

THOMPSON COBURN LLP

221667

One US Bank Plaza  
St. Louis, Missouri 63101  
314-552-6000  
FAX 314-552-7000  
www.thompsoncoburn.com

February 21, 2008

Clifford A. Godiner  
314-552-6433  
FAX 314-552-7433  
EMAIL cgodiner@  
thompsoncoburn.com

**VIA FEDERAL EXPRESS**

Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20024

**Re: In the Matter of Arbitration Between Union Pacific Railroad Company and  
Brotherhood of Locomotive Engineers and Trainmen, New York Dock  
Finance Docket No. 32760, SUB-FILE 45 (Arbitration Review)**

To Whom It May Concern:

Enclosed please find an original and 11 copies of (1) Carrier's Appeal from Arbitration Award, (2) Appendix of Exhibits, and (3) Motion for Leave to Exceed the Page Limit, to be filed in the above-referenced matter. Please return a file stamped copy to us of each filing in the enclosed self-addressed stamped envelope for our files. Also enclosed is the \$150 filing fee for this matter.

If you have any questions, please feel free to give me a call.

Very truly yours,

Thompson Coburn LLP

By   
Clifford A. Godiner

ENTERED  
Office of Proceedings  
FEB 22 2008  
Part of  
Public Record

Enclosures

cc: Gilbert Gore

221667



BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

FINANCE DOCKET NO. 32760, SUB-FILE 45

---

IN THE MATTER OF ARBITRATION BETWEEN UNION PACIFIC RAILROAD  
COMPANY AND BROTHERHOOD OF LOCOMOTIVE ENGINEERS & TRAINMEN

(Arbitration Review)

---

APPENDIX  
VOLUME I

---

Respectfully submitted,

THOMPSON COBURN LLP

Clifford A. Godiner  
Rodney A. Harrison  
One US Bank Plaza  
St. Louis, Missouri 63101  
314-552-6000  
FAX 314-552-7000

Attorneys for Carrier

**TABLE OF CONTENTS**

UP EX. 1     The Perkovich Award

UP EX. 2     UP/CNW Merger Implementing Agreement

UP EX. 3     Dallas/Ft. Worth Merger Implementing Agreement

UP EX. 4     Denver Merger Implementing Agreement

UP EX. 5     Houston Zones 1 and 2 Merger Implementing Agreement

UP EX. 6     Houston Zones 3, 4, and 5 Merger Implementing Agreement

UP EX. 7     Kansas City Merger Implementing Agreement

UP EX. 8     Los Angeles Merger Implementing Agreement

UP EX. 9     Longview Merger Implementing Agreement

UP EX. 10    North Little Rock/Pine Bluff Merger Implementing Agreement

UP EX. 11    Portland Zone 1 Merger Implementing Agreement

UP EX. 12    Portland Zone 2 and 3 Merger Implementing Agreement

UP EX. 13    Roseville Merger Implementing Agreement

UP EX. 14    Salina Merger Implementing Agreement

UP EX. 15    Salt Lake City Merger Implementing Agreement

UP EX. 16    San Antonio Merger Implementing Agreement

UP EX. 17    Southwest Merger Implementing Agreement

UP EX. 18    St. Louis Merger Implementing Agreement

UP EX. 19    UP/MP Merger Implementing Agreement (Omaha)

UP EX. 20    UP/MP Merger Implementing Agreement (Hastings)

UP EX. 21    UP/MP Merger Implementing Agreement (Kansas City)

UP EX. 22    UP/MP Merger Implementing Agreement (Beloit)

- UP EX 23 UP/MKT Merger Implementing Agreement
- UP EX. 24 Article IX of the 1986 BLET National Agreement
- UP EX 25 Article II of the 1971 BLET National Agreement

Respectfully submitted,

THOMPSON COBURN LLP

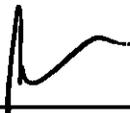
By  \_\_\_\_\_

Clifford A. Godiner  
Rodney A. Harrison  
One US Bank Plaza  
St. Louis, Missouri 63101  
314-552-6000  
FAX 314-552-7000

Attorneys for Carrier

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon Gilbert Gore, 1448 MacArthur Avenue, Harvey, Louisiana 70058, by United States Mail, first class postage prepaid, this 21<sup>st</sup> day of February 2008.

  
\_\_\_\_\_

1



but they were unable to do so. Thus, the Carrier announced that it believed the parties were at an impasse and declared that it would invoke arbitration under Article IX, Section 4 of the parties' collective bargaining agreement. To that end the Carrier wrote to the Organization on September 29, 2006 a letter in which, *inter alia*, the Carrier proposed five neutrals to chair the arbitration board. On December 7, 2006 the Organization replied offering different proposed neutral chairs. Thereafter, on January 5, 2007, the Carrier responded, asserting that none of the neutrals proposed by the Organization were acceptable and further informing the Organization that the Carrier intended to ask the National Mediation Board (NMB) to appoint the neutral chair. On January 22, 2007 the Carrier so requested the NMB to make that appointment and on January 31, 2007 the NMB advised the parties that Referee Robert Perkovich had been appointed to chair the Arbitration Board.

On March 30, 2007 the Organization provided to the Carrier a counter proposal to its June 7, 2006 proposed Memorandum of Agreement and on April 5, 2007 the Carrier wrote to the Organization informing it that it could not agree to the counterproposal. This arbitration ensued.

#### POSITIONS OF THE PARTIES

As set forth in more detail below, the Organization contends that the Carrier's notice of intent to establish interdivisional service and the terms and conditions of employment to govern employees working on that service is procedurally defective and must be rejected. In the alternative, the Organization argues that the proposed Memorandum of Agreement is neither reasonable nor practical as required by Article IX, Section 4 of the parties' collective bargaining agreement. The Carrier on the other hand asserts, as set forth more fully below, that its notice of intent is procedurally sound and that its proposed Memorandum of Agreement is not only reasonable and practical but necessary for efficient operations.

#### FACTS

Arbitration Board No. 458 determined the terms of Article IX that govern the establishment of interdivisional service finding that a carrier may establish such service so long as it provides twenty day's written notice of its intent to do so to the Organization specifying the nature of the service and the conditions which it proposes to govern the establishment of such service. With regard to the latter, Section 2 of that Article provides, *inter alia*, that those conditions be "reasonable and practical" and that the proposed runs "be adequate for efficient operations and reasonable in regard to the miles run, hours on duty and in regard to other conditions of work." Section 2 also allows the organization and carrier to negotiate notwithstanding the proposed conditions and Section 4 provides that in the event any such negotiations do not produce an agreement, the parties shall avail themselves of arbitration to resolve the dispute.

The record reflects the circumstances that led the Carrier to propose the service in question and the proposed terms and conditions of employment to govern the proposed

service. More specifically, the Houston area contains a large network of railroad track such that ten major railroad arteries serve the area. In addition, smaller railroads originate and terminate rail traffic in the area as well. As a result, the network in question handles a record number of carloads of up to on or about 120 originating trains. Currently the Carrier has configured pools such that tree between Houston and Freeport and the return thereto, between Houston and Angleton and the return thereto, and between Spring, Texas and Angleton and the return thereto have no away-from-home terminal. Thus, crews on these pools are required to return to Houston and, if they are unable to do so within the twelve hour limitation under the Federal Hours of Service Law, an occurrence that arises frequently, a relief crew must be dispatched from Houston. Moreover, the current configuration of pools does not allow the Carrier to operate between Houston and Spring without changing crews in Houston. Thus, the Carrier's proposed service will combine all of these pools into one with a home terminal at Houston and will allow crews to operate directly between Houston and Spring.

#### FINDINGS AND DISCUSSION

The threshold inquiry is, of course, whether the Carrier's Notice of Intent is procedurally sound because if it is not, we may not examine whether its proposed Memorandum of Agreement may be imposed to govern conditions of employment on the proposed service.

On this issue the Organization argues that the Notice of Intent must be invalidated because it runs afoul of various provisions of the parties' Houston Hub Merger Implementing Agreements and because the parties agreed that those Agreements would prevail if conflicts with their terms should arise. Moreover, the Organization cites the decision of Arbitration Board 581 on this very property that found this argument persuasive.

The Carrier on the other hand argues that the decision of Arbitration Board 581 is distinguishable as determined by the decision of Arbitration Board 590, another decision on this very property.

We have carefully reviewed the parties' submissions and in particular the decisions of Arbitration Boards 581 and 590. We find that they can be reconciled and that, for the reasons described below, the decision of Arbitration Board 581 must govern this dispute.

In brief, Arbitration Board 581 held that although the parties' Savings Clause in their hub merger implementing agreements preserved the Carrier's right to invoke Article IX of their collective bargaining agreement, it held that the right so preserved was not "unfettered." More specifically, the Board there held that the parties' further agreement in the merger implementing agreements that "(w)here conflict arise, the specific provision of this Agreement shall prevail..." clearly and unequivocally evinced a mutual intent that compelled the conclusion that the merger implementing agreements governed

over Article IX. Finally, the Board held that statements by the Carrier in side letter further buttressed this conclusion.

As noted above another arbitration board, Board 590, has also had the opportunity to review the decision of Board 581. In its decision it concluded that the decision of Arbitration Board 581 was distinguishable because the merger implementing agreements in question preserved all national agreements that existed before those agreements, because the merger implementing agreements contained the language relied upon by Arbitration Board 581 but that it did so only in that portion of the merger implementing agreement that dealt with "Applicable Agreement" rather than other portions of the merger implementing agreement, and because the record before it did not contain any side letters expressing the parties' intent on the issue.

This Board therefore must consider the relevant language of the merger implementing agreements to determine whether they are of the type that were before Arbitration Board 581 or of the type that were relied upon by Arbitration Board 590. When we do so, we find that the decision of Arbitration Board 581 governs. The relevant language found in the applicable merger implementing agreements before us read, in relevant part, as follows:

All engineers and assignments in the territories comprehended by this Implementing Agreement will work under the Collective Bargaining Agreement currently in effect., including all applicable national agreements...Where conflicts arise the specific provisions of this Agreement shall prevail..."

There can be no doubt that the last clause of the provision cited above is identical to that relied upon by Arbitration Board 581 when it rescinded the carrier's notice of proposed service and proposed terms and conditions of employment to govern the work of those bargaining unit employees working on that service. Moreover, unlike the merger implementing agreements before Arbitration Board 590, none of those in the record before us provide that "the system and national collective bargaining agreements...shall prevail." In other words the Houston Hub Merger Implementing Agreements are more like those relied upon by Arbitration Board 581 rather than those relied upon by Arbitration Board 590. Thus, as construed by Board 581 in a decision between these same parties on the very same property, it most control and we so hold<sup>1</sup>.

The only remaining consideration is to determine whether the Carrier's proposed Memorandum of Agreement does indeed conflict with the Hub Merger Implementing Agreements. As pointed out by the Organization it does so with respect to, *inter alia*, first-in/first-out provisions, terminal limits, and seniority rights. Thus, under the parties'

---

<sup>1</sup> Unlike Arbitration Board 590 we are not troubled by the fact that there are no side letters in the record before us that might shed further light on the parties' mutual intent when they agreed that the Houston Hub Merger Implementing Agreements "shall prevail." Rather, because Arbitration Board 581 held that such language was clear and unequivocal we feel that its reliance on the side letter was simply an adjunct to its finding.

agreement that the Hub Merger Implementing Agreements "shall prevail" we find, and we so order.

**AWARD AND ORDER**

**Question At Issue:**

Is the Carrier's June 7, 2006 notice of intent "to establish new interdivisional unassigned (pool) freight service with a home terminal at Houston and away-from-home terminals at Angleton, Freeport or Bloomington, Texas...to be governed by...the attached Memorandum of Agreement..." procedurally proper?

**Answer to the Question at Issue:**

No.

\_\_\_\_\_  
**S. F. Boone, Carrier Member**

\_\_\_\_\_  
**Gil Gore, Organization Member**



\_\_\_\_\_  
**Robert Parkovich, Neutral Chairman**

2

**MERGER IMPLEMENTING  
AGREEMENT**

between the

**UNION PACIFIC/MISSOURI PACIFIC RAILROAD COMPANY  
CHICAGO AND NORTH WESTERN RAILWAY COMPANY**

and the

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

In Finance Docket No. 32133, the Interstate Commerce Commission (ICC) approved the acquisition and control of the Chicago and North Western Railway Company (CNW) by the Union Pacific/Missouri Pacific Railroad Company (Union Pacific or UP). In order to achieve the benefits of operational changes made possible by the transaction and to modify pretransition labor arrangements to the extent necessary to obtain those benefits, **IT IS AGREED:**

I. **Seniority and Work Consolidation.** To achieve the work efficiencies and allocation of forces that are necessary to make the merged Carrier operate efficiently as a unified system, the following seniority consolidations will be made:

A. **St. Louis, Missouri**

1. (a) The CNW employees assigned to CNW yard assignments at Madison, Illinois, on September 1, 1995, will be placed on the bottom of Missouri Pacific (MP) Merged Roster No. 1 and will have prior rights to the former CNW regularly assigned yard assignments at Madison. Should those former CNW assignments be abolished or consolidated with other MP assignments, the former CNW employees will have no prior rights. However, should those former CNW assignments be reestablished, prior rights shall apply. Any newly established assignments will not be subject to prior rights.
- (b) Both MP employees and former CNW employees may work all assignments covered by Merged Roster No. 1 and may work all assignments protected by the MP St. Louis extra board. All employees and all assignments will work under the MP

Agreement all in accordance with the employees' seniority on Merged Roster No. 1, subject to prior rights.

**NOTE:** Prior rights will not apply to assignments on nor operation of the MP Merged Roster #1 extra board at St. Louis.

2. (a) The CNW employee(s) assigned to the Monterey Mine assignment on September 1, 1995, will be placed on the bottom of the Chicago and Eastern Illinois (C&EI) road roster at St. Louis and will have prior rights to the Monterey Mine assignment, if regularly assigned. Should this assignment be abolished or consolidated with other C&EI assignments, the former CNW employee(s) will have no prior rights. However, should those former CNW assignments be reestablished, prior rights shall apply. Any newly established assignments will not be subject to prior rights.
- (b) Both C&EI and the former CNW employee may work the Monterey Mine Assignment, may work all assignments covered by the C&EI road roster and may work all assignments protected by the C&EI extra board at St. Louis. All employees and all assignments will work under the C&EI Agreement all in accordance with the employees' seniority on the C&EI road roster at St. Louis, subject to prior rights.

**NOTE:** Prior rights will not apply to assignments on nor operation of the C&EI extra board at St. Louis.

3. (a) The number of employees assigned to work South Pekin, Illinois, to St. Louis (in through freight only, excluding power plant operations) on September 1, 1995, will be transferred to St. Louis and will be placed on the bottom of the C&EI road roster at St. Louis and will have prior rights to a maximum of three positions in the new St. Louis to Chicago/South Pekin pool. Any newly established assignments will not be subject to prior rights.
- (b) Both C&EI employees and former CNW employees may work all assignments in the new St. Louis to Chicago/South Pekin Pool, may work all assignments protected by the C&EI road roster (including the Monterey Mine assignment) and may work

all assignments protected by the St. Louis extra board (including the Monterey Mine assignment). All employees and all assignments will work under the C&EI Agreement all in accordance with the employees' seniority on the C&EI roster at St. Louis, subject to prior rights.

**NOTE:** Prior rights will not apply to assignments on nor operation of the C&EI extra board at St. Louis.

**B. Kansas City, Missouri**

1. (a) The CNW employees assigned to CNW yard assignments at Kansas City on September 1, 1995, will be placed on the bottom of MP Merged Roster No. 2A and Merged Roster 2B and will have prior rights to the former CNW yard assignments. Should those former CNW assignments be abolished or consolidated with other MP assignments, those former CNW employees will have no prior rights. However, should those former CNW assignments be reestablished, prior rights shall apply. Any newly established assignments will not be subject to prior rights.
- (b) Both MP employees and former CNW employees may work all assignments covered by Merged Rosters 2A and 2B and may work all assignments protected by the Merged Roster 2A and Merged Roster 2B extra boards. All employees and all assignments will work under the MP Agreement all in accordance with the employees' seniority on Merged Rosters 2A and 2B, subject to prior rights.

**NOTE:** These prior rights will not be applicable to assignments on nor operation of the three MP extra boards at Kansas City.

2. (a) The number of CNW employees assigned to road service work between Kansas City and Des Moines (excluding service to Indianola), on September 1, 1995, and who are headquartered at Des Moines, will be transferred to Kansas City. Those CNW employees, as well as the CNW employees currently assigned to work between Kansas City and Des Moines headquartered at Kansas City and the CNW employees on the CNW extra board at Kansas City, will all be placed on the

bottom of the MP Merged Roster 2A and MP Merged Roster 2B and will have prior rights to their percentage in the new Kansas City to Omaha Metro Complex (OMC)/Des Moines pool. The percentage will be as follows: 75% for Merged Roster 2B and 25% for the former CNW employees. The percentage for the former CNW employees need not be maintained as those employees attrite or are unavailable. Any newly established assignments will not be subject to prior rights.

NOTE: These prior rights will not be applicable to assignments on nor operation of the three MP extra boards at Kansas City.

- (b) Both MP employees and former CNW employees may work all assignments in the Kansas City to OMC/Des Moines pool, may work local assignments between Kansas City and Des Moines (excluding service to Indianola) and all assignments protected by Merged Roster No. 2A and Merged Roster 2B may work all assignments protected by the Merged Roster No.2A and Merged Roster 2B extra boards. All employees and all assignments will work under the MP Agreement all in accordance with the employees' seniority on Merged Roster No. 2A and Merged Roster 2B, subject to prior rights.

C. Chicago, Illinois Complex

1. A new consolidated Chicago Terminal Complex (CTC) seniority roster will be established to protect all non-through freight, yard or extra board assignments headquartered within the CTC. The CTC is defined in Article III.
2. The new CTC seniority roster will consist of the following employees:
  - (a) All C&EI employees working in Chicago on March 1, 1996;
  - (b) All CNW employees on the Chicago Freight Terminal #7 Roster;
  - (c) The number of CNW Eastern #1 employees working in Chicago on March 1, 1996; and,

- (d) The number of CNW Northeastern #2 employees working in Chicago on March 1, 1996.

**NOTE 1: "Working in Chicago" is defined as holding an assignment (non-through freight, yard, or extra board) with an on-duty point within the territory of the new CTC as defined in Article III.**

**NOTE 2: One Eastern-1 extra board employee for each four Eastern-1 employees transferred to the CTC and one Northeastern-2 extra board employee for each four Northeastern-2 employees transferred to the CTC will also be transferred to the new CTC roster.**

3. (a) Employees identified in Paragraph 2, above, will be placed on the new CTC seniority roster in the following manner:

(1) Employees identified in 2(a), (c) and (d), above, will be dovetailed based upon the employees's engine service date. If this process results in employees having identical seniority dates, seniority will be determined by the employees's service date.

(2) The dovetailed list in (1), above, will be placed on the bottom of the CNW Chicago Freight Terminal #7 Roster creating the new CTC roster.

- (b) Each employee placed on the new CTC roster will be provided prior rights to their former work now included in the CTC. Current assignments retained in the new CTC will not be rebulletined. Should any former assignments subsequently be abolished or consolidated with other CTC assignments, there will be no prior rights to those assignments. However, should those former CNW assignments be reestablished, prior rights shall apply. Any newly established assignments will not be subject to prior rights. The new CTC seniority roster will indicate prior rights in the following manner:

**NOTE: Prior rights will not apply to assignments on nor operation of the CTC extra board.**

**EXAMPLE (assumes roster only has five people on it):**

Name	Prior Rights to which Assignments				
	Roster Ranking	Chicago Freight Terminal#7	Eastern#1	North-Eastern#2	C&EI
Jones, J.	#1	X			
Smith, L.	#2	X			
Ames, G.	#3			X	
Bailey, T.	#4				X
Moore, K.	#5		X		

(c) All employees placed on the CTC roster may work all assignments protected by the new CTC roster and may work all assignments protected by the new CTC extra board. All employees and all assignments will work under the CNW Agreement all in accordance with the employee's seniority on the new CTC roster, subject to prior rights.

(d) New employees hired and placed on the CTC roster subsequent to the adoption of the CTC will be governed by the CNW collective bargaining agreement, but will have no prior rights to any assignments within the CTC; will have no rights to any CNW Eastern #1, CNW Northeastern #2 nor C&EI assignments outside of the CTC; will rank below all prior rights employees on the roster and will have seniority to all assignments headquartered within the CTC.

**D. Omaha**

1. UP/BLE Roster #1 will be expanded to protect all assignments headquartered within the Omaha Metro Complex (OMC) or which have the OMC as the source of supply. The OMC is defined in Article III.

2. The new UP/BLE Merged Roster #1 will consist of the following employees:

- (a) All UP employees on the current UP/BLE #1;
- (b) All CNW employees assigned to work between the OMC and Sioux City, Iowa (including Sergeant Bluff, Iowa) on September 1, 1995.

**NOTE 1:** CNW employees who work in the Sioux City area on yard, locals and road switchers and through freight between Sioux City and St. James, Minnesota will remain under the CNW Agreement until the Carrier gives a 30 day written notice that it is instituting through freight service between the OMC and Worthington. When such service is instituted then all employees in all classes of service between the OMC and Worthington, Minnesota will be part of the UPED Seniority District #1 and will operate under the UPED Agreement provisions and the provisions of Article II New Operations. Assignments at Worthington and to Minneapolis shall remain under the CNW.

**NOTE 2:** Employees on the Sioux City extra board may relieve crews unloading coal trains at the Sergeant Bluff power plant but will not be used to return trains to the OMC.

**NOTE 3:** The carrier notice to institute ID service to Worthington does not require additional bargaining of terms and conditions as those are already set forth in the Award but to give the parties time to transfer the employees to the new seniority roster and relocate additional employees to the OMC if needed.

- (c) All CNW employees working an assignment headquartered within the OMC on September 1, 1995;

**NOTE -1:** "Working an assignment headquartered within the OMC" is defined as holding an assignment (non-through freight, yard or extra board) with an on-duty point within the territory of the OMC.

**NOTE 2: "Working an assignment headquartered within the OMC" is also defined as the CNW assignments working to Norfolk, Nebraska, from Fremont, Nebraska, and the CNW assignment at Norfolk.**

- 3. (a) Employees identified in Paragraph 2, above, will be placed on the new UP/BLE Merged Roster #1 in the following manner:**
- (1) Employees identified in 2(b) and (c), above, will be dovetailed based on the employee's engine service date. If this process results in employees having identical seniority dates, seniority will be determined by the employee's Company service date.**
  - (2) The dovetailed list in (1), above, will be placed on the bottom of the UP/BLE Roster #1.**

**NOTE: Employees affected by the dovetailing of seniority in 3(a), above, will be transferred to the OMC in accordance with operational needs.**

- (b) Each employee placed on the new UP/BLE Merged Roster #1 will retain their current assignment (if operated) and will be provided primary prior rights to assignments on their former seniority district. Secondary prior rights shall be granted former CNW employees on other CNW work transferred to UPBLE merged roster number 1 not covered by primary prior rights. . Prior rights will also include the new operations established in accordance with Article II, Section A, Paragraph (1), but prior rights will not apply to assignments on nor operation of the UP extra boards at the OMC. Should any former CNW assignment be abolished or consolidated with UP assignments, the former CNW employees will have no prior rights to those assignments. However, should those former CNW assignments be reestablished, prior rights shall apply. Any newly established assignments will not be subject to prior rights; however, additions to pool freight service shall not be considered "newly established assignments" as used in this**

sentence. The UP/BLE Merged Roster #1 seniority roster will indicate prior rights in the following manner:

**EXAMPLE (assumes only five people on the roster):**

Name	Roster Ranking	Prior Rights to which Assignments			
		UP/BLE Roster#1	CNW with-in OMC	CNW - OMC to Worth'ton	
Brown, J.	#1	P			
Green, S.	#2	P			
Black, C.	#3		S	P	
White, P.	#4		P	S	
Blue, R.	#5		P	S	

- (c) All employees placed on the UP/BLE Merged Roster #1 may work all assignments (regular or extra) protected by the new roster. All employees and all assignments will work under the UP Agreement in accordance with the employee's seniority on the new roster, subject to prior rights.
- (d) New employees hired and placed on the new UP/BLE Merged Roster #1 subsequent to the adoption of this agreement will be governed by the UP Agreement, but will have no prior rights to any assignment protected by the new roster, will rank below all prior rights employees on the roster and will have seniority rights to all assignments protected by the new roster.

4. The expanded UP/BLE Merged Roster #1 will enable the Carrier to address necessary operational efficiencies and economies in the territory and on the following trackage: the existing UP/BLE Seniority District #1; the OMC as defined in Article III; ; and the north-south main line, branch lines and yards from the OMC to Sioux City. It will include all trackage from Sioux City to Worthington after service of the notice in Article I D 2 (b).

E. Midwest

1. A new CNW Midwest seniority district will be created to address necessary operational efficiencies and economies on the following lines: Mason City, Iowa, to Butterfield, Minnesota; Allendorf, Iowa, to Bricelyn, Iowa; Hartley, Iowa, to Emmetsburg, Iowa; Estherville, Iowa, to Eagle Grove, Iowa; Burt, Iowa, to Goldfield, Iowa; Forest City, Iowa, to Belmont, Iowa; Kanawha, Iowa, to Belmont, Iowa; Dows, Iowa, to Clarion, Iowa; Mason City, Iowa, to Somers, Iowa; Eagle Grove, Iowa, to Ames, Iowa; Ellsworth, Iowa, to Jewell, Iowa; Mallard, Iowa, to Grand Junction, Iowa; Albert City, Iowa, to Rolfe, Iowa; Royal, Iowa, to Laurens, Iowa; Coulter, Iowa, to Clarksville, Iowa; Iowa Falls, Iowa, to Aiden, Iowa; Oelwein, Iowa, to Waterloo, Iowa; Marshalltown, Iowa, to Steamboat Rock, Iowa; Marshalltown, Iowa, to Powerville, Iowa; Marshalltown, Iowa, to Albia, Iowa; Hampton, Iowa, to Sheffield, Iowa; Des Moines, Iowa, to Yale, Iowa; Des Moines, Iowa, to Woodward, Iowa; Des Moines, Iowa, to Indianola, Iowa; and Des Moines, Iowa, to Bondurant, Iowa. In addition, trackage from Des Moines to Mason City and trackage from the OMC to Clinton is included in the new Midwest seniority district.
2. The new Midwest Seniority District will consist of the following employees:
  - (a) The number of CNW Southern #3 employees working in the Midwest territory on September 1, 1995 (less those transferred to other districts in accordance with this Agreement);
  - (b) The number of CNW Central #5 employees working in the Midwest territory on September 1, 1995 (less those transferred to other districts in accordance with this Agreement).

**NOTE: "Working in the Midwest territory" is defined as holding an assignment (through freight, non-through freight, yard or extra board) with an on-duty point within the territory of the new Midwest seniority district.**

**3. Currently active employees on the Central 5 and Southern 3 Seniority Rosters who have been placed on the new Midwest Seniority District will be listed on the new Midwest Seniority District Roster as follows:**

**(a) Two new rosters will be created: Midwest Roster A and Midwest Roster B;**

**Roster A will list the currently active Southern 3 employees with their current seniority date ahead of currently active Central 5 employees who will receive a common date of June 1, 1996 and will be ranked in the order they currently stand on the Central 5 Roster.**

**Roster B will list the currently active Central 5 employees with their current seniority date ahead of currently active Southern 3 employees who will receive a common date of June 1, 1996 and will be ranked in the order they currently stand on the Central 5 Roster.**

**(b) Employees with seniority dates on the Midwest Seniority District after June 1, 1996 will be listed on both Rosters A and B behind Southern and Central employees. Rosters A and B will exist until such time as all employees on either of the two rosters with dates older than June 1, 1996 are attrited.**

**(c) Employees listed on Roster A shall have prior rights to those positions (including extra boards) headquartered at points located on the former Southern 3 territory. Employees listed on Roster B shall have prior rights to those positions (including extra boards) headquartered at points located on the former Central 5 territory.**

**(d) On runs which operate over both former Southern 3 and Central 5 territories, the Local Chairmen involved will work with the Crew Management Director or his designee to determine whether equalization is required as between employees having a date of June 1, 1996 or earlier. If equalization is desired, the Local Chairman will then notify the Crew Management Director to post a bulletin to the entire district which will indicate that the bulletin is for equalization purposes, the time period the assignment will cover, and whether Roster A or B will have prior right to the assignment. No changes will be made during the life of the bulletin. If no bids are received from the Roster**

to whom equalization is owed, the right to the equalization will be deemed waived and the bulletin will be canceled.

(e) The prior rights set forth in this Section 3 govern assignment to service only. Once assigned, all employees, including prior rights employees, on the new Midwest seniority roster may work all assignments (regular or extra) protected by the Midwest roster without regard to former Southern 3 and Central 5 seniority demarcation lines. All employees and all assignments will work under the CNW (proper) Agreement and under the terms and conditions established in Article II.

F. Seniority and Service Rights

The following will apply to employees transferring from CNW to UP (Sections A, B and D of this Article I) and to employees transferring from UP to CNW (Section C of this Article I):

- (a) All engine service seniority with the employees' original railroad will be eliminated;
- (b) Seniority with the employees' new railroad will be established in accordance with the provisions of this Article I; and,
- (c) The employees will be treated for vacation, entry rates and payment of arbitraries as though all their time in engine service on their original railroad had been performed on their new railroad.
- (d) Employees with train service seniority on their original railroad will forfeit that seniority. Train service on the employees' new railroad will be established either following the same relative standing as on the original railroad or as provided for in the UTU National Agreement.

NOTE: Subparagraph (d) is contingent upon the implementing agreement for the other operating craft organization.

- (e) The seniority consolidations provided for in this Article I will result in the elimination of GNW Southern #3 seniority district. CNW Freight Terminal #7 and the C&EI Chicago Yard seniority districts will also be eliminated and made part of the

**new CTC seniority district. The UP/BLE Seniority District #1 will also be eliminated and will become the basis for the new UP/BLE Merged Roster #1 seniority district.**

- (f) CNW employees placed on the bottom of a C&EI or MP roster under Sections A and B of this Article I will be placed on the roster in the same seniority order they held on the CNW.**
- (g) After the initial placement on a new roster in accordance with the procedures set forth in Article V, below, no additional employees hired prior to the date of this Agreement will be permitted to place on another roster under the provisions of this Agreement.**

## **II. New Operations**

**A. The following new operations may be implemented in accordance with the provisions set forth in this Article II:**

- 1. Under the UP Agreement with the OMC as the home terminal: OMC-Sioux City, OMC-Sergeant Bluff, OMC-North Platte, OMC-Grand Island (including the "picker" pool) and OMC-Marysville. OMC-Worthington shall be included after the notice in Article I D 2 (b) becomes effective.**

**NOTE: The current North Platte-Fremont and North Platte - Council Bluffs doubleheaded interdivisional pools may cease operations (with the understanding these pools may be re-established by the Carrier) when replaced by an OMC-North Platte and North Platte-OMC pool.**

- 2. Under the CNW Agreement with Boone as the home terminal: Boone-Clinton and Boone-OMC; with Clinton as the home terminal: Clinton-OMC.**

**Note: Return trips from the OMC and Clinton in the Boone pool may go to Des Moines, Mason City, Nevada and Ames with the employees being either transported back to the home terminal of Boone after completion of the trip or taking a train back to the home terminal of Boone and being paid actual miles run or transported or combination thereof. This does not prohibit the use of Clinton crews on their return trip from being used to any of these cities and then**

transported to Clinton or used on another train to Clinton and paid actual miles run or transported or combination thereof.

**Example:** A crew goes from Boone to the OMC and on its return trip it takes a train to Ames and is then transported back to Boone to tie up. The crew is paid actual miles Boone to Council Bluffs (where it yarded its train), and on its return trip is paid from Missouri Valley (where it received its train) to Ames and Highway miles Ames to Boone unless overtime was greater.

3. Under the MP Agreement with Kansas City as the home terminal: Kansas City-OMC/Des Moines.

**NOTE:** This will be a single pool with alternative destinations (see Article I, Section B2).

4. Under the C&EI Agreement with St. Louis as the home terminal: St. Louis - Chicago/South Pekin.

**NOTE 1:** This will be a single pool with alternative destinations (see Article 1, Section A3).

**NOTE 2:** The current St. Louis-Chicago operation is a guaranteed pool. The guarantee and offset adjustments for the new pool operation will be paid and adjusted in accordance with Side Letter #1 of the Villa Grove Interdivisional Run Arbitration Agreement.

5. On the territory covered by the CNW Agreement:
  - (a) Twin Cities (home terminal) to Worthington (far terminal);
  - (b) Any Midwest Seniority District location to any other Midwest Seniority District location; (This includes runs to the OMC)
  - (c) Waukegan (home terminal) to Clinton (far terminal) with Waukegan as the on-duty point/off-duty point and transported to/from the power plants at Waukegan and Pleasant Prairie;

**NOTE:** Employees working in the Waukegan-Clinton pool freight service will be from both CNW Eastern #1 and CNW Northeastern #2. The equalization for the

pool will be 71% for Eastern #1 and 29% for Northeastern #2. Either road extra board may be used to fill any vacancy in the pool or to perform hours of service relief.

- (d) South Pekin (home terminal) to Clinton; and,
- (e) Chicago (CTC) (home terminal) to Clinton/South Pekin.

**NOTE:** This will be a single pool with alternative destinations.

**B. The terms and conditions of the new operations set forth in Section A, above, are as follows:**

1. **Miles Run - The miles paid shall be the actual miles run.. Actual miles run to/from the OMC will be calculated in accordance with the chart found in Attachment A.**

**NOTE:** As long as the Fremont-North Platte and Council Bluff-North Platte Double headed pools are operated they will be paid the minimum number of specified miles in the current ID agreements and will be paid additional miles if they run past their currently assigned final terminals.

**Example 1:** A Fremont-North Platte crew operates on a return trip ten miles past Fremont towards Blair and are then transported back to Fremont. They will be paid 244 miles North Platte to Fremont and an additional ten miles to the point of leaving their train.

**Example 2:** A Council Bluff-North Platte crew operates a train from North Platte to a point ten miles short of Council Bluffs and are then transported to their tie up point. They will be paid the full 282 miles. A Boone-OMC crew then takes the same train from the same point to Boone. They are paid the 144 miles Council Bluffs to Boone and an additional ten miles for the distance west of Council Bluffs.

2. **Basic Day/Rate of Pay - The provisions of the November 7, 1991, Implementing Agreement (BLE) will apply, to include applicable entry rates.**

3. **Overtime - Overtime will be paid in accordance with Article IV of the November 7, 1991, Implementing Document (BLE).**
4. **Transportation - Transportation will be provided in accordance with Section (2)(c) of Article IX of the May 19, 1986, National Arbitration Award (BLE).**
5. **Meal Allowance and Eating Enroute - Meal allowances and eating enroute will be governed by Section 2(d) and Section (2)(e) of Article IX of the May 19, 1986, National Arbitration Award (BLE), as amended by the November 7, 1991, Implementing Agreement.**
6. **Suitable Lodging - Suitable lodging will be provided by the Carrier in accordance with applicable agreements as identified in Article II.**
7. **Held-away-from-home terminal time will be up to a maximum of eight (8) hours in every twenty-four (24) hour-period beginning after the first sixteen (16) hours.**
8. **All through freight service will be rotary pool freight service with blue print board provisions for placing employees in the proper order at the home terminal and at the far terminal. Under a blue print board operation, employees are not run-around if used on the train for which called.**

**NOTE 1: Item B7, above, will not apply to the OMC-North Platte nor the North Platte-OMC operation. The traditional HAHT payment for that operation will continue to apply.**

**NOTE 2: Item B2, above, will reflect the CNW rate of pay for those new operations governed by the CNW Agreement.**

**NOTE 3: It is not the intent of this Award to eliminate provisions of the existing MP/C&EI ID Agreements involving St. Louis - Chicago and Kansas City - Omaha by the addition of South Pekin and Des Moines respectively as alternate destinations from the home terminal and the creation of the OMC and CTC for the receiving and leaving of trains, except those subjects of this award that are identified in this note.**

**In addition, it is not the intent to eliminate provisions of existing UPED ID Agreements involving Fremont -**

North Platte, Council Bluffs - North Platte and Council Bluffs-Marysville by the creation of the OMC as a complex for the receiving and leaving of trains by a pool nor the North Platte - South Morrill ID Agreement by the creation of the thirty mile zone, except those subjects of this award that are identified in this note.

The specific areas of coordination are as follows:

Miles Run - The currently paid miles from St. Louis to South Pekin and Kansas City to Des Moines will be paid for crews run between those points. Mileage paid to and from the OMC will be paid per the chart set forth in Attachment A. For example, if a Kansas City crew receives its train six miles north of the Council Bluffs yard toward Missouri Valley and takes the train to Kansas City, the crew will be paid the 204 miles OMC to Kansas City and six miles for receiving the train north of the Council Bluffs yard. If new OMC-North Platte/North Platte-OMC or OMC-Marysville pools are established this note shall govern them. If new pools are not established then the note to B 1 above governs existing pools.

Hours of Service Relief - At South Morrill, the OMC, Des Moines, South Pekin, North Platte, Marysville and the CTC, the extra board(s) home terminated at each location may now be used, if not previously allowed, to perform hours of service relief in all directions, except on northbound KC-OMC MP trains. If this service results in the extra board being used off its seniority district, the extra board crew is limited to the same road/yard limit that a yard crew would be limited to under applicable agreements measured from the consolidated switching limits not from the terminal complex limits.

Thirty Mile Zone - At South Morrill through freight crews from the UP and CNW may leave or receive their trains at any location within the thirty mile zone and will be governed by the conditions set forth in other sections of this Award.

Terminals/Complexes - ID crews may now receive or leave their trains anywhere within the complex limits of the OMC or CTC or the new terminal limits of Kansas City and St. Louis as established in this award.

**NOTE 4: The Carrier will not serve a national ID notice to move the Clinton and Boone home terminals to the OMC and have those terminals become away from home terminals. This does not prohibit the serving of ID notices to run through either of these terminals with other than the OMC as the home terminal.**

- C. When the carrier has a customer request for particularized handling that would provide more efficient service, local and road switcher service may be established to operate in turnaround service or to operate from any location to any other location within any seniority territory outlined in Article I. Should this service be desired by the Carrier and the desired service would cross seniority lines, such service may be implemented upon a five (5) day notice by the Carrier to the involved General Chairmen. The service will be manned by employees from the seniority territory where the home terminal of the assignment is located. The involved local chairmen may make arrangements for the equalization of work; however, such equalization must be cost neutral to the Carrier.**
- D. All pool freight and all other road service crews may receive and/or leave trains anywhere within the boundaries of the terminal of their runs in accordance with the provisions of all national agreements.**

**NOTE: "Anywhere within the terminal" is defined to include the CTC and OMC as those complexes are defined in Article III and to include the consolidated terminals of St. Louis, Kansas City and South Morrill.**

- E. 1. Turnaround service/Hours of Service relief for the new operations listed in Section A, above, may be performed as follows:**
- (a) When crews are heading toward the home terminal, the protecting extra board will be used.**
  - (b) When crews are heading toward the far terminal, an extra board at that terminal, if available, will be used first, in any direction out of the extra board point except on northbound KC-OMC MP trains. The first-out away-from-home terminal crew also may be used.**

**NOTE 1: Crews used for this service, whether extra or in the pool, may be used for multiple "dogcatches" during a tour of duty.**

**NOTE 2: When the first-out away-from-home terminal crew completes this service, the crew may be used for either a through train or for additional turnaround service/Hours of Service relief. Any crew used for two consecutive turnaround service/Hours of Service relief jobs will be placed first out after rest for a through train or deadheaded back to the home terminal**

2. Nothing in this Section E prevents the use of other employees to perform work currently permitted by other agreements, including, but not limited to, yard crews performing hours of service relief within the road/yard zone, ID crews performing service and deadheads between terminals, traveling switch engines ( TSEs) handling trains within their zones and using an employee from a following train to work a preceding train.
- F.
1. The new operations listed in Section A, above, may be implemented separately, in groups or collectively, upon five (5) days' notice by the Carrier to the involved General Chairman.
  2. The new operations listed in Section A, above, may be run by the Carrier in pool service, extra service or any other type of service necessary to meet the demands of the service and/or to meet customer requirements.

**III. Terminals/Complexes**

- A. The following terminal and complex consolidations will be implemented on the Implementation Date of this Agreement in accordance with the provisions set forth in this Article III:
1. Kansas City
    - (a) The existing switching limits at Kansas City will now include the CNW rail line to CNW Mile Post 500.3.
    - (b) All road crews (MP, including former CNW, and UP) may receive/leave their trains at any location within the boundaries of the new Kansas City Consolidated terminal and may perform work anywhere within those boundaries. The Carrier will designate the on/off duty point(s) for road crews.

- (c) All yard assignments in the new consolidated Kansas City terminal will be governed by the MP Agreement and manned by MP employees from MP Merged Roster 2, subject to the prior rights requirement of Article I.

NOTE: This provision will not alter the current work equity/seniority allocation for UP Seniority District #8 employees.

- (d) All rail lines, yards and/or sidings within the new consolidated Kansas City terminal will be considered as common to all crews working in, into and out of Kansas City. All crews will be permitted to perform all permissible road/yard work. Interchange rules are not applicable for intra-carrier moves within the consolidated terminal.

## 2. St. Louis

- (a) The existing switching limits at St. Louis will now include the CNW rail line to CNW Mile Post 144.
- (b) All road crews (MP and C&E, including former CNW) may receive/leave their trains at any location within the boundaries of the new St. Louis consolidated terminal and may perform work anywhere within those boundaries. The Carrier will designate the on/off duty point(s) for road crews.
- (c) All yard assignments in the new consolidated St. Louis terminal will be governed by the MP Agreement and manned by MP employees from MP Merged Roster #1, subject to the prior rights requirement of Article I.
- (d) All rail lines, yards and/or sidings within the new consolidated St. Louis terminal will be considered as common to all crews working in, into and out of St. Louis. All crews will be permitted to perform all permissible road/yard moves. Interchange rules are not applicable for intra-carrier moves within the consolidated terminal.

## C. Chicago Terminal Complex

1. The new consolidated Chicago Terminal Complex (CTC) will be the entire area within and including the following trackage: Waukegan (CNW Mile Post 41.0 on the Kenosha Branch) southwest paralleling the EJE rail line to Geneva (CNW Mile Post 41.0 on the Geneva Subdivision), continuing on a parallel with the EJE line south through Normantown and East Joliet through Brisbane, Matteson, Chicago Heights (south to the current southern boundary of Mile Post 30.0 on the C&EI) to Griffith, then north on a parallel with the EJE through Van Loon and Ivanhoe, and then east paralleling the EJE line through Kirk and Gary Yard.
2. All road crews (CNW and C&EI) may receive/leave their trains at any location within the boundaries of the new CTC and may perform any work anywhere within those boundaries. The Carrier will designate the on/off duty point(s) for road crews.
3. All yard and non-through freight assignments headquartered within the CTC will be governed by the CNW Agreement and manned by employees from the new CTC seniority roster, subject to the prior rights requirements of Article I.

NOTE: This provision will not be applicable to C&EI non-through freight road assignments headquartered within the CTC which operate onto C&EI road territory.

4. All rail lines, yards and/or sidings within the new CTC will be considered as common to all crews working in, into and out of the CTC. All crews will be permitted to perform all permissible road/yard moves. Interchange rules are not applicable for intra-carrier moves within the CTC.

#### **D. Omaha Metro Complex**

1. The new consolidated Omaha Metro Complex (OMC) will be the entire area within and including the following trackage: Fremont (UP Mile Post 44.75 - west) to Omaha/Council Bluffs (UP Mile Post 473.1 - south) to Missouri Valley (CNW Mile Post 327.2 - east) and return to Fremont. At California Junction, trackage north to CNW Mile Post 10.2 will be included.

**NOTE: The Omaha Metro Complex described above is part of the larger UP/BLE Merged Roster #1 seniority district described in Article I.**

- 2. All road crews (UP, including former CNW, and MP) may receive/leave their trains at any location within the boundaries of the new complex and may perform any work within those boundaries. The Carrier will designate the on/off duty point(s) for road crews.**
- 3. All yard and non-through freight assignments headquartered within the complex will be governed by the UP Agreement and manned by employees from the new UP/BLE Merged Roster #1 seniority district, subject to the prior rights requirement of Article I.**
- 4. All rail lines, yards and/or sidings within the new complex will be considered as common to all crews working in, into and out of the complex. All crews will be permitted to perform all permissible road/yard moves. Interchange rules are not applicable for intra-carrier moves within the complex.**
- 5. In addition to the consolidated complex, the UP terminal at Omaha/Council Bluffs and the CNW terminal at Council Bluffs will be consolidated into a single terminal controlled by UP. The existing UP switching limits at Omaha/Council Bluffs will now include the CNW rail line to CNW Mile Post 345.0.**

**E. South Morrill**

- 1. South Morrill will be a consolidated terminal with the following boundaries: UP Mile Post 156.8 to UP Mile Post 166.0. All road crews (UP and CNW) may receive/leave their trains at any location within the boundaries of the consolidated South Morrill Terminal and may perform any work anywhere within those boundaries.**
- 2. The following will be applicable to achieve efficient operations in and around the common UP/CNW terminal of South Morrill, Nebraska:**
  - (a) UP crews (destined North Platte or Cheyenne) may receive their trains up to thirty (30) miles westward on the CNW from their existing far terminal of South Morrill. CNW crews (destined Bill) may receive their trains up to thirty (30) miles eastward on the UP (toward North Platte) or westward on the**

UP (toward Cheyenne) from their existing far terminal of South Morrill.

- (b) The thirty (30) miles listed in (a), above, will run east from UP mile Post 156.8 to UP Mile Post 126.8 and will run west from UP Mile Post 166.0 to CNW Mile Post 24.8 and UP Mile Post 196.0.
- (c) Crews relieving trains or extra crews called for this service may also perform all work in connection with the train regardless of where the train is received.
- (d) Through freight crews that operate in the thirty mile zone at South Morrill will be paid time or miles whichever is greater with a minimum of one-half basic day. The time or miles paid in the thirty mile zone will be treated separately from the miles from South Morrill to Bill, Cheyenne or North Platte for the compensation of overtime. The time or miles paid is subject to wage adjustments.

Example: A pre-October 31, 1985 North Platte crew is transported to its train 10 miles north of South Morrill and they take the train to North Platte. The miles north of South Morrill equal 20 and it took one hour. The crew spent an additional 10 1/2 hours between South Morrill and North Platte for a total time on duty of 11 1/2 hours. The crew will be paid 1/2 basic day for the work in the thirty mile zone, the miles to North Platte and 1/2 hour overtime for the part of the trip South Morrill to North Platte that took over 10 hours.

- (e) Initial terminal delay for crews performing this service will be governed by the applicable collective bargaining agreements and will not again commence when the crew operates into South Morrill. For the operation back through South Morrill, South Morrill will be considered an intermediate point.
- (f) Departure and/or terminal runarounds will not apply for crews arriving/departing South Morrill under this Section.

3. Nothing in the Section E prevents the use of other employees to perform work currently permitted by other agreements, including, but not limited to, TSEs handling trains within their zone, an engineer

from a following train to work a preceding train and the CNW extra board at South Morrill to perform service in all directions on both CNW and UP trackage.

**NOTE 1:** The UP extra board at South Morrill may be abolished by the Carrier.

**NOTE 2:** The CNW extra board at South Morrill will be permitted to perform Hours of Service relief on the UP side of South Morrill consistent with the parameters of the road/yard service zone mileage limits found in the applicable National Agreement measured from the new terminal boundaries as set forth in Article III Section E1.

**F. General Conditions for Terminal/Complex Operations**

1. Initial delay and final delay at Kansas City and St. Louis terminal and at the Chicago and Omaha complexes will be governed by the applicable collective bargaining agreements, including the Duplicate Pay and Final Terminal Delay provisions of the 1986 and 1991 National Agreements.
2. For all locations, road employees will be transported to/from their trains to/from the designated on/off duty point in accordance with applicable rules. Yard Extra Board employees in the Chicago Terminal Complex will report to Proviso and will be transported to/from their assignment if the assignment is more than twenty (20) miles from the employee's home by the most direct highway route.
3. The current application of National Agreement provisions provides for the following regarding work and Hours of Service relief under the Combined Road/Yard Service Zone, which shall continue to apply:
  - (a) Yard crews at Kansas City and St. Louis may perform such service in all directions out of the new consolidated terminals.
  - (b) Yard crews at the CTC may perform such service in all directions out of individual yards (switching limits) within the complex.

(c) Yard crews at the Omaha Metro Complex may perform such service in all directions out of the individual yards (switching limits) within the complex.

4. Nothing in this Section F will prevent the use of other employees to perform this work and/or relief in any way permitted by applicable agreements.

#### IV. Extra Boards

##### A. Terminals/Complexes

###### 1. Kansas City -

The current Merged Roster #2B extra board will protect the work in the consolidated terminal. The current Merged Roster #2B extra board will protect the Kansas City - OMC/Des Moines operation. This service for these extra boards is in addition to other service protected by these extra boards.

###### 2. St. Louis -

The current Merged Roster #1 extra board will protect the work in the consolidated terminal. The current C&EI road extra board at St. Louis will protect the Monterey Mine and the St. Louis - Chicago/South Pekin operations. This service for these extra boards is in addition to other service protected by these extra boards.

###### 3. Chicago Consolidated Complex -

The current CNW Chicago Freight Terminal #7 extra board will become the CTC extra board and will protect the work (yard and non-through freight) within the CTC, including former C&EI, Eastern #1 and Northeastern #2 work. This service is in addition to any other service protected by that extra board. Prior rights will not be applicable to positions on or operation of this extra board.

###### 4. Omaha Metro Complex -

The current UP/BLE Seniority District #1 combination extra board will protect the work in the complex and all assignments headquartered within the complex, including the new operations provided for in

Article II. This service for this extra board is in addition to other service protected by this extra board.

5. Outlying Points -

- (a) The Carrier may establish guaranteed extra boards at locations governed by the UP Agreement on the new OMC seniority territory where extra boards do not now exist.
- (b) The Carrier may establish guaranteed extra boards at locations governed by the CNW Agreement on the new Midwest seniority territory where extra boards do not now exist.

B. Nothing in this Article IV will prevent the use of other employees to perform this work in any way permitted by applicable agreements.

**V. Implementation**

- A. The Carrier will give at least forty (40) days' written notice of its intent to implement this Agreement.
- B.
  - 1. Concurrent with the serving of its notice, the Carrier will post a description of those new merged seniority districts which will require former CNW employees to make a seniority election. Those seniority districts are MP Merged Rosters #2A and #2B, C&EI road roster at St. Louis, the new CNW Chicago Terminal Complex, the new UP Omaha Metro Complex and the new CNW Midwest.
  - 2. The Carrier will determine the number of employees to be transferred to those new rosters in accordance with Article I.
  - 3. Fifteen (15) days after posting of the information described in B, above, the appropriate Directors of Labor Relations, General Chairmen and Local Chairmen will convene a workshop to implement assembly of the merged seniority rosters. Employees on a roster from where work is being transferred will be canvassed, in seniority order for each roster, and required to make an election as to which roster the employees wish to be transferred or whether the employee wishes to remain on the current roster. (Staying will not be possible on those rosters which are being eliminated.) Positions on the new roster will be awarded on using the method as spelled out in

the various provisions of this Agreement. Failure or refusal of an employee to make an election will result in the Carrier making the assignment for the employee.

4. At the end of the workshop, which will last no more than five (5) days, the participants will have finalized agreed-to rosters which will then be posted for information and protest in accordance with the applicable agreements. If the participants have not finalized agreed-to rosters, the Carriers will prepare such rosters, post them for information and protest, will use those rosters in assigning positions and will not be subject to claims or grievances as a result.

C. Once rosters have been posted, the Carrier will bulletin all positions covered by this agreement which require rebulletining for a period of five (5) calendar days. Employees may bid on these bulletined assignments in accordance with applicable agreement rules. However, no later than 10 (ten) days after the closing of the bulletins, assignments will be made .

D. 1. After all assignments are made, employees assigned to positions which require them to relocate will be given the opportunity to relocate within the next thirty (30) day period. During this period, the affected employees may be allowed to continue to occupy their existing positions. If required to assume duties at the new location immediately upon implementation date and prior to having received their thirty (30) days to relocate, such employees will be paid normal and necessary expenses at the new location until relocated. Payment of expenses will not exceed thirty (30) calendar days.

2. The Carrier may, at its option, elect to phase-in the actual implementation of this Agreement. Employees will be given ten (10) days' notice of when their specific relocation/reassignment is to occur.

E. All employees on any affected roster who were not in active status (disability, leave of absence, holding official or union positions, dismissed, etc.) at the time of the roster workshop will be placed on an inactive roster. If at any future date any such employee is released to return to active service, the employee will be allowed to exercise an election as to which roster he/she wishes in line with his/her original seniority. Such election must be made at the time the employee marks up for service. Once the returning employee elects a roster placement, the junior employee occupying that designated

position and all other below him/her will be repositioned to the next lower designated position on that merged roster.

- F. The parties will meet for purposes of reviewing the operational implementation of this Award. Questions and answers pertaining thereto should be prepared by the parties covering that implementation. Should the parties be unable to agree upon any item, that/those matter(s) is/are to be referred to party pay arbitration. Future individual claim disputes will be arbitrated in accordance with the applicable New York Dock or Railway Labor Act provisions. This provision will not delay the implementation of any section of the Award.

#### **VI. Protection**

1. Employees who are adversely affected as a result of the implementation of this Agreement will be entitled to the employee protection provided for in the New York Dock Conditions. With the following addition: Employees required to relocate under this Agreement will have the option of electing the relocation benefits provided for in the New York Dock Conditions or an in lieu allowance in the amount of \$28,000.00 less applicable taxes.
2. Employees currently eligible for other protective benefits must elect between those benefits and the benefits provided by this Agreement. This election must take place within ten (10) days after the adverse affect. No benefits will be paid until the employee has made an election.
3. There will be no pyramiding of benefits.
4. Health and Welfare benefits will be provided in accordance with the provisions of the applicable collective bargaining agreement.

#### **VII. Familiarization**

Employees will not be required to lose time or "ride the road" on their own time in order to qualify for new operations.

1. Employees will be provided with a sufficient number of familiarization trips in order to become familiar with a new territory. Issues concerning individual qualifications should be handled with local operating officers.

2. If road crew or extra board employees operating in CTC have not been in the Chicago Terminal Complex within six (6) months prior to assignment, Carner will provide a local operating officer or pilot if requested. Issues concerning individual qualifications should be handled with local operating officers.

**VIII. Conflict of Agreements**

Should the provisions of any BLE Collective bargaining agreement conflict with the terms and intent of this Agreement, this Agreement will apply.

The Carrier may serve the required notices at any time after the date of this Arbitration Award. Dated this 10th day of January, 1996.

/s/ John J. Mikrut, Jr.  
John J. Mikrut, Jr.

**IX. Interpretation of Award**

The parties have reviewed the Arbitration Award and have agreed to interpret the Award. The interpretation has been accomplished through minor language clarifications, the addition of notes and examples and agreed upon Questions and Answers. Since the interpretation has been agreed to by all parties, they will advise the Surface Transportation Board in writing that all appeals of the January 10, 1996 Award are withdrawn including the request for a stay and the carrier is now free to continue implementation of the Award as now interpreted.

The parties agree that the interpretation of the Award is without prejudice to either party and that no portion of this document, changes, notes, examples or Questions and Answers will be cited by any party in any proceeding or negotiations not involving an interpretation of them.

For the Organization:

Richard Young 6/3/96  
General Chairman BLE Date

B. H. MacArthur 6/4/96  
General Chairman BLE Date

For the Carrier:

John J. Mikrut, Jr. 6/3/96  
Assistant Vice-President Date

John J. Mikrut, Jr. 6/3/96  
Assistant Vice-President Date

D.E. Penning 6-6-96  
General Chairman BLE Date

W. Stinchley 6-3-1996  
General Director Date

R.E. Dean 6-6-96  
Vice-President BLE Date  
(O.E.P.)

## ATTACHMENT A

Actual miles (miles run on the train) will be paid on the basis of the chart set forth below. The miles listed for some locations reflect the mileage payment required under existing agreements. If a crew receives/leaves a train on main/line territory within a consolidated complex but outside a yard, the mileage paid will be based on the main line mile post nearest the train.

OMC (Council Bluffs)	- Clinton	341 miles
	- Boone	144 miles
	- Des Moines	199 miles
	- Mason City	251 miles
	- Worthington	185 miles
	- Sioux City	96 miles
	- Sergeant Bluff	88 miles
	- North Platte	282 miles *
	- Grand Island	144 miles *
	- Marysville	160 miles *
- Kansas City	204 miles	
OMC (Missouri Valley)	- Clinton	320 miles *
	- Boone	124 miles
	- Des Moines	178 miles
	- Mason City	231 miles
	- Worthington	165 miles
	- Sioux City	76 miles
	- Sergeant Bluff	68 miles
	- North Platte	281 miles
	- Grand Island	145 miles
	- Marysville	180 miles
- Kansas City	224 miles	
OMC (Fremont)	- Clinton	357 miles
	- Boone	161 miles
	- Des Moines	215 miles
	- Mason City	267 miles
	- Worthington	202 miles
	- Sioux City	113 miles
	- Sergeant Bluff	105 miles
	- North Platte	244 miles
	- Grand Island	108 miles
	- Marysville	145 miles
- Kansas City	238 miles	

These miles are calculated with 4 additional miles working into Council Bluffs to MP 1. We pay 4 miles less working out of Council Bluffs.

These are the current miles and they are to be changed if additions or reductions in the mileage occur.

3

**MERGER IMPLEMENTING AGREEMENT  
(Dallas Ft. Worth (DFW)Hub)**

**between the**

**UNION PACIFIC RAILROAD COMPANY  
SOUTHERN PACIFIC TRANSPORTATION COMPANY**

**and the**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

In Finance Docket No. 32760, the U.S. Department of Transportation, Surface Transportation Board ("STB") approved the merger of the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") and Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SP"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp., and The Denver & Rio Grande Western Railroad Company ("DRGW") (collectively referred to as "SP"). In approving this transaction, the STB imposed New York Dock labor protective conditions.

In order to achieve the benefits of operational changes made possible by the transaction, to consolidate the seniority of all engineers working in the territory covered by this Agreement into one common seniority district covered under a single, common collective bargaining agreement,

**IT IS AGREED:**

**I. DALLAS FT. WORTH HUB**

- A. A new seniority district entitled the Dallas Ft. Worth Hub ("Hub") shall be created that encompasses the following area: Toyah (including) to Mesquite (including); Childress (including) to Ft. Worth (including) on the trackage rights; Winfield (not including) to Ft. Worth (including) on the trackage rights; Wichita (not including) to Taylor (not including) and Hearne/Valley Jct. (including); Dallas (including) south to Ennis (including); Plano Jct southwest to Ft. Worth and Ft. Worth northeast to McAlester(not including). (This includes all main and branch lines, industrial leads and stations between the points identified). This seniority district has provisions spelled out later in this document that combines Longview Hub engineers seniority with engineers in this Hub.**
- B. Engineers with home terminals within the DFW Hub may work to points outside the Hub without infringing on the rights of other engineers in other**

Hubs and engineers outside the Hub may work to points inside the Hub without infringing on the rights of engineers inside the DFW Hub. The Hub identifies the on-duty points for assignments and not the boundaries of such assignments.

**EXAMPLE 1:** A road switcher on duty at Mesquite may work in any direction up to the limits of its radius as set by the controlling agreement, irrespective of the territorial description (boundaries) of the Hub.

**EXAMPLE 2:** A through freight train out of Ft. Worth may operate to points outside the territorial definitions of the DFW Hub, such as to Smithville.

**NOTE 1:** There are several points where engineers in this Hub work on tracks also used by engineers of other Hubs such as between Taylor and Hearne and between Mesquite and Ft. Worth. The entering into this agreement does not interfere with those operations.

- C. If an assignment goes on duty at the dividing point between two Hubs and the work is performed in the other Hub except for terminal work at the dividing point then that assignment shall be part of the Hub where the road work is performed, however short term vacancies will be protected by a designated extra board.
- D. When new locals are put on that will have an on duty point in this Hub and work both inside the Hub and outside the Hub, it shall be filled on a 50/50 equity basis with the DFW Hub filling the initial bulletin. The equity arrangement may be changed by agreement between the local chairmen involved with written confirmation from the General Chairmen to the Carrier.
- E. There are several assignments that currently work into the DFW Hub such as the Longview - Ft. Worth Pool and the entering into this agreement does not interfere with their continued operation.

## **II. Seniority and Work Consolidation.**

The following seniority consolidations will be made:

- A. 1. A new seniority district, known as the DFW Hub, will be formed and a master UP/BLE DFW Hub Merged Engineer's Seniority Roster, will be created from engineers assigned / working in the territory comprising the new DFW Hub and those outside the Hub who have

rights to place in the Hub and elect to place in the Hub. (See section H of this Article II for integration of Longview Hub seniority)

2. The number of engineers who will be placed on the roster will be capped at the level of UP, SP, and SSW positions that existed in the month prior to the merger being approved or the number of current positions whichever is greater. As a result, but unlikely to happen, engineers electing to come into the Hub may bump some engineers out of the Hub. These elections and displacements shall be seniority moves and not entitled to a relocation allowance. Should more positions exist at time of implementation then the pre merger numbers shall set a template.

**NOTE:** Engineers who may have a relocation allowance held in abeyance from a merger transaction may utilize that allowance if electing this Hub and meet the relocation provisions.

**B. The new rosters will be created as follows:**

1. Engineers assigned on the seniority rosters identified in Section A above will be dovetailed based upon their current engineer's seniority date or consolidated seniority date, whichever is applicable. For UP engineers it will be the pre KATY merger seniority date, not the 1989 merger date. This shall include any engineer working in train service or as a hostler in the DFW Hub. If this process results in engineers having identical seniority dates, seniority ranking will be determined by the employee's earliest retained fireman's date with the Carrier and if still identical then on the earliest retained hire date.
2. All engineers placed on the roster may work all assignments protected by the roster in accordance with their seniority and the provisions set forth in this agreement and the controlling collective bargaining agreement.
3. Engineers who elect to be placed on the DFW Hub Merged Engineer's Seniority Roster shall relinquish all seniority outside the Hub upon implementation of this Agreement and all seniority inside the Hub held by engineers outside the Hub who do not elect to place in this Hub shall be eliminated. Those inside the Hub who elect to hold their seniority in abeyance shall be placed temporarily on the roster until such time as they elect to place on a post DFW Hub roster or there is no further election and by default become a permanent DFW Hub engineer.

4. **Engineers hired or promoted after the implementation of the Longview Hub (02-01-98) shall only have common seniority unless the Cap in A, 1, above is not filled. If not filled, then engineers hired or promoted in either the Longview or DFW Hub after 02-01-98 shall be offered a prior right Cap spot, in seniority order, until the Cap is filled. Once the DFW Cap is filled all other common engineers shall remain as common engineers.**
  5. **Engineers who are on an authorized leave of absence or who are dismissed and later reinstated with seniority unimpaired, will have the right to displace to any Hub and prior rights assignment which may have been established on his/her former territory, provided his/her seniority at time of selection would have permitted him/her to hold that selection. The parties will create an inactive roster for all such engineers until they return to service in a Hub or other location at which time they will be placed on the appropriate seniority rosters and removed from the inactive roster.**
  6. **Engineers currently borrowed out to the DFW Hub, will be released when their services are no longer required and will not establish a permanent date on the merged roster.**
  7. **The work on the Oklahoma City subdivision that is currently protected from the Coffeyville/Van Buren roster shall be transferred to this Hub and the following shall govern seniority.**
    - a. **Those engineers on the assignment on the date of the thirty day notice of implementation shall have first rights to retain those assignments and be placed on the DFW Hub roster.**
    - b. **Should those engineers elect to not retain those assignments then they shall be offered to the Coffeyville/Van Buren roster for bid and the successful bidders shall be placed on the DFW roster. Should no one bid the assignments then they shall be available to the DFW roster. Thereafter they shall only be available to the DFW roster.**
- C. Prior right provisions as set forth below, shall govern the following assignments.**
1. **Ft. Worth - Taylor/Hearne/Smithville (SP 16%, UP 84%, up to the baseline of 45 then dovetail roster.)**

2. Ft. Worth - Sweetwater ( UP 100%, up to the baseline of 6 then dovetail roster.)
3. Ft. Worth - Childress/Chickasha/Purcell ( UP 62%, SSW 38% up to the baseline of 16 then dovetail roster.)
4. Ft. Worth - McAlester ( UP 100%, up to the baseline of 34\* then dovetail roster.)
5. Ft. Worth - Denison ( UP 100%, up to the baseline of 34\* then dovetail roster.)
6. Dallas - Taylor/Hearne/Tyler (SP 100% up to the baseline of 8 then dovetail roster.)
7. Sweetwater - Toyah ( UP 100% up to the baseline of 5 then dovetail roster.)
8. Chickasha/Purcell - Wichita/Winfield ( UP100% up to the baseline of 9 then dovetail roster.)
9. Chico Aggregate - ( UP 100% up to the baseline of 4 then dovetail roster.)
10. Chickasha - Lawton regional pool ( UP100% up to the baseline of 2 then dovetail roster.)
11. Denison - McAlester ( UP100% up to the baseline of 34\* then dovetail roster.)

**NOTE:** The baseline of 34 for paragraphs 4,5 and 11 is a total amount for those three pools. Within thirty (30) days of implementation the local chairman shall notify the Carrier in writing of the distribution of the total for the three pools and it shall not change after that. For example if 4 has 20 and 5 and 11 have 7 each then those are the baselines for the remainder of the initial baseline period. If not notified then the General Chairman shall set the baseline divisions.

12. Ft. Worth yard assignments prior rights shall be based on the attached chart (SP 3%, UP 97%, )
13. Dallas yard assignments prior rights shall be based on the attached chart (SP 22%, UP 69%, SSW 9%)

14. **Arlington TSE assignments (UP100%) with a baseline of 10 however two GSW assignments shall be prior righted to those with prior GSW seniority.**
  15. **Yard assignments at the following outlying points shall be prior righted with the baseline in brackets: Hearne (SP) (3), Waco(SSW) (1), Ennis (SP) (1), Oklahoma City (UP)(1), Enid (UP) (2), Big Spring (UP) (3), Odessa (UP) (2) and Denison (UP) (1). These are not prior righted if changed to non yard assignments.**
  16. **All other assignments shall be filled from the dovetail roster.**
- D. Prior rights shall be phased out on the following basis:**
1. **For the first three years after implementation the pools shall retain prior rights up to the baseline level of 100%. At the start of the fourth year the prior rights shall fall to 67% and at the start of the fifth year at 33% and at the start of the sixth year all pool turns shall be assigned off the common roster.**
  2. **DFW Hub Yard assignments and Arlington and GSW TSE assignments prior rights shall be reduced at the same time as the pool assignments except beginning with the 4th year all third shift assignments will be assigned using the common roster, beginning with the 5th year all second shift assignments will be assigned using the common roster and beginning with the 6th year all assignments will be filled using the common roster.**
- E. All vacancies within the DFW Hub must be filled prior to any engineer being reduced from the working list or prior to engineers being permitted to exercise to a reserve board. All engineers not eligible to hold a reserve board must be displaced prior to any engineer holding a position on a reserve board. (See Article VI for "Home Rule" provisions)**
- F. Engineers will be treated for vacation, payment of arbitraries and personal leave days as though all their service on their original railroad had been performed on the merged railroad.**
- G. SPEL and SSW engineers who are covered by this Implementing Agreement and who have earned vacation in 1999 for 2000 shall be entitled to obtain the benefits of the vacation agreement they worked under in 1999 for the calendar year 2000. Thereafter, vacation benefits shall be as set forth in the controlling agreement on the merged territory.**

H. Longview Hub seniority and DFW Hub seniority shall be consolidated as provided in side letter no. 5.

I. Heame/Valley Jct. Seniority shall be as follows:

1. Regular assignments, including Article I,C assignments (which are filled by the home Hub roster), shall be filled first by Home Hub or DFW engineers, whichever is applicable. If an assignment goes no bid from the DFW engineers or Home Hub engineers, engineers from other Hubs that run into Heame may bid on these assignments. When assigned they will be subject to displacement from DFW or Home Hub engineers. If no bid from any engineer then recall shall be from the DFW Hub or Home Hub as appropriate.
2. Extra board assignments shall be available for bid by engineers in the following order of selection 1. Houston, 2. San Antonio 3. DFW 4. Longview (repeated as necessary). If an assignment goes no bid from the designated non DFW areas the assignments shall henceforth belong to the DFW Hub. These prior rights do not phase out with the pool prior rights but remain as long as the other Hubs bid them in.

**III. POOL FREIGHT AND OTHER ROAD SERVICE OPERATIONS.**

A. Existing UP and SP pool freight operations in the DFW Hub shall be restructured. Where multiple routes exist between terminals the pools may operate over any and all routes or combination of routes as part of their assignments. Pools identified with a "/" between them such as Taylor/Heame/Smithville have multiple away from home terminals with crews being tied up- at either location. The following shall govern such operations.

1. Operations with a home terminal at Ft. Worth shall operate as follows:
  - a. Ft. Worth - Taylor/Hearne/Smithville shall be one pool with multiple away from home terminals.
  - b. Ft. Worth - Sweetwater shall be run as one pool with Sweetwater as the only away from home terminal. The Ft. Worth East/West extra board shall protect Ft. Worth -Dallas/Mesquite work. Engineers running between Ft. Worth and Dallas/Mesquite shall not be tied up at Dallas/Mesquite but returned to the on duty point.

- c. Ft. Worth - Childress/Chickasha/Purcell shall be one pool with multiple away from home terminals. Ft. Worth - Wichita Falls work shall be protected by the Ft. Worth North extra board.
- d. Ft. Worth - McAlester shall be one pool.
- e. Ft. Worth - Denison shall be one pool.

2. Operations with a home terminal at Dallas shall operate as follows:

- a. Dallas - Taylor/Hearne shall be one pool with multiple away from home terminals. This pool may also protect aggregate movement to and from Tyler for unloading in the Tyler vicinity. The Dallas extra board shall protect Dallas/Mesquite - Ft. Worth work. Extra Engineers running between Dallas and Ft. Worth shall not be tied up at Ft. Worth but returned to the on duty point.

**NOTE:** Both A,1,b and 2,a refer to work between Ft. Worth and Dallas/Mesquite. It is anticipated that shuttle work between these terminals will be needed and such work not protected by assigned service will be handled on an as needed basis by the two extra boards. These extra boards may handle cars in both directions and will be returned to their home terminal after their tour of duty. If sufficient work exists that would result in a pool of 4 or more in either direction then a pool may be established. A pool may be established at only one location if only that location has sufficient work and the other location does not.

3. Operations with a home terminal at Sweetwater shall operate as follows:

- a. Sweetwater - Toyah shall be one pool.

4. Operations with a home terminal at Chickasha shall operate as follows:

- a. Chickasha - Wichita/Winfield shall be one pool with multiple away from home terminals. Operations to Winfield shall be operated through Purcell on the trackage rights line.

**NOTE:** The pool in a, above may be operated as a directional running pool.

- b. Chickasha - regional pool which operates between Enid - Lawton - Oklahoma City Subdivision with Chickasha as the on and off duty point. This pool may be abolished and run off the extra board.
5. Operations with a home terminal at Chico shall operate as follows:
- a. Within the Hub engineers may travel to any point, but no further than one tour of duty away from the home terminal. For example, they would not go to Dallas, tie up for rest and then go to Heame. They will tie up at the home terminal after the second tour of duty. They could take aggregate cars/trains to another point towards their home terminal, however, the aggregate cars do not need to go all the way to the home terminal. For example, if in the first tour of duty they took a train to Dallas, on the second tour they could take an aggregate train to Ft. Worth and then deadhead on to Chico.
  - b. They can deliver aggregate trains to any regular pool service point, i.e., Ft. Worth, and pick up aggregate trains from any of these points. For example, a Chico crew can take an aggregate train to Miller yard and a Dallas crew will take it to Heame. Upon return of the empties to Miller a Chico crew could pick it up there and handle back to Chico or the quarry or a Dallas crew could take it to Ft. Worth. If there is a rested available Chico crew at Miller they would be used first back to Chico.
  - c. An engineer in this pool can take aggregate trains to points up to and including Terrell, Texas.
  - d. Engineers assigned to this(these) pool(s) are not restricted in the number of times they may operate/work into or out of Chico or any other location. Engineers assigned to this(these) pool(s) may handle/operate more than one aggregate train during a tour of duty in accordance with the provisions of 5(a) above.

**NOTE 1:** Nothing in 5 above precludes using crews in turnaround service in one tour of duty or of being deadheaded home after one tour of duty.

**NOTE 2:** The pool in 5 is an aggregate pool and it is not intended that they be used in non aggregate service. Aggregates are the various rock type products loaded in the area North of Ft. Worth. It is immaterial as to the size of the aggregates.

**6. Operations with a home terminal at Denison shall operate as follows:**

**a. Denison - McAlester shall operate as one pool.**

**B. The terms and conditions of the pool operations set forth in Article III A. 1-6 above shall be the same for all pool freight runs whether run as combined pools or separate pools except as set forth in 11 and 12 below. The terms and conditions are those of the designated collective bargaining agreement as modified by subsequent national agreements, awards and implementing documents and those set forth in this Agreement.**

**1. The parties shall prepare a mileage chart which shall be used for service between the points therein.**

**2. The overtime rule in the September 19, 1997 letter shall apply to all engineers in engine service prior to implementation and shall not terminate on December 31, 1999. Overtime will be paid in accordance with Article IV of the 1991 BLE National Agreement for all other engineers.**

**3. Transportation will be provided in accordance with Section 2,c of Article IX of the May 19, 1986 BLE National Agreement.**

**4. Meal allowances and eating en route will be governed by Section 2(d) and Section 2(e) of Article IX of the May 19, 1986 BLE National Agreement, as amended by the 1991 BLE National Agreement.**

**5. Crews may use and/or operate over any route or combination of UP and former SP trackage between their initial and final terminal.**

**6. There are no train length limitations and no work event restrictions other than those contained in the National Agreements, Awards and implementation Documents.**

**7. Pool engineers shall receive continuous held-away-from-home terminal pay (HAHT) for all time so held at the far terminal after the expiration of sixteen (16) hours. All other provisions in the selected CBA pertaining to HAHT pay remain unchanged.**

8. Overmiles shall be paid at the same rate paid for overmiles in ID runs.
9. Since most of the pools in this Hub are changed as to miles, routing or number of destinations, the parties will meet to develop a new regulation factor that takes into account the differing lengths of the pools. Until the new regulating factor is agreed to the regulating factor shall be between 4160 and 4940 miles per month.
10. Engineers called to a destination and depart the terminal for that destination shall be paid to that destination and movement to another destination shall only be in accordance with the repositioning provisions in C below.

**Example 1:** A crew is called to go from Ft. Worth to Smithville via Taylor and expires on the hours of service at Taylor. CMS cannot change the call to Taylor and avoid payment to Smithville.

**Example 2:** If an employee is called to take a train to Taylor and while in the terminal is changed out to a deadhead to Smithville then Smithville is the destination for the purposes of this Section.

11. Pools with multiple away from home terminals shall be operated on a first in first out basis at the home terminal. Each away from home terminal shall have its own calling board. At the AFHT engineers, subject to rest, shall be repositioned in the order called at the home terminal with respect to other engineers from the same home terminals at that AFHT.
12. The same conditions shall apply to the aggregate pool in A, 5 except all miles worked in excess of the miles encompassed in the basic day shall be paid at the road switcher rate and overtime will be paid based on miles run; however in any case no later than 12 hours and for time in excess of 12 hours until reaching their off duty point.(Payment provisions paid formerly on this assignment are no longer applicable).

**EXAMPLE:** If the road switcher rate is \$147/day then the first 100 miles is paid \$147 and overmiles shall be paid \$1.47 per mile.

- C. 1. If directional running is implemented between Ft. Worth and Wichita using the BNSF trackage rights, the employee (Chickasha and Ft. Worth) will be transported to the away from home lodging or home terminal, at the completion of the service trip. Engineers being

transported in this manner will be paid the greater of highway mileage or time consumed on a minute basis at the basic pro rata through freight rate. The parties will drive the highway miles and add a letter to this agreement identifying the actual miles.

**EXAMPLE:** A Chickasha crew runs North to Wichita and is transported to Winfield (AFHT). After rest they run to Purcell and are transported to Chickasha (Home Terminal).

2. Engineers running between Taylor/Hearne/Smithville on the return trip are not being repositioned but are moving in straight away or combined service.

**EXAMPLE:** A crew at the AFHT of Smithville is called to deadhead to Taylor to pick up a train to Ft. Worth. This is not repositioning but straightaway service.

- D. At all home and away from home terminals, both inside and outside the DFW Hub, pool crews may receive their train up to twenty-five (25) miles on the far side of the terminal and run on through to the scheduled (destination) terminal. Crews shall be paid an additional one-half ( $\frac{1}{2}$ ) basic day for this service in addition to the miles run between the two terminals. If the time spent in this zone is greater than four (4) hours, then they shall be paid on a minute basis. This payment shall be at the pro rata through freight rate.

**Example:** A Sweetwater - Toyah crew receives their westbound train fifteen (15) miles east of Sweetwater and runs to Toyah. They shall be paid the actual miles established for the Sweetwater - Toyah run and an additional one-half basic day for handling the train from the point fifteen (15) miles east of Sweetwater back through that terminal.

- E. Except as provided in (D) above, turnaround hours-of-service relief at both home and away from home terminals shall be handled by extra boards, if available, prior to using pool crews in turn around service. Engineers used for this service may be used for multiple trips/dog catches in one tour of duty. Extra boards may handle this service in all directions out of a terminal.

**NOTE 1:** Nothing in this Article III (D) and (E) prevents the use of other crews to perform work currently permitted by prevailing agreements, including, but not limited to yard crews performing hours-of-service relief within road/ yard zone(s), pool crews performing through freight combined service/ deadheads between terminals, road switchers handling trains within their

zones and using an engineer from a following train to work a preceding train.

- F. Any local, work train, or road switcher service may be established pursuant to the controlling collective bargaining agreement to operate from any point inside the Hub to any other point within or outside the new seniority district with the on duty point being within the DFW Hub except as provided in Article 1, C.
- G. New pool operations not covered in this implementing Agreement between Hubs or one Hub and a non-merged area or within a Hub will be handled per Article IX of the 1986 National Implementation Award.
- H. A terminal runaround occurs when engineers from the same pool, going to the same destination, depart the same yard or location in other than the order called and both crews have their power attached to their train. "Depart" means that a train has started moving on the track it was made up in. A terminal runaround does not occur between a working engineer and an engineer deadheading.

**Example 1:** Two engineers are called on duty in the Ft. Worth - Hearne/Taylor/Smithville pool. The first out engineer receives his train at Centennial Yard and the second engineer receives his train at Ney Yard. Both trains are destined to Hearne. There cannot be a terminal runaround because the engineers did not depart from the same yard.

**Example 2:** Two engineers are called on duty in the Ft. Worth - Hearne/Taylor/Smithville pool. The first out engineer is on a train destined for Hearne. The second engineer is on a train destined for Smithville. Both are departing Ney Yard. There cannot be a terminal runaround because the engineers are not going to the same destination.

**Example 3:** Two engineers are called on duty in the Ft. Worth - Hearne/Taylor/Smithville pool and both trains are in the same yard and going to Hearne. If both trains have their outbound power attached, a terminal runaround can occur.

**Example 4:** Same set of facts as Example 3; however, one crew is required to go to the mechanical facilities to obtain all or a part of their power consist. If the second crew departs the yard prior to the first crew returning to their train and putting their power on it, no runaround has occurred.

**Example 5:** Two engineers are called from the same extra board and the first one is called to work a train running from Ft. Worth to Heame and the other is called to work a train running from Ft. Worth to Smithville. No runaround can occur even if they depart from the same yard.

