$ 1,582	\$ 86
1969	\$ 3,541	\$ 350	6.84%	\$ 5,473	\$ 350
1970	\$ 1,299	\$ 512	7.56%	\$ 7,284	\$ 512
1971	\$ 6,796	\$ 888	6.30%	\$ 14,968	\$ 888
1972	\$ 3,606	\$ 1,181	6.36%	\$ 19,754	\$ 1,181
1973		\$ 1,388	7.03%	\$ 21,142	\$ 1,388
1974		\$ 1,644	7.78%	\$ 22,787	\$ 1,644
1975		\$ 1,876	8.23%	\$ 24,663	\$ 1,876
1976		\$ 1,931	7.83%	\$ 26,594	\$ 1,931
1977		\$ 2,029	7.63%	\$ 28,622	\$ 2,029
1978		\$ 2,484	8.68%	\$ 31,107	\$ 2,484
1979		\$ 3,039	9.77%	\$ 34,145	\$ 3,039
1980		\$ 4,073	11.93%	\$ 38,219	\$ 4,073
1981		\$ 5,604	14.66%	\$ 43,823	\$ 5,604
1982		\$ 5,986	13.66%	\$ 49,808	\$ 5,986
1983		\$ 5,763	11.57%	\$ 55,572	\$ 5,763
1984		\$ 7,255	13.05%	\$ 62,826	\$ 7,255
1985		\$ 6,943	11.05%	\$ 69,769	\$ 6,943
1986		\$ 5,507	7.89%	\$ 75,276	\$ 5,507
1987		\$ 6,517	8.66%	\$ 81,793	\$ 6,517
1988		\$ 7,482	9.15%	\$ 89,275	\$ 7,482
1989		\$ 7,824	8.76%	\$ 97,100	\$ 7,824
1990		\$ 8,572	8.83%	\$ 105,672	\$ 8,572
1991		\$ 8,554	8.09%	\$ 114,226	\$ 8,554
1992		\$ 8,220	7.20%	\$ 122,446	\$ 8,220
1993		\$ 7,347	6.00%	\$ 129,793	\$ 7,347
1994		\$ 9,450	7.28%	\$ 139,243	\$ 9,450
1995		\$ 9,376	6.73%	\$ 148,619	\$ 9,376
1996		\$ 9,805	6.60%	\$ 158,424	\$ 9,805
1997		\$ 10,302	6.50%	\$ 168,726	\$ 10,302
1998		\$ 9,052	5.36%	\$ 177,777	\$ 9,052
1999		\$ 10,259	5.77%	\$ 188,037	\$ 10,259
2000		\$ 11,598	6.17%	\$ 199,634	\$ 11,598
2001		\$ 10,212	5.12%	\$ 209,846	\$ 10,212
2002		\$ 9,842	4.69%	\$ 219,688	\$ 9,842
2003		\$ 8,943	4.07%	\$ 228,631	\$ 8,943
2004		\$ 9,920	4.34%	\$ 238,551	\$ 9,920
2005		\$ 10,400	4.36%	\$ 248,951	\$ 10,400
2006		\$ 12,166	4.89%	\$ 261,117	\$ 12,166
2007 (d)		\$ 12,428	4.76%	\$ 273,546	\$ 12,428
					\$ 256,808

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file. Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 4: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for George Sophner, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1968	\$ 1,495	\$ 97	6.46%	\$ 1,592	\$ 97
1969	\$ 3,541	\$ 420	8.19%	\$ 5,554	\$ 420
1970	\$ 1,299	\$ 558	8.15%	\$ 7,411	\$ 558
1971	\$ 6,796	\$ 831	5.85%	\$ 15,038	\$ 831
1972	\$ 3,606	\$ 998	5.35%	\$ 19,642	\$ 998
1973		\$ 1,621	8.25%	\$ 21,263	\$ 1,621
1974		\$ 2,389	11.24%	\$ 23,652	\$ 2,389
1975		\$ 1,914	8.09%	\$ 25,567	\$ 1,914
1976		\$ 1,794	7.02%	\$ 27,361	\$ 1,794
1977		\$ 1,915	7.00%	\$ 29,276	\$ 1,915
1978		\$ 2,741	9.36%	\$ 32,017	\$ 2,741
1979		\$ 4,249	13.27%	\$ 36,266	\$ 4,249
1980		\$ 5,846	16.12%	\$ 42,111	\$ 5,846
1981		\$ 8,522	20.24%	\$ 50,633	\$ 8,522
1982		\$ 7,945	15.69%	\$ 58,578	\$ 7,945
1983		\$ 6,583	11.24%	\$ 65,162	\$ 6,583
1984		\$ 8,207	12.59%	\$ 73,368	\$ 8,207
1985		\$ 7,563	10.31%	\$ 80,931	\$ 7,563
1986		\$ 6,955	8.59%	\$ 87,886	\$ 6,955
1987		\$ 7,433	8.46%	\$ 95,320	\$ 7,433
1988		\$ 9,192	9.64%	\$ 104,511	\$ 9,192
1989		\$ 11,835	11.32%	\$ 116,346	\$ 11,835
1990		\$ 12,090	10.39%	\$ 128,436	\$ 12,090
1991		\$ 11,217	8.73%	\$ 139,653	\$ 11,217
1992		\$ 8,937	6.40%	\$ 148,590	\$ 8,937
1993		\$ 9,118	6.14%	\$ 157,708	\$ 9,118
1994		\$ 11,558	7.33%	\$ 169,266	\$ 11,558
1995		\$ 15,447	9.13%	\$ 184,713	\$ 15,447
1996		\$ 15,758	8.53%	\$ 200,470	\$ 15,758
1997		\$ 17,466	8.71%	\$ 217,937	\$ 17,466
1998		\$ 18,784	8.62%	\$ 236,721	\$ 18,784
1999		\$ 19,498	8.24%	\$ 256,219	\$ 19,498
2000		\$ 24,488	9.56%	\$ 280,707	\$ 24,488
2001		\$ 19,917	7.10%	\$ 300,623	\$ 19,917
2002		\$ 14,302	4.76%	\$ 314,925	\$ 14,302
2003		\$ 13,185	4.19%	\$ 328,110	\$ 13,185
2004		\$ 14,476	4.41%	\$ 342,586	\$ 14,476
2005		\$ 21,686	6.33%	\$ 364,272	\$ 21,686
2006		\$ 29,861	8.20%	\$ 394,133	\$ 29,861
2007 (d)		\$ 32,971	8.37%	\$ 427,105	\$ 32,971
					\$ 410,367

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Peter Sowinski Summary Sheet Revised

	Value
I. Loss of Displacement Allowance, Benefits, & Back Interest	
A. Displacement Allowance (Interest Based on 10 Year Treasuries)	\$ 8,227
Pension Benefits	\$ 873
Back Interest through 12/31/2007	<u>\$ 125,151</u>
Total	\$ 134,251
B. Displacement Allowance (Interest Based on Bank Prime Loan Rates)	\$ 8,227
Pension Benefits	\$ 873
Back Interest through 12/31/2007	<u>\$ 199,534</u>
Total	\$ 208,634

Table 3: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Peter Sowinski, through 12/31/2007. (Based on the 10 Year Treasury Securities)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1971	\$ 3,474	\$ 219	6.30%	\$ 3,693	\$ 219
1972	\$ 3,104	\$ 432	6.36%	\$ 7,229	\$ 432
1973	\$ 2,103	\$ 656	7.03%	\$ 9,988	\$ 656
1974	\$ -	\$ 777	7.78%	\$ 10,765	\$ 777
1975	\$ 419	\$ 921	8.23%	\$ 12,104	\$ 921
1976		\$ 948	7.83%	\$ 13,052	\$ 948
1977		\$ 996	7.63%	\$ 14,047	\$ 996
1978		\$ 1,219	8.68%	\$ 15,266	\$ 1,219
1979		\$ 1,491	9.77%	\$ 16,758	\$ 1,491
1980		\$ 1,999	11.93%	\$ 18,757	\$ 1,999
1981		\$ 2,750	14.66%	\$ 21,507	\$ 2,750
1982		\$ 2,938	13.66%	\$ 24,445	\$ 2,938
1983		\$ 2,828	11.57%	\$ 27,273	\$ 2,828
1984		\$ 3,560	13.05%	\$ 30,834	\$ 3,560
1985		\$ 3,407	11.05%	\$ 34,241	\$ 3,407
1986		\$ 2,703	7.89%	\$ 36,944	\$ 2,703
1987		\$ 3,198	8.66%	\$ 40,142	\$ 3,198
1988		\$ 3,672	9.15%	\$ 43,815	\$ 3,672
1989		\$ 3,840	8.76%	\$ 47,655	\$ 3,840
1990		\$ 4,207	8.83%	\$ 51,862	\$ 4,207
1991		\$ 4,198	8.09%	\$ 56,060	\$ 4,198
1992		\$ 4,034	7.20%	\$ 60,094	\$ 4,034
1993		\$ 3,606	6.00%	\$ 63,700	\$ 3,606
1994		\$ 4,638	7.28%	\$ 68,338	\$ 4,638
1995		\$ 4,602	6.73%	\$ 72,939	\$ 4,602
1996		\$ 4,812	6.60%	\$ 77,751	\$ 4,812
1997		\$ 5,056	6.50%	\$ 82,807	\$ 5,056
1998		\$ 4,442	5.36%	\$ 87,250	\$ 4,442
1999		\$ 5,035	5.77%	\$ 92,285	\$ 5,035
2000		\$ 5,692	6.17%	\$ 97,976	\$ 5,692
2001		\$ 5,012	5.12%	\$ 102,988	\$ 5,012
2002		\$ 4,830	4.69%	\$ 107,819	\$ 4,830
2003		\$ 4,389	4.07%	\$ 112,208	\$ 4,389
2004		\$ 4,869	4.34%	\$ 117,076	\$ 4,869
2005		\$ 5,104	4.36%	\$ 122,180	\$ 5,104
2006		\$ 5,971	4.89%	\$ 128,151	\$ 5,971
2007 (d)		\$ 6,100	4.76%	\$ 134,251	\$ 6,100
					\$ 125,151

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the 10 year market yield on U.S. Treasury Securities at 10-year constant maturity. See copy in file. Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.

Table 4: Schedule Showing the Present Value of the Back Interest on the Displacement Allowance for Peter Sowinski, through 12/31/2007. (Based on the Bank Prime Loan Rate)

Year	Total (a)	Back Interest (b)	Interest Rates (c)	Year End Balance	Total Present Value of Back Interest
1971	\$ 3,474	\$ 203	5.85%	\$ 3,677	\$ 203
1972	\$ 3,104	\$ 363	5.35%	\$ 7,144	\$ 363
1973	\$ 2,103	\$ 763	8.25%	\$ 10,010	\$ 763
1974	\$ -	\$ 1,125	11.24%	\$ 11,135	\$ 1,125
1975	\$ 419	\$ 935	8.09%	\$ 12,489	\$ 935
1976		\$ 876	7.02%	\$ 13,365	\$ 876
1977		\$ 935	7.00%	\$ 14,301	\$ 935
1978		\$ 1,339	9.36%	\$ 15,640	\$ 1,339
1979		\$ 2,075	13.27%	\$ 17,715	\$ 2,075
1980		\$ 2,855	16.12%	\$ 20,571	\$ 2,855
1981		\$ 4,163	20.24%	\$ 24,733	\$ 4,163
1982		\$ 3,881	15.69%	\$ 28,615	\$ 3,881
1983		\$ 3,216	11.24%	\$ 31,830	\$ 3,216
1984		\$ 4,009	12.59%	\$ 35,839	\$ 4,009
1985		\$ 3,694	10.31%	\$ 39,534	\$ 3,694
1986		\$ 3,397	8.59%	\$ 42,931	\$ 3,397
1987		\$ 3,631	8.46%	\$ 46,562	\$ 3,631
1988		\$ 4,490	9.64%	\$ 51,052	\$ 4,490
1989		\$ 5,781	11.32%	\$ 56,833	\$ 5,781
1990		\$ 5,906	10.39%	\$ 62,739	\$ 5,906
1991		\$ 5,480	8.73%	\$ 68,219	\$ 5,480
1992		\$ 4,366	6.40%	\$ 72,584	\$ 4,366
1993		\$ 4,454	6.14%	\$ 77,038	\$ 4,454
1994		\$ 5,646	7.33%	\$ 82,684	\$ 5,646
1995		\$ 7,545	9.13%	\$ 90,229	\$ 7,545
1996		\$ 7,697	8.53%	\$ 97,927	\$ 7,697
1997		\$ 8,532	8.71%	\$ 106,459	\$ 8,532
1998		\$ 9,176	8.62%	\$ 115,635	\$ 9,176
1999		\$ 9,524	8.24%	\$ 125,159	\$ 9,524
2000		\$ 11,962	9.56%	\$ 137,121	\$ 11,962
2001		\$ 9,729	7.10%	\$ 146,850	\$ 9,729
2002		\$ 6,986	4.76%	\$ 153,836	\$ 6,986
2003		\$ 6,440	4.19%	\$ 160,277	\$ 6,440
2004		\$ 7,072	4.41%	\$ 167,348	\$ 7,072
2005		\$ 10,593	6.33%	\$ 177,941	\$ 10,593
2006		\$ 14,587	8.20%	\$ 192,528	\$ 14,587
2007 (d)		\$ 16,106	8.37%	\$ 208,634	\$ 16,106
					\$ 199,534

(a) The Total, which includes the Displacement Allowance & Pension as calculated on Table 2.

(b) Back Interest calculated as compound interest based on interest rates from column (c).

(c) The interest rates are the Bank Prime Loan Rates. See copy in file.

Please note that they are adjusted to reflect quarterly compounding.

(d) Calculated through 12/31/2007. Please note that the 2007 interest rate is based upon 11 months of rates.



Cl. Ex. 42

- MCA District

BROTHERHOOD RAILWAY CARMEN DIVISION
TRANSPORTATION-COMMUNICATIONS INTERNATIONAL UNION

WAGE RATE PROGRESSION CHART
(Revised: January 24, 2003)

NWI=Negotiated Wage Increase COLA=Cost of Living Adjustment IBL=Imposed by Law GWI=General Wage Increase

DATE	ADJUSTMENT	INCREASE	MECHANIC RATE	FREIGHT RATE	HELPER RATE
Nov 1, 1956	NWI	.10	2.278	2.234	2.002
May 1, 1957	COLA	.03	2.308	2.264	2.032
Nov 1, 1957	NWI	.07	2.378	2.334	2.102
Nov 1, 1957	COLA	.05	2.428	2.384	2.152
May 1, 1958	COLA	.04	2.468	2.424	2.192
Nov 1, 1958	NWI	.07	2.538	2.494	2.262
Nov 1, 1958	COLA	.01	2.548	2.504	2.272
Nov 1, 1959	COLA	.03	2.578	2.534	2.302
May 1, 1960	COLA	.01	2.588	2.544	2.312
Jul 1, 1960	NWI	.05	2.638	2.594	2.362
Feb 1, 1962	NWI	.04	2.678	2.634	2.402
May 1, 1962	NWI	.0628	2.7408	2.6968	2.4648
Jan 1, 1964	NWI	.09	2.8308	2.7868	2.5548
Jan 1, 1965	NWI	.09	2.9208	2.8768	2.6448
Jan 1, 1966	NWI	.09	3.0108	2.9668	2.7348

10:216 861 881

381 330 7672

FROM:TCU-IR

DATE	ADJUSTMENT	INCREASE	MECHANIC RATE	FREIGHT RATE	HELPER RATE
Jan 1, 1967	IBL	6%	3.1914	3.1448	2.8989
Apr 1, 1967	IBL	.05	3.2414	3.1948	2.8989
Oct 1, 1967	IBL	.05	3.2914	3.2448	2.8989
Apr 1, 1968	IBL	.05	3.3414	3.2948	2.8989
Jul 1, 1968	IBL	5%	3.5085	3.4595	3.0438
Oct 1, 1968	IBL	.05	3.5585	3.5095	3.0438
Jan 1, 1969	NWI	.0415	3.60	3.55	3.05
Jan 1, 1969	NWI	2%=.07	3.67	3.62	3.11
Jul 1, 1969	NWI	3%=.11	3.78	3.73	3.20
Jul 1, 1969	NWI	.05	3.83	3.78	-
Sep 1, 1969	NWI	.10	3.93	3.88	3.30
Jan 1, 1970	NWI	5%=.20	4.13	4.07	3.47
Apr 1, 1970	NWI	.04	4.17	4.11	3.51
Apr 24, 1970	NWI	.07	4.24	4.18	-
Aug 1, 1970	NWI	.04	4.28	4.22	3.55
Jan 1, 1971	NWI	.10	4.38	4.32	-
Apr 1, 1971	NWI	.15	4.53	4.47	-
Oct 1, 1971	NWI	.23	4.76	4.70	-
Apr 1, 1972	NWI	.24	5.00	4.94	-
Oct 1, 1972	NWI	.25	5.25	5.19	-

DATE	ADJUSTMENT	INCREASE	MECHANIC RATE	FREIGHT RATE	HELPER RATE
Apr 1, 1973	NWI	.25	5.50	5.44	-
Jan 1, 1974	NWI	4%=.22	5.72	5.66	-
Jan 1, 1975	NWI	10%=.57	6.29	6.23	-
Oct 1, 1975	NWI	5%=.31	6.60	6.54	-
Jan 1, 1976	NWI	.12	6.72	6.66	-
Apr 1, 1976	NWI	3%=.20	6.92	6.86	-
Jul 1, 1976	NWI	.12	7.04	6.98	-
Jan 1, 1977	NWI	.13	7.17	7.11	-
Jul 1, 1977	NWI	.18	7.35	7.29	-
Jul 1, 1977	NWI	4%=.28	7.65	7.57	-
Jan 1, 1978	NWI	.19	7.85	7.79	-
Apr 1, 1978	NWI	3%=.23	8.08	8.02	-
Jul 1, 1978	COLA	.19	8.27	8.21	-
Oct 1, 1978	NWI	2%=.16	8.43	8.37	-
Jan 1, 1979	COLA	.25	8.68	8.62	-
Jul 1, 1979	NWI	4%=.34	9.02	8.96	-
Jul 1, 1979	COLA	.25	9.27	9.21	-
Jan 1, 1980	COLA	.28	9.55	9.49	-
Jul 1, 1980	NWI	5%=.47	10.02	9.96	-
Jul 1, 1980	COLA	.27	10.29	10.23	-

DATE	ADJUSTMENT	INCREASE	MECHANIC RATE	FREIGHT RATE	HELPER RATE
Jan 1, 1981	COLA	.32	10.61	10.55	-
Apr 1, 1981	NWI	2%=.20	10.81	10.75	-
Jul 1, 1981	COLA	.32	11.13	11.07	-
Oct 1, 1981	NWI	3%=.31	11.44	11.38	-
Jan 1, 1982	COLA	.35	11.79	11.73	-
Jul 1, 1982	NWI	3%=.32	12.11	12.05	-
Jul 1, 1982	COLA	.22	12.33	12.27	-
Jan 1, 1983	COLA	.34	12.67	12.61	-
Jul 1, 1983	NWI	.33	13.00	12.94	-
Jan 1, 1984	COLA	.26	13.26	13.20	-
Dec 1, 1985	NWI	2%=.26	13.52	13.46	-
Dec 1, 1986	NWI	2.25%=.30	13.82	13.76	-
Dec 1, 1987	NWI	2.25%=.31	14.13	14.07	-
Jul 1, 1991	IBL	3%=.42	14.55	14.49	-
Jul 1, 1993	IBL	3%=.44	14.99	14.93	-
Jul 1, 1994	IBL	4%=.60	15.59	15.53	-
Nov 30, 1995	COLA	.09	15.68	15.62	-
Dec 1, 1995	NWI	3.5%=.55	16.23	16.17	-
Jul 1, 1996	NWI	1.75%=.28	16.51	16.45	-
Jul 1, 1997	NWI	3.5%=.58	17.09	17.03	-

**DAILY RATE OF PAY FOR YARD CONDUCTORS (FOREMEN) - YARD BRAKEMEN (HELPERS)
AND SWITCHTENDERS**

October 1, 1950 through July 1, 1983

EFFECTIVE DATE	YARD CONDUCTOR (FOREMAN)	YARD BRAKEMEN (HELPER)	SWITCHTENDERS
October 1, 1950	\$ 14.95	\$ 14.10	\$ 12.55
January 1, 1951	15.11	14.26	12.71
March 1, 1951	15.27	14.42	12.87
December 1, 1952	15.91	15.06	13.51
October 1, 1953	16.95	16.10	14.55
December 16, 1953	17.35	16.50	14.95
*June 1, 1955	17.60	NOT APPLICABLE	
October 1, 1955	18.44	17.34	15.79
December 1, 1955	19.42	18.15	16.29
November 1, 1956	20.42	19.15	17.29
November 1, 1957	20.82	19.55	17.69
November 1, 1958	21.22	19.25	18.09
May 1, 1960	22.58	21.31	19.45
July 1, 1960	23.04	21.74	19.85
March 1, 1961	23.50	22.18	20.24
May 7, 1964	24.80	23.20	21.20
July 12, 1964	26.55	24.64	22.64
August 12, 1966	27.88	25.87	23.77
January 1, 1968	28.58	26.52	24.36
July 1, 1968	29.98	27.85	25.61
January 1, 1969	30.58	28.41	26.12
July 1, 1969	31.50	29.26	26.90
January 1, 1970	33.08	30.72	28.25
November 1, 1970	35.64	33.28	30.81
April 1, 1971	37.07	34.61	32.04
October 1, 1971	38.92	36.34	33.64
April 1, 1972	40.87	38.16	35.32
October 1, 1972	42.91	40.07	37.09
January 1, 1973	45.11	42.27	39.29
April 1, 1973	45.91	43.07	40.09
January 1, 1974	47.75	44.79	41.69
January 1, 1975	52.53	49.27	45.86
October 1, 1975	55.16	51.73	48.15
January 1, 1976	56.12	52.69	49.11
April 1, 1976	57.77	54.24	50.55
July 1, 1976	58.73	55.20	51.51
January 1, 1977	59.77	56.24	52.55
July 1, 1977	63.56	59.89	56.05
January 1, 1978	65.08	61.41	57.57
April 1, 1978	66.95	63.17	59.22
July 1, 1978	68.47	64.69	60.74
October 1, 1978	69.78	65.93	61.90
January 1, 1979	71.78	67.93	63.90
July 1, 1979	76.58	72.58	68.39
January 1, 1980	78.82	74.82	70.63
July 1, 1980	84.82	80.62	76.22
January 1, 1981	87.38	83.18	78.78
April 1, 1981	89.03	84.75	80.26
July 1, 1981	91.59	87.31	82.82
October 1, 1981	94.12	89.71	85.09
January 1, 1982	96.92	92.51	87.89
July 1, 1982	101.29	96.75	91.99
January 1, 1983	104.01	99.47	94.71
July 1, 1983	106.70	102.02	97.12
January 1, 1984	108.78	104.10	99.20
November 1, 1985	109.86	105.13	100.18
January 1, 1986	112.04	107.21	102.16
July 1, 1986	113.71	108.80	103.68
January 1, 1987	116.25	111.22	105.99
July 1, 1987	117.98	112.87	107.56
January 1, 1988	120.61	115.39	109.96
July 1, 1991	124.23	118.85	113.26
July 1, 1993	127.96	122.42	116.66
July 1, 1994	133.08	127.32	121.33
**July 1, 1995	133.80	128.04	122.05
December 1, 1995	138.48	132.52	126.32
July 1, 1997	143.33	137.16	130.74
July 1, 1999	148.35	141.96	135.32

* Special Adjustment for Yard Conductors
** C-O-L-A Adjustment

UTU/R&S Dept.
October 1996

**BRAKEMAN'S
DAILY AND MILEAGE RATES OF PAY
LOCAL FREIGHT SERVICE**

Effective Date	Western Region		East & Southeast Region	
	Daily Rate	For miles in excess of 100	Daily Rate	For miles in excess of 100
October 1, 1950	\$11.42		\$11.47	
January 1, 1951	11.82		11.87	
March 1, 1951	12.02		12.07	
December 1, 1952	12.34		12.39	
October 1, 1953	13.38		13.43	
December 16, 1953	13.78		13.83	
October 1, 1955	14.62		14.67	
November 1, 1956	15.62		15.67	
November 1, 1957	16.18		16.23	
November 1, 1958	16.74		16.79	
May 1, 1960	18.10		18.15	
July 1, 1960	18.47		18.52	
March 1, 1961	18.83		18.88	
July 12, 1964	20.27	18.83¢	20.32	18.88¢
August 12, 1966	21.26	18.83	21.31	18.88
January 1, 1968	21.78	18.83	21.83	18.88
July 1, 1968	22.53	19.47	22.58	19.53
January 1, 1969	22.97	19.85	23.02	19.91
July 1, 1969	23.65	20.43	23.70	20.49
January 1, 1970	24.81	21.43	24.86	21.49
November 1, 1970	27.37	23.99	27.42	24.05
April 1, 1971	28.45	24.93	28.50	24.99
October 1, 1971	29.85	26.16	29.90	26.22
April 1, 1972	31.32	27.45	31.37	27.51
October 1, 1972	32.86	28.80	32.92	28.86
January 1, 1973	34.06	30.00	34.12	30.06
April 1, 1973	34.86	30.80	34.92	30.86
January 1, 1974	36.24	32.01	36.30	32.08
January 1, 1975	39.82	35.17	39.89	35.25
October 1, 1975	41.79	36.91	41.86	36.99
January 1, 1976	42.75	37.87	42.82	37.95
April 1, 1976	43.99	38.96	44.06	39.05
July 1, 1976	44.95	39.92	45.02	40.01
January 1, 1977	45.99	40.96	46.06	41.05
July 1, 1977	49.21	43.98	49.28	44.07
January 1, 1978	50.73	45.50	50.80	45.59
April 1, 1978	52.16	46.77	52.23	46.86
July 1, 1978	53.68	48.29	53.75	48.38
October 1, 1978	54.69	49.19	54.76	49.28
January 1, 1979	56.69	51.19	56.76	51.28
July 1, 1979	60.87	55.15	60.95	55.25
January 1, 1980	63.11	57.39	63.19	57.49
July 1, 1980	68.30	62.30	68.39	62.40
January 1, 1981	70.86	64.86	70.95	64.96
April 1, 1981	72.18	66.06	72.27	66.16
July 1, 1981	74.74	68.62	74.83	68.72
October 1, 1981	76.75	70.45	76.85	70.55
January 1, 1982	79.55	73.25	79.65	73.35
July 1, 1982	83.38	76.89	83.49	77.00
January 1, 1983	86.10	79.61	86.21	79.72
July 1, 1983	88.24	81.55	88.35	81.66
January 1, 1984	90.32	83.63	90.43	83.74
November 1, 1985	91.21	83.63	91.32	83.74
January 1, 1986	93.00	83.63	93.12	83.74
July 1, 1986	94.37	83.63	94.49	83.74
January 1, 1987	96.46	83.63	96.58	83.74
July 1, 1987	97.88	83.63	98.01	83.74
January 1, 1988	100.05	83.63	100.18	83.74
July 1, 1991	103.04	83.63	103.17	83.74
July 1, 1993	106.12	83.63	106.25	83.74
July 1, 1994	110.35	83.63	110.48	83.74
**July 1, 1995	111.07	83.63	111.20	83.74
December 1, 1995	114.94	86.54	115.08	86.66
July 1, 1997	118.95	89.55	119.09	89.68
July 1, 1999	123.10	92.67	123.24	92.80

* Special Adjustment for Road Conductors
** C-O-L-A Adjustment

UTU R&S Dept - October 1996

**Tax Rates and Maximum Taxable Earnings Under Social Security,
Railroad Retirement and Railroad Unemployment Insurance Programs**