- I. Engineers with displacement rights exercising in pool freight service shall place into the pool at the home terminal in the position occupied by the junior engineer at which time the junior pool freight engineer will be removed. If such junior pool freight engineer is on-duty, or at the away-from-home terminal; the senior engineer shall be placed last out and such junior engineer will be removed from the pool following his/her subsequent tie-up at the home terminal. Any unassigned pool position shall be considered the junior position to be displaced. The Organization may cancel this rule at the end of the six year New York Dock period upon giving the General Director Labor Relations a 30 day written notice. Upon cancellation the CBA rule in affect on the day prior to implementation of this agreement shall be reinstated.
- J. The different pools identified in this agreement may be established individually or in groups. If not established at time of implementation they shall be established upon ten days written notice to the General Chairman. Existing pools will remain in place until replaced by new pools.

**IV. TERMINAL AND OTHER CONSOLIDATIONS**

- A.
  - 1. At all joint terminal locations, all UP and SP operations shall be consolidated into unified terminal operations. Yard crews will not be restricted where they can operate in a terminal.
  - 2. Upon merger implementation, all other UP and SP facilities, stations, terminals, equipment and track shall be combined into a unified operation.
- B. A consolidated Ft. Worth Terminal will be created to include the entire area within the following limits:

SUBDIVISION / LINE		MILEPOST
Ft. Worth		243.2
Baird		252.00
Dallas Dallas via Sylvania		243.00(EFT.Worth) 628.0
Choctaw		747.0

OKT		608.9
Midlothian		48.3
Everman Branch		253.40(end of track)

- C. A consolidated Dallas Terminal will be created to include the entire area within the following limits:

SUBDIVISION / LINE		MILEPOST
Ennis		257.1
Dallas East		203.0
Dallas West		220.0
DFW via Mockingbird		625.0
Elam Branch		313.93(end of track)

- D. The terminal limits of Hearne/Valley Jct. shall be as follows:

SUBDIVISION / LINE		MILEPOST
Austin		102.0
Ft. Worth		103.5
Ennis		125.0
Heame		87.0
Flatonia		8.0
Navasota.		95.0
Bryan		115.0

- E. The provisions of Sections A, B, C and D of this Article IV will not, except as set forth therein, be used to enlarge or contract the current limits except to the extent necessary to combine into a unified operation.

- F. The terminal (Station) limits for other areas shall be:

1. Sweetwater shall be 444.33 (East) and 449.80 (West).
2. Chickasha shall be 434.0 (North) and 438.0 (South) and 2.0 towards Lawton.

3. Toyah shall be 664.83 (East) and 667.33 (West).
  4. Taylor shall be 918.9 (North), 919.92 (South), 141.26 (East) and 146.35 (West).
  5. McAlester shall be 560.2 (North) and 575.0 (South).
  6. Denison shall be 656.0 (North) and 666.0 (South).
  7. Waco/Bellmead shall be 166.2 North and 161.1 South and 853.0 towards Taylor
- G. Road crews may receive/leave their trains at any location within the consolidated terminals and may perform work within the terminals pursuant to the controlling collective bargaining agreement, including National Agreement provisions.
- H. Carrier will designate the on/off duty points for all road and yard crews. Such on/off duty points will have appropriate facilities as currently required by the controlling collective bargaining agreement and/or by governmental statute or regulation.
- I. The 25 mile provisions at Heame will not be measured from the mileposts in D, above but shall be measured from the old mileposts. In an effort to clearly define these limits for road crews and Carrier Officers the Article III, D, 25 mile limits are as follows:

<b>SUBDIVISION / LINE</b>		<b>25 MILE LIMIT</b>
Austin		118.6
Ft. Worth		125.9
Ennis		145.7
Heame		64.6
Flatonia		25.0
Navasota		75.9
Bryan		95.7

## V. EXTRA BOARDS

A. Combination road/yard extra boards may be established at the following locations with the following areas of coverage:

1. **Ft Worth North** - to cover the pools to McAlester, Chickasha, Childress and Purcell; turnaround hours of service relief for trains heading to Ft. Worth from those points; Wichita Falls work; non pool assignments that operate on those lines with home terminals between Ft. Worth and Hicks and Pilot Point and other usual extra board work in these areas.
2. **Ft. Worth South** - to cover the pools to Smithville, Taylor, and Heame; turnaround hours of service relief for trains heading to Ft. Worth from these points; non pool assignments that operate on those lines with home terminals between Ft. Worth and Hillsboro and other usual extra board work in these areas.
3. **Ft. Worth East/West** - to cover the pool to Sweetwater; turnaround hours of service relief for trains heading to Ft. Worth from Sweetwater and Longview (when trains have at least reached Mesquite); non pool assignments that operate on those lines with home terminals between Ft. Worth and Eastland and Arlington (not including), turnaround service to Dallas/Mesquite, Ft. Worth yard assignments, and other usual extra board work in these areas.
4. **Dallas** - to cover the pool to Taylor, Heame and Tyler; service to Ft. Worth; turnaround hours of service relief for trains heading to Dallas from those points and from Longview (when trains have at least reached Terrell); non pool assignments that operate on those lines with home terminals at and south of Dallas including Waxahachie, and Ennis, Gude, West of Dallas to Arlington, Dallas yard assignments and other usual extra board work in these areas.
5. **Chico** - to cover the Chico aggregate pool and hours of service relief for trains heading to Chico and non pool assignments that go on duty between Duncan and Hicks, and other usual extra board work in these areas.
6. **Heame** - to cover all assignments that go on duty in the Heame/Valley Jct. terminal, hours of service relief for trains heading to this terminal from all directions up to Taylor, Waco, Gude, Marquez, Navasota and Giddings and other usual extra board work between Marjorie, Marlin, Gude, Marquez, Giddings and Navasota.

7. **Sweetwater** - to cover the pool to Toyah; turnaround hours of service relief for trains heading to Sweetwater from either direction; non pool assignments that operate on those lines with home terminals between Eastland and Dome and other usual extra board work in these areas.
8. **Chickasha** - to cover the pool to Wichita/Winfield; turnaround hours of service relief for trains heading to Chickasha from either direction; the regional pool; non pool assignments that operate on those lines with home terminals between Duncan and Wichita (not including) including the branch line to Lawton and the Oklahoma City Subdivision and other usual extra board work in these areas.
9. **Bellmead** - to cover all non pool assignments that have home terminals between Taylor (not including) and Hillsboro and Marlin, hours of service relief for pool freight headed for Taylor between Waco and Taylor and other usual extra board work in these areas.
10. **Big Spring** - to cover all non pool operations with a home terminal between Dome and Toyah and other usual extra board work in these areas. In addition, if pool freight heading east does not reach Big Spring due to Hours of Service then this extra board may be used to take the train to Sweetwater and be returned to Big Spring.
11. **Arlington** - to cover all non pool operations with a home terminal in the Arlington area including former Great Southwest assignments.
12. **Denison** - to cover the pool to McAlester and turnaround hours of service relief for trains heading to Denison from either direction and all non pool operations that have a home terminal between Pilot Point and McAlester, hours of service relief for trains heading to McAlester that have at least reached Denison and other usual extra board work in these areas.

- B. When the extra boards in A, above are established, the operation and administration of such extra board(s) will be governed by applicable provisions of the extra board provisions of the controlling CBA. The Carrier will designate the on and off duty point for the extra boards. If a Ft. Worth or Dallas extra board engineer is called and his/her assignment location in the Ft. Worth or Dallas terminals is at another location than the regular reporting point the employee may elect to drive direct to the other reporting point. Engineers who do so will be allowed an one hour driving allowance in lieu of reporting to the regular reporting point and being transported to the assignment location to start work and being returned to the reporting point after assignment.

**EXAMPLE 1:** The Dallas/Mesquite yard extra board has a reporting point at Miller yard. An extra board engineer is called for a 7AM assignment at Mesquite. The employee elects to report direct to Mesquite at 7AM in lieu of reporting to Miller at 7AM. The engineer shall be paid *one hour in addition to other earnings for the tour of duty.*

**EXAMPLE 2:** The Ft. Worth yard extra board has a reporting point at the East end of Centennial yard. An extra engineer is called for an assignment that goes on duty at the West end of Centennial yard. The engineer should report to the regular on duty point as the assignment is located in the same yard as the reporting point and no additional payment is available.

- C.** Carrier will give a ten (10) -day advanced written notice(s) of its intent to establish extra board(s) in A, 1 -12 above or to consolidate pre-existing extra boards into those in A, 1-12 above. Existing extra boards not covered by a notice shall continue to operate until a notice is served abolishing or combining them. Beginning with implementation day these existing extra boards shall be governed by the provisions of the selected CBA.
- D.** Turnaround hours of service relief shall be protected first from the extra boards and straight away service shall be protected first from the pools.
- E.** When the above extra boards are exhausted then the current vacancy procedures shall be used to fill vacancies.

## **VI. AGREEMENT COVERAGE**

- A.** Initial delay and final delay will be governed by the controlling collective bargaining agreement, including the Duplicate Pay and Final Terminal Delay provisions of the 1986 and 1991 National Arbitration Award and Implementing Agreements.
- B.** Engineers will be transported to/from their trains to/from their designated on/off duty point in accordance with Article VIII, Section 1 of the May 1986 National Arbitration Award. Suitable transportation includes Carrier owned or provided passenger carrying motor vehicles or taxi, but excludes other forms of public transportation.

- C. The current application of National Agreement provisions regarding road work and Hours of Service relief under the combined road/yard service Zone, shall continue to apply. Yard crews at any location within the Hub may perform such service in all directions out of their terminal.**
- D. Entry rate provisions established prior to the implementation date of this agreement shall be waived for current engineers and those hired/promoted subsequent to the implementation date.**
- E. If an assignment goes no bid and there are demoted engineers, the senior demoted engineer working within 50 miles of the assignment shall be recalled to engine service and placed on the vacant assignment. If no such engineers then the senior demoted engineer working in the source of supply and finally the senior demoted engineer on the seniority roster shall be recalled.**
- F. The Carrier has selected the October 1, 1977 (reprinted October 1, 1991) UPRR/BLE Agreement as the collective bargaining agreement for this Hub. Engineers working in the DFW Hub shall be governed, in addition to the provisions of this Agreement, including all addenda and side letter agreements pertaining to that agreement, previous National Agreement/Award/Implementing Document provisions still applicable and this merger agreement. Except as specifically provided herein, the system and national collective bargaining agreements, awards and interpretations shall prevail. None of the provisions of these agreements are retroactive.**
- G. The Carrier will provide copies of the designated collective bargaining agreement (local, system and national) to those engineers who do not have a copy at the earliest possible date, but no later than by date of implementation of this Agreement.**
- H. Engineers, both pool and extra board, when called in turnaround hours of service relief shall be considered called as in combination deadhead/service and shall be paid as such.**

**VII. PROTECTION**

- A. Due to the parties voluntarily entering into this agreement the Carrier agrees to provide New York Dock wage protection (automatic certification) to all engineers who are listed on the DFW Hub Merged Rosters on implementation day and working in engine service. This protection will start with the effective (implementation) date of this agreement and any interim protection shall end. The engineers must comply with the requirements associated with New York Dock conditions or their protection will be reduced for such items as layoffs, bidding/displacing to lower paying assignments when they could hold higher paying assignments, etc. Protection offsets due**

to unavailability will be governed by New York Dock provisions. This does not include those engineers working in the Longview Hub who are placed on the DFW roster as they have already started their NYD protection period.

- B. This protection is wage only and hours will not be taken into account.**
- C. Engineers required to relocate under this agreement will be governed by the relocation provisions of New York Dock. In lieu of New York Dock provisions, an engineer required to relocate may elect one of the following options:**
  - 1. Non-homeowners may elect to receive an "in lieu of" allowance in the amount of \$10,000 upon providing proof of actual relocation.**
  - 2. Homeowners may elect to receive an "in lieu of" allowance in the amount of \$20,000 upon providing proof of actual relocation.**
  - 3. Homeowners in Item 2 above, who provide proof of a bona fide sale of their home at fair value at the location from which relocated, shall be eligible to receive an additional allowance of \$10,000.**
    - (a) This option shall expire five (5) years from date of application for the allowance under Item 2 above.**
    - (b) Proof of sale must be in the form of sale documents, deeds, and filings of these documents with the appropriate agency.**
  - 4. With the exception of Item 3 above, no claim for an "in lieu of" relocation allowance will be accepted after three (3) years from date of implementation of this agreement.**
  - 5. Engineers receiving an "in lieu of" relocation allowance pursuant to this implementing agreement will be required to remain at the new location, seniority permitting, for a period of two (2) years. If an engineer is no longer able to hold at this location later during the two year period and relocates to a position more than thirty miles from this location then they will not be required to move back if able to later hold at that location.**
  - 6. Under no circumstances shall an engineer be permitted to receive more than one (1) "in lieu of" relocation allowance under this implementing agreement. An engineer who received an "in lieu of" relocation allowance under the Longview Hub agreement shall not be eligible for one under this agreement.**

7. Required to relocate shall include engineers who are the senior bidder for an assignment and they reside (within 30 miles) at a location where the work was moved from and they are bidding on the assignments where work is moved to.

**EXAMPLE:** When pools are rearranged and positions are relocated from Big Spring to Sweetwater and Ft. Worth, senior bidders from Big Spring will be treated as "required" to relocate when bidding on these assignments. Likewise if a Ft. Worth engineer bids on a Sweetwater assignment they are not "required" to relocate because no work was transferred from Ft. Worth to that location.

- D. There will be no pyramiding of benefits.
- E. Engineers who do not have an interim protection shall select either the calendar year 1995 or 1996 to have their TPA calculated. Local Chairmen will provide the protection bureau a list of the names and SSN's and the year that the engineer selects to have his/her TPA developed. If an engineer is currently covered by an interim protection TPA due to the merger then the engineer may elect to retain that TPA or select the period January 1, 1995 through December 31, 1995. Engineers who were employed after the year 1995 shall use the twelve month period prior to implementation. When TPA's are mailed to the engineers the engineer must respond within thirty days from the date of the letter or they will be given the higher TPA. The TPA for union officers will be based on the two engineers above and two engineers below the officer with regular work records in the same class of service on the pre-merger roster or their regular TPA, whichever is larger.
- F. When an extra engineer takes a paid personal leave day and is marked up at the end of the 24 hour period, the personal leave day will be calculated for protection purposes as a single day even though the time off may span parts of two separate calendar days. This is without prejudice or precedent to other Hubs with different offset provisions.
- G. National Termination of Seniority provisions shall not be applicable to engineers hired prior to the effective date of this agreement.

### **VIII. FAMILIARIZATION**

- A. Engineers involved in the consolidation of the DFW Hub covered by this Agreement whose assignments require performance of duties on a new geographic territory not familiar to them will be given full cooperation, assistance and guidance in order that their familiarization shall be accomplished as quickly as possible. Engineers will not be required to lose

time or ride the road on their own time in order to qualify for these new operations.

- B. Engineers will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualifications shall be handled with local operating officers. The parties recognize that different terrain and train tonnage impact the number of trips necessary and the operating officer assigned to the merger will work with the local Managers of Operating Practices in implementing this section. Familiarization issues not settled at the local level shall be referred to the Director Labor Relations and the General Chairman for review.**
- C. Engineers hired subsequent to the effective date of this document will be qualified in accordance with current Federal Railroad Administration certification regulations and paid in accordance with the local agreements that will cover the Hub.**
- D. Upon implementation but prior to pools being combined, such as Ft. Worth to Taylor/Hearne, the Carrier may call the first out SP and first out UP engineer to go together, over the entire run, for familiarization purposes in addition to using other methods such as a peer training pool, the engineers extra board and certified Carrier Officers. In addition the provisions of Side Letter No. 4 of this Hub shall be applicable and a copy is attached hereto.**
- E. During implementation of the Hub when possible, engineers will not be removed from their regular assignments to become peer trainers and any engineer who work their assignment (road and yard service) accompanied by an engineer taking a familiarization trip in connection with the merger shall be paid one (1) hour at the straight time rate of pay in addition to all other earnings for each tour of duty. This payment shall not be used to offset any extra board or pool freight guarantee payments. Engineers will be required to submit a timeslip indicating he/she was required to train another engineer and shall include the name of the engineer taking the familiarization trip on the timeslip.**

## **IX. IMPLEMENTATION**

- A. The Carrier shall give 30 days written notice for implementation of this agreement and the number of initial positions that will be changed in the Hub. Engineers whose assignments are changed shall be permitted to exercise their new seniority. After the initial implementation the 10 day provisions of the various Articles shall govern.**
- B. This agreement does not require the rebulletining of all assignments due to it's implementation. When pools and/or extra boards are combined they shall be rebullitened prior to that time. After implementation all displacements**

shall be made under the selected CBA. It is not the intent of these provisions to have engineers not bid but wait until implementation day and then displace. Engineers must place on assignment and local chairmen and CMS will call those engineers that do not place and have them make a selection/displacement prior to implementation day so that all engineers have an assignment on that day.

- C. When assignments are relocated and engineers are required to relocate, CMS and the Local Chairmen will work together to assist in this transition process.

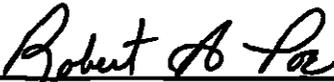
**X. HEALTH AND WELFARE**

- A. Engineers currently are under either the National Plan or the Union Pacific Engineers Hospital Association. Engineers coming under a new CBA will have ninety (90) days to make an election as to keeping their old Health and Welfare coverage or coming under the Health and Welfare coverage of their new CBA. Engineers who do not make an election will have been deemed to elect to retain their current coverage. Engineers hired after the date of implementation will be covered under the plan provided for in the surviving CBA.
- B. If an engineer is covered under a group life and/or disability insurance policy provided for in his/her collective bargaining agreement and that collective bargaining agreement is not the surviving collective bargaining agreement, the Carrier shall continue the premium payments required at the time of implementation of this agreement for those engineers presently covered under those provisions for a period of six years, beginning January 1, 1998.

This Dallas Ft. Worth Hub Merger Agreement is entered into this 29<sup>th</sup> day of April, 1999.

**For the Organization:**

  
\_\_\_\_\_  
W. R. Slone  
General Chairman BLE UP

  
\_\_\_\_\_  
R. A. Poe  
General Chairman BLE SPEL

  
\_\_\_\_\_  
D. E. Thompson  
General Chairman BLE SSW

  
\_\_\_\_\_  
D. M. Hahs  
Vice President BLE

  
\_\_\_\_\_  
J. L. McCoy  
Vice President BLE

**For the Carrier:**

  
\_\_\_\_\_  
W. S. Hinckley  
General Director Labor Relations

  
\_\_\_\_\_  
H.E. Handley  
Assistant Vice President Southern Region

## THROUGH FREIGHT RUNS IN DFW HUB

### UP

Run	Miles
FTW (Cent) – McAlester	197
FTW (Cent) – Chickasha	183
FTW (Cent) – Valley Jct.	162
FTW (Ney) – Smithville	218
FTW (Cent) – Taylor	206 via Valley Jct. 167 via Temple
FTW (Cent) – Sweetwater	197
Sweetwater – Toyah	219
Chickasha – Wichita	195
FTW (Cent) – Denison	99
Denison – McAlester	98
Chickasha – Enid Turnaround	192

### SP/UP

Run	Miles
FTW (Ney) – Childress	222
FTW (Cent) – Purcell	173
Purcell – Winfield	168
FTW – Hearne (via Ennis)	185 Centennial 177 Ney
Dallas (Miller) – Hearne	143
Dallas (Mockingbird) – Hearne	153
Dallas (Browder) – Hearne	150
Dallas (Miller) – Tyler	125 via Corsicana
Dallas (Mockingbird) – Tyler	135 via Corsicana
Dallas (Browder) – Tyler	132 via Corsicana
Dallas (Miller) – Tyler	122 via Big Sandy
Dallas (Mockingbird) – Tyler	132 via Big Sandy
Dallas (Browder) – Tyler	129 via Big Sandy

Distance between Centennial Yard and Ney Yard is 4 miles.

Distance between SP Miller Yard and UP Mockingbird Yard is 10 miles, to UP Browder Yard is 7 miles. Distance between SP Miller Yard and Mesquite is 14 miles, to UP Mockingbird Yard is 20 miles, and to UP Browder Yard is 18 miles.

4

**MERGER IMPLEMENTING AGREEMENT  
(Denver Hub)**

**between the**

**UNION PACIFIC/MISSOURI PACIFIC RAILROAD COMPANY  
SOUTHERN PACIFIC TRANSPORTATION COMPANY**

**and the**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

In Finance Docket No. 32760, the U.S. Department of Transportation, Surface Transportation Board ("STB") approved the merger of the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") and Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SP"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp., and The Denver & Rio Grande Western Railroad Company ("DRGW") (collectively referred to as "SP"). In approving this transaction, the STB imposed New York Dock labor protective conditions.

Subsequent to the filing of UP's application, but prior to the STB's decision, the Parties engaged in certain discussions which focused upon the Carrier's request that the Brotherhood of Locomotive Engineers support the merger of UP and SP. These discussions resulted in the exchange of certain commitments between the Parties which were outlined in letters dated March 8, 9 and 22, 1996. Copies of these letters are attached collectively as Attachment "A" to this Agreement.

In order to achieve the benefits of operational changes made possible by the transaction, to consolidate the seniority of all employees working in the territory covered by this Agreement into one common seniority district covered under a single, common collective bargaining agreement,

**IT IS AGREED:**

**I. Denver Hub**

A new seniority district shall be created that encompasses the following area: UP milepost 429.7 at Sharon Springs, Kansas; UP milepost 511.0 at Cheyenne, Wyoming ; DRGW milepost 451.7 at Grand Junction, Colorado and milepost 251.7 at Alamosa, Colorado; SSW milepost 545.4 at Dalhart, Texas and UP milepost 732.1 at Horace, Kansas and all stations, branch lines, industrial leads and main line between the points identified.

**II. Seniority and Work Consolidation.**

The following seniority consolidations will be made:

**A.** A new seniority district will be formed and a master Engineer Seniority Roster, UP/BLE Denver Hub Merged Roster #2, will be created for the employees assigned to the Denver Hub on December 1, 1996. The new roster will be created as follows:

1. Engineers placed on this roster will be dovetailed based upon the employee's current engineer's seniority date. If this process results in employees having identical seniority dates, seniority will be determined by the employee's current hire date with the Carrier.

**Prior Rights to Zones, Example (assumes only has 5 people on roster):**

<b>Name</b>	<b>Roster Ranking</b>	<b>Zone 1</b> (Denver Terminal, Denver-Axial/Bond/ to Sharon Springs/Cheyenne <i>excluding Sharon Springs &amp; Cheyenne yard/local road switchers</i> , Pueblo-Horace) [UPED,MPUL Pueblo roster,DRGW]	<b>Zone 2</b> (Grand Junction/Denver/Bond /Montrose/Oliver/Mintum) [DRGW]	<b>Zone 3</b> (Pueblo-Denver/S Fork/Mintum/ to Dalhart, <i>excluding Dalhart</i> ) [DRGW]
JONES, A.	#1	X		
SMITH, B.	#2	X		
ADAMS, C	#3			X
BAILEY, D.	#4		X	
GREEN, E.	#5			X

2. All employees placed on the roster may work all assignments protected by the roster in accordance with their seniority and the provisions set forth in this Agreement.

3. New employees hired and placed on the new roster on or after December 1, 1996, will have no prior rights but will have roster seniority rights in accordance with the zone and extra board provisions set forth in this Agreement.

**B.** The new UP/BLE Denver Hub Merged Roster #2 seniority district will be divided into the following three (3) Zones:

1. **Zone 1** will include Denver east to but not including Sharon Springs, Denver north to but not including Cheyenne, Denver west to and including Bond and Axial, Pueblo east to Horace, and all road and yard operations within the Denver Terminal including any road switchers at Colorado Springs.

2. **Zone 2** will include Grand Junction to Denver (long pool only), Grand Junction to Montrose, Oliver, Minturn (not including Minturn helper service) and Bond.

3. **Zone 3** will include Pueblo to Denver, South Fork, Minturn and to Dalhart not including Dalhart, but including Minturn helper service.

4. Road, road/yard or yard extra boards will not be part of any zone if they cover assignments in more than one zone. Extra boards that cover assignments in only one zone will be governed by zone rules and the current rules of the collective bargaining agreement for this Hub.

C. Engineers initially assigned to the new roster will be accorded prior rights to one of the three zones based on the following:

1. **Zone 1** - Engineers assigned to rosters on the former Union Pacific Eastern District 10th, 11th and 14th Districts, MPUL Pueblo roster and DRGW employees working positions that operate within the points specified for this Zone on December 1, 1996.

**Note:** Only those engineers that relocate to Denver from Oakley (10th and 11th) will be included in the Denver Hub roster. Those that remain in Oakley or relocate to Salina will be placed or remain on the roster that will govern Salina after the merger.

2. **Zone 2** - Engineers assigned to rosters on the former DRGW positions that operate within the points specified for this Zone on December 1, 1996.

3. **Zone 3** - Engineers assigned to rosters on the former DRGW working positions that operate within the points specified for this Zone on December 1, 1996.

4. Any engineer working in one of the Zones on or before December 1, 1996, and reduced from the engineer's working list on the implementation date shall also be given a date on the roster and prior rights in the appropriate Zone. Engineers currently forced to positions within the Denver Hub or borrowed out to locations within the Denver Hub will be released when their services are no longer required and will not establish a permanent date on the merged roster.

**Note 1:** Working positions that operate within the points specified for a Zone is defined as holding an assignment (non-through freight, yard, extra board or through freight) with an on duty home terminal point within the territory of the new Zone as specified above.

**Note 2: DRGW engineers with prior rights previous to this Agreement will retain those prior rights and will not establish new prior rights while using their system seniority at an outside location.**

**D. Engineers promoted and assigned to the merged roster after implementation shall be assigned to a zone, but without prior rights, based on the Carrier's determination of the demands of service at that time in the Denver Hub. Student engineers in training on December 1, 1996, will be assigned a zone with prior rights in the zone covering the territory designated in the bulletin seeking application for engine service.**

**E. The purpose of creating zones is twofold: First, it is to provide seniority in an area that an employee had some seniority prior to the merger, or contributed some work after the merger, unless that trackage is abandoned, and thus preference to some of their prior work over employees in other zones; Second, to provide a defined area of trackage and train operations that an engineer can become familiar so as not to be daily covering a multitude of different sections of track. As such the following will govern:**

**1. Engineers will be allowed to make application for an assignment in a different zone as vacancies arise. If reduced from the working list in their zone, engineers may exercise their common seniority in the remaining two zones.**

**2. Engineers may not hold a reserve, supplemental or protection board outside their zone. The current collective bargaining agreement is amended to provide for a supplemental (reserve) board for each zone.**

**F. It is understood that certain runs home terminated in the Denver Hub will have away from home terminals outside the Hub and that certain runs home terminated outside the Hub will have away from home terminals inside the Hub. Examples are Denver to Cheyenne and Pueblo to Dalhart. It is not the intent of this agreement to create seniority rights that interfere with these operations or to create double headed pools. For example, Denver will continue to be the home terminal for Denver-Cheyenne runs and Cheyenne will not have equity in these runs. The Denver-Rawlins run currently has no employees assigned to it. If this operation is reestablished at a later date the current Denver-Rawlins pool agreement will continue to apply with Denver as the home terminal.**

**G. All engineer vacancies within the zones must be filled prior to any engineer being reduced from the working list or prior to engineers being permitted to exercise to any reserve, supplemental or protection boards. All non prior right engineers (those hired after December 1, 1996) must be displaced prior to any engineer holding a position on a reserve board or supplemental board.**

**H. All engine service seniority outside the Denver Hub will be held in abeyance during the interim period as set forth in Article VII. Engineers working outside the Denver**

Hub but currently holding seniority in the Denver Hub will not be able to exercise seniority into the Denver Hub during the interim period. After the interim period, seniority will be finalized with employees holding seniority in only one seniority district. After seniority is finalized within the Denver Hub, Engineers outside the Denver Hub who previously held seniority on territory within the Denver Hub prior to the implementation of this Agreement shall be given the opportunity to return to the Denver Hub on a voluntary basis prior to the Carrier posting a bulletin or advertisement for engine service positions within the Denver Hub. Engineers must have a standing application on file requesting transfer back to the Hub at least thirty (30) days prior to the Carrier's need for additional engineers. They must relocate to the appropriate home terminal at his/her own expense. Engineers electing to return to the Denver Hub under this provision will be placed at the bottom of the roster without prior rights with a new seniority date and will relinquish all seniority outside the Denver Hub.

I. Engineers will be treated for vacation and payment of arbitraries as though all their service on their original railroad had been performed on the merged railroad. Engineers assigned to the Denver Hub seniority roster at the end of the interim period shall have entry rate provisions waived and engineers hired/promoted after the effective date of this Agreement shall be subject to National Agreement rate progression provisions. The entry rate provisions shall be waived during the interim period. Those engineers leaving the Denver Hub shall be governed by the collective bargaining agreement where they relocate.

### III. Terminal Consolidations

The following terminal consolidations will be implemented in accordance with the following provisions:

#### A. Denver Terminal

1. The existing switching limits at Denver will now include Denver Union Terminal north to and including M.P. 6.24 and M.P. 6.43 on the Dent Branch, south to and including M.P. 5.5, east to and including M.P. 635.10, and west to and including M.P. 7.5. Yard crews currently perform service on the Boulder Branch and they may continue to do so after implementation of this agreement in accordance with existing agreements.

**Note:** The intent of this section is to combine the two Carrier's facilities into a common terminal and not to extend the switching limits beyond the current established points.

2. All UP and SP operations within the greater Denver area shall be consolidated into a unified terminal operation.

3. All road crews may receive/leave their trains at any location within the boundaries of the new Denver terminal and may perform work anywhere within those boundaries pursuant to the applicable collective bargaining agreements. The Carrier will designate the on/off duty points for road crews with the on/off duty points having appropriate facilities for inclement weather and other facilities as currently required in the collective bargaining agreement.

4. All rail lines, yards, and/or sidings within the new Denver terminal will be considered as common to all crews working in, into and out of Denver. All crews will be permitted to perform all permissible road/yard moves pursuant to the applicable collective bargaining agreements. Interchange rules are not applicable for intra-carrier moves.

**B. General Conditions for Terminal Operations**

1. Initial delay and final delay will be governed by the controlling collective bargaining agreement, including the Duplicate Pay and Final Terminal Delay provisions of the 1986 and 1991 National Awards and Implementing Agreements.

2. Employees will be transported to/from their trains to/from their designated on/off duty point in accordance with Article VIII, Section 1 of the May 19, 1986 National Arbitration Award.

3. The current application of National Agreement provisions regarding road work and Hours of Service relief under the combined road/yard service zone, shall continue to apply. Yard crews at Denver, Grand Junction and Pueblo may perform such service in all directions out of the terminal.

**Note:** Items 1 through 3 are not intended to expand or restrict existing rules

**IV. Pool Operations.**

**A.** The following pool consolidations may be implemented to achieve efficient operations in the Denver Hub:

1. All Grand Junction-Denver/Bond and Grand Junction-Minturn pool operations shall be combined into one pool with Grand Junction as the home terminal. Denver shall have three separate pool operations during the interim period; Denver-Phillipsburg/Bond, Denver-Cheyenne, and Denver-Sharon Springs. Upon finalization of seniority within the Hub, Denver may have one, two or three pools as the Carrier determines. Short pool operations when run shall be between Grand Junction-Bond and Denver-Bond.

2. All Pueblo-Denver and Pueblo-Dalhart pool operations shall be combined into one pool with Pueblo as the home terminal. The Pueblo-Alamosa local shall remain separate but Pueblo-Alamosa traffic may be combined with the Pueblo-Dalhart and Pueblo-Denver pool if future traffic increases result in pool operations. The Pueblo-Minturn pool shall remain separate until the number of pool turns drops below ten (10) due to the cessation of service on portions of that line, at that time, the Carrier may combine it with the remaining Pueblo pool. The Pueblo-Horace pool shall remain separate until terminated with the abandonment of portions of that line. The tri-weekly local provisions shall apply until abandonment of any portion of the line east of Pueblo where Pueblo crews now operate.

3. Pool, local, road switcher and yard operations not covered in the above originating at Grand Junction shall continue as traffic volumes warrant.

4. Helper service at Minturn shall remain separate until terminated with the cessation of service on portions of the line where the helpers operate.

5. Any pool freight, local, work train or road switcher service may be established to operate from any point to any other point within the new Seniority District with the on duty point within one of the zones.

6. The operations listed in A 1-4 above, may be implemented separately, in groups or collectively upon ten (10) days written notice from the Carrier to the General Chairman. Implementation notices covering item (5) above, shall be governed by applicable collective bargaining agreements.

7. Power plants between Denver and Pueblo may be serviced by either Pueblo-Denver pool or the Denver extra board or a combination thereof. The Denver extra board shall be used first and if exhausted, the pool crew will be used and deadheaded home after completion of service.

B. The terms and conditions of the pool operations set forth in Section A shall be the same for all pool freight runs whether run as combined pools or separate pools. The terms and conditions are those of the designated collective bargaining agreement as modified by subsequent national agreements, awards and implementing documents and those set forth below. For ready reference sections of existing rules are attached in Attachment "B".

1. Twenty-Five mile Zone - At Grand Junction, Pueblo, Sharon Springs, Denver, Cheyenne and Dalhart, pool crews may receive their train up to twenty-five miles on the far side of the terminal and run on through to the

scheduled terminal. Crews shall be paid an additional one-half (½) basic day for this service in addition to the miles run between the two terminals. If the time spent in this zone is greater than four (4) hours then they shall be paid on a minute basis.

**Example:** A Pueblo-Denver crew receives their north bound train ten miles south of the Pueblo terminal but within the 25 mile terminal zone limits and runs to Denver. They shall be paid the actual miles established for the Pueblo-Denver run and an additional one-half basic day for handling the train from the point ten (10) miles south of the Pueblo terminal.

2. **Turnaround Service/Hours of Service Relief** - Except as provided in (1) above, turnaround service and Hours of Service relief at both home and away from home terminals shall be handled by extra boards, if available, prior to using pool crews. Engineers used for this service may be used for multiple trips in one tour of duty in accordance with the designated collective bargaining agreement rules. Extra boards may perform this service in all directions out of their home terminal.

**Note:** Due to qualification issues at Mintum the pool crews will continue to perform Hours of Service relief at this location.

3. Nothing in this Section B (1) and (2) prevents the use of other engineers to perform work currently permitted by prevailing agreements, including, but not limited to yard crews performing Hours of Service relief within the road/yard zone, ID crews performing service and deadheads between terminals, road switchers handling trains within their zones and using an engineer from a following train to work a preceding train.

C. **Agreement Coverage** - Employees working in the Denver Hub shall be governed, in addition to the provisions of this Agreement, by the Agreement between the Union Pacific Railroad Company and the BLE Union Pacific Eastern District, including all addenda and side letter agreements pertaining to that agreement, the May 31, 1996 Local/National Agreement applicable to Union Pacific and previous National Agreement/Award/Implementing Document provisions still applicable. Except as specifically provided herein and in Attachment "B", the system and national collective bargaining agreements, awards and interpretations shall prevail. None of the provisions of these agreements are retroactive.

**D. After implementation, the application process will be used to fill all vacancies in the Hub as follows:**

**1. Prior right vacancies must first be filled by an employee with prior rights to the vacancy who is on a protection, reserve or supplemental board prior to considering applications from employees who do not have prior rights to the assignment .**

**2. If no prior right applications are received then the junior prior right employee on one of the boards described above will be forced to the assignment or permitted to exercise seniority to a position held by another prior right employee.**

**3. If there are no prior right employees on one of the boards described above covering the vacant prior right assignment then the senior non prior right applicant will be assigned. If no applications are received then the most junior employee on any of the boards described above will be recalled and will take the assignment or displace a junior employee. If there are no engineers on any protection, reserve or supplemental boards, then the senior demoted engineer in the Denver Hub shall be recalled to the vacancy. When forcing or recalling, prior rights engineers shall be forced or recalled to prior right assignments prior to engineers who do not have prior rights.**

**V. EXTRA BOARDS**

**A. The following road/yard extra boards may be established to protect engineer assignments as follows:**

**1. Denver - One (1) extra board to protect the Denver-Cheyenne, Denver-Sharon Springs and Denver-Phippsburg and Denver-Bond pools, the Denver yard assignments and all road switchers, locals and work trains originating within these territories and extra service to any power plant and other extra board work.**

**2. Pueblo - One (1) extra board to protect the Pueblo-Denver, Pueblo-Alamosa, Pueblo-Minturn and Pueblo-Dalhart pool operations, Pueblo Yard assignments and all road switchers, locals and work trains and other extra board work originating within the these territories. The MPUL extra board shall remain separate during the interim period and shall be phased out with the Pueblo-Horace pool operations.**

3. **Grand Junction - One (1) extra board to protect Grand Junction-Denver, Grand Junction-Bond and Grand Junction-Minturn pool(s), Grand Junction yard, road switcher, local and work train assignments and other extra board work originating within these territories. Since the extra board at Grand Junction is at a point joining two hubs, it may protect work up to but not including Helper, Utah.**

**Note: At each of the above locations the Carrier may operate more than one extra board. When more than one extra board is operated the Carrier shall notify the General Chairman what area each extra board shall cover. When combining extra boards the Carrier shall give ten (10) days written notice.**

**B. The Carrier may establish extra boards at outside points to meet the needs of service pursuant to the designated collective bargaining agreement provisions. Extra boards at outside points such as Phippsburg may continue.**

**C. At any location where both UP and DRGW extra boards exist the Carrier may combine these boards into one board.**

## **VI. PROTECTION**

**A. Due to the parties voluntarily entering into this agreement the Carrier agrees to provide New York Dock wage protection (automatic certification) to all engineers who are listed on the Denver Hub Merged Roster #2 and working an engineer assignment (including a protection board) during the interim period or relocated under this agreement to a point outside the Denver Hub. This protection will start with the effective (implementation) date of this agreement. The employees must comply with the requirements associated with New York Dock conditions or their protection will be reduced for such items as layoffs, bidding/displacing to lower paying assignments when they could hold higher paying assignments, etc.**

**B. This protection is wage only and hours will not be taken into account. If the interim period is less than one year, when the interim period is terminated, employees certified as part of this agreement will have their protection period start over. If the interim period is in excess of one year the employee's final protection period will begin after one year.**

**C. Engineers required to relocate under this agreement will be governed by the relocation provisions of New York Dock. In lieu of New York Dock provisions, an employee required to relocate may elect one of the following options:**

1. Non-homeowners may elect to receive an "in lieu of" allowance in the amount of \$10,000 upon providing proof of actual relocation.

2. Homeowners may elect to receive an "in lieu of" allowance in the amount of \$20,000 upon providing proof of actual relocation.

3. Homeowners in Item 2 above, who provide proof of a bona fide sale of their home at fair value at the location from which relocated, shall be eligible to receive an additional allowance of \$10,000.

(a) This option shall expire five (5) years from date of application for the allowance under Item 2 above.

(b) Proof of sale must be in the form of sale documents, deeds, and filings of these documents with the appropriate agency.

4. With the exception of Item 3 above, no claim for an "in lieu of" relocation allowance will be accepted after two (2) years from date of implementation of this agreement.

5. Under no circumstances shall an engineer be permitted to receive more than one (1) "in lieu of" relocation allowance under this implementing agreement.

6. Engineers receiving an "in lieu of" relocation allowance pursuant to this implementing agreement will be required to remain at the new location, seniority permitting, for a period of two (2) years.

D. There will be no pyramiding of benefits.

E. The Test Period Average for union officers will include lost earnings while conducting business with the Carrier.

F. The establishing of interim protection is without prejudice or precedent to either parties position and will not be cited by either party.

G. National Termination of Seniority provisions shall not be applicable to engineers hired prior to the effective date of this agreement.

H. Employees, with New York Dock wage protection, who relocate either within or outside the Denver Hub under the provisions of this Agreement shall take their New York Dock wage protection with them. When relocating outside the Denver Hub the interim protection shall cease and the regular protection shall start upon reporting for the new assignment.

## **VII. INTERIM OPERATIONS**

This agreement is a final agreement covering the area described in Article I. It begins with an interim period of operation that covers the creation of protection boards. In addition to other provisions of this agreement, the interim period shall be governed by the following:

**A. The interim period shall begin with the implementation of this agreement as outlined in Article VIII, IMPLEMENTATION.**

**B. As traffic routing changes and surplus employees are developed, the following process will govern for each zone:**

- 1. First, force assigned employees shall be released.**
- 2. Second, borrow-out employees shall be released.**
- 3. Third, additional surplus will be added to the protection board.**

**C. Each Zone shall have one protection board and an employee must hold prior rights in that Zone to be eligible to hold the protection board.**

**D. If any Zone(s) have a surplus and other Zone(s) have borrow-outs, force assigned, or a shortage of employees, and no one on their protection board, the following shall govern:**

**1. The Carrier shall advise of the number of employees needed in the appropriate Zone which has the shortage.**

**2. The senior applicant from the other Zone(s) with a surplus shall be assigned to the vacancies.**

**3. If there are no applicants, the most junior employee on the protection board(s) in the other Zones shall be forced unless junior employees are working in their Zone and they elect to displace the junior employee who shall, in turn, be forced to fill the vacancy.**

**4. Where necessary, Employees forced from one Zone to another Zone during the interim period shall be governed by the relocation provisions of this agreement and shall have the election to change their prior rights designation to their new Zone. During the interim period employees shall not be forced from one zone to another more than once.**

**Note 1:** After the two year period identified in Article VI(C)(4) is terminated, relocations during an employees protection period and, as a result of the merger, will be covered under New York Dock provisions only and not Article VI, Section C. Seniority moves between or within Zones will not be covered by this agreement or New York Dock.

5. Because the MPUL engineers at Pueblo are in Zone 1, their transfer provisions take precedence over those in this Section D.

E. The Carrier will identify other locations that either have a current shortage of engineers or will have a shortage due to projected traffic increases. Engineers in the Salt Lake and Denver Hubs shall, in seniority order, be given the opportunity to make application for a permanent transfer to one of these locations. If there are borrow out engineers at the location, the employee may transfer immediately and displace the borrow out. If no borrow outs are at the location or the shortage does not yet exist, the transfer will be delayed until the employee is notified of the need. The Denver Hub shall have the first opportunity to go to Cheyenne working both directions and Rawlins, Wyoming, in accordance with the following: **First**, Union Pacific Eastern District Engineers forced to Denver shall be released to return to Cheyenne; **Second**, Union Pacific Eastern District Engineers working in Denver with seniority in Cheyenne may elect to relocate to Cheyenne to fill vacancies at that location; **Third**, DRGW and MPUL employees shall be allocated one pool position in each pool at Rawlins and Cheyenne above the base line number of pool turns, if applications are on file from these employees for these turns. If no applications are received, then those forced will not be entitled to the allocated pool slots. Additional DRGW and MPUL employees that go to Cheyenne and Rawlins shall place where their seniority permits. All DRGW and MPUL employees shall be placed at the bottom of the rosters at Cheyenne and Rawlins. The surplus DRGW/MPUL employees at Pueblo shall have the first opportunity to go to Dalhart

F. During the interim period, at locations outside the Hub where shortages exist and an insufficient number of applications are received for vacant positions, the junior engineer holding a surplus position in either Hub not having an application accepted to a shortage location shall be forced to the vacancy. If they are senior to other engineer's working in the Hub they may displace the junior working engineer at the location where they are surplus or the junior engineer working in the Hub, with the junior engineer being forced to the location. An engineer may not displace a junior engineer that has prior rights in a different zone and is working in their prior right zone.

G. Engineers on the protection board shall be paid the greater of their earnings or their protection. While on the protection board they shall be governed by basic New York Dock protection reduction principles when laying off or absent for any reason.

H. The protection boards shall be located at Denver, Pueblo (two), Minturn, Phippsburg and Grand Junction and shall be used as follows:

1. The protection board shall be a supplemental board to be used when the extra board is exhausted. The first out engineer shall be rotated to the bottom of the protection board at noon each day.

2. Junior employees on the protection board may be temporarily added to the extra boards to permit the familiarization of employees over trackage they have not previously operated.

3. If engineers on a protection board are sent to another location to familiarize themselves on new territory prior to being actually assigned, the carrier shall provide lodging and \$25.00 per day for meals, as long as the employee is marked up

I. The interim period shall terminate upon sixty (60) days' written notice by the Carrier to the appropriate General Chairman.

#### VIII. IMPLEMENTATION

A. The Parties have entered into this agreement to implement the merger of the Union Pacific Railroad and Southern Pacific Railroad operations in the area covered by Notice 18W and any amended notices thereto.

In addition, the Parties understand that the overall operational implementation is being phased in to accommodate the cut over of computer operations, dispatching, track improvements and clerical support.

It is the Parties' intent to utilize the current work force in an efficient manner and not require several relocations of an employee as areas of combined UP/SP operations are implemented. It is understood that some locations will have a surplus of employees while other locations will have a shortage due to such factors as track improvements that permit additional traffic volumes and cessation of business over other trackage. Therefore, it would be in the best interests of all concerned to delay final decisions on seniority placement and relocations where possible until the implementation of operations is closer to completion to enable employees to make a more informed choice of their options when faced with relocation.

B. The Carrier shall give thirty (30) days written notice for implementation of this agreement and the number of initial positions that will be changed in the Hub. Employees whose assignments are changed shall be permitted to exercise their new seniority. After the initial implementation the 10 day provisions of Article IV(A)(6) and Article V(A) (note) shall govern.

**C. Prior to movement to reserve boards or transfers outside the Hub, it will be necessary to fill all positions in the Denver Hub and then add all surplus positions in the Hub to the newly created protection boards.**

**Example: In Zone 1 all pool turns, locals, yard any other assignments and the extra boards at Denver must be filled prior to adding surplus engineers to a protection board. If all positions are filled and there are five engineers at Denver that do not have a spot and the other zones do not need them, then they may be placed on a protection board at Denver.**

**D. Due to the cessation of service over of portions of the Hoisington Subdivision, MPUL engineers living and working in this area will be affected and shall be relocated to Denver, Cheyenne and Rawlins. Engineers in this area at the time of implementation shall be placed on the UP/BLE merged Roster #2 and given prior rights in Zone 1. As vacancies arise in Zone 1, the affected MPUL Pueblo roster engineers will be notified and required to relocate in accordance with the protection provisions specified in Section VI.**

**E. At the end of the interim period the protection board(s) will terminate. If there are engineers on the protection board(s) the Carrier will open reserve board positions in the Zone(s) for the number of surplus engineers with an engineer date on or before October 31, 1985. Engineers forced to the reserve board will be treated as holding the highest rated position in the Zone they could hold.**

#### **IX. Familiarization**

**A. Employees will not be required to lose time or "ride the road" on their own time in order to qualify for the new operations. Employees will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualifications shall be handled with local operating officers. The parties recognize that different terrain and train tonnage impact the number of trips necessary and the operating officer assigned to the merger will work with the local Managers of operating practices in implementing this section.**

**B. Engineers hired subsequent to the effective date of this document will be qualified in accordance with current FRA certification regulations and paid in accordance with the local agreements that will cover the appropriate Hub.**

**This agreement is entered into this 8th day of April, 1997.**

**For the Organization:**

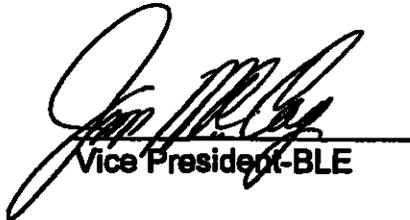
  
General Chairman UPED

  
General Chairman DRGW

  
General Chairman MPUL

**Approved:**

  
Vice President-BLE

  
Vice President-BLE

**For the Carrier:**

  
Asst. Vice-President Employee  
Relations & Planning

  
General Director Labor Relations

  
Assistant Director Labor Relations

5

**MERGER  
IMPLEMENTING AGREEMENT  
(Houston Hub Zones 1 and 2)  
between the  
UNION PACIFIC RAILROAD COMPANY  
SOUTHERN PACIFIC TRANSPORTATION COMPANY**

**and the  
BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

**PREAMBLE**

The U.S. Department of Transportation, Surface Transportation Board ("STB") approved the merger of the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") and Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp., and the Denver & Rio Grande Western Railroad Company ("DRGW") (collectively referred to as "SP") in Finance Docket 32760. In approving this transaction, the STB imposed New York Dock labor protective conditions. Copy of the New York Dock conditions is attached as Attachment "A" to this Agreement.

Subsequent to the filing of Union Pacific's application but prior to the decision of the STB, the parties engaged in certain discussions which focused upon Carrier's request that the Organization support the merger of UP and SP. These discussions resulted in the parties exchanging certain commitments, which were outlined in letters dated March 8 (2), March 9 and March 22, 1996. Copies of these letters are attached as Attachment "B" to this Agreement.

On August 29, 1996, the Carriers served notice of their intent to merge and consolidate operations generally between Houston, Texas and Avondale and Alexandria, Louisiana. On that same date the Carriers served notice of the sale of certain lines and facilities between Iowa Junction and Avondale, Louisiana to the Burlington Northern Santa Fe Company ("BNSF"). In order to permit the expedient consummation of this sale as mandated by the STB, the parties entered into an Interim Agreement dated October 2, 1996. That Agreement is attached as Attachment "C" to this Agreement, and provides certain protective benefits which will be applied from the time of the line and facility sale to BNSF until the effective date of this Agreement.

Pursuant to Section 4 of the New York Dock protective conditions, in order to achieve the benefits of operational changes made possible by the transaction and to modify collective bargaining agreements to the extent necessary to obtain those benefits,

**IT IS AGREED:**

**ARTICLE I - SENIORITY AND WORK CONSOLIDATIONS**

The following seniority consolidations and/or modifications will be made to existing rosters:

**A. Avondale West Seniority District - Zone 1**

1. Territory Covered: Avondale to Livonia (including Livonia)  
Avondale to Lafayette (including Lafayette)  
Avondale Terminal

The above includes all main lines, branch lines, industrial leads, yard tracks and stations between or located at the points identified. All UP operations between Livonia and Anchorage and Addis and Lettsworth, including Lobdell Junction to Baton Rouge, shall be included in the new Avondale West Seniority District.

2. Former Rosters Included:

SP

Morgan, Louisiana & Texas  
District (34.52%) (Roster #31)

UP

Avondale (Roster #16101) (48.97%)

DeQuincy (Roster #05101) (.98%)

TPMP (Roster 17101) (15.54%)

- a. Seniority integration of the employees from the above affected former rosters into one consolidated prior rights seniority roster for Zone 1 will be done in the manner set forth in the Standby Seniority Merger Implementing Agreement executed this date. Based upon the equity data provided to the Organization, a merged roster will be developed by the Organization using the percentages denoted above. The number of engineers on such prior rights roster will be mutually agreed upon by the parties based upon anticipated service requirements prior to the formulation of the prior rights merged roster for Zone 1. Copy of the finalized prior rights seniority roster for Zone 1 shall be attached and identified as Attachment "D" to this Agreement.

- b. **Service requirements for Zone 1 not filled by employees on the prior rights rosters described above shall be protected by engineers from the common seniority roster defined in Article II.D. of the Standby Seniority Merger Implementing Agreement.**

**3. Terminal Consolidation**

**Avondale - All UP and SP operations within the new Avondale Terminal limits shall be consolidated into a single operation. The westward terminal limits of the consolidated terminal are as follows:**

**Union Pacific: Mile Post 17.0.  
Southern Pacific: Mile Post 17.77.**

**Preexisting eastward terminal limits remain unchanged.**

**4. Road Operation Consolidations**

- a. **All Avondale-Livonia/Lafayette pool operations shall be combined into one (1) pool with Avondale as the home terminal. Crews in this pool may operate to either of the destination terminals via any combination of former UP and SP trackage. Crews may also be transported between the destination terminals for the return trip to the home terminal, subject to the terms set forth in Side Letter No. 1.**
- b. **Any road switcher/zone local or local service may be established to operate from any point to any other point within the Avondale West Seniority District. Any yard assignments outside of the terminal limits of Avondale shall be converted to road switcher/zone local assignments. This provision is not intended to modify existing agreements currently in force, if any, which require maintenance of local service over certain specified territories.**

**B. Houston East Seniority District - Zone 2**

- 1. **Territory Covered:**
  - Houston to Alexandria (not including Houston and not including Alexandria)**
  - Houston to Livonia (not including Houston and not including Livonia)**
  - Houston to Lafayette (not including Houston and not including Lafayette)**
  - Houston to Baytown (not including Houston)**
  - Alexandria to Lake Charles (not including Alexandria)**
  - Houston to Kemah on the SP Galveston Branch**

The above includes all main lines, branch lines, industrial leads, yard tracks and stations between the points identified. Where the phrase "not including" is used above, it refers to yard operations and does not restrict road crews from operating into/out of such terminals or from performing work in such terminals which is permissible under local and national agreements.

2. Former Rosters Included:

SP

Texas & New Orleans District (66.78%)  
(Roster #01)

UP

DeQuincy (Roster #05101) (24.19%)

Lake Charles (Roster #35101)  
(2.67%)

Baytown (Roster #04101) (6.36%)

- a. Seniority integration of the employees from the above affected former rosters into one consolidated prior rights seniority roster for Zone 2 will be done in the manner set forth in the Standby Seniority Merger Implementing Agreement executed this date. Based upon the equity data provided to the Organization, a merged roster will be developed by the Organization using the percentages denoted above. The number of engineers on such prior rights roster will be mutually agreed upon by the parties based upon anticipated service requirements prior to the formulation of the prior rights merged roster for Zone 2. Copy of the finalized prior rights seniority roster for Zone 2 shall be attached and identified as Attachment "E" to this Agreement.
- b. Service requirements for Zone 2 not filled by employees on the prior rights rosters described above shall be protected by engineers from the common seniority roster defined in Article II.D. of the Standby Seniority Merger Implementing Agreement.

3. Road Operation Consolidations

- a. All Houston-Alexandria, Houston-Livonia and Houston-Lafayette pool operations shall be combined into one (1) pool with Houston as the home terminal. Crews in this pool may operate to any of the destination terminals via any combination of former UP and SP trackage. Crews may also be transported between Livonia and Lafayette for the return trip to the home terminal, subject to the terms set forth in Side Letter No. 1.
- b. Any road switcher/zone local or local service may be established to operate from any point to any other point within the new Houston East Seniority District. Any yard assignments within the limits of this seniority district except

at Lake Charles and except the hump and trim jobs at Beaumont, shall be converted to road switcher/zone local assignments. This provision is not intended to modify existing agreements currently in force, if any, which require maintenance of local service over certain specified territories.

4. Other Operations

- a. SP Baytown Branch - All SP operations on its Baytown Branch, including yards at Dayton and Mont Belvieu, shall be included in the new prior rights Houston East Seniority District (Zone 2) and consolidated with other UP and SP operations as appropriate. Any pool freight service originating or terminating at Dayton may be protected by either the consolidated Houston-East pool established in 3.a. above, or a separate pool.
- b. UP Baytown Branch - All UP operations on its Baytown Branch shall be included in the new Houston East Seniority District (Zone 2) and consolidated with other UP and SP operations as appropriate.
- c. SP Galveston Branch - All SP operations on its Galveston Branch, including Strang Yard, to Kemah, but excluding that part of the line from Kemah to Galveston and Galveston Yard, shall be included in the new Houston East Seniority District (Zone 2) and consolidated with other UP and SP operations as appropriate.

C. Extra Boards

1. Guaranteed Extra Boards (road, yard, or combination road/yard) may be established at any location within the Houston East Seniority District (Zone 2) and Avondale West Seniority District (Zone 1) pursuant to the designated collective bargaining agreement provisions. At any locations where multiple extra boards now exist, such boards may be consolidated.
  - a. At outside points the Company may establish guaranteed extra boards that cover assignments in multiple locations. For example, the Carrier may establish one extra board to cover the DeQuincy/Lake Charles area, or one extra board to cover the Beaumont/Orange/Amelia/Mauriceville area. When established, the Carrier shall designate the geographic area the extra board will cover. If exhausted, such extra board may be supplemented from the next nearest extra board in the seniority district in accordance with existing agreement rules and practices.

## **ARTICLE II - APPLICABLE AGREEMENTS**

- A. All employees and assignments in the territories comprehended by this Implementing Agreement will work under the Collective Bargaining Agreement currently in effect between the Union Pacific Railroad Company and the Brotherhood of Locomotive Engineers dated October 1, 1977 (reprinted October 1, 1991), including all applicable national agreements, the "local/national" agreement of May 31, 1996, and all other side letters and addenda which have been entered into between date of last reprint and the date of this Implementing Agreement. Where conflicts arise, the specific provisions of this Agreement shall prevail. None of the provisions of these agreements are retroactive.**
- B. All runs established pursuant to this Agreement will be governed by the conditions set forth in Section 2 through 6 of the Livonia Interdivisional Agreement dated February 27, 1995. These provisions are replicated in Attachment "F".**
- C. Engineers protecting pool freight operations on the territories covered by this Agreement shall receive continuous held-away-from-home terminal pay (HAHT) for all time so held at the distant terminal after the expiration of sixteen (16) hours. All other provisions in existing agreement rules and practices pertaining to HAHT pay remain unchanged.**
- D. Actual miles will be paid for runs in the new Houston East Seniority District and the new Avondale West Seniority District. Examples are illustrated in Attachment "G".**

## **ARTICLE III - FAMILIARIZATION**

- A. Engineers involved in the consolidation covered by this Agreement whose assignments require performance of duties on a new geographic territory not familiar to them will be given full cooperation, assistance and guidance in order that their familiarization shall be accomplished as quickly as possible. Engineers will not be required to lose time or "ride the road" on their own time in order to qualify for these new operations.**
- B. Engineers will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualification shall be handled with local operating officers. The parties recognize that different terrain and train tonnage impact the number of trips necessary and the operating officer assigned to the merger will work with the local Managers of Operating Practices in implementing this section. If disputes occur under this Article they may be addressed directly with the**

appropriate Director of Labor Relations and the General Chairman for expeditious resolution.

- C. It is understood that familiarization required to implement the merger consolidation herein will be accomplished by calling a qualified engineer (or Manager of Operating Practices) to work with an engineer called for service on a geographic territory not familiar to him.
- D. Engineers hired subsequent to the effective date of this document will be qualified in accordance with current FRA certification regulations and paid in accordance with the local agreements that will cover the merged Hub.

#### **ARTICLE IV - IMPLEMENTATION**

- A. The Carrier will give at least sixty (60) days' written notice of its intent to implement this Agreement.
- B.
  - 1. Concurrent with the service of its notice, the Carrier will post a description of Zones 1 and 2 described in Article 1 herein.
  - 2. Twenty (20) days after posting of the information described in B.1. above, the appropriate Labor Relations Personnel, CMS Personnel, General Chairmen and Local Chairmen will convene a workshop to implement assembly of the merged seniority rosters. At this workshop, the representatives of the Organization will construct consolidated seniority rosters, without names, which reflect the equity distribution from the interested former rosters. After constructed, employees from the interested former rosters will be assigned to the new consolidated rosters pursuant to Article II.B.6. of the Standby Seniority Merger Implementing Agreement.
  - 3. Dependent upon the Carrier's manpower needs, the Carrier may develop a pool of representatives of the Organization, with the concurrence of the General Chairmen, which, in addition to assisting in the preparation of the rosters, will assist in answering engineers' questions, including explanations of the seniority consolidation and implementing agreement issues, discussing merger integration issues with local Carrier officers and coordinating with respect to CMS issues relating to the transfer of engineers from one zone to another or the assignment of engineers to positions.
- C. The roster consolidation process shall be completed in seven (7) days, after which the finalized agreed-to rosters will be posted for information and protest in accordance with the applicable agreements. If the participants have not finalized agreed-to rosters, the Carrier will prepare such rosters,

post them for information and protest, will use those rosters in assigning positions, and will not be subject to claims or grievances as a result.

- D. Once rosters have been posted, those positions which have been created or consolidated will be bulletined for a period of seven (7) calendar days. Employees may bid on these bulletined assignments in accordance with applicable agreement rules. However, no later than ten (10) days after closing of the bulletins, assignments will be made.
- E. 1. After all assignments are made, employees assigned to positions which require them to relocate will be given the opportunity to relocate within the next thirty (30) day period. During this period, the affected employees may be allowed to continue to occupy their existing positions. If required to assume duties at the new location immediately upon implementation date and prior to having received their thirty (30) days to relocate, such employees will be paid normal and necessary expenses at the new location until relocated. Payment of expenses will not exceed thirty (30) calendar days.
2. The Carrier may, at its option, elect to phase-in the actual implementation of this Agreement. Employees will be given ten (10) days' notice of when their specific relocation/reassignment is to occur.
- F. Engineers will be treated for vacation, entry rates and payment of arbitraries as though all their time on their original railroad had been performed on the merged railroad. Engineers assigned to the Hub on the effective date of this Agreement (including those engaged in engineer training on such date) shall have entry rate provisions waived and engineers hired/promoted after the effective date of this Agreement shall be subject to National Agreement rate progression provisions.

#### **ARTICLE V - PROTECTIVE BENEFITS AND OBLIGATIONS**

- A. All employees who are listed on the prior rights Avondale West (Zone 1) and Houston East (Zone 2) merged rosters shall be considered adversely affected by this transaction and consolidation and will be subject to the New York Dock protective conditions which were imposed by the STB. It is understood there shall not be any duplication or compounding of benefits under this Agreement and/or any other agreement or protective arrangement.
1. Carrier will calculate and furnish TPA's for such employees to the Organization as soon as possible after implementation of the terms of this Agreement. The time frame used for calculating the TPA's in

accordance with New York Dock will be August 1, 1995 through and including July 31, 1996.

2. In consideration of blanket certification of all employees covered by this Agreement for wage protection, the provisions of New York Dock protective conditions relating to "average monthly time paid for" are waived under this Implementing Agreement.
3. Test period averages for designated union officers will be adjusted to reflect lost earnings while conducting business with the Carrier.
4. National Termination of Seniority provisions shall not be applicable to engineers hired prior to the effective date of this Agreement.

B. Engineers required to relocate under this Agreement will be governed by the relocation provisions of New York Dock. In lieu of New York Dock provisions, an employee required to relocate may elect one of the following options:

1. Non-homeowners may elect to receive an "in lieu of" allowance in the amount of \$10,000 upon providing proof of actual relocation.
2. Homeowners may elect to receive an "in lieu of" allowance in the amount of \$20,000 upon providing proof of actual relocation.
3. Homeowners in Item 2 above who provide proof of a bona fide sale of their home at fair value at the location from which relocated shall be eligible to receive an additional allowance of \$10,000.

a) This option shall expire within five (5) years from date of application for the allowance under Item 2 above.

b) Proof of sale must be in the form of sale documents, deeds, and filings of these documents with the appropriate agency.

Note: All requests for relocation allowance must be claimed on form which is attached as "Attachment H."

4. With the exception of Item 3 above, no claim for an "in lieu of" relocation allowance will be accepted after two

(2) years from date of implementation of this Agreement.

5. Under no circumstances shall an engineer be permitted to receive more than one (1) "in lieu of" relocation allowance under this Implementing Agreement.
- 6.. Engineers receiving an "in lieu of" relocation allowance pursuant to this Implementing Agreement will be required to remain at the new location, seniority permitting, for a period of two (2) years.

#### **ARTICLE VI - SAVINGS CLAUSES**

- A. The provisions of the applicable Schedule Agreement will apply unless specifically modified herein.
- B. Nothing in this Agreement will preclude the use of any engineers to perform work permitted by other applicable agreements within the new Houston East Seniority District or the new Avondale West Seniority District, i.e., yard crews performing Hours of Service Law relief within the road/yard zone, ID crews performing service and deadheads between terminals, road switchers handling trains within their zones, etc.
- C. The provisions of this Agreement shall be applied to all employees covered by said Agreement without regard to race, creed, color, age, sex, national origin, or physical handicap, except in those cases where a bona fide occupational qualification exists. The masculine terminology herein is for the purpose of convenience only and does not intend to convey sex preference.

Signed at SAN FRANCISCO this 17<sup>th</sup> day of JANUARY, 1997.

**FOR THE BROTHERHOOD  
OF LOCOMOTIVE ENGINEERS:**

  
\_\_\_\_\_  
D. E. Penning  
General Chairman, BLE

  
\_\_\_\_\_  
R. A. Poe  
General Chairman, BLE

  
\_\_\_\_\_  
M. L. Royal, Jr.  
General Chairman, BLE

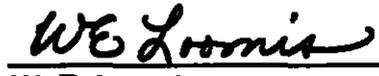
**APPROVED:**

  
\_\_\_\_\_  
D. M. Hahs  
Vice President, BLE

  
\_\_\_\_\_  
J. L. McCoy  
Vice President, BLE

**FOR THE CARRIERS:**

  
\_\_\_\_\_  
M. A. Hartman  
General Director-Labor Relations  
Union Pacific Railroad Co.

  
\_\_\_\_\_  
W. E. Loomis  
Director-Labor Relations  
Southern Pacific Transportation Co.

6

**MERGER  
IMPLEMENTING AGREEMENT  
(Houston Hub Zones 3, 4 and 5)  
between the  
UNION PACIFIC RAILROAD COMPANY  
SOUTHERN PACIFIC TRANSPORTATION COMPANY**

**and the  
BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

**PREAMBLE**

The U.S. Department of Transportation, Surface Transportation Board ("STB") approved the merger of the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") and Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp., and the Denver & Rio Grande Western Railroad Company ("DRGW") (collectively referred to as "SP") in Finance Docket 32760. In approving this transaction, the STB imposed New York Dock labor protective conditions. Copy of the New York Dock conditions is attached as Attachment "A" to this Agreement.

Subsequent to the filing of Union Pacific's application but prior to the decision of the STB, the parties engaged in certain discussions which focused upon Carrier's request that the Organization support the merger of UP and SP. These discussions resulted in the parties exchanging certain commitments, which were outlined in letters dated March 8 (2), March 9 and March 22, 1996. Copies of these letters are attached as Attachment "B" to this Agreement.

On February 14, 1997, the Carriers served notice of their intent to merge and consolidate operations generally in the following territories:

**UNION PACIFIC**

- Houston to Longview (not including Longview)
- Houston to Galveston
- Houston to Valley Jct. (not including Valley Jct.)
- Houston to Brownsville (including Odem to Corpus Christi and Angleton to Freeport)
- Houston Terminal

**SOUTHERN PACIFIC**

- Houston to Shreveport (not including Shreveport)
- Kemah to Galveston
- Houston to Hearne (not including Hearne)
- Houston to Glidden
- Houston to Victoria (via Flatonia)
- Victoria to Hearne (not including Hearne)
- Victoria to Brownsville (including Odem to Corpus Christi)
- Houston Terminal

On January 17, 1997, the parties entered into a Standby Seniority Merger Implementing Agreement which provided for an agreed-to method for consolidating UP and SP seniority in the Houston Hub, including the territories listed above. Copy of that agreement is attached as "Attachment C" to this Agreement.

Pursuant to Section 4 of the New York Dock protective conditions, in order to achieve the benefits of operational changes made possible by the transaction and to modify collective bargaining agreements to the extent necessary to obtain those benefits,

**IT IS AGREED:**

**ARTICLE I - SENIORITY AND WORK CONSOLIDATIONS**

The following seniority consolidations and/or modifications will be made to existing rosters:

**A. Longview/Shreveport Seniority District - Zone 3**

1. Territory Covered: Houston to Longview (not including Houston or Longview)  
Houston to Shreveport (not including Houston or Shreveport)  
Longview to Shreveport (not including Longview, Marshall, Reisor or Shreveport)

The above includes all main lines, branch lines, industrial leads, yard tracks and stations between or located at the points indicated. Where the phrase "not including" is used above, it refers to other than through freight operations, but does not restrict through freight engineers from operating into/out of such terminals/points or from performing work at such terminals/points which is permissible under local or national agreements.

2. Former Rosters Included:

SP

Houston-Shreveport, HE&WT-H&S ( \_%)  
(Roster #03)

UP

Merged 10 Palestine ( \_%)  
(Roster #014111)

- a. Seniority integration of the engineers from the above affected former rosters into one consolidated prior rights seniority roster for Zone 3 will be done in the manner set forth in the Standby Seniority Merger Implementing Agreement executed January 17, 1997. Based upon the equity data provided to the Organization, a merged roster will be developed by the Organization using the percentages denoted above. The number of engineers on such prior rights roster will be mutually agreed upon by the parties based upon anticipated service requirements prior to the formulation of the prior rights merged roster for Zone 3. Copy of the finalized prior rights seniority roster for Zone 3 shall be attached and identified as Attachment "D" to this Agreement.
- b. Service requirements for Zone 3 not filled by engineers on the prior rights roster described above shall be protected by engineers from the common seniority roster defined in Article II.D. of the Standby Seniority Merger Implementing Agreement.

3. Road Operation Consolidations

- a. All Houston-Longview/Shreveport pool operations shall be combined into one (1) pool with Houston as the home terminal. Longview and Shreveport shall be considered as one combined away from home terminal for this pool. Pool and extra engineers may receive their trains up to 25 miles north of Shreveport on the Pine Bluff Subdivision. <When such service is performed, engineers shall be paid an additional one-half (1/2) basic day for this service in addition to the district miles of the run.> If the time spent beyond the terminal under this provision is greater than four (4) hours, then they shall be paid on a minute basis at the basic pro rata through freight rate.  
*See UP 11/14/97*
- b. When it is necessary due to wreck, washout or other main line service interruption to revert temporarily to bi-directional running, engineers in this service may leave or receive their trains anywhere between Longview and Marshall or between Shreveport and Marshall, depending upon which route is utilized for bi-directional running. When so used, engineers will be paid on a minute basis or actual miles, whichever is greater, with a minimum of four (4) at the pro rata through freight rate.

- c. **Engineers will be provided lodging pursuant to existing agreements in this pool and the Carrier shall provide transportation to engineers between the on/off duty location and the designated lodging facility.**
- d. **Except as provided in e. and f. below, any road switcher/zone local or local service may be established to operate from any point to any other point within the Longview/Shreveport Seniority District. Any yard assignment within the limits of this seniority district may be converted to road switcher/zone local assignments at the Carrier's option. This provision is not intended to modify existing agreements currently in force, if any, which require maintenance of local service over certain specified territories.**
- e. **Existing yard, road switcher/zone local and local service assignments with a home terminal of Longview, Palestine or Shreveport or an on-duty location on the UP-Palestine Subdivision between Longview and Palestine are not covered by this Agreement. The parties intend to negotiate these assignments within the provisions of a Merger Implementing Agreement for the Longview, Texas Hub. Assignments with an on-duty location on the UP-Palestine Subdivision between Palestine and Houston are covered by this Agreement.**
- f. **Existing yard, road switcher/zone local and local service assignments with a home terminal of Shreveport are not covered by this Agreement. The parties intend to negotiate these assignments within the provisions of a Merger Implementing Agreement for the Longview, Texas Hub. Assignments with a home terminal or an on-duty location on the SP Lufkin Subdivision between Shreveport and Houston are covered by this Agreement.**
- g. **Vacancies occurring on road switcher/zone local and local service assignments covered by this Agreement in Article I.3.d, I.3.e and I.3.f will be protected by a Zone 3 extra board.**

**4. Interim Operations**

- a. **It is understood that the Carrier intends to rely heavily upon an operational philosophy of directional train operations in the Houston-St. Louis corridor. The implementation of this type of operation cannot occur until merger negotiations for the balance of the UP and SP lines between Longview/Shreveport and St. Louis have been completed. Therefore, the parties recognize that current bi-directional train operations on both lines, as separate pools, will continue during an interim period while negotiations for the balance of the corridor are being completed. Palestine will revert from a home terminal to an**

away from home terminal with the resulting necessary relocation of some engineers to Houston.

- b. Until the balance of negotiations are completed and directional train operations are instituted, engineers in this service shall continue to operate to and from Palestine rather than Longview. During this interim arrangement, Carrier will maintain lodging facilities at both Palestine and Shreveport.

**B. Hearne/Kingsville Seniority District - Zone 4**

- 1. Territory Covered:
  - Houston to Valley Jct. (not including Houston or Valley Jct.)
  - Houston to Hearne (not including Houston or Hearne)
  - Houston to Brownsville (not including Houston but including Odem to Corpus Christi and including Angleton to Freeport)
  - Houston to Victoria via Flatonia (not including Houston)
  - Victoria to Hearne (not including Hearne)
  - Victoria to Brownsville (including Odem to Corpus Christi)
  - Houston to Galveston on the UP Branch (not including Houston but including Galveston)
  - Galveston to Kemah on the SP Branch (including Galveston)

The above includes all main lines, branch lines, industrial leads, yard tracks and stations between the points identified. Where the phrase "not including" is used above, it refers to yard operations and does not restrict road engineers from operating into/out of such terminals/points or from performing work at such terminals/points which is permissible under local and national agreements.

2. Former Rosters Included:

SP

H&TC (Roster #01) (\_\_\_%)  
T&NO (Roster #01) (\_\_\_%)  
GH&SA (Roster #26) (\_\_\_%)

UP

Merged 8 Ft. Worth South (\_\_\_%)  
(Roster #006111)  
Kingsville (\_\_\_%)  
(Roster #003101)  
Merged 10 Palestine (\_\_\_%)  
(Roster #014111)

- a. **Seniority integration of the engineers from the above affected former rosters into one consolidated prior rights seniority roster for Zone 4 will be done in the manner set forth in the Implementing Agreement executed January 17, 1997. Based upon the equity data provided to the Organization, a merged roster will be developed by the Organization using the percentages denoted above. The number of engineers on such prior rights roster will be mutually agreed upon by the parties based upon anticipated service requirements prior to the formulation of the prior rights merged roster for Zone 4. Copy of the finalized prior rights seniority roster for Zone 4 shall be attached and identified as Attachment "E" to this Agreement.**
  - b. **Service requirements for Zone 4 not filled by engineers on the prior rights roster described above shall be protected by engineers from the common seniority roster defined in Article II.D. of the Standby Seniority Merger Implementing Agreement.**
- 3. Road Operation Consolidations-Houston to Valley Jct./Hearne.**
- a. **All Houston-Valley Jct. and Houston-Hearne pool operations shall be combined into one (1) pool with Houston as the home terminal. Valley Jct. and Hearne shall be considered as one combined away from home terminal and engineers may originate or terminate their runs at either Valley Jct. or Hearne or at any point between Valley Jct. and Hearne.**
  - b. **Engineers will be provided lodging at Valley Jct./Hearne pursuant to existing agreements and the Carrier shall provide transportation to engineers between the on/off duty location and the designated lodging facility.**
  - c. **It is understood that the Carrier intends to rely heavily upon an operational philosophy of directional train operations in the Houston-Dallas/Fort Worth corridor. Pool freight trains from both Fort Worth and Houston will change engineers at Valley Jct./Hearne. SP and UP pool freight service between Houston and Valley Jct./Hearne will be immediately consolidated as described in 3.a. above. A sufficient number of UP engineers at Fort Worth may be relocated to Houston to protect this service as necessary to fill any roster slots left vacant or unoccupied by the roster formulation process.**
  - d. **Existing SP operations between San Antonio and Hearne and San Antonio and Houston shall continue under this Agreement. The home terminal for such service, whether pool or extra, shall be San Antonio. Hearne and Houston will serve as the respective away from home terminals for these runs.**

Concurrent with the implementation of this Agreement, the SP Houston to San Antonio long pool will be converted to a single ended pool with San Antonio as the home terminal and Houston as the away from home terminal. The Carrier will advertise a sufficient number of pool and extra jobs, with a home terminal at San Antonio, to protect this service. Engineers in the Houston Hub who successfully bid on such jobs will be afforded relocation benefits/allowance pursuant to this Agreement.

**4. Road Operation Consolidations - Houston to Bloomington/Victoria.**

- a. All Houston - Bloomington and Houston to Victoria (via Flatonia) pool operations shall be combined into one (1) pool with Houston as the home terminal. Bloomington and Victoria shall be considered as one combined away from home terminal and engineers may originate or terminate their runs at either Bloomington or Victoria or at any point between Bloomington and Victoria.
- b. Engineers will be provided lodging at Bloomington/Victoria pursuant to existing agreements and the Carrier shall provide transportation to engineers between the on/off duty location and the designated lodging facility.
- c. The Houston to Glidden short pool shall be protected by the Zone 4 freight pool board at Houston described in 4.a above. Irregular service between Houston and Glidden (hours of service relief, wreck train, work train, etc) will be protected by the extra board at Houston.

The above is not intended to place any restrictions on yard engineers from servicing industries or relieving trains which have been overtaken by the hours of service if otherwise permitted by local or national agreement.

**5. Road Operation Consolidations - Bloomington/Victoria to Hearne and Bloomington/Victoria to Kingsville (including Odem to Corpus Christi).**

- a. All SP pool operations Victoria-Hearne and all pool operations Bloomington/Victoria to Kingsville shall be combined into one (1) pool with Bloomington/Victoria as the home terminal. Bloomington and Victoria shall be considered as one combined home terminal for this pool, and engineers may originate or terminate their runs at either Bloomington or Victoria or at any point between Bloomington and Victoria.

- b. **Engineers receiving or leaving trains between Bloomington and Victoria will be provided transportation to/from their trains and the on/off duty point.**
- c. **Engineers of the Bloomington/Victoria Terminal, in either pool or extra service, shall be called to handle trains between Bloomington/Victoria and Coleta Creek. Nothing in this Agreement precludes the use of inbound/outbound road engineers from leaving or receiving their trains at any point between Bloomington/Victoria and Coleta Creek or performing any work in connection therewith as permitted by local or national agreements.**
- d. **Existing SP operations between San Antonio and Victoria shall continue under this Agreement. The home terminal for such service, whether pool or extra, shall be San Antonio. Concurrent with the implementation of this Agreement, a proportionate number of SP engineers in San Antonio to Victoria pool service, with a home terminal of Victoria, will be relocated to San Antonio. Bloomington/Victoria will serve as the away from home terminal.**
- e. **Existing operations from Bloomington/Victoria to Corpus Christi (via Odem) shall continue under this Agreement with Bloomington/Victoria as the home terminal and shall be protected by the consolidated pool described in 5.a. above. Engineers performing service between Bloomington/Victoria and Kingsville may operate on the UP Corpus Christi Subdivision between Odem and Corpus Christi and may leave or receive their trains at any location between Odem and Corpus Christi, including Corpus Christi.**

**6. Road Operation Consolidations - Kingsville-Brownsville:**

- a. **All pool operations between Kingsville and Brownsville shall be home terminated at Kingsville, with Brownsville as the away from home terminal.**
- b. **Engineers will be provided lodging at Brownsville pursuant to existing agreements and the Carrier shall provide transportation to engineers between the on and off duty location and the designated lodging facility.**

**7. Road Operation Consolidations - Houston to Galveston:**

- a. All SP and UP operations between Houston and Galveston whether protected by pools (if justified by business levels) or off the extra board, shall be combined and operated as one with Houston as the home terminal.

8. Road Operations - General

- a. Any road switcher/zone local service may be established to operate from any point to any other point within the new Hearne/Kingsville Seniority District - Zone 4. Any yard assignment within the limits of this seniority district may be converted to road switcher/zone local assignments at the Carrier's option. This provision is not intended to modify existing agreements currently in force, if any, which require maintenance of local service over certain specified territories.

C. Houston Terminal Seniority District - Zone 5

1. Territory Covered: All terminal operations within the greater Houston area including, but not limited to, Eureka Yard, Englewood Yard, Hardy Street, Galena Park and Settegast Yard.
2. Former Rosters Included:

This roster will consist of all those engineers on seniority rosters identified in Zones 2, 3 and 4 of the Houston Hub who hold dual (road/yard) or yard prior rights seniority.

- a. Seniority integration of the engineers from the above affected former rosters into one consolidated prior rights seniority roster for Zone 5 will be done in the manner set forth in the Standby Seniority Merger Implementing Agreement executed January 17, 1997. Based upon equity data provided to the Organization, a merged roster will be developed by the Organization using the percentages denoted above. The number of engineers on such prior rights roster will be mutually agreed upon by the parties based upon anticipated service requirements prior to the formulation of the prior rights merged roster for Zone 5. Copy of the finalized prior rights seniority roster for Zone 5 shall be attached and identified as Attachment "F" to this Agreement.
- b. Service requirements for Zone 5 not filled by engineers on the prior rights roster described above shall be protected by engineers from the common seniority roster defined in Article II.D. of the Standby Seniority Merger Implementing Agreement.