Period	Maximum annual taxable earnings		Tax rate (percent)								
			Employer and employee, each				Self-employed person				
	OASDI	HI	Total	OASI	DI	HI	Total	OASI	DI	HI	
1937-1949.....	\$3,000	...	1.0	1.0	...	...	...	...	...	...	...
1950.....	3,000	...	1.5	1.5	...	...	...	...	...	...	...
1951-1953.....	3,600	...	1.5	1.5	...	...	2.25	2.25	...	...	...
1954.....	3,600	...	2.0	2.0	...	...	3.0	3.0	...	...	...
1955-1956.....	4,200	...	2.0	2.0	...	...	3.0	3.0	...	...	...
1957-1958.....	4,200	...	2.25	2.0	0.25	...	3.375	3.0	0.375	...	...
1959.....	4,800	...	2.5	2.25	0.25	...	3.75	3.375	0.375	...	...
1960-1961.....	4,800	...	3.0	2.75	0.25	...	4.5	4.125	0.375	...	...
1962.....	4,800	...	3.125	2.875	0.25	...	4.7	4.325	0.375	...	...
1963-1965.....	4,800	...	3.625	3.375	0.25	...	5.4	5.025	0.375	...	...
1966.....	6,600	\$6,600	4.2	3.5	0.35	0.35	6.15	5.275	0.525	0.35	...
1967.....	6,600	6,600	4.4	3.55	0.35	0.5	6.4	5.375	0.525	0.5	...
1968.....	7,800	7,800	4.4	3.325	0.475	0.6	6.4	5.0875	0.7125	0.6	...
1969.....	7,800	7,800	4.8	3.725	0.475	0.6	6.9	5.5875	0.7125	0.6	...
1970.....	7,800	7,800	4.8	3.65	0.55	0.6	6.9	5.475	0.825	0.6	...
1971.....	7,800	7,800	5.2	4.05	0.55	0.6	7.5	6.075	0.825	0.6	...
1972.....	9,000	9,000	5.2	4.05	0.55	0.6	7.5	6.075	0.825	0.6	...
1973.....	10,800	10,800	5.85	4.3	0.55	1.0	8.0	6.205	0.795	1.0	...
1974.....	13,200	13,200	5.85	4.375	0.575	0.9	7.9	6.185	0.815	0.9	...
1975.....	14,100	14,100	5.85	4.375	0.575	0.9	7.9	6.185	0.815	0.9	...
1976.....	15,300	15,300	5.85	4.375	0.575	0.9	7.9	6.185	0.815	0.9	...
1977.....	16,500	16,500	5.85	4.375	0.575	0.9	7.9	6.185	0.815	0.9	...
1978.....	17,700	17,700	6.05	4.275	0.775	1.0	8.1	6.01	1.09	1.0	...
1979.....	22,900	22,900	6.13	4.33	0.75	1.05	8.1	6.01	1.04	1.05	...
1980.....	25,900	25,900	6.13	4.52	0.56	1.05	8.1	6.2725	0.7775	1.05	...
1981.....	29,700	29,700	6.65	4.7	0.65	1.3	9.3	7.025	0.975	1.3	...
1982.....	32,400	32,400	6.7	4.575	0.825	1.3	9.35	6.8125	1.2375	1.3	...
1983.....	35,700	35,700	6.7	4.775	0.625	1.3	9.35	7.1125	0.9375	1.3	...
1984.....	37,800	37,800	7.0	5.2	0.5	1.3	14.0	10.4	1.0	2.6	...
1985.....	39,600	39,600	7.05	5.2	0.5	1.35	14.1	10.4	1.0	2.7	...
1986.....	42,000	42,000	7.15	5.2	0.5	1.45	14.3	10.4	1.0	2.9	...
1987.....	43,800	43,800	7.15	5.2	0.5	1.45	14.3	10.4	1.0	2.9	...
1988.....	45,000	45,000	7.51	5.53	0.53	1.45	15.02	11.06	1.06	2.9	...
1989.....	48,000	48,000	7.51	5.53	0.53	1.45	15.02	11.06	1.06	2.9	...
1990.....	51,300	51,300	7.65	5.6	0.6	1.45	15.3	11.2	1.2	2.9	...
1991.....	53,400	125,000	7.65	5.6	0.6	1.45	15.3	11.2	1.2	2.9	...
1992.....	55,500	130,200	7.65	5.6	0.6	1.45	15.3	11.2	1.2	2.9	...
1993.....	57,600	135,000	7.65	5.6	0.6	1.45	15.3	11.2	1.2	2.9	...
1994.....	60,600	No Limit	7.65	5.26	0.94	1.45	15.3	10.52	1.88	2.9	...
1995.....	61,200	No Limit	7.65	5.26	0.94	1.45	15.3	10.52	1.88	2.9	...
1996.....	62,700	No Limit	7.65	5.26	0.94	1.45	15.3	10.52	1.88	2.9	...
1997.....	65,400	No Limit	7.65	5.35	0.85	1.45	15.3	10.7	1.7	2.9	...
1998.....	68,400	No Limit	7.65	5.35	0.85	1.45	15.3	10.7	1.7	2.9	...
1999.....	72,600	No Limit	7.65	5.35	0.85	1.45	15.3	10.7	1.7	2.9	...
2000.....	76,200	No Limit	7.65	5.3	0.9	1.45	15.3	10.6	1.8	2.9	...
2001.....	80,400	No Limit	7.65	5.3	0.9	1.45	15.3	10.6	1.8	2.9	...
2002.....	84,900	No Limit	7.65	5.3	0.9	1.45	15.3	10.6	1.8	2.9	...
2003.....	87,000	No Limit	7.65	5.3	0.9	1.45	15.3	10.6	1.8	2.9	...
2004.....	87,900	No Limit	7.65	5.3	0.9	1.45	15.3	10.6	1.8	2.9	...
2005.....	90,000	No Limit	7.65	5.3	0.9	1.45	15.3	10.6	1.8	2.9	...
2006.....	94,200	No Limit	7.65	5.3	0.9	1.45	15.3	10.6	1.8	2.9	...
2007.....	97,500	No Limit	7.65	5.3	0.9	1.45	15.3	10.6	1.8	2.9	...
2008 and thereafter.....	(2)	No Limit	7.65	5.3	0.9	1.45	15.3	10.6	1.8	2.9	...

See footnotes at end of table.

↓
**Tax Rates and Maximum Taxable Earnings Under Social Security,
 Railroad Retirement and Railroad Unemployment Insurance Programs, Continued**

Period	Railroad Retirement					Railroad Unemployment Insurance		Unemployment Repayment Tax [4]		Supplemental Annuities	
	Maximum earnings base [3]		Tax rate (percent) [3]			Maximum monthly taxable earnings	Employer tax rate [5] (percent)	Maximum taxable earnings	Employer tax rate (percent)	Period	Employer tax rate [6] (cents/hr.)
	Tier 1 [7]	Tier 2	Tier 1		Tier 2						
			Employer & employee each	Employer	Employee						
1937-6/39	\$ 300	...	2.75	...	...	...	...	...	...	11/1966-3/70	2
7/39-12/39	300	...	2.75	...	...	\$ 300	3.0	...	...	4/70-6/70	6
1940-1942	300	...	3.0	...	...	300	3.0	...	...	7/70-12/70	7
1943-1945	300	...	3.25	...	...	300	3.0	...	...	1/71-6/72	6
1946	300	...	3.5	...	...	300	3.0	...	...	7/72-12/74	7½
1947	300	...	5.75	...	...	300	3.0	...	...	1/75-12/75	8½
1948	300	...	5.75	...	...	300	0.5	...	...	1/76-12/78	12
1949-1951	300	...	6.0	...	...	300	0.5	...	...	1/77-12/77	12½
1952-6/54	300	...	6.25	...	...	300	0.5	...	...	1/78-12/78	12
7/54-12/54	350	...	6.25	...	...	350	0.5	...	...	1/79-12/80	12½
1955	350	...	6.25	...	...	350	0.5	...	...	1/81-12/81	14½
1956	350	...	6.25	...	...	350	1.5	...	...	1/82-12/82	17
1957	350	...	6.25	...	...	350	2.0	...	...	1/83-12/83	18½
1958	350	...	6.25	...	...	350	2.5	...	...	1/84-12/85	20
1/59-5/59	350	...	6.25	...	...	350	3.0	...	...	1/86-12/86	22½
6/59-12/59	400	...	8.75	...	...	400	3.75	...	...	1/87-12/87	24
1960-1961	400	...	6.75	...	...	400	3.75	...	...	1/88-6/91	26
1962	400	...	7.25	...	...	400	4.0	...	...	7/91-3/92	28½
1/63-10/63	400	...	7.25	...	...	400	4.0	...	...	4/92-12/93	31
11/63-12/64	450	...	7.25	...	...	400	4.0	...	...	1/94-12/94	30
1/65-9/65	450	...	8.125	...	...	400	4.0	...	...	1/95-12/95	33
10/65-12/65	450	...	7.125	...	...	400	4.0	...	...	1/96-12/96	34
1966	550	...	7.95	...	...	400	4.0	...	...	1/97-12/98	35
1967	550	...	8.65	...	...	400	4.0	...	...	1/99-12/99	27
1968	650	...	8.9	...	...	400	4.0	...	...	1/00-12/00	26½
1969-1970	650	...	9.55	...	...	400	4.0	...	...	1/01-12/01	26
1971	650	...	9.95	...	...	400	4.0	...	...
1972	750	...	9.95	...	...	400	4.0	...	...
1/1973-9/73	900	\$ 900	10.6	...	...	400	4.0	...	...
10/73-12/73	900	900	5.85	9.5	...	400	4.0	...	...
1974	1,100	1,100	5.85	9.5	...	400	4.0	...	...
1975	1,175	1,175	5.85	9.5	...	400	4.0	...	...
1976	1,275	1,275	5.85	9.5	...	400	5.5	...	...
1977	1,375	1,375	5.85	9.5	...	400	8.0	...	...
1978	1,475	1,475	6.05	9.5	...	400	8.0	...	...
1979	1,908.33	1,575	6.13	9.5	...	400	7.0	...	...
1980	2,158.33	1,700	6.13	9.5	...	400	5.5	...	...
1/81-9/81	2,475	1,850	6.65	9.5	...	400	8.0	...	...
10/81-12/81	2,475	1,850	6.65	11.75	2.0	400	8.0	...	...
1982	2,700	2,025	6.7	11.75	2.0	400	8.0	...	...
1983	2,975	2,225	6.7	11.75	2.0	400	8.0	...	...
1984	3,150	2,350	[1] 7.0	12.75	2.75	600	8.0	...	...
1985	39,600	29,700	7.05	13.75	3.5	600	8.0	...	...
1/86-6/86	42,000	31,500	7.15	14.75	4.25	600	8.0	...	...
7/86-12/86	42,000	31,500	7.15	14.75	4.25	600	8.0	\$3,500	4.3		
1987	43,800	32,700	7.15	14.75	4.25	600	8.0	7,000	4.7		
1988	45,000	33,600	7.51	16.1	4.9	600	8.0	7,000	6.0		
1989	48,000	35,700	7.51	16.1	4.9	710	8.0	710	4.0		
1990	51,300	38,100	7.65	16.1	4.9	745	8.0	745	4.0		

See footnotes at end of table.

**Tax Rates and Maximum Taxable Earnings Under Social Security,
Railroad Retirement and Railroad Unemployment Insurance Programs, Continued**

Period	Railroad Retirement					Railroad Unemployment Insurance				Unemployment Repayment Tax [4]	
	Maximum earnings base [3]		Tax rate (percent) [3]			Maximum monthly taxable earnings	Employer tax rate [5] (percent)	Surcharge or (pooled credit)	New employer tax rate (percent)	Maximum taxable earnings	Employer tax rate (percent)
	Tier 1 [7]	Tier 2	Tier 1	Tier 2							
			Employer & employee each	Employer	Employee						
1991	53,400	39,600	7.65	16.1	4.9	765	5.55 - 12.0	...	8.00	765	4.0
1992	55,500	41,400	7.65	16.1	4.9	785	3.10 - 12.0	(3.12)	8.00	785	4.0
1993	57,600	42,900	7.65	16.1	4.9	810	0.65 - 12.0	(5.31)	7.30	810	4.0
1994	60,600	45,000	7.65	16.1	4.9	840	0.65 - 12.0	(0.22)	6.06		
1995	61,200	45,300	7.65	16.1	4.9	850	0.65 - 12.0	...	4.15		
1996	62,700	46,500	7.65	16.1	4.9	865	0.65 - 12.0	...	2.31		
1997	65,400	48,600	7.65	16.1	4.9	890	0.65 - 12.0	...	1.16		
1998	68,400	50,700	7.65	16.1	4.9	925	2.15 - 12.0	1.5	0.85		
1999	72,600	53,700	7.65	16.1	4.9	970	2.15 - 12.0	1.5	0.92		
2000	76,200	56,700	7.65	16.1	4.9	1,005	0.65 - 12.0	...	1.67		
2001	80,400	59,700	7.65	16.1	4.9	1,050	2.15 - 12.0	1.5	2.59		
2002	84,900	63,000	7.65	15.6	4.9	1,100	3.15 - 12.0	2.5	2.71		
2003	87,000	64,500	7.65	14.2	4.9	1,120	3.15 - 12.0	2.5	2.36		
2004	87,900	65,100	7.65	13.1	4.9	1,130	2.15 - 12.0	1.5	2.38		
2005	90,000	66,900	7.65	12.6	4.4	1,150	2.15 - 12.0	1.5	3.43		
2006	94,200	69,900	7.65	12.6	4.4	1,195	2.15 - 12.0	1.5	4.03		
2007	97,500	72,600	7.65	12.1	3.9	1,230	2.15 - 12.0	1.5	3.75		
2008 and later	[2]	[2]	7.65	[8]	[8]	[2]	[5]	[5]	[5]		

1. Before tax credit. Employees received a credit of 0.3 percent in 1984. The self-employed received a credit of 2.7 percent in 1984, 2.3 percent in 1985 and 2.0 percent in 1986-89.
2. Based on automatic adjustments in proportion to increases in average earnings levels.
3. Earnings bases are monthly through 1984 and annual for 1985 and later. October 1, 1973 was the effective date for the allocation of railroad retirement taxes by tiers, subject to a moratorium for certain railroad labor organizations. The tier 1 tax rate was set equal to the current social security tax rate.
4. This temporary tax applied to employers until all pre-October 1985 loans from the Railroad Retirement Account were fully repaid with interest on June 29, 1993. Earnings bases are annual through 1988 and monthly for 1989-1993.
5. Taxes are paid only by employer. From 1948 through 1988, the rate for a calendar year was based on a graduated schedule depending on the preceding September 30 account balance (including administration fund). Except for certain commuter railroads, the rate for 1989-1990 was fixed at 8.0 percent. Beginning in 1991, each employer's rate is experience-based, with a minimum of 0.65 percent and a maximum of 12 percent, or 12.5 percent if a 3.5 percent surcharge applies due to a low account balance.
6. Taxes are paid only by employers. The supplemental annuity tax was repealed for calendar years after 2001.
7. Beginning in 1991, the portion of the tier 1 tax rate which does not exceed the social security HI tax rate is applied to earnings up to the HI maximum taxable amount. In 1993, a 1.45 percent tax applied to earnings up to \$135,000 and a 6.2 percent tax applied to earnings up to \$57,600.
8. Beginning in 2004, the tier 2 tax rate will be determined annually from a tax rate schedule based on the average account benefits ratio. The average account benefits ratio is the average for the 10 fiscal years preceding the calendar year of the ratio of the fair market value of the assets in the Railroad Retirement Account and the National Railroad Retirement Investment Trust as of the close of each fiscal year to the total benefits and administrative expenses paid from those accounts during the fiscal year. Employer tax rates can range from 8.2 percent to 22.1 percent. Employee tax rates can range from 0 percent to 4.9 percent.

10 Year T-Bill Interest Rates

Prime Interest Rates

Year	Rate	Quarterly Compounding			Rate	Quarterly Compounding		
1968	5.64%	0.0141	1.057604	5.76%	6.31%	0.0158	1.064633	6.46%
1969	6.67%	0.0167	1.068387	6.84%	7.95%	0.0199	1.0819	8.19%
1970	7.35%	0.0184	1.075551	7.56%	7.91%	0.0198	1.081467	8.15%
1971	6.16%	0.0154	1.063038	6.30%	5.72%	0.0143	1.058469	5.85%
1972	6.21%	0.0155	1.063561	6.36%	5.25%	0.0131	1.053519	5.35%
1973	6.85%	0.0171	1.07028	7.03%	8.01%	0.0200	1.082544	8.25%
1974	7.56%	0.0189	1.07777	7.78%	10.79%	0.0270	1.112378	11.24%
1975	7.99%	0.0200	1.082326	8.23%	7.86%	0.0196	1.080941	8.09%
1976	7.61%	0.0190	1.078299	7.83%	6.84%	0.0171	1.070171	7.02%
1977	7.42%	0.0186	1.07629	7.63%	6.82%	0.0171	1.069992	7.00%
1978	8.41%	0.0210	1.08679	8.68%	9.05%	0.0226	1.093624	9.36%
1979	9.43%	0.0236	1.097687	9.77%	12.66%	0.0316	1.1327	13.27%
1980	11.43%	0.0286	1.119293	11.93%	15.23%	0.0381	1.161188	16.12%
1981	13.92%	0.0348	1.146636	14.66%	18.86%	0.0472	1.202365	20.24%
1982	13.01%	0.0325	1.136586	13.66%	14.84%	0.0371	1.156916	15.69%
1983	11.10%	0.0278	1.115706	11.57%	10.79%	0.0270	1.112387	11.24%
1984	12.46%	0.0312	1.130544	13.05%	12.04%	0.0301	1.125943	12.59%
1985	10.62%	0.0266	1.110505	11.05%	9.93%	0.0248	1.103084	10.31%
1986	7.67%	0.0192	1.078934	7.89%	8.33%	0.0208	1.085938	8.59%
1987	8.39%	0.0210	1.086577	8.66%	8.20%	0.0205	1.084578	8.46%
1988	8.85%	0.0221	1.091481	9.15%	9.31%	0.0233	1.096431	9.64%
1989	8.49%	0.0212	1.087641	8.76%	10.87%	0.0272	1.113239	11.32%
1990	8.55%	0.0214	1.088281	8.83%	10.01%	0.0250	1.103912	10.39%
1991	7.86%	0.0197	1.080947	8.09%	8.46%	0.0212	1.087338	8.73%
1992	7.01%	0.0175	1.071964	7.20%	6.25%	0.0156	1.063995	6.40%
1993	5.87%	0.0147	1.060005	6.00%	6.00%	0.0150	1.061364	6.14%
1994	7.09%	0.0177	1.072807	7.28%	7.14%	0.0178	1.073284	7.33%
1995	6.57%	0.0164	1.067336	6.73%	8.83%	0.0221	1.091257	9.13%
1996	6.44%	0.0161	1.065972	6.60%	8.27%	0.0207	1.085309	8.53%
1997	6.35%	0.0159	1.065028	6.50%	8.44%	0.0211	1.087126	8.71%
1998	5.26%	0.0132	1.053647	5.36%	8.35%	0.0209	1.086192	8.62%
1999	5.65%	0.0141	1.057708	5.77%	7.99%	0.0200	1.082367	8.24%
2000	6.03%	0.0151	1.061677	6.17%	9.23%	0.0231	1.095574	9.56%
2001	5.02%	0.0126	1.051153	5.12%	6.91%	0.0173	1.070952	7.10%
2002	4.61%	0.0115	1.046903	4.69%	4.67%	0.0117	1.047575	4.76%
2003	4.01%	0.0100	1.040707	4.07%	4.12%	0.0103	1.041866	4.19%
2004	4.27%	0.0107	1.043389	4.34%	4.34%	0.0109	1.044121	4.41%
2005	4.29%	0.0107	1.043595	4.36%	6.19%	0.0155	1.0633	6.33%
2006	4.80%	0.0120	1.048871	4.89%	7.96%	0.0199	1.081975	8.20%
2007	4.68%	0.0117	1.047597	4.76%	8.12%	0.0203	1.083655	8.37%

01/2007, 8.25
02/2007, 8.25
03/2007, 8.25
04/2007, 8.25
05/2007, 8.25
06/2007, 8.25
07/2007, 8.25
08/2007, 8.25
09/2007, 8.03
10/2007, 7.74
11/2007, 7.50

01/2006, 4.42
02/2006, 4.57
03/2006, 4.72
04/2006, 4.99
05/2006, 5.11
06/2006, 5.11
07/2006, 5.09
08/2006, 4.88
09/2006, 4.72
10/2006, 4.73
11/2006, 4.60
12/2006, 4.56
01/2007, 4.76
02/2007, 4.72
03/2007, 4.56
04/2007, 4.69
05/2007, 4.75
06/2007, 5.10
07/2007, 5.00
08/2007, 4.67
09/2007, 4.52
10/2007, 4.53
11/2007, 4.15

Title:	Bank Prime Loan Rate								
Series ID:	MPRIME								
Source:	Board of Governors of the Federal Reserve System								
Release:	H.15 Selected Interest Rates								
Seasonal Adjustment:	Not Applicable								
Frequency:	Monthly								
Units:	Percent								
Date Range:	1949-01-01 to 2007-06-01								
Last Updated:	2007-07-03 9:36 AM CT								
Notes:	Averages of Daily Figures								
DATE	VALUE								EXP
1968-01-01	6.00	1.0600	0.058269						
1968-02-01	6.00	1.0600	0.058269						
1968-03-01	6.00	1.0600	0.058269						
1968-04-01	6.20	1.0620	0.060154						
1968-05-01	6.50	1.0650	0.062975						
1968-06-01	6.50	1.0650	0.062975						
1968-07-01	6.50	1.0650	0.062975						
1968-08-01	6.50	1.0650	0.062975						
1968-09-01	6.45	1.0645	0.062505						
1968-10-01	6.25	1.0625	0.060625						
1968-11-01	6.25	1.0625	0.060625						
1968-12-01	6.60	1.0660	0.063913	0.0612	1.0631				1.0631
1969-01-01	6.95	1.0695	0.067191						
1969-02-01	7.00	1.0700	0.067659						
1969-03-01	7.24	1.0724	0.069899						
1969-04-01	7.50	1.0750	0.072321						
1969-05-01	7.50	1.0750	0.072321						
1969-06-01	8.23	1.0823	0.079088						
1969-07-01	8.50	1.0850	0.08158						
1969-08-01	8.50	1.0850	0.08158						
1969-09-01	8.50	1.0850	0.08158						
1969-10-01	8.50	1.0850	0.08158						
1969-11-01	8.50	1.0850	0.08158						
1969-12-01	8.50	1.0850	0.08158	0.0765	1.0795				1.0795
1970-01-01	8.50	1.0850	0.08158						
1970-02-01	8.50	1.0850	0.08158						
1970-03-01	8.39	1.0839	0.080566						
1970-04-01	8.00	1.0800	0.076961						
1970-05-01	8.00	1.0800	0.076961						
1970-06-01	8.00	1.0800	0.076961						
1970-07-01	8.00	1.0800	0.076961						
1970-08-01	8.00	1.0800	0.076961						
1970-09-01	7.83	1.0783	0.075386						
1970-10-01	7.50	1.0750	0.072321						
1970-11-01	7.28	1.0728	0.070272						
1970-12-01	6.92	1.0692	0.066911	0.0761	1.0791				1.0791
1971-01-01	6.29	1.0629	0.061001						
1971-02-01	5.88	1.0588	0.057136						
1971-03-01	5.44	1.0544	0.052972						
1971-04-01	5.28	1.0528	0.051453						
1971-05-01	5.46	1.0546	0.053162						
1971-06-01	5.50	1.0550	0.053541						
1971-07-01	5.91	1.0591	0.057419						
1971-08-01	6.00	1.0600	0.058269						
1971-09-01	6.00	1.0600	0.058269						
1971-10-01	5.90	1.0590	0.057325						
1971-11-01	5.53	1.0553	0.053825						
1971-12-01	5.49	1.0549	0.053446	0.0557	1.0572				1.0572

1972-01-01	5.18	1.0518	0.050503				
1972-02-01	4.75	1.0475	0.046406				
1972-03-01	4.75	1.0475	0.046406				
1972-04-01	4.97	1.0497	0.048504				
1972-05-01	5.00	1.0500	0.04879				
1972-06-01	5.04	1.0504	0.049171				
1972-07-01	5.25	1.0525	0.051168				
1972-08-01	5.27	1.0527	0.051358				
1972-09-01	5.50	1.0550	0.053541				
1972-10-01	5.73	1.0573	0.055718				
1972-11-01	5.75	1.0575	0.055908				
1972-12-01	5.79	1.0579	0.056286	0.0511	1.0525		1.0525
1973-01-01	6.00	1.0600	0.058269				
1973-02-01	6.02	1.0602	0.058458				
1973-03-01	6.30	1.0630	0.061095				
1973-04-01	6.61	1.0661	0.064007				
1973-05-01	7.01	1.0701	0.067752				
1973-06-01	7.49	1.0749	0.072228				
1973-07-01	8.30	1.0830	0.079735				
1973-08-01	9.23	1.0923	0.088286				
1973-09-01	9.86	1.0986	0.094037				
1973-10-01	9.94	1.0994	0.094765				
1973-11-01	9.75	1.0975	0.093035				
1973-12-01	9.75	1.0975	0.093035	0.0771	1.0801		1.0801
1974-01-01	9.73	1.0973	0.092853				
1974-02-01	9.21	1.0921	0.088102				
1974-03-01	8.85	1.0885	0.084801				
1974-04-01	10.02	1.1002	0.095492				
1974-05-01	11.25	1.1125	0.10661				
1974-06-01	11.54	1.1154	0.109213				
1974-07-01	11.97	1.1197	0.113061				
1974-08-01	12.00	1.1200	0.113329				
1974-09-01	12.00	1.1200	0.113329				
1974-10-01	11.68	1.1168	0.110467				
1974-11-01	10.83	1.1083	0.102827				
1974-12-01	10.50	1.1050	0.099845	0.1025	1.1079		1.1079
1975-01-01	10.05	1.1005	0.095765				
1975-02-01	8.96	1.0896	0.085811				
1975-03-01	7.93	1.0793	0.076313				
1975-04-01	7.50	1.0750	0.072321				
1975-05-01	7.40	1.0740	0.07139				
1975-06-01	7.07	1.0707	0.068313				
1975-07-01	7.15	1.0715	0.06906				
1975-08-01	7.66	1.0766	0.073808				
1975-09-01	7.88	1.0788	0.075849				
1975-10-01	7.96	1.0796	0.076591				
1975-11-01	7.53	1.0753	0.0726				
1975-12-01	7.26	1.0726	0.070086	0.0757	1.0786		1.0786
1976-01-01	7.00	1.0700	0.067659				
1976-02-01	6.75	1.0675	0.065319				
1976-03-01	6.75	1.0675	0.065319				
1976-04-01	6.75	1.0675	0.065319				
1976-05-01	6.75	1.0675	0.065319				
1976-06-01	7.20	1.0720	0.069526				
1976-07-01	7.25	1.0725	0.069992				
1976-08-01	7.01	1.0701	0.067752				
1976-09-01	7.00	1.0700	0.067659				
1976-10-01	6.77	1.0677	0.065507				
1976-11-01	6.50	1.0650	0.062975				
1976-12-01	6.35	1.0635	0.061565	0.0662	1.0684		1.0684
1977-01-01	6.25	1.0625	0.060625				
1977-02-01	6.25	1.0625	0.060625				
1977-03-01	6.25	1.0625	0.060625				
1977-04-01	6.25	1.0625	0.060625				
1977-05-01	6.41	1.0641	0.062129				
1977-06-01	6.75	1.0675	0.065319				
1977-07-01	6.75	1.0675	0.065319				
1977-08-01	6.83	1.0683	0.066069				

1977-09-01	7.13	1.0713	0.068873				
1977-10-01	7.52	1.0752	0.072507				
1977-11-01	7.75	1.0775	0.074644				
1977-12-01	7.75	1.0775	0.074644	0.0660	1.0682		1.0682
1978-01-01	7.93	1.0793	0.076313				
1978-02-01	8.00	1.0800	0.076961				
1978-03-01	8.00	1.0800	0.076961				
1978-04-01	8.00	1.0800	0.076961				
1978-05-01	8.27	1.0827	0.079458				
1978-06-01	8.63	1.0863	0.082777				
1978-07-01	9.00	1.0900	0.086178				
1978-08-01	9.01	1.0901	0.086269				
1978-09-01	9.41	1.0941	0.089932				
1978-10-01	9.94	1.0994	0.094765				
1978-11-01	10.94	1.1094	0.103819				
1978-12-01	11.55	1.1155	0.109303	0.0866	1.0905		1.0905
1979-01-01	11.75	1.1175	0.111094				
1979-02-01	11.75	1.1175	0.111094				
1979-03-01	11.75	1.1175	0.111094				
1979-04-01	11.75	1.1175	0.111094				
1979-05-01	11.75	1.1175	0.111094				
1979-06-01	11.65	1.1165	0.110199				
1979-07-01	11.54	1.1154	0.109213				
1979-08-01	11.91	1.1191	0.112525				
1979-09-01	12.90	1.1290	0.121332				
1979-10-01	14.39	1.1439	0.134443				
1979-11-01	15.55	1.1555	0.144533				
1979-12-01	15.30	1.1530	0.142367	0.1192	1.1266		1.1266
1980-01-01	15.25	1.1525	0.141933				
1980-02-01	15.63	1.1563	0.145225				
1980-03-01	18.31	1.1831	0.168138				
1980-04-01	19.77	1.1977	0.180403				
1980-05-01	16.57	1.1657	0.153322				
1980-06-01	12.63	1.1263	0.118938				
1980-07-01	11.48	1.1148	0.108675				
1980-08-01	11.12	1.1112	0.105441				
1980-09-01	12.23	1.1223	0.11538				
1980-10-01	13.79	1.1379	0.129184				
1980-11-01	16.06	1.1606	0.148937				
1980-12-01	20.35	1.2035	0.185234	0.1417	1.1523		1.1523
1981-01-01	20.16	1.2016	0.183654				
1981-02-01	19.43	1.1943	0.17756				
1981-03-01	18.05	1.1805	0.165938				
1981-04-01	17.15	1.1715	0.158285				
1981-05-01	19.61	1.1961	0.179066				
1981-06-01	20.03	1.2003	0.182572				
1981-07-01	20.39	1.2039	0.185566				
1981-08-01	20.50	1.2050	0.18648				
1981-09-01	20.08	1.2008	0.182988				
1981-10-01	18.45	1.1845	0.169321				
1981-11-01	16.84	1.1684	0.155635				
1981-12-01	15.75	1.1575	0.146263	0.1728	1.1886		1.1886
1982-01-01	15.75	1.1575	0.146263				
1982-02-01	16.56	1.1656	0.153236				
1982-03-01	16.50	1.1650	0.152721				
1982-04-01	16.50	1.1650	0.152721				
1982-05-01	16.50	1.1650	0.152721				
1982-06-01	16.50	1.1650	0.152721				
1982-07-01	16.26	1.1626	0.150659				
1982-08-01	14.39	1.1439	0.134443				
1982-09-01	13.50	1.1350	0.126633				
1982-10-01	12.52	1.1252	0.117961				
1982-11-01	11.85	1.1185	0.111989				
1982-12-01	11.50	1.1150	0.108854	0.1384	1.1484		1.1484
1983-01-01	11.16	1.1116	0.1058				
1983-02-01	10.98	1.1098	0.10418				
1983-03-01	10.50	1.1050	0.099845				
1983-04-01	10.50	1.1050	0.099845				

1983-05-01	10.50	1.1050	0.099845				
1983-06-01	10.50	1.1050	0.099845				
1983-07-01	10.50	1.1050	0.099845				
1983-08-01	10.89	1.1089	0.103369				
1983-09-01	11.00	1.1100	0.10436				
1983-10-01	11.00	1.1100	0.10436				
1983-11-01	11.00	1.1100	0.10436				
1983-12-01	11.00	1.1100	0.10436	0.1025	1.1079		1.1079
1984-01-01	11.00	1.1100	0.10436				
1984-02-01	11.00	1.1100	0.10436				
1984-03-01	11.21	1.1121	0.10625				
1984-04-01	11.93	1.1193	0.112703				
1984-05-01	12.39	1.1239	0.116805				
1984-06-01	12.60	1.1260	0.118672				
1984-07-01	13.00	1.1300	0.122218				
1984-08-01	13.00	1.1300	0.122218				
1984-09-01	12.97	1.1297	0.121952				
1984-10-01	12.58	1.1258	0.118494				
1984-11-01	11.77	1.1177	0.111273				
1984-12-01	11.06	1.1106	0.1049	0.1137	1.1204		1.1204
1985-01-01	10.61	1.1061	0.10084				
1985-02-01	10.50	1.1050	0.099845				
1985-03-01	10.50	1.1050	0.099845				
1985-04-01	10.50	1.1050	0.099845				
1985-05-01	10.31	1.1031	0.098124				
1985-06-01	9.78	1.0978	0.093308				
1985-07-01	9.50	1.0950	0.090754				
1985-08-01	9.50	1.0950	0.090754				
1985-09-01	9.50	1.0950	0.090754				
1985-10-01	9.50	1.0950	0.090754				
1985-11-01	9.50	1.0950	0.090754				
1985-12-01	9.50	1.0950	0.090754	0.0947	1.0993		1.0993
1986-01-01	9.50	1.0950	0.090754				
1986-02-01	9.50	1.0950	0.090754				
1986-03-01	9.10	1.0910	0.087095				
1986-04-01	8.83	1.0883	0.084617				
1986-05-01	8.50	1.0850	0.08158				
1986-06-01	8.50	1.0850	0.08158				
1986-07-01	8.16	1.0816	0.078441				
1986-08-01	7.90	1.0790	0.076035				
1986-09-01	7.50	1.0750	0.072321				
1986-10-01	7.50	1.0750	0.072321				
1986-11-01	7.50	1.0750	0.072321				
1986-12-01	7.50	1.0750	0.072321	0.0800	1.0833		1.0833
1987-01-01	7.50	1.0750	0.072321				
1987-02-01	7.50	1.0750	0.072321				
1987-03-01	7.50	1.0750	0.072321				
1987-04-01	7.75	1.0775	0.074644				
1987-05-01	8.14	1.0814	0.078256				
1987-06-01	8.25	1.0825	0.079273				
1987-07-01	8.25	1.0825	0.079273				
1987-08-01	8.25	1.0825	0.079273				
1987-09-01	8.70	1.0870	0.083422				
1987-10-01	9.07	1.0907	0.08682				
1987-11-01	8.78	1.0878	0.084157				
1987-12-01	8.75	1.0875	0.083881	0.0788	1.0820		1.0820
1988-01-01	8.75	1.0875	0.083881				
1988-02-01	8.51	1.0851	0.081672				
1988-03-01	8.50	1.0850	0.08158				
1988-04-01	8.50	1.0850	0.08158				
1988-05-01	8.84	1.0884	0.084709				
1988-06-01	9.00	1.0900	0.086178				
1988-07-01	9.29	1.0929	0.088835				
1988-08-01	9.84	1.0984	0.093855				
1988-09-01	10.00	1.1000	0.09531				
1988-10-01	10.00	1.1000	0.09531				
1988-11-01	10.05	1.1005	0.095765				
1988-12-01	10.50	1.1050	0.099845	0.0890	1.0931		1.0931

1989-01-01	10.50	1.1050	0.099845				
1989-02-01	10.93	1.1093	0.103729				
1989-03-01	11.50	1.1150	0.108854				
1989-04-01	11.50	1.1150	0.108854				
1989-05-01	11.50	1.1150	0.108854				
1989-06-01	11.07	1.1107	0.10499				
1989-07-01	10.98	1.1098	0.10418				
1989-08-01	10.50	1.1050	0.099845				
1989-09-01	10.50	1.1050	0.099845				
1989-10-01	10.50	1.1050	0.099845				
1989-11-01	10.50	1.1050	0.099845				
1989-12-01	10.50	1.1050	0.099845	0.1032	1.1087		1.1087
1990-01-01	10.11	1.1011	0.09631				
1990-02-01	10.00	1.1000	0.09531				
1990-03-01	10.00	1.1000	0.09531				
1990-04-01	10.00	1.1000	0.09531				
1990-05-01	10.00	1.1000	0.09531				
1990-06-01	10.00	1.1000	0.09531				
1990-07-01	10.00	1.1000	0.09531				
1990-08-01	10.00	1.1000	0.09531				
1990-09-01	10.00	1.1000	0.09531				
1990-10-01	10.00	1.1000	0.09531				
1990-11-01	10.00	1.1000	0.09531				
1990-12-01	10.00	1.1000	0.09531	0.0954	1.1001		1.1001
1991-01-01	9.52	1.0952	0.090937				
1991-02-01	9.05	1.0905	0.086636				
1991-03-01	9.00	1.0900	0.086178				
1991-04-01	9.00	1.0900	0.086178				
1991-05-01	8.50	1.0850	0.08158				
1991-06-01	8.50	1.0850	0.08158				
1991-07-01	8.50	1.0850	0.08158				
1991-08-01	8.50	1.0850	0.08158				
1991-09-01	8.20	1.0820	0.078811				
1991-10-01	8.00	1.0800	0.076961				
1991-11-01	7.58	1.0758	0.073065				
1991-12-01	7.21	1.0721	0.069619	0.0812	1.0846		1.0846
1992-01-01	6.50	1.0650	0.062975				
1992-02-01	6.50	1.0650	0.062975				
1992-03-01	6.50	1.0650	0.062975				
1992-04-01	6.50	1.0650	0.062975				
1992-05-01	6.50	1.0650	0.062975				
1992-06-01	6.50	1.0650	0.062975				
1992-07-01	6.02	1.0602	0.058458				
1992-08-01	6.00	1.0600	0.058269				
1992-09-01	6.00	1.0600	0.058269				
1992-10-01	6.00	1.0600	0.058269				
1992-11-01	6.00	1.0600	0.058269				
1992-12-01	6.00	1.0600	0.058269	0.0606	1.0625		1.0625
1993-01-01	6.00	1.0600	0.058269				
1993-02-01	6.00	1.0600	0.058269				
1993-03-01	6.00	1.0600	0.058269				
1993-04-01	6.00	1.0600	0.058269				
1993-05-01	6.00	1.0600	0.058269				
1993-06-01	6.00	1.0600	0.058269				
1993-07-01	6.00	1.0600	0.058269				
1993-08-01	6.00	1.0600	0.058269				
1993-09-01	6.00	1.0600	0.058269				
1993-10-01	6.00	1.0600	0.058269				
1993-11-01	6.00	1.0600	0.058269				
1993-12-01	6.00	1.0600	0.058269	0.0583	1.0600		1.0600
1994-01-01	6.00	1.0600	0.058269				
1994-02-01	6.00	1.0600	0.058269				
1994-03-01	6.06	1.0606	0.058835				
1994-04-01	6.45	1.0645	0.062505				
1994-05-01	6.99	1.0699	0.067565				
1994-06-01	7.25	1.0725	0.069992				
1994-07-01	7.25	1.0725	0.069992				
1994-08-01	7.51	1.0751	0.072414				

1994-09-01	7.75	1.0775	0.074644				
1994-10-01	7.75	1.0775	0.074644				
1994-11-01	8.15	1.0815	0.078349				
1994-12-01	8.50	1.0850	0.08158	0.0689	1.0714		1.0714
1995-01-01	8.50	1.0850	0.08158				
1995-02-01	9.00	1.0900	0.086178				
1995-03-01	9.00	1.0900	0.086178				
1995-04-01	9.00	1.0900	0.086178				
1995-05-01	9.00	1.0900	0.086178				
1995-06-01	9.00	1.0900	0.086178				
1995-07-01	8.80	1.0880	0.084341				
1995-08-01	8.75	1.0875	0.083881				
1995-09-01	8.75	1.0875	0.083881				
1995-10-01	8.75	1.0875	0.083881				
1995-11-01	8.75	1.0875	0.083881				
1995-12-01	8.65	1.0865	0.082962	0.0846	1.0883		1.0883
1996-01-01	8.50	1.0850	0.08158				
1996-02-01	8.25	1.0825	0.079273				
1996-03-01	8.25	1.0825	0.079273				
1996-04-01	8.25	1.0825	0.079273				
1996-05-01	8.25	1.0825	0.079273				
1996-06-01	8.25	1.0825	0.079273				
1996-07-01	8.25	1.0825	0.079273				
1996-08-01	8.25	1.0825	0.079273				
1996-09-01	8.25	1.0825	0.079273				
1996-10-01	8.25	1.0825	0.079273				
1996-11-01	8.25	1.0825	0.079273				
1996-12-01	8.25	1.0825	0.079273	0.0795	1.0827		1.0827
1997-01-01	8.25	1.0825	0.079273				
1997-02-01	8.25	1.0825	0.079273				
1997-03-01	8.30	1.0830	0.079735				
1997-04-01	8.50	1.0850	0.08158				
1997-05-01	8.50	1.0850	0.08158				
1997-06-01	8.50	1.0850	0.08158				
1997-07-01	8.50	1.0850	0.08158				
1997-08-01	8.50	1.0850	0.08158				
1997-09-01	8.50	1.0850	0.08158				
1997-10-01	8.50	1.0850	0.08158				
1997-11-01	8.50	1.0850	0.08158				
1997-12-01	8.50	1.0850	0.08158	0.0810	1.0844		1.0844
1998-01-01	8.50	1.0850	0.08158				
1998-02-01	8.50	1.0850	0.08158				
1998-03-01	8.50	1.0850	0.08158				
1998-04-01	8.50	1.0850	0.08158				
1998-05-01	8.50	1.0850	0.08158				
1998-06-01	8.50	1.0850	0.08158				
1998-07-01	8.50	1.0850	0.08158				
1998-08-01	8.50	1.0850	0.08158				
1998-09-01	8.49	1.0849	0.081488				
1998-10-01	8.12	1.0812	0.078072				
1998-11-01	7.89	1.0789	0.075942				
1998-12-01	7.75	1.0775	0.074644	0.0802	1.0835		1.0835
1999-01-01	7.75	1.0775	0.074644				
1999-02-01	7.75	1.0775	0.074644				
1999-03-01	7.75	1.0775	0.074644				
1999-04-01	7.75	1.0775	0.074644				
1999-05-01	7.75	1.0775	0.074644				
1999-06-01	7.75	1.0775	0.074644				
1999-07-01	8.00	1.0800	0.076961				
1999-08-01	8.06	1.0806	0.077516				
1999-09-01	8.25	1.0825	0.079273				
1999-10-01	8.25	1.0825	0.079273				
1999-11-01	8.37	1.0837	0.080381				
1999-12-01	8.50	1.0850	0.08158	0.0769	1.0799		1.0799
2000-01-01	8.50	1.0850	0.08158				
2000-02-01	8.73	1.0873	0.083698				
2000-03-01	8.83	1.0883	0.084617				
2000-04-01	9.00	1.0900	0.086178				

2000-05-01	9.24	1.0924	0.088377					
2000-06-01	9.50	1.0950	0.090754					
2000-07-01	9.50	1.0950	0.090754					
2000-08-01	9.50	1.0950	0.090754					
2000-09-01	9.50	1.0950	0.090754					
2000-10-01	9.50	1.0950	0.090754					
2000-11-01	9.50	1.0950	0.090754					
2000-12-01	9.50	1.0950	0.090754	0.0883	1.0923			1.0923
2001-01-01	9.05	1.0905	0.086636					
2001-02-01	8.50	1.0850	0.08158					
2001-03-01	8.32	1.0832	0.07992					
2001-04-01	7.80	1.0780	0.075107					
2001-05-01	7.24	1.0724	0.069899					
2001-06-01	6.98	1.0698	0.067472					
2001-07-01	6.75	1.0675	0.065319					
2001-08-01	6.67	1.0667	0.06457					
2001-09-01	6.28	1.0628	0.060907					
2001-10-01	5.53	1.0553	0.053825					
2001-11-01	5.10	1.0510	0.049742					
2001-12-01	4.84	1.0484	0.047265	0.0669	1.0691			1.0691
2002-01-01	4.75	1.0475	0.046406					
2002-02-01	4.75	1.0475	0.046406					
2002-03-01	4.75	1.0475	0.046406					
2002-04-01	4.75	1.0475	0.046406					
2002-05-01	4.75	1.0475	0.046406					
2002-06-01	4.75	1.0475	0.046406					

, Instrument, "Bank prime loan"
 , Maturity, "Not applicable"
 , Frequency, "Annual"
 , Description, "Average majority prime rate charged by banks on short-term loans to business, quarterly"
 , Note, "Weekly figures are averages of 7 calendar days ending on Wednesday of the current week."
 , Note, "Annualized using a 360-day year or bank interest."
 , Note, "Rate posted by a majority of top 25 (by assets in domestic offices) insured U.S.-chartered banks."

DATE , PRIMENA

.956, 3.77
 .957, 4.20
 .958, 3.83
 .959, 4.48
 .960, 4.82
 .961, 4.50
 .962, 4.50
 .963, 4.50
 .964, 4.50
 .965, 4.54
 .966, 5.63
 .967, 5.63
 .968, 6.31
 .969, 7.96
 .970, 7.91
 .971, 5.73
 .972, 5.25
 .973, 8.03
 .974, 10.81
 .975, 7.86
 .976, 6.84
 .977, 6.83
 .978, 9.06
 .979, 12.67
 .980, 15.26
 .981, 18.87
 .982, 14.85
 .983, 10.79
 .984, 12.04
 .985, 9.93
 .986, 8.33
 .987, 8.21
 .988, 9.32
 .989, 10.87
 .990, 10.01
 .991, 8.46
 .992, 6.25
 .993, 6.00
 .994, 7.15
 .995, 8.83
 .996, 8.27
 .997, 8.44
 .998, 8.35
 .999, 8.00
 :000, 9.23
 :001, 6.91
 :002, 4.67
 :003, 4.12
 :004, 4.34
 :005, 6.19
 :006, 7.96

,Instrument,"U.S. government securities/Treasury constant maturities/Nominal"

,Maturity,"10-year"

,Frequency,"Annual"

,Description,"Market yield on U.S. Treasury securities at 10-year constant maturity, quoted or

,Note,"Yields on actively traded non-inflation-indexed issues adjusted to constant maturities.

DATE , TCMNOMY10

.962,	3.95
.963,	4.00
.964,	4.19
.965,	4.28
.966,	4.93
.967,	5.07
.968,	5.64
.969,	6.67
.970,	7.35
.971,	6.16
.972,	6.21
.973,	6.85
.974,	7.56
.975,	7.99
.976,	7.61
.977,	7.42
.978,	8.41
.979,	9.43
.980,	11.43
.981,	13.92
.982,	13.01
.983,	11.10
.984,	12.46
.985,	10.62
.986,	7.67
.987,	8.39
.988,	8.85
.989,	8.49
.990,	8.55
.991,	7.86
.992,	7.01
.993,	5.87
.994,	7.09
.995,	6.57
.996,	6.44
.997,	6.35
.998,	5.26
.999,	5.65
2000,	6.03
2001,	5.02
2002,	4.61
2003,	4.01
2004,	4.27
2005,	4.29
2006,	4.80



Group of 16.	<u>Wage Rate</u>		<u>Hours</u>		<u>10 Yr</u>	<u>10 Yr</u>	<u>Prime</u>	<u>Prime</u>
	<u>\$2.6968</u>	<u>\$2.7868</u>	<u>Paid 63-64</u>	<u>% Std Yr</u>					Summary	Adjusted	Summary	Adjusted
Bilinsky	\$4,900.00	\$5,400.00	1,877.34	90.26%	\$ 34,196.37	\$ 30,864.49	\$ 52,860.96	\$ 47,710.50
Crtalic		\$4,905.13	1,760.13	84.62%	\$ 42,583.55	\$ 36,034.90	\$ 66,471.45	\$ 56,249.22
Foecking	\$3,567.41	\$5,229.54	1,599.69	76.91%	\$ 135,550.94	\$ 104,249.43	\$ 201,865.97	\$ 155,250.95
Gallagher	\$4,675.80	\$4,800.00	1,728.12	83.08%	\$ 54,933.73	\$ 45,640.40	\$ 86,630.76	\$ 71,975.13
Janke	\$4,900.00	\$4,800.00	1,769.69	85.08%	\$ 66,476.28	\$ 56,558.76	\$ 103,436.74	\$ 88,005.12
Jarabeck	\$4,900.00	\$5,259.64	1,852.15	89.05%	\$ 26,394.35	\$ 23,503.08	\$ 39,946.25	\$ 35,570.49
Kochenderf	\$4,900.00	\$5,386.86	1,874.98	90.14%	\$ 100,288.91	\$ 90,403.69	\$ 156,149.84	\$ 140,758.55
McLaughlin	\$4,900.00	\$5,115.10	1,826.22	87.80%	\$ 528,205.84	\$ 463,759.98	\$ 828,073.26	\$ 727,040.89
McNeeley	\$4,900.00	\$5,225.50	1,846.03	88.75%	\$ 70,404.93	\$ 62,485.35	\$ 108,242.65	\$ 96,066.86
Novotny	\$4,900.00	\$5,336.08	1,865.87	89.71%	\$ 32,865.68	\$ 29,482.24	\$ 51,295.29	\$ 46,014.56
Opalk	\$4,791.88	\$4,997.84	1,785.14	85.82%	\$ 146,827.43	\$ 126,013.01	\$ 229,069.66	\$ 196,596.48
Pentz	\$4,884.91	\$5,304.02	1,857.32	89.29%	\$ 77,198.97	\$ 68,934.19	\$ 119,155.10	\$ 106,398.57
Schreiner	\$4,827.49	\$4,878.42	1,770.31	85.11%	\$ 327,164.17	\$ 278,453.38	\$ 512,767.78	\$ 436,422.85
Scuba	\$4,900.00	\$5,308.15	1,860.86	89.46%	\$ 196,905.65	\$ 176,160.30	\$ 306,818.59	\$ 274,493.16
Sophner	\$4,866.76	\$5,381.48	1,867.85	89.80%	\$ 273,545.82	\$ 245,645.67	\$ 427,104.67	\$ 383,542.38
Sowinski	\$4,900.00	\$5,345.71	1,867.60	89.79%	\$ 134,250.73	\$ 120,541.46	\$ 208,634.05	\$ 187,328.98
			1,813.08	87.17%				

Cl. Ex. 43

Master Summary Sheet Revised (Interest Thru 12/31/2007)

1

CL-EX-44

	Damages	10 Year Treasures	Bank Prime Loan
I. Group of 6.			
Bundy	10,793	\$ 187,955	\$ 294,615
Feldsher	10,759	\$ 185,306	\$ 289,849
Franz	10,473	\$ 183,384	\$ 287,750
O'Neil	10,406	\$ 181,226	\$ 284,068
Watjen	10,950	\$ 190,692	\$ 298,907
Wuliger	10,435	\$ 185,721	\$ 292,306
II. Group of 10.			
Acree	10,556	\$ 198,569	\$ 314,810
Benko	123,110	\$ 1,636,422	\$ 2,526,009
Day	48,267	\$ 746,341	\$ 1,168,628
Doran	12,210	\$ 216,987	\$ 341,696
Gastony	16,632	\$ 264,303	\$ 413,721
Gentile	7,562	\$ 138,687	\$ 219,239
Norris	50,156	\$ 783,138	\$ 1,223,886
Steimle	3,540	\$ 64,191	\$ 101,332
Tomczak	52,667	\$ 794,035	\$ 1,240,102
Uher	23,560	\$ 418,077	\$ 658,061
III. Group of 16.			
Bilinsky	2,293	\$ 34,196	\$ 52,861
Crtalic	2,959	\$ 42,584	\$ 66,471
Foecking	13,767	\$ 135,551	\$ 201,866
Gallagher	3,053	\$ 54,934	\$ 86,631
Janke	4,146	\$ 66,476	\$ 103,437
Jarabeck	3,557	\$ 26,394	\$ 39,946
Kochenderf	6,784	\$ 100,289	\$ 156,150
McLaughlin	34,433	\$ 528,206	\$ 828,073
McNeeley	5,146	\$ 70,405	\$ 108,243
Novotny	2,195	\$ 32,866	\$ 51,295
Opalk	9,469	\$ 146,827	\$ 229,070
Pentz	5,397	\$ 77,199	\$ 119,155

Schreiner	20,815	\$	327,164	\$	512,768
Scuba	12,892	\$	196,906	\$	306,819
Sophner	16,738	\$	273,546	\$	427,105
Sowinski	9,100	\$	134,251	\$	208,634

	Value
I. Loss of Separation Allowance	
A. Separation Allowance	\$ 10,793
Back Interest through 12/31/2007 (Interest Based on 10 Year Treasuries)	\$ <u>177,162</u>
Total	\$ 187,955
B. Separation Allowance	
Separation Allowance	\$ 10,793
Back Interest through 12/31/2007 (Interest Based on Bank Prime Loan Rates)	\$ <u>283,823</u>
Total	\$ 294,615

C1. Ex. 45



Docuents from the
Railroad

Philadelphia, Penna.

- not reliable

District Claim Agent

Dear Sir:

This will acknowledge your request for statement of earnings for the following:

Employe Name G. JANKE
Ident. Number CVT 320064
PC 658835
S.S.N. Number 713-12-0854
Payroll Group _____

<u>1968</u>	<u>NONE</u>	<u>19</u>
<u>1969</u>	<u>\$ 530.62</u>	<u>19</u>
<u>1970</u>	<u>NONE</u>	<u>19</u>
<u>1971</u>	<u>NONE</u>	<u>19</u>
<u>1972</u>		<u>19</u>

Assistant Controller -
Payrolls & Employee Benefits

T SEPT 1971

CA 46

PCC00944



EX: 11547

NYCS
RR-101

#63144X
 NAME TANNENBAUM SAM Middle 6912 S.S. No. 294-10-5581
 Sex _____ Race _____ Citizenship _____ Height _____ Weight _____
 Date of birth April 20 1921 Where born New York, N.Y. State or Country _____
 Check Highest Grade Completed: Grammar School 1 2 3 4 5 6 7 8 High School 1 2 3 4
 High School _____ Name _____ City _____ State _____ Year of Graduation _____
 College _____ Name _____ City _____ State _____ College Graduate? _____ Yes or No
 Attended College from _____ to _____ Year Year Course of Study _____ Degree _____
 Night School Attended (Show Name and Address of School) _____
 _____ Attended from _____ to _____ Year Year Course of Study _____
 Other Training _____

DATE EMPLOYED OR CHANGED	OCCUPATION	LOCATION	DIV.	DEPT.	RATE OF PAY	DATE OFF DUTY OR LEFT SERVICE	REVIEWED PENSION BUREAU	CAUSE AND REMARKS (DIS.; RES.; L. A.; S. D.; R. F.)
10 26 45	Switchtender & Y. rd Brakeman							
	<i>Yd. Comdr</i>	<i>OSMT</i>	<i>Lake</i>	<i>Town's</i>	<i>26.53</i>			
	<i>BRMN</i>				<i>24.64</i>			
8 12 66	"	"	"	"	<i>25.87</i>			
8 12 66	" <i>Comdr</i>	"	"	"	<i>27.88</i>			
2 25 68	" <i>BRMN</i>	"	"	"	<i>25.87</i>	<i>2 25 68</i>		<i>Excluded from</i>
7 2 69	<i>Closed Out 7c failed to answer recall from Burlington when recalled 5/16/69</i>							

E-408

THE CLEVELAND UNION TERMINALS COMPANY

77'S EX-48

9-1

December 15, 1969 2-3

Mr. R. Headlow
15518 Clifton Blvd.
Lakewood, Ohio 44107

Dear Sirs:

Because of extenuating circumstances and by mutual agreement with your Gen. Chairman, Mr. J. A. Lyons, the Carrier, without prejudice to either party, is agreeable to restoring your seniority provided you accept this return-to-work notice for work presently available in the Cleveland Union Terminal.

Provisions for return to service physical examination must be arranged before reporting to the Gen. Yardmaster at the C.U.T. If for any reason a date for examination for return to service cannot be acquired, contact the Gen. Yardmaster and appointment will be arranged.

In the event you are subsequently furloughed from the C.U.T. list, you will be compelled to exercise your prior right and/or Penn Central seniority according to the Agreements.

You have 15 days from the date you are notified according to your Agreement Appendix "I" to report for service.

Very truly yours,

S. J. Cala
Gen. Yardmaster

Return Attached

cc: Mr. J.A. Lyons



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

Exhibit L

TT's EX-49

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MICHAEL J. KNOPIK,)
)
Plaintiff,)
)
v.) C69-722
)
PENN-CENTRAL COMPANY,) Judge Lambros
)
UNITED TRANSPORTATION UNION,)
)
BROTHERHOOD OF RAILROAD TRAINMEN,)
)
Defendants.)
)

TRANSCRIPT OF VARIOUS WITNESSES IN THE
ABOVE-ENTITLED CASE BEFORE THE HONORABLE
THOMAS D. LAMBROS, JUDGE OF SAID COURT,
THE TRIAL COMMENCING JULY 7, 1976.

APPEARANCES:

For the Plaintiff: Michael R. Kube, Esq.
Peter H. Weinberger, Esq.
For the Defendant John F. Dolan, Esq.
Penn-Central:
For the Defendants Norton N. Newborn, Esq.
United Transportation Union
and the Brotherhood of
Railroad Trainmen:

1 Q And, sir, that was sent to you on what stationery?

2 A On their heading, the New York Central System heading.

3 MR. KUBE: May I briefly pass this to the
4 members of the jury at this time?

5 THE COURT: Let me see it.

6 (Exhibit handed to the Court.)

7 (After an interval.)

8 It is a list of persons furloughed as of a par-
9 ticular date, and Mr. Norris' name is on that list.

10 It is not necessary to pass it. The jury will
11 have an opportunity to review it later.

12 BY MR. KUBE:

13 Q After the furlough, Mr. Norris, in February of 1968,
14 February 25, 1968, when were you next recalled, if at all,
15 to service by the New York Central Railroad?

16 A I think it was in May, 1969.

17 Q And when you were recalled in May of 1969, sir, did
18 you receive a recall notice identical to that which is Joint
19 Exhibit No. 38, which is a recall notice to a Mr. R. Beedlowe?