3. Terminal Consolidation

- a. All UP and SP operations within the new Houston Terminal limits shall be consolidated into a single operation. All road engineers may receive/leave their trains at any location within the terminal and may perform work within the terminal pursuant to the applicable collective bargaining agreements, including national agreements. The Carrier will designate the on/off duty points for all road and yard engineers, with these on/off duty points having appropriate facilities as currently required in the collective bargaining agreement.
- b. All rail lines, yards, and/or sidings within the Houston Terminal will be considered as common to all engineers working in, into and out of Houston. All engineers will be permitted to perform all permissible road/yard moves pursuant to the applicable collective bargaining agreements, including national agreements. Interchange rules are not applicable for intra-carrier moves within the terminal.
- c. Terminal limits for this new consolidated Houston Terminal are as follows:

<u>Southern Pacific</u>	<u>Mile Post</u>
Lufkin Subdivision	10.00
Galveston Branch	9.16
Glidden Subdivision	12.77
Lafayette Subdivision	354.59
Hearne Subdivision	9.00
Bellaire Branch	9.00

<u>Union Pacific</u>	<u>Mile Post</u>
Palestine Subdivision	227.0
Ft. Worth Subdivision	227.0
Galveston Branch	194.3
Houston Subdivision	170.8
Beaumont Subdivision	381.6
Baytown Branch	1.2
Brownsville Subdivision	19.4 (ATSF M.P./former Tower 81)
Houston Subdivision Main Line (BN)	60.8 (BN M.P.)
Popp Industrial Lead (Sugarland Branch)	0.25

D. Savings Clause - The creation of expanded terminal limits for the consolidated Houston Terminal shall not constitute restrictions which did not previously exist for any freight run which was in effect prior to this Agreement, or which Carrier had the right to operate with one crew, by UP Agreement or practice, prior to this Agreement.

**E. Extra Boards - Zones 3 and 4**

1. **Guaranteed Extra Boards (combination road/yard) may be established at any location within the Longview/Shreveport Seniority District (Zone 3) and Hearne/Kingsville Seniority District (Zone 4) pursuant to the designated collective bargaining agreement provisions. At any locations where multiple extra boards now exist, such boards may be consolidated.**
  - a. **At outside points the Company may establish guaranteed extra boards that cover assignments in multiple locations pursuant to current collective bargaining agreements. When established, the Carrier shall designate the geographic area the extra board will cover. If exhausted, such extra board may be supplemented from the next nearest extra board in the seniority district in accordance with existing agreement rules and practices.**
  - b. **The Carrier will establish at least one (1) Guaranteed Extra Board each in Zone 3 and Zone 4 respectively.**

**F. Extra Boards - Zone 5**

1. **Extra Boards protecting service exclusively within Zone 5 shall be guaranteed as a combination road/yard extra board and shall be operated pursuant to the designated collective bargaining provisions. Any existing extra boards which presently exist may be consolidated as deemed appropriate by the Carrier. (See Side Letter No. 4.)**

**ARTICLE II - APPLICABLE AGREEMENTS**

- A. **All engineers and assignments in the territories comprehended by this implementing Agreement will work under the Collective Bargaining Agreement currently in effect between the Union Pacific Railroad Company and the Brotherhood of Locomotive Engineers dated October 1, 1977 (reprinted October 1, 1991), including all applicable national agreements, the "local/national" agreement of May 31, 1996, and all other side letters and addenda which have been entered into between date of last reprint and the date of this Implementing Agreement. Where conflicts arise, the specific provisions of this Agreement shall prevail. None of the provisions of these agreements are retroactive.**
- B. **All runs established pursuant to this Agreement will be governed by the following:**
  1. **Rates of Pay: The provisions of the June 1, 1996 National Agreement will apply as modified by the May 31, 1996 Local/National Agreement.**

2. **Overtime:** Overtime will be paid in accordance with Article IV of the 1991 National Agreement.

3. **Transportation:** When a crew is required to report for duty or is relieved from duty at a point other than the on and off duty points fixed for the service established hereunder, the Carrier shall authorize and provide suitable transportation for the crew.

**Note:** Suitable transportation includes Carrier owned or provided passenger carrying motor vehicles or taxi, but excludes other forms of public transportation.

4. **Meal Allowance and Eating Enroute:**

a. On runs established hereunder, crews will be allowed a \$6.00 meal allowance after four (4) hours at the away-from-home terminal and another \$6.00 allowance after being held an additional eight (8) hours, pursuant to existing national agreement provisions.

b. In order to expedite the movement of interdivisional runs, engineers on runs equal to or less than the number encompassed in the basic day will not stop to eat except in cases of emergency or unusual delays. For engineers on longer runs, the Carrier shall determine the conditions under which such engineers may stop to eat. When engineers on such runs are not permitted to stop to eat, such engineers shall be paid an allowance of \$1.50 for the trip, except engineers in Houston to Bloomington interdivisional service shall receive the meal allowance specified by that Agreement. Engineers working between Houston and Bloomington/Victoria via Flatoria and between Bloomington/Victoria and Hearne/Valley Jct. shall receive the meal allowance specified by the UP Houston-Bloomington Interdivisional Agreement.

5. **Suitable Lodging:** Suitable lodging will be provided by the Carrier in accordance with existing agreements.

C. Engineers protecting pool freight operations on the territories covered by this Agreement shall receive continuous held-away-from-home terminal pay (HAHT) for all time so held at the distant terminal after the expiration of sixteen (16) hours. All other provisions in existing agreement rules and practices pertaining to HAHT pay remain unchanged.

- D. Actual miles will be paid for runs in the new Longview/Shreveport Seniority District and the new Hearne/Kingsville Seniority District. Examples are illustrated in Attachment "G".

### **ARTICLE III - FAMILIARIZATION**

- A. Engineers involved in the consolidation of the Houston Hub and Spoke covered by this Agreement whose assignments require performance of duties on a new geographic territory not familiar to them will be given full cooperation, assistance and guidance in order that their familiarization shall be accomplished as quickly as possible. Engineers will not be required to lose time or "ride the road" on their own time in order to qualify for these new operations.
- B. Engineers will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualification shall be handled with local operating officers. The parties recognize that different terrain and train tonnage impact the number of trips necessary and the operating officer assigned to the merger will work with the local Managers of Operating Practices in implementing this Section. If disputes occur under this Article they may be addressed directly with the appropriate Director of Labor Relations and the General Chairman for expeditious resolution.
- C. It is understood that familiarization required to implement the merger consolidation herein will be accomplished by calling a qualified engineer (or Manager of Operating Practices) to work with an engineer called for service on a geographic territory not familiar to him.
- D. Engineers hired subsequent to the effective date of this document will be qualified in accordance with current FRA certification regulations and paid in accordance with the local agreements that will cover the merged Hub.

### **ARTICLE IV - IMPLEMENTATION**

- A. The Carrier will give at least thirty (30) days' written notice of its intent to implement this Agreement.
- B. 1. Concurrent with the service of its notice, the Carrier will post a description of Zones 3, 4 and 5 described in Article 1 herein.
2. Ten (10) days after posting of the information described in B.1. above, the appropriate Labor Relations Personnel, CMS Personnel, General Chairmen and Local Chairmen will convene a workshop to implement assembly of the merged seniority rosters. At this workshop, the representatives of the Organization will construct consolidated

seniority rosters, without names, which reflect the equity distribution from the interested former rosters. After constructed, engineers from the interested former rosters will be assigned to the new consolidated rosters pursuant to Article II.B.6. of the Standby Seniority Merger Implementing Agreement.

3. Dependent upon the Carrier's manpower needs, the Carrier may develop a pool of representatives of the Organization, with the concurrence of the General Chairmen, which, in addition to assisting in the preparation of the rosters, will assist in answering engineers' questions, including explanations of the seniority consolidation and implementing agreement issues, discussing merger integration issues with local Carrier officers and coordinating with respect to CMS issues relating to the transfer of engineers from one zone to another or the assignment of engineers to positions.
- C. The roster consolidation process shall be completed in five (5) days, after which the finalized agreed-to rosters will be posted for information and protest in accordance with the applicable agreements. If the participants have not finalized agreed-to rosters, the Carrier will prepare such rosters, post them for information and protest, will use those rosters in assigning positions, and will not be subject to claims or grievances as a result.
  - D. Once rosters have been posted, those positions which have been created or consolidated will be bulletined for a period of five (5) calendar days. Engineers may bid on these bulletined assignments in accordance with applicable agreement rules. However, no later than ten (10) days after closing of the bulletins, assignments will be made.
  - E.
    1. After all assignments are made, engineers assigned to positions which require them to relocate will be given the opportunity to relocate within the next thirty (30) day period. During this period, the affected engineers may be allowed to continue to occupy their existing positions. If required to assume duties at the new location immediately upon implementation date and prior to having received their thirty (30) days to relocate, such engineers will be paid normal and necessary expenses at the new location until relocated. Payment of expenses will not exceed thirty (30) calendar days.
    2. The Carrier may, at its option, elect to phase-in the actual implementation of this Agreement. Engineers will be given ten (10) days' notice of when their specific relocation/reassignment is to occur.
  - F. Engineers will be treated for vacation, entry rates and payment of arbitraries as though all their time on their original railroad had been performed on the merged railroad. Engineers assigned to the Hub on the effective date of this

Agreement (including those engaged in engineer training on such date) shall have entry rate provisions waived and engineers hired/promoted after the effective date of this Agreement shall be subject to National Agreement rate progression provisions.

#### **ARTICLE V - PROTECTIVE BENEFITS AND OBLIGATIONS**

- A. All engineers who are listed on the prior rights Longview/Shreveport (Zone 3), Hearne/Kingsville (Zone 4), and Houston Terminal (Zone 5) merged rosters shall be considered adversely affected by this transaction and consolidation and will be subject to the New York Dock protective conditions which were imposed by the STB. It is understood there shall not be any duplication or compounding of benefits under this Agreement and/or any other agreement or protective arrangement.
1. Carrier will calculate and furnish TPA's for such engineers to the Organization as soon as possible after implementation of the terms of this Agreement. The time frame used for calculating the TPA's in accordance with New York Dock will be August 1, 1995 through and including July 31, 1996.
  2. In consideration of blanket certification of all engineers covered by this Agreement for wage protection, the provisions of New York Dock protective conditions relating to "average monthly time paid for" are waived under this Implementing Agreement.
  3. Test period averages for designated union officers will be adjusted to reflect lost earnings while conducting business with the Carrier.
  4. National Termination of Seniority provisions shall not be applicable to engineers hired prior to the effective date of this Agreement.
- B. Engineers required to relocate under this Agreement will be governed by the relocation provisions of New York Dock. In lieu of New York Dock provisions, an employee required to relocate may elect one of the following options:
1. Non-homeowners may elect to receive an "in lieu of" allowance in the amount of \$10,000 upon providing proof of actual relocation.
  2. Homeowners may elect to receive an "in lieu of" allowance in the amount of \$20,000 upon providing proof of actual relocation.

3. Homeowners in Item 2 above who provide proof of a bona fide sale of their home at fair value at the location from which relocated shall be eligible to receive an additional allowance of \$10,000.
  - a) This option shall expire within five (5) years from date of application for the allowance under Item 2 above.
  - b) Proof of sale must be in the form of sale documents, deeds, and filings of these documents with the appropriate agency.

**NOTE:** All requests for relocation allowances must be submitted on form which is replicated as Attachment "H".

4. With the exception of Item 3 above, no claim for an "in lieu of" relocation allowance will be accepted after two (2) years from date of implementation of this Agreement.
5. Under no circumstances shall an engineer be permitted to receive more than one (1) "in lieu of" relocation allowance under this Implementing Agreement.
6. Engineers receiving an "in lieu of" relocation allowance pursuant to this Implementing Agreement will be required to remain at the new location, seniority permitting, for a period of two (2) years.

#### **ARTICLE VI - SAVINGS CLAUSES**

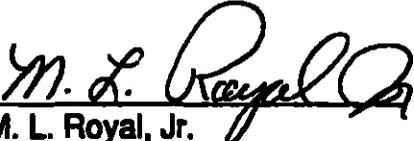
- A. The provisions of the applicable Schedule Agreement will apply unless specifically modified herein.
- B. Nothing in this Agreement will preclude the use of any engineers to perform work permitted by other applicable agreements within the new seniority districts described herein, i.e., yard engineers performing Hours of Service Law relief within the road/yard zone, ID engineers performing service and deadheads between terminals, road switchers handling trains within their zones, etc.
- C. The provisions of this Agreement shall be applied to all engineers covered by said Agreement without regard to race, creed, color, age, sex, national origin, or physical handicap, except in those cases where a bona fide

occupational qualification exists. The masculine terminology herein is for the purpose of convenience only and does not intend to convey sex preference.

Signed at Ft. Worth, Tx this 23<sup>rd</sup> day of April, 1997.

**FOR THE BROTHERHOOD  
OF LOCOMOTIVE ENGINEERS:**

  
R. A. Poe  
General Chairman, BLE

  
M. L. Royal, Jr.  
General Chairman, BLE

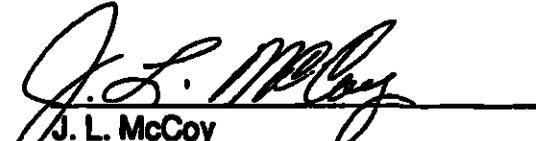
**APPROVED:**

  
D. M. Hahs  
Vice President, BLE

**FOR THE CARRIERS:**

  
M. A. Hartman  
General Director-Labor Relations  
Union Pacific Railroad Co.

  
W. E. Loomis  
Director-Labor Relations  
Southern Pacific Transportation Co.

  
J. L. McCoy  
Vice President, BLE

April 23, 1997

Side Letter No. 1

Mr. M. L. Royal, Jr.  
General Chairman BLE  
413 West Texas  
Sherman, TX 75092-3755

Mr. R. A. Poe  
General Chairman BLE  
515 Northbelt East Suite 120  
Houston, TX 77060

Gentlemen:

This refers to the Merger Implementing Agreement entered into this date between the Union Pacific Railroad Company, Southern Pacific Lines and the Brotherhood of Locomotive Engineers.

During our negotiations we discussed ARTICLE 6 - LIFE INSURANCE and ARTICLE 9 - DISABILITY INSURANCE of the August 1, 1995 Agreement between Southern Pacific Lines and your Organization. It was your position that coverages provided by the former agreement should be preserved for the former Southern Pacific engineers covered by this Implementing Agreement.

This will confirm that Carrier agreed that these insurance premiums would be maintained at current levels and would be grandfathered to those former Southern Pacific engineers who are covered by this Implementing Agreement and who are presently covered under those plans. These insurance premiums will be maintained at current levels for such employees for a six (6) year period commencing January 1, 1998, unless extended or modified pursuant to the Railway Labor Act.

It is understood this Agreement is made without prejudice to the positions of either party regarding whether or not such benefits are subject to preservation under New York Dock and it will not be cited by any party in any other negotiations or proceedings.

If the foregoing adequately and accurately sets forth our agreement in this matter, please so indicate by signing in the space provided for that purpose below.

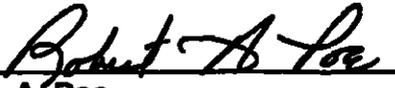
Yours truly,



M. A. Hartman  
General Director - Labor Relations

Side Letter No. 1  
M. L. Royal, Jr.  
R. A. Poe  
April 23, 1997  
Page 2

**AGREED:**

  
\_\_\_\_\_  
R. A. Poe  
General Chairman, BLE

  
\_\_\_\_\_  
M. L. Royal, Jr.  
General Chairman, BLE

cc: D. M. Hahs  
Vice President BLE

J. L. McCoy  
Vice President BLE

April 23, 1997

Side Letter No. 2

Mr. M. L. Royal, Jr.  
General Chairman BLE  
413 West Texas  
Sherman, TX 75092-3755

Mr. R. A. Poe  
General Chairman BLE  
515 Northbelt East Suite 120  
Houston, TX 77060

Gentlemen:

This refers to the Merger Implementing Agreement entered into this date between the Union Pacific Railroad Company, Southern Pacific Lines and the Brotherhood of Locomotive Engineers.

During our negotiations we discussed ARTICLE 7 - VACATION of the August 1, 1995 Agreement between Southern Pacific Lines and your Organization.

This will reflect our understanding that those former Southern Pacific engineers who are covered by this Implementing Agreement and who are presently covered by the above agreement provision shall be entitled to obtain the benefits of said ARTICLE 7 for the duration of the period covered by that agreement, i.e., through December 31, 1997. Thereafter, vacation benefits shall be as set forth in the controlling agreement on the merged territory.

If the foregoing adequately and accurately sets forth our agreement in this matter, please so indicate by signing in the space provided for that purpose below.

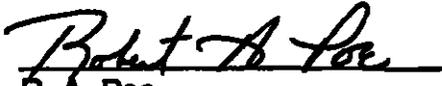
Yours Truly,

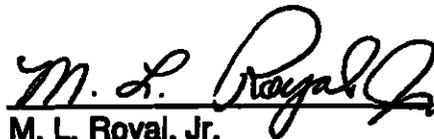


M. A. Hartman  
General Director - Labor Relations

Side Letter No. 2  
M. L. Royal, Jr.  
R. A. Poe  
April 23, 1997  
Page 2

**AGREED:**

  
R. A. Poe  
General Chairman, BLE

  
M. L. Royal, Jr.  
General Chairman, BLE

cc: D. M. Hahs  
Vice President BLE

J. L. McCoy  
Vice President BLE

April 23, 1997

Side Letter No. 3

Mr. M. L. Royal, Jr.  
General Chairman BLE  
413 West Texas  
Sherman, TX 75092-3755

Mr. R. A. Poe  
General Chairman BLE  
515 Northbelt East Suite 120  
Houston, TX 77060

Gentlemen:

This refers to the Merger Implementing Agreement entered into this date between the Union Pacific Railroad Company, Southern Pacific Lines and the Brotherhood of Locomotive Engineers.

During our negotiations we discussed the concern the Committee had with entering into an agreement only to find out that later bargaining in other areas resulted in more favorable terms. In that connection the Carrier agreed it was not its intent to penalize a Committee under such circumstances and that it was agreeable to granting this Committee the benefit of more favorable monetary terms that may be negotiated in future merger implementing agreements involving the SP and UP.

It is understood, however, that this Agreement refers to monetary terms which do not relate to operational changes because each area has differing operating needs thus requiring more or fewer pool consolidations and extra board consolidations, differing home terminals, etc. Secondly, this Agreement applies only to newly negotiated items and does not include provisions of an existing collective bargaining agreement which were in effect on UP or SP prior to the negotiation of a merger implementing agreement. An example of items which could potentially be covered by this agreement would be relocation allowance, labor protection, or separation allowance. However, the more favorable terms must be viewed in correlation to the whole agreement and not just one section. For example, a different Committee may agree to less protection in exchange for different relocation provisions which, on balance, do not constitute more favorable terms.

If the foregoing adequately and accurately sets forth our agreement in this matter, please so indicate by signing in the space provided for that purpose below.

Yours truly,



M. A. Hartman  
General Director - Labor Relations

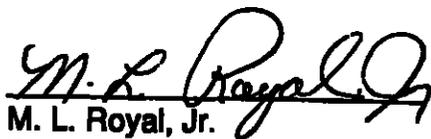
Side Letter No. 3

M. L. Royal, Jr.  
R. A. Poe  
April 23, 1997  
Page 2

**AGREED:**



R. A. Poe  
General Chairman, BLE



M. L. Royal, Jr.  
General Chairman, BLE

cc: D. M. Hahs  
Vice President BLE

J. L. McCoy  
Vice President BLE

April 23, 1997

Side Letter No. 4

Mr. M. L. Royal, Jr.  
General Chairman BLE  
413 West Texas  
Sherman, TX 75092-3755

Mr. R. A. Poe  
General Chairman BLE  
515 Northbelt East Suite 120  
Houston, TX 77060

Gentlemen:

This refers to the Merger Implementing Agreement entered into this date between the Union Pacific Railroad Company, Southern Pacific Lines and the Brotherhood of Locomotive Engineers, specifically Article I.F.1 (Extra Boards - Zone 5).

This will reflect our understanding the extra board(s) protecting service exclusively within Zone 5 shall be guaranteed as combination road/yard extra board(s). The parties herein acknowledge that a separate agreement governing the operation, board positioning, and other general provisions pertaining to such extra board(s) is to be negotiated by the Director of Labor Relations and the General Chairmen. See LA 4/7/97

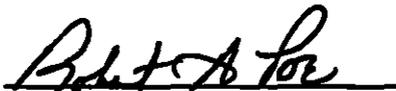
If the foregoing adequately and accurately sets forth our agreement in this matter, please so indicate by signing in the space provided for that purpose below.

Yours truly,

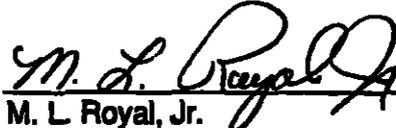


M. A. Hartman  
General Director - Labor Relations

AGREED:



R. A. Poe  
General Chairman, BLE



M. L. Royal, Jr.  
General Chairman, BLE

April 23, 1997

- Side Letter No. 5

Mr. M. L. Royal, Jr.  
General Chairman BLE  
413 West Texas  
Sherman, TX 75092-3755

Mr. R. A. Poe  
General Chairman BLE  
515 Northbelt East Suite 120  
Houston, TX 77060

Gentlemen:

This refers to the Merger Implementing Agreement for the Houston Hub, Zones 3, 4, and 5, entered into this date.

During our negotiations we discussed the current "in lieu" lodging arrangements in effect on the SP at Shreveport, and the impact of the merger implementing agreement upon that arrangement.

It was agreed that current bi-directional operations between Houston and Palestine and Houston and Shreveport will continue (with separate pools) until the Little Rock/Pine Bluff implementing agreement is completed and directional flow is commenced. Therefore, we also agreed that the present "in lieu" lodging arrangement at Shreveport will be continued at that location after implementation of this merger agreement until the change in terminals from Palestine to Longview occurs and directional flow is commenced. At that time, the provisions of the controlling agreement described in Article II.A. of the Merger Implementing Agreement shall apply to the lodging for this consolidated pool.

If the foregoing adequately and accurately sets forth our agreement in this matter, please so indicate by signing in the space provided for that purpose below.

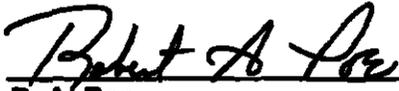
Yours truly,



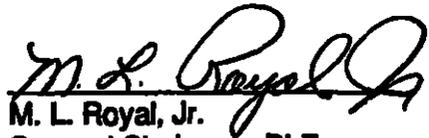
M. A. Hartman  
General Director - Labor Relations

Side Letter No. 5  
M. L. Royal, Jr.  
R. A. Poe  
April 23, 1997  
Page 2

**AGREED:**



R. A. Poe  
General Chairman, BLE



M. L. Royal, Jr.  
General Chairman, BLE

April 23, 1997

Side Letter No. 6

Mr. M. L. Royal, Jr.  
General Chairman BLE  
413 West Texas  
Sherman, TX 75092-3755

Mr. R. A. Poe  
General Chairman BLE  
515 Northbelt East Suite 120  
Houston, TX 77060

Gentlemen:

This refers to the Merger Implementing Agreement for the Houston Hub, Zones 3, 4, and 5, entered into this date.

In discussing the relocation benefits in Article V.B. of the agreement, we discussed the situation where an employee may desire to sell his home prior to the actual implementation of the merger. Carrier committed to you that such employee would be entitled to treatment as a "homeowner" for relocation benefits purposes provided:

1. Upon actual implementation of the Merger Implementing Agreement the engineer meets the requisite test of having been "required to relocate",
2. The sale of the residence occurred at the same location where claimant was working immediately prior to implementation, and
3. The sale of the residence occurred after the date of this Agreement.

If the foregoing adequately and accurately sets forth our agreement in this matter, please so indicate by signing in the space provided for that purpose below.

Yours truly,



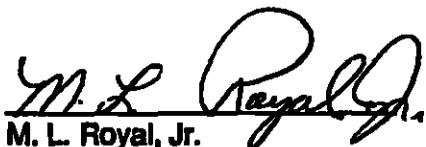
M. A. Hartman  
General Director - Labor Relations

Side Letter No. 6  
M. L. Royal, Jr.  
R. A. Poe  
April 23, 1997  
Page 2

**AGREED:**



R. A. Poe  
General Chairman, BLE



M. L. Royal, Jr.  
General Chairman, BLE

April 23, 1997

Side Letter No. 7

Mr. M. L. Royal, Jr.  
General Chairman BLE  
413 West Texas  
Sherman, TX 75092-3755

Mr. R. A. Poe  
General Chairman BLE  
515 Northbelt East Suite 120  
Houston, TX 77060

Gentlemen:

This has reference to our negotiations covering the Merger Implementing Agreement entered into April 23, 1997 between the Union Pacific Railroad Company, Southern Pacific Lines and the Brotherhood of Locomotive Engineers. During these negotiations the Organization expressed concern that engineers who expire on the Hours of Service Law would not be transported in a timely manner to the destination terminal.

This will confirm the advice given to you, i.e., that when an engineer ties up on the Hours of Service before reaching the objective terminal, the Carrier will make every reasonable effort to relieve subject engineer and transport him to the tie up point, expeditiously. The Carrier recognized the interests of the railroad and its engineers are best served when a train reaches the final terminal within the hours of service. In the event this does not occur, the Carrier is committed to relieving that engineer and providing transportation as soon as practical.

In the event the Organization feels that this commitment is not being observed at a particular location, the General Chairman shall promptly contact the Director of Labor Relations in writing stating the reasons or circumstances thereof. Within ten (10) days after being contacted the Director of Labor Relations will schedule a conference between the parties to discuss the matter and seek a resolution. The conference will include the appropriate General Manager or his designate.

Respectfully,



M. A. Hartman  
General Director - Labor Relations

cc: D. M. Hahs  
Vice President BLE  
J. L. McCoy  
Vice President BLE

April 23, 1997

Side Letter No. 8

Mr. M. L. Royal, Jr.  
General Chairman BLE  
413 West Texas  
Sherman, TX 75092-3755

Mr. R. A. Poe  
General Chairman BLE  
515 Northbelt East Suite 120  
Houston, TX 77060

Gentlemen:

This has reference to our negotiations covering the Merger Implementing Agreement entered into April 23, 1997 between the Union Pacific Railroad Company, Southern Pacific Lines and the Brotherhood of Locomotive Engineers.

During our negotiations we discussed the equity percentages contained in Articles I.A.2 and I.B.2. concern was expressed about possible errors or omissions in the equity percentages referenced therein. This will confirm our understanding that should any errors or omissions be ascertained between the date of this Merger Implementing Agreement and the date established for the slotting of the affected rosters, the parties will promptly meet to review the alleged disputes and seek an adjustment to the equity percentages if necessary. It is understood that any changes to the equity percentages shown in Articles I.A.2. and I.B.2. which Carrier is requested to make, represent consensus among the Organization representatives.

If the foregoing adequately and accurately sets forth our consensus in the matter please so indicate by signing in the space provided below.

Respectfully,



M. A. Hartman  
General Director - Labor Relations

Side Letter No. 8  
M. L. Royal, Jr.  
R. A. Poe  
April 23, 1997  
Page 2

**AGREED:**



R. A. Poe  
General Chairman, BLE



M. L. Royal, Jr.  
General Chairman, BLE

cc: D. M. Hahs  
Vice President BLE

J. L. McCoy  
Vice President BLE

Finance Docket No. 28250

## APPENDIX III

Labor protective conditions to be imposed in railroad transactions pursuant to 49 U.S.C. 11343 et seq. [formerly sections 5(2) and 5(3) of the Interstate Commerce Act], except for trackage rights and lease proposals which are being considered elsewhere, are as follows:

1. **Definitions.**-(a) "Transaction" means any action taken pursuant to authorizations of this Commission on which these provisions have been imposed.

(b) "Displaced employee" means an employee of the railroad who, as a result of a transaction is placed in a worse position with respect to his compensation and rules governing his working conditions.

(c) "Dismissed employee" means an employee of the railroad who, as a result of a transaction is deprived of employment with the railroad because of the abolition of his position or the loss thereof as the result of the exercise of seniority rights by an employee whose position is abolished as a result of a transaction.

(d) "Protective period" means the period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of 6 years therefrom, provided, however, that the protective period for any particular employee shall not continue for a longer period following the date he was displaced or dismissed than the period during which such employee was in the employ of the railroad prior to the date of his displacement or his dismissal. For purposes of this appendix, an employee's length of service shall be determined in accordance with the provisions of section 7(b) of the Washington Job Protection Agreement of May 1936.

2. The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges and benefits (including continuation of pension rights and benefits) of the railroad's employees under applicable laws and/or existing collective bargaining agreements or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes.

3. Nothing in this Appendix shall be construed as depriving any employee of any rights or benefits or eliminating any obligations which such employee may have under any existing job security or other protective conditions or arrangements; provided, that if an employee otherwise is eligible for protection under both this Appendix and some other job security or other protective conditions or arrangements, he shall elect between the benefits under this Appendix and similar benefits under such other arrangement and, for so long as he continues to receive such benefits under the provisions which he so elects, he shall not be entitled to the same type of benefit under the provisions which he does not so elect; provided further, that the benefits under this Appendix, or any other arrangement, shall be construed to include the conditions,

responsibilities and obligations accompanying such benefits; and, provided further, that after expiration of the period for which such employee is entitled to protection under the arrangement which he elects, he may then be entitled to protection under the other arrangement for the remainder, if any, of this protective period under that arrangement.

**4. Notice and Agreement or Decision -** (a) Each railroad contemplating a transaction which is subject to these conditions and may cause the dismissal or displacement of any employees, or rearrangement of forces, shall give at least ninety (90) days written notice of such intended transaction by posting a notice on bulletin boards convenient to the interested employees of the railroad and by sending registered mail notice to the representatives of such interested employees. Such notice shall contain a full and adequate statement of the proposed changes to be affected by such transaction, including an estimate of the number of employees of each class affected by the intended changes. Prior to consummation the parties shall negotiate in the following manner.

Within five (5) days from the date of receipt of notice, at the request of either the railroad or representatives of such interested employees, a place shall be selected to hold negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this appendix, and these negotiations shall commence immediately thereafter and continue for at least thirty (30) days. Each transaction which may result in a dismissal or displacement of employees or rearrangement of forces, shall provide for the selection of forces from all employees involved on a basis accepted as appropriate for application in the particular case and any assignment of employees made necessary by the transaction shall be made on the basis of an agreement or decision under this section 4. If at the end of thirty (30) days there is a failure to agree, either party to the dispute may submit it for adjustment in accordance with the following procedures:

(1) Within five (5) days from the request for arbitration the parties shall select a neutral referee and in the event they are unable to agree within said five (5) days upon the selection of said referee then the National Mediation Board shall immediately appoint a referee.

(2) No later than twenty (20) days after a referee has been designated a hearing on the dispute shall commence.

(3) The decision of the referee shall be final, binding and conclusive and shall be rendered within thirty (30) days from the commencement of the hearing of the dispute.

(4) The salary and expenses of the referee shall be borne equally by the parties to the proceeding; all other expenses shall be paid by the party incurring them.

(b) No change in operations, services, facilities, or equipment shall occur until after an agreement is reached or the decision of a referee has been rendered.

5. Displacement allowances - (a) So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules and practices, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protective period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the average monthly compensation received by him in the position from which he was displaced.

Each displaced employee's displacement allowance shall be determined by dividing separately by 12 the total compensation received by the employee and the total time for which he was paid during the last 12 months in which he performed services immediately preceding the date of his displacement as a result of the transaction (thereby producing average monthly compensation and average monthly time paid for in the test period), and provided further, that such allowance shall also be adjusted to reflect subsequent general wage increases.

If a displaced employee's compensation in his retained position in any month is less in any month in which he performs work than the aforesaid average compensation (adjusted to reflect subsequent general wage increases) to which he would have been entitled, he shall be paid the difference, less compensation for time lost on account of his voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but if in his retained position he works in any month in excess of the aforesaid average monthly time paid for during the test period he shall be additionally compensated for such excess time at the rate of pay of the retained position.

(b) If a displaced employee fails to exercise his seniority rights to secure another position available to him which does not require a change in his place of residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position he elects to decline.

(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for justifiable cause.

6. Dismissal allowances. - (a) A dismissed employee shall be paid a monthly dismissal allowance, from the date he is deprived of employment and continuing during his protective period, equivalent to one-twelfth of the compensation received by him in the last 12 months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the transaction. Such allowance shall also be adjusted to reflect subsequent general wage increases.

(b) The dismissal allowance of any dismissed employee who returns to service with the railroad shall cease while he is so reemployed. During the time of such reemployment, he shall be entitled to protection in accordance with the provisions of section 5.

(c) The dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his representative, and the railroad shall agree upon a procedure by which the railroad shall be currently informed of the earnings of such employee in employment other than with the railroad, and the benefits received.

(d) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the employee's resignation, death, retirement, dismissal for justifiable cause under existing agreements, failure to return to service after being notified in accordance with the working agreement, failure without good cause to accept a comparable position which does not require a change in his place of residence for which he is qualified and eligible after appropriate notification, if his return does not infringe upon the employment rights of other employees under a working agreement.

7. Separation allowance. - A dismissed employee entitled to protection under this appendix, may, at his option within 7 days of his dismissal, resign and (in lieu of all other benefits and protections provided in this appendix) accept a lump sum payment computed in accordance with section 9 of the Washington Job Protection Agreement of May 1936.

8. Fringe benefits. - No employee of the railroad who is affected by a transaction shall be deprived, during his protection period, of benefits attached to his previous employment, such as free transportation, hospitalization, pensions, reliefs, et cetera, under the same conditions and so long as such benefits continue to be accorded to other employees of the railroad, in active or on furlough as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained.

9. Moving expenses.-Any employee retained in the service of the railroad or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment as a result of the transaction, and who within his protective period is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects for the traveling expenses of himself and members of his family, including living expenses for himself and his family and for his own actual wage loss, not exceed 3 working days, the exact extent of the responsibility of the railroad during the time necessary for such transfer and for reasonable time thereafter and the ways and means of transportation to be agreed upon in advance by the railroad and the affected employee or his representatives; provided, however, that changes in place of residence which are not a result of the transaction, shall not be considered to be within the purview of this section; provided further, that the railroad shall, to the same extent provided above, assume the expenses, et cetera, for any employee furloughed with three (3) years after changing his point of employment as a result of a transaction, who elects to move his place of residence back to his original point of employment. No claim for reimbursement shall be paid under the provision of this section unless such claim is presented to railroad with 90 days after the date on which the expenses were incurred.

10. Should the railroad rearrange or adjust its forces in anticipation of a transaction with the purpose or effect of depriving an employee of benefits to which he otherwise would have become entitled under this appendix, this appendix will apply to such employee.

11. Arbitration of disputes.- (a) In the event the railroad and its employees or their authorized representatives cannot settle any dispute or controversy with respect to the interpretation, application or enforcement of any provision of this appendix, except section 8 and 12 of this article I, within 20 days after the dispute arises, it may be referred by either party to an arbitration committee. Upon notice in writing served by one party on the other of intent by that party to refer a dispute or controversy to an arbitration committee, each party shall, within 10 days, select one member of the committee and the members thus chosen shall select a neutral member who shall serve as chairman. If any party fails to select its member of the arbitration committee within the prescribed time limit, the general chairman of the involved labor organization or the highest officer designated by the railroads, as the case may be, shall be deemed the selected member and the committee shall then function and its decision shall have the same force and effect as though all parties had selected their members. Should the members be unable to agree upon the appointment of the neutral member within 10 days, the parties shall then within an additional 10 days endeavor to agree to a method by which a neutral member shall be appointed, and, failing such agreement, either party may request the National Mediation Board to designate within 10 days the neutral member whose designation will be binding, upon the parties.

(b) In the event a dispute involves more than one labor organization, each will be entitled to a representative on the arbitration committee, in which event the railroad will be entitled to appoint additional representatives so as to equal the number of labor organization representatives.

(c) The decision, by majority vote, of the arbitration committee shall be final, binding, and conclusive and shall be rendered within 45 days after the hearing of the dispute or controversy has been concluded and the record closed.

(d) The salaries and expenses of the neutral member shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them.

(e) In the event of any dispute as to whether or not a particular employee was affected by a transaction, it shall be his obligation to identify the transaction and specify the pertinent facts of that transaction relied upon. It shall then be the railroad's burden to prove that factors other than a transaction affected the employee.

12. Losses from home removal.- (a) The following conditions shall apply to the extent they are applicable in each instance to any employee who is retained in the service of the railroad (or who is later restored to service after being entitled to receive a dismissal allowance) who is required to change the point of his employment within his protective period as a result of the transaction and is therefore required to move his place of residence:

(i) If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by the railroad for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the date of the transaction so as to be unaffected thereby. The railroad shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other person.

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

(iii) If the employee holds an unexpired lease of a dwelling occupied by him as his home, the railroad shall protect him from all loss and cost in securing the cancellation of said lease.

b) Changes in place of residence which are not the result of a transaction shall not be considered to be within the purview of this section.

(c) No claim for loss shall be paid under the provisions of this section unless such claim is presented to the railroad within 1 year after the date the employee is required to move.

(d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through joint conference between the employee, or their representatives and the railroad. In the event they are unable to agree, the dispute or controversy may be referred by either party to a board of competent real estate appraisers, selected in the following manner. One to be selected by the representatives of the employees and one by the railroad, and these two, if unable to agree within 30 days upon a valuation, shall endeavor by agreement within 10 days thereafter to select a third appraiser, or to agree on a method by which a third appraiser shall be selected, and failing such agreement, either party may request the National Mediation Board to designate within 10 days a third appraiser whose designation will be binding upon the parties. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

#### ARTICLE II

1. Any employee who is terminated or furloughed as a result of a transaction shall, if he so requests, be granted priority of employment or reemployment to fill a position comparable to that which he held when his employment was terminated or he was furloughed, even though in a different craft or class, on the railroad which he is, or by training or retraining physically and mentally can become, qualified, not, however, in contravention of collective bargaining agreements relating thereto.

2. In the event such training or retraining is requested by such employee, the railroad shall provide for such training or retraining at no cost to the employee.

3. If such a terminated or furloughed employee who had made a request under section 1 or 2 of the article II fails without good cause within 10 calendar days to accept an offer of a position comparable to that which he held when terminated or furloughed for which he is qualified, or for which he has satisfactorily completed such training, he shall, effective at the expiration of such 10-day period, forfeit all rights and benefits under this appendix.

**ARTICLE III**

Subject to this appendix, as if employees of railroad, shall be employees, if affected by a transaction, of separately incorporated terminal companies which are owned (in whole or in part) or used by railroad and employees of any other enterprise within the definition of common carrier by railroad in section 1(3) of part I of the Interstate Commerce Act, as amended, in which railroad has an interest, to which railroad provides facilities, or with which railroad contracts for use of facilities, or the facilities of which railroad otherwise uses; except that the provisions of this appendix shall be suspended with respect to each such employee until and unless he applies for employment with each owning carrier and each using carrier; provided that said carriers shall establish one convenient central location for each terminal or other enterprise for receipt of one such application which will be effective as to all said carriers and railroad shall notify such employees of this requirement and of the location for receipt of the application. Such employees shall not be entitled to any of the benefits of this appendix in the case of failure, without good cause, to accept comparable employment, which does not require a change in place of residence, under the same conditions as apply to other employees under this appendix, with any carrier for which application for employment has been made in accordance with this section.

**ARTICLE IV**

Employees of the railroad who are not represented by a labor organization shall be afforded substantially the same levels of protection as are afforded to members of labor organizations under these terms and conditions.

In the event any dispute or controversy arises between the railroad and an employee not represented by a labor organization with respect to the interpretation, application or enforcement of any provision hereof which cannot be settled by the parties within 30 days after the dispute arises, either party may refer the dispute to arbitration.

**ARTICLE V**

1. It is the intent of this appendix to provide employee protections which are not less than the benefits established under 49 USC 11347 before February 5, 1976, and under section 565 of title 45. In so doing, changes in wording and organization from arrangements earlier developed under those sections have been necessary to make such benefits applicable to transactions as defined in article 1 of this appendix. In making such changes, it is not the intent of this appendix to diminish such benefits. Thus, the terms of this appendix are to be resolved in favor of this intent to provide employee protections and benefits no less than those established under 49 USC 11347 before February 5, 1976 and under section 565 of title 45.

2. In the event any provision of this appendix is held to be invalid or otherwise unenforceable under applicable law, the remaining provisions of this appendix shall not be affected.

UNION PACIFIC RAILROAD COMPANY

J. J. MARCHANT  
SP. ASST. VICE PRESIDENT  
LABOR RELATIONS

1416 BROAD STREET  
OMAHA, NEBRASKA 68102



March 8, 1996

Mr. R. P. McLaughlin  
President - Brotherhood of  
Locomotive Engineers  
Standard Building  
1369 Ontario Street  
Cleveland OH 44113

Dear Sir:

This refers to our discussions concerning the issues of New York Dock protection and the certification of adversely affected BLE employees.

As you know, Union Pacific, in its SP Merger Application, stipulated to the imposition of the New York Dock conditions. The Labor Impact Study which Union Pacific filed with the Merger Application reported that 251 engineers would transfer and that 772 engineer jobs would be abolished because of the implementation of the Operating Plan.

Within the New York Dock conditions, Section 11 addresses disputes and controversies regarding the interpretation, application or enforcement of the New York Dock conditions (except for Sections 4 and 12). Under Section 11, perhaps the two most serious areas for potential disputes involve whether an employee was adversely affected by a transaction and what will be such employee's protected rate of pay.

In an effort to eliminate as many of these disputes as possible, Union Pacific makes the following commitment regarding the issue of whether an employee was adversely affected by a transaction: Union Pacific will grant automatic certification as adversely affected by the merger to the 1023 engineers projected to be adversely affected in the Labor Impact Study and to all other engineers identified in any Merger Notice served after Board approval. Union Pacific will supply BLE with the names and TPA's of such employees as soon as possible upon implementation of approved merger. Union Pacific also commits that, in any Merger Notice served after Board approval, it will only seek those changes in existing collective bargaining agreements that are necessary to implement the approved transaction, meaning such changes that produce a public transportation benefit not based solely on savings achieved by agreement changes(s).

Union Pacific commits to the foregoing on the basis of BLE's agreement, after merger approval, to voluntarily reach agreement for implementation of the Operating Plan accompanying the Merger Application.

Even with these commitments, differences of opinion are bound to occur. In order to ensure that any such differences are dealt with promptly and fairly, Union Pacific makes this final commitment: If at any time the affected General Chairman or the assigned International Vice President of the BLE believes Union Pacific's application of the New York Dock conditions is inconsistent with our commitments, BLE and Union Pacific personnel will meet within five (5) days of notice from the General Chairman or the International Vice President to attempt to resolve the dispute. If the matter is not resolved, the parties will agree to expedited arbitration with a written agreement within ten (10) days after the initial meeting. The Agreement will contain, among other things, the full description for neutral selection, timing of hearing, and time for issuance of Award(s).

In view of Union Pacific's position regarding the issues of New York Dock protection and the certification of employees, I understand that the BLE will now support the UP/SP merger.

Sincerely,

A handwritten signature in black ink, appearing to read "Gene Johnson", written in a cursive style.

**UNION PACIFIC RAILROAD COMPANY**

**J J MARCHANT  
SENIOR VICE PRESIDENT  
LABOR RELATIONS**

**1416 DODD STREET  
OMAHA, NEBRASKA 68179**



**March 8, 1996**

**Mr. R. P. McLaughlin  
President - Brotherhood  
of Locomotive Engineers  
Standard Building  
1370 Ontario Street  
Cleveland, OH 44113**

**Dear Sir:**

**This refers to my letter of March 8, 1996, outlining our respective commitments relative to BLE's support of the UP/SP merger. At an informal meeting regarding this matter there were several other related issues discussed, and this letter confirms the substance of those discussions.**

**Union Pacific recognizes that implementing a merger of UP and SP will be a complex undertaking which will require planning and cooperation between the parties. Much of our discussions revolved around the process which would best facilitate the implementing agreement negotiation efforts. During our discussions, I agreed to meet with BLE in advance of the serving of New York Dock notices to try to come to consensus on various aspects of the implementing agreement process. Conceptually, it appears the parties are in agreement that our discussion of process should include the following topics:**

- A discussion of what will be contained in the notices, whether they will be all-inclusive as to territory or relate to individual regions/corridors, timing of service of notices, etc.**
- An effort to separate the focus of negotiations into logical regions/corridors and prioritize those negotiations so they match up in a meaningful way with the operational implementing priorities, territorial boundaries of labor agreements, etc.**
- General understandings and/or guidelines regarding size of the respective negotiating teams, where and how often they will meet, administrative support, and other such ground rules for the actual conduct of negotiations.**

We also discussed a concern expressed by several committees regarding the potential that Union Pacific might elect to lease the SPT, SSW, SPCSL and/or DRGW to the UP or MP for certain financial reasons. It was the concern of BLE that such an arrangement might create an avenue by which Union Pacific could avoid New York Dock protective obligations on some of the leased entities.

Union Pacific has agreed to accept imposition of New York Dock protective conditions in this proceeding, and by definition that includes SPT, SSW, SPCSL and DRGW, as well as UP and MP. While we have no intention to consummate this merger through such a lease arrangement, Union Pacific commits to the application of New York Dock to such territories even if such a lease arrangement were to occur.

The final issue which was discussed pertained to integration of seniority as a result of post-merger consolidations and implementing agreements. BLE asked if Union Pacific would defer to the interested BLE committees regarding the method of seniority integration where the committees were able to achieve a mutually agreeable method for doing so. In that regard, Union Pacific would give deference to an internally devised BLE seniority integration solution, so long as; 1) it would not be in violation of the law or present undue legal exposure; 2) it would not be administratively burdensome, impractical or costly; and 3) it would not create an impediment to implementing the operating plan.

I trust that the foregoing accurately reflects our discussions.

Sincerely,

A handwritten signature in black ink, appearing to read "John J. ...", written in a cursive style.

0308jm

**UNION PACIFIC RAILROAD COMPANY**

J. J. MARCHANT  
BY ASST. VICE PRESIDENT  
JAMES H. LARSON

1415 DODGE STREET  
CHICAGO, ILLINOIS 60617



**March 9, 1996**

**Mr. R. P. McLaughlin  
President - Brotherhood  
of Locomotive Engineers  
Standard Building  
1370 Ontario Street  
Cleveland, OH 44113**

**Dear Sir:**

**This refers to my March 8 letter and to our March 8 meeting in Las Vegas, both of which dealt with the issues of New York Dock protection and the certification of adversely affected BLE employees and our respective commitments relative to BLE's support of the UP/SP merger.**

**At the March 8 meeting, we reached an understanding that the certification provided for in the March 8 letter will begin at the time of implementation of the particular transaction in question. The following example illustrates this understanding:**

**The UP/SP merger is approved on August 1. The implementing agreement with the BLE is reached on October 1 and is implemented on December 1. Certification will begin on December 1.**

**I trust the foregoing accurately reflects our understanding.**

**Sincerely,**

0308jm.par



March 22, 1996

R. P. McLaughlin  
President, BLE  
1370 Ontario Avenue  
Cleveland, OH 44113-1702

Dear Sir:

This refers to my letter of March 9, 1996, dealing with when certification begins.

The example in my letter deals with a situation where a single transaction is implemented and indicates that certification begins on the date of implementation. You have asked me to clarify when certification begins in the event the SP Merger results in multiple New York Dock transactions.

In the event the SP Merger leads to multiple transactions with different implementation dates, certification will begin for those employees affected by a particular transaction on the date that transaction is implemented. In other words, multiple transactions with different implementation dates lead to different starting dates for certification.

John J. Marchant

**October 2, 1996**

**Mr. M. L. Royal, Jr.  
General Chairman BLE  
413 West Texas  
Sherman, TX 75082-3755**

**Mr. R. A. Poe  
General Chairman BLE  
515 Northbelt East Suite 120  
Houston, TX 77060**

**Mr. D. E. Penning  
General Chairman BLE  
12531 Missouri Bottom Road  
Hazelwood, MO 63042**

**Gentlemen:**

**This refers to the Carrier's notice dated August 29, 1996 (Notice No. 3-E-BLE) concerning the sale of the SP Line between Avondale, LA and Iowa Jct. LA (MP 16.9 to 205.3), along with the SP Yards at Avondale and Lafayette, LA, and the UP Intermodal Facility at Westwego, LA, to the BNSF.**

**Since a merger notice was concurrently served on August 29, 1996 covering the territory between Houston, TX and Avondale, LA, in order to comply with the mandates and time frames set forth by the Surface Transportation Board, the Parties agree that the line and facility sale negotiations will be handled as follows:**

- 1. The Carrier shall give those addressed ten (10) days notice of BNSF intent to assume control and operation of the line and facilities involved.**
- 2. At all locations within the territory covered by the merger notice where positions are abolished or reduced as a result of BNSF commencement of operations, additional positions shall be added to the extra boards to accommodate the number of employees affected by the abolishments and/or reductions. Such positions will not be reduced from the extra boards unless there is a need at another location to protect the Carrier's business levels in accordance with existing collective bargaining agreements.**
- 3. In the event a position described in the preceding paragraph is subsequently reduced from the extra board because there is a need at another location to protect the Carrier's business levels and such employees are required to relocate, they shall be entitled to the relocation provisions of New York Dock Conditions. The provisions of this section do not apply to voluntary exercises of seniority.**
- 4. The entitlements set forth above shall terminate upon consummation and implementation of a merger implementing agreement pursuant to the merger notice served on August 29, 1996.**
- 5. All employees in the territory described in the merger notice served on August 29, 1996, shall be certified for wage protection purposes as a result of BNSF commencement of operations pursuant to the line and facility sales. The following procedure shall apply to any such employee who believes he/she has suffered a loss of compensation pursuant to this provision:**

October 2, 1996  
M. L. Royal, Jr.  
R. A. Poe  
D. E. Penning  
Page 2

- 1) He/she shall submit to the Director of Labor Relations the reasons such an employee believes he/she has been adversely affected with a copy sent to the General Chairman.
  - 2) Following notification, the Carrier shall calculate the test period earnings which shall be compared with the earnings for the period in question.
  - 3) If such a difference should be demonstrated, the amount of monies due shall be placed in line for payment as a displacement allowance through Carrier's labor protection payroll system.
6. As part of the merger negotiations for this territory, the Parties will review those employees adversely affected as a result of the line and facilities sale and insure that if they are also certified as adversely affected under the merger, their protective period will be restarted with the commencement of a new protective period in line with other employees who may be certified for wage protection under the merger implementing agreement. In so doing, their test period averages will be recomputed but, in no event, shall be reduced by virtue of wage protection received under this interim arrangement.
7. It is the intent of this agreement to provide employees in the territory involved with an interim protection period for the time frame between implementation of the STB line/facility sale order and the consummation of a merger implementing agreement. This agreement is without precedent or prejudice to either party, and will not be cited in any other negotiations, disputes, or arbitration. It is not the intent of this Agreement to provide a windfall to any employee who may attempt to bid or displace upon an assignment immediately prior to the commencement of BNSF operations and, in those circumstances, the Parties mutually agree to select the employee who held the position on October 2, 1996 for entitlement to the protections set forth herein rather than the latter employee.

If the foregoing adequately and accurately sets forth our agreement in this matter, please so indicate by signing in the space provided for that purpose below.

Yours Truly,

M. A. Hartman  
Director - Employee Relations Planning

October 2, 1996  
M. L. Royal, Jr.  
R. A. Poe  
D. E. Penning  
Page 3

**AGREED:**

\_\_\_\_\_  
M. L. Royal, Jr.

Date: \_\_\_\_\_

\_\_\_\_\_  
R. A. Poe

Date: \_\_\_\_\_

\_\_\_\_\_  
D. E. Penning

Date: \_\_\_\_\_

\_\_\_\_\_  
J. L. McCoy

Date: \_\_\_\_\_

\_\_\_\_\_  
D. M. Hahn

Date: \_\_\_\_\_

a:\bnsf.agt

**ATTACHMENT "D"**

**SENIORITY ROSTER FOR ZONE 3 (TO BE PROVIDED)**

**ATTACHMENT "F"**

**SENIORITY ROSTER FOR ZONE 5 (TO BE PROVIDED)**

**ATTACHMENT "H"**

**RELOCATION BENEFITS LOCATION**

Please accept this as my application for relocation benefits as set forth in Article V - B. of this Merger Implementing Agreement. I understand that my election herein is in lieu of actual relocation benefits provided under New York Dock. This election must be exercised within two (2) years from the date of implementation of this Agreement. (Except that Option 3 shall expire within five (5) years from implementation.) Please check one of the following three options:

- Option 1: I am a non-owner and accept a \$10,000 allowance in lieu of New York Dock relocation benefits
- Option 2: I am a homeowner and accept a \$20,000 allowance in lieu of New York Dock relocation benefits.

If I have accepted Option 1 or 2, I understand that I must submit "proof of actual relocation" in order to receive the "in lieu of" allowance.

- Option 3: I am a homeowner and having sold my home, accept allowances in addition to the \$20,000 allowance I shall receive under Option 2 for a total of a \$30,000 allowance.

If I have accepted Option 3, I understand that I must not only submit "proof of actual relocation" but in addition I must provide "proof of a bona fide sale" of my home at fair value in the form of sale documents, deeds, and filings of these documents with the appropriate agency in order to receive the "in lieu of" allowance.

In addition, I understand that in accepting any of the three options above, I will be required to remain at the new location, seniority permitting, for a period of two (2) years.

NAME \_\_\_\_\_

SIGNATURE \_\_\_\_\_

SSN \_\_\_\_\_

CRAFT \_\_\_\_\_

DATE \_\_\_\_\_

OLD WORK LOCATION \_\_\_\_\_

NEW WORK LOCATION \_\_\_\_\_

**MERGER IMPLEMENTING AGREEMENT  
 AGREED UPON QUESTIONS & ANSWERS**

**ARTICLE I - Seniority and Work Consolidations**

*Sections A.2, B. 2. and C.2.:*

- Q. 1. What is the significance of the percentages listed by the former rosters, and give an example of how those percentages are used to formulate an "equity" consolidated roster.**
- A. 1. The formula used to accomplish this, since it is based upon the percentage of the total work brought by each interested roster to the new merged roster, actually incorporates or builds into the new rosters the prior rights of each interested roster to the work they brought. The formula is actually quite uncomplicated. Once all work equities have been measured and converted to a percentage of the total, those percentages are entered into the formula as indicated by the following example:**

**COMPUTATION-SELECTION ORDER LIST**

Roster (a) entitled to 46%  
 Roster (b) entitled to 39%  
 Roster (c) entitled to 15%

Roster Position	(a)	(b)	(c)
1	0.46 (1)	0.39	0.15
	-1.00		
	-0.54	0.39	0.15
	0.46	0.39	0.15
2	-0.08	.78 (1)	0.30
		-1.00	
	-0.08	-0.22	0.3
	0.46	0.39	0.15
3	0.38	0.17	.45 (1)
			-1.00
	0.38	0.17	-0.55
	0.46	0.39	0.15
4	.84 (2)	0.56	-0.40
	-1.00		
	-0.16	0.56	-0.40
	0.46	0.39	0.15
5	0.30	.95 (2)	-0.25
		-1	
	0.30	-0.05	-0.25
	0.46	0.39	0.15
6	.76 (3)	0.34	-0.10
	-1		
	-0.24	0.34	-0.10
	0.46	0.39	0.15
7	0.22	.73 (3)	0.05
		-1.00	
	0.22	-0.27	0.05
	0.46	0.39	0.15
8	.88 (4)	0.12	0.20
	-1.00		
	-0.32	0.12	0.20

Under the above formula, the first ten roster positions using the hypothetical percentages of 46%, 39% and 15% would be:

1. a
2. b
3. c
4. a
5. b
6. a
7. b
8. a
9. b
10. c

To summarize, the roster profiles developed for each merged seniority district were based upon the percentage of work equity as inserted into the above-described formula.

**Section 3.:**

Q. 1. Is it the intent of this agreement to use engineers beyond the 25-mile zone?

A. 1. No.

Q. 2. What is intended by the words "at the pro rata through freight rate" as used in Section A.3.a. and A.3.b.?

A. 2. Payment would be at the high (unfrozen) through freight rate of pay which is applicable to the service portion of the trip.

Q. 3. How will initial terminal delay be determined when performing service as outlined above?

A. 3. Initial terminal delay for engineers entitled to such payments will be governed by the applicable collective bargaining agreement and will not commence when the crew operates back through the on-duty point. Operation back through the on-duty point shall be considered as operating through an intermediate point.

Q. 4. If a crew in the 25 mile zone is delayed in bringing the train into the original terminal so that it does not have time to go on to the far terminal, what will happen to the crew?

A. 4. Except in cases of emergency, the crew will be deadheaded on to the far terminal.

**Section C.3.:**

Q. 1. What is the impact of the terminal operation at Houston being "consolidated into a single operation"?

- A. 1. In a consolidated terminal, all road crews can receive/leave their trains at any location within the boundaries of the new Houston Terminal and may perform work anywhere within those boundaries pursuant to the applicable collective bargaining agreement. The Carrier will designate the on/off duty points for road crews. All rail lines, yards, and/or sidings within the new Houston Terminal are considered as common to all crews working in, into and out of Houston and all road crews may perform all permissible road/yard moves pursuant to the applicable collective bargaining agreements.

**Section D:**

- Q. 1. Give an example of a pre-existing freight run which would be preserved under this savings clause?

A. 1. The current UP runs between Spring and Angleton.

**Sections E and F:**

- Q. 1. How many extra boards will be combined at implementation?

A. 1. It is unknown at this time. The Carrier will give written notice of any consolidations whether at implementation or thereafter.

- Q. 2. Are these guaranteed extra boards?

A. 2. Yes. The pay provisions and guarantee offsets and reductions will be in accordance with the existing UP guaranteed extra board agreement.

- Q. 3. Will extra boards established under this section be confined to protecting extra work exclusively within the zone in which established?

A. 3. Initially, all extra boards will only protect extra work within one zone. After implementation, should the Carrier desire to establish extra boards which protect extra work in more than one zone, this will be done pursuant to the existing collective bargaining agreement, and the parties must reach agreement as to how engineers from the zones involved will be allowed to exercise seniority to such extra board(s).

**ARTICLE II - Applicable Agreements**

- Q. 1. When the Merger Implementing Agreement becomes effective what happens to existing claims previously submitted under the prior agreements?

A. 1. The existing claims shall continue to be handled in accordance with the former agreements and the Railway Labor Act. No new claims shall be filed under those former agreements once the time limit for filing claims has expired.

**ARTICLE III - Familiarization**

- A. 4. Test periods will be furnished to each individual and their appropriate General Chairman.
- Q. 5. -An engineer is off one or more days of a month in the test period account of an on-duty personal injury. Will that month be used in computing test period averages?
- A. 5. Yes, if the engineer performed other compensated service during the month.
- Q. 6. Is vacation pay received during the test period considered as compensation?
- A. 6. Yes.
- Q. 7. How is length of service calculated?
- A. 7. It is the length of continuous service an engineer has in the service of the Carrier, as defined in the Washington Job Protection Agreement of 1936.
- Q. 8. If an engineer has three years of engine service and three years of train service, how many years of protection will they have?
- A. 8. Six.
- Q. 9. Claims for a displacement allowance are subject to offset when an engineer is voluntarily absent. How are such offsets computed?
- A. 9. A prorated portion of the guarantee is deducted for each twenty-four (24) hour period or portion thereof. The proportion varies depending on the number of days in the month and the rest days of a regularly assigned engineer. For example, in a thirty (30) day month, the through freight deduction would be 1/30th. For an engineer assigned to a six (6) day local, the proration would be 1/26th or 1/27th, depending on how rest days fell. For an unassigned yard engineer, the proration would be anywhere from 1/20th to 1/24th, depending on how the rest days fall. A deduction will not be made for an engineer required to lay-off due to mileage regulations.
- Q.10. An engineer assigned to the extra board lays off for one day. During the period of lay-off, he would not have otherwise had a work opportunity. What offset should be made in the engineer's protective claim?
- A. 10. A prorata portion of the guarantee is deducted, such proportion depending on the number of days in the month, i.e., 1/28th, 1/29th, 1/30th or 1/31st. [Except mileage regulation lay-off].
- Q.11. What prorated portion of a protection guarantee will be deducted for an engineer working on a guaranteed extra board whereon such engineer is entitled to lay off up two (2) days per month without deduction of the extra board guarantee?
- A.11. No deduction will be made from the protection guarantee for the first two (2) days of layoff during the month. Layoffs in excess of two (2) will result in a prorated deduction from the protection guarantee on the basis of the number of days in the month for each day of layoff in excess of two. [Except mileage regulation lay-off.]

**Q.12. How will engineers know which jobs are higher rated?**

**A.12. The Carrier will periodically post job groupings identifying the highest to lowest paid jobs.**

**Q.13. Will specific jobs be identified in each grouping?**

**A.13. Pools, locals and extra boards, with different monetary guarantees, may be identified separately but yard jobs and road switchers will not be.**

**Q.14. If an engineer is displaced from his assignment and not immediately notified of the displacement, will their New York Dock protection be reduced?**

**A.14. An engineer's reduction from New York Dock protection would commence with notification or attempted notification by the Carrier and would continue until the engineer placed himself.**

**Q.15. What rights does an engineer have if he is already covered under labor protection provisions resulting from another transaction?**

**A. 15. Section 3 of New York Dock permits engineers to elect which labor protection they wish to be protected under. By agreement between the parties, if an engineer has three years remaining due to the previous implementation of Interdivisional Service the engineer may elect to remain under that protection for three years and then switch to the number of years remaining under New York Dock. If an engineer elects New York Dock then he/she cannot later go back to the original protection even if additional years remain. It is important to remember that an engineer may not receive duplicate benefits, extend their protection period or count protection payments under another protection provision toward their test period average for this transaction.**

**Q.16. Will the Carrier offer separation allowances?**

**A.16. The Carrier will review its manpower needs at each location and may offer separation allowances if the Carrier determines that they will assist in the merger implementations. Article I Section 7 of New York Dock permits an engineer that is "dismissed" as defined by New York Dock to request a separation allowance within seven days of his/her being placed in dismissed status in lieu of all other benefits.**

**Q.17. Does an engineer who elects to exercise his seniority outside the Houston Hub and not participate in the formulation of rosters for the new Houston Hub qualify for wage protection?**

**A.17. The certification agreed to under Article V applies only to those engineers who are slotted on the newly formed Houston Hub rosters.**

**Q.18. In applying the "highest rated job" standard to a protected engineer, may the Carrier require an engineer to take a higher rated job (or use those earnings as an offset against the protection guarantee) which would require a change in residence?**

**A.18. No, unless the job is protected from that source of supply point.**

**Q.19. Could you give some examples?**

**A.19. Example 1:** An engineer, after implementation, is holding a job on a road switcher assignment at Bloomington. If he should subsequently be able to hold through freight service at Houston, such jobs, since they would require a change in residence, could not be used as an offset.

**Example 2:** An engineer, after implementation, is holding a job on a yard assignment at Houston. If he should subsequently be able to hold a higher rated road switcher job at Galveston (approximately 48 miles from Houston) since the source of supply for Galveston is Houston, the earnings of such job could be used as an offset against his guarantee if he chose not to bid to it.

**Section B:**

**Q. 1. Who is required to relocate and is thus eligible for the allowance?**

**A. 1. An engineer who can no longer hold a position at his location and must relocate to hold a position as a result of the merger. This excludes engineers who are borrow outs or forced to a location and released.**

**Q. 2. Are there mileage components that govern the eligibility for an allowance?**

**A. 2. Yes, the engineer must have a reporting point farther than his old reporting point and at least 30 miles between the current home and the new reporting point and at least 30 miles between reporting points.**

**Q. 3. Can you give some examples?**

**A. 3. The following examples would be applicable.**

**Example 1:** Engineer A lives 80 miles north of Houston and works a road switcher assignment at Houston. As a result of the merger he is assigned to a road switcher with an on duty point 20 miles north of Houston. Because his new reporting point is closer to his place of residence no relocation allowance is given.

**Example 2:** Engineer B lives 35 miles north of Houston and goes on duty at the UP yard office in Houston. As a result of the merger he goes on duty at the SP yard office in Houston which is one mile away. No allowance is given because the home terminal has not been changed.

**Example 3:** Engineer C lives in Victoria and is unable to hold an assignment at that location and is placed in Zone 3, where a shortage exists, and places on an assignment at Houston. The engineer meets the requirement for an allowance and whether he is a home owner, a home owner who sells their home or a non-homeowner determines the amount of the allowance.

**Example 4:** Engineer D lives in Houston and can hold an assignment in Houston but elects to place on a road switcher at Bloomington approximately 150 miles away. Because the engineer can hold in Houston, no allowance is given.

**Q. 4. Why are there different dollar amounts for non-home owners and homeowners?**

**A. 4. New York Dock has two provisions covering relocating. One is Article I Section 9 Moving expenses and the other is Section 12 Losses from home removal. The \$10,000 is in lieu of New York Dock moving expenses and the additional \$10,000 or \$20,000 is in lieu of loss on sale of home.**

**Q. 5. Why is there a set amount offered on loss on sale of home?**

**A. 5. It is an in lieu of amount. Engineers have an option of electing the in lieu of amount or claiming New York Dock benefits. Some people may not experience a loss on sale of home or may not want to go through the procedures to claim the loss under New York Dock.**

**Q. 6. What is loss on sale of home for less than fair value?**

**A. 6. This refers to the loss on the value of the home that results from the Carrier implementing this merger transaction. In many locations the impact of the merger may not affect the value of a home and in some locations the merger may affect the value of a home.**

**Q. 7. Can you give an example?**

**A. 7. Prior to the merger announcement a home was worth \$60,000. Due to numerous employees transferring from a small city the value drops to \$50,000. Upon approval of the sale by the Carrier employee is entitled to \$10,000 under Section 12 and the expenses provided under Section 9, or the owner can claim the in lieu of amount of \$30,000.**

**Q. 8. If the parties cannot agree on the loss of fair value what happens?**

**A. 8. New York Dock Article I Section 12 (d) provides for a panel of real estate appraisers to determine the value before the merger announcement and the value after the merger transaction.**

**Q. 9. What happens if an employee sells a home valued at \$50,000 for \$20,000 to a family member?**

**A. 9. That is not a bona fide sale and the employee would not be entitled to either an in lieu of payment or a New York Dock payment for the difference below the fair value.**

**Q. 10. What is the most difficult part of New York Dock in the sale transaction?**

**A. 10. Determine the value of the home before the merger transaction. While this can be done through the use of professional appraisers, many people think their home is valued at a different amount.**

**SIDE LETTER NO. 2**

**Q. 1. Will an engineer gain or lose vacation benefits as a result of the merger?**

**A. 1. SP engineers will retain the number of weeks vacation earned for 1997 that they would have earned under their previous vacation agreement. Beginning with the 1998 calendar year they will be treated as if they had always been a UP engineer and will earn identical vacation benefits as a UP engineer who had the same hire date and same work schedule.**

**Q. 2. When the agreement is implemented, which vacation agreement will apply?**

**A. 2. The vacation agreements used to schedule vacations for 1997 will be used for the remainder of 1997.**

**Q. 3. Will personal leave be applicable to SP engineers in 1997?**

**A. 3. When the agreement is implemented, personal leave will be prorated for the remainder of the year.**

**SIDE LETTER NO. 3**

**Q. 1. Can you give some examples of items that would be and would not be covered by Side Letter No. 3?**

**A. 1. Covered:**  
relocation allowance  
length of protection  
amount of separation allowance

**Not Covered:**  
differences that currently exist between collective bargaining agreements  
UTU crew consist issues  
seniority roster issues  
number of extra boards and pools

**Q. 2. Does the "me too" provision apply to arbitrated awards?**

**A. 2. No. Side Letter No. 3 clearly refers to "more favorable monetary terms that may be negotiated".**

# UNION PACIFIC RAILROAD COMPANY

A. TERRY OLIN  
GENERAL DIRECTOR - LABOR RELATIONS  
OPERATING CRAFTS - SOUTH

1416 DODGE STREET, ROOM 332  
OMAHA, NEBRASKA 68179-0332  
(402) 271-3201  
FAX (402) 271-4474



September 19, 1997

Mr. M. L. Royal, Jr.  
General Chairman, BLE  
413 West Texas  
Sherman, TX 75092-3755

Mr. Robert A. Poe  
General Chairman, BLE  
515 North Belt, Suite #120  
Houston, TX 77060

Gentlemen:

This has reference to the parties' various discussions pertaining to the forthcoming implementation of the UP/SP New York Dock Merger Implementing Agreement for the Houston Hub and, specifically, various issues pertaining to the application of the UP Southern Region collective bargaining agreement in the new Houston Terminal.

This letter will serve to confirm the parties' understanding that effective on the date of implementation of the UP/SP New York Dock Merger Implementing Agreement for the Houston Hub, those provisions of the UP Southern Region Schedule of Agreement, and any practices and/or interpretations associated therewith, governing meal periods for yard engineers, will not be applicable to those yard assignments working in the territory comprising the Houston Hub. In lieu thereof, the following will apply with respect to providing yard engineers in the Houston Hub with a meal period:

## **" YARD MEAL PERIOD(S)**

- "(a). *The time for fixing the beginning of assignments for meal periods is to be calculated from the time fixed for the crew to begin work as a unit, without regard to preparatory or individual duties.***
- "(b). *Engine crews in yard service will be allowed twenty (20) minutes for lunch between 4 ½ and 6 hours after starting work without any deduction in pay.***
- "(c). *Engineers in yard service will not be required to work longer than six (6) hours without being allowed twenty (20) minutes for lunch with no deduction in pay therefor. If a yard engineer is required to work through their lunch period and is later given a lunch period before the expiration of full eight hours from beginning of day, they will be allowed a day of eight hours and, in addition thereto, twenty (20) minutes at the overtime rate. If a yard engineer is required to work through full eight hours without being allowed lunch period and is relieved at the end of eight hours continuous service, they***

will be paid one day of eight hours and, in addition thereto, twenty (20) minutes pro-rata for the lunch period.

**NOTE:** The language "... allowed a day of eight hours ..." and/or "... paid one day of eight hours ..." is intended to reflect the fact the twenty (20)-minute payments identified therein are to be paid in addition to the earnings of the assignment.

"(d). In the event yard engineers are worked beyond the regular 8-hour assignment, they will be allowed twenty (20) minutes for lunch between 4 ½ and 6 hours after the time of taking their first lunch period. Section (c) will apply in the payment of overtime for the second lunch period."

If the foregoing properly reflects the parties' understandings on this matter, please so indicate by affixing your signatures in the spaces provided below.

Sincerely,



A. Terry Olin  
General Director - Labor Relations  
Operating - South

**AGREED:**

15/ M. L. Royal  
M. L. Royal, Jr.  
General Chairman, BLE

15/ R. A. Poe  
R. A. Poe  
General Chairman, BLE

7

**MERGER  
IMPLEMENTING AGREEMENT  
(Kansas City Hub)**

between the

**UNION PACIFIC RAILROAD COMPANY  
Southern Pacific Transportation Company  
and the**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

**PREAMBLE**

The U.S. Department of Transportation, Surface Transportation Board ("STB") approved the merger of the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") and Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp., and the Denver & Rio Grande Western Railroad Company ("DRGW") (collectively referred to as "SP") in Finance Docket 32760. In approving this transaction, the STB imposed New York Dock labor protective conditions. Copy of the New York Dock conditions is attached as Attachment "A" to this Agreement.

Subsequent to the filing of Union Pacific's application but prior to the decision of the STB, the parties engaged in certain discussions which focused upon Carrier's request that the Organization support the merger of UP and SP. These discussions resulted in the parties exchanging certain commitments, which were outlined in letters dated March 8(2), March 9 and March 22, 1996.

On January 30, 1998, the Carriers served notice of their intent to merge and consolidate operations generally in the following territories:

- Union Pacific:      Kansas City to Council Bluffs (not including Council Bluffs/Omaha Metro Complex)
- Kansas City to Des Moines (not including Des Moines)
- Kansas City to Coffeyville (not including Coffeyville)
- Kansas City to Parsons (not including Parsons)

6

Kansas City to Marysville (not including Marysville, but including Topeka)

Kansas City to Jefferson City (not including Jefferson City)

Kansas City Terminal

**Southern Pacific:**

(SSW and SPCSL) Kansas City to Jefferson City (not including Jefferson City)

Kansas City to Chicago via Ft. Madison (not including Chicago)

Kansas City to Chicago via Quincy (not including Chicago)

Kansas City to Winfield via BNSF trackage rights (not including Winfield)

Kansas City to Wichita via BNSF trackage rights (not including Wichita)

Kansas City to Pratt via Hutchinson via BNSF trackage rights (not including Pratt)

Kansas City Terminal

Pursuant to Section 4 of the New York Dock protective conditions, in order to achieve the benefits of operational changes made possible by the transaction and to modify collective bargaining agreements to the extent necessary to obtain those benefits

**IT IS AGREED:**

**ARTICLE I - WORK AND ROAD POOL CONSOLIDATIONS**

The following work/road pool consolidations and/or modifications will be made to existing runs:

**A. Zone 1 - Seniority District**

1. Territory Covered: Kansas City to Council Bluffs (not including Council Bluffs/Omaha Metro Complex)

Kansas City to Des Moines (not including Des Moines)

Kansas City to Chicago via Ft. Madison (not including Chicago)

**Kansas City to Chicago via Quincy (not including Chicago)**

**The above includes all UP and SPCSL main lines, branch lines, industrial leads, yard tracks and stations between or located at the points indicated. Where the phrase "not including" is used above, it refers to other than through freight operations, but does not restrict through freight engineers from operating into/out of such terminals/points or from performing work at such terminals/points pursuant to the designated collective bargaining agreement provisions.**

- 2. The existing former UP Kansas City to Council Bluffs and Kansas City to Des Moines pool operations shall be preserved under this Agreement. The home terminal for this pool will be Kansas City. Council Bluffs and Des Moines are the respective away-from-home terminals. This pool shall be governed by the provisions of the ID Agreement dated March 31, 1992, including all side letters and addenda. Engineers in this pool may be transported between destination terminals for the return trip to the home terminal, subject to the terms set forth in Side Letter No. 6.**
  - a. Hours of Service relief of trains in this pool shall be protected as provided in the existing agreement rules covering such runs.**
  
- 3. The existing former SPCSL Kansas City to Quincy and Kansas City to Ft. Madison pool operations shall be preserved as a separate pool operation under this agreement, but the home terminal of such runs will be changed to Kansas City. Quincy and Ft. Madison will be the respective away-from-home terminals. Engineers may also be transported between destination terminals for the return trip to the home terminal, subject to the terms set forth in Side Letter No. 6. A sufficient number of engineers at Quincy and Ft. Madison will be relocated to Kansas City to accomplish this change.**
  - a. Hours of Service relief of trains in this pool operating from Kansas City to Ft. Madison or Quincy may be protected by the extra board at Ft. Madison/Quincy if the train has reached Marceline or beyond on the former ATSF line or Brookfield or beyond on the former BN line. If there is no extra board in existence or the extra board is exhausted, an away-from-home terminal engineer may be used, and will thereafter be deadheaded home or placed first out for service on their rest. Such trains which have not reached Marceline or Brookfield shall be protected on a straightaway move by a home terminal pool engineer at Kansas City.**

- b. **Hours of Service relief of trains in this pool operating from Ft. Madison to Kansas City or Quincy to Kansas City may be protected by the extra board at Kansas City if the train has reached Marceline or beyond on the former ATSF line or Brookfield or beyond on the former BN line; otherwise, a rested away-from-home terminal engineer at Ft. Madison or Quincy shall be used on a straightaway move to provide such relief.**
4. **The existing former SPCSL Quincy to Chicago and Ft. Madison to Chicago pool operations shall be preserved as a single, separate pool operation under this Agreement. The home terminal of this pool will be Ft. Madison. Chicago will be the away-from-home terminal.**
- a. **Engineers called to operate from Quincy to Chicago shall report and go on duty at Ft. Madison for transport to Quincy to take charge of their train; engineers operating Chicago to Quincy shall be transported back to Ft. Madison on a continuous time basis. In both instances, the transport between Ft. Madison and Quincy shall be automatically considered as deadhead in combination with service and paid on that basis.**
  - b. **Hours of Service relief of trains in this pool operating from Ft. Madison/Quincy to Chicago may be protected by a rested away-from-home terminal engineer at Chicago if the train has reached Streator or beyond on the former ATSF line or Galesburg or beyond on the former BN line. Away-from-home terminal engineers so used shall thereafter be deadheaded home or placed first out for service on their rest. Hours of Service relief of trains in this pool operating from Chicago to Ft. Madison/Quincy may be protected by an extra board engineer at Ft. Madison if the train has reached Streator or beyond on the former ATSF line or Galesburg or beyond on the former BN line.**
  - c. **In the event business conditions result in engineers at Ft. Madison (either in pool service, on the extra board, or otherwise) being unable to hold any assignment as locomotive engineer at Ft. Madison, such engineers required to exercise seniority to Kansas City (or senior engineers who elect to relocate in their stead) shall be eligible for relocation benefits under Article VII of this Agreement. After six (6) years from date of implementation of this Agreement, no future relocation benefits shall be applicable under such circumstances.**
  - d. **Notwithstanding the above provisions, if at any future date Carrier elects to discontinue its exercise of BNSF trackage rights between Kansas City and Chicago, all engineers at Ft.**

Madison will be relocated to Kansas City and would under those circumstances be eligible for Article VII relocation benefits.

**NOTE:** It is understood the provisions of c. and d. above supersede the general provisions of Article VII.B.4. of this agreement.

- e. No Ft. Madison or Quincy engineer may receive more than one (1) compensated relocation under this Implementing Agreement.
  
- 5. At the equity meeting held pursuant to Side Letter No. 10 hereto the parties shall agree on a baseline number of pool turns for both of the pools described in Articles I.A.2. and I.A.3 above, and former UP and SPCSL engineers will be prior righted, respectively, to such baseline number of pool turns. In the event of a cessation of trackage rights operations described in 4.d. above, the parties will meet and reach agreement on how the baseline numbers of the two former pools will be consolidated into the remaining single pool for Zone 1. It is understood that under these circumstances all Zone 1 extra work at Kansas City would be consolidated under one (1) extra board.
  
- 6. At Des Moines, Ft. Madison and Quincy, away-from-home terminal engineers called to operate through freight service to Kansas City may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through Des Moines, Ft. Madison or Quincy to their destination without claim or complaint from any other engineer. At Ft. Madison and Quincy, home terminal engineers called to operate through freight service to Chicago may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through Ft. Madison or Quincy to their destination without claim or complaint from any other engineer. When so used, the engineer shall be paid an additional one-half (½) day at the basic pro rata through freight rate for this run in addition to the district miles of the run. If the time spent beyond the terminal under this provision is greater than four (4) hours then he shall be paid on a minute basis at the basic pro rata through freight rate.
  
- 7. The terminal limits of Des Moines, Ft. Madison and Quincy are as follows:
  - a. Des Moines: MP 70.37 - Trenton Subdivision  
MP 79.2 - Mason City Subdivision  
MP 224.76 - Bondurant Spur  
MP 304.2 - Perry Branch  
MP 4.26 - Ankeny Branch

- b. Ft. Madison: MP 234.0 - East  
MP 236.0 - West
- c. Quincy: MP 135.0 - West  
MP 138.0 - East

8. Engineers of an adjacent hub may have certain rights to be defined, if any, in the Merger Implementing Agreement for that hub to receive their through freight trains up to twenty-five (25) miles on the far side of the terminal and run back through Des Moines.
9. All road switcher and yard assignments with an on/off duty location at Council Bluffs (Omaha Metro Complex), Des Moines or Chicago will be protected by engineers from those seniority districts even if such assignments perform service within any territories contemplated by Article I.A.1. (Note: This provision does not disturb the current yard job allocation arrangement at Council Bluffs arising out of the UP/MP Merger Implementing Agreement). Local assignments, assigned freight service, and any other irregular assignments (work train, wreck train, etc.) will be protected on a prior rights basis by Zone 1 engineers if such assignments are home terminated at Council Bluffs (Omaha Metro Complex), Des Moines or Chicago and work exclusively within the territories identified by Article I.A.1. At Ft. Madison and Quincy, any such assignment home terminated at such locations, including the extra board, may work either direction out of such terminal without seniority or other restrictions.
10. Engineers protecting through freight service in the pools described above shall be provided lodging at the away-from-home terminals pursuant to existing agreements and the Carrier shall provide the transportation to engineers between the on/off duty location and the designated lodging facility. All road engineers may leave or receive their trains at any location within the terminal and may perform work within the terminal pursuant to the designated collective bargaining agreement provisions. The Carrier will designate the on/off duty points for all engineers, with these on/off duty points having appropriate facilities as currently required in the collective bargaining agreement.
11. All existing yard assignments at Atchison and St. Joseph shall be converted to road switcher assignments upon implementation of this Agreement. Notwithstanding any conflicting current agreement provisions, and on a non-precedent, non-referable basis, all road switcher assignments at these two locations shall be paid the 5-day yard rate of pay.
  - a. The regular assignments headquartered at Atchison and St. Joseph shall be collectively prior righted to those former

engineers holding seniority at Atchison and St. Joseph. On and after the implementation of this Agreement, any engineer holding a regular assignment at Atchison or St. Joseph on the basis of his prior rights who voluntarily exercises his seniority elsewhere in the Kansas City Hub shall be deemed to have forfeited his prior rights to assignments at these locations.

- b. The prior rights provisions set forth above shall not apply to the extra board at Atchison (Article III.A.1.) established under this Agreement, or any future extra board which may be established at either of these locations.

**B. Zone 2 - Seniority District**

- 1. **Territory Covered: Kansas City to Marysville (not including Marysville, but including Topeka)**

The above includes all UP main lines, branch lines, industrial leads, yard tracks and stations between or located at the points indicated. Where the phase "not including" is used above, it refers to other than through freight operations, but does not restrict through freight engineers from operating into/out of such terminals, points or from performing work at such terminals/points pursuant to the designated collective bargaining agreement provisions.

- 2. Existing Kansas City-Marysville pool operations shall be preserved under this Agreement. The home terminal for this pool will be Kansas City. Marysville will serve as the away-from-home terminal.
- 3. Engineers performing service in the Kansas City to Marysville pool shall receive a two (2) hour call for duty at Kansas City.
- 4. Hours of Service relief of trains in this pool operating from Kansas City to Marysville which have reached Topeka or beyond shall be protected in the following order (it being understood Carrier always reserves the right to call a Kansas City pool engineer to perform such service on a straightaway basis for crew balancing purposes):
  - a. By a rested, available engineer assigned to the Jeffrey Energy Pool and then
  - b. By the Marysville Extra Board, and then
  - c. By the first out, rested away-from-home terminal engineer at Marysville, who will thereafter be deadheaded home or placed first out for service on their rest.

Hours of Service relief of trains in this pool operating from Marysville to Kansas City may be protected by the extra board at Kansas City regardless of the location of such train should Carrier not elect to use a rested away-from-home terminal engineer at Marysville for crew balancing purposes.

5. At Marysville, away-from-home terminal engineers called to operate through freight service to Kansas City may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through Marysville to their destination without claim or complaint from any other engineer. When so used, the engineer shall be paid an additional one-half (½) day at the basic pro rata through freight rate for this run in addition to the district miles of the run. If time spent beyond the terminal under this provision is greater than four (4) hours, then he shall be paid on a minute basis at the basic pro rata through freight rate.

6. The terminal limits of Marysville are as follows:

MP 142.3 to MP 155.7	-	Marysville Subdivision
MP 132.29	-	Beatrice Branch
MP .75	-	Bestwall Spur

7. All road switcher and yard assignments home terminated at Marysville will be protected by engineers from that seniority district even if such assignments perform service within the territories contemplated by Article I.B.1. Local assignments and any other irregular assignments (work train, wreck train, etc.) will be protected by Zone 2 engineers (including those at Topeka) if such assignments are home terminated at Marysville and work exclusively within the territories defined by Article I.B.1.

8. The pool service presently protected by the so-called Jeffrey Energy Pool shall attrite to the UP Eastern District Seniority District No. 18 at Marysville and shall not be under the jurisdiction of this hub agreement. On and after the date of implementation of this Agreement, engineers protecting such service shall be governed by the schedule rules and rates of pay comprehending said 18th District. The terms of the August 17, 1979 Jeffrey Pool Agreement and other UP-BLE Eastern District Agreement pertaining to said pool shall be unaffected by this Implementing Agreement, except as modified below.

a. Former UP 8th District Engineers coming under the provisions of this Implementing Agreement and establishing Zone 2 prior rights seniority in the Kansas City Hub shall retain prior rights to the Jeffrey Energy Pool assignments on an attrition basis. Engineers presently occupying assignments in said pool will be

grandfathered to these assignments. Additionally, former UP 8th District Engineers performing service in Zone 2 will at time of roster canvassing, per Article VI.B.2., be asked to declare prior rights to assignments in the Jeffrey Energy Pool. If the engineer declares for such prior rights he will be allowed to occupy an assignment seniority permitting. If he does not declare for prior rights in the pool he shall thereafter waive said prior rights to the Jeffrey Energy Pool. The Carrier will maintain a list of those former UP 8th District Engineers who declared for prior rights in the Jeffrey Energy Pool at time of canvassing, but unable to occupy an assignment in the pool. When vacancies occur, such engineers will be canvassed, in seniority order. If the engineer declines to accept the assignment he will waive his prior rights to the Jeffrey Energy Pool. As vacancies occur which are not filled by former UP 8th District Engineers, the assignments will attrite to UP 18th District Engineers at Marysville.

- b. On the effective date of implementation of this Agreement the existing JK Extra Board at Marysville will no longer be preserved. All vacancies in the JK Pool, all extra work associated therewith and all other extra work described in the August 17, 1979 Jeffrey Pool Agreement, will be handled and performed by the UP 18th District Extra Board at Marysville.
  - c. In consideration of the assignments described above attriting to the UP 18th District Engineers at Marysville, said 18th District Engineers also acknowledge and agree to the provisions of Section 5 above with regard to Kansas City Hub engineers receiving their trains up to twenty-five (25) miles west of Marysville, such zone to be calculated from the original Marysville switching limits (MP 150.27 West - MP 147.33 East).
9. Engineers protecting through freight service in the pool described in Article I.B.2. above shall be provided lodging at the away-from-home terminal pursuant to existing agreements and the Carrier shall provide transportation to engineers between the on/off duty location and the designated lodging facility. All road engineers may leave or receive their trains at any location within the terminal and may perform work within the terminal pursuant to the designated collective bargaining agreement provisions. The Carrier will designate on/off duty points for all engineers, with these on/off duty points having appropriate facilities as currently required in the collective bargaining agreement.
10. All UP and SSW operations within the Topeka terminal limits shall be consolidated into a single operation. All rail lines, yards and/or sidings at Topeka will be considered as common to all engineers working in,

into and out of Topeka. All engineers will be permitted to perform all permissible road/yard moves pursuant to the designated collective bargaining agreement provisions. Interchange rules are not applicable for intra-carrier moves within the terminal. Topeka will serve as station enroute for all Kansas City Hub engineers.

- a. UP 8th District engineers occupying yard assignments at Topeka and local assignments home terminated at Topeka on the date of implementation of this Agreement shall establish seniority in the Kansas City Hub and prior rights in Zone 2.
- b. UP 8th District engineers assigned to the extra board at Topeka on the date of implementation of this Agreement shall establish seniority in the Kansas City Hub and prior rights in Zone 2. This extra board shall continue to protect vacancies in yard service at Topeka and other yard and road extra service normally provided by such extra board prior to merger, except that it shall no longer supplement the JK Extra Board, so long as it is in existence, or any other extra board, at Marysville.

**C. Zone 3 - Seniority District**

1. **Territory Covered: Kansas City to Jefferson City (not including Jefferson City)**

The above includes all UP and SSW main lines, branch lines, industrial leads, yard tracks and stations between or located at the points indicated. Where the phrase "not including" is used above, it refers to other than through freight operations, but does not restrict through freight engineers from operating into/out of such terminals, points or from performing work at such terminals/points pursuant to the designated collective bargaining agreement provisions.

2. **All former UP Kansas City to Jefferson City and former SSW Kansas City to Jefferson City pool operations shall be combined into one (1) pool with Kansas City as the home terminal. Jefferson City will serve as the away-from-home terminal. Engineers operating between Kansas City and Jefferson City may utilize any combination of UP or SSW trackage between such points.**
  - a. **The parties agreed in Article I.A.4.a. of the St. Louis Hub Merger Implementation Agreement the Kansas City to Jefferson City pool would be slotted on a work equity basis. Attachment "C" lists the slotting order for the pool. Former SSW and UP engineers residing at or in the vicinity of Jefferson City shall have prior rights to said pool turns. The**

engineers subject to this prior rights arrangement are identified on Attachment "D". If turns in excess of that number are established or any of such turns be unclaimed by a prior rights engineer, they shall be filled from the zone roster, and thereafter from the common roster. The parties further agreed in Side Letter No. 16 of the St. Louis Hub Agreement to allow former UP and SSW engineers residing in Jefferson City or vicinity on the date notice was served to begin negotiations for the Kansas City Hub (notice dated January 30, 1998) to continue to maintain their residences at that location so long as pool freight service between Kansas City and Jefferson City and extra board work at Jefferson City continue to exist and such engineers possess sufficient seniority to hold such assignments. Such engineers will be allowed to continue to reside at Jefferson City on an attrition basis subject to the terms and conditions of this Merger Implementing Agreement (See Side Letter No. 7).

- b. Hours of Service relief of trains in this pool operating from Kansas City to Jefferson City may be protected by the extra board at Jefferson City if the train has reached Booneville or beyond on the River Sub or Smithton or beyond on the Sedalia Sub; otherwise, a rested pool engineer at Kansas City shall be used on a straightaway move to provide such relief. Hours of Service relief of trains in this pool operating from Jefferson City to Kansas City may be protected by the Zone 3 Extra Board at Kansas City if the train has reached Renick or beyond on the River Sub or Pleasant Hill or beyond on the Sedalia Sub; otherwise, a rested pool engineer at Jefferson City shall be used on a straightaway move to provide such relief. At the away-from-home-terminal, if the extra board is exhausted, the first out rested pool engineer may be used, and shall thereafter be deadheaded home or placed first out for service on their rest.
3. At Jefferson City, away-from-home terminal engineers called to operate through freight service to Kansas City may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through Jefferson City to their destination without claim or complaint from any other engineer. When so used, the engineer shall be paid an additional one-half (½) day at the basic pro rata through freight rate for this run in addition to the district miles of the run. If the time spent beyond the terminal under this provision is greater than four (4) hours, then he shall be paid on a minute basis at the basic pro rata through freight rate.



**Kansas City to Winfield via BNSF trackage rights  
(not including Winfield)**

**Kansas City to Pratt via Hutchinson via BNSF  
trackage rights (not including Pratt)**

The above includes all UP and SSW main lines, branch lines, industrial leads, yard tracks and stations between or located at the points indicated. Where the phase "not including" is used above, it refers to other than through freight operations, but does not restrict through freight engineers from operating into/out of such terminals, points or from performing work at such terminals/points pursuant to the designated collective bargaining agreement provisions.

2. The existing UP Interdivisional Service between Kansas City and Coffeyville shall continue as a separate pool and shall be governed by the provisions of the ID Agreement dated August 15, 1985, including all side letters and addenda.
  - a. Hours of Service relief of trains in this pool shall be protected as provided in the existing agreement rules covering such runs.
3. The existing but non-operational SSW Kansas City to Pratt (via Hutchinson) run shall be preserved under this Agreement and in the event such runs resume in the future they shall be governed by the provisions of the UP-BLE Kansas City Hub Agreement. The home terminal will be changed to Kansas City. Pratt will serve as the away-from-home terminal.
4. Former SSW yard engine equity in Kansas City shall be placed under Zone 4. The former SSW engineers who elect Zone 4 as their prior rights zone and former UP engineers in Zone 4 shall compete for all assignments in Zone 4 on the basis of their Zone 4 seniority.
5. At Coffeyville/Parsons, Wichita, Winfield and Pratt, away-from-home terminal engineers called to operate through freight service to Kansas City may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through Coffeyville/Parsons, Wichita and Winfield to their destination without claim or complaint from any other engineer. When so used, the engineer shall be paid an additional one-half (½) day at the basic pro rata through freight rate for this run in addition to the district miles of the run. If the time spent beyond the terminal under this provision is greater than four (4) hours, then he shall be paid on a minute basis at the basic pro rata through freight rate.

6. The terminal limits of Coffeyville/Parsons, Wichita and Winfield are as follows:

a. Coffeyville MP 462.0 - North  
MP 661.0 - South

The north terminal limits of Coffeyville have been modified by this Implementing Agreement.

b. Parsons MP 133.4 - North  
MP 138.0 - South

c. Wichita MP 236.0 - Herington  
MP 476.0 - Wichita Branch  
MP 254.0 - OKT Subdivision

d. Winfield MP 248.7 - East  
MP 250.8 - West

e. Pratt MP 292.33 - East  
MP 300.16 - West

7. Engineers of an adjacent hub may have certain rights to be defined, if any, in the Merger Implementing Agreements for these hubs to receive their through freight trains up to twenty-five (25) miles on the far side of the terminal and run back through Wichita or Winfield to their destination without claim or complaint from any other engineer.

8. Engineers protecting through freight service in the pool described in Article I.D.2. and I.D.3. above shall be provide lodging at the away-from-home terminal pursuant to existing agreements and the Carrier shall provide transportation to engineers between the on/off duty location and the designated lodging facility. All road engineers may leave or receive their trains at any location within the terminal and may perform work within the terminal pursuant to the designated collective bargaining agreement provisions. The Carrier will designate on/off duty points for all engineers, with these on/off duty points having appropriate facilities as currently required in the collective bargaining agreement.

9. All local, road switcher and yard assignments home terminated at Coffeyville/ Parsons, Wichita, Winfield and Pratt will be protected by engineers from those seniority districts even if such assignments perform service within any territories contemplated by Article I.D.1. Other irregular assignments (work train, wreck train, etc.) will be protected by the engineers from the location where the assignment is home terminated.

**E. Kansas City Terminal**

1. All UP, SSW and SPCSL operations within the new Kansas City Terminal limits shall be consolidated into a single operation. The terminal includes all UP/SSW/SPCSL main lines, branch lines, industrial leads, yard tracks and stations between or located at the points indicated. All UP/SSW/SPCSL road crews may receive or leave their trains at any location within the terminal and may perform work within the terminal pursuant to the applicable collective bargaining agreement, including national agreements. The Carrier will designate the on/off duty points for all yard crews, with these on/off duty points having appropriate facilities as currently required in the collective bargaining agreement. Interchange rules are not applicable for intra-carrier moves within the terminal.
2. All yard assignments operating within the Kansas City Terminal will be bid and assigned in the manner set forth in Side Letter No. 22 to this Agreement.
3. All UP, SSW and SPCSL rail lines, yards and/or sidings within the Kansas City Terminal will be considered as common to all engineers working in, into and out of Kansas City.
4. Terminal limits for the consolidated Kansas City terminal are as follows:

<u>UP</u>	<u>Mile Post</u>
Marysville Subdivision	6.59
Coffeyville Subdivision	284.22
Sedalia Subdivision	276.32
Falls City Subdivision	288.37
Trenton Subdivision (former CNW)	500.3

SPCSL

Brookfield Subdivision	221.5 (BNSF MP)
Marceline Subdivision	444.2 (BNSF MP)
SPCSL terminal limits have been modified by this Agreement	

SSW

Sedalia Subdivision (via UP)	276.32
BNSF Line to Topeka/Ottawa	9.0 (BNSF MP)
UP terminal limits are established as MP 9.0 on the BNSF Topeka/Ottawa Line	

- F. At all terminals the Carrier will designate the on/off duty points for all road engineers, with these on/off duty points having appropriate facilities for inclement weather and other facilities as currently required in the designated collective bargaining agreement.
- G. In all of the zones, when local, work, wreck, Hours of Service relief or other road runs are called or assigned which operate exclusively within the territorial limits of one (1) of these zones established in this Agreement, such service shall be protected by engineers in such zone. If such run or assignment extends across territory encompassing more than one (1) zone contemplated by this Agreement, the Carrier and Organization will mutually agree on the method for assigning engineers to such service, otherwise, it will be protected by engineers on the basis of their common seniority date.

## **ARTICLE II - SENIORITY CONSOLIDATIONS**

- A. To achieve the work efficiencies and allocation of forces that are necessary to make the Kansas City Hub operate efficiently as a unified system, a new seniority district will be formed and a master Engineer Seniority Roster - UP/BLE Kansas City Merged Roster #1 will be created for engineers holding seniority in the territory comprehended by this Agreement on the effective date thereof. The new roster will be divided into four (4) zones as described in Articles I.A., I.B., I.C. and I.D. above.
- B. Prior rights seniority rosters will be formed covering each of the four (4) zones outlined above. Placement on these rosters and awarding of prior rights to their respective zones shall be based on the following:
  - 1. Zone 1 - This roster will consist of former UP engineers with prior rights on MPUL Merger 2B (Roster No 052111), CNW (Roster No. 053111), St. Joseph Union Terminal (Roster No. 057101) and Northern Kansas (Roster No. 055101) and former SPCSL engineers with rights on SPCSL (Roster No. 310101).
  - 2. Zone 2 - This roster will consist of former UP engineers with rights on UP Eighth District (Roster No. 068101) and former SSW engineers with rights on SSW Herington (Roster No. 303101).
  - 3. Zone 3 - This roster will consist of former UP engineers with rights on Merged 1 St. Louis (Merged Roster No. 040111) and former SSW engineers with rights on SSW Jefferson City (Roster No. 311101).
  - 4. Zone 4 - This roster will consist of former UP engineers with prior rights on Osawatomie Merged 2A (Roster No. 054111) and former SSW engineers with rights on SSW Herington (Roster No. 303101).

- C. Entitlement to assignment on the prior rights zone rosters described above shall be the canvass of the employees from the above affected former rosters contributing equity to each of such zones.**
- D. Engineers on the above-described newly-created prior rights zone rosters shall be integrated into one (1) common seniority roster.**
- E. All zone and common seniority shall be based upon each employee's date of promotion as a locomotive engineer (except those who have transferred into the territory covered by the hub and thereby established a new date). If this process results in engineers having identical common seniority dates, seniority will be determined by the age of the employees with the older employee placed first. If there are more than two (2) employees with the same seniority date, and the ranking of the pre-merged rosters would make it impossible for age to be a determining factor, a random process, jointly agreed upon by the Director of Labor Relations and the appropriate General Chairman(men), will be utilized to effect a resolution. It is understood this process for ranking employees with identical dates may not result in any employee running around another employee on his former roster.**
- F. Any engineer working in the territories described in Article I. on the date of implementation of this Agreement, but currently reduced from the engineers working list, shall also be given a place on the roster and prior rights. Engineers currently forced to this territory will be given a place on the roster and prior rights if so desired; otherwise, they will be released when their services are no longer required and will not establish a place on the new roster. Engineers borrowed out from locations within the hub and engineers in training on the effective date of this Agreement shall also participate in formulation of the roster described above.**
- G. UP engineers currently on an inactive roster pursuant to previous merger agreements shall participate in the roster formulation process described above based upon their date of seniority as a locomotive engineer.**
- H. With the creation of the new seniority described herein, all previous seniority outside the Kansas City Hub held by engineers inside the new hub shall be eliminated and all seniority inside the new hub held by engineers outside the hub shall be eliminated. All pre-existing prior rights, top and bottom, or any other such seniority arrangements in existence, if any, are of no further force or effect and the provisions of this Agreement shall prevail in lieu thereof. Upon completion of consolidation of the rosters and implementation of this hub, it is understood that no engineer may be forced to any territory or assignment outside the Kansas City Hub.**
- I. The total number of engineers on the master UP/BLE Kansas City Merged Roster #1 will be mutually agreed upon by the parties, subject to the provisions of Side Letter No. 15.**

## **ARTICLE III - EXTRA BOARDS**

- A. The following extra boards shall be established to protect vacancies and other extra board work into or out of the Kansas City Hub or in the vicinity thereof. It is understood whether or not such boards are guaranteed boards is determined by the designated collective bargaining agreement.
1. **Atchison** - One (1) Extra Board (combination road/yard) to protect all extra service at or in the vicinity of Atchison including St. Joseph, Falls City and Union. This board will also protect work formerly performed by the Nearman coal pool. This board may not be used to provide hours of service relief of pool freight trains operating between Kansas City and Council Bluffs except in emergency, nor may it be used to provide relief of Zone 1 assignments home terminated at Kansas City.
  2. **Ft. Madison** - One (1) Extra Board (combination road/yard) to protect all extra service at or in the vicinity of Ft. Madison and Quincy, including Hours of Service relief in both directions.
  3. **Jefferson City - West** - One (1) Extra Board (combination road/yard) to protect all Zone 3 vacancies headquartered at Jefferson City including vacancies created by engineers laying off while exercising "reverse lodging" privileges. Local or irregular service originating at Jefferson City working west on the UP Sedalia and River Subdivisions will also be protected by this board. This board will protect extra service on assignments headquartered at Lees Summit until a Zone 3 extra board is established at Kansas City.
  4. **Topeka** - One (1) Extra Board (combination road/yard) to protect all road and yard extra service at or in the vicinity of Topeka per Article I.B.9.b. This board will not be used to provide relief of Zone 2 assignments home terminated at Kansas City.
  5. **Kansas City** - One (1) Extra Board (combination road/yard) to protect each of the following:
    - a. Zone 1 pool freight extra service in the Kansas City-Ft. Madison/Quincy pool so long as it remains in existence as a separate pool. This board will be headquartered in Kansas City. This board will supplement the board described in b. below.
    - b. Zone 1 pool freight extra service and all other road service in Zone 1, except as otherwise provided herein. This board will be headquartered at Kansas City. This board will supplement the board described in 1. above (Atchison).

- c. Zone 2 pool freight extra service and all other road service in Zone 2, except as otherwise provided herein. This board will be headquartered at Kansas City.
  - d. Zone 3 pool freight extra service and all other road service in Zone 3 except as otherwise provided herein. This board will be headquartered at Kansas City.
  - e. Zone 4 pool freight extra service and all other road service in Zone 4 except as otherwise provided herein. This board will be headquartered at Kansas City.
6. One (1) extra board (yard only) to protect all yard extra service within the Kansas City Terminal. This board will be accessed by engineers in the manner set forth in Side Letter No. 22.
- B. If additional extra boards are established or abolished after the date of implementation of this Agreement, it shall be done pursuant to the terms of the designated collective bargaining agreement. When established, the Carrier shall designate the geographic area the extra board will cover.

#### **ARTICLE IV - APPLICABLE AGREEMENT**

- A. All engineers and assignments in the territories comprehended by this Implementing Agreement will work under the Collective Bargaining Agreement currently in effect between the Union Pacific Railroad Company and the Brotherhood of Locomotive Engineers dated October 1, 1977 (reprinted October 1, 1991), including all applicable national agreements, the "local/national" agreement of May 31, 1996, and all other side letters and addenda which have been entered into between date of last reprint and the date of this Implementing Agreement. Where conflicts arise, the specific provisions of this Agreement shall prevail. None of the provisions of these agreements are retroactive.
- B. All runs established pursuant to this Agreement will be governed by the following:
- 1. **Rates of Pay:** The provisions of the June 1, 1996 National Agreement will apply as modified by the May 31, 1996 Local/National Agreement.
  - 2. **Overtime:** Overtime will be paid in accordance with Article IV of the 1991 National Agreement.
  - 3. **Transportation:** When a crew is required to report for duty or is relieved from duty at a point other than the on and off duty points fixed for the service established hereunder, the Carrier shall authorize and provide suitable transportation for the crew.

**NOTE:** Suitable transportation includes Carrier owned or provided passenger carrying motor vehicles or taxi, but excludes other forms of public transportation.

4. **Suitable Lodging:** Suitable lodging will be provided by the Carrier in accordance with existing agreements.
- C. Existing ID run provisions regarding overmile rate and meal allowances as contained in the current UP Kansas City to Falls City ID Agreement (Sections 3. and 4. thereof) shall apply to the through freight pools described in Articles I.A.3. (Kansas City-Ft. Madison/Quincy), I.A.4. (Ft. Madison-Chicago), and I.D.3. (Kansas City-Pratt) of this Implementing Agreement.
- D. The following provisions of the former UP Eastern District Interdivisional Run Agreement dated December 16, 1971 will apply to any pre-October 31, 1985 Kansas City Hub Engineers performing service in the Kansas City to Marysville pool:
- (1) Part III - Paragraph (b) dealing with overtime.
- (2) Part VII - Section 5 dealing with eating en route.
- E. Existing ID run provisions regarding deadhead as contained in the current UP Kansas City to Falls City ID Agreement (Section 9 thereof) shall also apply to the through freight pools described in Articles I.C.2. (Kansas City - Jefferson City), I.D.2. (Kansas City - Coffeyville/Parsons) and I.D.3. (Kansas City - Pratt).
- F. Engineers in the Kansas City - Coffeyville/Parsons pool who have an engineer/train service seniority date prior to October 31, 1985, shall begin overtime at the expiration of ten (10) hours on duty. When overtime, initial terminal delay and final terminal delay accrue on the same trip, pay will be calculated pursuant to National Agreement provisions. Employees hired after October 31, 1985, shall be paid overtime in accordance with the National Rules governing same and in the same manner as previously paid on the MPUL prior to the merger.
- G. The following provisions shall apply to all engineers who establish seniority in the Kansas City Hub under this Merger Implementing Agreement. It is understood these provisions shall not be applicable to engineers establishing seniority as engineer in the Hub after the effective (signature) date of this Agreement:

Engineers protecting through freight service who exceed twelve (12) hours on duty shall be paid for all time on duty in excess of 12 hours at the overtime rate of pay regardless of the district miles of the run. When overtime, initial terminal delay and final terminal delay accrue

on the same trip, pay will be calculated pursuant to National Agreement provisions.

- H. Engineers will be treated for vacation, entry rates and payment of arbitraries as though all their time on their original railroad had been performed on the merged railroad. Engineers assigned to the Hub on the effective date of this Agreement (including those engaged in engineer training on such date) shall have entry rate provisions waived. Engineers hired/promoted after the effective date of the Agreement shall be subject to National Agreement rate progression provisions.
- I. Engineers protecting pool freight operations on the territories covered by this Agreement shall receive continuous held-away-from-home terminal pay (HAHT) for all time so held at the distant terminal after the expiration of sixteen (16) hours. All other provisions in existing agreement rules and practices pertaining to HAHT pay remain unchanged.
- J. Except where specific terminal limits have been detailed in the Agreement, is not intended to change existing terminal limits under applicable agreements.
- K. Actual miles will be paid for runs in the new Kansas City Hub. Examples are illustrated in Attachment "B".

#### **ARTICLE V - FAMILIARIZATION**

- A. Engineers involved in the consolidation of the Kansas City Hub covered by this Agreement whose assignments require performance of duties on a new geographic territory not familiar to them will be given full cooperation, assistance and guidance in order that their familiarization shall be accomplished as quickly as possible. Engineers will not be required to lose time or ride the road on their own time in order to qualify for these new operations.
- B. Engineers will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualification shall be handled with local operating officers. The parties recognize that different terrain and train tonnage impact the number of trips necessary and the operating officer assigned to the merger will work with the local Managers of Operating Practices in implementing this Section. If disputes occur under this Article they may be addressed directly with the appropriate Director of Labor Relations and the General Chairman for expeditious resolution.
- C. It is understood that familiarization required to implement the merger consolidation herein will be accomplished by calling a qualified engineer (or

Manager of Operating Practices) to work with an engineer called for service on a geographical territory not familiar to him.

- D. Engineers hired subsequent to the effective date of this document will be qualified in accordance with current FRA certification regulations and paid in accordance with the local agreements that will cover the merged Hub.

## **ARTICLE VI - IMPLEMENTATION**

- A. The Carrier will give at least thirty (30) days' written notice of its intent to implement this Agreement.
- B.
  - 1. Concurrent with the service of its notice, the Carrier will post a description of Zones 1, 2, 3 and 4 described in Article I herein.
  - 2. Ten (10) days after posting of the information described in B.1. above, the appropriate Labor Relations Personnel, CMS Personnel, General Chairmen and Local Chairmen will convene a workshop to implement assembly of the merged seniority rosters. At this workshop, the representatives of the Organization will construct consolidated seniority rosters as set forth in Article II of this Implementing Agreement.
  - 3. Dependent upon the Carrier's manpower needs, the Carrier may develop a pool of representatives of the Organization, with the concurrence of the General Chairmen, which, in addition to assisting in the preparation of the rosters, will assist in answering engineers' questions, including explanations of the seniority consolidation and implementing agreement issues, discussing merger integration issues with local Carrier officers and coordinating with respect to CMS issues relating to the transfer of engineers from one zone to another or the assignment of engineers to positions.
- C. The roster consolidation process shall be completed in five (5) days, after which the finalized agreed-to rosters will be posted for information and protest in accordance with the applicable agreements. If the participants have not finalized agreed-to rosters, the Carrier will prepare such rosters, post them for information and protest, will use those rosters in assigning positions, and will not be subject to claims or grievances as a result.
- D. Once rosters have been posted, those positions which have been created or consolidated will be bulletined for a period of seven (7) calendar days. Engineers may bid on these bulletined assignments in accordance with applicable agreement rules. However, no later than ten (10) days after closing of the bulletins, assignments will be made.

- E. 1. After all assignments are made, engineers assigned to positions which require them to relocate will be given the opportunity to relocate within the next thirty (30) day period. During this period, the affected engineers may be allowed to continue to occupy their existing positions. If required to assume duties at the new location immediately upon implementation date and prior to having received their thirty (30) days to relocate, such engineers will be paid normal and necessary expenses at the new location until relocated. Payment of expenses will not exceed thirty (30) calendar days.
2. The Carrier may, at its option, elect to phase-in the actual pool consolidations which are necessary in the implementation of this Agreement. Engineers will be given ten (10) days' notice of when their specific relocation/reassignment is to occur.

#### **ARTICLE VII - PROTECTIVE BENEFITS AND OBLIGATIONS**

- A. All engineers who are listed on the prior rights Kansas City Hub merged rosters shall be considered adversely affected by this transaction and consolidation and will be subject to the New York Dock protective conditions which were imposed by the STB. It is understood there shall not be any duplication or compounding of benefits under this Agreement and/or any other agreement or protective arrangement.
1. Carrier will calculate and furnish TPA's for such engineers to the Organization as soon as possible after implementation of the terms of this Agreement. The time frame used for calculating the TPA's in accordance with New York Dock will be August 1, 1996 through and including July 31, 1997.
2. In consideration of blanket certification of all engineers covered by this Agreement for wage protection, the provisions of New York Dock protective conditions relating to "average monthly time paid for" are waived under this Implementing Agreement.
3. Test period averages for designated union officers will be adjusted to reflect lost earnings while conducting business with the Carrier.
4. National Termination of Seniority provisions shall not be applicable to engineers hired prior to the effective date of this Agreement.
- B. Engineers required to relocate under this Agreement will be governed by the relocation provisions of New York Dock. In lieu of New York Dock provisions, an employee required to relocate may elect one of the following options:

1. Non-homeowners may elect to receive an "in lieu of" allowance in the amount of \$10,000 upon providing proof of actual relocation.
2. Homeowners may elect to receive an "in lieu of" allowance in the amount of \$20,000 upon providing proof of actual relocation.
3. Homeowners in Item 2 above who provide proof of a bona fide sale of their home at fair value at the location from which relocated shall be eligible to receive an additional allowance of \$10,000.
  - a) This option shall expire within five (5) years from date of application for the allowance under Item 2 above.
  - b) Proof of sale must be in the form of sale documents, deeds, and filings of these documents with the appropriate agency.

**NOTE:** All requests for relocation allowances must be submitted on the appropriate form.

4. With the exception of Item 3 above, no claim for an "in lieu of" relocation allowance will be accepted after two (2) years from date of implementation of this Agreement.
5. Under no circumstances shall an engineer be permitted to receive more than one (1) "in lieu of" relocation allowance under this Implementing Agreement.
6. Engineers receiving an "in lieu of" relocation allowance pursuant to this Implementing Agreement will be required to remain at the new location, seniority permitting, for a period of two (2) years.

#### **ARTICLE VIII - SAVINGS CLAUSES**

- A. The provisions of the applicable Schedule Agreement will apply unless specifically modified herein.
- B. It is the Carrier's intent to execute a standby agreement with the Organization which represents engineers on the former St. Joseph Union Terminal. Upon execution of that Agreement, said engineers will be fully covered by this Implementing Agreement as though the Organization representing them had been signatory hereto.
- C. Nothing in this Agreement will preclude the use of any engineers to perform work permitted by other applicable agreements within the new seniority districts described herein, i.e., yard engineers performing Hours of Service Law relief within the road/yard zone, pool and/or ID engineers performing

service and deadheads between terminals, road switchers handling trains within their zones, etc.

- D. The provisions of this Agreement shall be applied to all engineers covered by said Agreement without regard to race, creed, color, age, sex, national origin, or physical handicap, except in those cases where a bona fide occupational qualification exists. The masculine terminology herein is for the purpose of convenience only and does not intend to convey sex preference.

#### **ARTICLE IX - HEALTH AND WELFARE**

Engineers of the former UP who are working under the collective bargaining agreement designated in Article IV.A. of this Implementing Agreement belong to the Union Pacific Hospital Association. Former SSW/SPCSL engineers are presently covered under United Health Care (former Travelers GA-23000) benefits. Upon implementation of this Agreement, said former SSW/SPCSL engineers will be granted an option to elect the health and welfare coverage provided by the designated collective bargaining agreement. Any engineer who fails to exercise such option shall be considered as having elected to retain existing coverage.

#### **ARTICLE X - EFFECTIVE DATE**

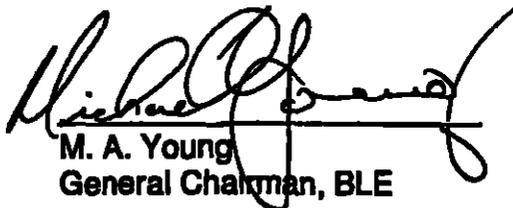
This Agreement implements the merger of the Union Pacific and SSW/SPCSL railroad operations in the area covered by Notice dated January 30, 1998.

Signed at DENVER, Co. this 2<sup>nd</sup> day of July, 1998.

**FOR THE BROTHERHOOD  
LOCOMOTIVE ENGINEERS:**



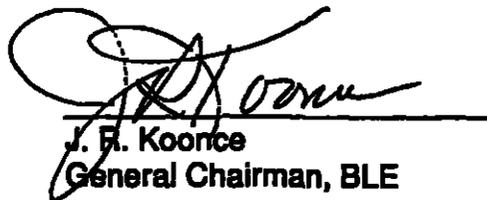
D. E. Penning  
General Chairman, BLE



M. A. Young  
General Chairman, BLE

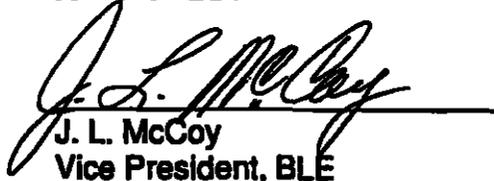


D. E. Thompson  
General Chairman, BLE

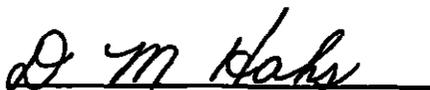


J. F. Koonce  
General Chairman, BLE

**APPROVED:**



J. L. McCoy  
Vice President, BLE

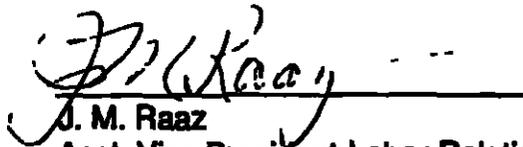


D. M. Hahs  
Vice President, BLE

**FOR THE CARRIERS:**



M. A. Hartman  
General Director-Labor Relations  
Union Pacific Railroad Co.



J. M. Raaz  
Asst. Vice President-Labor Relations  
Union Pacific Railroad Co.

July 2, 1998

MR D E PENNING  
GENERAL CHAIRMAN BLE  
12531 MISSOURI BOTTOM RD  
HAZELWOOD MO 63042

MR D E THOMPSON  
GENERAL CHAIRMAN BLE  
414 MISSOURI BLVD  
SCOTT CITY MO 63780

MR JOHN R KOONCE  
GENERAL CHAIRMAN BLE  
5050 POPLAR AVE STE 501  
MEMPHIS TN 38157

MR M A YOUNG  
GENERAL CHAIRMAN BLE  
1620 CENTRAL AVE RM 203  
CHEYENNE WY 82001

Gentlemen:

This refers to the Merger Implementing Agreement for the Kansas City Hub.

During our negotiations your Organization raised some concern regarding the intent of Article VIII - Savings Clauses, Item C thereof. Specifically, it was the concern of some of your constituents that the language of Item C might subsequently be cited to support a position that "other applicable agreements" supersede or otherwise nullify the very provisions of the Merger Implementing Agreement which were negotiated by the parties.

I assured you this concern was not valid and no such interpretation could be applied. I pointed out that Item C must be read in conjunction with Item A, which makes it clear that the specific provisions of the Merger Implementing Agreement, where they conflict with the basic schedule agreement, take precedence, and not the other way around.

The purpose of Item C was to establish with absolute clarity that there are numerous other provisions in the designated collective bargaining agreement, including national agreements, which apply to the territory involved, and to the extent such provisions were not expressly modified or nullified, they still exist and apply. It was not the intent of the Merger Implementing Agreement to either restrict or expand the application of such agreements.

In conclusion, this letter of commitment will confirm that the provisions of Article VIII - Savings Clauses may not be construed to supersede or nullify the terms of the Merger Implementing Agreement which were negotiated in good faith between the parties. I hope the above elaboration clarifies the true intent of such provisions.

Yours truly,

*M.A. Hartman*

M. A. Hartman  
General Director-Labor Relations

8

**MERGER IMPLEMENTING AGREEMENT  
Los Angeles Hub**

**between the**

**UNION PACIFIC  
SOUTHERN PACIFIC TRANSPORTATION COMPANY  
and  
BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

In Finance Docket No. 32760, the U.S. Department of Transportation, Surface Transportation Board ("STB") approved the merger of the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") and Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SP"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp., and The Denver & Rio Grande Western Railroad Company ("DRGW") (collectively referred to as "SP"). In approving this transaction, the STB imposed New York Dock labor protective conditions.

In order to achieve the benefits of operational changes made possible by the transaction, to consolidate the seniority of all engineers working in the territory covered by this Agreement into one common seniority district covered under a single, common collective bargaining agreement

**IT IS AGREED:**

**I. Los Angeles Hub**

A new seniority district shall be created that encompasses the following area: UP territory including milepost 164.42 East of Yermo westward to end of track in the Los Angeles Basin and SP territory from (not including) Santa Barbara and milepost 460.0 at (including) Hivolt, and between Burbank Jct and Palmdale Jct, East to milepost 731.5 at (not including) Yuma including all tracks in the Los Angeles Basin and shall include all main and branch lines, industrial leads and stations between the points identified.

**NOTE 1:** Engineers with home terminals within the hub may work to points outside the Hub without infringing on the rights of other engineers in other Hubs and engineers outside the Hub may work to points inside the Hub without infringing on the rights of engineers inside the Los Angeles Hub. The Hub identifies the on duty points for assignments and not the boundaries of assignments. ( This note is further explained in side letter No. 3)

## **II. Seniority and Work Consolidation.**

The following seniority consolidations will be made:

**A. A new seniority district will be formed and a master Engineer roster(s) shall be created for the Los Angeles Hub for the engineers on the current SP seniority roster and the current UP Seniority roster and PE Seniority roster or on a SP auxiliary board from a point inside the Hub but working outside the Hub or UP engineer borrowed out to other locations that will return to the Hub upon release. It does not include borrow outs or auxiliary board engineers to the Hub, if any. All such engineers must be on one of these rosters or in training on January 13, 1998.**

**B. The new roster will be created as follows:**

- 1. UP, SP and PE Engineers will be dovetailed based upon the current engineer seniority date within the Hub. This shall include any engineer working in trainman/fireman service with an engineer's seniority date. If this process results in engineers having identical seniority dates, seniority ranking will be determined by the engineer's earliest retained hire date with the Carrier.**
- 2. All engineers who entered training after January 13, 1998 and are promoted in the Hub after January 13, 1998 will be considered common engineers(holding no prior rights), and placed on the bottom of the roster. Those engineers who entered training prior to January 13, 1998 and are promoted after that date will be entitled to any prior rights set forth in this agreement. This includes those who entered training and have been hostling.**
- 3. All engineers placed on the rosters may work all assignments protected by the roster in accordance with their seniority and the provisions set forth in this Agreement.**
- 4. Engineers placed on the Los Angeles Hub Roster shall relinquish all seniority outside the new roster area upon implementation of this Agreement and all seniority inside the Los Angeles Hub held by engineers outside the Hub shall be eliminated.**
- 5. For the purposes of prior rights, SP San Joaquin engineers who remain in the LA Hub, SP Los Angeles and PE engineers will be dovetailed into one SP prior right roster.**

**NOTE: San Joaquin engineers who have a right in the Roseville Hub Agreement to bid and relocate on assignments where work is moved will**

continue to do so in accord with those agreement provisions. Until that time they shall remain on the LA Hub roster.

**C. Engineers who are on an authorized leave of absence or who are dismissed and later reinstated will have the right to displace to the appropriate roster, provided his/her seniority at time of displacement would have permitted him/her to hold that selection. The parties will create an inactive roster for all such engineers until they return to service in a Hub or other location at which time they will be placed on the appropriate seniority rosters and removed from the inactive roster.**

**D. Prior rights and dovetail rights shall be governed by the following:**

- 1. Until new extra boards are established the current ones shall be prior righted and protect the same assignments that they protected pre-merger. Once new extra boards are established they shall be filled from the dovetail rosters.**
- 2. Road switchers and work trains that go on duty at pre-merger points that were clearly an SP or a UP point shall be filled using the prior right roster.**
- 3. Road Switchers, local freights and work trains that go on duty at a pre-merger point that was a joint location or at a point where on duty points are consolidated, shall be filled as follows:**

<b>Harbor area:</b>	<b>70% SP and 30% UP</b>
<b>City of Industry</b>	<b>75% SP and 25% UP</b>

Engineers will be required to fill their prior right positions in the pre merger part of the above two areas first. For example, UP engineers will fill Paramount and Mead positions if available prior to former SP positions in the Harbor area.

**NOTE: When on duty points of the two former Carriers are consolidated a ten (10) day advance notice will be given.**

- 4. Locals that run to or from Yermo shall be prior righted to the UP roster regardless of the on duty point. Locals that run West (such as Oxnard, Gemco, Palmdale and Santa Barbara) to pre merger SP destinations shall be prior righted to the SP roster regardless of the on duty point. This does not apply to locals that run to the Harbor area as that has been a joint area. All other locals shall be prior righted based on the on duty point.**
- 5. Extra work trains shall be filled from the extra boards.**

6. **Victorville helpers shall be UP prior righted and Colton Helpers shall be SP prior righted**
7. **Except as otherwise provided for in this agreement, all assignments at LATC/East Yard shall be prior righted on a 50/50 percentage basis per shift, at West Colton they shall be SP prior righted and at Yermo they shall be UP prior righted. Any new facility assignments established at other locations after the merger shall be filled from the dovetail roster (This does not apply to expansions of existing facilities)**
8. **Pools that run only to Yermo shall be UP prior righted and pools that run only to Yuma and/or Indio shall be SP prior righted up to the baseline number for the specific destination. The baseline number shall be 99(SP) and 37(UP). (The numbers 99 and 37 come from the number of pool turns the respective properties have had for the past two years). Turns above the baseline number shall be filled in one of the two following methods:**
  - a. **If either the UP or SP drop below the baseline by a minimum of three turns and the other pools increase by a minimum of three then the Local Chairman may request that the increase in turns, up to the number decreased in the other pools, be prior righted to the roster that lost the turns. These turns will be the first ones whose prior rights are phased out in E, 2, below**
  - b. **All increases not filled by a, above shall be filled from the dovetail roster.**
9. **In determining the baseline, the SP shall add up the number of turns that go to Indio and Yuma, whether from West Colton or LATC/East Yard and subtract from that 35 (which represents their premerger portion of the West Colton-Basin Pool). The UP shall add up the number of turns that go to Yermo, whether from the West Colton or LATC/East Yard and subtract 9 (which represents their premerger portion of the West Colton-Basin Pool). Since there is more than one pool the Local Chairman shall designate how the prior right turns are allocated between the pools and once designated they cannot be changed.**

**Example:** The SP baseline is 99. After implementation the West Colton-Yuma pool has 45 turns and the LATC/East Yard-Yuma pool has 25. The total is 70. When one adds the 35 allocated to the West Colton-Basin pool the total comes to 105. This is 6 over the baseline. The Local Chairman must designate how many of the 45 and 25 turns are prior righted leaving six non prior right turns. If he designates all 25 in the LATC/East Yard and 39 in the West Colton pools then he cannot later change the designation

10. The West Colton-Basin pool shall be prior righted on an 80(SP)/20(UP) basis up to the number 44 and shall be filled on a dovetailed basis after that number. The attached chart shows the specific job allocation.
11. Assignments at Yuma, both regular and extra board, protected by the West Colton source of supply shall be governed as follows:
  - a. The assignments shall be prior righted to SP engineers holding seniority in the Los Angeles Hub on the day this agreement is implemented
  - b. If an assignment goes no bid/application then it shall be filled by an engineer from the adjoining Hub.
  - c. LA Hub SP prior right engineers shall have bid/application rights to vacancies on these assignments and shall not have displacement rights to them if they are held by an engineer from the adjoining Hub for a period of time not to exceed 6 months from the date the engineer from the other Hub holding the assignment is assigned, unless the 6 month period of time is waived by the engineer holding the assignment.

**NOTE:** These provisions shall become applicable when the adjoining area is under a merger agreement/award.

12. Engineers who are on assignments on the day of implementation shall remain on those assignments unless they make application to another vacancy or are displaced by engineers with displacement rights under the controlling CBA This agreement does not create displacement rights due to its implementation.
- E. Prior rights shall be phased out on the following basis:**
1. Non pool freight prior right assignments shall have the prior rights phased out at the rate of 25% per year beginning with the start of year eight and 25 % with the start of year nine. The local chairman shall designate in writing 30 days prior to the end of each year the assignments that will no longer be prior righted the next year. Failure to do so will result in the Carrier selecting the assignments. The remaining prior rights (50%) shall be phased out through attrition.
  2. Pool freight prior right assignments shall have the prior rights phased out at the rate of 25% per year beginning with the start of year eight and 25 % with the start of year nine. The remaining prior rights (50%) shall be phased out through attrition.

3. Yuma positions shall be prior righted until attrited.

### **III. POOL OPERATIONS/ASSIGNED SERVICE**

The following operations may be instituted:

**A. West Colton-Yermo and West Colton-Yuma** - These operations will be run as separate pools. Trains originating or terminating at Mira Loma may be operated by West Colton engineers with the on and off duty point at West Colton. Engineers in this pool that take trains to and from Mira Loma shall be governed as follows:

1. This only applies when engineers go through Riverside and does not permit West Colton pool engineers to run through West Colton to Pomona and then back down the Riverside line to Mira Loma.
2. Engineers in the West Colton-Yuma pool shall be paid actual miles between Mira Loma and Yuma.
3. Engineers in the West Colton-Yermo pool with a trainman/engineman seniority date subsequent to October 31, 1985 shall be paid a 30 minute arbitrary in addition to all other payments when delivering or receiving trains at Mira Loma. Should the engineer receive the train on the outbound trip and deliver one on the return trip then they shall be entitled to two 30 minute payments.
4. Engineers on duty time shall begin and end at West Colton and not at Mira Loma.
5. If pool engineers hostler their power to and from Mira Loma they shall be paid the mileage from West Colton to Mira Loma.
6. For those eligible engineers, ITD shall be computed from the time on duty at West Colton until departure is made from Mira Loma and FTD shall be computed from the time the engineer "yards" the train at Mira Loma and ties up at West Colton. This does not change the method used to calculate ITD and FTD but identifies that Mira Loma will be considered "in the terminal" for these calculations.

**B. LATC/EAST YARD-Yermo/Yuma** - These operations shall be run as two separate pools, one to Yuma and one to Yermo.

**NOTE:** The parties recognize that traffic disruption due to track work, and potential temporary line closures for other reasons, may result in several trains using alternate routes in A and B above. In these instances, CMS shall contact the Local Chairman, and engineers from the route with reduced

traffic shall be called to operate on the other line with calls being alternated between the two pools.

**C. West Colton- Basin** - These operations shall be run as one pool or a combination of pool service, with the home terminal at West Colton, and assigned service. Assigned service shall designate the home and away from home terminal. Assigned service shall have a single away from home terminal for each assignment. The pool shall have three away from home terminals of; the combined SP/UP LATC/LA East Yard terminal/LA/Long Beach Harbor area, Anaheim, and Gemco. This pool may be run as straight away with engineers tying up at the far terminal or as turn around. Service to City of Industry shall be run as turn around service with the engineer working or being deadheaded in combination service back to West Colton at the end of the tour of duty.

**NOTE:** The Carrier shall give a ten day notice for the implementation of service in (A),(B), and (C), above if not given in the notice to implement this Hub agreement. Notice may be given individually or for more than one operation. Operations in place prior to the implementation of this Agreement shall continue until the Carrier serves notice to implement new operations and abolish old operations or the BLE exercises the cancellation clauses of the flat rate agreements.

**D.** Any pool freight, local, work train, hostler or road switcher service may be established in accordance with the controlling CBA.

**E.** None of the engineers in (A) through (D) above shall be restricted, in or between the terminals of their assignment, as to where they may set out or pick up cars or leave or receive their train. The type and amount of work shall be governed by the controlling CBA. All engineers may operate over any and all tracks and alternate routings between locations.

#### **IV. EXTRA BOARDS**

**A.** The Carrier may establish extra boards at any location in accordance with the governing CBA. The Carrier will give a thirty day notice of the consolidation of pre-merger extra boards and the notice provisions of the governing CBA shall be used in the establishment of new extra boards.

**B.** If there are no rested and available West Colton pool engineers at the away from home points LATC and the Harbor area, then the closest extra board may be used to work trains back to West Colton. When so used they will not be tied up at West Colton but will deadhead back to their on duty point. If sufficient traffic exists to warrant a pool to protect this service then a pool shall be established. The use of this pool shall be ahead of using a West Colton engineer in combination deadhead service.

**C. Exhausted extra boards.**

1. If one of the above extra boards is exhausted, then another (secondary) extra board may be used prior to using other sources of supply. Secondary extra boards shall be identified by bulletin.
2. An engineer called from his/her extra board for an assignment in another area not principally covered by their extra board shall be handled as follows:
  - a. Pay received for this assignment shall not be used as an offset for extra board guarantee but shall be in addition to, however, it shall be used in computing whether the engineer is entitled to protection pay at the end of the month.
  - b. An engineer unavailable at time of call for secondary assignments shall have a deduction made in their extra board guarantee in accordance with the extra board agreement and shall have an offset to their protection in accordance with the protection offset provisions. If miss called for secondary calls, the engineer shall not be placed on the bottom of the board but will hold his/her place.
  - c. An engineer unavailable at time of call for secondary assignments shall not be disciplined.

**D.** On a temporary basis, until the Yuma area is under a merger agreement/award that provides for the consolidated Yuma extra board to cover El Centro vacancies and Yuma based assignments, The LA Hub extra board at Yuma will continue to protect all assignments that it protected pre-merger.

**V. TERMINAL AND OTHER CONSOLIDATIONS**

**A.** The SP LATC and UP LA East Yard shall be combined into a single terminal covering the existing terminal limits for each Carrier and the connecting trackage between the two terminals. Yard engineers shall not be restricted as to where in the terminal they can operate.

**B.** The provisions of A above will not be used to enlarge or contract the current limits except to the extent necessary to combine into a unified operation.

**C.** In the LA Hub, prior to this implementing Agreement, there existed several trackage rights, stations and Harbor areas used by both Carriers. With the implementation of this Agreement all areas, trackage, stations and facilities in the Hub shall be common

to all engineers as a single unified system. Engineers shall not be restricted in the Hub where they can operate except on the basis of CBA provisions that set forth limits of an assignment such as the radius of a road switcher.

D. **Riverside Line** - When heading west, trains that pass Colton Crossing onto the Riverside line may be operated by West Colton-Basin crews as if "in the terminal". When heading East, trains that reach Streeter, a point directly south of West Colton on the Riverside line, may be operated by West Colton-Yuma or West Colton Yermo crews as if "in the terminal". This does not apply to Mira Loma trains as those trains have separate provisions.

## **VI. AGREEMENT COVERAGE**

### **A. General Conditions for Terminal Operations.**

1. Initial delay and final delay will be governed by the controlling collective bargaining agreement, including the Duplicate Pay and Final Terminal Delay provisions of the 1986 and 1991 National and Implementing Agreements and awards
2. Engineers will be transported to/from their trains to/from their designated on/off duty point in accordance with Article VIII, Section 1 of the May 1986 National Agreement. The Carrier shall designate the on/off duty points for engineers.
3. The current application of National Agreement provisions regarding road work and Hours of Service relief under the combined road/yard service Zone, shall continue to apply. Yard engineers at any location within the Hub may perform such service in all directions out of their terminal.

### **B. General Conditions for Pool/Assigned Operations In Article III.**

1. The terms and conditions of the pool operations set forth in Article III (A), and (B) shall be the same except where specifically provided otherwise in those Sections. The terms and conditions are those of the surviving collective bargaining agreement as modified by subsequent national agreements, awards and implementing documents and those set forth in this Agreement.
2. The terms and conditions of the pool and assigned service in Article III (C) shall be as follows:
  - a. The pool shall operate first in/first out at the home terminal.

- b. **Engineers, if operated in pool service to Gemco and Anaheim, shall be operated first in/first out at each away from home location.**
- c. **Engineers operated to LATC/LA East yard and the Harbor shall be treated as one pool, stay at the same lodging facility and shall operate first in/first out from the far terminal for calls to either LATC/LA East yard or the Harbor to return to West Colton. The lodging facility shall be the on and off duty point for this pool when at the away from home point.**
- d. **Pool engineers shall be paid in accordance with Sections 1,2,5, and 6 of the flat rate road switcher agreement effective September 16, 1996. The flat rate for these assignments shall be \$300.00/engineer. These payments shall be inclusive of any payments for not stopping to eat. When given a call and release, the call and release rules shall apply for engineers in this pool in lieu of the flat rate**
- e. **In addition, that agreement shall be amended so that the cancellation clause shall be a one year notice unless the hours of service is changed from the current 12 hour provisions, in which case the cancellation notice shall be a 30 day notice. If canceled then the engineers shall be paid in accordance with pool freight service conditions based on the miles of the assignments.**
- g. **Other payments made to the pool engineers will be in accordance with the held way from home provisions, overtime after 12 hours, the 25 mile zone payments, payments that are applicable when another person is in the cab such as an employee in training and runarounds of the governing CBA. The held time payment shall be made at the rate as provided in section 5(a) of the agreement (156.11) subject to all future wage and cola adjustments.**
- h. **If there is both pool service and assigned service to the same location, they shall not be combined at the far terminal but shall operate independently from each other for the return trip.**
- i. **Local freight assignments shall operate under local freight work and pay rules.**
- j. **Separate and apart deadheading shall be paid in accordance with the National Agreement provisions and shall not be paid the flat rate. Separate and apart deadheading shall be from the home or away from home point to the away from home or home point when not**

connected with service. It does not include any deadheading in connection with service that would be covered in the flat rate.

k. Unless canceled sooner than the implementation date of this agreement, Agreement E&F 188-138 dated January 5, 1995 and all side letters and Questions and Answers to it are cancelled with the implementation of this agreement.

3. **Twenty-Five Mile Zone** - As provided in the note below, pool engineers may receive their train up to twenty-five miles on the far side of the terminal and run on through to the scheduled terminal. Engineers shall be paid an additional one-half (½) basic day for this service in addition to the miles run between the two terminals. If the time spent in this zone is greater than four (4) hours, then they shall be paid on a minute basis.

**NOTE 1:** This provision will apply at Yermo and Yuma for all pool engineers and at West Colton for LA Hub and Bakersfield pool engineers (only on trains that have not reached West Colton from Bakersfield, Yermo and Yuma). It does not apply to trains that have not reached West Colton from the West.

**NOTE 2.** The Twenty five mile zone towards Yermo and Yuma shall be measured from Colton Crossing which shall extend to milepost 563.7 towards Yuma.

4. **Turnaround Service/Hours of Service Relief** Except as provided in (3) above, *turnaround service/hours of service relief at both home and away* from home terminals shall be handled by extra boards, if available, prior to using pool engineers. Engineers used for this service may be used for multiple trips in one tour of duty in accordance with the designated collective bargaining agreement rules. Extra boards may handle this in all directions out of a terminal.

5. Nothing in this Section B (3) and (4) prevents the use of other engineers to perform work currently permitted by prevailing agreements, including, but not limited to yard engineers performing Hours of Service relief within the road/yard zone, ID engineers performing service and deadheads between terminals, road switchers handling trains within their zones and using a engineer from a following train to work a preceding train and payments required by the controlling CBA shall continue to be paid when this work is performed.

**C. Agreement Coverage** - Engineers working in the Los Angeles Hub shall be governed, in addition to the provisions of this Agreement, by the Collective Bargaining Agreement selected by the Carrier, including all addenda and side letter agreements pertaining to that agreement and previous National Agreement/Award/Implementing Document provisions still applicable. Except as specifically provided herein the system and national collective bargaining agreements, awards and interpretations shall prevail. None of the provisions of these agreements are retroactive. The Carrier has selected the SP WEST modified BLE Agreements.

## **VII. PROTECTION.**

**A.** Due to the parties voluntarily entering into this agreement the Carrier agrees to provide New York Dock wage protection (automatic certification) to all prior right engineers who are listed on the Los Angeles Hub Merged Rosters and working an assignment (including a Reserve Board) on January 13, 1998. (The term working shall also include those engineers disciplined and later returned to work and those full time Union Officers should they later return to service with the Carrier.) This protection will start with the effective (implementation) date of this agreement. The engineers must comply with the requirements associated with New York Dock conditions or their protection will be reduced for such items as layoffs, bidding/displacing to lower paying assignments when they could hold higher paying assignments, etc. Protection offsets due to unavailability are set forth in the Questions and Answers and side letter #1.

**B.** This protection is wage only and hours will not be taken into account.

**C.** Engineers required to relocate under this agreement will be governed by the relocation provisions of New York Dock. In lieu of New York Dock provisions, engineers required to relocate may elect one of the following options:

- 1.** Non-homeowners may elect to receive an "in lieu of" allowance in the amount of \$10,000 upon providing proof of actual relocation.
- 2.** Homeowners may elect to receive an "in lieu of" allowance in the amount of \$20,000 upon providing proof of actual relocation.
- 3.** Homeowners in Item 2 above, who provide proof of a bona fide sale of their home at fair value at the location from which relocated, shall be eligible to receive an additional allowance of \$10,000.

**(a)** This option shall expire five (5) years from date of application for the allowance under Item 2 above.

(b) Proof of sale must be in the form of sale documents, deeds, and filings of these documents with the appropriate agency.

4. With the exception of Item 3 above, no claim for an "in lieu of" relocation allowance will be accepted after two (2) years from date of implementation of this agreement.

**NOTE:**The two (2) year provision of this paragraph (4) shall be extended for engineers if operations affecting those engineers are not instituted until less than ninety (90) days remain in the two year period. If not instituted within 21 months of implementation then affected engineers shall have a one year extension from the date operations are instituted to request an "in Lieu of" payment.

5. Engineers receiving an "in lieu of" relocation allowance pursuant to this implementing agreement will be required to remain at the new location, seniority permitting, for a period of two (2) years.

6. In addition to those engineers required to relocate, engineers at the location where assignments are relocated from shall be treated as required to relocate under this Agreement, seniority governing, on a one for one basis equal to the number of assignments transferred. Once the number of in lieu of allowances are granted equal to the number of assignments transferred all other moves associated with the specific number of assignments transferred will not be eligible for any moving allowance. The following is a list of assignments that will be transferred:

- a. Assignments to West Colton for the West Colton-Basin pool/assigned service.
- b. Assignments to West Colton for the West Colton-Yermo pool.
- c. Assignments to LATC for the LATC-Yuma pool.
- d. Extra board assignments in connection with the above moves. Engineers who are augmenting an extra board from a regular extra board shall be considered as assigned at the regular extra board point for determining whether relocation provisions shall apply.

- D. There will be no pyramiding of benefits.

E. National Termination of Seniority provisions shall not be applicable to Engineers hired prior to the effective date of this agreement.

F. Engineers will be treated for vacation, payment of arbitraries and personal leave days as though all their service on their original railroad had been performed on the

merged railroad. Engineers assigned to the Los Angeles Hub seniority roster with a seniority date prior to January 13, 1998 shall have entry rate provisions waived and engineers hired after that date shall be subject to the rate progression provisions of the controlling CBA. Those engineers leaving the Los Angeles Hub will be governed by the CBA where they then work.

## **VIII. FAMILIARIZATION**

**A.** Engineers involved in the consolidation of the Los Angeles Hub covered by this Agreement whose assignments require performance of duties of a new geographic territory not familiar to them will be given familiarization opportunities as quickly as possible. Engineers will not be required to lose time or ride the road on their own time in order to qualify for these new operations.

**B.** Engineers will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualification shall be handled with local operating officers. The parties recognize that different terrain and train tonnage impact the number of trips necessary and an operating officer will be assigned to the merger that will work with the local managers of Operating Practices in implementing this Section. If disputes occur under this Agreement they may be addressed directly with the appropriate Director of Labor Relations and the General Chairman for expeditious resolution.

**C.** It is understood that familiarization required to implement the merger consolidation herein will be accomplished by calling a qualified engineer (or qualified Manager of Operating Practices) to work with an engineer called for service on a geographical territory not familiar to the engineer.

**D.** Engineers who work their assignment (road or yard) accompanied by an engineer taking a familiarization trip shall be paid one (1) hour at the pro rata rate, in addition to all other earnings for each tour of duty. This payment shall not be used to offset any extra board payments. The provision of 3 (a) and (b) Training Conditions of the System Instructor Engineer Agreement shall apply to the regular engineer when the engineer taking the familiarization trip operates the locomotive.

**E.** Locomotive engineers will not be required to make the decision on whether or not an engineer being familiarized is sufficiently familiarized for the territory.

**F.** An engineer concerned about familiarization on his/her assignment must contact a Manager Operating Practices prior to being called to resolve the concerns.

**IX. IMPLEMENTATION**

The Carrier shall give 30 days written notice for implementation of this agreement and the number of initial positions that will be changed in the Hub. Thereafter implementation provisions of the various articles shall govern any further changes.

**X. HEALTH AND WELFARE**

A. Engineers currently are under either the National Plan or the Union Pacific Hospital Association. Engineers coming under a new CBA will have six months from the implementation of this agreement to make an election as to keeping their old coverage or coming under the coverage of their new CBA. Engineers who do not make an election will have been deemed to elect to retain their current coverage. Engineers hired after the date of implementation will be covered under the plan provided for in the surviving CBA.

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_ 1998.

**For the Organization:**

**For the Carrier:**

*[Signature]* 11-18-98  
General Chairman BLE UP

*[Signature]* 11-18-98  
General Director Labor Relations

*[Signature]* 11-18-98  
General Chairman BLE SPWest

*[Signature]* 11-23-98  
General Chairman BLE PE

*[Signature]* 11-20-98  
Vice-President BLE

*[Signature]* 11-23-98  
Vice-President BLE

9

**IMPLEMENTING AGREEMENT  
(Longview Hub)**

between the

**UNION PACIFIC RAILROAD COMPANY**

**SOUTHERN PACIFIC TRANSPORTATION COMPANY**

and the

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

**PREAMBLE**

The U.S. Department of Transportation, Surface Transportation Board ("STB") approved the merger of the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") and Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp., and the Denver & Rio Grande Western Railroad Company ("DRGW") (collectively referred to as "SP") in Finance Docket 32760. In approving this transaction, the STB imposed New York Dock labor protective conditions. Copy of the New York Dock conditions is attached as Attachment "A" to this Agreement.

Subsequent to the filing of Union Pacific's application but prior to the decision of the STB, the parties engaged in certain discussions which focused upon Carrier's request that the Organization support the merger of UP and SP. These discussions resulted in the parties exchanging certain commitments, which were outlined in letters dated March 8 (2), March 9 and March 22, 1996.

On May 14, 1997, the Carriers served notice of their intent to merge and consolidated operations generally in the following territories:

Union Pacific: Longview to Ft. Worth (not including Mesquite or Ft. Worth or any stations between Mesquite and Ft. Worth.)

Longview to Livonia (not including Alexandria or Livonia)

Longview to Valley Junction (not including Valley Junction or Hearne)

Texarkana Terminal  
Palestine, TX  
Troup, TX

Southern Pacific: Big Sandy to Hearne (not including Hearne)

Big Sandy to Dallas (not including Mesquite or Dallas or any station between Mesquite and Dallas).

Texarkana to Sulphur Springs (end of track) via the SSW Commerce Subdivision

Texarkana Terminal  
Lewisville, AR

Pursuant to Section 4 of the New York Dock protective conditions, in order to achieve the benefits of operational changes made possible by the transaction and to modify collective bargaining agreements to the extent necessary to obtain those benefits,

**IT IS AGREED:**

**ARTICLE I - WORK AND ROAD POOL CONSOLIDATIONS**

The following work/road pool consolidations and/or modifications will be made to existing runs.

A. Zone 1 - Seniority District

Territory Covered: Longview to Livonia (not including Longview, Alexandria or Livonia).

The above includes all main lines, branch lines, industrial leads, yard tracks and stations between or located at the points indicated. Where the phrase "not including" is used above, it refers to other than through freight operations, but does not restrict through freight engineers from operating into/out of such terminals/points or from performing work at such terminals/points pursuant to the designated collective bargaining agreement provisions.

1. Pool freight operations between Longview and Livonia shall be protected by either a long pool or two short pools. The long pool shall operate Longview to Livonia with Longview as the home terminal. The short pool will consist of:

- a. One pool operating Longview to Shreveport, with Shreveport

as the home terminal, and

- b. One pool operating Shreveport to Livonia, with Shreveport as the home terminal.

For the first 90-day period following implementation of this Agreement all pool freight operations shall be protected by the short pools. Thereafter, Carrier may advertise turns in the long pool at Longview as operational and business conditions warrant. Any engineers required to relocate to Longview as a result of the institution of long pool operations shall be covered by the relocation provisions of this Agreement.

- 2. Engineers in this pool will be provided lodging at the away from home terminal pursuant to existing agreements and the Carrier shall provide transportation to engineers between the on/off duty location and the designated lodging facility.
- 3. Any road switcher/zone local or local service may be established to operate from any point to any other point within the seniority district pursuant to the designated collective bargaining agreement provisions. This provision is not intended to modify existing agreements currently in force, if any, which require maintenance of local service over certain specified territories.
- 4. At Longview, engineers called to operate pool freight service to Shreveport or Livonia may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through Longview to their destination without claim or complaint from any other engineer. At Shreveport, engineers called to operate pool freight service to Longview or Livonia may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through Shreveport to their destination without claim or complaint from any other engineer. When so used, the engineer shall be paid an additional one half ( $\frac{1}{2}$ ) day at the basic pro rata through freight rate for this service in addition to the district miles of the run. If the time spent beyond the terminal under this provision is greater than four (4) hours, then they shall be paid on a minute basis at the basic pro rata through freight rate.
- 5. All road switcher/zone local and yard assignments at Marshall, Reisor, Lewisville or Shreveport shall be protected by engineers from this seniority zone. Any such assignments, including irregular assignments (i.e., work train, wreck train, etc.) between Longview and Livonia (excluding Longview and Alexandria yards) shall be protected by engineers from this seniority zone.

6. All UP and SSW operations within the Shreveport terminal limits shall be consolidated into a single operation. For purposes of leaving or receiving road trains, the terminal limits of Shreveport shall be extended westward to include Reisor. The westward limits shall extend to Mile Post 323.8 on the UP Alexandria Subdivision. Other Shreveport terminal limits remain unchanged. All existing yard assignments at Shreveport may be converted to road switcher/zone local assignments at the Carrier's option. All road engineers may leave or receive their trains at any location within the terminal and may perform work within the terminal pursuant to the designated collective bargaining agreement provisions. The Carrier will designate the on/off duty points for all engineers, with these on/off duty points having appropriate facilities as currently required in the collective bargaining agreement.
7. All rail lines, yards and/or sidings within or at Shreveport will be considered as common to all engineers working in, into and out of Shreveport.

**B. Zone 2 - Seniority District**

**Territory Covered: Longview to Valley Junction (not including Longview, Valley Junction or Hearne)**

**Big Sandy to Hearne (not including Hearne)**

The above includes all main lines, branch lines, industrial leads, yard tracks and stations between or located at the points indicated. Where the phrase "not including" is used above, it refers to other than through freight operations, but does not restrict through freight engineers from operating into/out of such terminals/points or from performing work at such terminals/points pursuant to designated collective bargaining agreement provisions.

1. All Longview-Valley Junction and Big Sandy-Hearne pool operations shall be combined into one (1) pool with Longview as the home terminal. Valley Junction/Hearne will serve as the away from home terminal. Engineers in this pool may operate between Longview/Big Sandy and Valley Junction/Hearne via any combination of former UP and SSW trackage between these points. Crews going on duty at Longview and taking charge of their trains at Big Sandy or leaving their trains at Big Sandy and going off duty at Longview will be paid full district miles between Longview and Valley Junction/Hearne.
2. Engineers in this pool will be provided lodging at the away from home terminal pursuant to existing agreements and the Carrier shall provide transportation to engineers between the on/off duty location and the designated lodging facility.

3. Any road switcher/zone local or local service may be established to operate from any point to any other point within the seniority district pursuant to the designated collective bargaining agreement. This provision is not intended to modify existing agreements currently in force, if any, which require maintenance of local service over certain specified territories.
4. At Longview or Big Sandy, engineers called to operate pool freight service to Valley Junction/Hearne may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through Longview or Big Sandy to their destination without claim or complaint from any other engineer. At Valley Junction/Hearne, engineers called to operate through freight service to Big Sandy/Longview may receive the train for which they were called up to twenty five (25) miles on the far side of the terminal and run back through Valley Junction/Hearne to their destination without claim or complaint from any other engineer. When so used, the engineer shall be paid an additional one-half ( $\frac{1}{2}$ ) day at the basic pro rata through freight rate for this service in addition to the district miles of the run. If the time spent beyond the terminal under this provision is greater than four (4) hours, then they shall be paid on a minute basis at the basic pro rata through freight rate.
5. All road switcher/zone local and yard assignments at Tyler, Troup, Corsicana, Palestine or Big Sandy shall be protected by engineers from this seniority zone. Any such assignments, including irregular assignments (i.e., work train, wreck train, etc.) between Longview and Valley Junction (excluding Longview and Hearne) or Big Sandy and Hearne shall be protected by engineers from this seniority zone.
6. Tyler terminal limits shall be extended to include the UP Tyler Industrial Lead between Mile Posts 8.0 and 26.3 (end of track). Pre-existing SSW Tyler Terminal limits remain unaffected. Upon implementation of this Agreement, Tyler will cease to function as a crew change location for through freight operations. Interchange rules are not applicable for intra-carrier moves within the terminal.
7. Any demarcation between former SP and SSW yards at Corsicana shall be extinguished and such yards shall be combined into a unified operation. Corsicana terminal limits shall extend between Mile Posts 208.0 and 211.0 on the SP Dallas Subdivision and to Mile Post 618.0 on the SSW Ennis Subdivision.
8. The terminal limits of Longview shall extend between Mile Posts 88.5 and 96.2 on the UP Dallas Subdivision and to Mile Post 1.9 on the UP Palestine Subdivision. The terminal limits of Big Sandy shall extend between Mile Posts 524.0 and 527.0 on the SSW Pine Bluff

**Subdivision and between Mile Posts 112.5 and 114.5 on the UP Dallas Subdivision.**

**C. Zone 3 - Seniority District**

**Territory Covered: Longview to Ft. Worth (not including Mesquite or Ft. Worth or any stations between Mesquite and Ft. Worth)**

**Big Sandy to Dallas (not including Mesquite or Dallas or any stations between Mesquite and Dallas)**

**Texarkana to Sulphur Springs (end of track) via SSW Commerce Subdivision**

**The above includes all main lines, branch lines, industrial leads, yard tracks and stations between or located at the points indicated. Where the phrase "not including" is used above, it refers to other than through freight operations, but does not restrict through freight engineers from operating into/out of such terminals/points or from performing work at such terminals/points pursuant to designated collective bargaining agreement provisions.**

- 1. All Longview to Ft. Worth pool operations shall be combined into one (1) pool with Longview as the home terminal. Dallas/Ft. Worth will serve as the destination terminal. Engineers in this pool may operate between Longview and Ft. Worth via any combination of former UP or SSW trackage. Crews going on duty at Longview and taking charge of their trains at Big Sandy or leaving their trains at Big Sandy and going off duty at Longview will be paid full district miles between Longview and Ft. Worth.**
- 2. Engineers in this pool will be provided lodging at the away from home terminal pursuant to existing agreements and the Carrier shall provide transportation to engineers between the on/off duty location and the designated lodging facility.**
- 3. Any road switcher/zone local or local service may be established to operate from any point to any other point within the seniority district pursuant to the designated collective bargaining agreement. This provision is not intended to modify existing agreements currently in force, if any, which require maintenance of local service due to certain specified territories.**
- 4. Upon implementation of this Agreement, Mineola and Texarkana will cease to function as terminals for through freight operations and become stations en route.**

5. At Longview or Big Sandy, engineers called to operate through freight service between Longview and Ft. Worth may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through Longview or Big Sandy to their destination without claim or complaint from any other engineer. When so used, the engineer shall be paid an additional one half (½) day at the basic pro rata through freight rate for this service in addition to the district miles of the run. If the time spent beyond the terminal under this provision is greater than four (4) hours, then they shall be paid on a minute basis at the basic pro rata through freight rate.
6. The terminal limits of Longview shall extend between Mile Posts 88.5 and 96.2 on the UP Dallas Subdivision and to Mile Post 1.9 on the UP Palestine Subdivision. The terminal limits of Big Sandy shall extend between Mile Posts 524.0 and 527.0 on the SSW Pine Bluff Subdivision and between Mile Posts 112.5 and 114.5 on the UP Dallas Subdivision.
7. All road switcher/zone local and yard assignments at Texarkana, Mt. Pleasant, Longview or Mineola shall be protected by engineers from this seniority zone. Any such assignments, including irregular assignments (i.e., work train, wreck train, etc.) between Texarkana and Mesquite (excluding Marshall and Mesquite) or on the former SSW Commerce Subdivision between Texarkana and Sulphur Springs (end of track) will be protected by engineers from this seniority zone.
8. All UP and SSW operations within the Texarkana terminal limits shall be consolidated into a single operation.
9. All rail lines, yard and/or sidings at Texarkana will be considered as common to all engineers working in, into and out of Texarkana. All engineers will be permitted to perform all permissible road/yard moves pursuant to the designated collective bargaining agreement provisions. Interchange rules are not applicable for intra-carrier moves within the terminal.

## **ARTICLE II - OTHER OPERATIONS**

- A. Certain trackage within the Longview Hub (i.e., the trackage between Texarkana and Big Sandy via Mt. Pleasant) is coextensive with trackage contained in the North Little Rock/Pine Bluff Seniority District (Zone 1). Engineers from either of these seniority districts may operate over such coextensive trackage as set forth in this Article without claim or complaint from other engineers.

- 1. Pool freight service originating at Houston and destined for Longview and/or Shreveport, and pool freight service originating at Longview and/or Shreveport and destined for Houston shall belong to engineers of the Houston Hub.**
- 2. Pool freight service originating at North Little Rock/Pine Bluff destined for Longview/Big Sandy and/or Shreveport, and pool freight service originating at Longview/Big Sandy and/or Shreveport destined for North Little Rock/Pine Bluff shall belong to engineers of the North Little Rock/Pine Bluff Hub.**
- 3. Engineers of the Houston Hub have certain rights as defined in the Implementing Agreement for that hub to handle their own through freight trains between Longview and Marshall and between Shreveport and Marshall at times of main line service interruptions.**
- 4. Engineers of the North Little Rock/Pine Bluff Hub have rights to operate over trackage between Marshall and Big Sandy in the handling their own through freight trains between North Little Rock/Pine Bluff and Longview/ Big Sandy. (Note: In the event operating conditions require operations from North Little Rock/Pine Bluff to Longview/Big Sandy via Shreveport, such runs shall terminate at Shreveport and thereafter be handled between Shreveport and Longview by engineers of the Longview Hub short pool.)**
- 5. Engineers of both the Houston and North Little Rock/Pine Bluff Hubs have certain rights as defined in the Implementing Agreements for those hubs to receive their through freight train up to twenty five (25) miles on the far side of the terminal and run back through the terminal to their destination.**
- 6. Hours of service relief of through freight trains originating at North Little Rock/Pine Bluff which have reached Lewisville or Texarkana or points beyond but which are not within the twenty-five (25) mile HOS relief zone described above, shall be performed by the first out rested away-from-home-terminal crew. Upon completion of such service, said crew shall be placed first out upon rest for service back to North Little Rock/Pine Bluff. HOS relief for trains which have not reached Lewisville or Texarkana shall be protected by engineers at North Little Rock/Pine Bluff.**
- 7. Handling of the Winfield coal trains onto the SSW Commerce Subdivision west of Mt. Pleasant shall belong to engineers of the Longview Hub. Such coal trains shall be handled by extra board engineers at Texarkana from Texarkana to the unloading point and return, or by extra board engineers at Longview from Big Sandy to the unloading point and return.**

8. When local, work, wreck, HOS relief, or other such road runs are called or assigned which operate exclusively within the territorial limits of one of the zones established in this Agreement, such service shall be protected by engineers in such zone. If such run or assignment extends across territory encompassing more than one zone, it will be protected by engineers in the zone in which such service is home terminated. For example, a local home terminated at Texarkana operating to/from Palestine would be protected by Zone 3 engineers.
9. Existing UP Mineola to North Little Rock, UP Texarkana to Palestine, SSW Pine Bluff to Tyler and SSW Tyler to Hearne ID runs will be suspended upon implementation of this Agreement.

### **ARTICLE III - SENIORITY CONSOLIDATIONS**

- A. To achieve the work efficiencies and allocation of forces that are necessary to make the Longview Hub operate efficiently as a unified system, a new seniority district will be formed and a master Engineer Seniority Roster - UP/BLE Longview Merged Roster #1 will be created for the engineers holding seniority in the territory comprehended by this Agreement on the effective date thereof. The new roster will be divided into three (3) zones as described in Article I.A., I.B. and I.C.
- B. Prior rights seniority rosters will be formed covering each of the three (3) zones outlined above. Placement on these rosters and awarding of prior rights to their respective zones shall be based on the following:
  1. Zone 1 - The roster will consist of former UP engineers with prior rights on the Ft. Worth Merged 7 (TP) (Roster #012111), TP Avondale (Roster #016101), TP Shreveport (Roster #015101) and SSW (Roster #308101).
  2. Zone 2 - This roster will consist of former SP (H&TC) engineers (Roster #130101), former SSW engineers (Roster #301101), and former UP engineers with prior rights on Palestine Merged 10 (Roster #014111).
  3. Zone 3 - This roster will consist of former SSW engineers (Roster #307101), former UP Ft. Worth Merger 7 (TP) (Roster #012111), and former Arkansas (Roster #302101).
- C. Seniority integration of the engineers from the above affected former rosters into three (3) prior rights zone rosters will be done on the basis of work equity. The source of determining such equity will be furnished to the Organization and the Organization will furnish the Carrier with the necessary equity percentages prior to the roster formulation process.