20 Would you take a minute and look at that. Did you
21 receive something like that?

22 A Yes, I did.

23 Q Now, did you, pursuant to the recall notice, attempt
24 to work in this Cleveland freight yard territory?

25 A Well, I answered that notice, and they told me that

1 I would have to take 1964 seniority.

2 Q And did you then go to work with a 1964 seniority date?
3 This would be in May of 1969?

4 A 1969.

5 Q Approximately.

6 A Well, with the seniority I had and the age that I
7 was attaining then, I was about 58 years old. I wasn't
8 as spry as I used to be, and I said I would not take 1964
9 seniority and give up 36 years seniority, so I refused it.

10 Q Now, the work at the freight yard, I think it was
11 indicated that the terminal jobs, the CUT jobs on the CUT
12 roster, that they were passenger jobs?

13 A That is right, passenger jobs, passenger coaches,
14 diners, sleepers, and passenger engines.

15 Q Now, if you were doing -- obviously the work in the
16 freight yards still involved brakemen and conductors?

17 A Right.

18 Q And if you were doing brakeman's work, for instance,
19 in the freight yards as to freight cars, would it be any
20 different than doing brakeman's work off the terminal roster
21 concerning passenger cars?

22 A Yes, very much so.

23 Q Why, and in what way?

24 A Well, the way -- in the way that they do the work.

1 I don't understand, if you are working, how was it
2 that you wouldn't be making what your guarantee wage was?

3 A Well, they determined it over previous months accumu-
4 lation.

5 I think that is the way they accumulate it. They
6 came to a figure that the type of work you were doing and
7 through the hours that you had worked over previous months,
8 they would guarantee that job, that wage as a guarantee.

9 Q Let's take an approximation, that whatever you had
10 done, it averaged out to \$1,000 a month.

11 A Okay.

12 Q Now, how was it if you were working at a later period
13 of time, how was it that you would not be making \$1,000
14 a month?

15 A Well, the job probably wouldn't be making the overtime,
16 or I probably was on there as a junior member of the crew
17 and making less money, and I wouldn't obtain my guaranteed
18 wage.

19 Q Okay.

20 Assume one of those circumstances exists for the pur-
21 poses of our discussion, and you made \$800.

22 A Fine.

23 Q How would this guarantee apply, to your understanding?

24 A All right.

25 I take my guaranteed wage and write into the timekeeper

1 at a job at Rockport, and a job opened where I could go
2 in with my 1945 seniority, which I did.

3 I went in and took one of those jobs because it was
4 near home where I lived.

5 Q And then did you continue to work that job until your
6 retirement?

7 A I did.

8 Q Now, sir, are you familiar in any respects with the
9 guaranteed wages which was set up as part of the merger
10 protection benefit of the merger between the New York Central
11 and the Pennsylvania Railroad?

12 Are you familiar with it?

13 A Yes.

14 There was talk going around and around in 1968 and
15 1969 that we had a guaranteed wage, that the union had gotten
16 that for us.

17 Q And what did that mean to you?

18 What was your understanding about it?

19 A The way I understood it, that if you couldn't hold
20 a job, or the job didn't make what you were guaranteed in
21 a month's time, that you were entitled to the difference
22 from what you made and what your guaranteed wages was, and
23 I put that to a test in May.

24 Q Okay.

25 May I stop you a minute before we get to that.

1 Q That was a teletype signal, DK, and that is what you
2 called it, a DK yard?

3 A Yes, teletype.

4 Q And that was in 1971?

5 A 1971.

6 I worked there on that job. They created a job there
7 and let us have 2 percent of the work in the freight yard,
8 and that got me, that brought me back to a regular job,
9 and I could work there regularly then.

10 Q Okay.

11 How did you obtain that job? -- off of what seniority
12 roster?

13 A Off of the CUT roster, and --

14 Q -- and by exercising what seniority rights? -- what
15 date?

16 A April 27, 1945.

17 Q But this was not until 1971?

18 A 1971, and I worked that.

19 Q Okay.

20 How long did you continue to work that job?

21 A I think I was on it about a year.

22 Q Okay.

23 Then what happened?

24 A Well, then, we had older men that was on the same
25 roster that did retire and quit, and they had been working

1 Q Wait a minute -- on the February 21, 1968 letter.

2 A -- "You have the rights in the Cleveland freight yard
3 territory by virtue of agreement effective February 16,
4 1965, and may stand for employment in the freight yard terri-
5 tory."

6 Q What does the next sentence say?

7 A "You should immediately contact General Yardmaster
8 D. J. Weisbarth," which I did.

9 Q And did you bid for a job?

10 A I did.

11 Q What job did you bid?

12 A All of them -- any one that I would have stood for.

13 Q And what did you stand for?

14 A With that kind of seniority a lot of them, at least
15 20 or 30 jobs.

16 Q 20 or 30 jobs in the Cleveland freight yard territory
17 were open to you on February 21, 1968, or would in a couple
18 of days?

19 A The company should have the canceled time sheets or
20 bid sheets that we turned in.

21 Q You bid on the jobs?

22 A Yes, and they were rejected.

23 Q You say you were turned down?

24 A Yes.

25 Q And did you file a time claim for that?

1 A I didn't.

2 Maybe some of the other fellows did.

3 Q Now, under the labor agreement, if you bid for a job --
4 and let's use this as an example, 18-V, and you were turned
5 down, then you were entitled to file a grievance with time
6 slips for when the money that 18-V would have earned?
7

8 A That is right.

9 Q And this is the ordinary normal practice for adjudi-
10 cating grievances relating to wages?
11

12 A Right.

13 Q Did you file any time slips, time claims, for work
14 that was denied to you after February 25, 1968?
15

16 A Everybody turned in the time claims. That came back
17 and was denied, the claim, and they turned them over to
18 the union.
19

20 Now, what happened to them, I don't know.

21 Q All right.

22 And were they appealed?

23 A I don't know. I couldn't say whether they were appealed
24 or not.

25 Q And were you recalled to work in June of 1968?

26 A Did I work?

27 Q Were you recalled?

28 A Not that I recall.

29 Q How many times did you get a letter saying, "Please

REDIRECT EXAMINATION

1
2 BY MR. KUBE:

3 Q Mr. Norris, it is getting late, and I know you have
4 been here a long time. I just have a few questions:

5 Assuming that the merger between the New York Central
6 and the Pennsylvania Railroad was finally consummated and
7 approved in January of 1968, Mr. Norris, you were laid off
8 or furloughed approximately two months after that, were
9 you not, in February of 1968?

10 A That is right.

11 Q Now, before the merger in 1964, you worked fairly
12 regularly, did you not?

13 A Yes; that is right.

14 Q And in 1965; right?

15 A Right.

16 Q Regularly?

17 A Regularly, yes.

18 THE COURT: Where?

19 THE WITNESS: In the CUT, in the Lakefront.

20 Q Okay; off the CUT roster?

21 A Yes.

22 Q Jobs under the wires?

23 A Yes.

24 Q CUT checks?

25 A Yes.

1 Q On the Lakefront area, New York Central System checks

2 A Yes.

3 Q And the same in 1966 and 1967?

4 A That is right.

5 Q Now, in 1968, approximately two months after the con-
6 summation of the merger, you lost your job? You were fur-
7 loughed, were you not?

8 A That is right.

9 Q And then at some time after that, in May of 1969,
10 you received a recall notice to exercise a September 10th,
11 1964 seniority date?

12 A That is right.

13 Q When was this?

14 MR. KUBE: May, 1969.

15 Q That was approximately 15 months after you were fur-
16 loughed; is that correct?

17 A Yes. It was a year.

18 Q Now, Mr. Dolan referred to Joint Exhibit No. 35, which
19 is the District 4 combined Penn-Central seniority roster
20 for the Penn-Central seniority district No. 4?

21 A Yes.

22 Q Okay; and that is the roster for the entire geographical
23 area as defined by that roster which encompasses the differ-
24 ent individual prior right rosters which are enumerated
25 in the specifications?

1 In other words, it includes the Cleveland Terminal
2 and the Erie and the Toledo and the Minerva, and a lot of
3 other individual rosters?

4 A All right.

5 Q Now, on that roster that Mr. Dolan referred to, he
6 referred to a job code which, if you will accept for the
7 purposes of our very brief discussion, that was 595, and
8 that refers to the Cleveland Terminal Yard?

9 A That is right.

10 Q And that is lifted in the first column or in the third
11 column here which shows a prior right roster symbol; is
12 that correct?

13 A Yes.

14 Q And 595 means Cleveland Union Terminal?

15 A That is right.

16 Q That means that is a prior right roster?

17 A Yes.

18 Q Following that number it gives a seniority date on
19 the prior right roster, does it not, referring to, for
20 instance, the first name on the consolidated roster, and
21 that is Mr. Deets?

22 A Yes.

23 Q And his prior rights seniority roster is 4-1-18, is
24 it not?

25 A 1918.

1 Q Okay.

2 What, Mr. Norris, did you indicate your number was?

3 A Right here (indicating).

4 Q 3259?

5 A Yes.

6 Q Okay.

7 What is your prior right seniority date here?

8 A 1964, when I started in 5-29.

9 Q Let me ask you, on the Cleveland Union Terminal roster,
10 from the period 1946 until I believe the last one we have
11 in evidence here is 1967, you worked off the Cleveland Union
12 Terminal roster?

13 A Right.

14 Q Which at the time this consolidated roster was made
15 up was your prior right roster, was it not?

16 A Right.

17 Q And you worked off that roster with what seniority
18 date?

19 A 1945.

20 Q Okay.

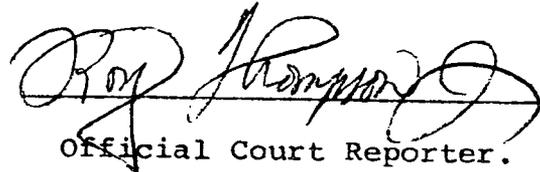
21 Now, on the consolidated roster it gives you a prior
22 right seniority date of what date?

23 A Of 1964.

24 Q What happened, Mr. Norris, to the difference of 29
25 years of seniority? Do you know?

CERTIFICATE

1
2
3
4
5 I, Roy Thompson Jr, Official Court Reporter
6 in and for the United States District Court for the
7 Northern District of Ohio, Eastern Division, do hereby
8 certify that the foregoing is a true and correct transcript
9 of the proceedings herein.
10
11
12

13 
14 Official Court Reporter.
15
16
17
18
19
20
21
22
23

TT'S EX. 50

COUNTY OF CUYAHOGA)
STATE OF OHIO)

SS: A F F I D A V I T

I, WALTER J. POTOSKY, being first duly sworn, do hereby depose and state as follows:

1. My date of birth is July 12, 1925.
2. My Social Security number is 274-20-1694.
3. My present address is 5965 Edgehill Drive, Parma Heights, Ohio 44130.
4. As a railroad employee, I have always worked as a switchtender, brakeman, conductor, or yardmaster.
5. I began working for the New York Central Railroad ("NYC") on June 22, 1946.
6. Prior to February 16, 1965, I was not asked by NYC or my union, the Brotherhood of Railroad Trainmen ("BRT")/United Transportation Union ("UTU"), whether I desired to work in the Collinwood freight yard.
7. I was not given the opportunity to vote on the 1965 "Top and Bottom Agreement" prior to its adoption.
8. I was not made aware of the existence of the 1965 Agreement until after its adoption.
9. On or around February 21, 1968, I received a letter from A.B. Cravens, Transportation Superintendent of the New York Central Railroad, stating that I would be furloughed, effective February 25, 1968, and

directing me to report for work in the freight yards, in accordance with the 1965 Agreement.

10. Under the 1965 Agreement, I would have been required, unfairly, to forfeit some eighteen (18) years of my seniority, and accept a seniority date of September 10, 1964. By accepting this seniority date, I consciously would have been placing myself outside the scope of the protection and benefits included in the 1964 Merger Protection Agreement. If I did not report to the freight yards, I would have lost all of my ^{Prior} seniority, ~~by operation of the 1965 Agreement.~~
W. NOBLE *G. J. B.* *244*

11. Had I accepted a seniority date of September 10, 1964, and reported to work in the freight yards, I would not have had enough seniority to gain a permanent, full-time job there.

12. Before and after the 1968 furlough, the railroad refused to acknowledge that: (1) I had been a New York Central Railroad employee since my hire in 1946; and (2) I was covered under the 1964 "Merger Protection Agreement". Coverage under this Agreement would have meant, amongst other benefits, a lifetime job guarantee. Without such coverage, there were no permanent, full-time jobs that were available to me.

13. Prior to and after the 1968 furlough, my co-workers tried, unsuccessfully, to obtain from the railroad confirmation of our status as New York Central employees/covered by the Merger Protection Agreement.

14. Given the above circumstances, I had no choice. Reporting for work in the freight yards would have meant accepting Penn Central's

position that: (1) I had never been a New York Central employee; (2) I was not entitled to keep/use my original seniority date; and (3) I was not covered under the Merger Protection Agreement.

15. My co-workers, George Gentile, Clarence Tomczak, and I, all had physical examinations and all reported to work at the Collinwood yard. We were informed that we were not on the roster and were not permitted to work under any agreement, under any circumstances.

16. Because of Penn Central's refusal to extend to me the job protections provided in the Merger Protection Agreement, I was forced to obtain other employment ^{OF JAN, 1964} ~~from approximately 1968~~ ¹⁹⁶⁴ ~~present~~. During this time, I have worked for, among others, Alex Kanareff & Associates, Great Lakes Construction, and the City of North Olmsted. Compared to Penn Central employment, these other jobs resulted in a substantial loss in wages and non-wage benefits.

17. My co-worker, Harvey E. Doran, was immediately below me in seniority on the roster. He was furloughed for approximately twenty-two (22) months from February, 1968 through December, 1969. He reported for work in December, 1969, to fulfill a call back for the railroad. He stood for no job and was only eligible for work on the extra board as an extra man. In this position, he got approximately one (1) day of work a month from 1969 until the time of his death in 1972.

18. Penn Central has never provided me with any of the benefits provided for in the Merger Protection Agreement, including permanent, full-time employment and supplementary wages.

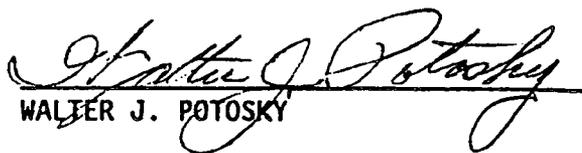
19. Because of Penn Central's refusal to employ me from approximately 1968-present, my pension from the Railroad Retirement Board will be significantly reduced.

20. Because of Penn Central's refusal to provide me with any non-wage benefits from approximately 1968-present, I was generally forced to forego such benefits or obtain them at my own expense.

21. Between 1968 and the present, I have not suffered any major illnesses or injuries that would have prevented me from performing my former job duties for Penn Central.

22. Contractual disputes aside, between 1968 and the present I have been, and still am, ready, willing, and able to work for Penn Central.

FURTHER AFFIANT SAYETH NAUGHT.


WALTER J. POTOSKY

SWORN TO, BEFORE ME, and subscribed in my presence this 25TH
day of January, 1990.


Notary Public

Linda Y. Young, Notary Public
state of Ohio - Cuyahoga County
My commission expires March 5, 1990

TI'S. EX 51

NEW YORK CENTRAL SYSTEM

Detroit, Michigan, July 5, 1968

Personal & Confidential

Mr. A. B. Cravens:

JACK F. ACREE, Switchman, Elyria, is long past due for re-check physical examination. Form letters calling attention to this fact were addressed to you under date of February 7, 1968 and again on March 27, 1968.

Mr. Acree should be examined promptly if he is working at this time. Please advise.

George E. Dimond
George E. Dimond, M.D.
Office of Medical Director

Mr. Acree has been Furloughed since Feb. 25, 1968

S.J.Cala
G.Y.M.

JUL 17 1968
SUPERVISOR
CLEVELAND

6-95

77 1/2 EX. 52

SEPTEMBER 25, 1964 AGREEMENT

(SHOP CRAFTS)

The following represents a synthesis in one document, for the convenience of the parties, of the current provisions of the Shop Crafts September 25, 1964 National Agreement as supplemented and/or amended in accordance with the provisions of the Memorandum of Agreement dated January 7, 1965, the Memorandum of Agreement dated May 31, 1974 and the Shop Crafts National Agreement dated December 4, 1975 (effective January 12, 1976), along with letter of understanding dated May 10, 1973 and two letters of understanding dated December 4, 1975 in connection therewith. The amendments are indicated with appropriate source identifications.

This is intended as a guide and is not to be construed as constituting a separate agreement between the parties. If any dispute arises as to the proper interpretation or application of any provision, the terms of the appropriate agreement shall govern.

IT IS AGREED:

ARTICLE I - EMPLOYEE PROTECTION

Section 1 -

The purpose of this rule is to afford protective benefits for employees who are displaced or deprived of employment as a result of changes in the operations of the carrier due to the causes listed in Section 2 hereof, and, subject to the provisions of this Agreement, the carrier has and may exercise the right to introduce technological and operational changes except where such changes are clearly barred by existing rules or agreements.

Any job protection agreement which is now in effect on a particular railroad which is deemed by the authorized employee representatives to be more favorable than this Article with respect to a transaction such as those referred to in Section 2 hereof, may be preserved as to such transaction by the representatives so notifying the carrier within thirty days from the date of receipt of notice of such transaction, and the provisions of this Article will not apply with respect to such transaction.

None of the provisions of this Article shall apply to any transactions subject to approval by the Interstate Commerce Commission, if the approval order of the



Commission contains equal or more favorable employee protection provisions, or to any transactions covered by the Washington Job Protection Agreement.

Section 2 -

The protective benefits of the Washington Job Protection Agreement of May 1936, shall be applicable, as more specifically outlined below, with respect to employees who are deprived of employment or placed in a worse position with respect to compensation and rules governing working conditions as a result of any of the following changes in the operations of this individual carrier:

a. Transfer of work;

b. Abandonment, discontinuance for 6 months or more, or consolidation of facilities or services or portions thereof;

c. Contracting out of work;

d. Lease or purchase of equipment or component parts thereof, the installation, operation, servicing or repairing of which is to be performed by the lesser or seller;

e. Voluntary or involuntary discontinuance of contracts;

f. Technological changes; and

g. Trade-in or repurchase of equipment or unit exchange.

Section 3 -

An employee shall not be regarded as deprived of employment or placed in a worse position with respect to his compensation and rules governing working conditions in case of his resignation, death, retirement, dismissal for cause in accordance with existing agreements, or failure to work due to disability or discipline, or failure to obtain a position available to his in the exercise of his seniority rights in accordance with existing rules or agreements, or reductions in forces due to seasonal requirements, the layoff of temporary employees or a decline in a carrier's business, or for any other reason not covered by Section 2 hereof. In any dispute over whether an employee is deprived of employment or placed in a worse position with respect to his compensation and rules governing working conditions due to causes listed in Section 2 hereof or whether it is due to the causes listed in Section 3 hereof, the burden of proof shall be on the carrier.

TT's Ex-53

Claimants' Expenses 1969-1998:

Date	Num.	Source Name	Memo	Amount
		Expenses for proceedings prior to 1982 are unavailable		
06-15-82			copies	13.60
06-15-82			long distance	2.80
06-16-82			copies	5.60
09-01-82	1756	William E. Frendenberger		619.95
05-23-83			long distance	.90
12-02-83	2838	William E. Frendenberger		947.83
10-29-85			copies	17.25
05-19-87	2545	Wallace Steffen	arbitrator	1,000.00
05-12-88	3170	Roy Thompson, Jr.	court reporter/transcript	600.00
07-14-88	3263	Roy Thompson, Jr.	court reporter/transcript	384.00
08-30-88	3348	Roy Thompson, Jr.	court reporter/transcript	1,080.00
09-09-88	3362	Fred Blackwell	arbitrator	580.00
09-27-88	3406	Fred Blackwell	arbitrator	125.00
02-08-89	3637	Mehler & Hagestrom	transcript	307.25
03-27-89	3693	Fred Blackwell	arbitrator	250.00
08-29-89	3930	US District Clerk of Courts	filing fee	100.00
09-19-89	3969	Federal Express		12.00
10-05-89	3994	US District Clerk of Courts	filing fee	21.00
10-20-89	4010	Sheraton Hopkins	pre-arbitration meeting	71.80
11-06-89	4001	Wallace Steffen	arbitrator	1,000.00
11-16-89	4045	Fred Blackwell	arbitrator	623.00
01-30-90		Superior Office Supply	supplies for arbitration	44.51
02-08-90	4177	Richard K. Radek	consultant	150.00
02-08-90	4178	Treasurer of the United States	copies from NMB	20.00
02-08-90	4179	Rapid Printing and Copy	copies and dividers	89.02
02-08-90	4180	Rapid Printing an Copy	copies of arb exhibits	117.10
02-15-90	4188	Federal Express		52.00
04-30-90	4293	Wallace Steffen	arbitrator	1,000.00
05-17-90	4309	Federal Express		59.00
06-06-90	4355	Fred Blackwell	arbitrator	600.00
06-06-90	4356	Fred Blackwell	arbitrator	1,602.00
07-12-90	4407	Wallace Steffen	arbitrator	1,468.75
08-03-90	4446	Wallace Steffen	arbitrator	734.88
08-22-90	4350	Federal Express		43.50

09-05-90	4495	Wallace Steffen	arbitrator	367.50
10-05-90	4550	Wallace Steffen	arbitrator	366.25
11-15-90	4595	Wallace Steffen	arbitrator	386.45
11-15-90		Stouffer Hotel	arb. conference room	284.00
12-20-90	4651	Fred Blackwell	arbitrator	500.00
12-20-90	4653	Mehler & Hagestrom	court reporter	645.13
12-28-90	4671	Mehler & Hagestrom	court reporter	2,000.00
10-22-92	5447	Fred Blackwell	arbitrator	2,854.00
10-19-94	6308	Federal Express		13.00
11-14-94	6334	US District Clerk of Courts	filing fee	120.00
12-14-94	6359	Federal Express		21.75
01-17-95	5418	Federal Express		35.50
02-28-95	5478	Sir Speedy	copies	39.29
08-10-95	6651	Federal Express		15.50
08-27-96	7145	US District Clerk of Courts	filing fee	100.00
10-24-96	7213	Federal Express		20.00
11-14-96	7249	Federal Express		13.00
11-14-96	7250	Legal Advantage	Prep/File 6 th Circuit brief	184.00
12-30-96	2162	Federal Express		20.00
12-30-96	2169	Cleveland Law Library	case law research copies	36.69
05-01-97	2253	Federal Express		80.44
05-01-97	2254	Sir Speedy		169.07
06-25-97	2272	Sir Speedy		121.62
08-25-97	2278	IKON Office Solutions		749.75
08-28-97	2279	Sir Speedy		248.43
08-30-97			postage	11.59
06-03-98	2319	Cleveland Law Library	case law research copies	55.45
			TOTAL	23,201.15

Claimants' Expenses 1999-present:

Date	Num	Source Name	Memo	Amount
1/4/1999	2395	Clerk of Courts	Appeal	100.00
2/9/1999	2420	Cleveland Law Library	Penn Central	45.00
2/9/1999	2425	Federal Express	Penn Central	28.50
3/10/1999	2474	Cleveland Law Library	Penn Central	17.00
4/22/1999	2529	Bonnie -Speed Delivery	Penn Central	4.00
4/22/1999	2531	Federal Express	To Nixon	15.25
5/10/1999	2550	Federal Express	Court of Appeals	18.00
5/10/1999	2550	Federal Express	Pepper Hamilton	12.75
5/10/1999	2552	Bonnie -Speed Delivery	Penn Central	4.00
5/27/1999	2561	Open	Locate heirs	447.68
5/27/1999	2563	Troutman Sanders LLP	Invoice Number 130319 Client No. 009...	546.00
5/27/1999	2571	Cleveland Law Library	Penn Central	44.00
6/8/1999	2578	Federal Express	Court of Appeals	16.25
7/14/1999	2616	Federal Express	Kershner	25.00
1/10/2000	2829	Troutman Sanders LLP	Invoice Number 143063 Client No. 009...	252.00
1/31/2000	2851	Cleveland Law Library	case law research and copies	60.80
2/10/2000	2873	Cleveland Law Library	case law research and copies	47.00
2/28/2000	2888	LEGAL ADVANTAGE	PennCentral	146.80
2/28/2000	2890	Troutman Sanders LLP	Invoice Number 147337 Client No. 009...	945.00
2/28/2000	2898	Federal Express	PennCentral	18.00
3/7/2000	2911	Fred Blackwell	Storage	85.00
3/7/2000	2918	Cleveland Law Library	case law research and copies	42.00
4/19/2000	2964	Federal Express	service	18.72
4/19/2000	2972	Bonnie -Speed Delivery	Penn	10.50
5/25/2000	2991	Cleveland Law Library	Caselaw research and copies	44.00
5/25/2000	2996	Federal Express	service	60.32
6/28/2000	3023	Federal Express	Service copies	29.90
7/26/2000	3057	Federal Express	Account Number 1249-2156-2	48.36
9/13/2000	3095	LEGAL ADVANTAGE	PennCentral	2,364.60
12/13/2000	3180	Bonnie -Speed Delivery	delivery	28.00
12/13/2000	3194	LEGAL ADVANTAGE	PennCent copy and files 6thCir Brief	1,941.30
1/29/2001	3218	Bonnie -Speed Delivery	delivery	4.00
1/29/2001	3219	CARLA M. TRICARICHI	Travel expenses Cincinnati	659.00
1/29/2001	3220	Federal Express	Service	29.12
4/27/2001	3307	Surface Transportation Board	Costs Augustus v. STB No. 99-3014	240.00
4/27/2001	3313	Federal Express	Service	15.08
11/15/2006	5133	Clerk of Courts	COPIES	27.90
1/31/2007	5201	Steven H. Steinglass	Statement 7-1-2006 - 12-31-2006	8,400.00
3/13/2007	5228	Cleveland Law Library	caselaw research and copies	197.00
4/12/2007	5240	Cleveland Law Library	caselaw research and copies	154.00
5/10/2007	5257	Steven H. Steinglass	Statement 1-1-07 to 3-3107	3,937.50
7/25/2007	5318	Clerk of Courts	Probate court filing fees	1,500.00
7/25/2007	5317	Probate Court	Steimle	200.00
7/26/2007	5320	United Transportation Union	Copies	40.00
7/26/2007	5321	Steven H. Steinglass	Statement 4-1-07 - 6-30-07	4,900.00
7/31/2007	5322	Probate Court	Cratalic	200.00
7/31/2007	5323	Probate Court	Doran	200.00
7/31/2007	5324	Probate Court	Bundy	200.00
7/31/2007	5325	Probate Court	Tomczak	200.00
7/31/2007	5326	Probate Court	Acree	200.00
7/31/2007	5327	Probate Court	Sophner	200.00
7/31/2007	5328	Probate Court	Foecking	200.00
8/15/2007	5346	Williams Lea, Inc.	PDF copies expert report	66.48
9/5/2007	5365	Commonwealth of Pennsylvania	Pa Archives Copies	46.50
9/13/2007	5329	Commonwealth of Pennsylvania	Pa Archives Copies	284.50
9/27/2007	5379	Bonnie -Speed Delivery	Inv. 0400579	5.46
9/27/2007	5383	Federal Express	Inv. 2-255-23469	37.28
9/27/2007	5386	Probate Court	Benko	129.00
9/27/2007	5387	Probate Court	Feldscher	76.00
9/27/2007	5388	Probate Court	Gastony	129.00
9/27/2007	5389	Probate Court	Gentile	129.00
9/27/2007	5390	Probate Court	McLaughlin	89.00
9/27/2007	5391	Probate Court	Wilger	90.00
9/27/2007	5392	Probate Court	Jarabeck	115.00
10/11/2007	5395	Bentley Historical Library	Copies of archived records	20.00
10/11/2007	5400	Rennillo Court Reporting	Inv. 15054,150479,150505	870.00
10/31/2007	5418	Bonnie -Speed Delivery	Inv. 0402752	5.46
10/31/2007	5420	Federal Express	Inv. 2-307-67004	204.72
10/31/2007	5421	Burke Rosen and Associates	Penn Central	43,550.00
11/15/2007	5426	Bonnie -Speed Delivery	Inv. 0403246	5.46
11/15/2007	5427	Probate Court	Pentz	41.00
11/15/2007	5433	Federal Express	Inv. 2-372-13838	78.20

Claimants' Expenses 1999-present:

<u>Date</u>	<u>Num</u>	<u>Source Name</u>	<u>Memo</u>	<u>Amount</u>
12/10/2007	5438	JOAN GUNKLER	Postage	352.38
12/10/2007	5439	SIR SPEEDY	Copies arbitration exhibits	82.38
12/10/2007	5441	Williams Lea Inc.	Inv. 1-07120604	975.94
12/10/2007	5442	Rennillo Court Reporting	151994,152150,152033	2,988.27
12/10/2007	5443	Cleveland Law Library	Caselaw research and copies	278.00
12/10/2007	5447	Bonnie -Speed Delivery	Inv. 0403246	11.12
				<u>79,829.48</u>
TOTAL				<u><u>79,829.48</u></u>

Claimants' Future Estimated Expenses*:

Date	Num.	Source Name	Memo	Amount
		Harvey Rosen Ph.D.	arbitration testimony	
		Dennis Lansdowne	arbitrator	
		Stephen Steinglass	arbitrator	
		Rennillo Court Reporting	attendance and transcript	
		* Will file supplemental proof of costs when received		
1969-1998				\$ 23,201.15
1999-2007				\$ 79,829.48
		TOTAL		<u>\$103,030.63</u>

TT'S EX. 55

BEFORE THE ARBITRATION COMMITTEE
~~~~~

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

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

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

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

~~~~~  
Videotaped Deposition of  
ROBERT MCNEELEY  
September 26, 2007  
12:00 p.m.