- D. Entitlement to assignment on subject prior right rosters shall be made on the following order of priority:**
- 1. Engineers with prior rights on the interested pre-merged rosters.**
  - 2. Engineers working on the SSW Engineer's System Seniority Roster and the SP Eastern Lines Seniority Roster with no prior rights status on the interested pre-merger rosters.**
- E. Engineers on each of the prior rights rosters described above will be afforded common seniority on the other zones outside their prior rights zone including the additional zones involved when the Longview and DFW Hubs are combined under I below. All such common seniority shall be based upon the current date of seniority as a locomotive engineer. If this process results in employees having identical common seniority dates, seniority will be determined by the employee's fireman's date, and if there are still identical dates, seniority will be determined by the employee's earliest continuous hire date with their carrier.**
- F. Any engineer working in the territories described in Article I. above on or before December 1, 1996, but currently reduced from the engineers working list, shall also be given a place on the roster and prior rights. Engineers currently forced to this territory will be given a place on the roster and prior rights if so desired; otherwise, they will be released when their services are no longer required and will not establish a place on the new roster.**
- G. Union Pacific engineers currently on an inactive roster pursuant to previous merger agreements and other UP, SP and SSW engineers who are on long term leave of absence shall not participate in the roster formulation process described above; however, in the event they return to active service, they will take the appropriate equity slot to which they would have been entitled at such time of formulation of said roster and stand immediately ahead of the engineer assigned that slot. The Carrier and Organization shall jointly agree on all names of employees which are excluded from the roster formulation process and placed on an inactive roster.**
- H. With the creation of the new seniority district described herein, all previous seniority outside the Longview Hub held by engineers on the new roster shall be eliminated and all seniority inside the new hub held by engineers outside the district shall be eliminated, excepted as modified by Article III.I. below.**
- I. When negotiations for the DFW Hub are completed, the parties hereto intend for the Longview Hub (Zones 1, 2 and 3) to become a part of the DFW Hub. Former SSW and SP engineers currently working in the Longview Hub (Zones 1, 2 and 3) will be afforded seniority opportunities within the DFW Hub based upon the language of that Agreement.**

- J. All engineer vacancies within the Longview Hub must be filled prior to any engineer being reduced from the working list or prior to engineers being permitted to exercise to any reserve or supplemental boards. Prior rights engineers in their prior rights zone must displace any common engineers working in that zone prior to being permitted to exercise to any reserve or supplemental boards.
- K. The total number of engineers on the master UP/BLE Longview Hub Merger Roster #1 will be mutually agreed upon by the parties based upon anticipated service requirements.

#### **ARTICLE IV - EXTRA BOARDS**

- A. The following extra boards shall be established to protect vacancies and other extra board work into or out of the Longview Hub or in the vicinity thereof:
  - 1. Shreveport - One Guaranteed Extra Board (combination road/yard) to protect all service in Zone 1 except the Longview-Livonia pool.
  - 2. Longview - Guaranteed Extra Board (combination road/yard) to protect each of the following:
    - a. Zone 1 pool freight service in the Longview-Livonia pool as defined in Article I.A.1. above.
    - b. All service in Zone 2, except as modified by paragraph 3. below.
    - c. All service in Zone 3, except as modified by paragraph 4. below.
  - 3. Tyler - One Guaranteed Extra Board (combination road/yard) to protect all assignments originating at Corsicana, Palestine, Tyler or Troup.
  - 4. Texarkana - One Guaranteed Extra Board (combination road/yard) to protect all assignments originating at Texarkana.
- B. If additional extra boards are established after the date of implementation of this agreement, it shall be done pursuant to the terms of the designated collective bargaining agreement. When established, the Carrier shall designate the geographic area the extra board will cover. If exhausted, such extra board may be supplemented from the next nearest extra board in the seniority district in accordance with existing agreement rules and practices.

## **ARTICLE V - APPLICABLE AGREEMENTS**

A. All engineers and assignments in the territories comprehended by this Implementing Agreement will work under the Collective Bargaining Agreement currently in effect between the Union Pacific Railroad Company and the Brotherhood of Locomotive Engineers dated October 1, 1977 (reprinted October 1, 1991), including all applicable national agreements, the "local/national" agreement of May 31, 1996, and all other side letters and addenda which have been entered into between date of last reprint and the date of this Implementing Agreement. Where conflicts arise, the specific provisions of this Agreement shall prevail. None of the provisions of these agreements are retroactive.

B. All runs established pursuant to this Agreement will be governed by the following:

1. **Rates of Pay:** The provisions of the June 1, 1996 National Agreement will apply as modified by the May 31, 1996 Local/National Agreement.
2. **Overtime:** Overtime will be paid in accordance with Article IV of the 1991 National Agreement.
3. **Transportation:** When a crew is required to report for duty or is relieved from duty at a point other than the on and off duty points fixed for the service established hereunder, the Carrier shall authorize and provide suitable transportation for the crew.

**Note:** Suitable transportation includes Carrier owned or provided passenger carrying motor vehicles or taxi, but excludes other forms of public transportation.

4. **Suitable Lodging:** Suitable lodging will be provided by the Carrier in accordance with existing agreements.
5. Existing ID run provisions regarding overmile rate and meal allowances as contained in the current UP Texarkana to Palestine ID Agreement shall apply to the following through freight territories:
  - Longview - Valley Junction/Hearne
  - Longview - Fort Worth
  - Longview - Livonia
  - Shreveport - Livonia

Current (non-ID) Agreement rules shall apply to the Longview-Shreveport short pool.

- C. Engineers protecting pool freight operations on the territories covered by this Agreement shall receive continuous held-away-from-home terminal pay (HAHT) for all time so held at the distant terminal after the expiration of sixteen (16) hours. All other provisions in existing agreement rules and practices pertaining to HAHT pay remain unchanged.
- D. Except where specific terminal limits have been detailed in the Agreement, it is not intended to change existing terminal limits under applicable agreements.
- E. Actual miles will be paid for runs in the new Longview Hub. Examples are illustrated in Attachment "B".

#### **ARTICLE VI - FAMILIARIZATION**

- A. Engineers involved in the consolidation of the Longview Hub covered by this Agreement whose assignments require performance of duties on a new geographic territory not familiar to them will be given full cooperation, assistance and guidance in order that their familiarization shall be accomplished as quickly as possible. Engineers will not be required to lose time or "ride the road" on their own time in order to qualify for these new operations.
- B. Engineers will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualification shall be handled with local operating officers. The parties recognize that different terrain and train tonnage impact the number of trips necessary and the operating officer assigned to the merger will work with the local Managers of Operating Practices in implementing this Section. If disputes occur under this Article they may be addressed directly with the appropriate Director of Labor Relations and the General Chairmen for expeditious resolution.
- C. It is understood that familiarization required to implement the merger consolidation herein will be accomplished by calling a qualified engineer (or Manager of Operating Practices) to work with an engineer called for service on a geographic territory not familiar to him.
- D. Engineers hired subsequent to the effective date of this document will be qualified in accordance with current FRA certification regulations and paid in accordance with the local agreements that will cover the merged Hub.

#### **ARTICLE VII - IMPLEMENTATION**

- A. The Carrier will give at least thirty (30) days' written notice of its intent to implement this Agreement.

- B. 1. Concurrent with the service of its notice, the Carrier will post a description of Zones 1, 2 and 3 described in Article 1 herein.**
- 2. Ten (10) days after posting of the information described in B.1. above, the appropriate Labor Relations Personnel, CMS Personnel, General Chairmen and Local Chairmen will convene a workshop to implement assembly of the merged seniority rosters. At this workshop, the representatives of the Organization will construct consolidated seniority rosters, without names, which reflect the equity distribution from the interested former rosters. After constructed, engineers from the interested former rosters will be assigned to the new consolidated rosters as set forth in Article III of this Implementing Agreement.**
- 3. Dependent upon the Carrier's manpower needs, the Carrier may develop a pool of representatives of the Organization, with the concurrence of the General Chairmen, which, in addition to assisting in the preparation of the rosters, will assist in answering engineers' questions, including explanations of the seniority consolidation and implementing agreement issues, discussing merger integration issues with local Carrier officers and coordinating with respect to CMS issues relating to the transfer of engineers from one zone to another or the assignment of engineers to positions.**
- C. The roster consolidation process shall be completed in five (5) days, after which the finalized agreed-to rosters will be posted for information and protest in accordance with the applicable agreements. If the participants have not finalized agreed-to rosters, the Carrier will prepare such rosters, post them for information and protest, will use those rosters in assigning positions, and will not be subject to claims or grievances as a result.**
- D. Once rosters have been posted, those positions which have been created or consolidated will be bulletined for a period of five (5) calendar days. Engineers may bid on these bulletined assignments in accordance with applicable agreement rules. However, no later than ten (10) days after closing of the bulletins, assignments will be made.**
- E. 1. After all assignments are made, engineers assigned to positions which require them to relocate will be given the opportunity to relocate within the next thirty (30) day period. During this period, the affected engineers may be allowed to continue to occupy their existing positions. If required to assume duties at the new location immediately upon implementation date and prior to having received their thirty (30) days to relocate, such engineers will be paid normal and necessary expenses at the new location until relocated. Payment of expenses will not exceed thirty (30) calendar days.**
- 2. The Carrier may, at its option, elect to phase-in the actual**

implementation of this Agreement. Engineers will be given ten (10) days' notice of when their specific relocation/reassignment is to occur.

- F. Engineers will be treated for vacation, entry rates and payment of arbitraries as though all their time on their original railroad had been performed on the merged railroad. Engineers assigned to the Hub on the effective date of this Agreement (including those engaged in engineer training on such date) shall have entry rate provisions waived. Engineers hired/promoted after the effective date of this Agreement shall be subject to National Agreement rate progression provisions.

### **ARTICLE VIII - PROTECTIVE BENEFITS AND OBLIGATIONS**

- A. All engineers who are listed on the Longview Hub merged rosters shall be considered adversely affected by this transaction and consolidation and will be subject to the New York Dock protective conditions which were imposed by the STB. It is understood there shall not be any duplication or compounding of benefits under this Agreement and/or any other agreement or protective arrangement.
1. Carrier will calculate and furnish TPA's for such engineers to the Organization as soon as possible after implementation of the terms of this Agreement. The time frame used for calculating the TPA's in accordance with New York Dock will be August 1, 1995 through and including July 31, 1996.
  2. In consideration of blanket certification of all engineers covered by this Agreement for wage protection, the provisions of New York Dock protective conditions relating to "average monthly time paid for" are waived under this Implementing Agreement.
  3. Test period averages for designated union officers will be adjusted to reflect lost earnings while conducting business with the Carrier or other related union business.
  4. National Termination of Seniority provisions shall not be applicable to engineers hired prior to the effective date of this Agreement.
- B. Engineers required to relocate under this Agreement will be governed by the relocation provisions of New York Dock. In lieu of New York Dock provisions, an employee required to relocate may elect one of the following options:
1. Non-homeowners may elect to receive an "in lieu of" allowance in the amount of \$10,000 upon providing proof of actual relocation.

2. Homeowners may elect to receive an "in lieu of" allowance in the amount of \$20,000 upon providing proof of actual relocation.
3. Homeowners in Item 2 above who provide proof of a bona fide sale of their home at fair value at the location from which relocated shall be eligible to receive an additional allowance of \$10,000.
  - a) This option shall expire within five (5) years from date of application for the allowance under Item 2 above.
  - b) Proof of sale must be in the form of sale documents, deeds, and filings of these documents with the appropriate agency.

**NOTE:** All requests for relocation allowances must be submitted on the prescribed form.

4. With the exception of Item 3 above, no claim for an "in lieu of" relocation allowance will be accepted after two (2) years from date of implementation of this Agreement.
5. Under no circumstances shall an engineer be permitted to receive more than one (1) "in lieu of" relocation allowance under this Implementing Agreement.
6. Engineers receiving an "in lieu of" relocation allowance pursuant to this Implementing Agreement will be required to remain at the new location, seniority permitting, for a period of two (2) years.

#### **ARTICLE IX - SAVINGS CLAUSES**

- A. The provisions of the applicable Schedule Agreement will apply unless specifically modified herein.
- B. Nothing in this Agreement will preclude the use of any engineers to perform work permitted by other applicable agreements within the new seniority districts described herein, i.e., yard engineers performing Hours of Service Law relief within the road/yard zone, ID engineers performing service and deadheads between terminals, road switchers handling trains within their zones, etc.

- C. The provisions of this Agreement shall be applied to all engineers covered by said Agreement without regard to race, creed, color, age, sex, national origin, or physical handicap, except in those cases where a bona fide occupational qualification exists. The masculine terminology herein is for the purpose of convenience only and does not intend to convey sex preference.

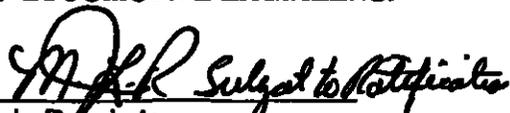
**ARTICLE X - EFFECTIVE DATE**

This Agreement implements the merger of the Union Pacific and Southern Pacific railroad operations in the area covered by Notice dated May 14, 1997.

Signed at Omaha, NE this 13th day of August, 1997.

**FOR THE BROTHERHOOD  
OF LOCOMOTIVE ENGINEERS:**

**FOR THE CARRIERS:**

  
M. L. Royal, Jr.  
General Chairman, BLE

  
M. A. Hartman  
General Director-Labor Relations  
Union Pacific Railroad Co.

  
D. E. Thompson  
General Chairman, BLE

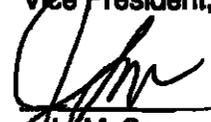
  
W. E. Loomis  
Director-Labor Relations  
Southern Pacific Transportation Co.

  
D. E. Penning  
General Chairman, BLE

  
R. A. Poe  
General Chairman, BLE

**APPROVED:**

  
D. M. Hahs  
Vice President, BLE

  
J. L. McCoy  
Vice President, BLE

10



North Little Rock to Memphis  
North Little Rock to Dexter  
North Little Rock to Pine Bluff  
North Little Rock Terminal  
Paragould to Lexa  
SSW: Pine Bluff to Big Sandy (not including Texarkana or Big Sandy)  
Pine Bluff to Shreveport (not including Shreveport)  
Pine Bluff to Memphis  
Pine Bluff to Dexter  
Pine Bluff to North Little Rock  
Pine Bluff Terminal

Pursuant to Section 4 of the New York Dock protective conditions, in order to achieve the benefits of operational changes made possible by the transaction and to modify collective bargaining agreements to the extent necessary to obtain those benefits,

**IT IS AGREED:**

**ARTICLE I - WORK AND ROAD POOL CONSOLIDATIONS**

The following work/road pool consolidations and/or modifications will be made to existing runs.

**A. Zone 1 Seniority District**

1. Territory Covered: North Little Rock to Dexter  
(North) (not including Dexter)  
  
North Little Rock to Memphis  
  
Pine Bluff to Dexter (not including Dexter)  
  
Pine Bluff to Memphis

Paragould to Lexa

2. **Territory Covered:** North Little Rock to Longview (not including South) Longview, Marshall or Texarkana)

North Little Rock to Shreveport (not including Texarkana or Shreveport)

Pine Bluff to Big Sandy (not including Texarkana, Mt. Pleasant or Big Sandy)

Pine Bluff to Shreveport (not including Shreveport)

The above includes all main lines, branch lines, industrial leads, yard tracks and stations between or located at the points indicated. Where the phrase "not including" is used above, it refers to other than through freight operations, but does not restrict through freight engineers from operating into/out of such terminals/points or from performing work at such terminals/points pursuant to the designated collective bargaining agreement provisions.

#### North Operations

3. All North Little Rock to Poplar Bluff and Pine Bluff to Ilmo pool freight service shall be combined into one (1) pool with North Little Rock/Pine Bluff as the home terminal. Dexter will serve as the away from home terminal. Engineers operating between North Little Rock/Pine Bluff and Dexter may utilize any combination of UP and SSW tracks between such points. The on duty location for this pool shall be at North Little Rock.
- a. The pool described above shall be slotted, and Attachment "B" lists the slotting order for the pool. Former UP and SSW engineers shall have prior rights to said pools turns as set forth in said Attachment "B". The Carrier and the Organization shall mutually agree on the number of turns subject to this arrangement. If turns in excess of that number are established or any of such turns be unclaimed by a prior rights engineer, they shall be filled from the zone roster, and thereafter from the common roster.
  - b. The UP pool presently protecting coal train service North Little Rock to/from Newport shall remain a separate pool and shall be unaffected by this Agreement.
  - c. The current UP Dupo-Memphis ID pool shall be suspended upon implementation of this Agreement.

- d. The current UP Salem-Poplar Bluff ID pool shall continue as present except that runs shall begin and end at Dexter rather than Poplar Bluff. From time of implementation of this Agreement until time of implementation of a Merger Implementing Agreement for the St. Louis Hub, engineers in the Salem-Poplar Bluff ID pool shall be paid district miles to and from Poplar Bluff even though running only to/from Dexter. This payment of constructive miles is an interim measure which terminates when the St. Louis Hub is completed.
  - e. The current SSW St. Louis to Illmo pool shall be extended to Dexter upon implementation of this Agreement, with payment of additional district miles being made for such extended runs.
  - f. The current UP Dupo to Poplar Bluff pool shall continue as present except that runs shall begin and end at Dexter rather than Poplar Bluff. From time of implementation of this Agreement until time of implementation of a Merger Implementing Agreement for the St. Louis Hub, engineers in the Dupo-Poplar Bluff pool shall be paid district miles to/from Poplar Bluff even though running only to/from Dexter. This payment of constructive miles is an interim measure which terminates when the St. Louis Hub is completed.
4. All North Little Rock to Memphis and Pine Bluff to Memphis pool freight service shall be combined into one (1) pool with North Little Rock/Pine Bluff as the home terminal. Memphis will serve as the away from home terminal, and shall cease to function as a home terminal for pool service between North Little Rock and Memphis. Engineers operating North Little Rock/Pine Bluff and Memphis may utilize any combination of UP and SSW tracks between such points.
- a. The pool described above shall be slotted, and Attachment "C" lists the slotting order for the pool. Former UP and SSW engineers shall have prior rights to said pool turns as set forth in said Attachment "C". The Carrier and the Organization shall mutually agree on the number of turns subject to this arrangement. If turns in excess of that number are established or any of such turns be unclaimed by a prior rights engineers they shall be filled from the zone roster, and thereafter from the common roster.
  - b. Engineers protecting through freight service in the North Little Rock/Pine Bluff to Memphis pool described in Article I.A.4. above shall be afforded lodging at North Little Rock, if requested, pursuant to the terms of this Agreement. The option to exercise "reverse lodging" at the home terminal must be initiated with CMS within thirty (30) days following the date

of implementation of this Agreement and remains in effect for a one (1) year period, renewable annually thereafter. This provision does not apply to employees hired on or after the date of this Agreement.

c. Engineers protecting through freight service in the North Little Rock/Pine Bluff to Memphis pool, who have elected the reverse lodging option described in b. above shall have lay off privileges at the away from home terminal consistent with the designated collective bargaining agreement rules and practices. When an engineer lays off at the away from home terminal, such vacancy will be filled by the extra board at Memphis, if in existence.

5. Pool freight engineers in the North Little Rock/Pine Bluff-Dexter and North Little Rock/Pine Bluff-Memphis pools may not be used to handle their through freight trains, either at the beginning or the end of their trip, from North Little Rock to Pine Bluff or vice versa. Such trackage may only be used by such engineers under the 25-mile zone provisions described below.

a. Pool freight engineers described above may receive their train up to twenty-five (25) miles on the far side of the terminal or receive or deliver their train up to twenty-five (25) miles on the UP Monroe Subdivision between North Little Rock and Pine Bluff without claim or complaint from any other engineer.

b. For purposes of the application of this Agreement, the lines of demarcation shall be the terminal (switching) limits of North Little Rock and Pine Bluff Terminals prior to the implementation of this Agreement. For the territory between North Little Rock and Pine Bluff, the engineer must operate south of UP Monroe Subdivision Mile Post 315.7, vicinity of North Little Rock, or north of UP Monroe Subdivision Mile Post 346.0, vicinity of Pine Bluff.

c. When so used, the engineer shall be paid an additional one half (½) day at the basic pro rata through freight rate in addition to the district miles of the run. If the time spent beyond the terminal is greater than four (4) hours, then they shall be paid on a minute basis at the basic pro rata through freight rate.

6. Concurrent with the suspension of ID service between Dupo and Memphis under 3.c. above, a new short pool shall be established for handling of pool freight service between Dexter and Memphis with Dexter as the home terminal. Memphis will serve as the away from home terminal, and shall cease to function as a home terminal for

service between Dupo and Memphis. Engineers operating between Dexter and Memphis may utilize any combination of UP and SSW tracks between such points.

- a. Hours of Service relief of through freight trains destined for Memphis, whether in the Dexter-Memphis pool or the North Little Rock/Pine Bluff-Memphis pool, shall be performed by the extra board at Memphis, if in existence. If not, it shall be performed by the first out rested away from home terminal engineer in the appropriate pool. Upon completion of such service, said engineer shall be placed first out upon arrival subject to rest for service or deadhead to the home terminal. If no extra board engineer is available and there are no rested away from home terminal engineers, such relief will be protected from the North Little Rock or Dexter engineers on a straight away basis.
7. In addition to protecting pool freight service between Dexter and Memphis, a sufficient number of engineers shall be maintained at Dexter to protect all other service requirements at or in the vicinity of said location, including but not limited to:
- a. Local, road switcher, yard, work, wreck, or any other service headquartered at or in the vicinity of Poplar Bluff, including operations on the DeSoto Subdivision between Poplar Bluff and Gads Hill.
  - b. Local, road switcher, yard, work, wreck, or any other service headquartered at or in the vicinity of Dexter, including Jonesboro, Ilmo and Paris.
  - c. All Hours of Service relief of pool freight engineers within a fifty (50) mile radius of Dexter in any direction which are not performed by road engineers under a 25-mile zone provision.
  - d. New Madrid coal trains operating between Dexter and the power plant, including handling thereof from/to Ilmo when stored or staged at that location.
  - e. Sikeston coal trains operating between Poplar Bluff and Sikeston.

During the interim period between implementation of this Agreement and implementation of a St. Louis Hub Agreement, engineer staffing needs at Dexter to protect the above service shall be drawn from existing engineers at Poplar Bluff and Ilmo. Final arrangements shall be negotiated in the St. Louis Hub Agreement.

8. **At Dexter, away from home terminal engineers called to operate through freight service to either North Little Rock/Pine Bluff or Memphis may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through Dexter to their destination without claim or complaint from any other engineer. When so used, the engineer shall be paid an additional one-half (1/2) day at the basic pro rata through freight rate for this service in addition to the district miles of the run. If the time spent beyond the terminal under this provision is greater than four (4) hours, then they shall be paid on a minute basis at the basic pro rata through freight rate.**
9. **Engineers of the St. Louis Hub may have certain rights to be defined, if any, in the Implementing Agreement for that hub, to receive their through freight trains up to twenty-five (25) miles on the far side of the terminal and run back through the terminal without claim or complaint from any other engineers.**
10. **The terminal limits of Dexter shall extend between Mile Posts 46.0 and 53.0 on the SSW Illmo Subdivision and to Mile Post 188.0 on the UP Chester Subdivision.**
11. **It is the intent of the parties that all the work described in Sections 6 and 7 above shall belong to the St. Louis Hub. Effective upon implementation of this Agreement, all of said work shall be performed by such engineers at Dexter and shall not be under the jurisdiction of the North Little Rock/Pine Bluff Hub in any manner.**
  - a. **The integration of the above engineers and work shall be more definitively described in the Merger Implementing Agreement covering the St. Louis Hub.**
  - b. **In the interim period between the implementation of this Agreement and a Merger Implementing Agreement for the St. Louis Hub, former SSW and UP engineers shall be maintained on separate rosters and extra boards for purposes of continuing to protect their prior pools, assignments and extra service. Hours of service relief of North Little Rock/Pine Bluff Hub crews pursuant to Section 7.c. above shall be performed by the two interim extra boards at Dexter on an alternating basis.**
12. **All UP and SSW operations within the Memphis terminal limits shall be consolidated into a single operation. All existing yard assignments at Memphis shall be converted to road switcher assignments upon implementation of this Agreement. All road crews may receive/leave their trains at any location within the terminal and may perform work within the terminal pursuant to the designated collective bargaining**

agreement provisions, including national agreements. All rail lines, yards and/or sidings within the Memphis Terminal will be considered as common to all engineers working in, into and out of Memphis. Interchange rules are not applicable to intra-carrier moves within the terminal.

- a. Upon completion of a new intermodal facility at Ebony, engineers may originate and/or terminate their runs at said facility. Since road trains will also originate at a variety of other locations within the Memphis Terminal, none of which will include the present Sargeant Yard, it is agreed that the designated on and off duty location shall be at the lodging facility. The appropriate Local Chairman shall participate in the selection of the lodging facility and insure that all necessary CRT's, printers, lockers, etc. are made available at said lodging facility.
- b. The westward terminal limits of the consolidated Memphis terminal are as follows:

SSW: Mile Post 4.1 (Memphis Line)  
UP: Mile Post 375.8 (Memphis Sub)

Pre-existing eastward terminal limits remain unchanged.

13. Engineers will be provided lodging at all of the away from home terminal locations pursuant to existing agreements, and the Carrier shall provide transportation to engineers between the on/off duty location and the designated lodging facility.
14. At all terminals the Carrier will designate the on/off duty points for all road and yard crews, with these on/off duty points having appropriate facilities as currently required in the designated collective bargaining agreement.
15. Engineers protecting pool freight or other road service which originates in the North Little Rock/Pine Bluff Terminal, upon making the return trip into said terminal, shall be provided transportation to the same on/off duty location in the home terminal from which they commenced service. Time consumed in being transported, calculated from time relieved (train comes to rest), shall be paid for on a minute basis at the basic pro rata through freight rate, separate and apart from the service trip, with a minimum of two (2) hours.

#### South Operations

16. All North Little Rock - Texarkana/Mineola, Pine Bluff - Texarkana and Pine Bluff - Shreveport pool operations shall be combined into one (1)

pool with North Little Rock/Pine Bluff as the home terminal. Longview and Shreveport will serve as the respective away from home terminals. The on duty location for this pool shall be at Pine Bluff. Engineers in this pool may operate to either Longview/Big Sandy or Shreveport. Engineers operating to Big Sandy via Mt. Pleasant shall be transported to their final terminal of Longview and be paid time or miles, whichever is greater, from time relieved (train comes at rest) at the basic pro rata through freight rate. Engineers called on duty at Longview and transported to their train at Big Sandy to be operated via Mt. Pleasant shall be paid the additional miles as part of the district miles. Engineers operating between North Little Rock/Pine Bluff and Longview/Big Sandy or Shreveport may utilize any combination of UP and SSW tracks between such points. All engineers shall be maintained on one (1) away from home terminal board on a first-in, first-out basis at Longview, based upon arrival at Longview, subject to Article IV.C. of this Agreement.

- a. The pool described above shall be slotted, and Attachment "D" lists the slotting order for the pool. Former UP(MP), UP(TP), and SSW engineers shall have prior rights to said pool turns as set forth in said Attachment "D". The Carrier and the Organization shall mutually agree on the number of turns subject to this arrangement. If turns in excess of that number are established or any of such turns be unclaimed by a prior rights engineer, they shall be filled from the zone roster, and thereafter from the common roster.
- b. Coal trains destined for Winfield on the SSW Commerce Subdivision or empty movements therefrom shall also be handled by this pool. Engineers in this pool shall leave or receive such trains at Texarkana for handling to/from the plant by engineers of the Longview Hub. It is understood that road engineers leaving such trains at Texarkana will be transported to Longview (and vice versa on the empty movement) and paid district miles thereto. Coal trains destined for Winfield via Big Sandy and empty movements from Winfield to Big Sandy shall be handled by engineers of the Longview Hub.
- c. The current UP North Little Rock-Mineola ID pool shall be suspended upon implementation of this Agreement.
- d. In the event operating conditions require operations from North Little Rock/Pine Bluff to Longview/Big Sandy via Shreveport, such runs shall terminate at Shreveport and be handled between Shreveport and Longview by engineers of the Longview Hub.

- e. In the event operating conditions require operations from Little Rock/Pine Bluff to Shreveport via Longview/Big Sandy, such runs shall terminate at Longview and be handled between Longview and Shreveport by engineers of the Longview Hub.
17. As set forth in the Implementing Agreement for the Longview Hub, for purposes of road engineers leaving or receiving road trains, the terminal limits of Shreveport have been extended westward to Mile Post 323.8 on the UP Reisor Subdivision. It is understood that road engineers shall be paid the additional road miles operated when leaving or receiving their trains at Reisor.
18. At Longview/Big Sandy or Shreveport, away from home terminal engineers called to operate through freight service to North Little Rock/Pine Bluff may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through Longview, Big Sandy or Shreveport to their destination without claim or complaint from any other engineer. When so used, the engineer shall be paid an additional one-half (½) day at the basic pro rata through freight rate for this service in addition to the district miles of the run. If the time spent beyond the terminal under this provision is greater than four (4) hours, they shall be paid on a minute basis at the basic pro rata through freight rate.
19. Hours of Service relief of through freight trains operating southbound from North Little Rock/Pine Bluff to either Shreveport or Longview/Big Sandy which have not reached Lewisville or Texarkana shall be protected by engineers at North Little Rock/Pine Bluff. If such trains have reached Lewisville or Texarkana or beyond, Hours of Service Law Relief may be performed by the Shreveport or Longview extra board, unless Carrier desires to dispatch an engineer from North Little Rock/Pine Bluff for crew balancing purposes. It is also understood that through freight crews may provide relief of such trains under a 25-mile zone provision.
20. Assignments other than through freight service, as described above, which originate at Shreveport, Marshall, Texarkana, Mt. Pleasant, Longview and Big Sandy, are not comprehended by the North Little Rock/Pine Bluff Hub and shall be protected by engineers of the Longview Hub.
21. Engineers operating in the directional pool shall be provided lodging at Longview. Engineers being transported from Shreveport to Longview for lodging shall be paid the greater of mileage (55 miles), at the basic pro rata through freight rate, or time consumed, calculated from time relieved (train comes to rest), on a minute basis at the basic pro rata through freight rate, separate and apart from the service trip. Engineers called for service to operate Shreveport to

North Little Rock/Pine Bluff shall be paid for the time being transported between Longview and Shreveport on the same basis.

22. Engineers will be provided lodging at all of the away from home terminal locations pursuant to existing agreements, and the Carrier shall provide transportation to engineers between the on/off duty location and the designated lodging facility.
23. At all terminals the Carrier will designate the on/off duty points for all road and yard engineers, with these on/off duty points having appropriate facilities as currently required in the collective bargaining agreement.
24. Engineers protecting pool freight or other road service which originates in the North Little Rock/Pine Bluff Terminal, upon making the return trip into said terminal, shall be provided transportation to the same on/off duty location in the home terminal from which they commenced service. Time consumed in being transported, calculated from time relieved (train comes to rest) from duty, shall be paid for on a minute basis at the basic pro rata rate, separate and apart from the service trip, with a minimum of two (2) hours.
25. Pool freight engineers in the North Little Rock/Pine Bluff-Shreveport/Longview/Big Sandy pool may not be used to handle their through freight trains, either at the beginning or the end of their trip, from North Little Rock to Pine Bluff or vice versa. Such trackage may only be used by such engineers under the 25-mile zone provisions described below.
  - a. Pool freight engineers described above may receive their train up to twenty-five (25) miles on the fair side of the terminal or receive or deliver train up to twenty-five (25) miles on the UP Monroe Subdivision between North Little Rock to Pine Bluff without claim or complaint from any other engineer.
  - b. For purposes of the application of this Agreement, the lines of demarcation shall be the terminal (switching) limits of North Little Rock to Pine Bluff Terminals prior to the implementation of this Agreement. For the territory between North Little Rock to Pine Bluff, the engineer must operate south of UP Monroe Subdivision Mile Post 315.7, vicinity of North Little Rock, or north of UP Monroe Subdivision Mile Post 346.0, vicinity of Pine Bluff.
  - c. When so used, the engineer shall be paid an additional one half (½) day at the basic pro rata through freight rate in addition to the district miles of the run. If the time spent beyond the terminal under this provision is greater than four (4)

hours, then they shall be paid on a minute basis at the basic pro rata through freight rate.

**B. Zone 2 - Seniority District**

1. **Territory Covered:** North Little Rock/Pine Bluff to Van Buren(not including Van Buren or North Little Rock/Pine Bluff Terminal)

The above includes all main lines, branch lines, industrial leads, yard tracks and stations between or located at the points indicated. Where the phrase "not including" is used above, it refers to other than through freight operations, but does not restrict through freight engineers from operating into/out of such terminals/points or from performing work at such terminals/points pursuant to the designated collective bargaining agreement provisions.

2. Existing North Little Rock-Van Buren pool operations shall be preserved under this Agreement. The on duty location for this pool shall be at North Little Rock. Engineers arriving from or departing to Van Buren may leave or receive their trains anywhere within the North Little Rock/Pine Bluff Terminal, subject to Section 5 below, and perform any work in connection therewith as permitted by local or national agreements. North Little Rock/Pine Bluff will serve as the home terminal. Van Buren will serve as the away from home terminal.
- a. The Carrier and the Organization shall mutually agree on the number of turns which shall be prior righted to engineers of this prior rights zone. If turns in excess of that number are established or any of such turns be unclaimed by a prior rights engineer, they shall be filled from the zone roster, and thereafter from the common roster.
- b. Hours of service relief of trains operating from North Little Rock/Pine Bluff to Van Buren may be protected by rested away from home terminal engineers at Van Buren if the train has reached Spadra or beyond. If the train has not reach Spadra, a home terminal engineer at North Little Rock/Pine Bluff shall be used to provide such relief.
3. Engineers will be provided lodging at the away from home terminal pursuant to existing agreements in this pool and the Carrier shall provide transportation to engineers between the on/off duty location and the designated lodging facility.
4. Engineers in this pool making a return trip from the away from home terminal shall be provided transportation to the same on/off duty location in the home terminal from which they commenced service.

Time consumed in being transported, calculated from time relieved (train comes to rest) shall be paid for on the minute basis at the basic pro rata through freight rate, separate and apart from the service trip, with a minimum of two (2) hours.

5. Zone 2 pool freight engineers may not be used to handle their through freight trains either at the beginning or the end of their trip, from North Little Rock to Pine Bluff or vice versa. Such trackage may only be used by such engineers under the 25-mile zone provisions described below.
  - a. Pool freight engineers described above may receive their train up to twenty-five (25) miles on the fair side of the terminal or receive or deliver train up to twenty-five (25) miles on the UP Monroe Subdivision between North Little Rock to Pine Bluff without claim or complaint from any other engineer.
  - b. For purposes of the application of this Agreement, the lines of demarcation shall be the terminal (switching) limits of North Little Rock to Pine Bluff Terminals prior to the implementation of this Agreement. For the territory between North Little Rock to Pine Bluff, the engineer must operate south of UP Monroe Subdivision Mile Post 315.7, vicinity of North Little Rock, or north of UP Monroe Subdivision Mile Post 346.0, vicinity of Pine Bluff.
  - c. When so used, the engineer shall be paid an additional one half (½) day at the basic pro rata through freight rate in addition to the district miles of the run. If the time spent beyond the terminal under this provision is greater than four (4) hours, then they shall be paid on a minute basis at the basic pro rata through freight rate.
6. Engineers utilizing the provisions of 5. above to deliver and spot their loaded coal trains to White Bluff shall not thereafter be required to handle empty coal trains, cars or power from White Bluff back to North Little Rock prior to final tie-up.

C. Zone 3 - Seniority District

1. Territory Covered: North Little Rock/Pine Bluff to Monroe/Livonia (not including Livonia or North Little Rock/Pine Bluff Terminal but including Alexandria)

The above includes all main lines, branch lines, industrial leads, yard tracks and stations between or located at the points indicated. Where the phrase "not including" is used above, it refers to other than through freight operations, but does

not restrict through freight engineers from operating into/out of such terminals/points or from performing work at such terminals/points pursuant to the designated collective bargaining agreement provisions.

2. Existing North Little Rock-Monroe pool operations shall be preserved under this Agreement. The on duty location for this pool shall be at North Little Rock. Engineers arriving from or departing to Monroe may leave or receive their trains anywhere within the North Little Rock/Pine Bluff Terminal and perform any work in connection therewith as permitted by local or national agreements. North Little Rock/Pine Bluff will serve as the home terminal. Monroe will serve as the away from home terminal.
  - a. The Carrier and the Organization shall mutually agree on the number of turns which shall be prior righted to engineers of this prior rights zone. If turns in excess of that number are established or any such turns be unclaimed by a prior rights engineer, they shall be filled from the zone roster, and thereafter from the common roster.
  - b. Current UP operations between Monroe and Alexandria and the current Monroe-Livonia ID service shall continue without change under this Agreement.
  - c. Hours of Service relief of trains operating from North Little Rock/Pine Bluff to Monroe may be protected by rested away from home terminal engineers at Monroe if the train has reached Bonita or beyond. If the train has not reached Bonita, a home terminal engineer at North Little Rock/Pine Bluff shall be used to provide such relief.
  - d. Local service headquartered at Alexandria and operating between Alexandria and Livonia shall belong to Zone 3 engineers of the North Little Rock/Pine Bluff Hub, and vacancies thereon from the Zone 3 extra board at Alexandria.
3. Engineers will be provided lodging at the away from home terminal pursuant to existing agreements in this pool and the Carrier shall provide transportation to engineers between the on/off duty location and the designated lodging facility.
4. Existing UP operations at Rodemacher will continue under this Agreement unaffected by any terms/language contained herein.
5. Engineers in this pool making a return trip from the away from home terminal shall be provided transportation to the same on/off duty location in the home terminal from which they commenced service. Time consumed in being transported, calculated from time relieved

(train comes to rest), shall be paid for on a minute basis at the basic pro rata through freight rate, separate and apart from the service trip, with a minimum of two (2) hours.

6. At North Little Rock/Pine Bluff engineers protecting pool freight service in the territories defined by Article I.C. (Zone 3) may receive the train for which called up to twenty-five (25) miles on the far side of the terminal without claim or complaint from any other engineer. The twenty-five (25) mile zone begins at the North Little Rock/Pine Bluff terminal limits as defined in Article 1.E.4. of this Agreement. When so used, the engineer shall be paid an additional one half (½) day at the basic pro rata through freight rate in addition to the district miles of the run. If the time spent beyond the terminal under this provision is greater than four (4) hours, then they shall be paid on a minute basis at the basic pro rata through freight rate. It is understood that engineers performing service in the territories defined by Article I.D. may leave or receive their train at any location between North Little Rock and Pine Bluff without additional compensation and without claim or complaint from any engineer.

D. North Little Rock/Pine Bluff Terminal

1. Territory Covered: North Little Rock Terminal  
Pine Bluff Terminal  
UP Monroe Subdivision trackage between North Little Rock and Pine Bluff  
Former-SP Little Rock (aka "N") Branch trackage between North Little Rock and Pine Bluff

The above includes all main lines, branch lines, industrial leads, yard tracks and stations between or located at the points indicated.

2. All UP and SSW operations within the new North Little Rock/Pine Bluff terminal limits shall be consolidated into a single operation. All road engineers may receive/leave their trains at any location within the terminal and may perform work within the terminal pursuant to the designated collective bargaining agreement provisions, subject only to the specific restrictions set forth in this Agreement. The Carrier will designate the on/off duty points for all road and yard engineers, with these on/off duty points having appropriate facilities as currently required in the collective bargaining agreement.

3. All rail lines, yard and/or sidings within the North Little Rock/Pine Bluff Terminal will be considered as common to all engineers working in, into and out of North Little Rock/Pine Bluff.
4. Terminal limits for the consolidated North Little Rock/Pine Bluff Terminal are as follows:

<u>SSW</u>	<u>Mile Post</u>
Illmo Subdivision	261.4
Pine Bluff Subdivision	271.2
<u>UP</u>	<u>Mile Post</u>
Hoxie Subdivision	338.0
Little Rock Subdivision	357.20
Van Buren Subdivision	<u>346.20</u>
Monroe Subdivision	353.6

- E. In all of the zones, when local, work, wreck, HOS relief, or other such road runs are called or assigned which operate exclusively within the territorial limits of one of the zones established in this Agreement, such service shall be protected by engineers in such zone. If such run or assignment extends across territory encompassing more than one zone contemplated by this Agreement, it will be protected by engineers in the zone in which such service is home terminated.

## ARTICLE II - SENIORITY CONSOLIDATIONS

- A. To achieve the work efficiencies and allocation of forces that are necessary to make the North Little Rock/Pine Bluff Hub operate efficiently as a unified system, a new seniority district will be formed and a master Engineer Seniority Roster - UP/BLE North Little Rock/Pine Bluff Merged Roster #1 will be created for the employees assigned in the North Little Rock/Pine Bluff Hub on the date of implementation of this Agreement. The new roster will be divided into three (3) zones as described in Article I.A., I.B. and I.C. above.
- B. Prior rights seniority rosters will be formed covering each of the three (3) zones outlined above. Placement on these rosters and awarding of prior rights to their respective zones shall be based on the following:
  1. Zone 1 - This roster will consist of former SSW engineers with prior rights on the Arkansas and Missouri (Roster Nos. 302101 and 308101), the Texas (Roster Nos. 301101 and 307101), and former UP engineers with prior rights on the North Little Rock/Poplar Bluff (Roster Nos. 039111 and 040111) Consolidated Arkansas-Memphis

(  
(  
  
**(Roster Nos. 032111 and 036101) and Ft. Worth Merged 7 (TP)  
(Roster No. 012111).**

2. **Zone 2 - This roster will consist of former UP engineers with prior rights on North Little Rock-Van Buren (Central Division) Roster No. 034101).**
  3. **Zone 3 - This roster will consist of former UP engineers with prior rights on Louisiana Division (Roster No. 035101), UP Avondale (Roster No. 016101) and TP Shreveport (Roster No. 015101).**
  4. **North Little Rock/Pine Bluff Terminal - The consolidated terminal shall not comprise a separate prior rights seniority zone. However, for purposes of filling regular yard assignments, the assignments will be prior righted as per Side Letter No. 15.**
- C. **Seniority integration of the engineers from the above affected former rosters into one (1) common seniority roster will be done on a dove-tail basis using the current date of seniority as a locomotive engineer.**
- D. **Entitlement to assignment on subject consolidated roster shall be by canvass of the employees contributing equity to each of the zones set forth herein.**
- E. **Any engineer working in the territories described in Article I. on the date of implementation of this Agreement, but currently reduced from the engineers working list, shall also be given a place on the roster and prior rights. Engineers currently forced to this territory will be given a place on the roster and prior rights if so desired; otherwise, they will be released when their services are no longer required and will not establish a place on the new roster.**
- F. **UP and SSW engineers currently on an inactive roster pursuant to previous merger agreements shall participate in the roster formulation process described above based upon their date of seniority as a locomotive engineer.**
- G. **Engineers on each of the prior rights rosters described above will be afforded common seniority on the other zones outside their prior rights zone. All such common seniority shall be based upon the current date of seniority as a locomotive engineer. If this process results in employees having identical common seniority dates, seniority will be determined by the employee's fireman's date and if there are still identical dates, seniority will be determined by the random method of comparing the last four (4) digits of each employee's Social Security Number, with the larger number ranking first.**
- H. **With the creation of the new seniority described herein, all previous seniority outside the North Little Rock/Pine Bluff Hub held by engineers outside the new hub shall be eliminated and all seniority inside the new hub held by**

engineers outside the hub shall be eliminated. Upon completion of consolidation of the rosters and implementation of this hub, it is understood that no engineer may be forced to any territory on assignment outside the North Little Rock/Pine Bluff Hub.

- I. The total number of engineers on the master UP/BLE North Little Rock/Pine Bluff Merged Roster #1 will be mutually agreed upon by the parties based upon anticipated service requirements.

### **ARTICLE III - EXTRA BOARDS**

- A. The extra boards listed below shall be established to protect vacancies and other extra board work into or out of the North Little Rock/Pine Bluff Hub or in the vicinity thereof. It is understood whether or not such boards are guaranteed boards is determined by the designated collective bargaining agreement.
  1. Memphis. One Extra Board (combination road/yard) to protect all of the service described in I.A.6.a. and all other road service originating at or in the vicinity of Memphis, including vacancies at Lexa, Jonesboro and Paragould.
  2. North Little Rock/Pine Bluff. One Extra Board (combination road/yard) to protect each of the following:
    - a. Zone 1 pool freight extra service in the North Little Rock/Pine Bluff to Dexter and the North Little Rock/Pine Bluff to Memphis pools, all Zone 1 yard assignments within the former UP North Little Rock Terminal, and all other road service in Zone 1 originating at North Little Rock, including HOS relief of trains destined to North Little Rock, except as otherwise provided herein. This board will be headquartered at North Little Rock.
    - b. Zone 1 pool freight extra service in the North Little Rock/Pine Bluff to Longview/Shreveport pool, all Zone 1 yard assignments within the former SSW Pine Bluff Terminal, and all other road service in Zone 1 originating at Pine Bluff, including HOS relief of trains destined to Pine Bluff, except as otherwise provided herein. This board will be headquartered at Pine Bluff.
    - c. Zone 2 pool freight extra service in the North Little Rock/Pine Bluff to Van Buren pool, all Van Buren prior rights yard assignments within the former UP North Little Rock Terminal, and all other road service in Zone 2 originating at North Little Rock/Pine Bluff. This board will be headquartered at North Little Rock.

- d. **Zone 3 pool freight extra service in the North Little Rock/Pine Bluff to Monroe pool, all Louisiana Division prior rights yard assignments within the former UP North Little Rock Terminal, and all other road service in Zone 3 originating at North Little Rock/Pine Bluff. This board will be headquartered at North Little Rock.**
  3. **McGehee. One Extra Board (combination/road/yard) to protect service originating at or in the vicinity of McGehee.**
  4. **Monroe. One Extra Board (combination road/yard) to protect service in the Monroe-Livonia pool, and all other service originating at or in the vicinity of Monroe, including El Dorado.**
  5. **Alexandria. One Extra Board (combination road/yard) to protect the Rodemacher coal trains and all other road and/or yard service originating at or in the vicinity of Alexandria.**
  6. **Gurdon. One Extra Board (combination road/yard) to protect all service originating at or in the vicinity of Gurdon.**
- B. **If additional extra boards are established or abolished after the date of implementation of this Agreement, it shall be done pursuant to the terms of the designated collective bargaining agreement. When established, the Carrier shall designate the geographic area the extra board will cover.**

#### **ARTICLE IV - APPLICABLE AGREEMENTS**

- A. **All engineers and assignments in the territories comprehended by this Implementing Agreement will work under the Collective Bargaining Agreement currently in effect between the Union Pacific Railroad Company and the Brotherhood of Locomotive Engineers dated October 1, 1977 (reprinted October 1, 1991), including all applicable national agreements, the "local/national" agreement of May 31, 1996, and all other side letters and addenda which have been entered into between date of last reprint and the date of this Implementing Agreement. Where conflicts arise, the specific provisions of this Agreement shall prevail. None of the provisions of these agreements are retroactive.**
- B. **All runs established pursuant to this Agreement will be governed by the following:**
1. **Rates of Pay: The provisions of the June 1, 1996 National Agreement will apply as modified by the May 31, 1996 Local/National Agreement.**
  2. **Overtime: Overtime will be paid in accordance with Article IV of the 1991 National Agreement.**

3. **Transportation:** When a crew is required to report for duty or is relieved from duty at a point other than the on and off duty points fixed for the service established hereunder, the Carrier shall authorize and provide suitable transportation for the crew.

**Note:** Suitable transportation includes Carrier owned or provided passenger carrying motor vehicles or taxi, but excludes other forms of public transportation.

4. **Suitable Lodging:** Suitable lodging will be provided by the Carrier in accordance with existing agreements.
- C. Existing ID run provisions contained in the current UP North Little Rock-Mineola ID Agreement shall apply to all runs in the south pool described in Article 1.A. (South Operations). Articles 4, 6, 7, 10, 11 and 12 of said UP North Little Rock-Mineola ID Agreement shall apply to all runs in the north pool described in Article I.A.3.
- D. Engineers will be treated for vacation, entry rates and payment of arbitraries as though all their time on their original railroad had been performed on the merged railroad. Engineers assigned to the Hub on the effective date of this Agreement (including those engaged in engineer training on such date) shall have entry rate provisions waived. Engineers hired/promoted after the effective date of this Agreement shall be subject to National Agreement rate progression provisions.
- E. Engineers protecting pool freight operations on the territories covered by this Agreement shall receive continuous held-away-from-home terminal pay (HAHT) for all time so held at the distant terminal after the expiration of sixteen (16) hours. All other provisions in existing agreement rules and practices pertaining to HAHT pay remain unchanged.
- F. Except where specific terminal limits have been detailed in the Agreement, it is not intended to change existing terminal limits under applicable agreements.
- G. Actual miles will be paid for runs in the new North Little Rock/Pine Bluff Hub. Examples are illustrated in Attachment "E".

#### **ARTICLE V - FAMILIARIZATION**

- A. Engineers involved in the consolidation of the North Little Rock/Pine Bluff Hub covered by this Agreement whose assignments require performance of duties on a new geographic territory not familiar to them will be given full cooperation, assistance and guidance in order that their familiarization shall be accomplished as quickly as possible. Engineers will not be required to

lose time or ride the road on their own time in order to qualify for these new operations.

- B. Engineers will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualification shall be handled with local operating officers. The parties recognize that different terrain and train tonnage impact the number of trips necessary and the operating officer assigned to the merger will work with the local Managers of Operating Practices in implementing this Section. If disputes occur under this Article they may be addressed directly with the appropriate Director of Labor Relations and the General Chairman for expeditious resolution.
- C. It is understood that familiarization required to implement the merger consolidation herein will be accomplished by calling a qualified engineer (or Manager of Operating Practices) to work with an engineer called for service on a geographic territory not familiar to him.
- D. Engineers hired subsequent to the effective date of this document will be qualified in accordance with current FRA certification regulations and paid in accordance with the local agreements that will cover the merged Hub.

#### **ARTICLE VI - IMPLEMENTATION**

- A. The Carrier will give at least thirty (30) days' written notice of its intent to implement this Agreement.
- B.
  - 1. Concurrent with the service of its notice, the Carrier will post a description of Zones 1, 2 and 3 described in Article 1 herein.
  - 2. Ten (10) days after posting of the information described in B.1. above, the appropriate Labor Relations Personnel, CMS Personnel, General Chairmen and Local Chairmen will convene a workshop to implement assembly of the merged seniority rosters. At this workshop, the representatives of the Organization will participate with the Carrier in the construction of consolidated seniority rosters. At this time, engineers from the interested former rosters will be assigned to the new consolidated rosters.
  - 3. Dependent upon the Carrier's manpower needs, the Carrier may develop a pool of representatives of the Organization, with the concurrence of the General Chairmen, which, in addition to assisting in the preparation of the rosters, will assist in answering engineers' questions, including explanations of the seniority consolidation and implementing agreement issues, discussing merger integration and familiarization issues with local Carrier officers and coordinating with

respect to CMS issues relating to the transfer of engineers from one zone to another or the assignment of engineers to positions.

- C. The roster consolidation process shall be completed in five (5) days, after which the finalized agreed-to rosters will be posted for information and protest in accordance with the applicable agreements. If the participants have not finalized agreed-to rosters, the Carrier will prepare such rosters, post them for information and protest, will use those rosters in assigning positions, and will not be subject to claims or grievances as a result.
- D. Once rosters have been posted, those positions which have been created or consolidated will be bulletined for a period of five (5) calendar days. Engineers may bid on these bulletined assignments in accordance with applicable agreement rules. However, no later than ten (10) days after closing of the bulletins, assignments will be made.
- E.
  - 1. After all assignments are made, engineers assigned to positions which require them to relocate will be given the opportunity to relocate within the next thirty (30) day period. During this period, the affected engineers may be allowed to continue to occupy their existing positions. If required to assume duties at the new location immediately upon implementation date and prior to having received their thirty (30) days to relocate, such engineers will be paid normal and necessary expenses at the new location until relocated. Payment of expenses will not exceed thirty (30) calendar days.
  - 2. The Carrier may, at its option, elect to phase-in the actual implementation of this Agreement. Engineers will be given ten (10) days' notice of when their specific relocation/reassignment is to occur.

## **ARTICLE VII - PROTECTIVE BENEFITS AND OBLIGATIONS**

- A. All engineers who are listed on the prior rights North Little Rock/Pine Bluff (Zones 1, 2 and 3) merged rosters shall be considered adversely affected by this transaction and consolidation and will be subject to the New York Dock protective conditions which were imposed by the STB. It is understood there shall not be any duplication or compounding of benefits under this Agreement and/or any other agreement or protective arrangement.
  - 1. Carrier will calculate and furnish TPA's for such engineers to the Organization as soon as possible after implementation of the terms of this Agreement. The time frame used for calculating the TPA's in accordance with New York Dock will be August 1, 1995 through and including July 31, 1996.
  - 2. In consideration of blanket certification of all engineers covered by this Agreement for wage protection, the provisions of New York Dock

protective conditions relating to "average monthly time paid for" are waived under this Implementing Agreement.

3. Test period averages for designated union officers will be adjusted to reflect lost earnings while conducting business with the Carrier.
4. National Termination of Seniority provisions shall not be applicable to engineers hired prior to the effective date of this Agreement.

B. Engineers required to relocate under this Agreement will be governed by the relocation provisions of New York Dock. In lieu of New York Dock provisions, an employee required to relocate may elect one of the following options:

1. Non-homeowners may elect to receive an "in lieu of" allowance in the amount of \$10,000 upon providing proof of actual relocation.
2. Homeowners may elect to receive an "in lieu of" allowance in the amount of \$20,000 upon providing proof of actual relocation.
3. Homeowners in Item 2 above who provide proof of a bona fide sale of their home at fair value at the location from which relocated shall be eligible to receive an additional allowance of \$10,000.
  - a) This option shall expire within five (5) years from date of application for the allowance under Item 2 above.
  - b) Proof of sale must be in the form of sale documents, deeds, and filings of these documents with the appropriate agency.

**NOTE:** All requests for relocation allowances must be submitted on the appropriate form.

4. With the exception of Item 3 above, no claim for an "in lieu of" relocation allowance will be accepted after two (2) years from date of implementation of this Agreement.
5. Under no circumstances shall an engineer be permitted to receive more than one (1) "in lieu of" relocation allowance under this Implementing Agreement.

6. Engineers receiving an "in lieu of" relocation allowance pursuant to this Implementing Agreement will be required to remain at the new location, seniority permitting, for a period of two (2) years.

#### **ARTICLE VIII - SAVINGS CLAUSES**

- A. The provisions of the applicable Schedule Agreement will apply unless specifically modified herein.
- B. It is the Carrier's intent to execute a standby agreement with the Organization which represents engineers on the former Memphis Union Terminal. Upon execution of that Agreement, said engineers will be fully covered by this Implementing Agreement as though the Organization representing them had been signatory hereto.
- C. Nothing in this Agreement will preclude the use of any engineers to perform work permitted by other applicable agreements within the new seniority districts described herein, i.e., yard engineers performing Hours of Service Law relief within the road/yard zone, ID engineers performing service and deadheads between terminals, road switchers handling trains within their zones, etc.
- D. The provisions of this Agreement shall be applied to all engineers covered by said Agreement without regard to race, creed, color, age, sex, national origin, or physical handicap, except in those cases where a bona fide occupational qualification exists. The masculine terminology herein is for the purpose of convenience only and does not intend to convey sex preference.

#### **ARTICLE IX - EFFECTIVE DATE**

This Agreement implements the merger of the Union Pacific and SSW railroad operations in the area covered by Notice dated May 14, 1997.

Signed at Omaha, Nebraska, this 9th day of October, 1997.

**FOR THE BROTHERHOOD  
OF LOCOMOTIVE ENGINEERS:**

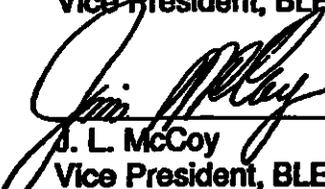
  
M. L. Royal, Jr.  
General Chairman, BLE

  
D. E. Thompson  
General Chairman, BLE

  
D. E. Penning  
General Chairman, BLE

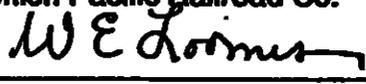
**APPROVED:**

  
D. M. Hahs  
Vice President, BLE

  
J. L. McCoy  
Vice President, BLE

**FOR THE CARRIERS:**

  
M. A. Hartman  
General Director-Labor Relations  
Union Pacific Railroad Co.

  
W. E. Loomis  
Director-Labor Relations  
Southern Pacific Transportation Co.

October 9, 1997

MR D E PENNING  
GENERAL CHAIRMAN BLE  
12531 MISSOURI BOTTOM RD  
HAZELWOOD MO 63042

MR D E THOMPSON  
GENERAL CHAIRMAN BLE  
414 MISSOURI BLVD  
SCOTT CITY MO 63780

MR M L ROYAL JR  
GENERAL CHAIRMAN BLE  
413 WEST TEXAS  
SHERMAN TX 75092-3755

Gentlemen:

This refers to the Merger Implementing Agreement for the North Little Rock/Pine Bluff Hub.

During the ratification meetings which have been conducted by your Organization on the property some concern has been raised regarding the intent of Article VIII - Savings Clauses, Item C thereof. Specifically, it was the concern of some of your constituents that the language of Item C might subsequently be cited to support a position that "other applicable agreements" supersede or otherwise nullify the very provisions of the Merger Implementing Agreement which were negotiated by the parties.

*I assured you this concern was not valid and no such interpretation could be applied. I pointed out that Item C must be read in conjunction with Item A, which makes it clear that the specific provisions of the Merger Implementing Agreement, where they conflict with the basic schedule agreement, take precedence, and not the other way around.*

The purpose of Item C was to establish with absolute clarity that there are numerous other provisions in the designated collective bargaining agreement, including national agreements, which apply to the territory involved, and to the extent such provisions were not expressly modified or nullified, they still exist and apply. It was not the intent of the Merger Implementing Agreement to either restrict or expand the application of such agreements.

Side Letter No. 20  
October 9, 1997  
Mr. D. E. Penning  
Mr. D. E. Thompson  
Mr. M. L. Royal, Jr.  
Page 2

In conclusion, this letter of commitment will confirm that the provisions of Article VIII - Savings Clauses may not be construed to supersede or nullify the terms of the Merger Implementing Agreement which were negotiated in good faith between the parties. I hope the above elaboration clarifies the true intent of such provisions.

Yours truly,



M. A. Hartman  
General Director-Labor Relations

11

**MERGER IMPLEMENTING AGREEMENT  
(Portland Hub)  
Zone 1**

**between the**

**UNION PACIFIC  
SOUTHERN PACIFIC TRANSPORTATION COMPANY  
and  
BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

In Finance Docket No. 32760, the U.S. Department of Transportation, Surface Transportation Board ("STB") approved the merger of the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") and Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SP"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp., and The Denver & Rio Grande Western Railroad Company ("DRGW") (collectively referred to as "SP"). In approving this transaction, the STB imposed New York Dock labor protective conditions.

In order to achieve the benefits of operational changes made possible by the transaction, to consolidate the seniority of all engineers working in the territory covered by this Agreement into one common seniority district covered under a single, common collective bargaining agreement,

**IT IS AGREED:**

**I. Portland Hub**

New seniority districts shall be created that encompasses the following area: UP territory including milepost 182.79 west of Seattle, Washington to Eastport, Idaho on the Spokane International to milepost 390.0 at Silver Bow Montana to milepost (Pocatello sub) 191.80 at McCammon, Idaho and to milepost (Pocatello sub) 0.64 at Granger, Wyoming; SP territory from (including) Chemult, Oregon to the Portland Terminal. The Hub shall be divided into three zones as follows:

**Zone 1 will include operations Chemult north to Seattle and Portland east to (not including) Hinkle.**

**Zones 2 and 3 are not defined in this document but will be addressed in implementing agreements/awards covering those zones.**

**NOTE 1:** Zone 1 shall include all main and branch lines, industrial leads and stations between the points identified.

**NOTE 2:** Crews with home terminals within a Zone may work to points outside the Zone and Hub without infringing on the rights of other engineers in other zones or Hubs. The Zone identifies the on duty points for assignments and not the boundaries of assignments. For example a road switcher on duty at Hinkle may work in any direction up to the limits of its radius as set by the road switcher agreement and a work train at Hinkle may work both east and west. Both of these assignments would use Zone 2 crews without infringing on the rights of Zone 1 crews. A Zone 1 pool freight crew would continue to operate through freight from Portland to Hinkle and perform the same work as it performed pre-merger.

**NOTE 3:** If former SP lines known as the Siskiyou and Coos Bay are reacquired by the Carrier then those lines that go as far as Bellview/Power will also be included in the SP prior right area.

**NOTE 4:** Any trackage, either under lease or sale, that may be reacquired by the UP will be included in the appropriate prior right territory.

## **II. Seniority and Work Consolidation.**

The following Zone 1 seniority consolidations will be made:

**A.** A new seniority district will be formed and a master Engineer roster shall be created for Zone 1 for the engineers on the current SP Portland seniority roster and the current UP First Seniority District roster and UP Second Seniority District roster or on a SP auxiliary board from a point inside Zone 1 but working outside Zone 1 or UP engineer borrowed out to other locations that will return to the Zone upon release. It does not include borrow outs to the Zone, if any. All such engineers must be on one of these rosters on October 1, 1997.

**B.** The new roster will be created as follows:

- 1.** UP First Seniority District, UP Second Seniority District and SP Engineers will be dovetailed based upon the current engineer seniority date within Zone 1. This shall include any engineer working in trainman/fireman service with an engineer's seniority date. If this process results in engineers having identical seniority dates, seniority ranking will be determined by the engineer's earliest retained hire date with the Carrier.

2. All engineers who entered training and are promoted in Zone 1 after October 1, 1997 will be considered common engineers, have no prior rights and placed on the bottom of the roster. An engineer who entered engineer training prior to October 1, 1997 and finished the training after October 1, 1997 shall not be a common engineer but will have prior rights in the area they took promotion.
3. All engineers placed on the rosters may work all assignments protected by the roster in accordance with their seniority and the provisions set forth in this Agreement.
4. Engineers placed on the Portland Hub Zone 1 Roster shall relinquish all seniority outside the new roster area upon implementation of this Agreement and all seniority inside the Zone held by engineers outside the Zone shall be eliminated. The seniority standing of engineers in more than one Zone of the Portland Hub will be finalized in the final Hub agreement.
5. Current 2nd District engineers working 2nd district assignments at Hinkle shall have the following options.

#### **NON EXTRA BOARD ASSIGNMENTS**

- a. Be prior righted to the non extra board assignments and retain their zone 1 prior right and expanded seniority. If they voluntarily leave the assignments the assignments shall no longer be 2nd district assignments and shall become 3rd district assignments until zone 2 is covered by an agreement or an award and shall be further handled in zone 2 at that time.
- b. If the assignments are abolished then the engineer shall be free to exercise his/her prior rights and expanded seniority. If the positions are later reestablished then the engineers who held the assignments at implementation shall be automatically reassigned and when contacted shall have an opportunity to return to it. Should they decline and not return to it then it shall be treated as a voluntary relinquishment per 5(a) above.

#### **EXTRA BOARD ASSIGNMENTS**

- c. Be prior righted to the extra board assignments and retain their zone 1 prior right and expanded seniority. If they voluntarily leave the assignments the assignments shall no longer be 2nd district assignments and shall become 3rd district assignments until zone 2 is covered by an agreement or an award and shall be further handled in zone 2 at that time.

d. If the assignments are abolished then the engineer shall be free to exercise his/her prior rights and expanded seniority. If the positions are later reestablished then the engineers who held the assignments at implementation shall be automatically reassigned and when contacted shall have an opportunity to return to it. Should they decline and not return to it then it shall be treated as a voluntary relinquishment per 5(c) above.

**NOTE 1:** All 2nd district assignments once vacated will no longer be available to former 2nd district engineers but initially to the 3rd district and finally to the Zone 2 roster.

C. Engineers who are on an authorized leave of absence or who are dismissed and later reinstated will have the right to displace to the appropriate roster, provided his/her seniority at time of displacement would have permitted him/her to hold that selection. The parties will create an inactive roster for all such engineers until they return to service in a Hub or other location at which time they will be placed on the appropriate seniority rosters and removed from the inactive roster.

D. At the time of implementation all assignments will be prior righted to the seniority district that have rights to the assignments on the day prior to implementation. Prior rights shall also extend to the following pools up to the baseline established:

Seattle-Portland	32
Portland-Hinkle	52
Portland-Eugene/Oakridge	32
Oakridge-Klamath Falls	32

**NOTE:** Portland Terminal shall be considered as common to all seniority districts for determining that service operates within a pre-merger seniority district. For example, it does not matter where in the Portland terminal a pool freight assignment goes on duty, if it goes to Hinkle or Eugene or Oakridge then they would be prior right assignments.

E. Prior rights shall be phased out on the following schedule:

1. **Portland Extra Boards**- As Portland extra boards are consolidated they shall be filled using the dovetail roster.

**NOTE :** Because the first consolidated extra board shall be between the UP 1st and 2nd Districts then UP 1st and 2nd district engineers on an interim dovetail basis can make application for that assignment ahead of the SP. Once the SP extra board is consolidated with the UP extra board, full dovetail rights shall govern

2. **Portland yard assignments** - On the first day of the month following forty-eight (48) months from the date of implementation all Portland yard assignments shall no longer be filled on an 80UP/20SP basis (see page 8, this Article, section M) but, shall be filled using a 40UP/10SP basis for two more years. The dovetail roster shall be used at the end of the six year period and for those assignments not covered by prior rights.

3. **Pool assignments**- The first day of the month following twenty-four (24) months from the date of implementation shall begin a four year period for the transition of prior right assignments in each pool to dovetail assignments. At the end of each year the number of prior right turns (baseline) in each pool shall be transferred to dovetail assignments by 25% until the baseline is eliminated.

Example: The Portland-Hinkle pool baseline for the first three years is 52. On the first day of the month after three years the baseline of prior right turns shall drop to 39. On the first day of the month after four years from implementation the baseline shall drop to 26 turns. This will continue for two more years with the baseline dropping to 13 and then zero. It does not matter how many turns are in the pool at the time, only the baseline is being reduced.

4. **Non-pool and non-yard assignments within the thirty mile radius**- On the first day of the month following twenty-four months from the date of implementation, all non-pool and non-yard assignments within the thirty mile zone shall no longer have prior rights and shall be filled from the dovetail roster.

5. **Other assignments**- Any assignment within Zone 1 not covered above shall be filled using the dovetail roster on the same date that the last pool turns are also subject to the dovetail roster.

6. When assignment(s) goes through the transition from prior right to dovetail there will be no re-advertising of the assignment(s), nor will the process generate a displacement. It means that the next time an engineer places an application for the assignment or an engineer has a displacement from some other reason provided for in the CBA he/she shall do so on the basis of the dovetail roster. There shall be no Sadie Hawkins Days during this transition period.

**F.** In addition to the above, the dovetail roster shall be used for all new non pool freight assignments that operate over two or more prior right areas, all pool freight assignments above the baseline and any prior right assignment not filled by a prior right engineer.

**NOTE:** Unassigned work trains shall be run off the extra board(s). Until the extra boards are consolidated work trains will not work on more than one prior right road territory. An unassigned work train may work on both a road territory and anywhere in the Portland terminal. Work train service shall be governed by the controlling CBA.

**G.** New pool freight operations not covered in Article III of this Agreement and created after the implementation of this Agreement shall be covered under Article IX of the May 1986 National Arbitration Award and seniority issues regarding rights to the new run(s) shall be determined at that time. It is not the intent of this agreement to supplant existing runs with non pool assignments or create non pool assignments to avoid provisions of this Article.

**H.** Prior right UP 1st and 2nd District and SP engineers will be required to protect all assignments in their pre-merger prior rights area that still remain in the new zone 1. In addition they will be required to protect all consolidated extra boards and all other assignments that have a home terminal on duty point within thirty miles of the Portland Terminal limits

**I.** When a permanent Zone 1 prior right vacancy exists at a point inside the thirty mile limit it shall be filled as follows:

1. The senior prior right applicant shall be assigned. If no applicant, and a reserve board exists with prior right engineers on the reserve board, then the junior prior right reserve board engineer shall be recalled in accordance with the reserve board provisions of the surviving CBA.
2. If no prior right applicant and no prior right engineer on a reserve board, then the senior applicant with prior rights on another area, shall be assigned unless that applicant is required to fill a prior right assignment on his/her prior right area.
3. If no applicant with prior rights in another area then the junior reserve board engineer with prior rights in another area shall be recalled in accordance with the reserve board provisions of the surviving CBA.

4. If no such engineer on a reserve board then the senior common engineer who makes application shall be assigned. If none then the senior demoted engineer shall be recalled. If none then the junior engineer from the protecting extra board shall be assigned

**J.** When a permanent Zone 1 common vacancy exists at a point inside the thirty mile limit it shall be filled as follows:

1. The senior applicant with any prior rights from the dovetail roster shall be assigned.
2. If none, then the junior prior right engineer on all reserve boards shall be recalled in accordance with the reserve board provisions of the surviving CBA.
3. If none, then the senior applicant with common rights shall be assigned. If none, then the senior demoted engineer shall be recalled. If none, then the junior engineer from the protecting extra board shall be assigned

**K.** When a permanent Zone I vacancy exists at a point outside the thirty mile limit it shall be filled as follows:

1. The senior prior right applicant shall be assigned.
2. If none, then the junior engineer on a reserve board who holds prior rights to that assignment shall be recalled in accordance with the reserve board provisions of the surviving CBA.
3. If none, then the senior applicant not holding prior rights to the assignment shall be assigned.
4. If there are no engineers on a reserve board who hold prior rights to the vacancy and no other applicants, then the senior engineer who is demoted (prior rights to the assignment or common) shall be recalled and assigned to the vacancy.
5. If there are no applicants and no prior right reserve board or common demoted engineers, a protecting extra board engineer is forced to the assignment. When selecting the junior engineer on the extra board,

those engineers with prior rights on another area shall not be considered as the junior engineer. In this case the junior engineer who can be forced to the assignment will be assigned. That extra board position (the one within the thirty mile limit) may then be filled by recalling an engineer on a different reserve board.

**Example:** An assignment on the Albany road switcher (SP prior right) goes no bid. If there are any former SP engineers on a reserve board they shall be recalled and the assignment filled through the displacement process. If none on a reserve board then the senior demoted engineer who holds rights to the assignment (prior right or common) shall be recalled. If none in that status, then the junior former SP engineer on the protecting extra board (Eugene) shall be assigned with an SP engineer on the Portland extra board filling the Eugene extra board if that position also goes no bid. The junior reserve board engineer on the UP 1st and 2nd District reserve boards shall then be recalled for the filling of the Portland extra board vacancy if that position goes no bid.

**NOTE:** If engineers are on the bump board with vacancies pending, CMS may review their prior right status and other eligibility of these engineers prior to proceeding with the above steps.

**L.** The thirty mile limit restrictions, in (H) above, on force assigning shall be eliminated on the same day that all prior rights are eliminated. Effective that day the provisions of Article II (H),(I),(J) and (K) shall no longer apply. The application and vacancy provisions of the controlling CBA shall govern at that time. When prior rights are eliminated, engineers will be required to protect all assignments in Zone 1.

**M.** For the first 48 month period that the yard prior rights are in effect, the Portland yard assignments shall be prior righted on an 80(UP)/20(SP)% basis. The next 24 months shall be on a 40/10 basis. When possible, the 80/20 or 40/10 will be filled using the current geographical assignment basis, with the SP protecting Brooklyn assignments up to 20/10 % of the total and the UP protecting all other Portland terminal assignments. When it is not possible to fill on this basis then the following shall govern:

1. If a reduction is made in one area and it is necessary to designate an assignment in another area, the first such assignment shall be on a daylight shift, the second on the afternoon shift and the third on the night shift and so forth.

2. The representative from the area being designated shall select the assignment on the first and third shift and the representative from the area losing the assignment shall select the assignment on the second shift. If only one representative then the General Chairman shall make the selection.

Example: Several assignments are reduced at Brooklyn and it is necessary to designate three assignments in the UP area as SP assignments. The UP representative shall select which assignments become SP on the first and third shifts and the SP representative shall select the assignment on the second shift.

3. If assignments are later reestablished in the former area then they shall be redesignated in accordance with (M) above.
4. The parties recognize that at the time of implementation that the numbers may not be 80/20. If not, the parties will not automatically designate jobs in another area but will wait until assignments are reduced or added after implementation. Attachment "A" shows the chart that will be used.

N. During the six year period there shall be a separate reserve board (total of three) for each of the three prior right seniority areas. After the prior rights are eliminated there shall only be one reserve board for Zone 1. While the reserve board provisions of the controlling CBA will govern, should a surplus of engineers develop, the Carrier may use the opportunity to familiarize employees on other assignments in addition to using reserve boards when not needed in train service. This would apply to those pre October 1, 1997 engineers when protected.

### III. POOL OPERATIONS.

Pool operations within the Portland Hub zone 1 shall be run as follows:

A. Current UP 1st and 2nd District pool home and away from home terminals are not modified by this agreement

B. SP pool operations shall be modified to add pool freight service between Portland (home terminal) and Oakridge (away from home terminal) and sufficient engineers shall be relocated to protect this service.

C. Oakridge-Klamath Falls and Dunsmuir-Oakridge service shall also be instituted and current Eugene-Klamath Falls service shall be discontinued. Recognizing that some employees may commute to Oakridge from Eugene, if due to inclement weather

at Oakridge after their return from Klamath Falls, the Carrier will assist with lodging at Oakridge if available. If requested an engineer may receive a two hour call for Oakridge service.

**NOTE :** The Carrier shall give notice for the implementation of service in (B) and (C) above if not given in the notice to implement this Zone 1 agreement. The notice shall include the number of initial positions that will be changed. Applications shall be accepted for 15 days for the new positions. Engineers shall be notified of their assignment either by application or force in the seven days following close of applications. Assignments shall be phased in beginning 30 days after the application closing date. CMS will work with the local chairman with this process. If additional positions are established within the first year, over and above the original number, the same process will be used.

**D.** When the Portland-Oakridge and Oakridge-Klamath Falls service is started, additional traffic may result in both the transfer of positions and an increase in new positions. Both new and transferred will be covered under the provisions of this agreement for a two year period. New positions at Portland will be determined by using the average number of pool turns in the first quarter 1998 as the baseline number. One must remember that employees will be going to assignments in Dunsmuir, Oakridge and Portland.

**E.** SP Engineers forced to Dunsmuir will be permitted to make application back to their original prior rights Zone. The application must be on file within sixty (60) days of being forced and will be honored when vacancies of a minimum of thirty (30) days exist in the original SP prior right area of Zone 1 and there are no engineers their senior on reserve boards or demoted in that Zone. If an engineer is recalled and declines the recall, then his/her application will be pulled and not reentered. (See relocation section on restrictions if relocation allowances are requested).

**Note:** The minimum of thirty (30) days shall be met when all engineers senior to the forced engineer have been assigned to a working position for a minimum of thirty (30) days or on a leave of absence for a minimum of thirty (30) days and an additional regular assignment becomes vacant. If the engineer returning to the original zone works for ninety (90) days without being demoted then the forced zone rights will be relinquished and the original zone rights reinstated.

**F.** Any pool freight, local, work train, or road switcher service may be established pursuant to the controlling CBA to operate from any point to any other point within the new Hub with the on duty point within Zone 1.

#### **IV. EXTRA BOARDS**

**A. Until the UP and SP extra boards are consolidated per (B) below the SP prior night board shall protect yard vacancies with an on duty point in the Brooklyn yard and the UP Second District and UP consolidated First and Second district extra boards shall protect other Portland Terminal Yard vacancies.**

**B. The three engineer road extra boards at Portland shall be consolidated based on the following time table.**

- 1. The Carrier may serve notice within 8 months from the date of implementation of this agreement to combine the UP 1st and 2nd district extra boards at Portland. The notice will be a 30 day notice that will permit the combining of the two boards on the first day of the month on or after the 30 day notice is given. If notice has not been served at the end of the 8 month period then it shall be deemed to have been served on the last day of the 8 month period after implementation.**
- 2. The Carrier may serve notice to combine the consolidated UP road extra board and the SP road extra board within 12 months from the date of consolidation of the extra boards in (B) (1) above. The notice will be a 30 day notice that will permit the combining of the two boards on the first day of the month on or after the 30 day notice is given. If notice has not been served at the end of the 12 month period then it shall be deemed to have been served on the last day of the 12 month period after implementation.**

**C. Other UP extra boards currently in zone 1 not mentioned above shall continue to operate in accordance with the provisions of the surviving CBA.**

**D. Any location not listed shall be covered by the nearest extra board or additional extra board(s) may be established pursuant to the provisions of the surviving CBA. It is the intent to establish an extra board at Oakridge.**

**E. Exhausted extra boards**

- 1. If prior to consolidation, one of the Portland extra boards is exhausted, then another Portland extra board may be used prior to using other sources of supply. If the Eugene or Oakridge extra board is exhausted then the other extra board may be used prior to using other sources of supply. If prior to an agreement/award in zone 2 the Second District extra board at Hinkle is exhausted the Third District extra board may be used prior to using other sources of supply.**

2. An engineer called from his/her extra board for an assignment in another area not principally covered by their extra board shall be handled as follows:
  - a. Pay received for this assignment shall not be used as an offset for extra board guarantee but shall be in addition to, however, it shall be used in computing whether the engineer is entitled to protection pay at the end of the month.
  - b. An engineer unavailable at time of call shall have a deduction made in their extra board guarantee in accordance with the extra board agreement and shall have an offset to their protection in accordance with the protection offset provisions. If miss called for secondary calls, the engineer shall not be placed on the bottom of the board but will hold his/her place.
  - c. An engineer unavailable at time of call shall not be disciplined.
3. Prior to the Carrier using a third extra board, all other sources of supply in the area where the vacancy exists must be exhausted.

**NOTE:** The nearest extra board will be determined by highway miles. When new assignments are established, the bulletin will identify the protecting extra board.

#### **V. TERMINAL AND OTHER CONSOLIDATIONS**

**A.** At the joint terminal location of Portland all UP and SP operations shall be consolidated into a unified terminal operation. Yard and road crews will not be restricted in the terminal where they can operate. The new terminal limits for Portland shall be : 17.0 on the UP main line, (Sandy siding), 765.01 on the SP main line south of Brooklyn, the Columbia river (North Portland Junction) 6.8 on the north and 741.24 on the SP Tillamook line.

**NOTE:** While these reflect the current terminal limits, the road/yard zones are still figured from the previous limits. This affects only the UP East main line limits which are 12.25 on the Graham line and 14.50 on the Kenton line. (Reference August 7, 1987 Agreement) The other limits in (A) above remain the same.

**B.** The provisions of (A) will not be used to enlarge or constrict the current limits except to the extent necessary to combine into a unified operation.

**C.** The terminal limits for Oakridge shall be MP578 74 and MP582.30

## **VI. AGREEMENT COVERAGE**

### **A. General Conditions for Terminal Operations.**

1. Initial delay and final delay will be governed by the controlling collective bargaining agreement, including the Duplicate Pay and Final Terminal Delay provisions of the 1986 and 1991 National and Implementing Agreements and awards.
2. Engineers will be transported to/from their trains to/from their designated on/off duty point in accordance with Article VIII, Section 1 of the May 1986 National Agreement. The Carrier shall designate the on/off duty points for engineers.
3. The current application of National Agreement provisions regarding road work and Hours of Service relief under the combined road/yard service Zone, shall continue to apply. Yard crews at any location within the Hub may perform such service in all directions out of their terminal.

### **B. General Conditions for Pool Operations.**

The terms and conditions of the pool operations set forth in Article III shall be the same for all pool freight runs. The terms and conditions are those of the surviving collective bargaining agreement as modified by subsequent national agreements, awards and implementing documents and those set forth below.

1. Turnaround Service/Hours of Service Relief. Turnaround service/hours of service relief at both home and away from home terminals;
  - (a) May be handled by extra boards at the away from home terminal, and,
  - (b) Shall be handled by extra boards at the home terminals,if extra crews are available, prior to using pool crews. Engineers used for this service may be used for multiple trips in one tour of duty in accordance with the designated collective bargaining agreement rules.
  - (c) Extra boards may handle this service in all directions out of a terminal.
2. Nothing in this Section B (1) prevents the use of other crews to perform work currently permitted by prevailing agreements, including, but not limited to yard crews performing Hours of Service relief within the road/yard zone, ID crews performing service and deadheads between terminals, road switchers

handling trains within their zones and using an engineer from a following train to work a preceding train and payments required by the controlling CBA shall continue to be paid when this work is performed.

3. The Portland-Hinkle pool and the Seattle-Portland pool provisions that provide for guarantee and/or constructive miles shall continue for those engineers who are eligible for them on the day prior to implementation. Each pool shall also continue to be paid under the current short turnaround provisions of those Agreements.
4. The Portland-Hinkle, Seattle-Portland, Portland-Eugene, Portland-Oakridge and Oakridge-Klamath Falls pools shall be governed by, but not limited to, the same ITD, FTD, HAHT and Overtime rules (see page 20). Rules for future runs that are created under Article IX notices shall be determined at that time and this sets no precedence for future runs.
5. The Portland-Eugene, Portland-Oakridge and Oakridge-Klamath Falls pools shall be governed by the basic Short Turnaround provisions of the Idaho Agreement which currently provides for miles or hours with a minimum of a basic day.

C. **Agreement Coverage** - Engineers working in Zone 1 shall be governed, in addition to the provisions of this Agreement, by the Collective Bargaining Agreement selected by the Carrier, including all addenda and side letter agreements pertaining to that agreement and previous National Agreement/Award/Implementing Document provisions still applicable. Except as specifically provided herein the system and national collective bargaining agreements, awards and interpretations shall prevail. None of the provisions of these agreements are retroactive. The Carrier has selected the Idaho CBA as the controlling CBA in the Portland Hub and it shall be effective in Zone 1 on the implementation date of this agreement.

D. In addition to the above the following will govern in the area covered by this agreement:

1. **Twenty-Five Mile Zone** - At all home and away from home terminals, both inside and outside the Hub, pool crews may receive their train up to twenty-five miles on the far side of the terminal and run on through to the scheduled terminal. Crews shall be paid an additional one-half (½) basic day for this service in addition to the miles run between the two terminals. If the time spent in this zone is greater than four (4) hours, then they shall be paid on a minute basis.

Note: At Hinkle this provision will not apply unless Zone 2 is covered with a merger agreement/award with similar provisions.

2. **First-In/First-Out** - Employees in pool freight service will operate and/or deadhead on a first-in/first-out basis, however, pool freight employees used in short turnaround service or given a call and release shall be placed first out after legal rest.

3. **Displacement** - Employees with displacement rights exercising in pool freight service shall place into the pool at the home terminal in the last out position at which time the junior pool freight engineer will be removed. If such junior pool freight engineer is currently on-duty or at the away-from-home terminal; such junior engineer will be removed from the pool upon tie-up at the home terminal.

4. **Personal Leave** - Requests for personal leave day(s) will be granted or rejected at the time requested. If granted, the day(s) will commence at the time granted and the employee's mark up for return to service will be pended in increments of twenty-four (24) hours from that time depending on the number of days granted.

5. **Runarounds**- A terminal runaround occurs when engineers from the same pool, going to the same destination, depart the same yard in other than the order called and both trains have their power attached to their train. "Depart" means that a train has started moving on the track it was made up in.

*Example 1: Two engineers are called on duty in the Portland-Hinkle pool. The first out engineer receives his train in the Barnes Yard and the second out engineer receives his train in the Albina Yard. There cannot be a terminal runaround because the engineer did not depart from the same yard.*

*Example 2: Two engineers are called on duty in the Portland-Hinkle pool and both engineers receive their trains in the Albina departure Yard. If both trains have their power attached a terminal runaround can occur.*

*Example 3: Same set of facts as example 2, however, one engineer is required to go to the mechanical facilities to obtain all or part of their power. If the second engineer departs the yard prior to the first engineer returning to their train and putting their power on it no runaround has occurred.*

*Example 4: Two engineers are called from the same extra board and the first one is called Portland-Oakridge and the other is called Portland-Hinkle. No runaround can occur even if they depart from the same yard.*

**NOTE:** Yards for the purposes of applying this runaround provision at Portland : Albina (East Portland/St. John Jct.); Barnes; Rivergate; Term 6; Kenton/Champ; Fir/Troutdale; and Brooklyn ( East Portland/MP 765.01).

**VII. PROTECTION.**

**A.** Due to the parties voluntarily entering into this agreement the Carrier agrees to provide New York Dock wage protection (automatic certification) to all prior right engineers who are listed on the Portland Hub Merged Rosters and working an assignment (including a Reserve Board) on October 1, 1997. This protection will start with the effective (implementation) date of this agreement. The engineers must comply with the requirements associated with New York Dock conditions or their protection will be reduced for such items as layoffs, bidding/displacing to lower paying assignments when they could hold higher paying assignments, etc. Protection offsets due to unavailability are set forth in the Questions and Answers and side letter #1.

**B.** This protection is wage only and hours will not be taken into account.

**C.** Engineers required to relocate under this agreement will be governed by the relocation provisions of New York Dock. Those required to relocate to other than Oakridge may elect in lieu of New York Dock provisions, one of the following options:

1. Non-homeowners may elect to receive an "in lieu of" allowance in the amount of \$10,000 upon providing proof of actual relocation.

2. Homeowners may elect to receive an "in lieu of" allowance in the amount of \$20,000 upon providing proof of actual relocation.

3. Homeowners in Item 2 above, who provide proof of a bona fide sale of their home at fair value at the location from which relocated, shall be eligible to receive an additional allowance of \$10,000.

(a) This option shall expire five (5) years from date of application for the allowance under Item 2 above.

(b) Proof of sale must be in the form of sale documents, deeds, and filings of these documents with the appropriate agency.

4. With the exception of Item 3 above, no claim for an "in lieu of" relocation allowance will be accepted after two (2) years from date of implementation of this agreement.

**NOTE:** The two (2) year provision of this paragraph (4) shall be extended for those engineers at Hinkle and Eugene if operations affecting those engineers are not instituted until less than ninety(90) days remain in the two year period or after the two year period. If not instituted until after the period then affected engineers shall have one year from when affected to request an "in lieu of" payment.

5. Engineers receiving an "in lieu of" relocation allowance pursuant to this implementing agreement will be required to remain at the new location, seniority permitting, for a period of two (2) years.

6. In addition to those engineers required to relocate, engineers at Eugene, shall be treated as required to relocate under this Agreement if their pool and extra board assignment is transferred to Portland for the Portland-Oakridge pool, or on a seniority basis on a one for one basis for the number of assignments transferred. Once the number of in lieu of allowances are granted equal to the number of positions transferred all other moves associated with the specific number of assignments transferred will not be eligible for any moving allowances.

**NOTE:** Paragraph (6) does not cover those instances when a yard or other assignment may be abolished at Eugene as a result of the merger and an engineer can no longer hold at Eugene because of that abolishment. Engineers who must relocate under this scenano are covered under this Article

D. There will be no pyramiding of benefits.

E. National Termination of Seniority provisions shall not be applicable to Engineers hired prior to the effective date of this agreement.

F. Engineers will be treated for vacation, payment of arbitraries and personal leave days as though all their service on their original railroad had been performed on the merged railroad. Engineers assigned to the Portland Hub seniority roster with a trainman/engineman seniority date prior to October 1, 1997 shall have entry rate provisions waived and engineers hired after that date shall be subject to the rate progression provisions of the controlling CBA. Those engineers leaving the Portland Hub will be governed by the CBA where they then work.

### **VIII. FAMILIARIZATION**

A. Engineers will not be required to lose time or "ride the road" on their own time in order to qualify for the new operations. Engineers will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualifications shall be handled with local operating officers.

**B.** Engineers who work their assignment (road or yard) accompanied by an engineer taking a familiarization trip in connection with the merger shall be paid one (1) hour at the straight time rate of pay in addition to all other earnings for each tour of duty. This payment shall not be used to offset any extra board payments. The provisions of 3 (a) and (b) Training Conditions of the System Instructor Engineer Agreement shall apply to the regular engineer when the engineer taking the familiarization trip operates the locomotive.

**C.** Beginning with implementation the Carrier may begin familiarization trips for engineers. They may be removed from their extra board and/or other assignments and temporarily placed on a familiarization board. When on the board they may be placed on other assignments and will be paid as if working the assignment and their riding on the assignment will not affect the pay of the working engineer. The familiarization board shall have the same guarantee, pay and offset provisions as the extra board. The Local Chairmen and CMS will work together to rotate engineers through the familiarization board. The familiarization board provisions shall expire when prior rights are expired.

**NOTE 1:** Familiarization will begin with any surplus engineers and extra board engineers. Later non pool assignments in the thirty mile zone, yard assignments and finally pool assignments. If prior to this schedule engineers obtain a position needing familiarization this schedule need not be followed.

**NOTE 2:** Engineers on the familiarization board will not have their protection offset for working a lower paying assignment. If the assignment they are taken from is higher paying than their TPA they will be paid a difference of earnings, however they must claim this difference on their timeslip.

## **IX. IMPLEMENTATION**

The Carrier shall give 30 days written notice for implementation of this agreement and the number of initial positions that will be changed in the Hub. Thereafter implementation provisions of the various articles shall govern any further changes.

## **X. HEALTH AND WELFARE**

**A.** Engineers currently are under either the National Plan or the Union Pacific Hospital Association. Engineers coming under a new CBA will have ninety (90) days after implementation to make an election as to keeping their old coverage or coming under the coverage of their new CBA. Engineers who do not make an election will have been deemed to elect to retain their current coverage. Engineers hired after the date of implementation will be covered under the plan provided for in the surviving CBA. Engineers electing to come under the coverage of the Union Pacific Hospital Association should contact that Association to insure that there is no gap in their coverage when they make the transition.

B. If an engineer is covered under a group life and/or disability insurance policy provided for in his/her CBA and that CBA is not the surviving CBA, the Carrier shall continue the premium payments required at the time of implementation of this agreement for those engineers presently covered under those provisions for a period of time as provided for in the group policy agreement however it shall not be longer than six years.

**XI. DISCLAIMER**

This agreement is a final agreement covering the area described in Zone 1. It is recognized that additional agreements will be entered into between the parties with respect to Zones 2 and 3. Provisions of those agreements cannot modify this agreement. After the final zone agreement is entered into the parties will enter into a master seniority agreement that will set forth the seniority rights, if any, between the different zones.

The provisions of this Agreement are entered into without prejudice to either party's position and the parties agree not to cite this agreement in negotiations/arbitration involving other zones in the Portland Hub or any other Hub.

This Agreement is entered into this 13<sup>th</sup> day of AUGUST 1998.

**For the Organization:**

**For the Carrier:**

MA Mitchell  
General Chairman BLE UP

W. S. Hinckley  
General Director Labor Relations

E. P. Smith  
General Chairman BLE SPWest

T. L. Wilkins  
Director Labor Relations

Jim McHugh  
Vice President BLE

D. G. Smith  
Vice President BLE

THE FOLLOWING IDENTIFIES TERMS AND CONDITIONS REFERRED TO IN ARTICLE VI(B)(4), (but not limited to) OF THE PORTLAND HUB MERGER AGREEMENT THAT WILL BE APPLICABLE TO THE POOL FREIGHT OPERATIONS, including Helpers, LISTED IN THAT SECTION.

1. **Initial Terminal Delay-** Engineers eligible for Initial Terminal Delay shall be paid on a minute basis after thirty (30) minutes unpaid terminal time has elapsed from the time of reporting for duty up to the time the train leaves the terminal. Existing definitions and interpretations of this rule will continue to apply even though not fully set forth in this document.
2. **Basic Day/Rate of Pay** - The provisions of the November 7, 1991, Implementing Agreement (BLE) and the May 31, 1996, National/Local Agreement (BLE) will apply.
3. **Transportation-** Transportation will be provided in accordance with Section (2)(c) of Article IX of the May 19, 1986, National Arbitration Award (BLE).
4. **Meal Allowances and Eating En Route** - Meal allowances and eating en route will be governed by Sections 2(d) and 2(e) of Article IX of the May 19, 1986, National Arbitration Award (BLE) as amended by the November 7, 1991, Implementing Agreement.
5. **Overtime** - Engineers who have an engineer/train service seniority date prior to October 31, 1985, shall begin overtime at the expirations of eight (8) hours for those through freight runs that are one hundred sixty miles or less and on runs in excess of one hundred sixty miles overtime will begin when the time on duty exceeds the miles run divided by 20, or in any case, when on duty in excess of 10 hours. When overtime, initial terminal delay and final terminal delay accrue on the same trip, allowance will be the combined initial and final terminal delay time, or overtime, whichever is the greater. Employees hired after October 31, 1985, shall be paid overtime in accordance with the National Rules governing same and in the same manner previously paid on the UP prior to the merger.
6. **Held Away from Home Time** - Engineers in pool-freight service held at other than home terminal will be paid continuous time for all time so held after the expiration of sixteen hours from the time relieved from previous tour of duty, at the regular rate per hour paid them for the last service performed.
7. **Final Terminal Delay** - Engineers eligible for final terminal delay shall be paid in accordance with Article V of the May 19, 1986 BLE National Arbitration Award.

12

**MERGER IMPLEMENTING AGREEMENT  
(Portland Hub)  
Zones 2 and 3**

**between**

**UNION PACIFIC RAILROAD COMPANY  
SOUTHERN PACIFIC TRANSPORTATION COMPANY  
and  
BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

In Finance Docket No. 32760, the Surface Transportation Board approved the merger of the Union Pacific Corporation, Union Pacific Railroad Company/Missouri Pacific Railroad Company (hereinafter, collectively referred to as "Carrier" or "UP") and Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver & Rio Grande Western Railroad Company (hereinafter, collectively referred to as "SP"). In approving this transaction, the STB imposed New York Dock labor protective conditions.

Pursuant to New York Dock, and to achieve the public transportation benefits and operational changes made possible by this transaction, **IT IS AGREED:**

**I. PORTLAND HUB ZONES 2 AND 3**

New seniority districts shall be created that encompasses the following area: UP territory including milepost 182.79 west of Seattle, Washington, to Eastport, Idaho, on the Spokane International to milepost 390.0 at Silver Bow, Montana, to milepost (Pocatello sub) 191.80 at McCammon, Idaho, and to milepost (Pocatello sub) 0.64 at Granger, Wyoming; SP territory from (including) Chemult, Oregon to the Portland Terminal. The Hub shall be divided into three (3) zones as follows:

- A. Zone 1 will include operations Chemult north to Seattle and Portland east to (not including) Hinkle.

**NOTE:** This Zone was covered by the Merger Implementing Agreement (Portland Hub) Zone 1 between the Union Pacific Railroad Company and the Brotherhood of Locomotive Engineers dated August 13, 1998

- B. Zone 2 will include operations from, and including, Hinkle, Oregon, to, and including, Huntington, Oregon, and from Hinkle, Oregon, to and including Eastport, Idaho on the former Spokane International Railroad.

**NOTE:** It is the parties' intent herein to include those regular and extra board positions governed by the provisions of Article II, Section B, Paragraphs 5.a and 5.b. of the August 13, 1998 Merger Implementing Agreement for Portland Hub Zone 1 into this new

**Zone 2.**

- C. Zone 3 will include operations from, but not including, Huntington, Oregon, to milepost 390.0 at Silver Bow, Montana, to milepost 191.80 at McCammon, Idaho (Pocatello Subdivision) and to milepost 0 64 (Pocatello Subdivision) at Granger, Wyoming.**

**NOTE: Zones 2 and 3 shall include all main, branch and/or secondary lines, yard trackage, industrial leads and all other trackage, leads and stations between the points identified.**

- D. Any trackage or lines, either under lease or sale, that may be reacquired by UP will be included in the appropriate Zone.**

**II. SENIORITY INTEGRATION AND CONSOLIDATION**

**The following seniority consolidations for Zones 2 and 3 will be made:**

- A. 1. A new seniority district and master seniority roster shall be created for Zone 2. The master roster will be comprised of the following:**
- a. Employees holding seniority, or in training, on the UP 3<sup>rd</sup> Seniority District;**
  - b. Employees holding seniority, or in training, on the UP 4<sup>th</sup> Seniority District;**
  - c. Employees holding seniority, or in training, on the UP 5<sup>th</sup> Seniority District;**
  - d. Employees holding seniority, or in training, on the UP 9<sup>th</sup> Seniority District (former Spokane International Railroad);**
  - e. Employees holding seniority on the UP Idaho District Seniority Roster who elect, pursuant to this Agreement, to permanently relocate to Zone 2; and,**
  - f. Employees holding engineer seniority in Portland Hub Zone 1 and assigned to positions governed and protected by Article II, Section B, Paragraph 5 of the Merger Implementing Agreement (Portland Hub Zone 1) between Union Pacific Railroad Company and the Brotherhood of Locomotive Engineers, dated August 13, 1998, who elect, pursuant to this Agreement, to permanently remain in Zone 2.**
- 2. The new master roster shall also include all engineers on the rosters identified above who are borrowed out to other locations but who will return to this zone upon their release. The new master roster will not, however,**

include engineers from outside Zone 2 who are borrowed out to locations in Zone 2.

**3. The Zone 2 master roster shall be created as follows:**

**a. The engineers identified in Section A, Paragraph 1, above, shall be dovetailed and placed on the new master Zone 2 seniority roster based on their current engineer seniority date. Engineers from the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> or 9<sup>th</sup> Seniority Districts will use their current engineer date on the applicable roster. Engineers permanently relocating from the Idaho Seniority District will be dovetailed and placed on the master roster based on their current engineer seniority date on the Idaho Seniority District. Engineers permanently relocating from Portland Hub Zone 1 will be dovetailed and placed on the master roster based on their current Portland Hub Zone 1 engineer seniority date.**

**b. If, in the process of placing employees on this roster, several engineers have identical seniority dates, the ranking of such engineers will be determined by the following:**

**i. If the employees have engineer seniority dates prior to November 1, 1985, they will be placed on the roster based on their earliest fireman seniority date on the involved roster. If the involved engineers have the same fireman seniority date, they shall be placed in the order of their earliest hire date with Carrier. If their hire dates are the same, and the procedure(s) set forth in Paragraph b.ii., below, do not resolve the matter of their roster placement, the parties shall promptly meet and agree regarding the proper roster placement and ordering for such employees.**

**ii. If engineers from different rosters have the same seniority date, they shall be placed on the new master roster as follows:**

**(a) Pre-November 1, 1985 engineers**

- [1]. Engineer's date and ranking as an engineer,**
- [2]. Fireman's date and ranking as a fireman,**
- [3]. Hire date and ranking as an employee.**

**(b). Post-October 31, 1985 engineers**

- [1]. Engineer's date and ranking as an engineer,**
- [2]. Switchman's/trainman's date and ranking as a switchman/trainman,**

[3]. Hire date and ranking as an employee.

4. The territory comprising Zone 2 will be divided into two prior rights sub-zones – the "Spokane" sub-zone and the "Hinkle-LaGrande" sub-zone. The territories comprising these prior rights sub-zones will be as follows:

- a. "Spokane" sub-zone – Eastport, Idaho to, but, not including, Ayer, Washington, and all track, lines, yards and facilities between these locations.
- b. "Hinkle-LaGrande" sub-zone – Hinkle to, and including, Huntington, Oregon, and, including, Ayer, Washington, and all track, lines, yards and facilities between these locations

NOTE 1: The "Hinkle-LaGrande" sub-zone will also include service to the utility plant near Boardman, service to Castle and other points west of Hinkle and dogcatching west of Hinkle, as well as those assignments with on-duty points at Hinkle.

NOTE 2: In connection with the performance of work by Oregon Fourth or Fifth Seniority District engineers at, or in the vicinity of Ayer, it is not the parties' intent to alter existing arrangements. Accordingly, the provisions of Sections 1, 2, 5(a), 5(b) and 6 of the Agreement between the Union Pacific Railroad Company (Northwestern District – Oregon Division) and the Brotherhood of Locomotive Engineers, dated May 22, 1967 ("Supplement No. 13 (O.D.E.-65) Ayer – Chew Line Relocation:") are retained and made a part of this Agreement, except that all references therein to "Fourth Seniority District" or "Fourth Seniority District engineers" shall now refer to the Hinkle-LaGrande sub-zone and/or to engineers either possessing prior rights, or working, in the Hinkle-LaGrande sub-zone, and all references therein to "Fifth Seniority District" or "Fifth Seniority District engineers" shall now refer to the Spokane sub-zone and/or to engineers either possessing prior rights, or working, in the Spokane sub-zone.

5. A prior rights roster will be established for each sub-zone. Each roster will be established by dovetailing the seniority of the engineers assigned to the sub-zone. The same seniority date used to determine placement on the Zone 2 master seniority roster will be used to determine placement on the applicable sub-zone roster. An employee may hold a position on only one (1) sub-zone prior rights roster.

- a. **Engineers holding seniority, or in training, on the former UP 5<sup>th</sup> or 9<sup>th</sup> Seniority District on the date this Agreement is implemented will be granted prior rights in the Spokane sub-zone.**
- b. **Engineers holding seniority, or in training, on the former UP 4<sup>th</sup> Seniority District on the date this Agreement is implemented who elect, pursuant to this Agreement, to permanently relocate to Spokane will be granted prior rights in the Spokane sub-zone.**
- c. **Engineers holding seniority, or in training, on the former UP 4<sup>th</sup> Seniority District on the date this Agreement is implemented (identified on Attachment "B") who elect to not relocate to Spokane will be granted prior rights, subject to the conditions set forth in Paragraph 7, below, in the Hinkle-LaGrande sub-zone.**
- d. **Engineers holding seniority, or in training, on the former UP 3<sup>rd</sup> Seniority District on the date this Agreement is implemented will be granted prior rights in the Hinkle-LaGrande sub-zone.**
- e. **Engineers holding seniority in Portland Hub Zone 1 and assigned to a position at Hinkle covered by Article II, Section B, Paragraph 5 of the Merger Implementing Agreement (Portland Hub Zone 1), dated August 13, 1998, who elect, pursuant to this Agreement, to remain in Zone 2 will be granted prior rights in the Hinkle-LaGrande sub-zone.**
  - i. **Engineers covered by Article II, Section B, Paragraph 5 of the Portland Hub Zone 1 Merger Implementing Agreement will be given a one-time opportunity to elect to either remain in Zone 2 or relocate to Portland Hub Zone 1.**
  - ii. **Those engineers who elect to remain in Zone 2 will permanently relinquish all seniority rights and standing in Portland Hub Zone 1.**
  - iii. **Concurrent with implementation of this Agreement, Article II, Section B, Paragraph 5 of the Portland Hub Zone 1 Merger Implementing Agreement will automatically terminate.**
- f. **Engineers holding seniority on the Idaho Seniority District and identified on Attachment "A" who elect, pursuant to this Agreement, to permanently relocate to Zone 2 will be granted prior rights in the Hinkle-LaGrande sub-zone.**
  - i. **Eligible engineers holding seniority on the Idaho Seniority District will, prior to implementation of this Agreement, be**

given a one-time opportunity to elect to either remain in Zone 3 or permanently relocate to Zone 2.

- ii. Eligible employees who elect to permanently relocate to Zone 2 will relinquish all seniority rights in Zone 3.

**NOTE:** If in the process of ranking employees on the sub-zone prior rights roster, several employees have identical seniority dates, the roster order for such employees will be determined in accordance with Paragraph 3.b of this Article II, Section A.

- 6. Employees acquiring engineer seniority on Zone 2 subsequent to the date this Agreement is implemented will not be assigned prior rights in the Spokane or Hinkle-LaGrande sub-zones and will be considered as common Zone 2 engineers.
- 7. Former UP 4<sup>th</sup> Seniority District engineers identified on Attachment "B" shall be given prior rights to assignments originating in the territory comprising the former UP 4<sup>th</sup> Seniority District. Such engineers shall be obligated to exhaust the prior rights afforded by this Paragraph 7 prior to exercising engineer seniority outside the UP 4<sup>th</sup> Seniority District territory.
- 8. New positions and/or permanent vacancies in Zone 2 for which there are no bidders/applicants will, subject to Paragraph 7, above, be assigned or filled as follows:
  - a. Assign the senior demoted engineer who is working in that sub-zone or an engineer obligated under Paragraph 7, above.
  - b. Assign the junior engineer on the protecting extra board in that sub-zone.
  - c. Assign the senior demoted engineer who is working outside that sub-zone.

**NOTE:** Existing Idaho Agreement provisions governing the filling of new positions or permanent vacancies will continue to apply for filling new positions and permanent vacancies in Zone 3.

- 9. Existing agreement rules and arrangements governing prior rights for engineers in the territory comprising Zone 2 are, effective with implementation of this Agreement, superseded by the provisions set forth herein.
- B. 1. The existing UP Idaho Seniority District roster shall become the Zone 3 master seniority roster. This roster shall include all engineers on the Idaho

Seniority District roster except for those engineers who elect, pursuant to this Agreement, to relocate to Zone 2. Engineers who elect to permanently relocate to Zone 2 pursuant to this Agreement will have their names removed from this roster. This roster shall also include all engineers presently listed thereon who may be borrowed out to other locations who will return to this zone upon their release. Similarly, engineers from outside Zone 3 who are borrowed out to locations within Zone 3 will not be included on this roster.

2. The engineers identified on Attachment "A" of this Agreement will, subject to the terms and conditions set forth herein, retain the right to exercise their Zone 3 engineer seniority to "Nampa" positions in the LaGrande – Nampa through freight pool.
3. New positions or permanent vacancies for which Nampa is the source of supply, other than "Nampa" positions in the LaGrande – Nampa pool, for which there are no bidders/applicants shall be filled as follows:
  - a. Force assign the senior demoted engineer identified on Attachment "A" working in the area for which Nampa is the source of supply.
  - b. Force assign the senior demoted engineer identified on Attachment "A."
  - c. Force assign the junior engineer identified on Attachment "A" assigned to a "Nampa" position in the LaGrande – Nampa pool.

**NOTE:** A vacancy resulting on a "Nampa" position in the LaGrande – Nampa pool from assignment of an engineer listed on Attachment "A" to another vacancy at Nampa will be filled on a temporary basis by a Zone 2 engineer. It is not intended that in these circumstances the involved position will be permanently transferred to Zone 2. The engineer assigned to the other Nampa vacancy may "reclaim," seniority permitting, the "Nampa" pool position once he or she is displaced from that other position (and is not needed/used on another Nampa vacancy) or the position is abolished.

- C. Engineers placed on the Zone 2 master seniority roster shall relinquish all seniority outside the territory comprising Zone 2. Likewise, all seniority inside Zone 2 held by engineers outside Zone 2 shall be eliminated.
- D. Engineers placed on the Zone 3 master seniority roster shall relinquish all seniority outside the territory comprising Zone 3. Likewise, all seniority inside Zone 3 held by engineers outside Zone 3 shall be eliminated.

**NOTE:** This Paragraph D shall not serve to eliminate or restrict the seniority rights or obligations, as established by this Agreement, of engineers identified on Attachment "A." Likewise, this Paragraph D is not intended to limit or restrict such engineers' right(s) to exercise their seniority to Zone 3 positions.

- E. Subject to applicable provisions of this Agreement, engineers on an authorized leave of absence, holding official positions – i.e., company officers - or dismissed from service and later reinstated will be placed on the appropriate master roster (Zone 2 or Zone 3). The parties will create an inactive roster for such engineers until they return to service in either Zone 2 or Zone 3, at which time they will be placed on the appropriate master seniority roster and removed from the inactive roster.

### **III. THROUGH FREIGHT POOL OPERATIONS**

- A. Through freight pool operations in Zone 2 will be governed, in relevant part, by the following:

- 1. **Spokane – Eastport**

Unassigned through freight (pool) service may be established between Spokane and Eastport. Spokane will be the home terminal.

- 2. **Spokane – Hinkle**

- a. The current Spokane – Hinkle (Hinkle – Spokane) freight service is assigned through freight service. Upon implementation of this Agreement, unassigned through (pool) freight service may be established between Spokane and Hinkle. Spokane will be the home terminal. Hinkle will, however, be retained as a home terminal for the former UP 4<sup>th</sup> Seniority District engineers listed on Attachment "B" until such time as one of the conditions set forth in Paragraph 2.b.(i), below, is met.

- b. Existing Agreement provisions governing assignment and allocation of positions between the UP 4<sup>th</sup> and 5<sup>th</sup> Seniority District engineers for the Spokane–Hinkle run will, subject to the provisions of this Agreement, be retained and continue to apply to the Spokane – Hinkle through freight pool operation until such time as Hinkle ceases to be a home terminal for this run.

- (i) Hinkle will cease to be a home terminal and all applicable Agreement provisions and practices governing former UP 4<sup>th</sup> Seniority District engineers rights or participation in this pool, including provisions governing allocation of work or

assignments between the UP 4<sup>th</sup> and 5<sup>th</sup> Seniority Districts, will automatically terminate and be of no future force or effect when one of the following occurs.

- (a) The employees identified on Attachment "B" have attrited or severed their employment relationship with Carrier; or,
  - (b) All positions in the Spokane – Hinkle through freight pool are permanently assigned at Spokane.
- (ii) Only engineers identified on Attachment "B" may exercise their seniority to, and will be obligated to protect, "Hinkle" positions in this pool. Employees holding seniority on the Zone 2 master roster or the Hinkle-LaGrande sub-zone roster not listed on Attachment "B" are not eligible to exercise their seniority to "Hinkle" positions in this pool.
  - (iii) The home terminal for employees working in this pool and assigned to the "Hinkle" positions will be at Hinkle.
  - (iv) A "Hinkle" position not filled by an employee listed on Attachment "B" will be filled by application at Spokane and filled in accordance with applicable Agreement provisions. A permanent vacancy on a "Hinkle" position not filled or protected by an employee identified on Attachment "B" will be filled by application at Spokane and filled in accordance with applicable Agreement provisions.
  - (v) Temporary vacancies on "Hinkle" positions in the Spokane – Hinkle through freight pool will be protected by the Hinkle road extra board or, if the Hinkle extra boards are consolidated, the Hinkle consolidated road/yard extra board.
  - (vi) For each UP 4<sup>th</sup> Seniority District engineer identified on Attachment "B" who elects, pursuant to this Agreement, to permanently relocate to Spokane, one (1) "Hinkle" position in the Hinkle – Spokane pool will be permanently transferred to Spokane. Accordingly, the number of positions in this pool designated as "Hinkle" positions in this pool will be correspondingly reduced and the applicable pool pro ration percentages will also be proportionately reduced.

**NOTE:** UP 4<sup>th</sup> Seniority District engineers relocating to Spokane will, as set forth in Article II, be given Spokane sub-zone prior rights. Said engineer will not, however, be granted prior rights to the

"Hinkle" pool position transferred to Spokane in accordance with this Paragraph (vi).

(vii) Regulation of this pool will, except as set forth herein, be conducted in accordance with applicable Agreement rules. BLE will designate one (1) employee member or representative who will be responsible for monitoring mileage, determining necessary pool adjustments and coordinating such adjustments with appropriate Carrier officials. BLE's representative will perform such duties for both home terminals in this pool until the Hinkle home terminal ceases to exist.

c. An engineer identified on Attachment "B" who elects, pursuant to this Agreement, to permanently relocate to Spokane will relinquish the prior rights established pursuant to Article II, Section A, Paragraph 7 of this Agreement.

3. LaGrande – Hinkle

LaGrande will be the home terminal

4. LaGrande – Nampa

a. LaGrande will be the home terminal, except that Nampa will be retained as a home terminal for those Idaho Seniority District engineers identified on Attachment "A" until one of the conditions set forth in Paragraph 4.b.(i), below, is met

b. Existing Agreement provisions governing assignment or allocation of work in the LaGrande – Nampa pool between UP 3<sup>rd</sup> Seniority District and Idaho Seniority District engineers will, subject to the provisions and/or modifications set forth below, be retained until such time as Nampa ceases to be a home terminal for this run.

(i) Nampa will permanently cease to be a home terminal and all applicable Agreement provisions, practices and/or arrangements governing Idaho Seniority District engineers' rights to and participation in this pool will automatically terminate when one of the following occurs:

(a) The engineers identified on Attachment "A" have either (1) attrited, (2) are no longer in active service as an engineer with Carrier or (3) their names have been removed from Attachment "A" in accordance with Article III, Section A, Paragraphs 4.b (vii) and (viii).

- (b) All "Nampa" positions in the LaGrande – Nampa through freight pool are permanently held by Zone 2 engineers.

**NOTE:** Application of this Paragraph (b) is not intended to supercede or nullify the provisions set forth in the Note contained in Article II, Section B, Paragraph 5. Accordingly, through freight positions at Nampa will be deemed as permanently held by a Zone 2 engineer when there are no engineers on Attachment "A" who can "reclaim" a Nampa pool position.

- (c) If twenty (20) Idaho Seniority District engineers permanently relocate to Zone 2 in conjunction with implementation of this Agreement.

Once Nampa has ceased being a home terminal for this pool, LaGrande will be the only home terminal. Once Nampa ceases to be a home terminal, all rights and obligations of former Idaho Seniority District engineers to hold, protect or participate in the work performed in the LaGrande – Nampa through freight pool shall, except for performing hours-of-service relief out of Nampa, automatically terminate.

- (ii) Except as modified by this Agreement, this pool shall continue to operate as it presently operates pending an agreement on necessary final provisions pertaining to the eventual elimination (attrition) of Nampa as a home terminal. Within the next one hundred twenty (120) days, the parties will meet and agree regarding the operation of this pool and the attrition of the rights, obligations and participation in this pool of Zone 3 Attachment "A" engineers. This transition and attrition shall be governed, in addition to that set forth elsewhere in this Agreement, by the following:

- (a) The engineers identified on Attachment "A" will be required to protect all other assignments whose source of supply is Nampa (including the extra board at Nampa) prior to protecting "Nampa" turns in the LaGrande - Nampa pool. Absent bids or requests from Zone 3 engineers, junior engineers in the Nampa - LaGrande pool may be removed from this pool and placed on such other assignments. Pool turns vacated by engineers on Attachment "A" to fill such

other assignments will be temporarily filled/protected by Zone 2 engineers at LaGrande. When removed from their pool turns to protect these other vacancies/positions, the involved engineer(s) will, for purposes of applying New York Dock, be considered as having occupied the highest paying assignment.

**NOTE:** Application of this Paragraph (a) is not intended to supercede or nullify the provisions set forth in the Note contained in Article II, Section B, Paragraph 3. Accordingly, through freight positions at Nampa will be deemed as permanently held by a Zone 2 engineer when there are no engineers on Attachment "A" who can "reclaim" a Nampa pool position.

- (iii) Regardless of the number of positions assigned in the LaGrande – Nampa pool, application of Agreement provisions governing apportionment of work between former 3<sup>rd</sup> Seniority District and Idaho Seniority District engineers eligible for assignment in this pool – i.e., engineers on Attachment "A" – shall not result in more than twenty (20) positions at Nampa being allocated in this pool for Zone 3 engineers identified on Attachment "A."
- (iv) Only those engineers identified on Attachment "A" may exercise their seniority to new or vacant positions in this pool. Engineers holding seniority on the Zone 2 master seniority roster or on the Zone 3 master roster but not listed on Attachment "A" are not eligible to exercise their seniority to "Nampa" positions in the pool.
- (v) Any new position or permanent vacancy at Nampa in this pool that is not filled by engineers identified on Attachment "A" will be filled as a new position or permanent vacancy at LaGrande by engineers holding seniority on the Zone 2 master seniority roster.

**NOTE:** It is the parties' intent that engineers identified on Attachment "A" shall retain the right to the "Nampa" positions in this pool until such time as the last engineer's name is attrited or removed therefrom.

- (vi) Vacancies in this pool at Nampa will be protected by the Nampa extra board until such time as Nampa ceases to be a home terminal. Thereafter, such vacancies will be protected by the extra board at LaGrande.
- (vii) Engineers identified on Attachment "A" of this Agreement who voluntarily exercise their seniority to a position for which Nampa is not the source of supply – i.e., to a position east of Glens Ferry – shall have their names removed from Attachment "A" and automatically and permanently forfeit all seniority rights attendant thereto.
- (viii) An engineer identified on Attachment "A" who is force assigned to an engineer job for which Nampa is not the source of supply must submit a written application, with copy to the Local Chairman, for a position or permanent vacancy in the pool at Nampa upon his/her assignment to that position. If such application is not submitted, or the employee does not accept the assignment to the position in the Nampa pool, the employee will have his/her name removed from Attachment "A" and automatically and permanently forfeit all seniority rights attendant thereto.

**NOTE:** This Paragraph (viii) shall apply only to the engineer on Attachment "A" who would have been the successful bidder/applicant had he or she submitted such bid or application and not to other junior engineers on Attachment "A."

- c. For each Idaho Seniority District engineer identified on Attachment "A" who elects, pursuant to this Agreement, to permanently relocate to Zone 2, one (1) "Nampa" position in the LaGrande – Nampa pool will be permanently transferred to LaGrande (Zone 2). Accordingly, the number of positions in this pool designated as "Nampa" positions will be correspondingly reduced and the applicable pool pro ration percentage will also be proportionately reduced.

**NOTE:** Idaho Seniority District engineers relocating to Zone 2 will, as set forth in Article II, be given Hinkle-LaGrande sub-zone prior rights. Said engineer will not, however, be granted prior rights to the "Nampa" pool position transferred to Zone 2 in accordance with this Paragraph c.

- d. Regulation of this pool will, except as set forth herein, be conducted in accordance with applicable Agreement rules. BLE will designate one (1) employee member or representative who will be responsible

for monitoring mileage, determining necessary pool adjustments and coordinating such adjustments with appropriate Carrier officials. BLE's representative will perform such duties for both home terminals in this pool until the Nampa home terminal ceases to exist.

- B. Zone 3 pool freight operations will, except as specifically set forth herein, remain unchanged and will continue to be governed by existing Idaho collective bargaining agreement provisions and practices.
- C. New through freight pool operations not covered in this Implementing Agreement between hubs or zones will be handled per Article IX of the 1986 BLE National Implementing Award.

#### **IV. EXTRA BOARDS**

- A. The following shall govern, in relevant part, the administration and operation of extra boards in Zone 2:

- 1. Spokane

- a. Carrier may establish a single consolidated extra board at Spokane.

**NOTE 1:** Carrier may consolidate the extra board at Spokane by the serving of a sixty (60)-day advanced written notice.

**NOTE 2:** If implementation of a consolidated extra board at Spokane is postponed, two extra boards at Spokane will be established – (1) a "north" extra board to protect vacancies, service and hours-of-service relief on the territory between, and including, Spokane and Eastport, including Trentwood; and, (2) a "south" extra board to protect vacancies, service and hours-of-service relief between (excluding) Spokane and (excluding) Ayer.

This extra board shall protect service and vacancies, including hours-of-service relief, in the territory presently protected by the two existing extra boards at Spokane, including those protected by the Spokane International Railroad extra board.

- 2. Hinkle

- a. Upon sixty (60) days advanced written notice, Carrier may establish a single consolidated extra board at Hinkle.
- b. This extra board will protect service at/from Hinkle, including service

to/from Castle and the utility plant near Boardman and hours-of-service relief into Hinkle or to/from a location closer to Hinkle than any other extra board, in all directions out of Hinkle. Additionally, this extra board will protect service on non-through freight assignments originating in the territory comprising the former UP 4<sup>th</sup> Seniority District.

**NOTE:** It is not intended this extra board be used to protect service at The Dalles or to supplant service performed by Zone 1 engineers at The Dalles. Accordingly, an extra engineer assigned to this extra board will not be used west of the east switch at The Dalles.

**3 LaGrande**

- a. There shall be a single consolidated extra board at LaGrande.
- b. This extra board shall protect all service, including hours-of-service relief, in all directions, subject to Article IV, Section B, Paragraph 2, below.

**B. The following shall govern, in relevant part, the administration and operation of extra boards in Zone 3:**

1. Zone 3 extra board administration and/or operations will, except as specifically set forth in this Agreement, remain unchanged and will continue to be governed by existing collective bargaining agreement provisions and practices.

**2. Nampa**

- a. There shall be a single extra board at Nampa. This extra board will protect service and vacancies between Glenns Ferry and Huntington and hours-of-service relief at or east of Huntington.
- b. For as long as Nampa remains a home terminal for the LaGrande – Nampa through freight pool, this extra board will protect pool freight vacancies at Nampa. Once Nampa ceases to be a home terminal, all vacancies in this pool will be protected by the LaGrande extra board.

**C. This Article IV is not intended, except as set forth in this Agreement and specifically those provisions that govern filling of positions and protecting vacancies in the LaGrande – Nampa pool, to permit Carrier to use extra Zone 2 engineers to protect Zone 3 or Zone 1 vacancies, extra Zone 3 engineers to protect Zone 2 or Zone 1 vacancies, or extra Zone 1 engineers to protect Zone 2 or Zone 3 vacancies.**

## **V. TERMINAL AND OTHER CONSOLIDATIONS**

- A. Except as set forth in Paragraph B, below, there are no changes in terminal limits or other consolidations contemplated for yards in Zones 2 and 3.
- B. Existing collective bargaining agreement provisions, either in the former "Oregon" collective bargaining agreement or the Spokane International Railroad collective bargaining agreement, governing the pro ration of work between the UP 5<sup>th</sup> Seniority District and the UP 9<sup>th</sup> Seniority District (former Spokane International Railroad) for extra boards at Spokane shall be eliminated and of no force or effect.

## **VI. AGREEMENT COVERAGE**

### **A. General Conditions for Terminal Operations**

- 1. Initial delay and final delay will be governed by the controlling collective bargaining agreement, including the Duplicate Pay and Final Terminal Delay provisions of the 1986 and 1991 National and Implementing Agreements and awards.
- 2. Engineers will be transported to/from their trains and/or to/from their designated on/off duty point in accordance with Article VIII, Section 1 of the May 1986 National Agreement. Carrier shall designate the on/off duty points for engineers.
- 3. The current application of National Agreement provisions regarding road work and hours-of-service relief under the combined road/yard service zone shall continue to apply. Yard crews at any location within Zones 2 and 3, may perform such service in all directions out of their terminal.

### **B. General Conditions for Pool Operations**

The terms and conditions for pool operations in the territories comprising Zones 2 and 3 shall be those of the surviving collective bargaining agreement, as modified by applicable National Agreements, awards and implementing documents, and those set forth elsewhere in this Agreement, including Attachment "C," and below.

- 1. Short Turnaround Service and Hours of Service Relief. Short turnaround service and hours of service relief at both home and away from home terminals
  - (a) may be handled by extra boards at the away from home terminal, and,
  - (b) shall be handled by extra boards at the home terminals,

if extra crews are available, prior to using pool crews. Engineers used for this service may be used for multiple trips in one tour of duty in accordance with the designated collective bargaining agreement rules.

(c) Extra boards may handle this service in all directions out of a terminal.

2. Nothing in this Agreement prevents or precludes the use of other employees/crews to perform work currently permitted by prevailing agreements; including, but not limited to yard crews performing hours-of-service relief within the road/yard service zone, interdivisional service or pool crews performing service and deadheads between terminals, road switchers handling trains within their zones and/or using an engineer from a following train to work a preceding train. Payments required by the controlling collective bargaining agreement shall continue to be paid when this work is performed.
3. Item Nos. 2, 3 and 4 of Appendix "D" of the Yahk, B. C. Agreement, effective September 26, 1955, will be retained and applicable only for the former Spokane International Railroad engineers identified below:

a.	E. J. Johnson	(539-38-0024)
b.	R. M. McElroy	(536-48-5726)
c.	T. J. Osburn	(532-34-8583)
d.	M. O. Wood	(533-40-5452)
e.	L. M. Bickford	(534-50-0358)
f.	A. L. Dauenhauer	(536-54-3592)
g.	L. W. Dorsey	(544-50-8299)
h.	N. L. Knapp	(539-38-1055)
i.	T. H. Baker	(536-50-3229)
j.	J. L. Thome	(531-52-8414)
k.	J. L. Sheridan	(574-24-0507)
l.	D. D. Davis	(532-50-0843)

Item Nos. 2, 3 and 4 of Appendix "D" of the Yahk, B.C. Agreement, effective September 26, 1955, reads as follows:

- "2. Crews operating through Eastport on turnaround run from Bonners Ferry, Idaho, to Eastport to Bonners Ferry shall be given an arbitrary allowance of one (1) hour in addition to all other compensation.
- "3. Crews operating to Eastport as a terminal will be given an arbitrary allowance of one-half (1/2) hour for operating into Eastport and one-half (1/2) hour for operating out of Eastport in addition to all of their compensation.

**"4. The arbitrary allowance shall apply to freight trains and not to snow plows or work-trains "**

**4. The constructive mileage payment set forth in Rules 31 and 105 of the "Oregon" Collective Bargaining Agreement (also referred to as the "mountain differential") is retained and will be applicable only for those engineers holding seniority as an engineer or trainman on the Oregon 3<sup>rd</sup> Seniority District on or before October 31, 1985. This payment will not be made to other engineers holding seniority on the Zone 2 and Zone 3 master seniority rosters.**

**a. Pursuant to Paragraph 4, above, the following engineers are eligible for the constructive mileage payment set forth in Rules 31 and 105:**

i.	J. L. Goben	543-38-5282
ii.	L. C. Batty, Jr.	541-42-0646
iii.	G. R. Spencer	540-40-2758
iv.	J. R. Folsom	541-42-0069
v.	R. C. Springer	541-48-9086
vi.	R. L. Bork	544-50-3410
vii.	L. I. Knouse	543-46-7341
viii.	M. W. Wall	543-54-9963
ix.	M. E. Halsey	542-50-1001
x.	D. H. McClay	543-52-3818
xi.	H. G. Stockhoff	543-56-6038
xii.	B. R. Rollins	544-58-2916
xiii.	R. J. Small	528-76-8689
xiv.	L. G. Schaures	540-58-0806
xv.	B. W. Jones	531-64-4170
xvi.	D. A. Thurner	542-58-8712
xvii.	M. S. Nelson	517-56-0303
xviii.	G. A. Pfnister	533-60-0278
xix.	G. J. Davrainvill	530-40-1043
xx.	G. T. Schwirse	541-50-3017
xxi.	J. D. Evans, Jr.	544-60-5445
xxii.	R. R. Broylescarr	544-64-7348
xxiii.	T. R. Gerlach	544-60-5691
xxiv.	D. L. Huntsman	543-56-5312
xxv.	R. D. Bowen	542-64-5035
xxvi.	H. J. Morgan	541-60-3401
xxvii.	E. G. Marcum	541-60-3687
xxviii.	B. L. Jenkins	544-66-6788
xxix.	H. K. Montgomery	543-56-7439
xxx.	D. S. Horstman	531-60-5307
xxxi.	C. B. Sherrow	544-64-7190
xxxii.	M. P. Adams	542-56-7314
xxxiii.	C. E. Anderson	548-84-1341

xxxiv.	C. H. Lamoreaux	519-66-1234
xxxv.	R. D. Hoverson	544-60-7923
xxxvi.	R. D. Collins	518-70-0102
xxxvii.	R. C. Aldred	544-78-1950
xxxviii.	M. L. Oliver, Jr.	543-54-3060
xxxix.	G. R. Quick	536-46-0162
xl.	R. L. McDonald	541-48-9732
xli.	B. K. Clark	539-56-2841
xlii.	R. C. Hawker	542-82-5061
xliii.	L. L. Jenkins	543-46-5201
xliv.	R. D. Payant	540-54-8491
xlv.	C. C. Rasmussen	538-52-8623
xlvi.	P. T. Nelson	517-56-0305
xlvii.	A. L. Beickel	540-54-8161
xlviii.	E. F. True	515-48-5138
xliv.	C. R. Woodward	541-68-2631
lx.	K. P. Fricke	544-64-5075
lxi.	P. L. Lafferty	541-70-1381
lxii.	B. J. Davison	539-56-1343
lxiii.	J. C. Wise	537-62-3962
lxiv.	G. R. Baker	544-52-4738
lxv.	G. A. Foster	533-56-0257
lxvi.	M. J. Gilleese	544-60-5795
lxvii.	M. L. Goodwin	516-70-1197
lxviii.	S. D. Long	541-74-4511
lxix.	K. K. Karnowski	540-80-4345
lxx.	J. E. Jacobs, III	560-74-5348
lxxi.	C. W. Johnson	560-94-1396
lxxii.	J. M. Chambers	541-64-1359
lxxiii.	D. D. Buhmann	480-44-1029
lxxiv.	R. L. Eardensohn	530-76-5137
lxxv.	J. P. Downey	539-58-7763
lxxvi.	J. Herrera	530-42-5792
lxxvii.	B. D. Roberts	541-58-4554
lxxviii.	C. R. Moore	537-38-4100
lxxix.	J. E. Delisle	530-56-8568
lxxx.	R. H. Roe	516-56-5867
lxxxi.	W. D. Hutchins	519-62-9908
lxxxii.	B. A. McDonald	509-52-6399
lxxxiii.	D. D. Poe	512-56-7711
lxxxiv.	D. E. Powell	541-58-1084
lxxxv.	J. C. Aycock	541-48-7729
lxxxvi.	G. D. King	518-72-4330
lxxxvii.	R. H. Brown	542-44-4603
lxxxviii.	M. W. Serrine	544-64-5167
lxxxix.	M. E. Spaulding, Jr	543-64-8305
lxxxx.	J. R. Petersohn	543-54-9228

lxxxix.	B. K. Roe	541-60-2695
lxxxix.	G. A. Gabriel	543-62-4324
lxxxix.	R. W. Simonis	543-70-5328
lxxxix.	T. S. Dewald	517-70-2700
lxxxix.	W. A. Dewald	516-56-8701
lxxxix.	R. B. Rasico	429-76-8231
lxxxix.	S. A. McCoy	515-72-5618
lxxxix.	R. L. Shenfield	540-64-2033
lxxxix.	T. F. Zander	540-76-3245
lxxxix.	R. D. Alexander	544-64-7430
lxxxix.	L. L. Picker	543-50-4738
lxxxix.	J. D. Skyles	516-56-8529

b. Engineers not identified in Paragraph 4.a., above, will be paid the applicable line miles for their working trip.

5. The existing "Oregon" Collective Bargaining Agreement provision(s) providing constructive miles for certain engineers working in through freight service between Spokane and Hinkle shall be retained and continue to apply for those engineers eligible for such payments on the day prior to implementation of this Agreement. Specifically, said constructive miles will be paid as follows:

a. The following engineers will, when working in through freight service between Spokane and Hinkle, be paid 198 miles for their working trip.

i.	R. J. Cantrell	536-40-1463
ii.	J. T. Carlyle	539-34-4841
iii.	D. V. Baker	535-38-7418
iv.	B. R. McKillip	534-46-1630
v.	R. J. Kennedy	532-42-5408
vi.	D. D. Hulbert	539-30-4784
vii.	R. L. Billings	519-38-1601
viii.	M. D. Barkdull	534-58-9232
ix.	J. M. Jones	531-42-4133
x.	T. H. Baker	536-50-3229
xi.	E. J. Johnson	539-38-0024
xii.	R. M. McElroy	536-48-5726
xiii.	T. J. Osburn	532-34-8583
xiv.	M. O. Wood	533-40-5452
xv.	L. M. Bickford	534-50-0358
xvi.	A. L. Dauenhauer	536-54-3592
xvii.	L. W. Dorsey	544-50-8299
xviii.	N. L. Knapp	539-38-1055

b. Engineers not identified in Paragraph 5.a , above, will be paid 187

line miles for their working trip.

6. The existing Nampa – LaGrande interdivisional service agreement provision(s) providing constructive miles for certain engineers working in through freight service between LaGrande and Nampa shall be retained and continue to apply for those engineers eligible for such payments on the day prior to implementation of this Agreement. Specifically, said constructive miles will be paid as follows:

- a. The following engineers will, when working in through freight service between LaGrande and Nampa, be paid 188 miles for their working trip (run):

i.	J. L. Goben	543-38-5282
ii.	L. C. Batty, Jr.	541-42-0646
iii.	G. R. Spencer	540-40-2758
iv.	J. R. Folsom	541-42-0069
v.	R. C. Springer	541-48-9086
vi.	R. L. Bork	544-50-3410
vii.	L. I. Knouse	543-46-7341
viii.	M. W. Wall	543-54-9963
ix.	M. E. Halsey	542-50-1001
x.	D. H. McClay	543-52-3818
xi.	H. G. Stockhoff	543-56-6038
xii.	J. D. Skyles	516-56-8529
xiii.	B R. Rollins	544-58-2916
xiv.	R. J. Small	528-76-8689
xv.	L. G. Schaures	540-58-0806
xvi.	L. L. Ward	518-44-5530
xvii.	E. H. Robertson	519-50-7926
xviii.	T. W. Gough	524-52-6055
xix.	G. E. Wilson	518-52-4006

- b. Engineers not identified in Paragraph 6 a., above, will be paid 182 line miles for their working trip.

7. Existing through freight pools in Zones 2 and 3 shall be governed by, but not limited to, the same ITD, FTD, HAHT and overtime rules (see Attachment "C"). Rules for future runs that are created pursuant to Article IX notices or other applicable National Agreement provisions shall be determined at that time and this provision shall set no precedence for future runs.

- C. Engineers working in Zones 2 and 3 shall be governed by the Agreement between the Union Pacific Railroad Company and the Brotherhood of Locomotive Engineers, effective January 1, 1977, (commonly referred to as the "Idaho Agreement"), including the provisions set forth herein, all addenda and side letter

agreements pertaining to that agreement and all previous National Agreement/Award/Implementing Document provisions still applicable. Except as provided herein, the system and national collective bargaining agreements, awards and interpretations shall prevail. None of the provisions of these agreements are retroactive.

- D. In addition to the above, the following will govern in the area covered by this agreement:

**Twenty-Five Mile Zone** - At all home and away from home terminals, both inside and outside the Hub, pool crews may receive their train up to twenty-five miles on the far side of the terminal and run on through to the scheduled terminal. Crews shall be paid an additional one-half (1/2) basic day for this service in addition to the miles run between the two terminals. If the time spent in this zone is greater than four (4) hours, then they shall be paid on a minute basis.

NOTE: The "Twenty-Five Mile Zone" provision shall be applicable only at those locations where there is a reciprocal or similar arrangement in the adjoining hub or location. For example, a Pocatello – Green River through freight crew may not be used in a twenty-five mile zone east of Green River because there is not a similar or reciprocal "Twenty-Five Mile Zone" agreement/arrangement at Green River.

## VII. PROTECTION

- A. Due to the parties voluntarily entering into this Agreement, Carrier agrees to provide New York Dock wage protection (automatic certification) to engineers listed on the Portland Hub Zone 2 or Zone 3 Master Seniority Rosters and working on an assignment as an engineer in said zones on the date this Agreement is implemented and to those engineers covered by Article II, Section B, Paragraphs 5 a. and 5.b. of the August 13, 1998 Merger Implementing Agreement for Portland Hub Zone 1. This protection will start with the effective (implementation) date of this agreement. The engineers must comply with the requirements associated with New York Dock conditions or their protection will be reduced for such items as layoffs, bidding/displacing to lower paying assignments when they could hold higher paying assignments, etc. Protection offsets due to unavailability are set forth in the Questions and Answers and Side Letter #1 of this Agreement and in the New York Dock conditions.
- B. This protection is wage only and hours will not be taken into account.
- C. Engineers required to relocate under this agreement will be governed by the relocation provisions of New York Dock. Those required to relocate to Zone 2 or the Spokane sub-zone may elect, "in lieu" of New York Dock provisions, one of the following options:
1. Non-homeowners may elect to receive an "in lieu of" allowance in the

amount of \$10,000 upon providing proof of actual relocation.

2. Homeowners may elect to receive an "in lieu of" allowance in the amount of \$20,000 upon providing proof of actual relocation.
3. Homeowners in Item 2 above, who provide proof of a bona fide sale of their home at fair value at the location from which relocated, shall be eligible to receive an additional allowance of \$10,000.
  - (a) This option shall expire five (5) years from date of application for the allowance under Item 2 above.
  - (b) Proof of sale must be in the form of sale documents, deeds, and filings of these documents with the appropriate agency.
4. With the exception of Item 3 above, no claim for an "in lieu of" relocation allowance will be accepted after two (2) years from date of implementation of this agreement.
5. Engineers receiving an "in lieu of" relocation allowance pursuant to this implementing agreement will be required to remain at the new location, seniority permitting, for a period of two (2) years.

**NOTE:** Engineers covered by Article II, Section B, Paragraphs 5.a. and 5.b. of the August 13, 1998 Merger Implementing Agreement for Portland Hub Zone 1 who elect to return to Portland Hub Zone 1 will be afforded the relocation benefits of this Section C.

- D. There will be no pyramiding of benefits.
- E. National Agreement "Termination of Seniority" provisions shall not be applicable to Engineers hired prior to the effective date of this agreement.
- F. Engineers will be treated for vacation, payment of arbitrables and personal leave days as though all their service on their original railroad had been performed on the merged railroad. Engineers assigned to Zone 2 or 3 master seniority rosters with an engineer seniority date prior to the date this Agreement is implemented shall have entry rate provisions waived and engineers acquiring seniority on or after that date shall be subject to the rate progression provisions of the controlling CBA. Those engineers leaving Zones 2 or 3 will be governed by the CBA where they then work. The provisions of this Paragraph F will apply only when said employees are working as an engineer and will not apply or be extended to employee's services in another craft.

## **VIII. FAMILIARIZATION**

- A. Engineers involved in the consolidation of the Portland Hub Zones 2 and 3 whose assignments require performance of duties on a geographic territory not familiar to them will be given full cooperation, assistance and guidance in order that their familiarization shall be accomplished as quickly as possible. Engineers will not be required to lose time or "ride the road" on their own time in order to qualify on the new territory.
- B. Engineers will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualification shall be handled with local operating officers. The parties recognize that different terrain and train tonnage will impact the number of familiarization trips necessary. If disputes occur under this Article, they will be expeditiously addressed by the Director - Labor Relations and General Chairman.
- C. It is understood that familiarization required to implement the merger consolidations herein will be accomplished by calling a qualified engineer (or Manager - Operating Practices) to work with an engineer called for service on a geographical territory not familiar to him or her. Engineers who work their assignment accompanied by an engineer taking a familiarization trip in connection with the implementation of this Agreement shall be paid twenty-eight dollars (\$28.00) in addition to all other earnings for that tour of duty. This payment shall not be used to offset extra board guarantee payments. The provisions of 3 (a) and (b) Training Conditions of the System Instructor Engineer Agreement shall apply to the regular engineer when the engineer taking the familiarization trip operates the locomotive

NOTE 1: The \$28.00 payment set forth in Paragraph C, above, made to engineers working their assignment accompanied by an engineer taking a familiarization trip shall apply for a period of one (1) year, commencing with the implementation of this Agreement. Upon expiration of this one-year period, existing Agreement rules and/or practices shall govern for payments, if any, to engineers accompanied by an engineer taking a familiarization trip.

NOTE 2: Prior to implementation, Carrier may begin familiarization trips, where necessary, to "pre-qualify" engineers. Likewise, Carrier may bulletin and assign (to be effective on implementation day) employees prior to implementation so employees will be in place on implementation day. If Carrier initiates such an effort to "pre-qualify" engineers, the \$28.00 payment set forth in Paragraph C, above, will be paid to eligible engineers who are accompanied by an engineer taking a familiarization trip.

## **IX. IMPLEMENTATION**

- A. Carrier shall give not less than a forty-five (45)-day advanced written notice advising of its intent to implement this Agreement and of the number of initial

positions that will be changed in the Hub. Thereafter, implementation provisions of the various articles shall govern any further changes.

- B.** All positions may be pre-advertised to close thirty (30) days prior to the effective date of this agreement. In conjunction with implementation of this Agreement, any employee who fails to sufficiently bid on, or obtain, a position may be assigned by Carrier to an unfilled position.
- C.** In conjunction with the implementation of this Agreement, it will not be necessary to bulletin all the jobs in Zones 2 and/or 3. Assignments which are not changed or impacted by the implementation of this Agreement need not be bulletined. Employees on such assignments will remain thereon in accordance with applicable Agreement provisions.
- D.** Engineers on a seniority district being divided either between Zones 2 and 3 or between the Spokane and Hinkle-LaGrande sub-zones, or who hold seniority in Portland Hub Zone 1 and are assigned positions at Hinkle will be canvassed by BLE Local Chairmen to determine and document their relocation decisions. The following shall govern canvassing of involved engineers:
  - 1.** Engineers at locations or on rosters required to make a relocation decision in connection with the implementation of this Agreement will be given a one-time opportunity to make such election. Engineers at locations or on rosters required to make a relocation decision will be contacted by the Local Chairmen. The engineers to be contacted and offered the opportunity to relocate will include:
    - a.** Only engineers holding seniority on the UP 4<sup>th</sup> Seniority District, on the Idaho Seniority District and identified on Attachment "A," or in Portland Hub Zone 1 and assigned to positions at Hinkle will be canvassed.
    - b.** The senior twenty-six (26) engineers holding seniority on the Idaho Seniority District and identified on Attachment "A" will be canvassed. Canvassing will cease once either twenty (20) engineers have elected to relocate to Zone 2 or the senior twenty-six (26) engineers have been contacted, whichever occurs first.
    - c.** All engineers holding seniority in Portland Hub Zone 1 and assigned to positions at Hinkle pursuant to Article II, Section B, Paragraph 5 of the August 13, 1998 Merger Implementing Agreement (Portland Hub Zone 1) will be canvassed.

**NOTE:** Subsequent to implementation of this Agreement, the provisions of Article II, Section B, Paragraph 5 will automatically terminate and will be of no force or effect. Employees electing to remain in Portland Hub

Zone 1 must accordingly exercise their seniority in Zone 1.

- d. The senior nine (9) engineers holding seniority on the former UP 4<sup>th</sup> Seniority District and identified on Attachment "B" will be canvassed.
- E. Engineers covered by this Article IX, Section D will be canvassed in seniority order and required to make their relocation decision within sixty (60) days of the date this Agreement is implemented. The employee's decision will be irrevocable. If an employee fails to make a decision, he or she will be considered as having elected to remain at his or her current location.
- F. All canvassing must be completed by no later than thirty (30) days from the date this Agreement is signed.

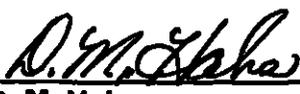
**X. SAVINGS CLAUSES**

- A. In the event the provisions of this Agreement conflict with existing collective bargaining agreement provisions, rules and/or practices, the provisions of this Agreement shall prevail.
- B. The provisions of this Agreement are entered into without prejudice to either party's position and the parties agree not to cite this agreement in other negotiations or arbitration proceeding(s).

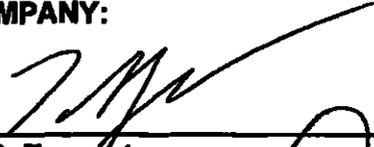
**SIGNED THIS 28TH DAY OF FEBRUARY, 2001, IN POCATELLO, IDAHO**

**FOR THE BROTHERHOOD OF  
LOCOMOTIVE ENGINEERS:**

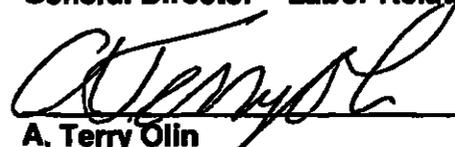
  
\_\_\_\_\_  
**T. J. Donnigan**  
General Chairman

  
\_\_\_\_\_  
**D. M. Hahs**  
International Vice President

**FOR UNION PACIFIC RAILROAD  
COMPANY:**

  
\_\_\_\_\_  
**T. G. Taggart**  
Director - Labor Relations

  
\_\_\_\_\_  
**W. E. Loomis**  
General Director - Labor Relations

  
\_\_\_\_\_  
**A. Terry Olin**  
General Director - Employee Relations  
Planning

13

**MERGER IMPLEMENTING AGREEMENT  
(Roseville Hub)**

**between the**

**UNION PACIFIC/MISSOURI PACIFIC RAILROAD COMPANY  
SOUTHERN PACIFIC TRANSPORTATION COMPANY**

**and the**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

In Finance Docket No. 32760, the U.S. Department of Transportation, Surface Transportation Board ("STB") approved the merger of the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") and Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SP"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp., and The Denver & Rio Grande Western Railroad Company ("DRGW") (collectively referred to as "SP") In approving this transaction, the STB imposed New York Dock labor protective conditions.

In order to achieve the benefits of operational changes made possible by the transaction, to consolidate the seniority of all employees working in the territory covered by this Agreement into one common seniority district covered under a single, common collective bargaining agreement,

**IT IS AGREED:**

**I. Roseville Hub**

A new seniority district shall be created that encompasses the following area: UP territory including milepost 665.0 west of Elko, Nevada to the end of the track on the former Western Pacific, Sacramento Northern and Tidewater Southern; SP territory including milepost 553.0 west of Elko, Nevada to the end of the track at Oakland/San Francisco, California, south to and including Santa Barbara, California; south from Roseville, California to and (not including) Hivolt via (including) Palmdale, and over the BNSF trackage rights to (not including) Barstow and north from Roseville to (not including) Chemult and the Modoc Line.

**BLE112097Roseville**

## **II. Seniority and Work Consolidation.**

The following seniority consolidations will be made:

**A. A new seniority district will be formed and a master Engineer's Seniority UP/BLE Roseville Hub Merged Roster , will be created for the engineers assigned to the Roseville Hub on September 1, 1997 or on an auxiliary board from a point inside the Hub but working outside the Hub or the WP engineers forced to Salt Lake Hub that will return to the Hub upon release. It does not include borrow outs to the Hub nor engineers assigned to the Hub from an auxiliary board with a home terminal outside the Hub. In addition to the Hub Roster a separate zone roster shall be created for each zone.**

**B. The new rosters will be created as follows:**

- 1. Engineers placed on these rosters will be dovetailed based upon their current engineer's seniority date. If this process results in engineers having identical seniority dates, seniority ranking will be determined by the employe's earliest retained hire date with the Carrier.**
- 2. All engineers placed on the roster may work all assignments protected by the roster in accordance with their seniority and the provisions set forth in this Agreement.**
- 3. Engineers placed on the Roseville Hub Merged Rosters shall relinquish all seniority outside the Hub upon implementation of this Agreement and all seniority inside the Hub held by engineers outside the Hub shall be eliminated.**
- 4. Engineers currently working in trainman/fireman service with an engineers seniority date shall retain their date and be placed on the appropriate merged engineer's roster and in the appropriate zone based upon the BLE ebb and flow agreements that existed prior to the effective date of this agreement.**
- 5. Student engineers in training on or before September 1, 1997 will be assigned prior rights as engineers based on the area designated in the bulletin seeking applications for engine service.**
- 6. New engineers hired/promoted after September 1, 1997 will have no prior rights but will have roster seniority rights in accordance with the provisions set forth in this agreement.**

**C. Engineer's initially assigned to the new roster will be accorded prior rights to one of four Zones based on the on duty location the engineer was working on September 1, 1997. The new UP/BLE Roseville Merged Roster seniority district will be divided into the following four (4) Zones.**

- 1. Zone 1 will include operations Roseville north to (not including) Red Bluff, east to (including) Oroville and (not including) Sparks, including helper service, west to (including) Oakland/San Francisco, south to (including) King City and (not including) Fresno.**
- 2. Zone 2 will include operations from San Luis Obispo north to (not including) King City, south to (including) Santa Barbara and from Bakersfield north to (including) Fresno and south to (not including) Hivolt via (including) Palmdale and the trackage rights to Barstow.**
- 3. Zone 3 will include operations from Dunsmuir north to (not including) Chemult and the Modoc Line to (not including) Wendel, south to (including) Red Bluff**

**Note: If the Siskiyou trackage reverts to the UP then the Zone will include the trackage to (not including) Bellview milepost 426.2.**

- 4. Zone 4 will include operations from Sparks, Portola and Winnemucca to but not including Elko except as defined in the Salt Lake City Hub Agreement and to (including) Wendel and (not including) Oroville**
- 5. Except as provided in the interim provisions of this agreement, engineers may not move from one Zone to another except in accordance with consolidated seniority provisions which require, among other provisions, the Carrier to post a notice of the intent to promote additional engineers so that engineers may request transfer to the Zone with the need for additional engineers. Engineers may be held up to 9 months, in lieu of 7 months provided for in the consolidated provisions, prior to being released to another Zone. Surplus engineers may be used in another Zone in accordance with auxillary board provisions.**
- 6. Consolidated seniority provisions and auxillary board provisions only apply within the four Zones of the Hub and engineers in the Hub do not have such rights in other Hubs or non-merged areas and correspondingly cannot be forced to those other areas outside the Hub.**

**Note 1:** Each Zone shall include all main and branch lines, industrial leads and stations between the points identified.

**Note 2:** Crews with home terminals within a Zone may work to points outside the Zone and Hub. The Zone identifies the on duty points for assignments and not the boundaries of assignments. For example a road switcher on duty at Fresno may work in any direction up to the limits of its radius as set by the road switcher agreement and a work train at Sparks may work both east and west.

7. SP engineers on Auxillary Boards will be placed in the same Zone as the source of supply location and WP engineers temporarily working in the Salt Lake City Hub shall be placed in a Zone based on the WP BLE ebb and flow agreement that existed prior to the effective date of this Agreement. Engineers currently forced to positions within the Roseville Hub, borrowed out to the Roseville Hub, or working an auxillary Board position from outside the Hub will be released when their services are no longer required and will not establish a permanent date on the merged roster.

D. Engineers who are on an authorized leave of absence or who are dismissed and later reinstated will have the right to displace to any Hub and prior rights Zone which may have been established on his/her former territory, provided his/her seniority at time of selection would have permitted him/her to hold that selection. The parties will create an inactive roster for all such engineers until they return to service in a Hub or other location at which time they will be placed on the appropriate seniority rosters and removed from the inactive roster.

E. As work is moved from one Zone to another during the interim period, the following will govern:

1. Due to the rebuild of the Roseville yard and the tunnel work needed to run double stacks over former SP routes, current pool home and away from home terminals will remain, except as provided elsewhere in this paragraph (1), until the Carrier notifies the Organization of the implementation of the new pool freight runs. The notice shall list all assignments abolished and all assignments initially posted at the new locations (both pool and extra board). The notice shall be posted for fifteen days and successful applicants shall be notified of the assignments no later than seven days following close of the notice. (Attachment "A" sets forth the order of selection for these assignments.) The assignments shall be phased in 30 days after the bids close.

**Note:** When pool turns are relocated a number of extra board positions shall be moved from the same location equal to 30% of the number of pool turns relocated.

2. **Interim pool freight rights on existing runs shall be on the basis of prior WP and SP service except as provided in (3) below. SP engineers shall have rights to their former pools and WP engineers shall have rights to their former pools only during this interim period and then Zone rights shall govern. For example former SP engineers shall retain rights ahead of former WP engineers to the SP Oakland-Roseville pool until that pool is abolished or until the interim period is over. The same is true for former WP engineers in their Stockton-Portola pool.**
  
3. **Service interruptions through Portola or Sparks shall be handled as follows:**
  - (a) **During the interim period it is anticipated that some temporary shifting of employees between Portola and Sparks will be undertaken to handle capital projects. If trains are shifted on a short term basis (maintenance of way windows) then the CMS Director shall discuss the situation with the Local Chairmen involved and shall alternate calls between the two pools during the window. When used at the new temporary location they shall be entitled to a driving allowance of \$31.50 per round trip.**
  
  - (b) **At times the Portola and Sparks areas have experienced washouts and heavy snows that have prohibited traffic movement. During these times, both interim and post interim, BLE local chairmen and the Carrier representative will consult so that the pools and extra boards on the disabled line shall be temporarily abolished and the other pools and extra boards shall be increased accordingly to handle the traffic. Should traffic use alternate routes during such periods and all pool and extra board engineers are not needed, then reserve board provisions shall apply for those who hold such rights or auxillary board provisions. During these times CMS will extend call times. The parties understand that weather conditions in the winter may impact travel and weather conditions will be taken into account in travel time.**

**Note 1:** Extended calls in 3 (a) and (b) will be two hour calls.

**Note 2:** During inclement weather the Carrier will provide suitable lodging to those crews in 3(a) and (b) above

4. The work referred to in section (1) is limited to specific pool turns moved to:
  - (a) Roseville [Zone 1] from Dunsmuir [Zone 3] / Bakersfield [Zone 2];
  - (b) San Luis Obispo [Zone 2] from Oakland [Zone 1] and Los Angeles;
  - (c) Sparks and Portola [Zone 4] from Oakland, Stockton, and Roseville [Zone 1];
  - (d) Bakersfield [Zone 2] from Los Angeles; and
  - (e) Dunsmuir from Eugene.
  
5. Work already in a Zone moving to a new location in the same Zone (e.g. Stockton to Roseville) is covered under the Zone seniority rules and engineers from a different Zone may not bid on those assignments unless there is a shortage in the Zone and then only pursuant to Article II(E)(10).
  
6. When pool vacancies occur and extra boards are increased at the locations identified due to the restructuring of pool operations the order of selection for the operations listed below are found in Attachment "A":
  - (a) Roseville - Dunsmuir/Oakland/San Jose
  - (b) Roseville-Bakersfield/Portola/Sparks
  - (c) San Luis Obispo-East and West
  - (d) Sparks -East and West
  - (e) Portola-East and West
  - (f) Bakersfield - Los Angeles/West Colton/Lathrop/Yermo/Fresno
  - (g) Dunsmuir-Bend/Oakridge
  
7. Relocation allowances, either under New York Dock or in lieu of , will not be available during the interim period for movement to pool freight positions or extra boards in Sections 2 & 3 above. Engineers required to relocate to non pool freight positions or other extra boards as a result of the merger may elect to delay their relocation allowance request until after the implementation date of the new pools in Section 1 above.
  
8. During the interim period as work is relocated between Zones or Hubs and a vacancy is not filled by bid, then engineers may be forced to the vacancy. If forced, the junior engineer at the location on September 1, 1997, at which work is transferred from shall be forced to the vacancy. Local Chairmen will assist in the assignment and placement process

**Example:** Ten (10) Pool turns and three (3) extra board positions are abolished at Bakersfield and established at Roseville. Engineers from the seniority district that protect these assignments bid in 12 of them leaving one unbid vacancy. The junior engineer at Bakersfield (location work is moved from) not bidding in one of these assignments may be assigned to the vacancy.

**Note:** Jobs left vacant through the bidding process will be filled by those who have a displacement. The intent of this agreement is to place all engineers on a position during the seven days following the closing of bids. It is also the intent of this agreement to reallocate forces between the Zones where necessary during the interim period so that at the end of the interim period there are not Zones with shortages and other Zones with a surplus. This process is explained in more detail in the questions and answers.

9. It is not the intent of this agreement to move engineers between Zones during the interim period except in response to the relocation of assignments and the equalization of engineers. Due to the reduction of assignments due to the Roseville yard rebuild and temporary movement of work due to capital projects it will be difficult to assess the number of surplus engineers in a Hub on a long term basis. This agreement will incorporate protection board provisions that will help identify if a surplus exists. During the interim period Auxiliary board provisions will be used for short term vacancies when engineers are needed to cross Zone lines.
10. During the interim period if long term vacancies occur, other than the relocation of assignments in Section (E)(1) which have their own provisions, and a shortage exists in a Zone then the vacancies shall be posted in the other Zones with a surplus and if no bids received then the junior engineer on the Hub seniority roster in the surplus Zone(s) shall be assigned to the vacancy.

**Example:** Engineers from auxiliary boards from outside the Hub are working at Oakland. When they are released and if there are not enough engineers on the Zone 1 protection board to fill those vacancies then the provisions of (10) above will be used.

**Note:** The General Chairman and Labor Relations shall meet periodically during the interim period to review the shortages and surpluses within each Zone.

F. Vacancies that do not involve transferring work between Zones shall be handled as follows:

1. Section F vacancies, both interim and after the interim period, that go no bid or application, shall be filled by the provisions of the controlling CBA except as provided within this agreement.
2. Pools shall have an allocation chart for priority in filling specific vacancies and all other assignments in a Zone shall be filled from the Zone roster. After the initial relocation of assignments engineers must be holding Zone prior rights and be working in the Zone to apply for allocated vacancies. If engineers with allocation rights do not bid in an allocated position or there are fewer engineers with those rights than there are positions, then the Zone roster shall be used to fill the vacancies.
3. If assignments are increased and there are not enough engineers in active service (not including the Reserve Board) to cover all assignments, Reserve Board recalls may be started to cover the number of extra vacancies prior to no bid assignments being identified.

**Example:** There are 100 engineers working 100 assignments in a Zone. Two pool turns are added and two new road switchers are added. Since four additional engineers are needed four reserve board engineers may be recalled prior to identifying which vacancies will go no bid.

4. Engineers force assigned to a new Zone or bidding in Section E transfer of work vacancies will transfer their seniority date and prior rights to the new Zone roster. Engineers forced to a new Zone will be permitted to make application back to their original prior rights Zone. The application must be on file within sixty (60) days of being forced and will be honored when vacancies of a minimum of thirty (30) days exist in the original Zone and there are no engineers their senior on reserve boards or demoted in that Zone. If an engineer is recalled and declines the recall, then his/her application will be pulled and not reentered. (See relocation section on restrictions if relocation allowances are requested).

**Note:** The minimum of thirty (30) days shall be met when all engineers senior to the forced engineer have been assigned to a working position for a minimum of thirty (30) days or on a leave of absence for a minimum of thirty (30) days and an additional regular assignment becomes vacant. If the engineer returning to the original zone works for ninety (90) days without being demoted then the forced zone rights will be relinquished and the original zone rights reinstated

5. Should work be moved from long pool service back to short pool service (i.e. the Sparks-Oakland Pool is abolished and traffic reverts to the Roseville short pools) or lines are abandoned or sold, then those engineers who previously moved from another Zone to man this service may elect to move back to the original Zone and reinstate those prior rights.

G. At the end of the interim period the Zone seniority dates shall become permanent and only auxiliary board provisions or consolidated seniority provisions will be used to perform work in another Zone

H. All vacancies within a Zone must be filled prior to any engineer being reduced from the working list or prior to engineers being permitted to exercise to any reserve board. All engineers not eligible to hold a reserve board must be displaced prior to any engineer holding a position on a reserve board.

I. Engineers will be treated for vacation, payment of arbitraries and personal leave days as though all their service on their original railroad had been performed on the merged railroad. Engineers assigned to the Roseville Hub seniority roster at the end of the interim period shall have entry rate provisions waived and engineers hired after the effective date of this agreement shall be subject to the rate progression provisions of the controlling CBA. The entry rate provisions shall be waived during the interim period. Those engineers leaving the Roseville Hub will be governed by the CBA where they then work.

### III. POOL OPERATIONS.

Pool operations within the Roseville Hub shall be restructured and the following shall represent pool operations.

A. Pools with home terminals at Sparks and Portola shall be run as follows.

1. Sparks-Elko and Portola-Elko shall be run as two separate single headed pools. These pools may be combined at the far terminal of Elko for the return trip to the home terminal upon ten (10) days notice from the Carrier. If later separated, a similar ten (10) day notice shall be given. When arrival at Sparks/Portola, if not at the home terminal, the engineer shall be driven to the original on-duty point for tie-up.
2. Sparks-Winnemucca and Portola-Winnemucca shall be run as two separate single headed pools. These pools may be combined at the far terminal of Winnemucca for the return trip to the home terminal upon ten (10) days notice from the Carrier. If later separated, a similar ten (10) day notice

shall be given. When arrival at Sparks/Portola, if not at the home terminal, the engineer shall be driven to the original on-duty point for tie-up.

**Note:** It is not the intent of this Agreement to use Winnemucca based engineers west to Sparks or Portola. If they are used in emergency service, then upon arrival at Sparks or Portola they will not be tied up but deadheaded back to Winnemucca in combination service.

3. **Portola-Oroville** service shall be operated as one pool as long as sufficient traffic permits the operation of a pool. Should sufficient traffic not be available then the service shall be protected from the extra board. If traffic levels again fall short then the work shall be protected from the extra board.
4. **Portola-Lathrop/Oakland** service shall be operated as one pool as long as sufficient traffic permits the operation of a pool. Should sufficient traffic not be available then the service shall be protected from the extra board. If traffic levels again fall short then the work shall be protected from the extra board. See (5) below for interim operation of the Portola/Lathrop portion. While the Portola-Lathrop portion remains with the Portola-Stockton doubleheaded pool the Portola-Oakland portion shall run as a separate pool if traffic warrants and if not then off the extra board.
5. **Portola-Stockton** service is currently doubleheaded. It shall remain in service while the new Roseville yard is constructed and shall be abolished in accordance with the provisions of Article II Section E . The Portola-Lathrop service in (4) above shall continue to run with this doubleheaded pool as it currently does until the termination notice is effective.
6. **Sparks-Oakland/Lathrop/Stockton** service shall be operated as one pool as long as sufficient traffic permits the operation of a pool. Should sufficient traffic not be available then the service shall be protected from the extra board. If traffic levels again fall short then the work shall be protected from the extra board.
7. **Sparks and Portola** crews at the far terminals of Oakland and or Lathrop/Stockton may be combined at the far terminal for the return trip to the home terminal upon ten (10) days notice from the Carrier. If later separated a similar ten (10) day notice shall be given. When arrival at Sparks/Portola, if not at the home terminal the engineer shall be driven to the on-duty point for tie-up.
8. Sparks and Portola crews combined at the far terminals of Elko, Winnemucca, Lathrop/Stockton or Oakland shall be paid as follows when they handle a train to other than the terminal they originally departed

- a. The engineer shall be paid the miles of their assignment or miles run whichever is greater and any applicable overtime and/or arbitraries. The train trip shall end at this point.
- b. For the transportation from Sparks to Portola or Portola to Sparks they shall be paid a minimum of two hours at the pro rata rate and on a minute basis for all time over two hours. The time shall begin at the time the crew has completed yarding their train and completed any reporting associated with the train. The time shall end when tied up at the home terminal. If the total time on duty would place the engineer on overtime then the two hour payment shall be at the overtime rate.  
  