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

Kristin L. Wegryn, R.P.R.

1 APPEARANCES:

2

3

On behalf of the Plaintiffs:

4

Tricarichi, Carnes & Clements, by

5

CARLA M. TRICARICHI, ESQ.

6

614 Superior Avenue NW, Suite 620

7

Cleveland, Ohio 44113

8

(216) 861-6677

9

-and-

10

Hahn, Loeser & Parks, by

11

RANDY J. HART, ESQ.

12

3300 BP Tower

13

200 Public Square

14

Cleveland, Ohio 44114-2301

15

(216) 274-2410

16

Rjhart@hahnlaw.com

17

-and-

18

Griffin Law Firm

19

MARK GRIFFIN, ESQ.

20

614 Superior Avenue, NW

21

Suite 620

22

Cleveland, Ohio 44113

23

(216) 861-6677

24

Mark.d.griffin@gmail.com

25

1 APPEARANCES, Continued:

2

3 On behalf of the Defendant:

4 Blank Rome, LLP, by  
5 THOMAS H. STEWART, ESQ.  
6 JASON GROPPE, ESQ.  
7 1700 PNC Center  
8 201 East Fifth Street  
9 Cincinnati, Ohio 45202  
10 (513) 362-8704  
11 Stewart@BlankRome.com

12 ~ ~ ~ ~ ~

13

14 ALSO PRESENT:

15 Kurt Henschel, Videographer

16

17

18

19

20

21

22

23

24

25

|    |                   |   |    |
|----|-------------------|---|----|
| 1  |                   |   |    |
| 2  |                   |   |    |
| 3  | EXAMINATION OF    | 6 | 15 |
| 4  | ROBERT MCNEELEY   |   |    |
| 5  | BY MS. TRICARICHI |   |    |
| 6  |                   |   |    |
| 7  |                   |   |    |
| 8  |                   |   |    |
| 9  |                   |   |    |
| 10 |                   |   |    |
| 11 |                   |   |    |
| 12 |                   |   |    |
| 13 |                   |   |    |
| 14 |                   |   |    |
| 15 |                   |   |    |
| 16 |                   |   |    |
| 17 |                   |   |    |
| 18 |                   |   |    |
| 19 |                   |   |    |
| 20 |                   |   |    |
| 21 |                   |   |    |
| 22 |                   |   |    |
| 23 |                   |   |    |
| 24 |                   |   |    |
| 25 |                   |   |    |

1 THE VIDEOGRAPHER: We're on the  
2 record at 11:58.

3 MR. STEWART: Could we go off the  
4 record for a second?

5 THE VIDEOGRAPHER: Off the record. 11:58:44  
6 (Off the video record.)

7 MR. STEWART: I just want to note  
8 an objection. It's twofold. One is the same  
9 one we made at Mr. Novotny's yesterday about  
10 the propriety of a perpetuation deposition, and 11:59:00  
11 when we received notice of that; and then,  
12 secondly, I don't think we received notice of a  
13 videotaped deposition.

14 MS. TRICARICHI: I think this was  
15 on the list. 11:59:15

16 MR. STEWART: All right. Well,  
17 I'll reserve it and see the notice that we  
18 received. I certainly wasn't -- didn't know it  
19 was happening, but if it's there, it's there.

20 MS. TRICARICHI: Okay. Just in 11:59:32  
21 response, this is the -- we're -- we noticed  
22 opposing counsel of notice to take deposition  
23 of Mr. McNeeley for use and preservation at  
24 trial by videotape within a reasonable period  
25 of time, at least -- at least two to three days 11:59:52

1 ago. Mr. McNeeley is -- we're aware that he  
2 has been under treatment for chemotherapy for  
3 colon cancer. He's I believe 82 years old and  
4 has numerous other health problems that we're  
5 doing this to preserve his testimony.

12:00:12

6 (Off the record.)

7 THE VIDEOGRAPHER: We're on the  
8 video record. Today's date is September 26th,  
9 2007. The time is 12 p.m. Would the reporter  
10 please swear in the witness.

12:00:44

11 ROBERT MCNEELEY, of lawful age,  
12 called for examination, being by me first duly  
13 sworn, as hereinafter certified, deposed and  
14 said as follows:

15 EXAMINATION OF ROBERT MCNEELEY

16 BY MS. TRICARICHI:

17 Q. Mr. McNeeley, my name's Carla  
18 Tricarichi and I'm going to ask you a few  
19 questions about the lawsuit we filed in this  
20 case, okay?

12:01:03

21 A. (Indicating.)

22 Q. Can you state your name for the  
23 record.

24 A. Robert McNeeley.

25 Q. And can you give me your address?

12:01:09



1 you were --

2 A. Middle. I don't know the date.

3 I'm not sure of the month. There was a few

4 months before I went in the service.

5 Q. Okay. And what year was that? 12:02:13

6 A. 1943.

7 Q. And when you said you went in the

8 service, you went in World War II?

9 A. Yeah. December 6th, 1943.

10 Q. And when you came back from the 12:02:26

11 service, did you go back to your work at

12 Cleveland Union Terminal?

13 A. Yes, I did.

14 Q. And can you tell us what kind of

15 work you did at Cleveland Union Terminal for 12:02:38

16 most of your career?

17 A. Car inspector repair.

18 Q. Mr. McNeeley, what does a car

19 inspector do?

20 A. Just like they say, inspect cars, 12:02:47

21 repair them when needed.

22 Q. The railroad cars?

23 A. Railroad passenger cars.

24 Q. And during most of your time at

25 the -- at the Cleveland Union Terminal, say in 12:03:01

1 the '50s and '60s, did you have regular work?  
2 A. Yes.  
3 Q. How many days a week did you work  
4 usually?  
5 A. Five. 12:03:13  
6 Q. And what shift did you usually  
7 work?  
8 A. Well, there was quite a few. Ten  
9 years or better on third, second.  
10 Q. And how long did you work at the 12:03:26  
11 Cleveland Union Terminal?  
12 A. At the -- well --  
13 Q. Until approximately when? Until  
14 approximately what year?  
15 A. '41 to '67. 12:03:37  
16 Q. About '67.  
17 And why did you leave Cleveland  
18 Union Terminal?  
19 A. It folded up. No more passenger  
20 trains. 12:03:53  
21 Q. Was your job abolished?  
22 A. Abolished completely.  
23 Q. And did someone tell you your job  
24 was abolished?  
25 A. I don't know. We were told. You 12:04:00

1 knew it was coming up.

2 Q. They told you you didn't have a job  
3 there anymore?

4 A. Right.

5 Q. And where did you work after 12:04:07  
6 Cleveland Union Terminal?

7 A. I went to Rockport.

8 Q. And when you went to Rockport, did  
9 you markup for work?

10 A. I went and signed up, yeah, on the 12:04:19  
11 roster and then was on call.

12 Q. You were on call for work.  
13 And did you get work all the time  
14 when you went to Rockport?

15 A. A little bit at a time. 12:04:35

16 Q. Were there times when you were  
17 available? Were you always available for work?

18 A. Always available.

19 Q. And but did you always get jobs?

20 A. No, not always. 12:04:51

21 Q. And did you get the regular kind of  
22 job that you had at Cleveland Union Terminal?

23 A. Well, it's freight trains  
24 different. It's all about the same. It's the  
25 same work. 12:05:06

1 Q. But you didn't have the regularity  
2 of work --

3 A. No.

4 Q. -- at Rockport --

5 A. Definitely not. 12:05:11

6 Q. -- that you had had?  
7 And if you didn't get a job, did  
8 you get paid?

9 A. No, no pay.

10 Q. Was there ever a time when you 12:05:19  
11 didn't work and the railroad paid you if you  
12 didn't work?

13 A. No.

14 Q. And so if you didn't work, during  
15 those times you didn't get a job and you didn't 12:05:33  
16 work, did you lose money?

17 A. Well, sure.

18 Q. And when you lost money and you  
19 didn't work, did you also lose credit on your  
20 pension? 12:05:46

21 A. Yes.

22 Q. Because you weren't working during  
23 that time?

24 A. Weren't working.

25 Q. And is it true to say that you 12:05:52

1 didn't get work for some time after you  
2 moved -- after you went to regular work after  
3 you went to Rockport?

4 A. Right.

5 Q. So you were losing money for that 12:06:03  
6 period of time that you didn't get regular  
7 jobs?

8 A. Yeah, not working.

9 Q. And throughout your work, you  
10 always worked for either Cleveland Union 12:06:16  
11 Terminal, New York Central, Penn Central, or  
12 Penn Central or Conrail; is that right?

13 A. Right.

14 MS. TRICARICHI: I don't have any  
15 further questions. You're not going to -- 12:06:33

16 MR. STEWART: No questions.

17 THE VIDEOGRAPHER: Off the record  
18 at 12:06.

19

20 (Deposition concluded.)

21

- - - - -

22

23

24

25

## 1 CERTIFICATE

2 The State of Ohio, )

3 SS:

4 County of Cuyahoga. )

5

6 I, Kristin L. Wegryn, a Notary  
7 Public within and for the State of Ohio, duly  
8 commissioned and qualified, do hereby certify  
9 that the within named witness, ROBERT MCNEELEY,  
10 was by me first duly sworn to testify the  
11 truth, the whole truth and nothing but the  
12 truth in the cause aforesaid; that the  
13 testimony then given by the above-referenced  
14 witness was by me reduced to stenotypy in the  
15 presence of said witness; afterwards  
16 transcribed, and that the foregoing is a true  
17 and correct transcription of the testimony so  
18 given by the above-referenced witness.

19 I do further certify that this  
20 deposition was taken at the time and place in  
21 the foregoing caption specified and was  
22 completed without adjournment.

23

24

25

1                   I do further certify that I am not  
2 a relative, counsel or attorney for either  
3 party, or otherwise interested in the event of  
4 this action.

5                   IN WITNESS WHEREOF, I have hereunto  
6 set my hand and affixed my seal of office at  
7 Cleveland, Ohio, on this \_\_\_\_\_ day of  
8 \_\_\_\_\_, 2007.

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

\_\_\_\_\_  
Kristin L. Wegryn, Notary Public  
within and for the State of Ohio

My commission expires July 13, 2008.





1 DEPOSITION ERRATA SHEET

2

3 RE: ROBERT WATJEN, ETC. VS.

4 PENN CENTRAL

5

6 Job No.: 10813 KLW

7 Deponent: ROBERT MCNEELEY

8 Deposition Date: SEPTEMBER 26, 2007

9

10 To the Reporter:

11 I have read the entire transcript of my  
12 Deposition taken in the captioned matter or the  
13 same has been read to me. I request that the  
14 following changes be entered upon the record  
15 for the reasons indicated. I have signed my  
16 name to the Errata Sheet and the appropriate  
17 Certificate and authorize you to attach both to  
18 the original transcript.

19

20

21

22

23

24 \_\_\_\_\_  
ROBERT MCNEELEY

25



CIVIL DOCKET  
 UNITED STATES DISTRICT COURT

TT'S EX-56 C69 7

Northern District of Ohio - Eastern Division

Jury demand date: 9/12/69

JUDGE LANDI

D. C. Form No. 106 Rev.

| TITLE OF CASE                                                                                                 | ATTORNEYS                                                                                                                           |
|---------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                               | For plaintiff:                                                                                                                      |
| (1) Michael J. Knopik                                                                                         | Charles S. Tricarichi (216)                                                                                                         |
| (2) Clarence C. Tomczak                                                                                       | Michael R. Kube                                                                                                                     |
| (3) Irene O. Grady, Administratrix of the Estate of <del>(8)</del> William E. Grady, deceased (order 1/29/70) | Tricarichi & Carnes<br>55 Public Square, Suite 2120                                                                                 |
| (4) George R. Norris                                                                                          |                                                                                                                                     |
| (5) Sam Tannebaum                                                                                             |                                                                                                                                     |
| (6) Michael J. McLaughlin                                                                                     |                                                                                                                                     |
| (7)** <del>Frank G. Uber</del> (Order 11/21/75)                                                               |                                                                                                                                     |
| (8) Kenneth B. Day                                                                                            |                                                                                                                                     |
| (9) Antonio Augustus                                                                                          |                                                                                                                                     |
| (10)** <del>Harvey E. Doran</del> (Order 11/21/75)                                                            | For defendant:                                                                                                                      |
| (11) Walter V. Potosky                                                                                        |                                                                                                                                     |
| (12) George A. Gentile et al.<br>**(SEE ADDITIONAL SHEET)                                                     | (1) Thomas R. Skulina, Sheila A. M Skulina & McKeon<br>709 Ohio Savings Plaza<br>1801 East Ninth St.<br>Cleveland, Ohio 44114 (216) |
| vs                                                                                                            |                                                                                                                                     |
| (1) Penn-Central Company                                                                                      | (1) John F. Dolan<br><del>REDACTED</del> - 44113<br>420 Northern Ohio Bank Bldg.                                                    |
| (2) United Transportation Union                                                                               | Norton N. Newborn                                                                                                                   |
| (3) Brotherhood of Railroad Trainmen (2) & (3)                                                                | Joseph E. Finley<br>Metzenbaum, Gaines, Finley<br><del>700 Union Commerce Bldg.</del><br>Investment Plaza, Suite 171                |

| STATISTICAL RECORD                                                                                          | COSTS        | DATE | NAME OR RECEIPT NO. | REC.  |
|-------------------------------------------------------------------------------------------------------------|--------------|------|---------------------|-------|
| J.S. 5 mailed SEP 30 1969                                                                                   | Clerk        | 9/12 | 46669               | 15 00 |
|                                                                                                             |              | 9/15 | Treas. OFUS         |       |
| J.S. 6 mailed JAN 31 1972                                                                                   | Marshal      |      |                     |       |
| JUL 31 1976                                                                                                 |              |      |                     |       |
| Basis of Action: Interstate Commerce Act - loss of employment - \$2,500,000.00 damages and punitive damages | Docket fee   |      |                     |       |
| Action arose at:                                                                                            | Witness fees |      |                     |       |
|                                                                                                             | Depositions  |      |                     |       |

*M*

659 722

Michael J. Knopik, et al. vs. Penn-Central, et al.

JUDGE LAMBROS

| DATE  | PROCEEDINGS                                                                                                                                                                                                                                               | Date Order or Judgment Note |
|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| 2/69  | Complaint filed. Summons issued. 3 copies of each to Marshal.                                                                                                                                                                                             |                             |
| 10/69 | Answer of defts. United Transportation Union and Brotherhood of Railroad Trainmen filed. Copies mailed 10/10/69.                                                                                                                                          |                             |
| 14/69 | Interrogatories of plaintiffs directed to defendant, Penn-Central Company, filed. Copy mailed 10/14/69.                                                                                                                                                   |                             |
| 20/69 | Stipulation & Order granting deft. Penn Central leave to move or answer to complaint and interrogatories by 11/19/69 filed, Green, J. Notice waived.                                                                                                      | 10/20                       |
| 27/69 | Summons ret. & filed. Served Penn Central on 9/29/69; served Brotherhood of Trainmen & United Transportation Union on 9/22/69. Fees, \$9.00.                                                                                                              |                             |
| 4-69  | Interrogatories by the plaintiff filed. Copy mailed 11-4-69.                                                                                                                                                                                              |                             |
| 13/69 | Stipulation & order granting deft., United Transportation Union, leave to answer pltf's. interrogatories until 12/5/69 filed. Thomas, J. Notice waived.                                                                                                   | 11/13/69                    |
| 20/69 | Stipulation & order granting deft. Penn Central Co. leave to move or answer complaint and to answer or object to interrogatories by 12/19/69 filed, Thomas, J. Notice waived.                                                                             | 11/20/69                    |
| 3/69  | Answers of defendant United Transportation Union to plaintiffs' interrogatories filed. Copies mailed 12/3/69.                                                                                                                                             |                             |
| 3/69  | Stipulation & order granting deft., Penn Central Co., leave to move or answer complaint and to answer or object to pltf's. interrogatories to and including 1/19/70 filed. Lambros, J. Notice waived.                                                     | 12/23/69                    |
| 29/69 | Motion of Irene O. Grady for order substituting her in capacity as Administratrix of the Estate of pltf. William E. Grady, deceased as pltf. filed. Copy mailed 12/29/69.                                                                                 |                             |
| 9/70  | Stipulation & order granting deft. leave to move or answer complaint and to answer or object to plaintiffs' interrogatories to and including 2/20/70 filed. FJB, J. Notice waived.                                                                        | 1/19/70                     |
| 0/70  | Answer of Deft., Penn Central Transportation Company, filed. Copy mailed 1/20/70.                                                                                                                                                                         |                             |
| 8/70  | Endorsed ruling sustaining motion of Irene O. Grady for substitution as Admn. of estate of Wm. E. Grady, deceased as pltf, Kalbfleisch, J.                                                                                                                |                             |
| 9/70  | Order sustaining motion of Irene O. Grady; further order that Irene O. Grady, Administratrix of the Estate of William E. Grady, deceased be substituted as party pltf. for William E. Grady filed, Kalbfleisch, J. Copies to Tricarichi, Dolan and Finley | 1/30/70                     |
| 10/70 | Answers of Deft., Penn Central Transportation Co., to interrogatories of plaintiffs filed. Copy mailed 2/20/70.                                                                                                                                           |                             |
| 8/70  | Motion of plaintiffs for order requiring def. Penn-Central to produce for inspection filed. Copy mailed 5/28/70.                                                                                                                                          |                             |
| 5/70  | Stipulation & Order granting deft. Penn Central leave to reply to pltf's motion for production and pltf's motion compelling answers to interr. by 7/14/70 filed, Lambros, J. Notice waived.                                                               | 6/15/70                     |
| -70   | Order vacating the stipulation and order filed 6-15-70 filed. Battisti, J. Copy mailed to Dolan and Tricarichi, and Finley.                                                                                                                               | 7-8-70                      |
| 29/70 | Continuing Interrogatories of the deft. directed to the pltf. filed. Copy mailed 7/29/70.                                                                                                                                                                 |                             |
| 29/70 | Brief in Opposition to Motion to compel defedant to answer Interrogatories Nos. 26, 34, 43 and 44 filed. Leave granted by Green, J. Copy mailed 7/29/70.                                                                                                  |                             |
| 29/70 | Brief in opposition to Motion to inspect or copy filed. Leave granted by Green, J. Copy mailed 7/29/70                                                                                                                                                    |                             |
| 2/70  | Stipulation & Order granting pltf. leave to answer interrogatories to & including 9/24/70 filed. Lambros J. Notice waived.                                                                                                                                | 9/27/70                     |
| 24/70 | Stipulation & Order granting pltf., Michael J. Knapik, et al., leave                                                                                                                                                                                      |                             |

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

MICHAEL J. KNOPIK, et al.,            )    CIVIL ACTION NO. C69-722  
                                          )    Plaintiffs,    )  
                                          )    v.                )    ANSWERS TO INTERROGATORIES  
PENN-CENTRAL COMPANY, et al.,    )    Defendants.    )

Defendant, Penn Central Transportation Company, answers  
the interrogatories propounded by plaintiffs as follows:

1. State your full name.  
A. Penn Central Transportation Company.
2. State whether or not you are a corporation.  
A. Yes.
3. If so, state:
  - a. The date of your incorporation. A. October 1, 1969.
  - b. The state of your incorporation. A. Pennsylvania
  - c. The address of your principal place of business  
or registered office.  
A. Philadelphia, Pennsylvania.
4. State whether or not you have succeeded to the assets  
and/or liabilities of the New York Central Railroad  
Company and the Pennsylvania Railroad Company pursuant  
to a merger agreement.  
A. Yes.
5. Did this merger agreement provide for the unification,  
coordination and consolidation of the separate facilities  
of both the New York Central Railroad Company and the  
Pennsylvania Railroad Company?  
A. Yes.
6. If you will do so without a Motion to produce, attach  
a copy of the Joint Agreement of Merger dated Janu-  
ary 12, 1962.  
A. NO.
7. State the Exact date on which the merger of the New  
York Central Railroad and the Pennsylvania Railroad  
was consummated, and if you will do so without a  
Motion to Produce, attach a copy of the final merger  
agreement.  
A. February 1, 1968.
8. Prior to the consummation of this merger, did either  
of the above carriers file an application for authority  
to merge with the Interstate Commerce Commission?  
A. Yes.
9. If so, state:
  - a. The date the initial applications were filed. <sup>Information</sup> A. being sought
  - b. The finance docket numbers of said applications.  
A. Nos. 21989 and 21990.

10. If you do so without a Motion to Produce, attach a copy of said application referred to in question 8.  
A. No.
11. State whether or not the New York Central Railroad Company was a corporation.  
A. Yes.
12. If so, state:  
(a) The date of its incorporation A. February 28, 1961.  
(b) The state of its incorporation. A. Delaware.
13. If a corporation, is said corporation still in existence?  
A. No.
14. If still in existence, state:  
(a) Its principal place of business.  
(b) The name and address of its statutory agent for Ohio.  
A. No answer required.
15. State the name, address and present employer of every officer of the New York Central Railroad Company on January 12, 1962.

|                   |                          |                     |
|-------------------|--------------------------|---------------------|
| A. E. Perlman     | Penn Central             | Philadelphia, Pa.   |
| R. W. Minor       | Penn Central             | Philadelphia, Pa.   |
| M. P. Richards    | Penn Central             | Philadelphia, Pa.   |
| R. W. Carroll     | Penn Central             | Philadelphia, Pa.   |
| L. B. Fee         | Retired                  | Florida             |
| W. M. Hoffman     | Flying Tiger<br>Lines    | Los Angeles, Calif. |
| Ernest C. Johnson | Deceased                 |                     |
| Douglass Campbell | Not Known                | New York, New York  |
| A. E. Baylis      | Has consulting<br>firm   | New York, N.Y.      |
| R. C. McCron      | Resigned                 | Scarsdale, N.Y.     |
| J. O. Boisi       | Morgan Guaranty<br>Trust | New York, N.Y.      |
| J. F. Nash        | Lehigh Valley<br>R.R.    | Bethlehem, Pa.      |
| W. R. Grant       | Consolidated<br>Edison   | New York, N.Y.      |
| R. E. Kappauf     | Lehigh Valley<br>R.R.    | Bethlehem, Pa.      |

16. State the name and address of each person who was acting as a director of the New York Central Railroad Company on January 12, 1962.

|                           |                          |
|---------------------------|--------------------------|
| Don Carter                | Not known                |
| William P. Feeley         | Deceased                 |
| Dr. R. Walter Graham, Jr. | Baltimore, Maryland      |
| Isaac B. Grainger         | New York, N.Y.           |
| Allen P. Kirby            | Morristown, New Jersey   |
| Fred M. Kirby             | Morristown, New Jersey   |
| Seymour H. Knox           | Buffalo, New York        |
| Frank C. McKinney         | Indianapolis, Indiana    |
| Richard M. Moss           | East St. Louis, Illinois |
| John D. Murchison         | Dallas, Texas            |
| A. E. Perlman             | Philadelphia, Pa.        |
| Eugene Pulliam            | Indianapolis, Indiana    |
| William G. Rabe           | Mill Neck, N.Y.          |
| John S. Routh             | Deceased                 |
| Orville Taylor            | Deceased                 |
| Daniel E. Taylor          | West Palm Beach, Fla.    |
| Andrew Van Felt           | Radnor, Pa.              |

17. State whether or not the Penn Central Railroad Company has any interest in the Cleveland Union Terminals Company.  
A. Yes.
18. If so, state the exact nature and extent of such interest.  
A. Ownership 71 shares; lessee 22 shares.
19. How was this interest acquired?  
A. By merger.
20. State the name, address and present employer of every officer of the Cleveland Union Terminals Company on January 12, 1962.
- |                |                          |                   |
|----------------|--------------------------|-------------------|
| A. E. Perlman  | Penn Central             | Philadelphia, Pa. |
| W. R. Grant    | Consolidated<br>Edison   | New York, N.Y.    |
| J. F. Nash     | Lehigh Valley<br>R.R.    | Bethlehem, Pa.    |
| M. P. Richards | Penn Central             | Philadelphia, Pa. |
| L. B. Fee      | Retired                  | Ebrida            |
| J. O. Boisi    | Morgan Guaranty<br>Trust | New York, N.Y.    |
| R. C. McCron   | Resigned-unknown         | Scarsdale, N.Y.   |
| R. W. Carroll  | Penn Central             | Philadelphia, Pa. |
21. State the name and address of each person who was acting as a director of the Cleveland Union Terminals Company on January 12, 1962.
- |                   |                   |
|-------------------|-------------------|
| A. E. Perlman     | Philadelphia, Pa. |
| A. E. Baylis      | New York, N.Y.    |
| W. R. Grant       | New York, N.Y.    |
| J. F. Nash        | Bethlehem, Pa.    |
| R. D. Timpany     | Philadelphia, Pa. |
| R. W. Minor       | Philadelphia, Pa. |
| R. R. Manion      | Washington, D.C.  |
| Clifford Campbell | Cleveland, Ohio   |
| M. B. Phipps      | Unknown.          |
22. State whether or not the New York Central Railroad had any interest in the Cleveland Union Terminals Company on January 12, 1962.  
A. Yes.
23. If so, state the exact nature and extent of such interest.  
A. See answer to Interrogatory No. 18.
24. How was this interest acquired?  
A. 71 shares by purchase; 22 shares by lease.
25. State whether or not any of the plaintiffs named in this lawsuit have ever been employees of the New York Central Railroad.  
A. Yes, men holding, prior to September 10, 1964, "M", "D" at "East 26th Street Express Shed" jobs worked on New York Central property as loan servants and received New York Central compensation therefor pursuant to labor agreements by and between the carrier and the labor organization having jurisdiction in the premises.
26. If so, state:
- The inclusive dates of each plaintiff's employment.
  - The total amount of wages paid to each plaintiff.
  - The total amount of hours worked by each plaintiff for the New York Central Railroad during any year in which said plaintiff performed services for the New York Central Railroad.
  - Whether any of these plaintiffs ever filed a claim against the New York Central Railroad for injuries sustained during the course of their employment and if so, for each such employee state:
    - The name of every plaintiff who filed such a claim.
    - The date on which notice of said claim was received by the New York Central Railroad.
    - Which of these claims were paid and by whom.

- A. (a) Subsequent to September 10, 1964.
- (b) See Schedules A 1 through 4.
- (c) Not Known.
- (d) Information being sought.

- 27. State the name, address and job title of the person having control over any records pertaining to the employment of any of the plaintiffs named in this lawsuit by either the Cleveland Union Terminals Company, the New York Central Railroad or the Penn-Central Railroad. A. R. A. Perrone, 75 Public Square, Cleveland, Ohio.
- 28. If you will do so without a Motion to Produce, attach a copy of the employment file for each plaintiff named in this lawsuit. A. No. Pursuant to Rule 2A(6) such information as is available will be furnished.
- 29. State whether or not defendant has in its possession or control any information pertaining to wages paid to any of the plaintiffs named in this lawsuit by either the New York Central Railroad, the Penn-Central Railroad, or the Cleveland Union Terminals Company. A. Yes.
- 30. If so, state the name, address and job title of the person having control or charge of this information. A. Comptroller, Philadelphia, Pennsylvania.
- 31. Has defendant ever received any correspondence from any of the plaintiffs named in this lawsuit relative to their job status, seniority date, or employment subsequent to January 12, 1962? A. Yes.
- 32. If so, state the name, address and job title of the person having control of any such correspondence. A. John F. Dplah, Cleveland, Ohio.
- 33. State whether any employee of the defendant pursuant to his duties as a crew dispatcher ever called to work any of the plaintiffs named in this lawsuit. A. Yes.
- 4. If so, state the name, address and present position of each such employee. A. Information being sought.
- 35. State the exact date on which the merger between the New York Central Railroad and the Pennsylvania Railroad was consummated. A. February 1, 1968.
- 36. Did the New York Central Railroad, pursuant to its Agreement of Merger, dated January 12, 1962, supply this defendant with an exact description of its assets and liabilities, including but not limited to property, equipment and employees? A. No.
- 37. If so, state the name, address and present position of the person having custody of such information. A. No answer required.
- 38. State the present business address and job title of Robert E. Smart. A. Labor Relations, Philadelphia, Pennsylvania.
- 39. State the present business address and job title of C. L. Starger. A. Superintendent, Labor Relations, Cleveland, Ohio.
- 40. State whether or not any of the plaintiffs named in this lawsuit have ever been employees of the Cleveland Union Terminals Company. A. Yes.