**Note:** Suitable transportation between Sparks and Portola includes carrier owned or provided passenger carrying motor vehicles or taxi, but excludes other forms of public transportation.
- c. If due to inclement weather the engineer is tied up prior to being transported then the transportation time shall begin eight (8) hours after the tie up
- d. If notice is not given to combine the pool at the far terminal and an engineer is used to the wrong terminal they shall be paid a one-half day payment in addition to all other payments listed above. The one-half day payment does not apply if there has been a service interruption on one of the lines. Service interruptions include maintenance of way curfews of eight or more consecutive hours, floods, derailments, weather and acts of God.

**B. Winnemucca-Elko/Wendell** shall be combined and protected from the extra board unless there is sufficient traffic to warrant a single pool. If that occurs then a pool shall be established. If traffic levels again fall short then the work shall be protected from the extra board.

**C. Pools with home terminals at Roseville shall be run as follows:**

- 1. **Roseville-Sparks/Portola** service shall be operated as one pool as long as sufficient traffic permits the operation of a pool. Should sufficient traffic not be available then the service shall be protected from the extra board.
- 2. **Roseville-San Jose/Oakland** shall be operated as one pool as long as sufficient traffic permits the operation of a pool. Should sufficient traffic not be available then the service shall be protected from the extra board.

BLE112097Roseville

3. Crews destined for Sparks and Portola in single headed pools will be governed by the dual destination away from home terminal provisions of this Agreement Article III (M). Crews with trains destined for Oakland may be either tied up at Oakland or deadheaded in combination service on to San Jose for tie-up. If tied up at Oakland and then called to take a train from San Jose the engineer will be paid in accordance with Article III (A) (8) (a) &(b).
  4. Roseville-Dunsmuir shall be operated as one pool as long as sufficient traffic permits the operation of a pool. Should sufficient traffic not be available then the service shall be protected from the extra board.
  5. Roseville-Fresno/Bakersfield shall be operated as one pool as long as sufficient traffic permits the operation of a pool. Should sufficient traffic not be available then the service shall be protected from the extra board.
  6. Roseville-Oroville shall be operated as one pool as long as sufficient traffic permits the operation of a pool. Should sufficient traffic not be available then the service shall be protected from the extra board.
- D. Pools identified in this agreement running to Oakland or San Jose may operate over any of the multiple routes.
- E. Pools with home terminals at Dunsmuir and Klamath Falls shall be run as follows.
1. Dunsmuir-Bend/Oakridge shall be operated as one pool as long as sufficient traffic permits the operation of a pool. Should sufficient traffic not be available then the service shall be protected from the extra board. It is not the intent to deadhead crews from Bend to Oakridge.
  2. Dunsmuir-Klamath Falls shall be operated as one pool as long as sufficient traffic permits the operation of a pool. Should sufficient traffic not be available then the service shall be protected from the extra board.
  3. Dunsmuir-Lathrop shall be operated as one pool as long as sufficient traffic permits the operation of a pool. Should sufficient traffic not be available then the service shall be protected from the extra board.
  4. Klamath Falls-Bend shall be operated as one pool as long as sufficient traffic permits the operation of a pool. Should sufficient traffic not be available then the service shall be protected from the extra board.

**Note:** Oakridge-Klamath Falls will be covered in the Portland Hub.

- 5 Should the Modoc line reopen then the Klamath Falls-Wendel pool shall be reinstated

**Note:** Operations between Dunsmuir and Eugene shall continue their current operations until the Portland Hub is implemented. At that time the Carrier may serve notice to implement these new operations except Klamath Falls-Bend may be operated at any time.

- F. Pools with home terminals at **Bakersfield** shall be run as follows:

1. **Bakersfield-Fresno/Yermo** shall be operated as one pool as long as sufficient traffic permits the operation of a pool. Should sufficient traffic not be available then the service shall be protected from the extra board.
2. **Bakersfield-Los Angeles/West Colton** shall be operated as one pool as long as sufficient traffic permits the operation of a pool. Should sufficient traffic not be available then the service shall be protected from the extra board.
3. **Bakersfield-Lathrop** shall be operated as one pool as long as sufficient traffic permits the operation of a pool. Should sufficient traffic not be available then the service shall be protected from the extra board.

- G. Pools with home terminals at **San Luis Obispo** shall be run as follows:

1. **San Luis Obispo-Los Angeles** shall be operated as one pool as long as sufficient traffic permits the operation of a pool. Should sufficient traffic not be available then the service shall be protected from the extra board.
2. **San Luis Obispo-San Jose/Oakland** shall be operated as one pool as long as sufficient traffic permits the operation of a pool. Should sufficient traffic not be available then the service shall be protected from the extra board.
3. Crews with trains destined for San Jose may be either tied up at San Jose or deadheaded in combination service on to Oakland. When tied up at San Jose and called to take a train from Oakland to San Luis Obispo the engineer will be paid in accordance with Article III(A)(a)&(b). If an engineer is deadheaded in combination service back to San Jose after delivering their train to Oakland, and then deadheaded again to San Luis Obispo the provisions of Article III(M)(5) apply.

H. **Oakland and San Jose** are separate terminals. If an engineer is tied up for rest at Oakland or San Jose, they will not be worked or deadheaded to the other away from home terminal and tied up a second time.

BLE112097Roseville

I. Stockton/Lathrop-Oakland/San Jose service shall be operated during the interim period with Stockton as the home terminal. This service shall be operated as one pool as long as sufficient traffic permits the operation of a pool. Should sufficient traffic not be available then the service shall be protected from the extra board. This traffic may operate over multiple routes.

J. New pool operations shall be governed by Article II Section E for implementation except for Portola-Oakland which may begin upon ten days notice. Operations in (K) below may be implemented upon proper notice/bulletin as provided in current collective bargaining agreements. Pool operations in place prior to the implementation of this Agreement shall continue until the Carrier serves notice to implement new pool operations.

K. Any pool freight, local, work train, or road switcher service may be established pursuant to the controlling CBA to operate from any point to any other point within the new seniority district with the on duty point within one of the Zones.

L. New pool operations not covered in this implementing Agreement between Hubs or one Hub and a non merged area will be handled per Article IX of the 1986 National Implementation Award.

M. **Away from Home Terminal Dual Destination.** The following conditions shall apply for repositioning crews from one away from home terminal to another at the combined destinations of , Portola/Sparks, and Los Angeles/West Colton.

1. Crews may only be deadheaded prior to tie-up after the initial trip.

**Example:** A crew runs from Roseville to Sparks. If the crew is tied up at Sparks they cannot later be deadheaded to Portola except in emergency situations such as a flood or derailment. The crew can be deadheaded prior to tie-up from Sparks to Portola for tie-up at Portola after their original trip from Roseville.

2. Crews will not be deadheaded by train from one away from home terminal to another away from home terminal.
3. Engineers will be paid for the transportation between the terminals in accordance with Article III Section (A) (8) (a) &(b)
4. Once deadheaded between two away from home terminals, an engineer will not be deadheaded back except in an emergency situation such as a flood or derailment.

5. It is not the intent of this Agreement to "double deadhead" engineers. If double deadheaded, then the engineer will be paid full district miles with a minimum of a basic day for the second deadhead if a pre November 1, 1985 engineer, or time consumed with a minimum of a basic day if a post November 1, 1985 engineer. A "double deadhead" in this instance is when an engineer is deadheaded at the end of his service trip to the other way from home terminal and then deadheaded back to the home terminal.

#### **IV. EXTRA BOARDS**

- A. A single combination extra board shall be established at the following locations:

Bakersfield, San Luis Obispo, Fresno, Portola, Sparks, Winnemucca, Klamath Falls and Dunsmuir

- B. Roseville shall have two extra boards as follows.

1. **Roseville North** - Engineer board covering the pools to Dunsmuir-Portola-Oroville-Sparks
2. **Roseville South** - Engineer board covering the pools to Bakersfield-Fresno-Oakland-San Jose and all Roseville and Sacramento yard assignments and all locals and road switchers that go on duty between Sacramento-Oroville and /Red Bluff.

- C. Regional combination Extra Boards shall be established as follows:

1. Stockton to cover Stockton-Turlock-Modesto-Tracy.
2. Oakland to cover Oakland-Fremont-Newark-Mulford.
3. San Jose to cover San Jose-Milpitas-Watsonville-Salinas-South San Francisco-Warm Springs.
4. Martinez to cover Ozol/Martinez-Suisun-Port Chicago.

**Note** Due to the high volume of commuter traffic during certain times of the day, engineers assigned to these regional extra boards will be granted an extended call of up to two and one-half hours if one is requested.

- D. It is the intent of this Article to provide extra board coverage to all assignments through one of the extra boards established in sections (A)(B)&(C). Any

BLE112097Roseville

location not listed shall be covered by the nearest extra board or additional extra board(s) may be established pursuant to the provisions of the surviving CBA

**Note:** The nearest extra board will be determined by highway miles. When new assignments are established, the bulletin will identify the protecting extra board.

**E. Exhausted extra boards.**

1. If one of the extra boards in (B) above is exhausted then the other extra board may be used prior to using other sources of supply
2. If one of the extra boards in (C) above is exhausted then the next closest extra board (secondary) shall be used prior to using another source of supply. The secondary extra boards are : Oakland for San Jose, San Jose for Oakland, Oakland for Martinez, and Roseville South for Stockton. An engineer called from his/her extra board for an assignment in another area not principally covered by their extra board shall be handled as follows:
  - a. Pay received for this assignment shall not be used as an offset for extra board guarantee but shall be in addition to, however, it shall be used in computing whether the engineer is entitled to protection pay at the end of the month.
  - b. An engineer unavailable at time of call shall have a deduction made in their extra board guarantee in accordance with the extra board agreement and shall have an offset to their protection in accordance with the protection offset provisions. If miss called for secondary calls, the engineer shall not be placed on the bottom of the board but will hold his/her place.
  - c. An engineer unavailable at time of call shall not be disciplined.
3. Prior to the Carrier using a third extra board, all other sources of supply in the area where the vacancy exists must be exhausted

**F.** The extra boards identified in this Article may be implemented (consolidated) by the Carrier giving a ten day notice to the organization. The notice shall identify which extra boards are being consolidated and/or created and/or abolished. The extra boards need not all be handled in the same notice but may be implemented in full or partially but a different notice shall be given if done at different times. Current Extra boards not covered by a notice shall continue to operate until a notice is served.

## V. TERMINAL AND OTHER CONSOLIDATIONS

A. At all joint terminal locations all UP and SP operations shall be consolidated into unified terminal operations. Yard crews will not be restricted in a terminal where they can operate.

The new terminal limits for the following locations shall be :

***[both parties are identifying consolidated limits and will add at a later date]***

1. Reno/Sparks - The Sparks terminal limits will not be expanded to include the UP Reno trackage.
2. Sacramento -
3. Stockton -
4. Oakland -

**Note:** Since Roseville is not a joint terminal location, no change in terminal limits is made by this Agreement.

B. Upon merger implementation all other UP and SP facilities, stations, terminals, equipment and track shall be combined into a unified operation.

C. The provisions of (A) and (B) will not be used to enlarge or contract the current limits except to the extent necessary to combine into a unified operation

**Example:** At Oakland the two separate yards and connecting tracks between shall be combined into one terminal facility.

## VI. AGREEMENT COVERAGE

A. General Conditions for Terminal Operations.

1. Initial delay and final delay will be governed by the controlling collective bargaining agreement, including the Duplicate Pay and Final Terminal Delay provisions of the 1986 and 1991 National Arbitration Award and Implementing Agreements.
2. Engineers will be transported to/from their trains to/from their designated on/off duty point in accordance with Article VIII, Section 1 of the May 1986 National Arbitration Award

BLE112097Roseville

3. The current application of National Agreement provisions regarding road work and Hours of Service relief under the combined road/yard service Zone, shall continue to apply. Yard crews at any location within the Hub may perform such service in all directions out of their terminal.

**B. General Conditions for Pool Operations**

The terms and conditions of the pool operations set forth in Article III shall be the same for all pool freight runs whether run as combined pools or separate pools. The terms and conditions are those of the designated collective bargaining agreement as modified by subsequent national agreements, awards and implementing documents and those set forth below.

1. **Twenty-Five Mile Zone** - At all home and away from home terminals, both inside and outside the Hub, pool crews may receive their train up to twenty-five miles on the far side of the terminal and run on through to the scheduled terminal. Crews shall be paid an additional one-half (½) basic day for this service in addition to the miles run between the two terminals. If the time spent in this zone is greater than four (4) hours, then they shall be paid on a minute basis. This payment shall be at the pro rata through freight rate.

**Example:** A Roseville-Bakersfield crew receives their south bound train ten miles north of Roseville but within the 25 mile zone limits and runs to Bakersfield. They shall be paid the actual miles established for the Roseville-Bakersfield run and an additional one-half basic day for handling the train from the point ten (10) miles north of Roseville back through Roseville.

2. **Turnaround Service/Hours of Service Relief**. Except as provided in (1) above, turnaround service/hours of service relief at both home and away from home terminals shall be handled by extra boards, if available, prior to using pool crews. Engineers used for this service may be used for multiple trips in one tour of duty in accordance with the designated collective bargaining agreement rules. Extra boards may handle this service in all directions out of a terminal.

3. Nothing in this Section B (1) and (2) prevents the use of other crews to perform work currently permitted by prevailing agreements, including, but not limited to yard crews performing Hours of Service relief within the road/yard zone, ID crews performing service and deadheads between terminals, road switchers handling trains within their zones and using an engineer from a following train to work a preceding train and payments required by those prevailing agreements will continue to be paid when this work is performed.

**C. Agreement Coverage** - Engineers working in the Roseville Hub shall be governed, in addition to the provisions of this Agreement, by the Collective Bargaining Agreement selected by the Carrier, including all addenda and side letter agreements pertaining to that agreement, previous National Agreement/Award/Implementing Document provisions still applicable. Except as specifically provided herein, the system and national collective bargaining agreements, awards and interpretations shall prevail. None of the provisions of these agreements are retroactive. The Carrier has selected the SP West Modified Agreement effective December 1, 1997, as the collective bargaining agreement for this Hub.

## **VII. PROTECTION.**

**A.** Due to the parties voluntarily entering into this agreement the Carrier agrees to provide New York Dock wage protection (automatic certification) to all prior right engineers who are listed on the Roseville Hub Merged Rosters and working an assignment (including a Reserve Board) during the period between September 1, 1997 and the implementation date. This protection will start with the effective (implementation) date of this agreement. The engineers must comply with the requirements associated with New York Dock conditions or their protection will be reduced for such items as layoffs, bidding/displacing to lower paying assignments when they could hold higher paying assignments, etc. Protection offsets due to unavailability are set forth in the Questions and Answers.

**B.** This protection is wage only and hours will not be taken into account. Due to the need to notch the tunnels and rebuild the Roseville Yard merger integration will take longer than would normally be expected. As such an interim protection will be added to the New York Dock protection period. If the interim period is less than one year, when the interim period is terminated, engineers certified as part of this agreement will have their protection period start over. If the interim period is in excess of one year the engineer's New York Dock protection period will begin after one year.

**C.** Engineers required to relocate under this agreement will be governed by the relocation provisions of New York Dock. In lieu of New York Dock provisions, an engineer required to relocate may elect one of the following options:

1. Non-homeowners may elect to receive an "in lieu of" allowance in the amount of \$10,000 upon providing proof of actual relocation
2. Homeowners may elect to receive an "in lieu of" allowance in the amount of \$20,000 upon providing proof of actual relocation.

3. Homeowners in Item 2 above, who provide proof of a bona fide sale of their home at fair value at the location from which relocated, shall be eligible to receive an additional allowance of \$10,000.

(a) This option shall expire five (5) years from date of application for the allowance under Item 2 above.

(b) Proof of sale must be in the form of sale documents, deeds, and filings of these documents with the appropriate agency.

4. With the exception of Item 3 above, no claim for an "in lieu of" relocation allowance will be accepted after two (2) years from date of implementation of this agreement.

**Note:** The 2 year provision of this paragraph (4) shall be extended should the Carrier institute directional running through Sparks and Portola after the two year period beginning with implementation. If instituted after the two (2) year period, affected employees shall have one (1) year from the start date of directional running to request an "in lieu of" payment. This extension shall only be available to those employees at Sparks or Portola who may be affected and shall not apply to temporary directional running caused by capital projects or service interruptions covered in Article II (E)

5. Under no circumstances shall an engineer be permitted to receive more than one (1) "in lieu of" relocation allowance under this implementing agreement. Those WP engineers at Winnemucca who previously received an allowance in the Portola-Elko ID agreement shall be entitled to New York Dock relocation provisions or an in lieu of allowance should they be required to relocate of either:

- (a) \$7,000 for non-homeowners;
- or
- (b) \$10,000 for homeowners

These payments shall be paid only if engineers meet all the other requirements of the relocation provisions of this agreement. They are not entitled to the allowances in (1), (2) or (3) above.

6. Engineers receiving an "in lieu of" relocation allowance pursuant to this implementing agreement will be required to remain at the new location, seniority permitting, for a period of two (2) years.

7. In addition to those engineers required to relocate, engineers shall be "treated as" required to relocate under the following situations.

(a) If assignments are abolished at one location and placed at another location, then the number of engineers at that location equal to the number of positions abolished at that location shall be entitled to New York Dock or "in lieu of" relocation provisions, if they meet those qualifications, should they be the successful bidder(s) on one of the positions established at a new location.

**Example:** Ten positions are abolished at Dunsmuir and placed at other locations. Ten engineers who reside at Dunsmuir shall be treated as required to relocate if they bid on positions at other locations.

(b) If sufficient engineers at a location do not bid or are unsuccessful bidders and displace at that location, those junior engineers, if any, forced from that location shall be treated as required to relocate.

**Example:** Ten positions at Dunsmuir are abolished and transferred to other locations. Three engineers whose positions are abolished displace junior engineers at that location. Those three junior engineers if unable to hold at that location will be required to relocate when they displace to other locations.

(c) Except as provided in (a) above, engineers who are able to displace to an assignment that does not require a relocation will not receive a relocation allowance if they do not displace to an assignment that does not require a relocation.

**Example:** Ten positions at Dunsmuir are abolished and transferred to Roseville. Three engineers whose positions are abolished elect to displace to positions at Oakland when they could have displaced junior engineers at Dunsmuir. Those three engineers will not receive a relocation allowance.

(d) Engineers who bid on a position at another location without assignments being reduced at their location are not entitled to any relocation allowance. Since their bid was a seniority move, engineers forced to fill their vacancy are not required to relocate due to the merger transaction.

**Example:** No positions are reduced at Winnemucca and four engineers place on positions at Roseville. Those engineers will not be entitled to a relocation allowance.

D. There will be no pyramiding of benefits.

BLE112097Roseville

E. The Test Period Average (TPA) for this agreement shall be the same period as the SP West Modification Agreement (calendar year 1996). The provisions of side letter No. 2 to the SP West Modification Agreement shall be applicable to TPAs determined under this agreement. The TPA for union officers will be based on the two engineers above and two engineers below the officer with regular work records on the pre-merger roster or their regular TPA whichever is larger.

F. The establishing of interim protection is without prejudice or precedent to either party's position and will not be cited by either party.

G. National Termination of Seniority provisions shall not be applicable to engineers hired prior to the effective date of this agreement

#### **VIII. FAMILIARIZATION**

A. Employees will not be required to lose time or "ride the road" on their own time in order to qualify for the new operations. Employees will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualifications shall be handled with local operating officers. The parties recognize that different terrain and train tonnage impact the number of trips necessary and the operating officer assigned to the merger will work with the local Managers of Operating Practices in implementing this section.

B. Engineers hired subsequent to the effective date of this document will be qualified in accordance with current FRA certification regulations and paid in accordance with the local agreements that will cover the appropriate Hub.

#### **IX. IMPLEMENTATION**

The Carrier shall give 30 days written notice for implementation of this agreement and the number of initial positions that will be changed in the Hub. Engineers whose assignments are changed shall be permitted to exercise their new seniority. After the initial implementation the 10 day provisions of the various Articles shall govern.

#### **X. HEALTH AND WELFARE**

A. Engineers currently are under either the National Plan or the Union Pacific Engineers Hospital Association. Engineers coming under a new CBA will have 30 days to make an election as to keeping their old coverage or coming under the coverage of their new CBA. Engineers who do not make an election will have been deemed to elect to retain their current coverage. Engineers hired after the date of implementation will be covered under the plan provided for in the surviving CBA

BLE112097Roseville

**B.** If an engineer is covered under a group life and/or disability insurance policy provided for in his/her CBA and that CBA is not the surviving CBA, the Carrier shall continue the premium payments required at the time of implementation of this agreement for those engineers presently covered under those provisions for a period of six years from the implementation date of this agreement.

#### **XI. INTERIM OPERATIONS**

This agreement is a final agreement covering the area described in Article I. In addition to other provisions of this agreement, the interim period shall be governed by the following:

**A.** The interim period shall begin with the implementation of this agreement.

**B.** If surplus engineers are developed as traffic routing changes the surplus will be added to the protection board. Protection boards are only available to engineers working as an engineer on the implementation date. If additional assignments are added in a Zone, the senior engineer on the protection board will be recalled.

**Note:** The terms and conditions of Side Letter No. 4 of the SLC Hub Merger Agreement will apply in the Roseville Hub.

**C.** Each Zone shall have one protection board. An engineer may not hold a protection board unless they are unable to hold any position in their Zone.

**D.** If any Zones have a surplus and other Zones have borrow-outs, force assigned, or a shortage of employees, and insufficient engineers on their protection board, the provisions of Article II (E) (10) shall govern.

**E.** Engineers on the protection board shall be paid the greater of their earnings or their protection. While on the protection board they shall be governed by basic New York Dock protection reduction principles when laying off or absent for any reason as set forth in the questions and answers to this agreement.

**F.** The interim period shall terminate upon filling the assignments identified in Article II (E) (1) and all protection boards shall be eliminated at that time.

This Agreement is entered into this 24<sup>th</sup> day of Feb. 1998

**For the Organization:**

**For the Carrier:**



M. A. Mitchell  
General Chairman BLE WP



W. S. Hinckley  
General Director Labor Relations



E. L. Pruitt  
General Chairman BLE SPWest



T. L. Wilson, Sr.  
Director Labor Relations



D. M. Hahs  
Vice President BLE



C. J. Andrews  
Assistant Director Labor Relations



J. L. McCoy  
Vice President BLE

ATTACHMENT "A"

POOL ALLOCATION

**ZONE 1:**

ROSEVILLE-DUNSMUIR*	60%Roseville/40%Dunsmuir**	baseline 41
ROSEVILLE-BAKERSFIELD***	56%Stockton/33%San Joaquin/11%Roseville****	baseline 38*****
ROSEVILLE-OROVILLE	doetail roster	
ROSEVILLE-PORTOLA/SPARKS	53%UP/47%Roseville	
ROSEVILLE-OAKLAND	8%Roseville/62%Oakland/30%UP	

Note Window remains open until baseline numbers are met

- \* UP run 32
- \*\* Roseville Engineers will get the pool positions if Dunsmuir 40% are not filled up to the baseline number of 41 All jobs over the baseline number go to the doetail roster
- \*\*\* UP run 20
- \*\*\*\* The Roseville Engineers get the 2nd and 7th turns from Stockton in addition to their 11%
- \*\*\*\*\* All runs over the 38 baseline are allocated 50%Stockton/50% Roseville

---

**ZONE 2:**

SAN LUIS OBISPO-LOS ANGELES	45%San Joaquin/55%Coast, helpers 100% Coast
SAN LUIS OBISPO-OAKLAND	85%Coast/15%Oakland*
BAKERSFIELD-LATHROP	45%San Joaquin/55%Stockton**
BAKERSFIELD-W COLTON/LOS ANGELES	100% San Joaquin***
BAKERSFIELD-YERMO/FRESNO	100% San Joaquin
BAKERSFIELD HELPER	100% San Joaquin

- \* If the 15% Oakland turn is not filled, then it goes to the Coast District Engineers
- \*\* If not filled by Stockton, then turns will go to San Joaquin Engineers
- \*\*\* Turn numbers 5, 10 and 15 will go to Los Angeles Engineers in pool now

---

**ZONE 3:**

ALL TURNS TO THE DOVETAIL ROSTER.

---

**ZONE 4:**

SPARKS-LATHROP/OAKLAND	13%Oakland/28%Roseville*/49%UP/10%Stockton*
SPARKS AND PORTOLA EAST	57%UP/43%SP

- \* One turn goes from the 28%Roseville to San Joaquin

NOTE 1: PORTOLA-ELKO FIRST 34 TURNS PRIOR RIGHTED DURING THE INTERIM PERIOD  
SPARKS-ELKO FIRST 26 TURNS PRIOR RIGHTED DURING THE INTERIM PERIOD

NOTE 2: A chart will be prepared for each pool identifying which turns are allocated

NOTE 3: No extra boards have percentage allocations and all extra boards shall be filled using the Zone doetail rosters

NOTE 4: Unless allocated by this attachment "A", all other work will be assigned from the Zone doetail rosters

BLE112097Roseville

14

**MERGER IMPLEMENTING AGREEMENT  
(Salina Hub)**

between the

**UNION PACIFIC RAILROAD COMPANY  
~~SOUTHERN PACIFIC RAILROAD COMPANY~~**

and the

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

**PREAMBLE**

The U.S. Department of Transportation, Surface Transportation Board ("STB") approved the merger of the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") and Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp., and the Denver & Rio Grande Western Railroad Company ("DRGW") (collectively referred to as "SP") in Finance Docket 32760.

In order to achieve the benefits of operational changes made possible by the transaction, and to consolidate the seniority of all firemen working in the territories covered by this Agreement into one common seniority district covered under a single, common collective bargaining agreement, in such hub,

**IT IS AGREED:**

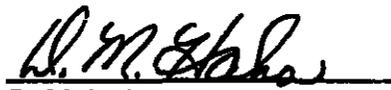
1. The parties acknowledge that an Implementing Agreement covering the consolidation of all firemen in the Salina Hub under one common collective bargaining agreement for such hub will be executed as a result of Carrier's notices served in such territories on June 4, 1998.
2. The parties agree that firemen who are currently covered by the SSW collective bargaining agreement will be considered fully covered by the terms of the Implementing Agreement which is negotiated/arbitrated and implemented pursuant to said June 4, 1998 notice. All rights and benefits set forth therein shall apply equally to such firemen on the same basis as to all other firemen covered by said Implementing Agreement/Award.

3. Upon implementation of the Implementing Agreement for the Salina Hub, the firemen referred to herein shall come under the jurisdiction of the collective bargaining agreement which is designated therein.
4. This Agreement implements the merger of the Union Pacific and Southern Pacific Lines railroad operations in the area covered by Notice dated June 4, 1998.

Signed at Omaha, NE, this 22nd day of July, 1998.

**FOR THE BROTHERHOOD  
OF LOCOMOTIVE ENGINEERS:**

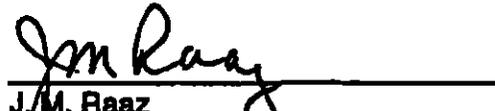
  
D. E. Thompson  
General Chairman, BLE

  
D. M. Hahs  
Vice President, BLE

  
J. L. McCoy  
Vice President, BLE

**FOR THE CARRIERS:**

  
M. A. Hartman  
General Director-Labor Relations

  
J. M. Raaz  
Asst. Vice President - Labor Relations

**MERGER  
IMPLEMENTING AGREEMENT  
(Expanded Salina Hub)**

between the

**UNION PACIFIC RAILROAD COMPANY  
Southern Pacific Transportation Company**

and the

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

**PREAMBLE**

The U.S. Department of Transportation, Surface Transportation Board ("STB") approved the merger of the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") and Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp., and the Denver & Rio Grande Western Railroad Company ("DRGW") (collectively referred to as "SP") in Finance Docket 32760. In approving this transaction, the STB imposed New York Dock labor protective conditions. Copy of the New York Dock conditions is attached as Attachment "A" to this Agreement.

Subsequent to the filing of Union Pacific's application but prior to the decision of the STB, the parties engaged in certain discussions which focused upon Carrier's request that the Organization support the merger of UP and SP. These discussions resulted in the parties exchanging certain commitments, which were outlined in letters dated March 8(2), March 9 and March 22, 1996.

On June 4, 1998, the Carriers served notice of their intent to merge and consolidate operations generally in the following territories:

Union Pacific:        Salina to Kansas City (not including Kansas City and Topeka)  
  
                             Salina to Sharon Springs  
  
                             Wichita to Salina via Lost Springs/Herington  
  
                             Salina to Sid (End-of-Track)  
  
                             Wichita to El Dorado

Wichita to Winfield/Arkansas City

Whitewater to McPherson

Herington to Hope (End-of-Track)

Southern Pacific: Pratt to Kansas City via Herington (not including Pratt, Topeka  
(SSW) or Kansas City)

Pursuant to Section 4 of the New York Dock protective conditions, in order to achieve the benefits of operational changes made possible by the transaction and to modify collective bargaining agreements to the extent necessary to obtain those benefits

**IT IS AGREED:**

**ARTICLE I - WORK AND ROAD POOL CONSOLIDATIONS**

The following work/road pool consolidations and/or modifications will be made to existing runs:

A. Zone 1 - Seniority District

1. Territory Covered: Salina to Sharon Springs

Salina to Kansas City (not including Topeka or Kansas City)

The above includes all UP main lines, branch lines, industrial leads, yard tracks and stations between or located at the points indicated. Where the phrase "not including" is used above, it refers to other than through freight operations, but does not restrict through freight engineers from operating into/out of such terminals/points or from performing work at such terminals/points pursuant to the designated collective bargaining agreement provisions.

2. The existing territories covered by the UP-BLE Salina Hub Agreement dated June 27, 1997 shall encompass Zone 1 of the expanded Salina Hub Agreement and no modifications will be made to such territories unless specifically referenced herein.

3. The terms of the UP-BLE Salina Hub Agreement of June 27, 1997 shall remain in full force and effect under this Agreement, as pertains to Zone 1, unless otherwise modified herein.

4. The terminal limits of Sharon Springs and Salina are as follows:

Sharon Springs: M.P. 432.0 - West

M.P. 426.0 - East

UP terminal limits at Sharon Springs are established by this Implementing Agreement.

Salina: M.P. 187.26 - West  
M.P. 184.26 - East

5. Engineers of the Denver Hub were granted rights in the Agreement for that hub to receive their through freight trains up to twenty-five (25) miles on the far side of Sharon Springs and run back through Sharon Springs to their destination without claim or complaint from any other engineer.
6. Engineers protecting through freight service in the pools described above shall be provided lodging at the away-from-home terminals pursuant to existing agreements and the Carrier shall provide transportation to engineers between the on/off duty location and the designated lodging facility. All road engineers may leave or receive their trains at any location within the terminal and may perform work within the terminal pursuant to the designated collective bargaining agreement provisions. The Carrier will designate the on/off duty points for all engineers, with these on/off duty points having appropriate facilities as currently required in the collective bargaining agreement.

**B. Zone 2 - Seniority District**

1. Territory Covered: Wichita to Salina via Lost Springs/Herington  
Wichita to El Dorado  
Wichita to Winfield/Arkansas City  
Whitewater to McPherson  
Herington to Hope (End-of-Track)  
Pratt to Kansas City via Herington (not including Pratt, Topeka or Kansas City)

The above includes all UP and SSW main lines, branch lines, industrial leads, yard tracks and stations between or located at the points indicated. Where the phrase "not including" is used above, it refers to other than through freight operations, but does not restrict through freight engineers from operating into/out of such terminals/points or from performing work at such terminals/points pursuant to the designated collective bargaining agreement provisions.

2. The existing former SSW Herington to Kansas City pool operation will be preserved under this Agreement with Herington as the home terminal. Kansas City will serve as the away-from-home terminal. Engineers operating between Herington and Kansas City may utilize any combination of UP or SSW trackage between such points. This pool shall be slotted, and Attachment "B" lists the slotting order for the pool. Former SSW engineers shall have prior rights to said pool turns. The Carrier and the Organization shall mutually agree on the number of turns subject to this arrangement. If turns in excess of that number are established or any of such turns be unfilled by a prior rights engineer, they shall be filled from the zone roster, and thereafter from the common roster.
  - a. In the event Carrier elects not to use a pool engineer on a straightaway move, Hours of Service relief of trains operating Herington to Kansas City which have reached Topeka or beyond (beyond S.J. Jct.) shall be protected by the Kansas City Hub Zone 2 Extra Board. If none rested or available, such relief shall then be provided by a rested away-from-home terminal engineer at Kansas City and such engineer will thereafter either be deadheaded home or placed first out for service or deadhead on his rest.
  - b. In the event Carrier elects not to use a pool engineer on a straightaway move, Hours of Service relief of trains operating Kansas City to Herington shall be protected by the extra board at Herington if the train has reached Topeka or beyond. If it has not reached Topeka, a rested away-from-home terminal engineer at Kansas City will be used on a straightaway move. If none rested or available, the extra board at Herington may be used beyond Topeka.
3. The existing former SSW Pratt to Herington pool operation will be preserved under this Agreement, except the home terminal will be changed to Herington. Pratt will serve as the away-from-home terminal. Sufficient number of engineers will be relocated to Herington to effect this change. This pool shall be slotted, and Attachment "B" lists the slotting order for the pool. Former SSW engineers shall have prior rights to said pool turns. The Carrier and Organization shall mutually agree on the number of turns subject to this arrangement. If turns in excess of that number are established or any of such turns be unfilled by a prior rights engineer they shall be filled from the zone roster, and thereafter from the common roster.
  - a. In the event Carrier elects not to use a pool engineer on a straightaway move, Hours of Service relief of trains operating Herington to Pratt shall be protected by the extra board at Pratt if the train has reached Inman or beyond; if exhausted, a rested away-from-home terminal engineer at Pratt may be used, and such engineer will thereafter be either deadheaded home or placed first out for service or deadhead on their rest. If the train has not reached

Inman or beyond, a home terminal pool engineer at Herington will be used.

- b. In the event Carrier elects not to use a pool engineer on a straightaway move, Hours of Service relief of trains operating Pratt to Herington shall be protected by the extra board at Herington if the train has reached Inman or beyond. If it has not reached Inman, a rested away-from-home terminal engineer at Pratt will be used on a straightaway move. If none rested or available, the extra board at Herington may be used beyond inman.

**NOTE:** Under Items 2 and 3 above, the establishment of Herington as a terminal for the corridor between Kansas City and Pratt does not constitute any restriction on operations through Herington by trains originating at Salina or Wichita.

- 4: The previously existing Agreement dated June 22, 1992 governing through freight service between Salina and Wichita shall become null and void upon implementation of this Agreement. A new pool operation between Wichita and Salina will be established under this Agreement, and Wichita shall serve as the home terminal for all such service. This pool shall be slotted, and Attachment "C" lists the slotting order for the pool. Former MP engineers shall have prior rights to said pool turns in set forth in said Attachment "C". The Carrier and the Organization shall mutually agree on the number of turns subject to this arrangement. If turns in excess of that number are established or any of such turns be unfilled by a prior rights engineer they shall be filled from the zone roster, and thereafter from the common roster.
  - a. In the event Carrier elects not to use a pool engineer on a straightaway move, Hours of Service relief of trains operating Wichita to Salina shall be protected by the extra board at Salina if the train has reached Lost Springs or beyond. If none rested or available, a rested away-from-home pool engineer may be used and such engineer will thereafter be deadheaded home or placed first out for service or deadhead on their rest. If the train has not reached Lost Springs, a home terminal pool engineer at Wichita will be used.
  - b. In the event Carrier elects not to use a pool engineer on a straightaway move, Hours of Service relief of trains operating Salina to Wichita shall be protected by the extra board at Wichita if the train has reached Lost Springs on beyond. If the train has not reached Lost Springs, a rested away-from-home terminal engineer at Salina will be used. If none rested or available, the extra board at Wichita may be used beyond Lost Springs.
  - c. Trains which have expired under the Hours of Service at a location within 25 miles of Herington in either direction toward Wichita or

Salina may be relieved and operated into Herington for later re-crewing by the extra board at Herington.

5. Local, work, wreck, and other extra or unassigned service may operate between Wichita and Salina with a home terminal of either Wichita or Salina.
6. The Carrier may, at its option, establish service between Wichita and Hutchinson via Herington, without crew change. Wichita will serve as the home terminal. Hutchinson will serve as the away-from-home terminal. This service will be protected by the extra board at Wichita unless traffic levels justify establishment of pool operations.
7. ~~At Herington, Pratt, Winfield and Wichita pool engineers may receive their~~ train up to twenty-five (25) miles on the far side of the terminal and run back through Herington, Pratt, Winfield and Wichita to their destination without claim or complaint from any other engineer. When so used, the engineer shall be paid an additional one-half (1/2) day at the basic pro rata through freight rate for this run in addition to the district miles of the run. If the time spent beyond the terminal under this provision is greater than four (4) hours, then he shall be paid on a minute basis at the basic pro rata through freight rate.
8. The terminal limits of Herington, Pratt, Winfield and Wichita are as follows:

Herington:	M.P. 459.2	-	UP Hoisington Subdivision
	M.P. 180.0	-	UP Herington Branch
	M.P. 169.2	-	SSW Topeka Subdivision
	M.P. 173.12	-	SSW Herington Subdivision

UP terminal limits at Herington are established by this Implementing Agreement.

Pratt:	M.P. 292.33	-	East
	M.P. 300.16	-	West

Winfield:	M.P. 248.7	-	East
	M.P. 250.8	-	West

Wichita:	M.P. 236.0	-	Herington
	M.P. 476.0	-	Wichita Branch
	M.P. 254.0	-	OKT Subdivision

9. Engineers of the Kansas City Hub were granted rights in the Agreement for that Hub to receive their through freight train up to twenty-five (25) miles on the far side of Winfield and Wichita and run back through Winfield and Wichita without claim or complaint from any other engineer.

10. **Engineers of an adjacent hub may have certain rights to be defined, if any, in the Merger Implementing Agreements for these hubs to receive their through freight trains up to twenty-five (25) miles on the far side of the terminal and run back through Wichita or Pratt to their destination without claim or complaint from any other engineer.**
11. **Engineers protecting through freight service in the pools described above shall be provided lodging at the away-from-home terminal pursuant to existing agreements and the Carrier shall provide the transportation to engineers between the on/off duty location and the designated lodging facility. All road engineers may leave or receive their trains at any location within the terminal and may perform work within the terminal pursuant to the designated collective bargaining agreement provisions. The Carrier will designate the on/off duty points for all engineers, with these on/off duty points having appropriate facilities as currently required in the collective bargaining agreement.**

**C. Herington Terminal**

1. **All UP and SSW operations within the new Herington Terminal limits shall be consolidated into a single operation. The terminal includes all UP and SSW main lines, branch lines, industrial leads, yard tracks and stations between or located at the points indicated. All UP and SSW road crews may receive or leave their trains at any location within the terminal and may perform work within the terminal pursuant to the applicable collective bargaining agreement, including national agreements. The Carrier will designate the on/off duty points for all yard crews, with these on/off duty points having appropriate facilities as currently required in the collective bargaining agreement. Interchange rules are not applicable for intra-carrier moves within the terminal.**
2. **All UP and SSW rail lines, yards and/or sidings within the Herington Terminal will be considered as common to all engineers working in, into and out of Herington. The establishment of prior rights zones is not intended to restrict operations which traverse territory in both zones. All road switchers, yard and local assignments will be protected by engineers from the seniority district where such assignments are home terminalled.**

**D. At all terminals the Carrier will designate the on/off duty points for all road engineers, with these on/off duty points having appropriate facilities for inclement weather and other facilities as currently required in the designated collective bargaining agreement.**

**E. When local, work, wreck, Hours of service relief or other road runs are called or assigned which operate exclusively within the territorial limits of one (1) of**

the zones established in this Agreement, such service shall be protected by engineers in such zone. If such run or assignment extends across territory encompassing both zones contemplated by this Agreement, the home terminal shall govern as indicated above.

## **ARTICLE II - SENIORITY CONSOLIDATIONS**

- A. To achieve the work efficiencies and allocation of forces that are necessary to make the Salina Hub operate efficiently as a unified system, a new seniority district will be formed and a master Engineer Seniority Roster - UP/BLE Salina Merged Roster #1 will be created for engineers holding seniority in the territory comprehended by this Agreement on the effective date thereof. Prior rights Zone 1 is already intact and will remain unchanged by this Agreement. A new prior rights Zone 2 will be created under this Agreement. Such two prior rights zone rosters shall constitute the new UP/BLE Salina Merged Roster #1.
- B. Prior rights seniority rosters will be formed covering Zone 2 as outlined above. Placement on this roster and awarding of prior rights to such zone shall be based on the following:
  - 1. Zone 2 - This roster will consist of former UP engineers with rights on MPUL Wichita (Roster No. 058111) and former SSW engineers with rights on SSW Pratt (Roster No. 304101) and SSW Herington (Roster No. 303101).
- C. Entitlement to assignment on the prior rights zone roster described above shall be by canvass of the employees from the above affected former rosters contributing equity to such zone.
- D. Engineers on the above-described prior rights Zone 2 roster and the existing Zone 1 roster shall be dovetailed with zone prior rights into one (1) common seniority roster.
- E. All zone and common seniority shall be based upon each employee's date of promotion as a locomotive engineer (except those who have transferred into the territory covered by the hub and thereby established a new date). If this process results in engineers having identical common seniority dates, seniority will be determined by the age of the employees with the older employee placed first. If there are more than two (2) employees with the same seniority date, and the ranking of the pre-merged rosters would make it impossible for age to be a determining factor, a random process, jointly agreed upon by the Director of Labor Relations and the appropriate General Chairman(men), will be utilized to effect a resolution. It is understood this process for ranking employees with identical dates may not result in any employee running around another employee on his former roster.

- F. Any engineer working in the territories described in Article I. on the date of implementation of this Agreement, but currently reduced from the engineers working list, shall also be given a place on the roster and prior rights. Engineers currently forced to this territory will be given a place on the roster and prior rights if so desired; otherwise, they will be released when their services are no longer required and will not establish a place on the new roster. Engineers borrowed out from locations within the hub and engineers in training on the effective date of this Agreement shall also participate in formulation of the roster described above.
- G. UP engineers currently on an inactive roster pursuant to previous merger agreements shall participate in the roster formulation process described above based upon their date of seniority as a locomotive engineer.
- H. With the creation of the new seniority described herein, all previous seniority outside the Salina Hub held by engineers inside the new hub shall be eliminated and all seniority inside the new hub held by engineers outside the hub shall be eliminated. All pre-existing prior rights, top and bottom, or any other such seniority arrangements in existence, if any, are of no further force or effect and the provisions of this Agreement shall prevail in lieu thereof. Upon completion of consolidation of the rosters and implementation of this hub, it is understood that no engineer may be forced to any territory or assignment outside the Salina Hub.
- I. The total number of engineers on the Zone 2 prior rights roster will be mutually agreed upon by the parties, and then merged with the existing Zone 1 prior rights roster to form the master UP/BLE Salina Merged Roster.

### **ARTICLE III - EXTRA BOARDS**

- A. The following extra boards shall be established to protect vacancies and other extra board work into or out of the Salina Hub or in the vicinity thereof. It is understood whether or not such boards are guaranteed boards is determined by the designated collective bargaining agreement. Further, nothing in this Agreement may be construed to require the continued maintenance of an extra board when there is insufficient work to justify its existence.
1. Wichita - One (1) Extra Board (combination road/yard) to protect all service at or in the vicinity of Wichita. This board will also protect the service between Wichita and Hutchinson via Herington.
  2. Hutchinson - One (1) Extra Board (combination road/yard) to protect all extra service at or in the vicinity of Hutchinson.
  3. Herington - One (1) Extra Board (combination road/yard) to protect all extra service at or in the vicinity of Herington including Hours of

Service relief in any direction, subject to the specific provisions in Article I. This board will supplement the extra board at Hutchinson and, if none in existence, will protect Hutchinson extra service.

4. Salina - One (1) Extra Board (combination road/yard) to protect all extra service at or in the vicinity of Salina, including Hours of Service relief in all directions, subject to the specific provisions in Article I.
5. Oakley - One (1) Extra Board (combination road/yard) to protect all extra service at or in the vicinity of Oakley, including Sharon Springs. This board will also protect freight vacancies working Sharon Springs to Denver and Sharon Springs to Salina. (See Side Letter No. 17)

- 
- B. If additional extra boards are established or abolished after the date of implementation of this Agreement, it shall be done pursuant to the terms of the designated collective bargaining agreement. When established, the Carrier shall designate the geographic area the extra board will cover.

#### **ARTICLE IV - APPLICABLE AGREEMENT**

- A. All engineers and assignments in the territories comprehended by this Implementing Agreement will work under the Collective Bargaining Agreement currently in effect between the Union Pacific Railroad Company and the Brotherhood of Locomotive Engineers, Union Pacific Eastern District, including all applicable national agreements, the "local/national" agreement of May 31, 1996, and all other side letters and addenda which have been entered into between date of last reprint and the date of this Implementing Agreement. Where conflicts arise, the specific provisions of this Agreement shall prevail. None of the provisions of these agreements are retroactive.
- B. The terms and conditions of the pool operations set forth in this Agreement shall be the same for all pool freight runs whether run as combined pools or separate pools. The terms and conditions are those of the designated collective bargaining agreement except as modified by subsequent national agreements, awards and implementing documents and those contained in this implementing agreement. For ready reference, sections of existing rules are attached in Attachment "D".
- C. Engineers will be treated for vacation, entry rates and payment of arbitraries as though all their time on their original railroad had been performed on the merged railroad. Engineers assigned to the Hub on the effective date of this Agreement (including those engaged in engineer training on such date) shall have entry rate provisions waived. Engineers hired/promoted after the effective date of the Agreement shall be subject to National Agreement rate progression provisions.

- D. A two hour (2') call time for engineers will apply in the entire territory comprehending the Salina Hub
- E. Engineers under this Hub Agreement operating into Kansas City will be paid actual miles to the various yards within the Kansas City Terminal to which they operate their road trains. Any previously recognized arrival/departure point at Kansas City (e.g., M.P. 5.18 for former UP Eastern District engineers) shall have no further force and effect, and the literal industry application of the national agreement rules shall apply throughout the Hub.
- F. Except where specific terminal limits have been detailed in the Agreement, is not intended to change existing terminal limits under applicable agreements.
- G. Actual miles will be paid for runs in the new Salina Hub. Examples are illustrated in Attachment "E".

#### **ARTICLE V - FAMILIARIZATION**

- A. Engineers involved in the consolidation of the Salina Hub covered by this Agreement whose assignments require performance of duties on a new geographic territory not familiar to them will be given full cooperation, assistance and guidance in order that their familiarization shall be accomplished as quickly as possible. Engineers will not be required to lose time or ride the road on their own time in order to qualify for these new operations.
- B. Engineers will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualification shall be handled with local operating officers. The parties recognize that different terrain and train tonnage impact the number of trips necessary and the operating officer assigned to the merger will work with the local Managers of Operating Practices in implementing this Section. If disputes occur under this Article they may be addressed directly with the appropriate Director of Labor Relations and the General Chairman for expeditious resolution.
- C. It is understood that familiarization required to implement the merger consolidation herein will be accomplished by calling a qualified engineer (or Manager of Operating Practices) to work with an engineer called for service on a geographical territory not familiar to him.
- D. Engineers hired subsequent to the effective date of this document will be qualified in accordance with current FRA certification regulations and paid in accordance with the local agreements that will cover the merged Hub.

## **ARTICLE VI - IMPLEMENTATION**

- A. The Carrier will give at least thirty (30) days' written notice of its intent to implement this Agreement.**
- B. 1. Concurrent with the service of its notice, the Carrier will post a description of Zones 1 and 2 described in Article I herein.**
  - 2. Ten (10) days after posting of the information described in B.1. above, the appropriate Labor Relations Personnel, CMS Personnel, General Chairmen and Local Chairmen will convene a workshop to implement assembly of the merged seniority rosters. At this workshop, the representatives of the Organization will construct consolidated seniority rosters as set forth in Article II of this Implementing Agreement.**
  - 3. Dependent upon the Carrier's manpower needs, the Carrier may develop a pool of representatives of the Organization, with the concurrence of the General Chairmen, which, in addition to assisting in the preparation of the rosters, will assist in answering engineers' questions, including explanations of the seniority consolidation and implementing agreement issues, discussing merger integration issues with local Carrier officers and coordinating with respect to CMS issues relating to the transfer of engineers from one zone to another or the assignment of engineers to positions.**
- C. The roster consolidation process shall be completed in five (5) days, after which the finalized agreed-to rosters will be posted for information and protest in accordance with the applicable agreements. If the participants have not finalized agreed-to rosters, the Carrier will prepare such rosters, post them for information and protest, will use those rosters in assigning positions, and will not be subject to claims or grievances as a result.**
- D. Once rosters have been posted, those positions which have been created or consolidated will be bulletined for a period of seven (7) calendar days. Engineers may bid on these bulletined assignments in accordance with applicable agreement rules. However, no later than ten (10) days after closing of the bulletins, assignments will be made.**
- E. 1. After all assignments are made, engineers assigned to positions which require them to relocate will be given the opportunity to relocate within the next thirty (30) day period. During this period, the affected engineers may be allowed to continue to occupy their existing positions. If required to assume duties at the new location immediately upon implementation date and prior to having received their thirty (30) days to relocate, such engineers will be paid normal and necessary expenses at the new location until relocated. Payment of expenses will not exceed thirty (30) calendar days.**

2. The Carrier may, at its option, elect to phase-in the actual pool consolidations which are necessary in the implementation of this Agreement. Engineers will be given ten (10) days' notice of when their specific relocation/reassignment is to occur.

#### **ARTICLE VII - PROTECTIVE BENEFITS AND OBLIGATIONS**

- A. All engineers who are listed on the prior rights Salina Hub Zone 2 prior rights roster shall be considered adversely affected by this transaction and consolidation and will be subject to the New York Dock protective conditions which were imposed by the STB. It is understood there shall not be any duplication or compounding of benefits under this Agreement and/or any other agreement or protective arrangement.
  1. Carrier will calculate and furnish TPA's for such engineers to the Organization as soon as possible after implementation of the terms of this Agreement. The time frame used for calculating the TPA's in accordance with New York Dock will be the calendar year 1997.
  2. In consideration of blanket certification of all engineers covered by this Agreement for wage protection, the provisions of New York Dock protective conditions relating to "average monthly time paid for" are waived under this Implementing Agreement.
  3. Test period averages for designated union officers will be adjusted to reflect lost earnings while conducting business with the Carrier.
  4. National Termination of Seniority provisions shall not be applicable to engineers hired prior to the effective date of this Agreement.
- B. Engineers required to relocate under this Agreement will be governed by the relocation provisions of New York Dock. In lieu of New York Dock provisions, an employee required to relocate may elect one of the following options:
  1. Non-homeowners may elect to receive an "in lieu of" allowance in the amount of \$10,000 upon providing proof of actual relocation.
  2. Homeowners may elect to receive an "in lieu of" allowance in the amount of \$20,000 upon providing proof of actual relocation.
  3. Homeowners in Item 2 above who provide proof of a bona fide sale of their home at fair value at the location from which relocated shall be eligible to receive an additional allowance of \$10,000.
    - a) This option shall expire within five (5) years from date of application for the allowance under Item 2 above.

- b) Proof of sale must be in the form of sale documents, deeds, and filings of these documents with the appropriate agency.

**NOTE:** All requests for relocation allowances must be submitted on the appropriate form.

4. With the exception of Item 3 above, no claim for an "in lieu of" relocation allowance will be accepted after two (2) years from date of implementation of this Agreement.
5. Under no circumstances shall an engineer be permitted to receive more than one (1) "in lieu of" relocation allowance under this Implementing Agreement.
6. Engineers receiving an "in lieu of" relocation allowance pursuant to this Implementing Agreement will be required to remain at the new location, seniority permitting, for a period of two (2) years.

#### **ARTICLE VIII - SAVINGS CLAUSES**

- A. The provisions of the applicable Schedule Agreement will apply unless specifically modified herein.
- B. Nothing in this Agreement will preclude the use of any engineers to perform work permitted by other applicable agreements within the new seniority districts described herein, i.e., yard engineers performing Hours of Service Law relief within the road/yard zone, pool and/or ID engineers performing service and deadheads between terminals, road switchers handling trains within their zones, etc.
- C. The provisions of this Agreement shall be applied to all engineers covered by said Agreement without regard to race, creed, color, age, sex, national origin, or physical handicap, except in those cases where a bona fide occupational qualification exists. The masculine terminology herein is for the purpose of convenience only and does not intend to convey sex preference.

#### **ARTICLE IX - HEALTH AND WELFARE**

Engineers of the former UP who are working under the collective bargaining agreement designated in Article IV.A. of this Implementing Agreement belong to the Union Pacific Hospital Association. Former SSW engineers are presently covered under United Health Care (former Travelers GA-23000) benefits. Said former SSW engineers will have ninety (90) days from date of implementation to make an election as to keeping their old Health and Welfare coverage or coming under the health and welfare coverage provided by the designated CBA. Any engineer who fails to exercise said option shall be considered as having elected to retain existing coverage. Engineers hired after the date of

implementation will be covered under the plan provided for in the surviving CBA. Copy of the form to be used to exercise the option described above is attached as Attachment "F" to this Agreement.

**ARTICLE X - EFFECTIVE DATE**

This Agreement implements the merger of the Union Pacific and SSW railroad operations in the area covered by Notice dated June 4, 1998.

Signed at Omaha this 16th day of July, 1998.

**FOR THE BROTHERHOOD  
LOCOMOTIVE ENGINEERS:**

DEP 7-12-98  
D. E. Penning  
General Chairman, BLE

MAY 7-16-98  
M. A. Young  
General Chairman, BLE

DET.  
D. E. Thompson  
General Chairman, BLE

**APPROVED:**

J. L. McCoy  
J. L. McCoy  
Vice President, BLE

D. M. Hahs  
D. M. Hahs  
Vice President, BLE

**FOR THE CARRIERS:**

M. A. Hartman  
M. A. Hartman  
General Director-Labor Relations  
Union Pacific Railroad Co.

J. M. Raaz  
J. M. Raaz  
Asst. Vice President-Labor Relations  
Union Pacific Railroad Co.

MR D E PENNING  
GENERAL CHAIRMAN BLE  
12531 MISSOURI BOTTOM RD  
HAZELWOOD MO 63042

MR M A YOUNG  
GENERAL CHAIRMAN BLE  
1620 CENTRAL AVE RM 203  
CHEYENNE WY 82001

MR D E THOMPSON  
GENERAL CHAIRMAN BLE  
414 MISSOURI BLVD  
SCOTT CITY MO 63780

Gentlemen:

This refers to the Merger Implementing Agreement for the Salina Hub.

During our negotiations your Organization raised some concern regarding the intent of Article VIII - Savings Clauses, Item C thereof. Specifically, it was the concern of some of your constituents that the language of Item C might subsequently be cited to support a position that "other applicable agreements" supersede or otherwise nullify the very provisions of the Merger Implementing Agreement which were negotiated by the parties.

I assured you this concern was not valid and no such interpretation could be applied. I pointed out that Item C must be read in conjunction with Item A, which makes it clear that the specific provisions of the Merger Implementing Agreement, where they conflict with the basic schedule agreement, take precedence, and not the other way around.

The purpose of Item C was to establish with absolute clarity that there are numerous other provisions in the designated collective bargaining agreement, including national agreements, which apply to the territory involved, and to the extent such provisions were not expressly modified or nullified, they still exist and apply. It was not the intent of the Merger Implementing Agreement to either restrict or expand the application of such agreements.

In conclusion, this letter of commitment will confirm that the provisions of Article VIII - Savings Clauses may not be construed to supersede or nullify the terms of the Merger Implementing Agreement which were negotiated in good faith between the parties. I hope the above elaboration clarifies the true intent of such provisions.

Yours truly,



M. A. Hartman  
General Director-Labor Relations

15

**MERGER IMPLEMENTING  
AGREEMENT  
(Salt Lake Hub)**

**between the**

**UNION PACIFIC RAILROAD COMPANY  
SOUTHERN PACIFIC RAILROAD COMPANY**

**and the**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

In Finance Docket No. 32760, the Surface Transportation Board approved the merger of Union Pacific Railroad Company/Missouri Pacific Railroad Company (Union Pacific or UP) with the Southern Pacific Transportation Company, the SPCSL Corp., the SSW Railway and the Denver and Rio Grande Western Railroad Company (SP). In approving this transaction, the STB imposed New York Dock labor protective conditions.

Subsequent to the filing of UP's application, but prior to the STB's decision, the Parties engaged in certain discussions which focused upon the Carrier's request that the Brotherhood of Locomotive Engineers support the merger of UP and SP. These discussions resulted in the exchange of certain commitments between the Parties which were outlined in letters dated March 8, 9 and 22, 1996. Copies of these letters are attached collectively as Attachment "A" to this Agreement.

In order to achieve the benefits of operational changes made possible by the transaction, to consolidate the seniority of all employees working in the territory covered by this Agreement into one common seniority district covered under a single, common collective bargaining agreement,

**IT IS AGREED:**

**I. SALT LAKE HUB.**

A new seniority district shall be created that is within the following area: DRGW mile post 446.5 at Grand Junction, UP mile post 161.02 at Yermo, UP mile post 665.0 and SP mile post 553.0 at Elko, UP mile post 110.0 at McCammon and UP mile post 847 at Granger and all stations, branch lines, industrial leads and main line between the points identified.

**II. SENIORITY AND WORK CONSOLIDATION.**

The following seniority consolidation will be made:

**A.** A new seniority district will be formed and a master Engineer Seniority Roster--UP/BLE Salt Lake Hub Merged Roster #1--will be created for the employees working as engineers in the Salt Lake Hub on December 1, 1996. The new roster will be created as follows:

1. Engineers placed on this new roster will be dovetailed based upon the employee's current engineer's date. If this process results in employees having identical seniority dates, seniority will be determined by the employee's hire date.
2. All employees placed on the roster may work all assignments protected by the roster in accordance with their seniority and the provisions set forth in this agreement.
3. New employees hired and placed on the new roster subsequent to the adoption of this agreement will have no prior rights. Any employee who enters engineer training on or after December 1, 1996, will hold no prior rights.
4. Prior rights rosters will be developed for all employees on the merged master roster reflecting their previous seniority areas that remain in the Hub.

**B.** Engineers assigned to the merged roster with a seniority date prior to December 1, 1996, will be accorded primary prior rights and secondary prior rights with dovetail rights being the final determination for selection purposes to pool operations during the interim period as follows:

<b>POOL</b>	<b>PRIMARY</b>	<b>SECONDARY</b>	<b>DOVETAIL</b>
SLC-MILFORD	S. CENTRAL	NONE	YES
SLC-POCATELLO	IDAHO	NONE	YES
SLC-Green River	UPED/IDAHO-ratio	NONE	YES
OG-Green River	UPED	DRGW	YES
OG-ELKO	SP	WP	YES
SLC-ELKO	WP	SP	YES
SLC-Provo/Helper/Grand Jct.	DRGW	NONE	YES
SLC-PROVO	DRGW	NONE	YES

Milford-Provo/Helper	SO. CENTRAL	DRGW	YES
Milford-Las Vegas	So. Central/Las Vegas	NONE	YES
Las Vegas-Yermo	LAS VEGAS	NONE	YES

**Note 1:** The Carrier does not plan Salt Lake City - Ogden pool operations and this service will be handled by an extra board or road switcher service. If sufficient extra board work develops to sustain a pool of 4 or more engineers, then a pool shall be established and pro rated on a 50/50 basis with Idaho prior right engineers taking the odd numbered turns and DRGW prior right engineers taking the even numbered turns.

**Note 2:** Salt Lake City - Helper may be combined with either the Salt Lake City - Grand Junction or the Salt Lake City - Provo pool.

**Note 3:** This Section does not limit the Carrier to these pool operations. New pools operated on prior rights areas will have the same primary prior rights and those that operate over two prior right areas will be manned from the dovetail roster.

**Note 4:** The Salt Lake City-Elko pool and the Salt Lake City-Grand Junction pool shall be single-headed operations with Salt Lake City as the home terminal. The Carrier shall give ten days written notice of the change to single headed pools if not given in the original 30 day implementation notice.

1. Any engineer from a prior right area on or before December 1, 1996, but currently reduced from the engineer's working list shall also be placed on dovetail and prior rights rosters and retain prior rights in the appropriate area. Engineers currently forced to the Salt Lake Hub or borrowed out to the Salt Lake Hub will be released when their services are no longer required and will not establish a permanent date on the new roster.

**C.** Yard crews will not be restricted in a terminal where they can operate but the following will govern which employees will have preference for assignments that go on duty in the following areas:

LOCATION	PRIMARY	SECONDARY	DOVETAIL
ROPER	DRGW	NONE	YES
SLC-NorthYard/intermodal	IDAHO	NONE	YES
OGDEN	OURD/IDAHO	SP	YES
ELKO	WP	SP	YES

CARLIN	SP	WP	YES
PROVO	DRGW	South Central	YES
Transfer Jobs	On Duty Point	NONE	YES
LAS VEGAS	LAS VEGAS	NONE	YES

**D. Road Switchers will work in a given area and may cross prior right boundaries. Employees shall have preference to road switchers based on the on duty points:**

1. Salt Lake City - North: Idaho.
2. Salt Lake City - Provo: DRGW
3. Provo - Milford: South Central
4. Salt Lake City - Milford via Tintic: South Central
5. In other areas the prior rights of the on duty points will govern.

**E. Locals that continue current operations shall be prior righted. Locals that operate over more than one prior rights area shall be assigned from the dovetailed roster.**

**F. Student engineers in training on December 1, 1996, will be assigned prior rights based on the area designated in the bulletin seeking application for engine service.**

**G. It is understood that certain runs home terminated in the Salt Lake Hub will have away from home terminals outside the Salt Lake Hub and that certain runs home terminated outside the Salt Lake Hub will have away from home terminals inside the Salt Lake Hub. Examples are: Salt Lake City/Ogden runs to Green River and Pocatello, and Portola/Sparks to Elko. It is not the intent of this agreement to create seniority rights that interfere with these operations or to create double headed pools. For example, Sparks will continue to be the home terminal for Sparks/Elko runs and a double headed pool will not be established.**

**H. All engineer vacancies within the Salt Lake Hub must be filled prior to any engineer being reduced from the working list or prior to engineers being permitted to exercise to any reserve, protection or supplemental boards.**

**I. All engine service seniority outside the Salt Lake Hub will be held in abeyance during the interim period. Engineer's working outside the Salt Lake Hub but currently holding seniority in the Salt Lake Hub will not be able to exercise seniority into**

the Salt Lake Hub during the interim period. The parties will handle the seniority finalization process in a side letter.

J. Engineers will be treated for vacation and payment of arbitraries as though all their service on their original railroad had been performed on the merged railroad. Engineers assigned to the Salt Lake Hub seniority roster at the end of the interim period shall have entry rate provisions waived and engineers hired/promoted after the effective date of this agreement shall be subject to National Agreement/Award rate progression provisions. The entry rate provisions shall be waived during the interim period. Those engineers leaving the Salt Lake Hub will be governed by the collective bargaining agreement where they relocate.

K. WP/OUR&D employees with reserve engineer service seniority on their original railroad will not retain that seniority after the interim period and such seniority may not be used during the interim period.

### III. TERMINAL CONSOLIDATIONS.

The terminal consolidations will be implemented in accordance with the following provisions:

A. Salt Lake City/Ogden Metro Complex. A new consolidated Salt Lake City/Ogden Metro Complex will be created to include the entire area within and including the following trackage:

Ogden mile posts 989.0 UP east, 3.25 UP north and 780.21 SP west and to Salt Lake City mile posts 739.0 DRGW south and 781.17 UP west.

1. All UP and SP pool, local, work train and road switcher operations within the SLC/Ogden Metro Complex shall be combined into a unified operation.
2. All road crews may receive/leave their trains at any location within the boundaries of the new complex and may perform any work within those boundaries pursuant to the controlling collective bargaining agreements. The Carrier will designate the on/off duty points for road crews within the new complex with the on/off duty points having appropriate facilities for inclement weather and other facilities as currently required in the collective bargaining agreement.
3. All rail lines, yards and/or sidings within the new complex will be considered as common to all crews working in, into and out of the complex. All crews will be permitted to perform all permissible road/yard moves. Interchange rules are not applicable for intra-carrier moves within the complex.

4. In addition to the consolidated complex, all UP and SP operations within the greater Salt Lake City area and all UP and SP operations (including the OUR&D) within the greater Ogden area shall be consolidated into two, separate terminal operations. The existing switching limits at Ogden will now include the former SP rail line to SP Milepost 780.21. The existing UP switching limits at Salt Lake City will now include the Roper Yard switching limits (former DRGW) to DRGW Milepost 739.0.

**B. Provo.** All UP and SP operations within the greater Provo area shall be consolidated into a unified terminal operation.

**C. Elko/Carlin.** All UP and SP operations within the greater Elko and Carlin area shall be consolidated into a unified terminal operation at Elko. Carlin will become a station enroute.

**D. General Conditions for Terminal Operations.**

1. Initial delay and final delay will be governed by the controlling collective bargaining agreement, including the Duplicate Pay and Final Terminal Delay provisions of the 1986 and 1991 National Awards and Implementing Agreements.

2. Employees will be transported to/from their trains to/from their designated on/off duty point in accordance with Article VIII, Section 1 of the May 19, 1986 National Arbitration Award.

3. The current application of National Agreement provisions regarding road work and Hours of Service relief under the combined road/yard service zone, shall continue to apply. Yard crews at any location within the Hub may perform such service in all directions out of their terminal.

**Note:** Items 1 through 3 are not intended to expand or restrict existing rules.

**IV. POOL OPERATIONS.**

**A.** The following pool consolidations may be implemented to achieve efficient operations in the Salt Lake City Hub:

1. **Salt Lake City - Elko and Ogden - Elko.** These operations may be run as either two separate pools or as a combined pool with the home terminal within the Salt Lake City/Ogden metro complex. This pool service shall be subject to the following:

(a) If the pools are combined, then the former SP and WP engineers shall have prior rights on a 40/60 basis.

(b) If separate pools, the Carrier may operate the crews at the far terminal of Elko as one pool back to the metro complex with the crew being transported by the Carrier back to its original on duty point at the end of their service trip.

(c) The Carrier must give ten days written notice of its intent to change the number of pools or to combine the pools at Elko for a single pool returning to Salt Lake City/Ogden.

(d) Since Elko will no longer be a home terminal for pool freight operations east to the metro complex a sufficient number of pool and extra board employees will be relocated to the metro complex.

2. **Salt Lake City - Green River/Pocatello and Ogden - Green River.** These operations may be run as either one, two, or three separate pools. If as a combined pool, the home terminal will be within the metro complex. The Carrier must give ten days written notice of its intent to change the number of pools. If run as a combined pool then prior rights, if still applicable, to the pool shall be based on the percentages that existed on the day the ten day notice is given.

**Example:** The Salt Lake-Green River and Salt Lake-Pocatello pools are combined. At the time the pools are combined, the Pocatello pool has six turns and the Green River pool has twenty turns with the former 7th District holding sixteen turns and the former Idaho holding four turns. The six Pocatello turns are added to the twenty turns for a total of twenty-six, broken down as follows:

former 7th District  $16/26 = 62\%$ ; former Idaho  $10/26 = 38\%$

3. **Salt Lake City - Grand Junction/Helper/ Milford/ Provo.** These operations may be run as either one, two, three or four separate pools with the home terminal within the metro complex. The Carrier must give ten days written notice of its intent to change the number of pools. If run as a combined pool(s) then prior rights to the pool(s) shall be based on the percentages that existed on the day the ten day notice is given.

4. **Helper-Grand Junction/Provo and Milford-Provo/Helper.** Each of these operations will be run as a single pool.

5. **Other Service.** Any pool freight, local, work train or road switcher service may be established to operate from any point to any other point within the new Seniority District with the on duty point within the new seniority district.

**Note:** All service, both interim and final, with on duty points at Elko, operating to Winnemucca, but not including Winnemucca, shall be operated as part of the Salt Lake City Hub.

6. The operations listed in A 1-4 above, may be implemented separately, in groups or collectively, upon ten (10) days written notice by the Carrier to the General Chairman. Implementation notices governing item (5) above, shall be governed by applicable collective bargaining agreements.

**Note 1:** While the Sparks-Carlin and Wendel-Carlin pools are not covered in this notice it is understood that they will operate Sparks-Elko and Wendel-Elko and will be paid actual miles when operating trains between these two points pursuant to the current collective bargaining agreements and will be further handled when merger coordinations are handled for that area.

**Note 2:** The Portola-Elko and Winnemucca-Elko pools shall continue to operate pursuant to the current collective bargaining agreements and will be further handled when merger coordinations are handled for that area.

B. The terms and conditions of the pool operations set forth in Section A shall be the same for all pool freight runs whether run as combined pools or separate pools. The terms and conditions are those of the designated collective bargaining agreement as modified by subsequent national agreements, awards and implementing documents and those set forth below. For ready reference sections of existing rules are attached in Attachment "B".

1. **Twenty-Five Mile Zone** - At Salt Lake City, Ogden, Elko, Milford, Grand Junction, Helper, Provo, Green River, Las Vegas, Yermo and Pocatello pool crews may receive their train up to twenty-five miles on the far side of the terminal and run on through to the scheduled terminal. Crews shall be paid an additional one-half ( $\frac{1}{2}$ ) basic day for this service in addition to the miles run between the two terminals. If the time spent in this zone is greater than four (4) hours, then they shall be paid on a minute basis.

**Example:** A Salt Lake City-Milford crew receives their north bound train ten miles south of Milford but within the 25 mile zone limits and runs to Salt Lake. They shall be paid the actual miles established for the Salt Lake-Milford run and an additional one-half basic day for handling the train from the point ten (10) miles south of Milford back through Milford.

**Note:** Crews receiving their trains on the far side of their terminal but within the Salt Lake-Ogden complex shall be paid under this provision.

2. **Turnaround Service/Hours of Service Relief.** Except as provided in (1) above, turnaround service/hours of service relief at both home and away from home terminals shall be handled by extra boards, if available, prior to using pool crews. Engineers used for this service may be used for multiple trips in one tour of duty in accordance with the designated collective bargaining agreement rules. Extra boards may handle this service in all directions out of a terminal.

3. **Runarounds.** A terminal runaround occurs when engineers from the same pool, going to the same destination, depart the same yard in other than the order called and both trains have their power attached to their train. "Depart" means that a train has started moving on the track it was made up in.

**Example 1:** Two engineers are called on duty in the Salt Lake-Green River pool. The first out engineer receives his train in the Salt Lake North Yard and the second out engineer receives his train in the Roper Yard. There cannot be a terminal runaround because the engineers did not depart from the same yard.

**Example 2:** Two engineers are called on duty in the Salt Lake-Green River pool and both engineers receive their trains in the Roper Yard. If both trains have their power attached, a terminal runaround can occur.

**Example 3:** Same set of facts as example 2, however, one engineer is required to go to the mechanical facilities to obtain all or part of their power. If the second engineer departs the yard prior to the first engineer returning to their train and putting their power on it, no runaround has occurred.

**Example 4:** Two engineers are called from the same pool and the first one is called Salt Lake-Green River and the other is called Salt Lake-Pocatello. No runaround can occur even if they depart from the same yard.

**Note:** Crews leaving on trains located on main lines and other trackage between specific yard confines cannot be runaround by crews obtaining their trains within those yard confines and vis versa.

4. Nothing in this Section B (1), (2) and (3) prevents the use of other employees to perform work currently permitted by prevailing agreements, including, but not limited to yard crews performing hours of service relief within the road/yard zone, ID crews performing service and deadheads

between terminals, road switchers handling trains within their zones and using an employee from a following train to work a preceding train.

**C. Agreement coverage.** Employees working in the Salt Lake Hub shall be governed, in addition to the provisions of this Agreement by the UP Agreement covering the BLE Northern Idaho District including all addenda and side letter agreements pertaining to that agreement, the May 31, 1996 Local/National Agreement applicable to Union Pacific and previous National Agreement provisions still applicable, except the UPED Guaranteed Extra Board Agreement shall replace the Northern Idaho Extra Board Agreement in the Salt Lake Hub. Except as specifically provided herein and in Attachment "B", the system and national collective bargaining agreements, awards and interpretations shall prevail. None of the provisions of these agreements are retroactive.

**D.** After implementation, the application process will be used to fill all vacancies in the Hub as follows:

1. Prior right vacancies must first be filled by an employee with prior rights to the vacancy who is on a protection, reserve or supplemental board prior to considering applications from employees who do not have prior rights to the assignment .

2. If no prior right applications are received, then the junior prior right employee on one of the boards described above will be forced to the assignment or permitted to exercise seniority to a position held by another prior right employee.

3. If there are no prior right employees on one of the boards described above covering the vacant prior right assignment, then the senior non prior right applicant will be assigned. If no applications are received then the most junior employee on any of the boards described above will be recalled and will take the assignment or displace a junior employee. If there are no engineers on any protection, reserve or supplemental boards, then the senior demoted engineer in the Salt Lake Hub shall be recalled to the vacancy. When forcing or recalling, prior rights engineers shall be forced or recalled to prior right assignments prior to engineers who do not have prior rights.

**V. EXTRA BOARDS.**

**A.** The following road/yard extra boards may be established to protect engineer vacancies and other extra board work in or out of the Salt Lake City/Ogden metro complex or in the vicinity thereof:

1. **Ogden :** One (1) extra board to protect the Ogden-Green River Pool, and the Ogden-Elko Pool (if pools are operated separately), the Ogden yard assignments and all road switchers, locals and work trains between Ogden-Green River, Clearfield-McCammon and Ogden-Elko.

2. **Salt Lake North:** One (1) extra board to protect the Salt Lake-Pocatello/Green River pool, the Salt Lake-Elko pool, all Salt Lake yard assignments and all road switchers, locals and work trains between Salt Lake to Wendover and Salt Lake to Clearfield except work trains may work all the way to Ogden

**Note:** If the Carrier operates Metro Complex pools to Pocatello/Green River and Elko then the above extra boards will convert to two extra boards with one extra board covering east pool freight and one covering west pool freight. The east extra board will also cover all road switcher, locals, yard assignments and work trains at or between Salt Lake and Pocatello/Green River/Ogden with the west extra board covering these assignments between Ogden/Salt Lake and Elko.

3. **Salt Lake South:** One (1) extra board to protect Salt Lake - Milford/Helper/Grand Junction/Provo pool(s) and all yard, road switcher , local and work train assignments in this area.

**Note:** The Carrier may operate more than the three extra boards in the Salt Lake Metro complex. When more than three extra boards are operated, the Carrier shall notify the General Chairman what area each extra board shall cover. When combining extra boards the Carrier shall give ten (10) days written notice.

**B.** The Carrier may establish or keep extra boards at outside points such as Milford, Provo, Helper, Elko, Las Vegas etc to meet the needs of service pursuant to the designated collective bargaining agreement provisions.

**C.** At any location where both UP and SP/DRGW extra boards exist the Carrier may combine these boards into one board.

**D.** The Ogden and Salt Lake extra boards shall be filled off the dovetail roster. Extra Boards in prior right areas shall be filled using that method. Extra boards at dual locations shall be filled on a 50/50 basis from the dovetail roster. At Grand Junction the extra board will be a combination east-west board.

## **VI. PROTECTION.**

**A.** Due to the parties voluntarily entering into this agreement the Carrier agrees to provide New York Dock wage protection (automatic certification) to all engineers who are listed on the Salt Lake Hub Merged Roster #1 and working an engineer assignment (including a protection board) during the interim period or relocated under this agreement to a point outside the Salt Lake Hub. This protection will start with the effective (implementation) date of this agreement. The employees must comply with the requirements associated with New York Dock conditions or their protection will be reduced for such items as layoffs, bidding/displacing to lower paying assignments when they could hold higher paying assignments, etc.

**B.** This protection is wage only and hours will not be taken into account. If the interim period is less than one year, when the interim period is terminated, employees certified as part of this agreement will have their protection period start over. If the interim period is in excess of one year the employee's final protection period will begin after one year.

**C.** Engineers required to relocate under this agreement will be governed by the relocation provisions of New York Dock. In lieu of New York Dock provisions, an employee required to relocate may elect one of the following options:

- 1.** Non-homeowners may elect to receive an "in lieu of" allowance in the amount of \$10,000 upon providing proof of actual relocation.
- 2.** Homeowners may elect to receive an "in lieu of" allowance in the amount of \$20,000 upon providing proof of actual relocation.
- 3.** Homeowners in Item 2 above, who provide proof of a bona fide sale of their home at fair value at the location from which relocated, shall be eligible to receive an additional allowance of \$10,000.
  - (a)** This option shall expire five (5) years from date of application for the allowance under Item 2 above.
  - (b)** Proof of sale must be in the form of sale documents, deeds, and filings of these documents with the appropriate agency.
- 4.** With the exception of Item 3 above, no claim for an "in lieu of" relocation allowance will be accepted after two (2) years from date of implementation of this agreement.

5. Under no circumstances shall an engineer be permitted to receive more than one (1) "in lieu of" relocation allowance under this implementing agreement.

6. Engineers receiving an "in lieu of" relocation allowance pursuant to this implementing agreement will be required to remain at the new location, seniority permitting, for a period of two (2) years.

D. There will be no pyramiding of benefits.

E. The Test Period Average for union officers will include lost earnings while conducting business with the Carrier.

F. The establishing of interim protection is without prejudice or precedent to either party's position and will not be cited by either party.

G. National Termination of Seniority provisions shall not be applicable to engineers hired prior to the effective date of this agreement.

H. Employees, with New York Dock wage protection, who relocate either within or outside the Salt Lake Hub under the provisions of this Agreement shall take their New York Dock wage protection with them. When relocating outside the Salt Lake Hub the interim protection shall cease and the regular protection shall start upon reporting for the new assignment.

## **VII. INTERIM OPERATIONS**

This agreement is a final agreement covering the area described in Article I. It begins with an interim operation that covers the creation of protection boards. In addition to other provisions of this agreement, the interim period shall be governed by the following:

A. The interim period shall begin with the implementation of this agreement as outlined in Article VIII, IMPLEMENTATION.

B. As traffic routing changes and surplus employees are developed, the following process will govern for each prior right roster:

1. First, force assigned employees shall be released
2. Second, borrow -out employees shall be released
3. Third, additional surplus will be added to the protection board.