- 41. State whether or not A. B. Cravens, formerly in charge of the Cleveland Union Terminals Company yard, is now employed by the Penn-Central Railroad.  
A. Yes.
- 42. State the present business address and job title of A. B. Cravens.  
A. District Transportation Superintendent; Chicago, Ill
- 43. Is there presently, or was there ever, in existence a master roster #2106 of the New York Central Railroad, Western District?  
A. Information being sought.
- 44. If so, who is the person having charge of or control for said rosters for the years 1962 through 1967?  
A. Information being sought.
- 45. If you will do so without a Motion to Produce, attach a copy of each roster referred to in question 44.  
A. Pursuant to Rule 2A(6) the subject matter will be disposed of.

\_\_\_\_\_  
 JOHN F. DOLAN  
 THOMAS R. SKULINA  
 NICHOLAS M. DEVITO  
 1324 West Third Street  
 Cleveland, Ohio  
 771-5000

Attorneys for Defendant

STATE OF OHIO            )  
                                   ) SS:  
 COUNTY OF CUYAHOGA    )

JOHN F. DOLAN, being first duly sworn, deposes and says that he is one of the attorneys for the defendant, Penn Central Transportation Company, a corporation; that the facts contained in the within Answers to Interrogatories are true as he verily believes.

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

Sworn to before me and subscribed in my presence this  
 \_\_\_\_\_ day of \_\_\_\_\_, 1970.

\_\_\_\_\_  
 Notary Public

NOTICE OF SERVICE

A copy of the within Answers to Interrogatories was mailed this \_\_\_\_\_ day of \_\_\_\_\_, 1970, to Tricarichi, Carnes & Kube, 75 Public Square, Cleveland, Ohio 44113, attorneys for plaintiffs.

\_\_\_\_\_  
 Attorney for Defendant  
 Penn Central Transportation  
 Company.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

MICHAEL J. KNAPIK, et al. )  
 )  
Plaintiffs )

-vs-

PENN CENTRAL CO., et al. )  
 )  
Defendants )

CASE NUMBER C-69-722  
Judge Thomas D. Lambros

REQUEST FOR PRODUCTION OF  
DOCUMENTS

Now come Plaintiffs, by and through their attorneys, Tricarichi, Carnes, and Kube and they hereby request pursuant to Rule 34 of the Federal Rules of Civil Procedure, that Defendant Penn Central produce and permit Plaintiffs to inspect and copy all of the following documents and/or records:

1. Records of all wages paid to all Plaintiffs by either the New York Central Railroad or the Cleveland Union Terminal Company during the "base period" as provided for in the "Memorandum of Understanding re Employment Information to be Furnished upon Request and Computations Respecting Compensation Due Operating Employees Under Agreement."
2. Records of all wages paid to all Plaintiffs by either the Cleveland Union Terminal Company, the New York Central Railroad, the Penn-Central, or any successor thereto from February 1, 1968 to the present date.
3. A schedule of all wage adjustments to those positions occupied by Plaintiffs during the "base" or "tent" period including general wage increases applicable thereto.
4. A list of all employees of either New York Central, Pennsylvania, or Penn Central who performed compensated service at the Cleveland Terminal District Freight Yard and which employees possessed a seniority date of 9-10-64 or a seniority date subsequent to 9-10-64.
5. Copies of all rosters for the Cleveland Terminal District Freight Yard (which roster's code number is 595) for the years 1968 through 1973.
6. A list of the names and present residence addresses of all yardmasters employed in, and in charge of, the Cleveland Terminal District Freight Yard for the years 1968 through 1973.
7. A list of all individual jobs available in the Cleveland Terminal District Freight Yard for the years 1968 through

1973. There should be a separate list for each year and for each time the list was changed either by addition, subtraction, or substitution of jobs. For each year, list:

- (a) The person who held each position.
- (b) The rate of pay for each position, and the date and amount of each increase in the rate of pay for each position.

It is requested that the aforementioned production be made at a reasonable time and place convenient to the parties involved, as shall be agreed upon by counsel, but that said production take place prior to December 10, 1976.

TRICARICHI, CARNES & KUEE

By \_\_\_\_\_  
Michael R. Kuba  
Peter H. Weinberger  
Attorneys for Plaintiffs  
The Illuminating Building  
55 Public Square-Suite 2120  
Cleveland, Ohio 44113  
Phone: 861-6677

S E R V I C E

A copy of the foregoing Request for Production of Documents has been mailed to John Dolan, Attorney for Defendant Penn Central at 420 Standard Building, Cleveland, Ohio 44114 on this \_\_\_\_\_ day of \_\_\_\_\_ 1976.

\_\_\_\_\_  
Michael R. Kuba  
Peter H. Weinberger  
Attorneys for Plaintiffs

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

MICHAEL J. KNOPIK, et al.,            ) CIVIL ACTION No. C69-722  
                                          ) Plaintiffs            )  
                                          ) v.                     ) BRIEF IN OPPOSITION TO MOTION  
                                          ) TO INSPECT OR COPY  
PENN CENTRAL COMPANY, et al.,        ) )  
                                          ) Defendants.         )

Counsel for the defendant has stated to counsel for the plaintiffs that when he obtains copies of the merger agreement and copies of the application for authority to merge filed before the Interstate Commerce Commission, he will make them available for inspection and reproduction at the cost of the plaintiffs.

As to each plaintiff, records relating to their employment are presently being collected. Such records will be available for inspection and reproduction at the cost of the plaintiffs.

The claim files for claims filed by the plaintiffs against The New York Central Railroad Company are privileged, objected to and are without the scope of discovery, the defendant claiming its privilege.

The information sought in the merger agreement and in the application for authority to merge, being Interstate Commerce Commission Docket No. 21989 and No. 21990, are presently readily available to the plaintiffs through the offices of the Interstate Commerce Commission, which, upon tender of the cost, will furnish copies thereof.

Respectfully submitted,

JOHN F. DOLAN  
THOMAS R. SKULINA  
NICHOLAS M. DEVITO  
420 Standard Building  
Cleveland, Ohio 44113  
771-3652

Attorneys for Defendant, Penn  
Central Transportation Company

NOTICE OF SERVICE

A copy of the foregoing Brief in Opposition to Motion to Inspect and Copy was mailed this 29 day of July, 1970 to Tricarichi, Carnes & Kube, 75 Public Square, Cleveland, Ohio 44113, attorneys for plaintiffs.

Attorney for Defendant, Penn  
Central Transportation Company



TKS EX. 57

MPA - 1

PRTD IN U.S.A. MU

PENNSYLVANIA NEW YORK CENTRAL TRANSPORTATION COMPANY CINCINNATI Division

Engine or Train Service Claim for Compensation Pursuant to Merger Protective Agreement

\* Claim for Month of JANUARY, 1972.

A. EMPLOYEE IDENTIFICATION  
 (Fill out for each day. On days not worked show reasons therefor, i.e., rest day, vacation, holiday, sickness, job annulled, personal reasons, etc.)

|                                        |                        |
|----------------------------------------|------------------------|
| Name                                   | Occupation             |
| <u>H. J. MIDDLETON</u>                 | <u>TRAINMAN</u>        |
| Employe No.                            | Social Security Number |
| <u>477836</u>                          | <u>306-14-4616</u>     |
| RR Point to Receive Company Mail       | Roster Standing        |
| <u>RICHMOND DEPOT RICHMOND INDIANA</u> |                        |
| Name of Prior Roster (PRR)             |                        |
| <u>(NYC)</u>                           |                        |

B. COMPENSATION EARNED - ADJUSTMENT CLAIMED  
 (1) Monthly Base Period Compensation Guarantee . . . \$ 947.61  
 (2) Total Earnings for Month . . . \$ NONE  
 (3) ADJUSTMENT CLAIMED (Subtract B(2) from B(1)) . . . \$ NONE  
 (4) All Other Compensation Received From Company (W-2 Chargeable) . . . \$ NONE  
 (5) Number of Days this Month Applied for RR Unemployment Insurance . . . \$ NONE

I HEREBY CERTIFY THAT THIS INFORMATION IS TRUE AND CORRECT:  
 (Signature) H. J. Middleton  
 (Date) FEB. 2-1972

THIS FORM TO BE FILED WITHIN 60 DAYS FROM END OF MONTH FOR WHICH ADJUSTMENT IS CLAIMED

| Date                                          | Terminal | Train No. | Crew or Job No. | Class of Service | Earnings |
|-----------------------------------------------|----------|-----------|-----------------|------------------|----------|
| 1                                             |          |           |                 |                  |          |
| 2                                             |          |           |                 |                  |          |
| 3                                             |          |           |                 |                  |          |
| 4                                             |          |           |                 |                  |          |
| 5                                             |          |           |                 |                  |          |
| 6                                             |          |           |                 |                  |          |
| 7                                             |          |           |                 |                  |          |
| 8                                             |          |           |                 |                  |          |
| 9                                             |          |           |                 |                  |          |
| 10                                            |          |           |                 |                  |          |
| 11                                            |          |           |                 |                  |          |
| 12                                            |          |           |                 |                  |          |
| 13                                            |          |           |                 |                  |          |
| 14                                            |          |           |                 |                  |          |
| 15                                            |          |           |                 |                  |          |
| 16                                            |          |           |                 |                  |          |
| Earnings for 1st thru 16th                    |          |           |                 |                  |          |
| Earnings, 17th thru end of month              |          |           |                 |                  |          |
| Earnings, 1st thru 16th                       |          |           |                 |                  |          |
| Total Earnings for Month (Enter at Item B(2)) |          |           |                 |                  |          |

REMARKS:



PELON CENTRAL TRANSPORTATION COMPANY

Union Station  
380 North High Street  
Columbus, Ohio 43215

Date 2-18-72

Claim No. C1-101-72

Month of JAN. 1972

Social Security 306-14-4616

H.J. MIDDLETON #477836  
PASSENGER BRAKEMAN

Dear Sir: CINCINNATI, OHIO

This refers to MPA-1 form submitted by you for the month of JANUARY 1972 claiming \_\_\_\_\_ as adjustment due under the Merger Protective Agreement, which we have processed with the following result:

Amount of your protected rate (upgraded 11-1-70) -- \$ 947.61

Your total earnings and compensation for the month -- \$ NONE

REMARKS:

The proper amount of adjustment due is \$ 947.61, and we have arranged for payment in Pay Period 74 (pay day 3-3-72). Any amount claimed in excess of this adjustment is hereby declined. In the event you received unemployment or sickness benefits from the Railroad Retirement Board during the month involved, the Retirement Board must recover such monies out of your guarantee payment (or out of your future earnings).

85.98

Yours truly,

*R. R. Howland*

R. R. Howland  
Acting Superintendent -  
Labor Relations

PENNSYLVANIA NEW YORK CENTRAL TRANSPORTATION COMPANY

Division

Engine or Train Service Claim for Compensation Pursuant to Merger Protective Agreement

CINTI

\* Claim for Month of FEBRUARY, 1972.

A. EMPLOYEE IDENTIFICATION

|                                  |                        |
|----------------------------------|------------------------|
| Name                             | Occupation             |
| H. MIDDLETON                     | TRAINMAN               |
| Employee No.                     | Social Security Number |
| 477836                           | 306-144616             |
| RR Point to Receive Company Mail |                        |
| RICHMOND IND                     | TRAIN DEPOT            |
| Name of (PRR) Roster             | Roster Standing        |
| L                                |                        |
| (NYC)                            |                        |

B. COMPENSATION EARNED - ADJUSTMENT CLAIMED

(1) Monthly Base Period Compensation Guarantees . . . \$ 947.61

(2) Total Earnings for Month . . . . . \$

(3) ADJUSTMENT CLAIMED (Subtract B(2) from B(1)) . . . \$ 947.61

(4) All Other Compensation Received From Company (W-2 Chargeable) . . . \$ NO OFFSET

(5) Number of Days this Month Applied for RR Unemployment Insurance . . . . . NONE

I HEREBY CERTIFY THAT THIS INFORMATION IS TRUE AND CORRECT:

(signature) H. J. Middleton

(Date) March 2 1972

\* THIS FORM TO BE FILED WITHIN 60 DAYS FROM END OF MONTH FOR WHICH ADJUSTMENT IS CLAIMED

C. DAILY RECORD OF WORK PERFORMED

(Fill out for each day. On days not worked show reasons therefor, i.e., rest day, vacation, holiday, sickness, job annulled, personal reasons, etc.)

| Date                       | Terminal No. | Train No. | Crew or Job No. | Class of Service | Earnings |
|----------------------------|--------------|-----------|-----------------|------------------|----------|
| 1                          |              |           |                 |                  |          |
| 2                          |              |           |                 |                  |          |
| 3                          |              |           |                 |                  |          |
| 4                          |              |           |                 |                  |          |
| 5                          |              |           |                 |                  |          |
| 6                          |              |           |                 |                  |          |
| 7                          |              |           |                 |                  |          |
| 8                          |              |           |                 |                  |          |
| 9                          |              |           |                 |                  |          |
| 10                         |              |           |                 |                  |          |
| 11                         |              |           |                 |                  |          |
| 12                         |              |           |                 |                  |          |
| 13                         |              |           |                 |                  |          |
| 14                         |              |           |                 |                  |          |
| 15                         |              |           |                 |                  |          |
| 16                         |              |           |                 |                  |          |
| Earnings for 1st thru 16th |              |           |                 |                  |          |

| Date                                          | Terminal No. | Train No. | Crew or Job No. | Class of Service | Earnings |
|-----------------------------------------------|--------------|-----------|-----------------|------------------|----------|
| 17                                            |              |           |                 |                  |          |
| 18                                            |              |           |                 |                  |          |
| 19                                            |              |           |                 |                  |          |
| 20                                            |              |           |                 |                  |          |
| 21                                            |              |           |                 |                  |          |
| 22                                            |              |           |                 |                  |          |
| 23                                            |              |           |                 |                  |          |
| 24                                            |              |           |                 |                  |          |
| 25                                            |              |           |                 |                  |          |
| 26                                            |              |           |                 |                  |          |
| 27                                            |              |           |                 |                  |          |
| 28                                            |              |           |                 |                  |          |
| 29                                            |              |           |                 |                  |          |
| 30                                            |              |           |                 |                  |          |
| 31                                            |              |           |                 |                  |          |
| Earnings, 17th thru end of month              |              |           |                 |                  |          |
| Earnings, 1st thru 16th                       |              |           |                 |                  |          |
| Total Earnings for Month (Enter at Item B(2)) |              |           |                 |                  |          |

REMARKS:

PAID PERIOD 2-17-72

PAY 75 PAY

PAY



**PENN CENTRAL TRANSPORTATION COMPANY**

C. T. 84-E  
11/70  
PRINTED IN U. S. A.

REGION FEBRUARY 1972  
STATEMENT OF HJ MIDDLETON #477836

| DATES         |             |  |  |  |  |  |  |  |  |  |
|---------------|-------------|--|--|--|--|--|--|--|--|--|
| 1             |             |  |  |  |  |  |  |  |  |  |
| 2             |             |  |  |  |  |  |  |  |  |  |
| 3             |             |  |  |  |  |  |  |  |  |  |
| 4             |             |  |  |  |  |  |  |  |  |  |
| 5             |             |  |  |  |  |  |  |  |  |  |
| 6             |             |  |  |  |  |  |  |  |  |  |
| 7             |             |  |  |  |  |  |  |  |  |  |
| 8             |             |  |  |  |  |  |  |  |  |  |
| 9             |             |  |  |  |  |  |  |  |  |  |
| 10            |             |  |  |  |  |  |  |  |  |  |
| 11            |             |  |  |  |  |  |  |  |  |  |
| 12            |             |  |  |  |  |  |  |  |  |  |
| 13            |             |  |  |  |  |  |  |  |  |  |
| 14            |             |  |  |  |  |  |  |  |  |  |
| 15            |             |  |  |  |  |  |  |  |  |  |
| 16            |             |  |  |  |  |  |  |  |  |  |
| 17            |             |  |  |  |  |  |  |  |  |  |
| 18            |             |  |  |  |  |  |  |  |  |  |
| 19            |             |  |  |  |  |  |  |  |  |  |
| 20            |             |  |  |  |  |  |  |  |  |  |
| 21            |             |  |  |  |  |  |  |  |  |  |
| 22            |             |  |  |  |  |  |  |  |  |  |
| 23            |             |  |  |  |  |  |  |  |  |  |
| 24            |             |  |  |  |  |  |  |  |  |  |
| 25            |             |  |  |  |  |  |  |  |  |  |
| 26            |             |  |  |  |  |  |  |  |  |  |
| 27            |             |  |  |  |  |  |  |  |  |  |
| 28            |             |  |  |  |  |  |  |  |  |  |
| 29            |             |  |  |  |  |  |  |  |  |  |
| 30            |             |  |  |  |  |  |  |  |  |  |
| 31            |             |  |  |  |  |  |  |  |  |  |
| TOTAL         | NO EARNINGS |  |  |  |  |  |  |  |  |  |
| Daily Average |             |  |  |  |  |  |  |  |  |  |

M-108

PENN CENTRAL TRANSPORTATION COMPANY

Union Station  
380 North High Street  
Columbus, Ohio 43215

Name H.J. MIDDLETON #477836

Date 6-8-72

Occupation PASSENGER BRAREMAN

Prior Right Roster No. \_\_\_\_\_

Claim No. C1-263-72

Location SHARON YARD

Social Security 306-14-4616

Dear Sir:

This refers to MPA-1 form submitted by you for the month of FEBRUARY 1972 claiming 947.61 as adjustment due under the Merger Protective Agreement, which we have processed with the following result:

Amount of your protected rate (upgraded 11-1-70) -- \$ 947.61

Your total earnings and compensation for the month -- \$ -

REMARKS:

The proper amount of adjustment due is \$ 947.61, and we have arranged for payment in Pay Period 75 (pay day 3-17-72). Any amount claimed in excess of this adjustment is hereby declined. In the event you received unemployment or sickness benefits from the Railroad Retirement Board during the month involved, the Retirement Board must recover such monies out of your guarantee payment (or out of your future earnings).

85.98

Yours truly,

*E. Gibson*

E. Gibson  
Superintendent-Labor Relations

PENNSYLVANIA NEW YORK CENTRAL TRANSPORTATION COMPANY

CINTI Division

Engine or Train Service Claim for Compensation Pursuant to Merger Protective Agreement

\* Claim for Month of MARCH, 1972.

A. EMPLOYEE IDENTIFICATION

|                                  |                        |
|----------------------------------|------------------------|
| Name                             | Occupation             |
| <u>HJ MIDDLETON</u>              | <u>TRAINMAN</u>        |
| Employee No.                     | Social Security Number |
| <u>477836</u>                    | <u>306-144616</u>      |
| RR Point to Receive Company Mail |                        |
| <u>TRAINDEPOT RICHMOND IND.</u>  |                        |
| Name of Roster                   | Roster Standing        |
| <u>(PRR)</u>                     | <u>OK</u>              |
| (NYC)                            |                        |

B. COMPENSATION EARNED - ADJUSTMENT CLAIMED

11-1-70

(1) Monthly Base Period Compensation Guarantee . . . \$ 947.61

(2) Total Earnings for Month . . . . . \$ NONE

(3) ADJUSTMENT CLAIMED (Subtract B(2) from B(1)) . . \$ NONE

(4) All Other Compensation Received From Company (W-2 Chargeable) . . . \$ OFFSET

(5) Number of Days this Month Applied for RR Unemployment Insurance . . . . . \$ NONE

I HEREBY CERTIFY THAT THIS INFORMATION IS TRUE AND CORRECT:

(Signature) HJ Middleton  
(Date) APRIL 3 1972

\* THIS FORM TO BE FILED WITHIN 60 DAYS FROM END OF MONTH FOR WHICH ADJUSTMENT IS CLAIMED

C. DAILY RECORD OF WORK PERFORMED (Fill out for each day. On days not worked show reasons therefor, i.e., rest day, vacation, holiday, sickness, job annulled, personal reasons, etc.)

| Date                                          | Terminal | Train No. | Crew or Job No. | Class of Service | Earnings |
|-----------------------------------------------|----------|-----------|-----------------|------------------|----------|
| 1                                             |          |           |                 |                  |          |
| 2                                             |          |           |                 |                  |          |
| 3                                             |          |           |                 |                  |          |
| 4                                             |          |           |                 |                  |          |
| 5                                             |          |           |                 |                  |          |
| 6                                             |          |           |                 |                  |          |
| 7                                             |          |           |                 |                  |          |
| 8                                             |          |           |                 |                  |          |
| 9                                             |          |           |                 |                  |          |
| 10                                            |          |           |                 |                  |          |
| 11                                            |          |           |                 |                  |          |
| 12                                            |          |           |                 |                  |          |
| 13                                            |          |           |                 |                  |          |
| 14                                            |          |           |                 |                  |          |
| 15                                            |          |           |                 |                  |          |
| 16                                            |          |           |                 |                  |          |
| Earnings for 1st thru 16th                    |          |           |                 |                  |          |
| Earnings, 17th thru end of month              |          |           |                 |                  |          |
| Earnings, 1st thru 16th                       |          |           |                 |                  |          |
| Total Earnings for Month (Enter at Item B(2)) |          |           |                 |                  |          |

REMARKS :



PENN CENTRAL TRANSPORTATION COMPANY

Union Station  
380 North High Street  
Columbus, Ohio 43215

Name H.J. MIDDLETON #477836

Date 4-13-72

Occupation BRAKEMAN

Prior Right Roster No. \_\_\_\_\_

Claim No. 01-301-72

Location CINCINNATI, OHIO

Social Security 306-14-4616

Dear Sir:

This refers to MPA-1 form submitted by you for the month of MARCH 1972 claiming 947.61 as adjustment due under the Merger Protective Agreement, which we have processed with the following result:

Amount of your protected rate (upgraded 11-1-70) -- \$ 947.61

Your total earnings and compensation for the month -- \$       

REMARKS:

The proper amount of adjustment due is \$ 947.61, and we have arranged for payment in Pay Period 78 (pay day 4-28-72). Any amount claimed in excess of this adjustment is hereby declined. In the event you received unemployment or sickness benefits from the Railroad Retirement Board during the month involved, the Retirement Board must recover such monies out of your guarantee payment (or out of your future earnings).

1033.59  
947.61  

---

8598

Yours truly,  
*E. Gibson*  
E. Gibson  
Superintendent-Labor Relations

PENN CENTRAL TRANSPORTATION COMPANY

CINTI Division

Engine or Train Service Claim for Compensation Pursuant to Merger Protective Agreement

\* Claim for Month of APRIL, 1972

(Fill out for each day. On days not worked show reasons (therefor, i.e., rest day, vacation, holiday, sickness, job annulled, personal reasons, etc.)

C. DAILY RECORD OF WORK PERFORMED

| Date                                          | Terminal No. | Train No. | Crew or Job No. | Class of Service | Earnings |
|-----------------------------------------------|--------------|-----------|-----------------|------------------|----------|
| 17                                            |              |           |                 |                  |          |
| 18                                            |              |           |                 |                  |          |
| 19                                            |              |           |                 |                  |          |
| 20                                            |              |           |                 |                  |          |
| 21                                            |              |           |                 |                  |          |
| 22                                            |              |           |                 |                  |          |
| 23                                            |              |           |                 |                  |          |
| 24                                            |              |           |                 |                  |          |
| 25                                            |              |           |                 |                  |          |
| 26                                            |              |           |                 |                  |          |
| 27                                            |              |           |                 |                  |          |
| 28                                            |              |           |                 |                  |          |
| 29                                            |              |           |                 |                  |          |
| 30                                            |              |           |                 |                  |          |
| 31                                            |              |           |                 |                  |          |
| Earnings, 17th thru end of month              |              |           |                 |                  |          |
| Earnings, 1st thru 16th                       |              |           |                 |                  |          |
| Total Earnings for Month (Enter at item B(2)) |              |           |                 |                  |          |

| Date                       | Terminal No. | Train No. | Crew or Job No. | Class of Service | Earnings |
|----------------------------|--------------|-----------|-----------------|------------------|----------|
| 1                          |              |           |                 |                  |          |
| 2                          |              |           |                 |                  |          |
| 3                          |              |           |                 |                  |          |
| 4                          |              |           |                 |                  |          |
| 5                          |              |           |                 |                  |          |
| 6                          |              |           |                 |                  |          |
| 7                          |              |           |                 |                  |          |
| 8                          |              |           |                 |                  |          |
| 9                          |              |           |                 |                  |          |
| 10                         |              |           |                 |                  |          |
| 11                         |              |           |                 |                  |          |
| 12                         |              |           |                 |                  |          |
| 13                         |              |           |                 |                  |          |
| 14                         |              |           |                 |                  |          |
| 15                         |              |           |                 |                  |          |
| 16                         |              |           |                 |                  |          |
| Earnings for 1st thru 16th |              |           |                 |                  |          |

A. EMPLOYEE IDENTIFICATION

Name HJ MIDDLETON Occupation TRAINMAN

Employe No. 477836 Social Security Number 306-144616

RR Point to Receive Company Mail \_\_\_\_\_

Name of (PRR) Roster \_\_\_\_\_ Roster Standing \_\_\_\_\_

Prior Right (NYC) \_\_\_\_\_

B. COMPENSATION EARNED - ADJUSTMENT CLAIMED

(1) Monthly Base Period Compensation Guarantee . . . \$ 947.61

(2) Total Earnings for Month . . . . . \$ None

(3) ADJUSTMENT CLAIMED (Subtract B(2) from B(1)) . . . \$ None

(4) All Other Compensation Received from Company (W-2 Chargeable) . . . \$ None

(5) Number of Days this Month Applied for RR Unemployment Insurance . . . . .

I HEREBY CERTIFY THAT THIS INFORMATION IS TRUE AND CORRECT:

(Signature) HJ Middleton

(Date) MAY 2 1972

\* THIS FORM TO BE FILED WITHIN 60 DAYS FROM END OF MONTH FOR WHICH ADJUSTMENT IS CLAIMED

REMARKS: Note - Middleton was given an 8-A-1 placement as Head Brakeman on Trains CI-3 and CI-4 effective May 1, 1972.



PENN CENTRAL TRANSPORTATION COMPANY

Union Station  
380 North High Street  
Columbus, Ohio 43215

Name H. J. Middleton #477836

Date 9-15-72

Occupation Brakeman

Prior Right Roster No. \_\_\_\_\_

Claim No. C1-483-7V

Location Cincinnati

Social Security 306-14-4616

Dear Sir:

This refers to MPA-1 form submitted by you for the month of April 1972 claiming \$947.61 as adjustment due under the Merger Protective Agreement, which we have processed with the following result:

Amount of your protected rate (upgraded 11-1-70) -- \$ 947.61

Your total earnings and compensation for the month -- \$           

REMARKS:

The proper amount of adjustment due is \$ 947.61, and we have arranged for payment in Pay Period 80 (pay day 5-26-72). Any amount claimed in excess of this adjustment is hereby declined. In the event you received unemployment or sickness benefits from the Railroad Retirement Board during the month involved, the Retirement Board must recover such monies out of your guarantee payment (or out of your future earnings).

1084.67  
947.61  

---

13706

Yours truly,  
E. Gibson  
E. Gibson  
Superintendent-Labor Relations

H.J. MIDDLETON # 477836

NAME

APRIL 1972

MONTH

| DATE     | AMOUNT |  |  |
|----------|--------|--|--|
| 1        |        |  |  |
| 2        |        |  |  |
| 3        |        |  |  |
| 4        |        |  |  |
| 5        |        |  |  |
| 6        |        |  |  |
| 7        |        |  |  |
| 8        |        |  |  |
| 9        |        |  |  |
| 10       |        |  |  |
| 11       |        |  |  |
| 12       |        |  |  |
| 13       |        |  |  |
| 14       |        |  |  |
| 15       |        |  |  |
| 16       |        |  |  |
| 17       |        |  |  |
| 18       |        |  |  |
| 19       |        |  |  |
| 20       |        |  |  |
| 21       |        |  |  |
| 22       |        |  |  |
| 23       |        |  |  |
| 24       |        |  |  |
| 25       |        |  |  |
| 26       |        |  |  |
| 27       |        |  |  |
| 28       |        |  |  |
| 29       |        |  |  |
| 30       |        |  |  |
| <b>T</b> |        |  |  |

| PENALTIES |  |
|-----------|--|
|           |  |
|           |  |
|           |  |
|           |  |
|           |  |
|           |  |

*Print*  
 5-26-72  
 PP # 80

EARNINGS \_\_\_\_\_  
 PENALTIES \_\_\_\_\_  
 GRAND TOTAL \_\_\_\_\_

SOUTHERN REGION

Indianapolis, Indiana

5/7/73

HQ Middletown, Bkn 477836

Sharon

Dear Sir:

We have received instructions to upgrade all 1972 guarantees that have not previously been upgraded. Payment(s) for line reflecting balance due and/or deduction(s) for line reflecting overpayment will be made in pay period 80 for which you will receive your check on 5/25/73.

|                | January        | February       | March          | April          | May      | June     |
|----------------|----------------|----------------|----------------|----------------|----------|----------|
| Upgraded Guar. | <u>1033.59</u> | <u>1033.59</u> | <u>1033.59</u> | <u>1084.17</u> | _____    | _____    |
| Old Guarantee  | <u>947.61</u>  | <u>947.61</u>  | <u>947.61</u>  | <u>947.61</u>  | _____    | _____    |
| Difference     | _____          | _____          | _____          | _____          | _____    | _____    |
| Back Pay       | _____          | _____          | _____          | _____          | _____    | _____    |
| Balance due    | <u>85.98</u>   | <u>85.98</u>   | <u>85.98</u>   | <u>137.06</u>  | _____    | _____    |
| OVERPAYMENT    | _____          | _____          | _____          | _____          | _____    | _____    |
|                | July           | August         | September      | October        | November | December |
| Upgraded Guar. | _____          | _____          | _____          | _____          | _____    | _____    |
| Old Guarantee  | _____          | _____          | _____          | _____          | _____    | _____    |
| Difference     | _____          | _____          | _____          | _____          | _____    | _____    |
| Back Pay       | _____          | _____          | _____          | _____          | _____    | _____    |
| Balance Due    | _____          | _____          | _____          | _____          | _____    | _____    |
| Overpayment    | _____          | _____          | _____          | _____          | _____    | _____    |

Any questions concerning payments or deductions shown in this letter can be made to J. E. McCarty or Dale Elston on Extension 4951 in Indianapolis, or by writing J. E. McCarty, Room 545, Penn Central Building, Indianapolis, Indiana. 46204.

E. GIBSON

Superintendent-Labor Relations



MPA - 1  
Division

TT's EX. 58

PENN CENTRAL TRANSPORTATION COMPANY

Engine or Train Service Claim for Compensation Pursuant to Merger Protective Agreement

\* Claim for Month of JANUARY, 1972.

(Fill out for each day. On days not worked show reasons (therefor, i.e., rest day, vacation, holiday, sickness, job annulled, personal reasons, etc.)

C. DAILY RECORD OF WORK PERFORMED

| Date                                          | Terminal   | Train No. | Crew of Job No. | Class of Service | Earnings |
|-----------------------------------------------|------------|-----------|-----------------|------------------|----------|
| 1                                             | Bellefonte |           |                 | YARD             |          |
| 2                                             | "          |           |                 | "                |          |
| 3                                             | "          |           |                 | "                |          |
| 4                                             | "          |           |                 | "                |          |
| 5                                             | "          |           |                 | "                |          |
| 6                                             | "          |           |                 | "                |          |
| 7                                             | "          |           |                 | "                |          |
| 8                                             | "          |           |                 | "                |          |
| 9                                             | "          |           |                 | "                |          |
| 10                                            | "          |           |                 | "                |          |
| 11                                            | "          |           |                 | "                |          |
| 12                                            | "          |           |                 | "                |          |
| 13                                            | "          |           |                 | "                |          |
| 14                                            | "          |           |                 | "                |          |
| 15                                            | "          |           |                 | "                |          |
| 16                                            | "          |           |                 | "                |          |
| Earnings, 1st thru end of month               |            |           |                 |                  |          |
| Earnings, 1st thru 16th                       |            |           |                 |                  |          |
| Total Earnings for Month (Enter at Item B(2)) |            |           |                 |                  |          |

| Date                       | Terminal   | Train No. | Crew of Job No. | Class of Service | Earnings |
|----------------------------|------------|-----------|-----------------|------------------|----------|
| 1                          | Bellefonte |           |                 | YARD             |          |
| 2                          | "          |           |                 | "                |          |
| 3                          | "          |           |                 | "                |          |
| 4                          | "          |           |                 | "                |          |
| 5                          | "          |           |                 | "                |          |
| 6                          | "          |           |                 | "                |          |
| 7                          | "          |           |                 | "                |          |
| 8                          | "          |           |                 | "                |          |
| 9                          | "          |           |                 | "                |          |
| 10                         | "          |           |                 | "                |          |
| 11                         | "          |           |                 | "                |          |
| 12                         | "          |           |                 | "                |          |
| 13                         | "          |           |                 | "                |          |
| 14                         | "          |           |                 | "                |          |
| 15                         | "          |           |                 | "                |          |
| 16                         | "          |           |                 | "                |          |
| Earnings for 1st thru 16th |            |           |                 |                  |          |

A. EMPLOYEE IDENTIFICATION

Name: W. R. Pedmore Occupation: YARD BRICKMAN  
 Employee No.: 628413 Social Security Number: 282-30-6167  
 RR Point to Receive Company Mail: Bellefonte, C. Y.M. Co.  
 Name of (RR) Roster: Bellefonte Roster Standing: 540  
 Prior Right (NYC) Bellefonte (540)

RATE 11-1-70 757.05 minus 1.44 (Feb 14) COMPENSATION CLAIMED - ADJUSTMENT CLAIMED

- (1) Monthly Base Period Compensation Guarantee . . . . . \$ 757.05
- (2) Total Earnings for Month . . . . . \$ 757.05
- (3) ADJUSTMENT CLAIMED (Subtract B(2) from B(1)) . . . \$ 757.05
- (4) All Other Compensation Received from Company (W-2 Chargeable) . . . \$ None
- (5) Number of Days this Month Applied for RR Unemployment Insurance . . . . . None

I HEREBY CERTIFY THAT THIS INFORMATION IS TRUE AND CORRECT:

(Signature) William R. Pedmore  
 (Date)

\* THIS FORM TO BE FILED WITHIN 60 DAYS FROM END OF MONTH FOR WHICH ADJUSTMENT IS CLAIMED

Lowell E. Henry Disputing

REMARKS: Had no compensation in January  
on supplemental extra list since 12/13/71  
and all through January.

OK to full guarantee minus of Feb 14 pay

\$757.05  
 11.61 of insurance  
 445.61  
 F.M.G.

Handwritten notes and signatures at the top right of the page, including "Disputing" and "F.M.G."



PENN CENTRAL TRANSPORTATION COMPANY

Union Station  
380 North High Street  
Columbus, Ohio 43215

Date February 18, 1972

Claim No. B-1-01-72

Month of JANUARY 1972

Social Security 282-30-6167

Mr. W. P. Fredmore  
Yard Brakeman  
Prior Right Roster 540  
Bellefontaine, Ohio

*628413*

(Mail to home address--  
Route #3  
Bellefontaine, O. 43311)

Dear Sir:

This refers to MPA-1 form submitted by you for the month of January, 1972 claiming 757.05 as adjustment due under the Merger Protective Agreement, which we have processed with the following result:

Amount of your protected rate (upgraded 11/1/70) -- \$757.05 (minus offset of \$11.44)  
Your total earnings and compensation for the month -- \$ (None)

REMARKS:

The offset deduction of \$11.44 indicated above has been established for your guarantee in relation to the 14-hours-of-service law. In addition, the Railroad Retirement Board has reported that you received \$50.80 in unemployment benefits during January, and they must recover that amount out of your guarantee adjustment.

The proper amount of adjustment due is \$ 745.61 (with \$50.80 to be deducted for the R.R.B.) and we have arranged for payment in Pay Period 74 (pay day March 3). Any amount claimed in excess of this adjustment is hereby declined. In the event you received unemployment or sickness benefits from the Railroad Retirement Board during the month involved, the Retirement Board must recover such monies out of your guarantee payment (or out of your future earnings).

*757.05 claimed  
745.61 paid  
11.44 amount denied*

*68.02*

Yours truly,

*R. R. Howland*

R. R. Howland  
Acting Superintendent -  
Labor Relations



TLS EX. 59  
C.N.T.I.  
MPA - 1  
Division

PENN CENTRAL TRANSPORTATION COMPANY

Engine or Train Service Claim for Compensation Pursuant to Merger Protective Agreement

APR 03 1975  
APR 03 1975

\* Claim for Month of MARCH, 1975.

(Fill out for each day. On days not worked show reasons (therefor, i.e., rest day, vacation, holiday, sickness, job annulled, personal reasons, etc.)

A. EMPLOYEE IDENTIFICATION

Name H. BONZ Occupation YO  
 Employee No. 475393 Social Security Number 716-03-0092 TRAINMAN  
 RR Point to Receive Company Mail SHARONVILLE, OHIO  
 Name of Prior Roster (PRR) \_\_\_\_\_ Roster Standing 01  
 Name of Roster (RRR) \_\_\_\_\_

B. COMPENSATION EARNED - ADJUSTMENT CLAIMED

(1) Monthly Base Period Compensation Guarantee . . . \$ 1750.65  
 (2) Total Earnings for Month . . . . . \$ 921.65  
 (3) ADJUSTMENT CLAIMED (Subtract B(2) from B(1)) . . . \$ 829.00  
 (4) All Other Compensation Received From Company (W-2 Chargeable) . . . \$ 0  
 (5) Number of Days this Month Applied for RR Unemployment Insurance . . . . .

I HEREBY CERTIFY THAT THIS INFORMATION IS TRUE AND CORRECT:

(Signature) Raymond Bonz  
 (Date) 4-3-75

\* THIS FORM TO BE FILED WITHIN 60 DAYS FROM END OF MONTH FOR WHICH ADJUSTMENT IS CLAIMED

C. DAILY RECORD OF WORK PERFORMED

| Date                       | Terminal | Train No. | Crew or Job No. | Class of Service | Earnings |
|----------------------------|----------|-----------|-----------------|------------------|----------|
| 1                          | SHOREN   | 45        | A               | YD               | 63.47    |
| 2                          |          |           | REST            | DAY              |          |
| 3                          |          |           | REST            | DAY              |          |
| 4                          |          | 45        | A               | YD               | 63.07    |
| 5                          |          | 45        | A               | YD               | 53.67    |
| 6                          |          | 45        | A               | YD               | 45.37    |
| 7                          |          | 45        | A               | YD               | 45.37    |
| 8                          |          | 45        | A               | YD               | 45.37    |
| 9                          |          |           | REST            | DAY              |          |
| 10                         |          |           | REST            | DAY              |          |
| 11                         |          | 45        | A               | YD               | 45.37    |
| 12                         |          | 45        | A               | YD               | 45.37    |
| 13                         |          | 45        | A               | YD               | 45.37    |
| 14                         |          | 45        | A               | YD               | 45.37    |
| 15                         |          | 45        | A               | YD               | 45.37    |
| 16                         |          |           | REST            | DAY              |          |
| Earnings for 1st thru 16th |          |           |                 |                  | 553.17   |

| Date                                          | Terminal | Train No. | Crew or Job No. | Class of Service | Earnings |
|-----------------------------------------------|----------|-----------|-----------------|------------------|----------|
| 17                                            | SHOREN   | 45        | A               | YD               | 45.37    |
| 18                                            |          | 45        | A               | YD               | 45.37    |
| 19                                            |          | 45        | A               | YD               | 45.37    |
| 20                                            |          | 45        | A               | YD               | 45.37    |
| 21                                            |          | 45        | A               | YD               | 45.37    |
| 22                                            |          | 45        | A               | YD               | 45.37    |
| 23                                            |          |           | REST            | DAY              |          |
| 24                                            |          |           | REST            | DAY              |          |
| 25                                            |          | 45        | A               | YD               | 49.47    |
| 26                                            |          | 45        | A               | YD               | 45.37    |
| 27                                            |          | 45        | A               | YD               | 47.37    |
| 28                                            |          | 45        | A               | YD               | 45.37    |
| 29                                            |          | CAEW      | W               | OFF              |          |
| 30                                            |          |           | REST            | DAY              |          |
| 31                                            |          |           | REST            | DAY              |          |
| Earnings, 17th thru end of month              |          |           |                 |                  | 368.48   |
| Earnings, 1st thru 16th                       |          |           |                 |                  | 553.17   |
| Total Earnings for Month (Enter at Item B(2)) |          |           |                 |                  | 921.65   |

1750.65  
1057.89  
692.76

992.90

REMARKS:

1505189  
62



PENN CENTRAL TRANSPORTATION COMPANY  
 MERGER PROTECTIVE AGREEMENT

SOUTHERN REGION

Cincinnati, Ohio

Location Sharon

5/20/75

Name H Benz

E - F - C - (B)

Referring to your claim for compensation in the amount of \$ 829.00  
 submitted for the month of Mar, 1975 pursuant to the Merger  
 Protective Agreement.

Claim in the amount of \$ 692.76 (less any amount recovered by the Rail-  
 road Retirement Board) is being carried in your regular pay draft that you will  
 receive 5/30/75.

- Difference being allowed and that claimed by you is the result of your - - - -
- current guarantee being - - - - \$ 1750.65.
  - having been paid more than shown received - - - - \$ \_\_\_\_\_.
  - not including earnings lost as a result of laying off - \$ \_\_\_\_\_.
  - not being available on rest days - - - - \$ \_\_\_\_\_.
  - lost earnings as a result of \_\_\_\_\_ \$ \_\_\_\_\_.

not taking job 45A Cond which was assigned to  
 a man junior to you.  
 From 3/1 - 3/31 this position earned \$ 1057.89.  
 From \_\_\_\_\_ you earned \$ \_\_\_\_\_.  
 Therefore, you will be paid \$ 692.76.

Due to the foregoing reasons checked, your claim as submitted, is denied.

J. M. LeGates  
 Division Superintendent

1,926.11  
 17546  
 10579  
 -----  
 6967

Division

C. L. T. I.

**CENTRAL TRANSPORTATION COMPANY**

Machine of Train Service Claim for Compensation Pursuant to Merger Protective Agreement

MAR 10 1975

SUPERINTENDENT  
LABOR RELATION  
INDIANAPOLIS, INDIANA

\* Claim for Month of ~~FEBRUARY~~ FEBRUARY, 1975.

A. EMPLOYEE IDENTIFICATION

|                                  |                              |                        |                                     |
|----------------------------------|------------------------------|------------------------|-------------------------------------|
| Name                             | ALIBONZ                      | Occupation             | Y.P. BAKER & MANU                   |
| Employe No.                      | 475 392                      | Social Security Number | 716-03-0092                         |
| RR Point to Receive Company Mail | C.C.P.W. DISTA. SHUREN. CH10 |                        |                                     |
| Name of Roster                   | 11                           | (PRR)                  |                                     |
| Prior Right Roster               |                              | (HWCT)                 |                                     |
|                                  |                              | Roster Scheduling      | <input checked="" type="checkbox"/> |

B. COMPENSATION EARNED - ADJUSTMENT CLAIMED

(1) Monthly Base Period Compensation Guarantee . . . \$ 1750.65

(2) Total Earnings for Month . . . \$ 1062.50

(3) ADJUSTMENT CLAIMED (Subtract B(2) from B(1)) . . . \$ 688.15

(4) All Other Compensation Received From Company (W-2 Chargeable) \$ 0

(5) Number of Days this Month Applied for RR Unemployment Insurance . . . . . 0

I HEREBY CERTIFY THAT THIS INFORMATION IS TRUE AND CORRECT:

(Signature) Danny S. Borg  
(Date) FEBRUARY 5-75

\* THIS FORM TO BE FILED WITHIN 60 DAYS FROM END OF MONTH FOR WHICH ADJUSTMENT IS CLAIMED

C. DAILY RECORD OF WORK PERFORMED

(Fill out for each day. On days not worked show reasons (therefor, i.e., rest day, vacation, holiday, sickness, job annulled, personal reasons, etc.)

| Date                                          | Terminal | Train No. | Crew or Job No. | Class of Service | Earnings |
|-----------------------------------------------|----------|-----------|-----------------|------------------|----------|
| 1                                             | SHUREN   | 45        | A               | YD               | 447.76   |
| 2                                             |          |           | REST            | DAY              |          |
| 3                                             |          |           | REST            | DAY              |          |
| 4                                             |          | 45        | A               | YD               | 47.20    |
| 5                                             |          | 45        | A               | YD               | 557.77   |
| 6                                             |          | 45        | A               | YD               | 84.50    |
| 7                                             |          | 45        | A               | YD               | 509.00   |
| 8                                             |          | 45        | A               | YD               | 45.27    |
| 9                                             |          | REST      | DAY             |                  |          |
| 10                                            |          | REST      | DAY             |                  |          |
| 11                                            |          | 45        | A               | YD               | 45.27    |
| 12                                            |          | 45        | A               | YD               | 45.27    |
| 13                                            |          | 45        | A               | YD               | 45.27    |
| 14                                            |          | 45        | A               | YD               | 53.67    |
| 15                                            |          | 45        | A               | YD               | 45.27    |
| 16                                            |          |           | REST            | DAY              |          |
| Earnings for 1st thru 16th                    |          |           |                 |                  | 585.47   |
| Earnings for 17th thru end of month           |          |           |                 |                  | 476.03   |
| Total Earnings for Month (Enter at Item B(2)) |          |           |                 |                  | 1062.50  |

| Date                                          | Terminal | Train No. | Crew or Job No. | Class of Service | Earnings |
|-----------------------------------------------|----------|-----------|-----------------|------------------|----------|
| 17                                            | SHUREN   |           | REST            | DAY              | 447.80   |
| 18                                            |          | 45        | A               | YD               | 447.80   |
| 19                                            |          | 45        | A               | YD               | 45.27    |
| 20                                            |          | 45        | A               | YD               | 57.82    |
| 21                                            |          | 45        | A               | YD               | 55.27    |
| 22                                            |          | 45        | A               | YD               | 45.27    |
| 23                                            |          |           | REST            | DAY              |          |
| 24                                            |          |           | REST            | DAY              |          |
| 25                                            |          | 45        | A               | YD               | 447.80   |
| 26                                            |          | 45        | A               | YD               | 60.67    |
| 27                                            |          | 45        | A               | YD               | 59.27    |
| 28                                            |          | 45        | A               | YD               | 62.07    |
| 29                                            |          |           |                 |                  |          |
| 30                                            |          |           |                 |                  |          |
| 31                                            |          |           |                 |                  |          |
| Earnings, 17th thru end of month              |          |           |                 |                  | 476.03   |
| Earnings, 1st thru 16th                       |          |           |                 |                  | 585.47   |
| Total Earnings for Month (Enter at Item B(2)) |          |           |                 |                  | 1062.50  |

1750.65  
1206.51  
544.14

1132.32

REMARKS:

4570

201



PENN CENTRAL TRANSPORTATION COMPANY

MERGER PROTECTIVE AGREEMENT

SOUTHERN REGION

Cincinnati, Ohio

Location Sharon

4-11-75

Name H. Bony

E - F - C - ~~B~~

Referring to your claim for compensation in the amount of \$ 688.15

submitted for the month of Feb., 1975 pursuant to the Merger

Protective Agreement.

Claim in the amount of \$ 544.14 (less any amount recovered by the Rail-

road Retirement Board) is being carried in your regular pay draft that you will

receive 4-18-75.

Difference being allowed and that claimed by you is the result of your - - - -

current guarantee being - - - - \$ 1750.65.

having been paid more than shown received - - - - \$ \_\_\_\_\_.

not including earnings lost as a result of laying off - \$ \_\_\_\_\_.

not being available on rest days - - - - \$ \_\_\_\_\_.

lost earnings as a result of \_\_\_\_\_ \$ \_\_\_\_\_.

not taking job 45A. (Cond) which was assigned to

a man junior to you.

From 2/1 - 2/28 this position earned \$ 1206.51.

From \_\_\_\_\_ you earned \$ \_\_\_\_\_.

Therefore, you will be paid \$ 544.14.

Due to the foregoing reasons checked, your claim as submitted, is denied.

J. M. LeGates  
Division Superintendent

1,926.11  
17546  
12065  
5481

SW 35

FD-101 (U.S.A. M-1)

PENNSYLVANIA NEW YORK CENTRAL TRANSPORTATION COMPANY

MPA - 1  
Division

Engine or Train Service Claim for Compensation Pursuant to Merger Protective Agreement

R E Morris

Claim for Month of Feb. 1972

3612  
3612  
3394

(A)

EMPLOYEE IDENTIFICATION

Name: A. D. Weir Occupation: conductor

Employee No. 439,456 Social Security Number 377-01-641

RR Point to Receive Company Mail: Gettysburg

Name of Prior Right Roster: P. R. R. Roster Stamping: 14

COMPENSATION EARNED - ADJUSTMENT PERIOD

(1) Monthly Base Period: 864.65

(2) Compensation Guaranteed: 798.67

(3) Total Earnings for month: 65.98

(4) ADJUSTMENT CLAIMED: 2

(5) Subtract B(2) from B(1): None

(6) All Other Compensation Received From Company (W-2 Chargeable): None

(7) Number of Days this Month Applied for RP Unemployment Insurance: None

I HEREBY CERTIFY THAT THIS INFORMATION IS TRUE AND CORRECT:

(Signature) A. D. Weir  
(Date) 3/3/1972

\* THIS FORM TO BE FILED WITHIN 60 DAYS FROM END OF MONTH FOR WHICH ADJUSTMENT IS CLAIMED

(Fill out for each day. On days not worked show reasons therefor, i.e., rest day, vacation, holiday, sickness, job annulled, personal reasons, etc.)

| Date                       | Terminal | Train Job No. | Crew or Class of Service | Earnings | Date                                          | Terminal | Train Job No. | Crew or Class of Service | Earnings |  |
|----------------------------|----------|---------------|--------------------------|----------|-----------------------------------------------|----------|---------------|--------------------------|----------|--|
| 1                          |          | Vacation      |                          | 3931     | 17                                            |          | Day of Rest   |                          |          |  |
| 2                          |          | Vacation      |                          | 3931     | 18                                            |          | Day of Rest   |                          |          |  |
| 3                          |          | Day of Rest   |                          |          | 19                                            |          | Day of Rest   |                          |          |  |
| 4                          |          | Day of Rest   |                          |          | 20                                            |          | Day off       |                          | 36.12    |  |
| 5                          |          | Vacation      |                          | 3931     | 21                                            |          | Day off       |                          | 36.12    |  |
| 6                          |          | Vacation      |                          | 3931     | 22                                            |          | Day of Rest   |                          |          |  |
| 7                          |          | Vacation      |                          | 3931     | 23                                            |          | Day of Rest   |                          |          |  |
| 8                          |          | Vacation      |                          | 3931     | 24                                            |          | Day of Rest   |                          |          |  |
| 9                          |          | Vacation      |                          | 3931     | 25                                            |          | Day of Rest   |                          |          |  |
| 10                         |          | Day of Rest   |                          |          | 26                                            |          | Day of Rest   |                          |          |  |
| 11                         |          | Day of Rest   |                          |          | 27                                            |          | Day of Rest   |                          |          |  |
| 12                         |          | Day of Rest   |                          |          | 28                                            |          | Day of Rest   |                          |          |  |
| 13                         |          | Day of Rest   |                          |          | 29                                            |          | Day of Rest   |                          |          |  |
| 14                         |          | Day of Rest   |                          |          | 30                                            |          | Day of Rest   |                          |          |  |
| 15                         |          | Day of Rest   |                          |          | 31                                            |          | Day of Rest   |                          |          |  |
| 16                         |          | Day off       |                          | 36.12    |                                               |          |               |                          |          |  |
| Earnings for 1st thru 16th |          |               |                          | 1440.40  | Earnings, 17th thru end of month              |          |               |                          | 342.90   |  |
| Earnings for 1st thru 16th |          |               |                          | 433.77   | Earnings, 17th thru 16th                      |          |               |                          | 433.77   |  |
| Earnings for 1st thru 16th |          |               |                          | 36.12    | Total Earnings for Month (Enter at Item B(2)) |          |               |                          | 798.67   |  |

REMARKS:

None  
gy-12  
957.75  
690.31

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

RR Main

3726  
4167  
3726  
3612

4000  
3612  
4835  
3946  
3612  
3564

~~458002~~ 490572 3946  
458002 4280  
458002 3726  
490572 5283  
458002 3612

~~517.84~~  
~~375.17~~  
~~292.71~~

596.47  
275.17  
871.64

*Circle*

Division

PENN CENTRAL COMPANY

Engine or Train Service Claim for Compensation Pursuant to Merger Protective Agreement

\* Claim for Month of Dec, 1975.



(Fill out for each day. On days not worked show reasons therefor, i.e., rest day, vacation, holiday, sickness, job annulled, personal reasons, etc.)

C. DAILY RECORD OF WORK PERFORMED

| Date                                          | Terminal No. | Train No. | Crew or Job No. | Class of Service | Earnings |
|-----------------------------------------------|--------------|-----------|-----------------|------------------|----------|
| 1                                             | Mermaid      | 84A       | Shaw            | Shaw             | 5507.508 |
| 2                                             |              |           |                 |                  | 5507.508 |
| 3                                             |              |           |                 |                  | 5507.508 |
| 4                                             |              |           |                 |                  | 5507.508 |
| 5                                             |              |           |                 |                  | 5507.508 |
| 6                                             |              |           |                 |                  | 5507.508 |
| 7                                             |              |           |                 |                  | 5507.508 |
| 8                                             |              |           |                 |                  | 5507.508 |
| 9                                             |              |           |                 |                  | 5507.508 |
| 10                                            |              |           |                 |                  | 5507.508 |
| 11                                            |              |           |                 |                  | 5507.508 |
| 12                                            |              |           |                 |                  | 5507.508 |
| 13                                            |              |           |                 |                  | 5507.508 |
| 14                                            |              |           |                 |                  | 5507.508 |
| 15                                            |              |           |                 |                  | 5507.508 |
| 16                                            |              |           |                 |                  | 5507.508 |
| Earnings for 1st thru 16th                    |              |           |                 |                  | 66184    |
| Earnings, 17th thru end of month              |              |           |                 |                  | 55948    |
| Earnings, 1st thru 16th                       |              |           |                 |                  | 66184    |
| Total Earnings for Month (Enter at Item B(2)) |              |           |                 |                  | 122032   |

| Date                                          | Terminal No. | Train No. | Crew or Job No. | Class of Service | Earnings |
|-----------------------------------------------|--------------|-----------|-----------------|------------------|----------|
| 1                                             | Mermaid      | 84A       | Shaw            | Shaw             | 5507.508 |
| 2                                             |              |           |                 |                  | 5507.508 |
| 3                                             |              |           |                 |                  | 5507.508 |
| 4                                             |              |           |                 |                  | 5507.508 |
| 5                                             |              |           |                 |                  | 5507.508 |
| 6                                             |              |           |                 |                  | 5507.508 |
| 7                                             |              |           |                 |                  | 5507.508 |
| 8                                             |              |           |                 |                  | 5507.508 |
| 9                                             |              |           |                 |                  | 5507.508 |
| 10                                            |              |           |                 |                  | 5507.508 |
| 11                                            |              |           |                 |                  | 5507.508 |
| 12                                            |              |           |                 |                  | 5507.508 |
| 13                                            |              |           |                 |                  | 5507.508 |
| 14                                            |              |           |                 |                  | 5507.508 |
| 15                                            |              |           |                 |                  | 5507.508 |
| 16                                            |              |           |                 |                  | 5507.508 |
| Earnings for 1st thru 16th                    |              |           |                 |                  | 66184    |
| Earnings, 17th thru end of month              |              |           |                 |                  | 55948    |
| Earnings, 1st thru 16th                       |              |           |                 |                  | 66184    |
| Total Earnings for Month (Enter at Item B(2)) |              |           |                 |                  | 122032   |

A. EMPLOYEE IDENTIFICATION

Name: E. J. Baker Occupation:  yard burner  
 Employee No.: 629794 Security Number: 988-10-0195  
 RR Point to Receive Company Mail: Mermaid Ohio  
 Name of Roster (PRR): \_\_\_\_\_ Roster Standing: 1  
 Name of Roster (NYC): \_\_\_\_\_

B. COMPENSATION EARNED - ADJUSTMENT CLAIMED 1470.64  
 (1) Monthly Base Period  
 Compensation Guarantee . . . \$ 1530.20  
 Total Earnings for  
 Month . . . . . \$ 1220.32  
 (3) ADJUSTMENT CLAIMED  
 (Subtract B(2) from B(1)) . . . \$ 330.02  
 All Other Compensation  
 Received From Company  
 (W-2 Chargeable) \$ \_\_\_\_\_  
 Number of Days this Month  
 Applied for RR Unemployment  
 Insurance . . . . . \_\_\_\_\_

I HEREBY CERTIFY THAT THIS INFORMATION IS TRUE AND CORRECT:

(Signature) E. J. Baker  
(Date) 11-12-76

\* THIS FORM TO BE FILED WITHIN 60 DAYS FROM END OF MONTH FOR WHICH ADJUSTMENT IS CLAIMED

REMARKS: Feb- (84A) did not work 12-26-75  
1,220.55

8488 135161

PENN CENTRAL TRANSPORTATION COMPANY

MERGER PROTECTIVE AGREEMENT

SOUTHERN REGION

Cincinnati, Ohio

Location Moraine, Ohio

2/6/76

Name J. J. Baker

E - F - C - (B)

Referring to your claim for compensation in the amount of \$ 330.02

submitted for the month of Dec., 1975 pursuant to the Merger Protective Agreement.

Claim in the amount of \$ 136.03 (less any amount recovered by the Railroad Retirement Board) is being carried in your regular pay draft that you will receive 2/20/76.

Difference being allowed and that claimed by you is the result of your - - - -

- current guarantee being - - - - \$ 1,470.64.
- having been paid more than shown received - - - - \$ \_\_\_\_\_.
- not including earnings lost as a result of laying off - \$ \_\_\_\_\_.
- not being available on rest days - - - - \$ \_\_\_\_\_.
- lost earnings as a result of \_\_\_\_\_ \$ \_\_\_\_\_.

not taking job 84B (Bibmn) which was assigned to a man junior to you.

From 12-1 to 12-31 this position earned \$ \_\_\_\_\_.

From \_\_\_\_\_ you earned \$ \_\_\_\_\_.

Therefore, you will be paid \$ 136.03.

Due to the foregoing reasons checked, your claim as submitted, is denied.

J. M. LeGates  
Division Superintendent

Sw 35

9  
3

PENNSYLVANIA NEW YORK CENTRAL TRANSPORTATION COMPANY

Engine or Train Service Claim for Compensation Pursuant to Merger Protective Agreement

\* Claim for Month of Jan, 1972.

EMPLOYEE IDENTIFICATION

Name: A. D. Weir Occupation: Sub. Conductor  
 Employee No.: 459456 Social Security Number: 377016041  
 RR Point to Receive Company Mail: Johns. Blvd.  
 Name of Prior Right Roster (NYC): P. R. R. Register Number: 14

2. COMPENSATION EARNED - ADJUSTMENT CLAIMED

1) Monthly Base Period: 876.90  
 Compensation Guarantee: 831.95  
 Total Earnings for Month: 39.95

2) ADJUSTMENT CLAIMED

3) Subtract B(2) from B(1): 56.65  
 All Other Compensation Received from Company: None  
 Number of Days this MSR Applied for RR Unemployment Insurance: None

I HEREBY CERTIFY THAT THIS INFORMATION IS TRUE AND CORRECT:

(Signature) A. D. Weir  
(Date) 2/16/72

\* THIS FORM TO BE FILED WITHIN 60 DAYS FROM END OF MONTH FOR WHICH ADJUSTMENT IS CLAIMED

3. DAILY RECORD OF WORK PERFORMED (Fill out for each day. On days not worked show reasons (thereof, i.e., rest day, vacation, holiday, sickness, job annulled, personal reasons, etc.)

| Date                       | Terminal     | Train No.   | Crew or Class of Job No., Service | Earnings                                      | Date                             | Terminal     | Train No.    | Crew or Class of Job No., Service | Earnings |       |
|----------------------------|--------------|-------------|-----------------------------------|-----------------------------------------------|----------------------------------|--------------|--------------|-----------------------------------|----------|-------|
| 1                          | Day Off      |             |                                   |                                               | 17                               | Day Off      | SB           | C                                 | 36.12    |       |
| 2                          | ✓            | Health Care | SB                                | 36.12                                         | 18                               | ✓            | SB           | C                                 | 36.12    |       |
| 3                          | ✓            | SB          | C                                 | 36.12                                         | 19                               | ✓            | SB           | C                                 | 36.12    |       |
| 4                          | ✓            | SB          | C                                 | 36.12                                         | 20                               |              | Day Off Rest |                                   |          |       |
| 5                          | Day Off      |             |                                   |                                               | 21                               |              | Day Off Rest |                                   |          |       |
| 6                          | Day Off      |             |                                   |                                               | 22                               | Day Off      | SB           | C                                 | 36.12    |       |
| 7                          | ✓            | SB          | C                                 | 36.12                                         | 23                               | Day Off      | SB           | C                                 | 36.12    |       |
| 8                          | Day Off      |             |                                   |                                               | 24                               | Day Off      | SB           | C                                 | 36.12    |       |
| 9                          | ✓            | SB          | C                                 | 36.12                                         | 25                               | Day Off      | SB           | C                                 | 36.12    |       |
| 10                         | ✓            | SB          | C                                 | 36.12                                         | 26                               | Day Off      | SB           | C                                 | 36.12    |       |
| 11                         | ✓            | SB          | C                                 | 36.12                                         | 27                               | Day Off Rest |              |                                   |          |       |
| 12                         | ✓            | SB          | C                                 | 36.12                                         | 28                               | Day Off Rest |              |                                   |          |       |
| 13                         | Day Off Rest |             |                                   |                                               | 29                               | Vacation     | C            | 36.12                             |          |       |
| 14                         | Day Off Rest |             |                                   |                                               | 30                               | Vacation     | C            | 36.12                             |          |       |
| 15                         | Day Off      |             |                                   |                                               | 31                               | Vacation     | C            | 36.12                             |          |       |
| 16                         | Day Off      |             |                                   |                                               |                                  |              |              |                                   |          |       |
| Earnings for 1st thru 16th |              |             |                                   | 4                                             | Earnings, 17th thru end of month |              |              |                                   | 3        | 98.99 |
| 72.24                      |              |             |                                   | 4                                             | Earnings, 1st thru 16th          |              |              |                                   | 1        | 32.96 |
| 769.28                     |              |             |                                   | Total Earnings for Month (Enter at Item B(2)) |                                  |              |              | 8                                 | 319.5    |       |
| 841.52                     |              |             |                                   |                                               |                                  |              |              |                                   | 769.28   |       |

REMARKS:

Handwritten signature

12-1-72

B ~~St...~~ BC 18/72 RE Memo C 1A ntl 840 5-31 719.03  
 1- Bentone Jr. 1/1-1/2 180.12  
 899.15



**PENN CENTRAL**

**MERGER PROTECTIVE AGREEMENT**

SOUTHWEST DIVISION

Indianapolis, Indiana

Location Jeffersonville

Feb 25, 1972

E - F - (C) - B

Name HD Weir

Referring to your claim for compensation in the amount of \$ 39.95 submitted for the month of Jan, 1972 pursuant to the Merger Protective Agreement.

Claim in the amount of \$ \_\_\_\_\_ is being carried in your regular pay draft that you will receive \_\_\_\_\_.

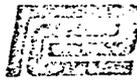
Difference being allowed and that claimed by you is the result of your having---

- ( ) Been paid more than shown received. \$ \_\_\_\_\_
- ( ) Not included earnings that you could have made as a result of laying off \$ \_\_\_\_\_ or not being available on rest days \$ \_\_\_\_\_.
- ( ) Been allowed \$ \_\_\_\_\_ by Railroad Retirement Board.
- (X) Not taken job 1A Cond rated \$ 840 on 4/8/72 when you had the opportunity to bid on this job which was assigned to R E Morris, a man junior to you. This position earned \$ 719.03 while you earned 4-17 8180.82
- (X) Your current guarantee is \$ 864.65.

Due to the foregoing reasons checked, your claim as submitted is denied.

K. F. Halsor  
Division Superintendent

0



**PENN CENTRAL**

**MERGER PROTECTIVE AGREEMENT**

SOUTHWEST DIVISION

Indianapolis, Indiana

Location

Jeff Yd

Mar 24, 1972

E - F (C) - B

Name

H D Weir

Referring to your claim for compensation in the amount of \$ 65.98 submitted for the month of Feb, 1972 pursuant to the Merger Protective Agreement.

Claim in the amount of \$ \_\_\_\_\_ is being carried in your regular pay draft that you will receive \_\_\_\_\_.

Difference being allowed and that claimed by you is the result of your having—

- ( ) Been paid more than shown received. \$ \_\_\_\_\_.
- ( ) Not included earnings that you could have made as a result of laying off \$ \_\_\_\_\_, or not being available on rest days \$ \_\_\_\_\_.
- ( ) Been allowed \$ \_\_\_\_\_ by Railroad Retirement Board.
- Not taken job 1A cond rated \$ \_\_\_\_\_ on \_\_\_\_\_ when you had the opportunity to \_\_\_\_\_ on this job which was assigned to \_\_\_\_\_, a man junior to you. This position earned \$ 871.64.
- ( ) Your current guarantee is \$ \_\_\_\_\_.

Due to the foregoing reasons checked, your claim as submitted is denied.

K. F. Kalsow  
Division Superintendent

0



PENN CENTRAL TRANSPORTATION COMPANY

Engine or Train Service Claim for Compensation Pursuant to Merger Protective Agreement

\* Claim for Month of MAY, 1975.

JUN 17 1975

Division

Richmond

(Fill out for each day. On days not worked show reasons (therefor, i.e., rest day, vacation, holiday, sickness, job annulled, personal reasons, etc.)

A. EMPLOYEE IDENTIFICATION

Name P.V. BEHREN Occupation TRAINMAN Richmond  
 Employee No. 475294 Social Security Number 316-36-4812  
 RR Point to Receive Company Mail Richmond  
 Name of (PRR) Claimant PAV Behren Roster Standing 17A  
 Prior Right Roster (MTC)

B. COMPENSATION EARNED - ADJUSTMENT CLAIMED / 562.62  
 (1) Monthly Base Period BASE 62.92  
 Compensation Guarantee . . . \$ 1094.74  
 Total Earnings for Month . . . \$ 915.61  
 (2) ADJUSTMENT CLAIMED  
 (Subtract B(2) from B(1)) . . . \$ 379.13  
 All Other Compensation Received From Company (W-2 Chargeable) . . . \$  
 Number of Days this Month Applied for RR Unemployment Insurance . . . . . 0

I HEREBY CERTIFY THAT THIS INFORMATION IS TRUE AND CORRECT:

(Signature) PAV Behren  
 (Date)

C. (1) Your claim is denied as our investigation has developed.  
 a - Your total chargeable compensation for the month in question exceeded your guarantee.  
 b - You could have held position producing a rate equal to or higher than your guarantee.  
 c - Your earnings would have equaled or exceeded your guarantee had you been available for service the entire month.  
 d - Application of transition factor letter of agreement dated August 14, 1968, plus your compensation exceeds your guarantee.

(2) Your claim as presented is denied, however you will be allowed an adjustment as indicated.  
 (3) Other

DAILY RECORD OF WORK PERFORMED

| Date | Terminal | TRAIN NO. | Crew or Job No. | Class of Service | Earnings |
|------|----------|-----------|-----------------|------------------|----------|
| 1    | RICHMOND | YR 130    |                 | LOST             |          |
| 2    |          |           | 210 YARD        | YARD             | 4.24     |
| 3    |          |           | REVER 001       | FRT              | 5.37     |
| 4    |          |           |                 | LOST             |          |
| 5    |          |           | 210 YARD        | YARD             | 5.57     |
| 6    |          |           |                 | LOST             |          |
| 7    |          |           | REVER 812       | FRT              | 5.48     |
| 8    |          |           | REVER 812       | FRT              | 5.48     |
| 9    |          |           | REVER 812       | FRT              | 5.48     |
| 10   |          |           | REVER 812       | FRT              | 5.48     |
| 11   |          |           | REVER 812       | FRT              | 5.48     |
| 12   |          |           | REVER 812       | FRT              | 5.48     |
| 13   |          |           | REVER 812       | FRT              | 5.48     |
| 14   |          |           | REVER 812       | FRT              | 5.48     |
| 15   |          |           | REVER 812       | FRT              | 5.48     |
| 16   |          |           | REVER 812       | FRT              | 5.48     |

\* THIS FORM TO BE FILED WITHIN 60 DAYS FROM END OF MONTH FOR WHICH ADJUSTMENT IS CLAIMED

4/2 39.90  
~~430 62.67~~

REMARKS:

120. 1294.74  
 1062.19  
 232.55

| Date                                          | Terminal | Train Job No. | Crew or Job No. | Class of Service | Earnings |
|-----------------------------------------------|----------|---------------|-----------------|------------------|----------|
| 17                                            | RICHMOND | YR 130        | KLH2            | LOCAL            | 4.10     |
| 18                                            |          |               |                 | LOST             |          |
| 19                                            |          |               |                 | LOST             |          |
| 20                                            |          |               |                 | LOST             |          |
| 21                                            |          |               |                 | LOST             |          |
| 22                                            |          |               |                 | LOST             |          |
| 23                                            |          |               |                 | LOST             |          |
| 24                                            |          |               |                 | LOST             |          |
| 25                                            |          |               |                 | LOST             |          |
| 26                                            |          |               |                 | LOST             |          |
| 27                                            |          |               |                 | LOST             |          |
| 28                                            |          |               |                 | LOST             |          |
| 29                                            |          |               |                 | LOST             |          |
| 30                                            |          |               |                 | LOST             |          |
| 31                                            |          |               |                 | LOST             |          |
| Earnings, 17th thru end of month              |          |               |                 |                  | 408.49   |
| Earnings, 1st thru 16th                       |          |               |                 |                  | 507.12   |
| Total Earnings for Month (Enter at Item B(2)) |          |               |                 |                  | 915.61   |

868.79  
 62.67  
 931.46  
 130.73

1062.19

PENN CENTRAL TRANSPORTATION COMPANY

MERGER PROTECTIVE AGREEMENT

SOUTHERN REGION

Cincinnati, Ohio

Location Richmond, Indiana

8/13/75

Name P. V. Behnen

E - F - C - (B)

Referring to your claim for compensation in the amount of \$ 379.13 submitted for the month of May, 1975 pursuant to the Merger Protective Agreement.

Claim in the amount of \$ 232.55 (less any amount recovered by the Railroad Retirement Board) is being carried in your regular pay draft that you will receive 8/22/75.

Difference being allowed and that claimed by you is the result of your - - - -

- current guarantee being - - - - \$ 1,294.74
- having been paid more than shown received - - - - \$ 931.46
- not including earnings lost as a result of laying off - \$ 130.73
- not being available on rest days - - - - \$ \_\_\_\_\_
- lost earnings as a result of \_\_\_\_\_ \$ \_\_\_\_\_

( ) not taking job \_\_\_\_\_ which was assigned to a man junior to you.

From \_\_\_\_\_ this position earned \$ \_\_\_\_\_.

From \_\_\_\_\_ you earned \$ \_\_\_\_\_.

Therefore, you will be paid \$ 232.55.

Due to the foregoing reasons checked, your claim as submitted, is denied.

J. M. LeGates  
Division Superintendent

1,418.39      8782  
1294.74      1307  
 12365      10089  
10089  
 2276

SOUTHERN REGION

Indianapolis, Indiana

12/29/75

F V Behnen, Bkrm

Richmond

Dear Sir:

We have received instructions to upgrade all 1975 guarantees that have not previously been upgraded. Payment(s) for line reflecting balance due and/or deduction(s) for line reflecting overpayment will be made in pay period 96 for which you will receive your check on 1-9-76

|                    | <u>January</u> | <u>February</u> | <u>March</u>   | <u>April</u> | <u>May</u>     |
|--------------------|----------------|-----------------|----------------|--------------|----------------|
| Upgraded Guarantee |                | <u>1418.39</u>  | <u>1418.39</u> |              | <u>1418.39</u> |
| Old Guarantee      |                | <u>1294.74</u>  | <u>1294.74</u> |              | <u>1294.74</u> |
| Difference         |                | <u>123.65</u>   | <u>123.65</u>  |              | <u>123.65</u>  |
| Back Pay           |                | <u>119.79</u>   | <u>100.59</u>  |              | <u>100.89</u>  |
| Balance Due        |                | <u>3.86</u>     | <u>23.06</u>   | <u>-</u>     | <u>22.76</u>   |
| Overpayment        |                |                 |                |              |                |

The column reflecting the back pay will not necessarily be what you received. If a job was held against your guarantee, the back pay that job received will be shown in that line, or if you layed off, last earnings will be added in.

DIVISION SUPERINTENDENT



PENN CENTRAL TRANSPORTATION COMPANY

TT'S EX. 61

Engine or Train Service Claim for Compensation Pursuant to Merger Protective Agreement

\* Claim for Month of JULY, 1972.

CELS Division

10-13-70

(Fill out for each day. On days not worked show reasons therefor, i.e., rest day, vacation, holiday, sickness, job annulled, personal reasons, etc.)

A. EMPLOYEE IDENTIFICATION

Name E. L. BAUER Occupation ENGINEER  
 Employee No. 460211 Social Security Number 306-16-2565  
 RR Point to Receive Company Mail AVON YARDS, AVON 160  
 Name of Prior Roster CELS DIV. Roster Standing 78  
 Name of Roster (NYC)

B. COMPENSATION EARNED - ADJUSTMENT CLAIMED

(1) Monthly Base Period Compensation Guarantee OK \$ 981.36  
 (2) Total Earnings for Month \$ 880.25  
 (3) ADJUSTMENT CLAIMED (Subtract B(2) from B(1)) \$ 100.61  
 (4) All Other Compensation Received from Company (M-2 Chargeable) \$ NONE  
 (5) Number of Days this Month Applied for RR Unemployment Insurance NONE

I HEREBY CERTIFY THAT THIS INFORMATION IS TRUE AND CORRECT:

(Signature) E. L. Bauer  
 (Date) 8-1-72

C. (1) Your claim is denied as our investigation has developed.

- a - Your total chargeable compensation for the month in question exceeded your guarantee.
- b - You could have held position producing a rate equal to or higher than your guarantee.
- c - Your earnings would have equaled or exceeded your guarantee had you been available for service the entire month.
- d - Application of transition factor letter of agreement dated August 14, 1968, plus your compensation exceeds your guarantee.

(2) Your claim as presented is denied, however you will be allowed an adjustment as indicated.

(3) Other

| Date | Terminal   | TRAIN NO. | Crew or Job No. | Class of Service | Earnings |
|------|------------|-----------|-----------------|------------------|----------|
| 1    | NOT CALLED |           |                 |                  |          |
| 2    | AVON       | 506       | 183             | TRAVEL           | 82.30    |
| 3    | CELS       | APP HEAD  | 183             | "                | 40.76    |
| 4    | NOT CALLED |           |                 |                  |          |
| 5    | NOT CALLED |           |                 |                  |          |
| 6    | HAN        | 01-4      | 191             | LOCAL            | 67.32    |
| 7    | HAN        | "         | "               | "                | 45.44    |
| 8    | AVON       | 506       | 183             | TRAVEL           | 93.99    |
| 9    | CELS       | APP HEAD  | 183             | HEAD             | 40.76    |
| 10   | HAN        | 01-4      | 191             | LOCAL            | 72.83    |
| 11   | NOT CALLED |           |                 |                  |          |
| 12   | NOT CALLED |           |                 |                  |          |
| 13   | NOT CALLED |           |                 |                  |          |
| 14   | AVON       | 01-4      | 180-1           | TRAVEL           | 93.30    |

\* THIS FORM TO BE FILED WITHIN 60 DAYS FROM END OF MONTH FOR WHICH ADJUSTMENT IS CLAIMED

15 SHARON 01-3 180-1 " 64.30

16 NOT CALLED

| Date                                          | Terminal    | Train No.  | Crew or Job No. | Class of Service | Earnings |
|-----------------------------------------------|-------------|------------|-----------------|------------------|----------|
| 17                                            | NOT CALLED  |            |                 |                  |          |
| 18                                            | MISSED CALL |            |                 |                  |          |
| 19                                            | NOT CALLED  |            |                 |                  |          |
| 20                                            | NOT CALLED  |            |                 |                  |          |
| 21                                            | NOT CALLED  |            |                 |                  |          |
| 22                                            | AVON        | 01-4       | 180-1           | TRAVEL           | 71.54    |
| 23                                            | SHARON      | 01-3       | 180-1           | "                | 18.26    |
| 24                                            | NOT CALLED  |            |                 |                  |          |
| 25                                            | NOT CALLED  |            |                 |                  |          |
| 26                                            | NOT CALLED  |            |                 |                  |          |
| 27                                            | NOT CALLED  |            |                 |                  |          |
| 28                                            | AVON        | 01-4       | 180-1           | TRAVEL           | 59.95    |
| 29                                            | SHARON      | 01-3       | 180-1           | "                | 22.98    |
| 30                                            | HAN         | RELIEF 232 | 232             | RELIEF           | 40.94    |
| 31                                            | NOT CALLED  |            |                 |                  |          |
| Earnings, 17th thru end of month              |             |            |                 |                  | 303.67   |
| Earnings, 1st thru 16th                       |             |            |                 |                  | 577.08   |
| Total Earnings for Month (Enter at item B(2)) |             |            |                 |                  | 880.75   |

REMARKS:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

THIS SIDE OF FORM FOR CARRIER USE ONLY

D. AVAILABILITY OF POSITIONS PRODUCING HIGHER RATES OF PAY.

1. ( ) No positions producing a higher rate of pay and compensation were available to claimant in the exercise of seniority.

2. ( ) Following positions producing a higher rate of pay and compensation to claimant in the exercise of seniority and should be applied against earnings dates indicated:

| Date | Position Not Worked | Terminal or Yard | Employee's Name and Number Who Worked | Rating of Position Not Worked | Actual Earnings of Position Not Worked |
|------|---------------------|------------------|---------------------------------------|-------------------------------|----------------------------------------|
| 1    |                     |                  |                                       |                               |                                        |
| 2    |                     |                  |                                       |                               |                                        |
| 3    |                     |                  |                                       |                               |                                        |
| 4    |                     |                  |                                       |                               |                                        |
| 5    |                     |                  |                                       |                               |                                        |
| 6    |                     |                  |                                       |                               |                                        |
| 7    |                     |                  |                                       |                               |                                        |
| 8    |                     |                  |                                       |                               |                                        |
| 9    |                     |                  |                                       |                               |                                        |
| 10   |                     |                  |                                       |                               |                                        |
| 11   |                     |                  |                                       |                               |                                        |
| 12   |                     |                  |                                       |                               |                                        |
| 13   |                     |                  |                                       |                               |                                        |
| 14   |                     |                  |                                       |                               |                                        |
| 15   |                     |                  |                                       |                               |                                        |
| 16   |                     |                  |                                       |                               |                                        |
| 17   |                     |                  |                                       |                               |                                        |
| 18   |                     |                  |                                       |                               |                                        |
| 19   |                     |                  |                                       |                               |                                        |
| 20   |                     |                  |                                       |                               |                                        |
| 21   |                     |                  |                                       |                               |                                        |
| 22   |                     |                  |                                       |                               |                                        |
| 23   |                     |                  |                                       |                               |                                        |
| 24   |                     |                  |                                       |                               |                                        |
| 25   |                     |                  |                                       |                               |                                        |
| 26   |                     |                  |                                       |                               |                                        |
| 27   |                     |                  |                                       |                               |                                        |
| 28   |                     |                  |                                       |                               |                                        |
| 29   |                     |                  |                                       |                               |                                        |
| 30   |                     |                  |                                       |                               |                                        |
| 31   |                     |                  |                                       |                               |                                        |

RECEIVED  
AUG 1 1972  
COLUMBUS, OHIO  
LABOR RELATIONS  
SUPERINTENDENT

RECEIVED  
AUG - 3 1972  
SUPERINTENDENT  
TRANSPORTATION DIVISION  
INDIANAPOLIS, INDIANA

Indianapolis, Indiana  
December 19, 1972

Mr. G. D. Cox, Local Chairman  
United Transportation Union (E)  
2742 South Kenyon Drive  
Indianapolis, Indiana. 46203

Dear Sir:

This refers to our telephone conversation concerning the merger guarantee of Engineer E. L. Baker for the month of July, 1972.

We find claimant was on the Engineers' Extra Board and marked off for a period of 24 hours and 20 minutes on July 3 and 4, 1972 and 1.2 for each portion of a 24 hour period was properly held against his guarantee. On July 18, 1972 he missed a call and lost earnings for the round trip which was held against his guarantee, this was improper. You and I agreed he should only have a single 1.2 times his last rate held against him. The 1.2 times his last rate amounts to \$42.10 and when that is held against his guarantee instead of \$138.66 as previously used he is due \$96.56 as an additional payment.

We are in the midst of upgrading merger guarantees and when we get to the July claims we will allow the additional \$96.56.

JACK McCARTY  
Examiner

cc: Mr. E. L. Baker, Engineer  
Avon Yard

1130.75  
1301  
-----  
111774  
103148  
-----  
8626

PENN CENTRAL TRANSPORTATION COMPANY

380 North High Street  
Columbus, Ohio 43215

Date OCT 16 1972

DENIAL OF MPA-1 CLAIM

NAME E. L. BAKER, # 460211 Engineer CLAIM NO. CO-745-72  
 PRIOR RIGHT ROSTER NO. \_\_\_\_\_ Fireman  
 \_\_\_\_\_ Conductor  
 \_\_\_\_\_ Brakeman Colts. Division  
 \_\_\_\_\_ Switchtender  
 LOCATION Avon Jd

This will acknowledge receipt of MPA-1 form submitted by you for the month of JULY 1972 claiming 100.61 as adjustment under the Merger Protective Agreement.

Your claim is hereby denied for the reason checked below:

-- Your earnings and compensation totaled 1,128.04 for that month, exceeding your protected rate of 481.36 as upgraded 11-1-70.

-- You could have held the higher-rated position \_\_\_\_\_ starting on \_\_\_\_\_ for reason indicated below:

1. Could have displaced junior man assigned thereto.
2. Could have bid in that job when bulletined.

If you had held that position, your earnings and compensation for the month would have totaled \_\_\_\_\_, which amount exceeds your protected rate of \_\_\_\_\_ as upgraded \_\_\_\_\_.

OTHER REMARKS: OFFSET OVER 14 HRS. \$ 11.35. HAD YOU BEEN AVAILABLE THE ENTIRE MONTH, YOU COULD HAVE EARNED AN ADDITIONAL \$ 232.43.

*No record of him missing call on 7/15 although something about work was written beside name and erased*

E. Gibson  
Superintendent, Labor Relations

895.11  
42.10  
75.07  
103148

*2 days show per letter*



SOUTHERN REGION

Indianapolis, Indiana

5/21/73

E. L. Baker, Engr 460211  
B/YD

Dear Sir:

We have received instructions to upgrade all 1972 guarantees that have not previously been upgraded. Payment(s) for line reflecting balance due and/or deduction(s) for line reflecting overpayment will be made in pay period 80 for which you will receive your check on 5/25/73.

|                | January        | February | March     | April   | May      | June     |
|----------------|----------------|----------|-----------|---------|----------|----------|
| Upgraded Guar. | _____          | _____    | _____     | _____   | _____    | _____    |
| Old Guarantee  | _____          | _____    | _____     | _____   | _____    | _____    |
| Difference     | _____          | _____    | _____     | _____   | _____    | _____    |
| Back Pay       | _____          | _____    | _____     | _____   | _____    | _____    |
| Balance due    | _____          | _____    | _____     | _____   | _____    | _____    |
| OVERPAYMENT    | _____          | _____    | _____     | _____   | _____    | _____    |
|                | July           | August   | September | October | November | December |
| Upgraded Guar. | <u>1117.74</u> | _____    | _____     | _____   | _____    | _____    |
|                | <u>earned</u>  |          |           |         |          |          |
| Old Guarantee  | <u>1031.48</u> | _____    | _____     | _____   | _____    | _____    |
| Difference     | _____          | _____    | _____     | _____   | _____    | _____    |
| Back Pay       | _____          | _____    | _____     | _____   | _____    | _____    |
| Balance Due    | <u>86.26</u>   | _____    | _____     | _____   | _____    | _____    |
| Overpayment    | _____          | _____    | _____     | _____   | _____    | _____    |

Any questions concerning payments or deductions shown in this letter can be made to J. E. McCarty or Dale Elston on Extension 4951 in Indianapolis, or by writing J. E. McCarty, Room 545, Penn Central Building, Indianapolis, Indiana. 46204.

E. GIBSON

Superintendent-Labor Relations