**C. Each prior rights roster (DRGW, South Central, Idaho/OUR&D, UPED, WP, Las Vegas and Southern Pacific West) shall have one protection board except the WP will have one at Salt Lake City and one at Elko and the DRGW will have one at Grand Junction and one at Salt Lake City. An employee must hold prior rights on that roster to be eligible to hold the protection board.**

**D. If any roster(s) have a surplus and other roster(s) have borrow-outs, force assigned, or a shortage of employees, and no one on their protection board, the following shall govern:**

**1. The Carrier shall advise of the number of employees needed in the appropriate area.**

**2. The senior applicant from the other roster(s) where there are surplus shall be assigned to the vacancies.**

**3. If there are no applicants, the most junior employee on the protection board(s) shall be forced unless junior employees are working in their prior right area and they elect to displace the junior employee who shall, in turn, be forced to fill the vacancies.**

**4. Employees forced to relocate as a result of these provisions shall be governed by the relocation provisions of this agreement. Seniority relocations are not covered under New York Dock.**

**Note 1: After the two year period identified in Article VI(C)(4) is terminated, relocations during an employees protection period and, as a result of the merger, will be covered under New York Dock provisions only and not Article VI, Section C. Seniority moves between or within prior right areas will not be covered by this agreement or New York Dock.**

**E. The Carrier will identify other locations outside the Salt Lake Hub that either have a current shortage of engineers or will have a shortage due to projected traffic increases. Engineers in the Salt Lake and Denver Hub's shall, in seniority order, be given the opportunity to make application for a permanent transfer to one of these locations. If there are borrow out engineers at the location, the employee may transfer immediately and displace the borrow out. If no borrow outs are at the location or the shortage does not yet exist, the transfer will be delayed until the employee is notified of the need. The Denver Hub shall have the first opportunity to go to Cheyenne working both directions and Rawlins, Wyoming. The surplus DRGW/MPUL employees at Pueblo shall have the first opportunity to go to Dalhart. Surplus engineers in the Salt Lake Hub shall have the first opportunity to go to locations on their former seniority districts outside the Salt Lake Hub.**

**F.** During the interim period, at locations outside the Salt Lake Hub where shortages exist and an insufficient number of applications are received for vacant positions, the junior engineer holding a surplus position in either the Salt Lake or Denver Hub not having an application accepted to a shortage location shall be forced to the vacancy. If they are senior to other engineer's working in the Hub they may displace the junior working engineer at the location where they are surplus or the junior engineer working in the Salt Lake Hub, with the junior engineer being forced to the location. An engineer may not displace a junior engineer that has different prior rights if that other engineer is utilizing those prior rights.

**G.** Engineers on the protection board shall be paid the greater of their earnings or their protection. While on the protection board they shall be governed by basic New York Dock protection reduction principles when laying off or absent for any reason.

**H.** Each protection board shall be used as follows:

1. The protection board shall be a supplemental board to be used when the extra board(s) is exhausted. The first out engineer shall be rotated to the bottom of the protection board at noon each day.

2. Junior employees on the protection board may be temporarily added to the extra boards to permit the familiarization of employees over trackage they have not previously operated.

3. If engineers on a protection board are sent to another location to familiarize themselves on new territory prior to being actually assigned, the Carrier shall provide lodging and \$25.00 per day for meals, as long as the employee is marked up.

**I.** The interim period shall terminate upon sixty (60) days' written notice by the Carrier to the appropriate General Chairman.

## **VIII. IMPLEMENTATION.**

**A.** The parties have entered into this agreement to implement the merger of the Union Pacific and Southern Pacific railroad operations in the area covered by Notice 19W and any amended notices thereto.

In addition, the parties understand that the overall implementation is being phased in to accommodate the cut over of computer operations, dispatching, track improvements and clerical support.

It is the parties intent to utilize the current work force in an efficient manner and not require several relocations of an employee as the different areas are implemented. It is understood that some locations will have surpluses and others will have shortages as track improvements permit additional traffic volumes. It would be in the best interests of all individuals if final decisions on relocations were delayed where possible until the implementation of operations is more complete. This would give employees a more knowledgeable choice when faced with relocation.

**B.** The Carrier shall give 30 days written notice for implementation of this agreement and the number of initial positions that will be changed in the Hub. Employees whose assignments are changed shall be permitted to exercise their new seniority. After the initial implementation the 10 day provisions of the various Articles shall govern.

**C.** Prior to the movement to reserve boards or transfers outside the Salt Lake Hub, it will be necessary to fill all positions in the Salt Lake Hub and then add all surplus positions to the newly created protection boards. Seniority shall not be considered for movement to the protection board but the employee actually reduced at the location shall be the one added.

**D.** At the end of the interim period the protection board(s) will terminate. If there are engineers on the protection board(s), the Carrier will open reserve board positions for the number of surplus engineers with an engineer date on or before October 31, 1985. Engineers forced to the reserve board will be treated as holding the highest rated position they could hold.

#### **IX. FAMILIARIZATION.**

**A.** Employees will not be required to lose time or "ride the road" on their own time in order to qualify for the new operations. Employees will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualifications shall be handled with local operating officers. The parties recognize that different terrain and train tonnage impact the number of trips necessary and the operating officer assigned to the merger will work with the local Managers of Operating Practices in implementing this section.

**B.** Engineers hired subsequent to the effective date of this document will be qualified in accordance with current FRA certification regulations and paid in accordance with the local agreements that will cover the appropriate Hub.

This agreement is entered into this 8th day of April, 1997.

**For the Organization:**

  
General Chairman UPED

  
General Chairman DRGW

  
General Chairman UP Western Region

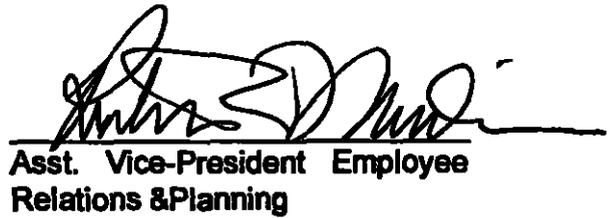
  
General Chairman SP West

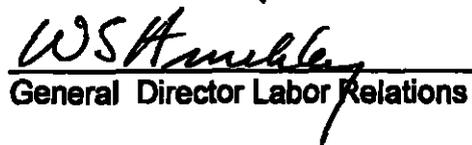
**Approved:**

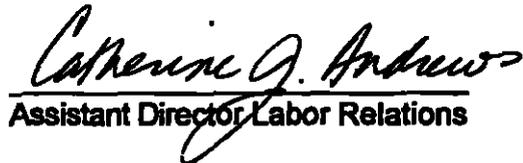
  
Vice President-BLE

  
Vice President-BLE

**For the Carrier:**

  
Asst. Vice-President Employee  
Relations & Planning

  
General Director Labor Relations

  
Assistant Director Labor Relations

16

**MERGER IMPLEMENTING AGREEMENT  
(San Antonio Hub)**

**between the**

**UNION PACIFIC RAILROAD COMPANY  
SOUTHERN PACIFIC TRANSPORTATION COMPANY**

**and the**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

In Finance Docket No. 32760, the U.S. Department of Transportation, Surface Transportation Board ("STB") approved the merger of the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") and Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SP"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp., and The Denver & Rio Grande Western Railroad Company ("DRGW") (collectively referred to as "SP"). In approving this transaction, the STB imposed New York Dock labor protective conditions.

In order to achieve the benefits of operational changes made possible by the transaction, to consolidate the seniority of all employees working in the territory covered by this Agreement into one common seniority district covered under a single, common collective bargaining agreement,

**IT IS AGREED:**

**I. San Antonio Hub**

- A. A new seniority district entitled the San Antonio Hub ("Hub") shall be created that encompasses the following area: Alpine (including) on the West, Laredo (including) on the South, Corpus Christi (including) on the Southeast, Hearne/Valley Jct. (not including) on the Northeast, Katy (including) on the UP line to the East and Glidden (including) on the SP line to the East.**
- B. Engineers with home terminals within the San Antonio Hub may work to points outside the Hub without infringing on the rights of other engineers in other Hubs and engineers outside the Hub may work to points inside the Hub without infringing on the rights of engineers inside the San Antonio Hub. The Hub identifies the on-duty points for assignments and not the boundaries of such assignments.**

15

**EXAMPLE 1:** A road switcher on duty at Taylor may work in any direction up to the limits of its radius as set by the controlling agreement, irrespective of the territorial description (boundaries) of the Hub.

**EXAMPLE 2:** A through freight train out of Smithville may operate to points outside the territorial definitions of the San Antonio Hub, such as to Galveston or Angleton.

**NOTE 1:** There are several points where this Hub meets zone 4 of the Houston Hub and several runs where engineers from both Hubs may utilize the same tracks.

- C. If an assignment goes on duty at the dividing point between two Hubs and the work is performed in the other Hub except for terminal work at the dividing point then that assignment shall be part of the Hub where the road work is performed, however short term vacancies will be protected by a designated extra board.
- D. When new locals are put on that will have an on duty point in this Hub and work both inside the Hub and outside the Hub, it shall be filled on a 50/50 equity basis with the San Antonio Hub filling the initial bulletin. The equity arrangement may be changed by agreement between the local chairmen involved with written confirmation from the General Chairmen to the Carrier.
- E. There are several assignments that currently work into the San Antonio Hub such as the FT. Worth - Smithville Pool and the entering into this agreement does not interfere with their continued operation.

## **II. Seniority and Work Consolidation.**

The following seniority consolidations will be made:

- A. 1. A new seniority district, known as the San Antonio Hub, will be formed and a master UP/BLE San Antonio Hub Merged Engineer's Seniority Roster, will be created from engineers assigned / working in the territory comprising the new San Antonio Hub and those outside the Hub who have rights to place in the Hub and elect to place in the Hub. All such engineers shall receive a letter (attachment "A") advising of their opportunities to so place and must elect in writing as to their decision and return a copy to both their local chairman and CMS.

2. The number of engineers who will be placed on the roster will be capped at the level of UP and SP positions that exists on the day notice to implement is served. As a result, but unlikely to happen, engineers electing to come into the Hub may bump some engineers out of the Hub. These elections and displacements shall be seniority moves and not entitled to a relocation allowance.

**NOTE:** Engineers who may have a relocation allowance held in abeyance from a merger transaction may utilize that allowance if electing this Hub and meet the relocation provisions. For example if a Palestine engineer cannot hold at Palestine and relocates to San Antonio under this agreement then they may utilize their relocation allowance if not already used.

**B. The new rosters will be created as follows:**

1. Engineers assigned on the seniority rosters identified in Section A above will be dovetailed based upon their current engineer's seniority date or consolidated seniority date, whichever is applicable. For UP engineers it will be the pre KATY merger date not the 1989 merger date. This shall include any engineer working in train service, as a fireman or as a hostler in the San Antonio Hub. If this process results in engineers having identical seniority dates, seniority ranking will be determined by the employee's earliest retained fireman's date with the Carrier and if still identical then on the earliest retained hire date.
2. All engineers placed on the roster may work all assignments protected by the roster in accordance with their seniority and the provisions set forth in this agreement and the controlling collective bargaining agreement.
3. Engineers who elect to be placed on the San Antonio Hub Merged Engineer's Seniority Roster shall relinquish all seniority outside the Hub upon implementation of this Agreement and all seniority inside the Hub held by engineers outside the Hub who do not elect to place in this Hub shall be eliminated. Those inside the Hub who elect to hold their seniority in abeyance shall be placed temporarily on the roster until such time as they elect to place on a post San Antonio Hub roster or there is no further election and by default become a permanent Hub engineer.
4. Student engineers in training on or before implementation date, will be assigned prior rights, if any, as set forth in this agreement.

5. New engineers hired/placed in training after implementation date, will have no prior rights but will have roster seniority rights in accordance with the provisions set forth in this agreement.
  6. Engineers who are on an authorized leave of absence or who are dismissed and later reinstated will have the right to displace to any Hub and prior rights assignment which may have been established on his/her former territory, provided his/her seniority at time of selection would have permitted him/her to hold that selection. The parties will create an inactive roster for all such engineers until they return to service in a Hub or other location at which time they will be placed on the appropriate seniority rosters and removed from the inactive roster. ✓
  7. Engineers currently borrowed out to the San Antonio Hub, will be released when their services are no longer required and will not establish a permanent date on the merged roster.
- C. Prior right provisions as set forth below, shall govern the following assignments.
1. Del Rio-Alpine (SP 100% up to the baseline of 32 then dovetail roster.)
  2. San Antonio-Del Rio/Eagle Pass (SP 100% up to the baseline of 38 then dovetail roster.) ✓
  3. San Antonio-Kingsville/Corpus Christi (UP 100% up to the baseline of 5 then dovetail roster.) /
  4. San Antonio-Glidden/Bloomington/Victoria (including Coletto Creek) (SP 100% up to the baseline of 9 then dovetail roster.) /
  5. San Antonio-Laredo (UP 100% up to the baseline of 16 then dovetail roster.)
  6. San Antonio-Houston (SP 100% up to the baseline of 31 then dovetail roster.) ✓
  7. Smithville-San Antonio/Taylor/Heame (UP 100% up to the baseline of 15 then dovetail roster.)

8. **Smithville-Bloomington/Victoria (including Coleta Creek) /Glidden/Houston/Galveston/Angelton/ HL&P/LCRA (UP 100% up to the baseline of 12 then dovetail roster.)**
9. **Georgetown pool (SP 50%/UP 50% up to the baseline of 10 then turn 11 shall be a Houston zone 4 turn and turn 12 shall be a DFW Hub turn and all turns over that number shall be filled from the dovetail roster.) If zone 4 and/or DFW engineers do not voluntarily fill their allocated spots then those turns shall be filled from the dovetail roster from that point on and it shall no longer be an allocated turn.**
10. **San Antonio-Taylor/Hearne (Initially 50/50 UP odd/SP even, up to a baseline of 40 then dovetail roster.)**
11. **New Braunfels pool.(UP 100% up to the baseline of 6 then dovetail roster.)**
12. **San Antonio yard assignments prior rights shall be based on the attached chart (60%SP/40%UP).**
13. **All other assignments shall be filled from the dovetail roster.**

**D. Prior rights shall be phased out on the following basis:**

1. **For the first three years after implementation the pools shall retain prior rights up to the baseline level of 100%. At the start of the fourth year the prior rights shall fall to 67% and at the start of the fifth year at 33% and at the start of the sixth year all pool turns shall be assigned off the common roster.**
2. **San Antonio Yard assignment prior rights shall be reduced at the same time as the pool assignments except beginning with the 4th year all third shift assignments will be assigned using the common roster, beginning with the 5th year all second shift assignments will be assigned using the common roster and beginning with the 6th year all assignments will be filled using the common roster.**

**E. All vacancies within the San Antonio Hub must be filled prior to any engineer being reduced from the working list or prior to engineers being permitted to exercise to a reserve board. All engineers not eligible to hold a reserve board must be displaced prior to any engineer holding a position on a reserve board.**

- F. Engineers will be treated for vacation, payment of arbitraries and personal leave days as though all their service on their original railroad had been performed on the merged railroad. Engineers assigned to the San Antonio Hub on the effective date of this agreement shall have entry rate provisions waived and engineers hired/promoted after the implementation date of this agreement shall be subject to the rate progression provisions found in Article VI D. ✓
- G. SPEL engineers who are covered by this Implementing Agreement and who have earned vacation in 1998 for 1999 shall be entitled to obtain the benefits of the vacation agreement they worked under in 1998 for the calendar year 1999. Thereafter, vacation benefits shall be as set forth in the controlling agreement on the merged territory.

### III. POOL FREIGHT AND OTHER ROAD SERVICE OPERATIONS.

- A. Existing UP and SP pool freight operations in the San Antonio Hub shall be restructured. Where multiple routes exist between terminals the pools may operate over any and all routes or combination of routes as part of their assignments. Pools identified with a "f" between them such as Taylor/ Hearn have multiple away from home terminals with crews being tied up at either location. The following shall govern such operations. ✓
  - 1. Operations with home terminal at Del Rio shall be run as and governed by the following:
    - a. Del Rio-Alpine shall be run as a single pool.
    - b. Work between Del Rio - Eagle Pass (both directions) shall be handled by the Del Rio extra board. If exhausted then the next source of supply will be a San Antonio Engineer at the away from home terminals of Eagle Pass and/or Del Rio. The pool employee performing this service shall at its completion be worked or deadheaded home.
  - 2. Pool(s) with home terminal at San Antonio shall be run as and governed by the following:
    - a. Pool freight service between San Antonio and Del Rio/ Eagle Pass shall be one pool with multiple away from home terminals.

- b. San Antonio-Kingsville/Corpus Christi shall be one pool with multiple away from home terminals.
  - c. San Antonio-Taylor/Hearne shall be one pool with multiple away from home terminals.
  - d. San Antonio-Houston shall be one pool.
  - e. San Antonio-Glidden/Bloomington (including Coleta Creek and Victoria) shall be one pool with multiple away from home terminals.
  - f. San Antonio-Laredo shall be one pool.
3. Pool(s) with home terminal at Smithville shall be run as and governed by the following:
- a. Smithville-San Antonio/Taylor/Hearne shall be one pool with multiple away from home terminals. This pool may handle traffic between Hearne and LCRA via Giddings with crews being taken to Smithville for tie up when leaving the train at LCRA.
  - b. Smithville-Bloomington (including Coleta Creek and Victoria)/Glidden/Houston (including HL&P)/Galveston/Angelton/LCRA shall be one pool with multiple away from home terminals.
  - c. If either pool in a or b above fall below four turns then the Carrier may combine the pools with a ten day notice.
4. Pool(s) with home terminal at Georgetown shall be run as and governed by the following:
- a. Within the Hub engineers may travel to any point, but no further than one tour of duty away from the home terminal. For example, they would not go to San Antonio, tie up for rest and then go to Laredo. They will tie up at the home terminal after the second tour of duty. They could take aggregate cars/trains to another point towards their home terminal, however, the aggregate cars do not need to go all the way to the home terminal. For example, If in the first tour of duty they took a train to San Antonio, on the second tour they could take an

aggregate train to New Braunfels and deadhead on to Georgetown.

- b. They can deliver aggregate trains to any regular pool service point, i.e., San Antonio, Taylor, Smithville, and Hearne and pick up aggregate trains from any of these points. For example, a Georgetown crew can take an aggregate train to Smithville and a Smithville crew will take it to Angelton. Upon return of the empties to Smithville a Georgetown crew could pick it up there or Smithville could take to Taylor for a Georgetown crew to handle to the quarry. If there is a rested available Georgetown crew at Smithville they would be used first back to Georgetown.
  - c. Outside the hub an engineer can take aggregate trains to points up to and including Waco, Palestine, Corsicana, Houston, and Cleveland on the trackage rights. (Houston refers to points in the Houston area currently receiving aggregate trains.
  - d. Employees assigned to this(these) pool(s) are not restricted in the number of times they may operate/work into or out of Georgetown or any other location. Employees assigned to this(these) pool(s) may handle/operate more than one aggregate train during a tour of duty in accordance with the provisions of 4(a) above.
5. Pool(s) with home terminal in the New Braunfels area shall be run as and governed by the following:
- a. Within the Hub engineers may travel to any point, but no further than one tour of duty away from the home terminal. For example, they would not go to Gardendale, tie up for rest and then go to Laredo. They will tie up at the home terminal after the second tour of duty. They could take aggregate cars/trains to another point towards their home terminal, however, the cars do not need to go all the way to the home terminal. If the first tour of duty they took an aggregate train to Flatonia, on the return trip they could leave the aggregate train at San Antonio and deadhead on to New Braunfels.
  - b. They can deliver aggregate trains to any regular pool service point, i.e., San Antonio, Taylor, Smithville, and Hearne and

pick up aggregate trains from any of these points. For example a New Braunfels crew can take an aggregate train to Smithville and a Smithville crew will take it to Angelton. Upon return of the empties to Smithville a New Braunfels crew could pick it up there, or Smithville could take to New Braunfels and deadhead on into San Antonio. If there is a rested and available New Braunfels crew they would be used first back to New Braunfels. ✓

- c. Outside the hub an engineer can take aggregate trains to points up to and including Waco and Navasota.
- d. Employees assigned to this(these) pool(s) are not restricted in the number of times they may operate/work into or out of New Braunfels or any other location. Employees assigned to this (these) pool(s) may handle/operate more than one aggregate train during a tour of duty in accordance with the provisions of 5(a) above.

**NOTE 1:** Nothing in 4 and 5 above precludes using crews in turnaround service in one tour of duty or of being deadheaded home after one tour of duty.

**NOTE 2:** The pools in 4 and 5 are aggregate pools and it is not intended that they be used in non aggregate service. Aggregates are the various rock type products loaded in the Austin Sub area. It is immaterial as to the size of the aggregates.

**NOTE 3:** Georgetown pools will handle the aggregate business North of Austin (including) and the New Braunfels area pool will handle the aggregate business North of San Antonio up to but not including Austin.

**NOTE 4:** In A, 1- 5 above, where sufficient miles are not run to warrant a pool, the protecting extra board shall be used until sufficient miles exist to establish a pool.

**NOTE 5:** There are several loading points in the New Braunfels area and the on duty location has not been developed as of the signing of this Agreement. When it is developed then the Carrier will designate the exact location.

- B.** The terms and conditions of the pool operations set forth in Article III A. 1-5 above shall be the same for all pool freight runs whether run as combined pools or separate pools except as set forth in 12 below. The terms and conditions are those of the designated collective bargaining agreement as modified by subsequent national agreements, awards and implementing documents and those set forth in this Agreement.
1. The parties shall prepare a mileage chart which shall be used for service between the points therein.
  2. When Section 1 of the September 19, 1997 letter agreement expires on December 31, 1999, overtime will be paid in accordance with Article IV of the 1991 BLE National Agreement, except for the San Antonio - Houston pool and the Del Rio- Alpine pool. The pre existing overtime rule for those pools shall remain for employees hired prior to implementation and employees hired after that date shall be paid overtime in accordance with the National Rules governing same and in the same manner previously paid on the UP prior to the merger.
  3. Transportation will be provided in accordance with Section 2(c) of Article IX of the May 19, 1986 BLE National Agreement.
  4. Meal allowances and eating en route will be governed by Section 2(d) and Section 2(e) of Article IX of the May 19, 1986 BLE National Agreement, as amended by the 1991 BLE National Agreement.
  5. Crews may use and/or operate over any route or combination of UP and former SP trackage between their initial and final terminal.
  6. There are no train length limitations and no work event restrictions other than those contained in the National Agreements, Awards and implementation Documents.
  7. Pool engineers shall receive continuous held-away-from-home terminal pay (HAHT) for all time so held at the far terminal after the expiration of sixteen (16) hours. All other provisions in the selected CBA pertaining to HAHT pay remain unchanged.

8. Overmiles shall be paid at the same rate paid for overmiles in the Houston - Livonia ID run.
9. Engineers that tie up at Taylor shall not remain at Taylor for more than 24 hours without being worked back to San Antonio either direct or via Hearne or deadheaded direct to San Antonio.
10. Regulation of current pools shall continue to be regulated in the same manner as pre merger for the prior right period, except the San Antonio -Taylor/Hearne pool shall be regulated under the provisions of the selected CBA. When regulating "in the same manner", those pools coming under the 130 mile basic day will have their regulation adjusted to reflect the change in the basic day. The parties will meet during the prior right period to develop a common regulating factor for the Hub.
11. Employees called to a destination shall be paid to that destination and movement to another destination shall only be in accordance with the repositioning provisions in Section C below.

**Example:** A crew is called to go from San Antonio to Hearne and expires on the hours of service at Taylor. CMS cannot change the call to Taylor and avoid payment to Hearne. The crew would be paid the miles to Hearne and repositioning back to Taylor if actually tied up at Taylor.

12. The same conditions shall apply to the aggregate pools in 4 and 5 except all miles worked in excess of the miles encompassed in the basic day shall be paid at the road switcher rate and overtime will be paid based on miles run; however in any case no later than 12 hours and for time in excess of 12 hours until reaching their off duty point. For Example, if the road switcher rate is \$147/day then the first 100 miles is paid \$147 and overmiles shall be paid \$1.47 per mile.
- C. The following conditions shall apply for repositioning crews from one away from home terminal to another at the following locations: Eagle Pass-Del Rio; Taylor-Hearne; Kingsville-Corpus Christi and Houston - Galveston - Angelton.
1. Crews may be deadheaded prior to tie-up after the initial trip unless the tie-up is an Hours of Service tie-up, or the deadhead is not started within the twelve hour period.

**EXAMPLE:** A crew runs from San Antonio to Eagle Pass. It can be deadheaded from Eagle Pass to Del Rio for tie-up at Del Rio following its original trip from San Antonio provided the Hours of Service is not reached before departing in the Van.

2. Crews may also be deadheaded after tie-up and rest after the initial trip, however an engineer will not be tied up for rest twice at different away from home terminals, unless it is due to a call and release caused by an emergency situation or Act of God.

**EXAMPLE:** A crew runs from San Antonio to Eagle Pass. After rest, it may be deadheaded from Eagle Pass to Del Rio for a trip from Del Rio to San Antonio, but will not be tied up for rest again at Del Rio before being called on duty.

3. Crews will not be deadheaded by train from one away-from-home terminal to another away-from-home terminal.
4. Once deadheaded between two away-from-home terminals, an employee will not be deadheaded back unless the return trip is part of a combination deadhead/service trip towards the home terminal, except in an emergency situation such as a flood or derailment. If not in combination service then the second deadhead shall be paid a basic day.

**EXAMPLE:** An employee deadheaded from Taylor to Hearne after a trip to Taylor may on a return trip to San Antonio be used in combination deadhead/service back through Taylor. However, an employee deadheaded from Hearne to Taylor after a trip to Hearne, will not be deadheaded back to Hearne.

5. The miles paid shall be the actual direct highway miles between the two away from home points unless time is greater, and then they shall be paid the greater amount. Time consumed shall be calculated from time relieved at the original destination. Payment shall be at the basic pro rata through freight rate, separate and apart from the service trip.
6. The National Agreements permit an employee deadheading into a terminal to take a train out of that terminal (without a break in service) without creating a runaround. As such the provisions of this rule do not create a runaround.

**D.** At all home and away from home terminals, both inside and outside the San Antonio Hub, pool crews may receive their train up to twenty-five (25) miles on the far side of the terminal and run on through to the scheduled (destination) terminal. Crews shall be paid an additional one-half (1/2) basic day for this service in addition to the miles run between the two terminals. If the time spent in this zone is greater than four (4) hours, then they shall be paid on a minute basis. This payment shall be at the pro rata through freight rate.

**Example:** A Del Rio - Alpine crew receives their westbound train fifteen (15) miles east of Del Rio and runs to Alpine. They shall be paid the actual miles established for the Del Rio - Alpine run and an additional one-half basic day for handling the train from the point fifteen (15) miles east of Del Rio back through Del Rio.

**E.** Except as provided in (D) above and in **NOTE 1** below, hours-of-service relief at both home and away from home terminals shall be handled by extra boards, if available, prior to using pool crews in turn around service. Engineers used for this service may be used for multiple trips/dog catches in one tour of duty. Extra boards may handle this service in all directions out of a terminal.

**NOTE 1:** At Laredo, if a pool crew is rested and available, it shall be used ahead of the extra board, paid actual miles run with a minimum of a basic day and be placed first out after rest for a return trip to San Antonio.

**NOTE 2:** Nothing in this Article III (D) and (E) prevents the use of other crews to perform work currently permitted by prevailing agreements, including, but not limited to yard crews performing hours-of-service relief within road/yard zone(s), pool crews performing through freight combined service/ deadheads between terminals, road switchers handling trains within their zones and using an engineer from a following train to work a preceding train.

**F.** Any local, work train, or road switcher service may be established pursuant to the controlling collective bargaining agreement to operate from any point inside the Hub to any other point within or outside the new seniority district with the on duty point being within the San Antonio Hub except as provided in of Article 1, C.

**G.** New pool operations not covered in this implementing Agreement between Hubs or one Hub and a non-merged area or within a Hub will be handled per Article IX of the 1986 National Implementation Award. ✓

**H.** A terminal runaround occurs when engineers from the same pool, going to the same destination, depart the same yard or location in other than the order called and both crews have their power attached to their train. "Depart" means that a train has started moving on the track it was made up in. A terminal runaround does not occur between a working engineer and an engineer deadheading.

**Example 1:** Two engineers are called on duty in the San Antonio - Del Rio/Eagle Pass pool at San Antonio. The first out engineer receives his train at Kirby Yard and the second engineer receives his train at SoSan Yard. Both trains are destined to Del Rio. There cannot be a terminal runaround because the engineers did not depart from the same yard.

**Example 2:** Two engineers are called on duty in the San Antonio - Del Rio/Eagle Pass pool at San Antonio. The first out engineer is on a train destined for Del Rio. The second engineer is on a train destined for Eagle Pass. Both are departing SoSan Yard. There cannot be a terminal runaround because the engineers are not going to the same destination. ✓

**Example 3:** Two engineers are called on duty in the San Antonio - Laredo pool at San Antonio and both trains are in the same yard and going to Laredo. If both trains have their outbound power attached, a terminal runaround can occur.

**Example 4:** Same set of facts as Example 3; however, one crew is required to go to the mechanical facilities to obtain all or a part of their power consist. If the second crew departs the yard prior to the first crew returning to their train and putting their power on it, no runaround has occurred.

**Example 5:** Two engineers are called from the same extra board and the first one is called to work a train running from San Antonio to Del Rio and the other is called to work a train running from San Antonio to Laredo. No runaround can occur even if they depart from the same yard. ✓

**NOTE 1:** Yards or other locations, for purposes of application of this runaround provision, at San Antonio shall include, but not limited to, South San Antonio ("SoSan") Yard, Kirby Yard, East Yard, San Fernando Yard, Yoakum Bend, auto loading/unloading facilities, intermodal ramp(s), and CPS plant (Rockport Branch).

**NOTE 2:** Yards or other locations, for purposes of application of this runaround provision, at Houston shall include, but not limited to, Settegast Yard, Englewood Yard, Eureka Yard, Hardy Street Yard, Basin Booth, Pierce Yard, auto loading/unloading facilities, intermodal ramp(s), Glass Track, Congress Yard, Old South Yard, and East Belt Yard.

- I. Employees with displacement rights exercising in pool freight service shall place into the pool at the home terminal in the position occupied by the junior engineer at which time the junior pool freight engineer will be removed. If such junior pool freight engineer is on-duty, or at the away-from-home terminal; the senior engineer shall be placed last out and such junior engineer will be removed from the pool following his/her subsequent tie-up at the home terminal. The Organization may cancel this rule at the end of the six year New York Dock period upon giving the General Director Labor Relations a 30 day written notice. Upon cancellation the CBA rule in affect on the day prior to implementation of this agreement shall be reinstated.
- J. The different pools identified in this agreement may be established individually or in groups. If not established at time of implementation they shall be established upon ten days written notice to the General Chairman. Existing pools will remain in place until replaced by new pools.

#### **IV. TERMINAL AND OTHER CONSOLIDATIONS**

- A.
  - 1. At all joint terminal locations, all UP and SP operations shall be consolidated into unified terminal operations. Yard crews will not be restricted where they can operate in a terminal.
  - 2. Upon merger implementation, all other UP and SP facilities, stations, terminals, equipment and track shall be combined into a unified operation.
- B. A consolidated San Antonio Terminal will be created to include the entire area within the following limits:

SUBDIVISION / LINE		MILEPOST
Corpus Christi		4.8
Austin (Laredo)		267.0 ✓
Austin (Track #1)		259.1
Austin (Track #2)		247.2 ✓
Del Rio		222.25
Flatonia		199.54
Kerrville Branch		242.40
Rockport Branch		5.3 ✓

**NOTE:** See Side Letter No. 3 on the Rockport Branch.

- C. The provisions of Sections A and B of this Article IV will not, except as set forth therein, be used to enlarge or contract the current limits except to the extent necessary to combine into a unified operation.
- D. The Alpine terminal shall be expanded to include the territory up to the west end of the siding at Alpine Siding.
- E. Road crews may receive/leave their trains at any location within the consolidated terminals and may perform work within the terminals pursuant to the controlling collective bargaining agreement, including National Agreement provisions.
- F. Carrier will designate the on/off duty points for all road and yard crews. Such on/off duty points will have appropriate facilities as currently required by the controlling collective bargaining agreement and/or by governmental statute or regulation. Appropriate facilities will include adequate parking, lockers and restrooms.

**V. EXTRA BOARDS**

- A. Combination road/yard extra boards may be established at the following locations with the following areas of coverage:

1. **Port Laredo** - Protect all vacancies on assignments with an on-duty point south of Gardendale to end of the UP line, hours of service relief on trains heading to Laredo that are between Gardendale and Laredo if no rested and available pool crews at Laredo to perform the work, and other usual extra board work between those two points.

**NOTE:** Engineers will be allowed a 30 minute driving allowance if called to work an assignment at Laredo and they choose to drive their own auto. This payment is in lieu of reporting at Port Laredo and being transported to Laredo and back to Port Laredo after the assignment is ended.

2. **San Antonio-Southwest** - to cover the pools to Del Rio/Eagle Pass, Laredo, Corpus Christi/Kingsville; hours of service relief for trains heading to San Antonio from those points when trains have at least reached Odlaw, Gardendale and George West; non pool assignments that operate on those lines with home terminals between San Antonio (including) and Odlaw, Gardendale and George West (all inclusive); yard assignments in the San Antonio terminal; and other usual extra board work in these areas.

**NOTE:** Depending on the needs of service the Carrier may establish a separate extra board for assignments in the San Antonio - Corpus Christi corridor. If established or recombined it shall be done pursuant to a ten day written notice to the General Chairman.

3. **San Antonio-Northeast** - to cover the pools to Taylor/Hearne Houston, Glidden/Bloomington; hours of service relief for trains heading to San Antonio from those points when within sixty-five miles of San Antonio; non pool assignments that operate on those lines with home terminals between San Antonio (including) and Glidden (including) and Ogden (not including); and other usual extra board work in these areas. This extra board will also protect vacancies in assignments that work the Kerrville Branch.

4. **Smithville** - to cover all Smithville pools; hours of service relief for trains heading to Smithville that are between Smithville and Sealy, Glidden, Dime Box, Taylor and Ajax(all inclusive); non pool assignments with home terminals at Smithville or between Sealy and Taylor, and Flatonia and Dime Box(all inclusive); and other usual

extra board work in these areas. In addition, hours of service relief on the tri-weekly local even if beyond the above points.

5. **Del Rio** - to cover the pool to Alpine; all other non pool assignments with an on duty point between Del Rio and Sanderson, Odlaw and Eagle Pass (all inclusive); service between Eagle Pass and Del Rio in both directions; hours of service relief for trains heading to Del Rio and Eagle pass between Sanderson and Odlaw (all inclusive); and other usual extra board work in these areas.
6. **Alpine** - to cover hours of service relief for trains heading to Alpine that are within 65 miles of Alpine, all other non pool assignments in this area and other usual extra board work in this area. If one assignment then the senior bidder from the two seniority Hubs shall be assigned and if two assignments then the other seniority Hub shall be assigned. If forced then it shall be forced even years from El Paso and odd years from San Antonio Hub.
7. **Georgetown** - to cover the Georgetown pool; all other non pool assignments with an on duty point between Austin (including) and Majorie (including) not including Taylor; hours of service relief for aggregate trains heading to Georgetown and other usual extra board work in these areas. This extra board shall continue to protect assignments in the Hearne area that are in the San Antonio Hub until the DFW Hub has been implemented.
8. **New Braunfels** - to cover the New Braunfels pool all non pool assignments between Ogden (including) and Austin (not including), including Ajax: hours of service relief for aggregate trains heading to New Braunfels and other usual extra board work in these areas.
9. **Corpus Christi** - to cover non pool assignments in the Corpus Christi/ Gregory area and up to George West (not including); hours of service relief for trains heading to Corpus Christi (from any direction) up to George West and Sinton (including) and other usual extra board work in these areas. The extra board shall be 50/50 Houston zone four and San Antonio. San Antonio shall have the odd numbered positions and zone four shall have the even numbered positions.

**NOTE:** Kingsville will perform hours of service relief for trains heading to Kingsville up to Odom.

10. **Glidden** - to cover hours of service relief for trains heading to Glidden from either direction up to Harwood and Rosenberg, if both Houston and San Antonio have short pools operating to this point. The extra board shall be 50/50 Houston zone four and San Antonio. On odd years San Antonio shall have the odd positions and on even years Houston zone four shall have the odd positions.

- B. When the extra boards in A, above are established, the operation and administration of such extra board(s) will be governed by applicable provisions of the extra board provisions of the controlling CBA.
- C. Carrier will give a ten (10) -day advanced written notice of its intent to establish extra board(s) in A, 1 -10 above or to consolidate pre-existing extra boards into those in A, 1-10 above. Existing extra boards not covered by a notice shall continue to operate until a notice is served abolishing or combining them. Beginning with implementation day these existing extra boards shall be governed by the provisions of the selected CBA.

#### VI. AGREEMENT COVERAGE

- A. Initial delay and final delay will be governed by the controlling collective bargaining agreement, including the Duplicate Pay and Final Terminal Delay provisions of the 1986 and 1991 National Arbitration Award and Implementing Agreements.
- B. Engineers will be transported to/from their trains to/from their designated on/off duty point in accordance with Article VIII, Section 1 of the May 1986 National Arbitration Award. Suitable transportation includes Carrier owned or provided passenger carrying motor vehicles or taxi, but excludes other forms of public transportation.
- C. The current application of National Agreement provisions regarding road work and Hours of Service relief under the combined road/yard service Zone, shall continue to apply. Yard crews at any location within the Hub may perform such service in all directions out of their terminal.
- D. Entry rate provisions established prior to the implementation date of this agreement shall be waived for engineers hired/promoted subsequent to the implementation date.
- E. Pools and extra boards with a home terminal at San Antonio shall have a two hour call and pools with a home terminal at other locations shall retain their

current call provisions. Extra boards at other locations shall have an hour and one/half call.

- F. The Carrier has selected the October 1, 1977 (reprinted October 1, 1991) UPRR/BLE Agreement as the collective bargaining agreement for this Hub. Engineers working in the San Antonio Hub shall be governed, in addition to the provisions of this Agreement, including all addenda and side letter agreements pertaining to that agreement, previous National Agreement/Award/Implementing Document provisions still applicable and this merger agreement. Except as specifically provided herein, the system and national collective bargaining agreements, awards and interpretations shall prevail. None of the provisions of these agreements are retroactive.
- G. The Carrier will provide copies of the designated collective bargaining agreement (local, system and national) to those engineers who do not have a copy at the earliest possible date, but no later than by date of implementation of this Agreement.

## VII. PROTECTION

- A. Due to the parties voluntarily entering into this agreement the Carrier agrees to provide New York Dock wage protection (automatic certification) to all prior right engineers who are listed on the San Antonio Hub Merged Rosters and working in engine service. This protection will start with the effective (implementation) date of this agreement and any interim protection shall end. The engineers must comply with the requirements associated with New York Dock conditions or their protection will be reduced for such items as layoffs, bidding/displacing to lower paying assignments when they could hold higher paying assignments, etc. Protection offsets due to unavailability will be governed by New York Dock provisions.
- B. This protection is wage only and hours will not be taken into account.
- C. Engineers required to relocate under this agreement will be governed by the relocation provisions of New York Dock. In lieu of New York Dock provisions, an engineer required to relocate may elect one of the following options:
  - 1. Non-homeowners may elect to receive an "in lieu of" allowance in the amount of \$10,000 upon providing proof of actual relocation.
  - 2. Homeowners may elect to receive an "in lieu of" allowance in the amount of \$20,000 upon providing proof of actual relocation.

3. Homeowners in Item 2 above, who provide proof of a bona fide sale of their home at fair value at the location from which relocated, shall be eligible to receive an additional allowance of \$10,000.
    - (a) This option shall expire five (5) years from date of application for the allowance under Item 2 above.
    - (b) Proof of sale must be in the form of sale documents, deeds, and filings of these documents with the appropriate agency.
  4. With the exception of Item 3 above, no claim for an "in lieu of" relocation allowance will be accepted after three (3) years from date of implementation of this agreement.
  5. Engineers receiving an "in lieu of" relocation allowance pursuant to this implementing agreement will be required to remain at the new location, seniority permitting, for a period of two (2) years. If an engineer is no longer able to hold at this location later during the two year period and relocates to a position more than thirty miles from this location then they will not be required to move back if able to later hold at that position.
  6. Under no circumstances shall an engineer be permitted to receive more than one (1) "in lieu of" relocation allowance under this implementing agreement.
- D. There will be no pyramiding of benefits.
- E. The time frame to be used for calculating test period averages ("TPA") for this Agreement will be January 1, 1995 through December 31, 1995. If an engineer is currently covered by an interim protection TPA due to the merger then the engineer may elect to retain that TPA. Engineers who were employed after the year 1995 shall use the twelve month period prior to implementation. When TPA's are mailed to the engineers the engineer must respond within thirty days from the date of the letter if they elect to retain the interim TPA. The TPA for union officers will be based on the two engineers above and two engineers below the officer with regular work records on the pre-merger roster or their regular TPA, whichever is larger.
- F. National Termination of Seniority provisions shall not be applicable to engineers hired prior to the effective date of this agreement.

## **VIII. FAMILIARIZATION**

- A. Engineers involved in the consolidation of the San Antonio Hub covered by this Agreement whose assignments require performance of duties on a new geographic territory not familiar to them will be given full cooperation, assistance and guidance in order that their familiarization shall be accomplished as quickly as possible. Engineers will not be required to lose time or ride the road on their own time in order to qualify for these new operations.**
- B. Employees will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualifications shall be handled with local operating officers. The parties recognize that different terrain and train tonnage impact the number of trips necessary and the operating officer assigned to the merger will work with the local Managers of Operating Practices in implementing this section. Familiarization issues not settled at the local level shall be referred to the Director Labor Relations and the General Chairman for review.**
- C. Engineers hired subsequent to the effective date of this document will be qualified in accordance with current Federal Railroad Administration certification regulations and paid in accordance with the local agreements that will cover the Hub.**
- D. Upon implementation but prior to pools being combined, such as San Antonio to Taylor/Hearn, the Carrier may call the first out SP and first out UP engineer to go together, over the entire run, for familiarization purposes in addition to using other methods such as a peer training pool, the engineers extra board and certified Carrier Officers. In addition the provisions of Side Letter No. 4 of this Hub shall be applicable and a copy is attached hereto.**

## **IX. IMPLEMENTATION**

- A. The Carrier shall give 30 days written notice for implementation of this agreement and the number of initial positions that will be changed in the Hub. Engineers whose assignments are changed shall be permitted to exercise their new seniority. After the initial implementation the 10 day provisions of the various Articles shall govern.**
- B. This agreement does not require the rebulletining of all assignments due to its implementation. When the San Antonio - Del Rio/Eagle Pass pool is combined those engineers in the San Antonio - Eagle Pass pool shall be placed on the bottom of the San Antonio - Del Rio pool in the same order as**

they stand in the San Antonio - Eagle Pass pool or upon arrival at the home terminal. When new extra boards are created or combined they shall be rebulletined. The New Braunfels area pool shall be bulletined. Additional turns shall be added to the Georgetown pool. The San Antonio - Taylor/Heame pools shall be rebulletined. Upon implementation all displacements shall be made under the selected CBA.

**X. HEALTH AND WELFARE**

- A. All Engineers currently are under the National Plan so there will not be any change no matter which CBA is selected.
- B. If an engineer is covered under a group life and/or disability insurance policy provided for in his/her collective bargaining agreement and that collective bargaining agreement is not the surviving collective bargaining agreement, the Carrier shall continue the premium payments required at the time of implementation of this agreement for those engineers presently covered under those provisions for a period of six years, beginning January 1, 1998.

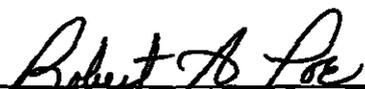
This San Antonio Hub Merger Agreement is entered into this 6<sup>th</sup> day of JANUARY, 1999.

**For the Organization:**

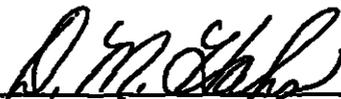
**For the Carrier:**

  
\_\_\_\_\_  
W. R. Slone  
General Chairman BLE UP

  
\_\_\_\_\_  
W. S. Hinckley  
General Director Labor Relations

  
\_\_\_\_\_  
R. A. Poe  
General Chairman BLE SPEL

  
\_\_\_\_\_  
H. E. Handley  
Assistant Vice President Southern Region

  
\_\_\_\_\_  
D. M. Hahs  
Vice President BLE

  
\_\_\_\_\_  
J. L. McCoy  
Vice President BLE

17

**MERGER IMPLEMENTING AGREEMENT  
Southwest Hub**

**between the**

**UNION PACIFIC  
SOUTHERN PACIFIC TRANSPORTATION COMPANY  
and  
BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

In Finance Docket No. 32760, the U.S. Department of Transportation, Surface Transportation Board ("STB") approved the merger of the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") and Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SP"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp., and The Denver & Rio Grande Western Railroad Company ("DRGW") (collectively referred to as "SP") In approving this transaction, the STB imposed New York Dock labor protective conditions.

In order to achieve the benefits of operational changes made possible by the transaction, to consolidate the seniority of all engineers working in the territory covered by this Agreement into one common seniority district covered under a single, common collective bargaining agreement.

**IT IS AGREED:**

**I. Southwest Hub**

New seniority districts shall be created that encompasses the following area: the territory from milepost 292.33 East of Pratt Kansas westward to milepost 731.5 West of Yuma, Arizona: BNSF trackage rights to Childress (not including) and Lubbock (including) that connect to this line; and the lines from El Paso to Alpine (not including) and Toyah (not including) and shall include all main and branch lines, industrial leads and stations between the points identified.

**NOTE 1: Engineers with home terminals within the hub may work to points outside the Hub without infringing on the rights of other engineers in other Hubs and engineers outside the Hub may work to points inside the Hub without infringing on the rights of engineers inside the Southwest Hub. The Hub identifies the on duty points for assignments and not the boundaries of assignments. ( This note is further explained in side letter No. 2)**

**II. Seniority and Work Consolidation.**

The following seniority consolidations will be made:

**A. The territory shall be divided into three zones as follows:**

- 1. Zone 1 - The territory between Yuma (including) and Lordsburg (not including).**
- 2. Zone 2 - The territory between Lordsburg (including) and Alpine (not including), Toyah (not including) and Vaughn (not including).**
- 3. Zone 3 - The territory between Vaughn (including) and Pratt (including), Childress (not including) and Lubbock (including).**

- B. A new seniority district will be formed and a master engineer Hub roster shall be created. In addition, engineer roster(s) shall be created for each Zone for those engineers on the current SPWL, EP&SW, UP, SSW and SPEL seniority rosters. It does not include borrow outs or SPWL auxiliary board engineers working in the Hub, if any. The new rosters will be created as follows:**

**HUB ROSTERS**

- 1. Engineer's shall be dovetailed on the Hub roster based on their current engineer's date in the Hub. If engineers from different rosters have the same engineers seniority date they shall be placed on the rosters as follows:**

**Pre October 31, 1985 engineers**

- a. Engineers date and ranking as an engineer.**
- b. Firemans date and ranking as a fireman.**
- c. Hire date and ranking as an employee.**
- d. Age**

**Post October 31, 1985 engineers**

- e. Engineers date and ranking as an engineer.**
- f. Switchmans date and ranking as a switchman.**
- g. Hire date and ranking as an employee.**
- h. Age.**

**NOTE : This will keep all engineers on the Hub roster in the same relative standing with respect to other engineers from the same pre merger roster that had the same seniority date.**

2. **Engineers placed on the Southwest Hub Rosters shall relinquish all seniority outside the new hub upon implementation of this Agreement and all seniority inside the Southwest Hub held by engineers outside the Hub shall be eliminated.**

**NOTE:** Because engineer seniority dates are based on the initial training date some employees now in training could be given a pre March 24, 1999 engineer seniority date after roster formulation. It is the intent of this agreement to include all those engineers based on the seniority date given them, and not when they finished training.

### **ZONE ROSTERS**

**The new zone rosters will be created in three parts as follows:**

3. **The first part will include SPWL, EP&SW, UP, SSW and SPEL Engineers, if any, with an engineer's seniority date prior to March 24, 1999 that will initially work in each zone. They will be dovetailed based upon the current engineer seniority date within the Hub. This shall include any engineer working in trainman/fireman service with an engineers seniority date.**
4. **Following next on the roster ( second part) will include all SPWL, EP&SW, UP, SSW and SPEL Engineers with engineer seniority dates prior to August 6, 1996 working in the other zones. They will be dovetailed based upon the current engineer seniority date within the Hub. This shall include any engineer working in trainman/fireman service with an engineers seniority date.**
5. **Following them (third part) will include all SPWL, EP&SW, UP, SSW and SPEL Engineers with engineer seniority dates subsequent to March 23, 1999 working in the zone. It does not include SPWL, EP&SW, UP, SSW and SPEL Engineers with engineer seniority dates subsequent to August 6, 1996 working in other zones.**
6. **All engineers with engineer seniority dates subsequent to August 6, 1996 and those promoted after the implementation date will only have seniority in one zone except as provided in the consolidated seniority provisions of the surviving CBA. They require, among other provisions, the Carrier to post a notice of intent to promote additional engineers so that post August 6, 1996 engineers may request transfer to the zone with the need for additional engineers. Engineers may be held up to 9 months, in lieu of 7 months provided for in the consolidation seniority provisions, prior to being released to another zone. When an engineer moves under the consolidated seniority provisions, they shall come off the zone roster they left and shall be placed on the zone roster they move to. They shall use the same seniority date but placing in the non prior rights portion of the roster and below those with prior rights. Surplus engineers may be used in another zone in accordance with auxiliary board provisions.**

7. All engineers placed on the zone rosters may work all assignments protected by the zone roster in accordance with their seniority and the provisions set forth in this Agreement. For an engineer to hold a baseline pool or yard percentage position using prior rights identified in this Section B., they must be zone prior righted and have a seniority date prior to August 6, 1996 except as defined in NOTE to 7(a) of Section D.

**C. Zone prior rights shall be governed by the following:**

1. Those engineers who make up the first part of the roster (pre March 24, 1999 working or originally transferred to the zone) shall have prior rights to assignments with home terminals in the zone over those engineers that make up parts two and three of the roster.
2. Those engineers who make up the second part of the roster ( pre August 6, 1996 from other zones) may bid into the zone on assignments not filled by zone prior right engineers using their current seniority date without losing any of their original zone prior rights. This move shall not establish prior rights in the new zone.
3. Those engineers who are post August 6, 1996 will establish use of seniority when they move to another zone using the consolidated seniority provisions. This move shall not establish prior rights in the new zone nor relinquish existing prior rights, if any, in other zones.

**D. Prior rights within a zone shall be governed as follows:**

**ZONE 1**

1. The Tucson - El Paso pool (home terminal at Tucson) shall be prior righted with the odd numbered slots being filled by those with zone prior rights and the even numbered slots to those engineers who relocate to Zone 1 as part of this implementing agreement. Each relocating engineer, with seniority prior to August 6, 1996, shall be placed on a specific turn by name and shall have prior rights only to that turn. These prior rights shall no longer be effective at the end of the sixth year after implementation, and at that time all positions in the pool shall be available to engineers based on the zone prior right provisions. If an engineer relocating to zone 1 voluntarily moves off their prior right spot during the six year period then he/she shall no longer be prior righted to that pool position. Once voluntarily vacated, the turn will be treated as an odd numbered slot.
2. With respect to all other assignments, the engineers who relocate to zone 1 as part of the single ending of the pool shall have the same zone prior rights as all other engineers currently working in the zone.

3. **Assignments at Yuma, both regular and extra board, protected by the West Colton source of supply shall be governed as follows:**
- a. **The assignments shall be prior righted to SP engineers holding seniority in the Los Angeles Hub on the day this agreement is implemented.**
  - b. **If an assignment goes no bid/application then it shall be filled by an engineer from the Zone 1 Southwest Hub roster.**
  - c. **LA Hub SP prior right engineers shall have bid/application rights to vacancies on these assignments and shall not have displacement rights to them if they are held by an engineer from the adjoining Hub for a period of time not to exceed 6 months from the date the engineer from the other Hub holding the assignment is assigned, unless the 6 month period of time is waived by the engineer holding the assignment.**
  - d. **Yuma positions protected by the West Colton source of supply shall be prior righted until attrited. All other Yuma positions shall be protected by zone 1 Southwest Hub engineers.**

#### **ZONE 2**

4. **Except for El Paso yard assignments, Clifton locals and pool assignments all Zone 2 positions shall be filled from the common dovetail zone roster. Zone 2 pools shall be prior righted as follows:**
- a. **El Paso - Lordsburg, 100% SPWL up to a base line of 26 and then to the dovetail roster.**
  - b. **El Paso - Vaughn, 100 % EP&SW up to a base line of 47 and then to the dovetail roster. When Alpine and Toyah are combined then the odd numbered slots, beginning with 35, shall be prior righted to SPNL engineers.**
  - c. **El Paso – Alpine, 100% SPEL up to a base line of 31 and then to the dovetail roster.**
  - d. **El Paso – Toyah, 100% UP up to a base line of 8 and then to the dovetail roster.**
  - e. **El Paso - Alpine/Toyah (when combined) 79% SPEL and 21% UP up to a baseline of 39 and then to the dovetail roster. (see attached chart)**
5. **El Paso yard assignments shall be prior righted as follows: 60% UP/SPEL, 40% EP&SW . (see chart)**

6. The Clifton locals shall be prior righted, one to J.E. Andress, a current occupant and the other to the initial successful bidder from the current El Paso /Tucson seniority district. Should either of the incumbents voluntarily vacate assignments at this location they shall lose their prior rights to these assignments and the assignments shall become common positions to the zone. This only applies when moving from this location not when moving from one assignment to another at the same on duty point.

### ZONE 3

7. Except for pools all Zone 3 positions shall be filled from the common dovetail zone roster. Zone 3 pools shall be prior righted as follows:

- a. Pratt – Dalhart/Dalhart – Pratt, 100% SSW up to a baseline of 38 then to the dovetail roster.

NOTE: SSW engineers working in Pratt from March 24, 1999 until implementation date will continue to hold prior rights pursuant to Article III, L, of this agreement until attrited.

- b. Dalhart – Vaughn, 50%SSW(even) and 50%EP&SW(odd) up to a baseline of 38 then to the dovetail roster.

- c. Dalhart - Childress/Lubbock, 100% SSW up to a baseline of 5 then to the dovetail roster.

- E. Yard and pool prior rights shall be eliminated as follows:

1. El Paso yard prior rights shall be 100% for the first three years. Starting with the fourth year (from start of implementation) all third shift assignments shall lose their yard prior rights, and starting with the fifth year all second shift assignments shall lose their yard prior rights and starting with the sixth year all first shift assignments shall lose their yard prior rights.

2. Pool baseline prior rights shall phase out 25% per year beginning with the start of year four (from start of implementation) and ending with the start of year seven when the pools shall lose their pool prior rights. This does not apply to Pratt-Dalhart pool engineers who remain at Pratt nor to the Tucson-El Paso pool which has its own phase out schedule.

- F. Engineers who are on an authorized leave of absence or who are dismissed and later reinstated will have the right to displace to the appropriate roster(s), provided his/her seniority at time of displacement would have permitted him/her to hold that selection. The parties will create an inactive roster for all such engineers until they return to service in a Hub or other location at which time they will be placed on the appropriate seniority roster(s) and removed from the inactive roster.

- G. The movement of engineers from Zone 2 to zone 1 shall be as follows:**
- 1. Engineers currently holding seniority on the Tucson Seniority District and working in zone 2 shall be given the first opportunity to elect to transfer to Tucson up to a baseline number of 35.**
  - 2. Should an insufficient number of engineers from this seniority district elect to transfer and prior to forcing engineers an opportunity for exchanges of seniority between former Tucson seniority district engineers and other engineers in Zone 2 and 3 shall be offered. The process shall be as follows:**
    - a. All requests must go through the local chairmen and be on file by August 15, 1999. The local chairmen will match up engineers with the closest seniority dates. The provisions of the surviving CBA requiring that engineers be within five years of age and five years of service are waived for this process.**
    - b. Each engineer shall take the younger of the two dates and shall be treated as holding seniority on the roster of the engineer they exchanged with.**
    - c. Other engineers in Zone 2 who go to Tucson will be treated the same as if they were initial voluntary transfer Tucson seniority district engineers. (relocation, zone prior rights and pool even numbered prior rights.)**
    - d. Rights to seniority exchanges will go first to former EP&SW engineers(at El Paso and Tucumcari) and then to other engineers in Zone 2 and finally to engineers in Zone 3.**
  - 3. Should an insufficient number of engineers elect to transfer or exchange seniority, then the remaining number (up to the demand number of 27) shall be forced from former Tucson seniority district engineers in junior order.**
- H. The structure of the zone seniority rosters is to provide a supply of engineers in each zone. Movement to other zones has some restrictions (depending on seniority) so as to provide a more stable Hub and Spoke system for engineers. This also provides a supply of available engineers in each zone for Carrier operations without the need to force engineers from one zone to another after the initial movement involving Tucumcari engineers and engineers involved in the El Paso – Tucson pool. Engineers forced to a new zone due to implementation will be permitted to make application back to their original prior rights zone. The application must be on file within sixty days of being forced and will be honored when vacancies of a minimum of thirty days exist in the original zone and there are no engineers their senior on reserve boards or demoted in that zone. If an engineer is recalled and declines the recall, then his/her application will be pulled and not**

reentered. (see relocation section on restrictions if relocation allowances are requested Engineers who receive a relocation allowance shall not be recalled for the two (2) year period.)

**NOTE:** The minimum of thirty days shall be met when all engineers senior to the forced engineer have been assigned to a working position for a minimum of thirty days or on a leave of absence for a minimum of thirty days and an additional regular assignment becomes vacant. If the engineer returning to the original zone works for ninety days without being demoted then the forced zone rights will be relinquished and the original zone rights reinstated.

### **III. POOL OPERATIONS/ASSIGNED SERVICE**

The following operations may be instituted:

- A. Dalhart - Childress/Lubbock via Dalhart or Stratford as one pool with Dalhart as the home terminal.**
- B. Dalhart – Vaughn with Dalhart as the home terminal. However, Tucumcari – Vaughn and Dalhart - Tucumcari shall continue to operate as separate pools during the transition to the long pool.**
- C. Dalhart – Springfield with Dalhart as the home terminal.**
- D.. El Paso - Vaughn with El Paso as the home terminal.**
- E. El Paso - Toyah/Alpine as one pool with El Paso as the home terminal. The Carrier will not give notice to combine the pools until either the new lodging facility is built at Toyah or the pools away from home lodging is at Pecos.**
- F. El Paso - Lordsburg with El Paso as the home terminal.**
- G. Tucson - El Paso with Tucson as the home terminal.**
- H Tucson - Lordsburg with Tucson as the home terminal.**
- I. Tucson - Nogales/Phoenix as one pool with Tucson as the home terminal. Through freight pool service to Nogales shall be run in turnaround service with no away from home lodging. Tucson pool engineers working to Nogales and return shall be paid in combination service if they perform deadhead and service in the same tour of duty. Through freight service to Phoenix may be run as either turnaround or straight away service on a trip by trip basis.**
- J. Tucson - Yuma with Tucson as the home terminal.**
- K. Phoenix - Yuma with Phoenix as the home terminal.**

- L. Pratt- Dalhart – This pool shall continue to operate (regulation and balancing) as it currently operates (double-ended) pending agreement on final provisions. In the next six months the parties will meet and agree on the operation of the pool and the transition process that will take place as the pool attrites to Dalhart. The basic principles are as follows:**
- 1. The Pratt engineers who qualify for this treatment shall be identified by name. The list will only include those engineers with a home terminal at or between Pratt and Liberal, Kansas and continually working at these locations from the date of notice March 24, 1999 to the date of implementation.**
  - 2. The listed engineers shall have prior rights to all SSW pool turns with a home terminal at Pratt subject to their obligations to cover other assignments set forth below. No non listed engineer may hold a pool turn at Pratt. They may hold non-pool assignments if there are no listed engineers available.**
  - 3. Listed Pratt engineers will be required to protect all other assignments (including extra board at Pratt) between Pratt and Liberal, Kansas prior to protecting pool assignments between Pratt and Dalhart. Absent bids or requests from senior engineers at Pratt, the junior engineer(s) in pool freight service may be removed from pool freight service and placed on the vacancies. When removed these engineers will be considered as holding the highest paying assignment for New York Dock purposes.**
  - 4. Lodging will be furnished at Dalhart for those Pratt engineers working into Dalhart and at Pratt for Dalhart based engineers.**
  - 5. Pool will operate so as to minimize time engineers are held at the away from home terminal.**
  - 6. There is no reverse held away from home terminal time or reverse lodging for either end of the pool.**
  - 7. Pratt engineers shall lay off at Pratt and Dalhart engineers shall lay off at Dalhart.**
  - 8. The carrier may offer relocation allowances to Pratt engineers to transfer to Dalhart.**
- M. Any pool freight, local, work train, or road switcher service may be established in accordance with the controlling CBA.**
- N. Crews may use and/or operate over any route or combination of UP and SP trackage between their initial and final terminal. Side trips shall continue to be paid under side trip provisions of the CBA.**

- O.** New pool operations not covered in this implementing Agreement between Hubs or within a Hub will be handled per Article IX of the 1986 National Implementation Award.
- P.** The different pools identified in this agreement may be established individually or in groups. Other than Dalhart-Vaughn and Tucson – El Paso changes, pools not established at time of implementation shall be established upon ten days written notice to the General Chairman. Existing pools will remain in place until replaced by new pools. The Dalhart-Vaughn and Tucson-El Paso pools have their own implementation provisions. Tucson-Phoenix-Nogales and Phoenix-Yuma shall be implemented concurrently. When requested these pools may be pre advertised.
- Q.** The Tucumcari transition shall provide for the creation of a long pool at Dalhart. This pool shall initially have 12 pool turns (six from Dalhart and six from Tucumcari). If not already qualified they may run with two engineers, one from each roster, and familiarize each other over the route in addition to other methods of qualification. Every two months an additional 12 turns shall be bulletined until the entire pool is a long pool. With each bulletin of 12 turns another Tucumcari engineer shall be added to the extra board at Dalhart. At the same time as each group of engineers move to Dalhart four engineers shall be transferred to El Paso.
- R.** There are some current locals and road switchers operating under other than SPWL agreements. The transition to the SPWL Agreement shall not eliminate these assignments if the SPWL agreements do not have similar provisions that permit these operations. It is the desire of all parties to continue to provide service to customers after the Hub implementation so these assignments may continue to operate and be paid pending review of their operations and agreements by the General Chairmen and the Director Labor Relations with regard to the SPWL Agreement. If the SPWL agreement does not provide for continued coverage then the current agreements will be adopted on a limited basis, (current operations only).
- S.** Current blue print provisions for EP&SW, SSW, UP and SPEL pools shall be retained at implementation pending a review by the parties to see if changes need to be made. In addition, if the pools to Alpine and Toyah are combined, engineers shall be placed at the home terminal in the order in which called from the away from home terminals.

#### **IV. EXTRA BOARDS**

- A.** The Carrier may establish extra boards at any location in accordance with the governing CBA. The Carrier will give a thirty day notice of the consolidation of pre-merger extra boards and the notice provisions of the governing CBA shall be used in the establishment of new extra boards. Existing extra boards not covered by a notice shall continue to operate until a notice is served abolishing or combining them. Beginning with implementation, day these existing extra boards shall be governed by the provisions of the selected CBA.

- B. The following information is given in order to assist engineers in any merger implementation decisions they must make. It is the Carriers intention to initially establish or retain extra boards at the following locations:**
- 1. Dalhart**
  - 2. El Paso (2)**
    - a. One to cover the yard assignments and the territory between El Paso and Lordsburg.**
    - b. One to cover the territory between El Paso and Vaughn, Toyah and Alpine.**
  - 3. Tucson**
  - 4. Phoenix**
  - 5. Yuma**
  - 6. Pratt**
- C. The extra boards at Yuma will be consolidated on a 50/50 basis with the LA Hub entitled to prior rights to the even numbered assignments 2, 4 and 6. The Southwest Hub zone 1 shall have prior rights to all other extra board assignments. There will then be one extra board at Yuma and the extra board at Yuma will be used to fill short term vacancies on all assignments that have Yuma as a home terminal (whether LA Hub or Southwest Hub vacancies) and EL Centro as a home terminal. This extra board shall protect hours of service relief/turnaround service as far West as Niland (MP 667) in the LA Hub and as far East as is provided elsewhere in this agreement.**
- D. At Alpine, there may be a joint extra board that may cover hours of service relief for trains heading to Alpine that are within 65 miles of Alpine, all other non pool assignments in this area and other usual extra board work. If only one assignment then the senior bidder from the two Hubs (San Antonio and zone 2 of the Southwest Hub) shall be assigned and if two assignments then the other Hub shall be assigned. If forced then it shall be forced even years from Southwest Hub seniority and odd years from San Antonio Hub seniority. Southwest Hub forcing shall be limited to previous SPEL engineers and engineers hired/promoted after March 24, 1999.**
- E. Exhausted extra boards.**
- 1. At El Paso, if one of the above extra boards is exhausted, then another (secondary)extra board may be used prior to using other sources of supply within the zone. Secondary extra boards shall be identified by bulletin.**

2. An engineer called from his/her extra board for an assignment in another area not primarily covered by their extra board shall be handled as follows:
  - a. Pay received for this assignment shall not be used as an offset for extra board guarantee but shall be in addition to, however, it shall be used in computing whether the engineer is entitled to protection pay at the end of the month.
  - b. An engineer unavailable at time of call for secondary assignments shall have a deduction made in their extra board guarantee in accordance with the extra board agreement and shall have an offset to their protection in accordance with the protection offset provisions. If miss called for secondary calls, the engineer shall not be placed on the bottom of the board but will hold his/her place.
  - c. An engineer unavailable at time of call for secondary assignments shall not be disciplined.

**V. TERMINAL AND OTHER CONSOLIDATIONS**

- A. The several yards at El Paso shall be combined into a single terminal. Yard engineers shall not be restricted as to where in the terminal they can operate. The new terminal limits shall be as follows:

SUBDIVISION/LINE		MILEPOST
Valentine		820.0
Lordsburg		1291.54
Carrizozo		1300.54

- B. The provisions of A above will not be used to enlarge or contract the current limits except to the extent necessary to combine into a unified operation.
- C. With the implementation of this Agreement all areas, trackage, stations and facilities in the Hub shall be common to all engineers as a single unified system. Engineers shall not be restricted in the Hub where they can operate except on the basis of CBA provisions that set forth limits of an assignment such as the radius of a road switcher.

- D. Road crews may receive/leave their trains at any location within the consolidated terminals and may perform work within the terminals pursuant to the controlling collective bargaining agreement, including National Agreement provisions.**
- E. Within terminals, the carrier will designate the on/off duty points for all road and yard crews. Such on/off duty points will have appropriate facilities as currently required by the controlling collective bargaining agreement and/or by governmental statute or regulation.**
- F. The following payment applies to Alfalfa yard:**
  - 1. The 20 minute payment currently paid to pre October 31, 1985 employees shall continue to be paid to regularly assigned engineers who report to this location.**
  - 2. A 20 minute payment shall be paid to those extra board engineers (both pre and post October 31, 1985) who fill vacancies at this location and report directly to this location at the call time.**

## **VI. AGREEMENT COVERAGE**

### **A. General Conditions for Terminal Operations.**

- 1. Initial delay and final delay will be governed by the controlling collective bargaining agreement, including the Duplicate Pay and Final Terminal Delay provisions of the 1986 and 1991 National and Implementing Agreements and awards.**
- 2. Engineers will be transported to/from their trains to/from their designated on/off duty point in accordance with Article VIII, Section 1 of the May 1986 National Agreement. The Carrier shall designate the on/off duty points for engineers within a terminal. Suitable transportation includes Carrier owned or provided passenger carrier motor vehicles or taxi, but excludes other forms of public transportation.**
- 3. The current application of National Agreement provisions regarding road work and Hours of Service relief under the combined road/yard service Zone, shall continue to apply. Yard engineers at any location within the Hub may perform such service in all directions out of their terminal.**
- 4. SPEL and SSW engineers who have earned their vacation for the year 2000 in 1999 shall be allowed to take the number of weeks provided in their current vacation agreement for the year 2000.**

**B. General Conditions for Pool/Assigned Operations in Article III.**

1. The terms and conditions of the pool operations set forth in Article III (A-L), shall be the same except where specifically provided otherwise in those Sections. The terms and conditions are those of the surviving collective bargaining agreement as modified by subsequent national agreements, awards and implementing documents and those set forth in this Agreement.

2. **Twenty-Five Mile Zone** - Pool engineers may receive their train up to twenty-five miles on the far side of the terminal and run on through to the scheduled terminal. Engineers shall be paid an additional one-half (1/2) basic day for this service in addition to the miles run between the two terminals. If the time spent in this zone is greater than four (4) hours, then they shall be paid on a minute basis. This payment shall be at the pro rata through freight rate.

**EXAMPLE:** An El Paso-Vaughn crew receives their westbound train fifteen (15) miles east of Vaughn and runs to El Paso. They shall be paid the actual miles established for the El Paso - Vaughn run and a minimum of an additional one-half basic day for handling the train from the point fifteen (15) miles east of Vaughn back through that terminal. (See Q&A's for additional information.)

3. **Turnaround Service/Hours of Service Relief**. Except as provided in (2) above, turnaround hours of service relief at both home and away from home terminals shall be handled by extra boards, if available, prior to using pool engineers in turn around service. Engineers used for this service may be used for multiple trips in one tour of duty in accordance with the designated collective bargaining agreement rules. Extra boards may handle this in all directions out of a terminal. At El Paso each extra board will protect its primary area of coverage unless the other is exhausted.

4. Nothing in this Section B (2) and (3) prevents the use of other engineers to perform work currently permitted by prevailing agreements, including, but not limited to yard engineers performing Hours of Service relief within the road/yard zone, ID engineers performing service and deadheads between terminals, road switchers handling trains within their zones and using an engineer from a following train to work a preceding train and payments required by the controlling CBA shall continue to be paid when this work is performed.

5. Engineers, both pool and extra board, when called in turnaround hours of service relief shall be considered called as in combination deadhead/service and shall be paid as such.

- C. **Agreement Coverage** – Engineers working in the Southwest Hub shall be governed, in addition to the provisions of this Agreement, by the Collective Bargaining Agreement selected by the Carrier, including all addenda and side letter agreements pertaining to that agreement and previous National Agreement/Award/Implementing Document provisions still applicable. Except as specifically provided herein the system and national collective bargaining agreements, awards and interpretations shall prevail. None of the provisions of these agreements are retroactive. The Carrier has selected the SP WEST modified BLE Agreements.

VII. **PROTECTION.**

- A. Due to the parties voluntarily entering into this agreement the Carrier agrees to provide New York Dock wage protection (automatic certification) to all prior right engineers who are listed on the Southwest Hub Merged Rosters and working an assignment (including a Reserve Board) on March 24, 1999. (The term working shall also include those engineers disciplined and later returned to work and those full time Union Officers should they later return to service with the Carrier.) This protection will start with the effective (implementation) date of this agreement. The engineers must comply with the requirements associated with New York Dock conditions or their protection will be reduced for such items as layoffs, bidding/displacing to lower paying assignments when they could hold higher paying assignments, etc. Protection offsets due to unavailability are set forth in the Questions and Answers and side letter #1.
- B. This protection is wage only and hours will not be taken into account.
- C. Engineers required to relocate under this agreement will be governed by the relocation provisions of New York Dock. In lieu of New York Dock provisions, engineers required to relocate may elect one of the following options:
1. Non-homeowners may elect to receive an "in lieu of" allowance in the amount of \$10,000 upon providing proof of actual relocation.
  2. Homeowners may elect to receive an "in lieu of" allowance in the amount of \$20,000 upon providing proof of actual relocation.
  3. Homeowners in Item 2 above, who provide proof of a bona fide sale of their home at fair value at the location from which relocated, shall be eligible to receive an additional allowance of \$10,000.
    - (a) This option shall expire five (5) years from date of application for the allowance under Item 2 above.

- (b) Proof of sale must be in the form of sale documents, deeds, and filings of these documents with the appropriate agency.
4. With the exception of Item 3 above, no claim for an "in lieu of" relocation allowance will be accepted after two (2) years from date of implementation of this agreement.
  5. Engineers receiving an "in lieu of" relocation allowance pursuant to this implementing agreement will be required to remain at the new location, seniority permitting, for a period of two (2) years.
  6. Under no circumstances shall an engineer be permitted to receive more than one (1) "in lieu of" relocation allowance under this implementing agreement.
  7. In addition to those engineers required to relocate, engineers at the location where assignments are relocated from shall be treated as required to relocate under this Agreement, seniority governing on a one for one basis equal to the number of assignments transferred. Once the number of in lieu of allowances are granted equal to the number of assignments transferred all other moves associated with the specific number of assignments transferred will not be eligible for any moving allowance.
- D. There will be no pyramiding of benefits.
- E. Engineers who do not have an interim protection shall select either the calendar year 1995 or 1996 to have their TPA calculated. Local Chairmen will provide the protection bureau a list of the names and SSN's and the year that the engineer selects to have his/her TPA developed. If an engineer is currently covered by an interim protection TPA due to the merger, then the engineer may elect to retain that TPA or select the period January 1, 1995 through December 31, 1995. When TPA's are mailed to the engineers the engineer must respond within thirty days from the date of the letter if they elect to retain the interim TPA. Engineers who were employed after the year 1995 shall use the twelve month period prior to implementation.
- F. Those who elect to retain the interim (SPEL&SSW) TPA's shall have them adjusted the equivalent of the General Wage increase of July 1, 1997. All TPA's shall be eligible for the July 1, 1999 General Wage increase and SPEL and SSW engineers who worked a yard assignment a minimum of 150 yard shifts during their test period shall have a further adjustment of 2.3%. These are subject to this proposal being initialed by July 1, 1999.

- G.** The TPA for union officers will be based on the two engineers above and two engineers below the officer with regular work records on the pre-merger roster or their regular TPA, whichever is larger. Engineers with a current ID protection or a temporary SP West modification protection must either elect to retain that protection in accordance with those agreements or this New York Dock protection. Failure to so elect will result in retention of the ID or modification protection TPA.
- H.** Engineers will be treated for vacation, payment of arbitraries and personal leave days as though all their service on their original railroad had been performed on the merged railroad. Engineers assigned to the Southwest Hub seniority roster with a seniority date prior to March 24, 1999 shall have entry rate provisions waived and engineers hired after that date shall be subject to the rate progression provisions of the controlling CBA. Those engineers leaving the Southwest Hub will be governed by the CBA where they then work.
- I.** National Termination of Seniority provisions shall not be applicable to engineers hired prior to the effective date of this agreement.

#### **VIII. FAMILIARIZATION**

- A.** Engineers involved in the consolidation of the Southwest Hub covered by this Agreement whose assignments require performance of duties of a new geographic territory not familiar to them will be given familiarization opportunities as quickly as possible. Engineers will not be required to lose time or ride the road on their own time in order to qualify for these new operations.
- B.** Engineers will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualification shall be handled with local operating officers. The parties recognize that different terrain and train tonnage impact the number of trips necessary and an operating officer will be assigned to the merger that will work with the local managers of Operating Practices in implementing this Section. If disputes occur under this Agreement they may be addressed directly with the appropriate Director of Labor Relations and the General Chairman for expeditious resolution.
- C.** It is understood that familiarization required to implement the merger consolidation herein will be accomplished by calling a qualified engineer (or qualified Manager of Operating Practices) to work with an engineer called for service on a geographical territory not familiar to the engineer.
- D.** Engineers who work their assignment (road or yard) accompanied by an engineer taking a familiarization trip shall be paid one (1) hour at the pro rata rate, in addition to all other earnings for each tour of duty. This payment shall not be used to offset any extra board payments. The provision of 3 (a) and (b) Training Conditions of the

System Instructor Engineer Agreement shall apply to the regular engineer when the engineer taking the familiarization trip operates the locomotive.

- E. Locomotive engineers will not be required to make the decision on whether or not an engineer being familiarized is sufficiently familiarized for the territory.

**IX. IMPLEMENTATION**

- A. The Carrier shall give 30 days notice for implementation of this agreement , if ratified prior to August 15, 1999. If ratified after August 15, 1999 the Carrier shall give 10 days notice for implementation.
- B. After notice of acceptance of this agreement, the appropriate Labor Relations Personnel, CMS Personnel, General Chairmen and Local Chairmen will convene a workshop to implement assembly of the merged seniority rosters. At this workshop, the representatives of the Organization will participate with the Carrier in constructing consolidated seniority rosters as set forth in Article II of this Implementing Agreement.
- C. Engineers who are on assignments on the day of implementation shall remain on those assignments unless abolished or unless they make application to another vacancy or are displaced by engineers with displacement rights under the controlling CBA. This agreement does not create displacement rights due to its implementation. See the Article on implementation which covers the bulletining of extra board and other common positions. At a minimum the carrier shall bulletin UP/SPEL yard assignments at El Paso, the two extra boards at El Paso, all zone 2 non pool assignments and all non baseline pool assignments.
- D. Dependent upon the Carriers manpower needs, the Carrier will develop (for zones 2 and 3) a pool of representatives of the Organization, with the concurrence of the General Chairmen, which, in addition to assisting in the preparation of the rosters, will assist in answering engineer's questions. In addition to questions, explanations of the seniority consolidation and implementing agreement issues, discussing merger integration issues with local Carrier officers and coordinating with respect to CMS issues relating to the transfer of engineers from one zone to another or the assignment of engineers to positions. Due to minor qualification issues and seniority changes in Zone 1 this pool may be developed if needed, however it is not mandatory to do so.

**X. HEALTH AND WELFARE**

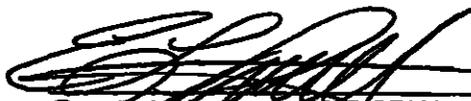
A. Engineers currently are under either the National Plan or the Union Pacific Hospital Association. Engineers coming under a new CBA will have six months from the implementation of this agreement to make an election as to keeping their old coverage or coming under the coverage of their new CBA. Engineers who do not make an election will have been deemed to elect to retain their current coverage. Engineers hired after the date of implementation will be covered under the plan provided for in the surviving CBA.

B. If an engineer is covered under a group life and/or disability insurance policy provided for in his/her collective bargaining agreement, and that collective bargaining agreement is not the surviving collective bargaining agreement, the Carrier shall continue the premium payments required at the time of implementation of this agreement for those engineers presently covered under those provisions for a period of six years, beginning January 1, 1998.

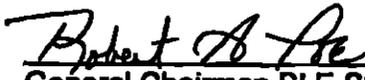
This Agreement is entered into this 15<sup>th</sup> day of JUNE 1999.

For the Organization:

  
General Chairman BLE UP

  
General Chairman BLE SP West

  
General Chairman BLE SSW

  
General Chairman BLE SP East

  
Vice-President BLE

  
Vice-President BLE

For the Carrier:

  
General Director Labor Relations

  
General Director Labor Relations

  
Assistant Vice President Southern Region

18

**MERGER  
IMPLEMENTING AGREEMENT  
(St. Louis Hub)**

between the

**UNION PACIFIC RAILROAD COMPANY  
Southern Pacific Transportation Company  
and the**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

**PREAMBLE**

The U.S. Department of Transportation, Surface Transportation Board ("STB") approved the merger of the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") and Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp., and the Denver & Rio Grande Western Railroad Company ("DRGW") (collectively referred to as "SP") in Finance Docket 32760. In approving this transaction, the STB imposed New York Dock labor protective conditions. Copy of the New York Dock conditions is attached as Attachment "A" to this Agreement.

Subsequent to the filing of Union Pacific's application but prior to the decision of the STB, the parties engaged in certain discussions which focused upon Carrier's request that the Organization support the merger of UP and SP. These discussions resulted in the parties exchanging certain commitments, which were outlined in letters dated March 8(2), March 9 and March 22, 1996.

On October 10, 1997, the Carriers served notice of their intent to merge and consolidate operations generally in the following territories:

Union Pacific:      St. Louis/Dupo to Dexter via Chester Sub  
  
                            Dexter to Memphis  
  
                            St. Louis/Dupo to Poplar Bluff/Dexter via DeSoto Sub  
  
                            Salem to Dexter

Findlay Junction to Metropolis

Gorham to Benton Junction

Chester to Mt. Vernon

St. Louis/Dupo to Chicago via Pana (not including Chicago Terminal Complex)

UP (former MP) lines governed by the Missouri and Illinois Agreements

St. Louis/Dupo to South Pekin (not including South Pekin)

St. Louis/Dupo to Jefferson City

St. Louis Terminal

**Southern Pacific:  
(SSW/SPCSL)**

St. Louis/East St. Louis to Dexter

St. Louis/East St. Louis to Bloomington (not including Bloomington)

St. Louis/East St. Louis to Jefferson City

St. Louis Terminal

Dexter to Memphis

Pursuant to Section 4 of the New York Dock protective conditions, in order to achieve the benefits of operational changes made possible by the transaction and to modify collective bargaining agreements to the extent necessary to obtain those benefits,

**IT IS AGREED:**

**ARTICLE I - WORK AND ROAD POOL CONSOLIDATIONS**

The following work/road pool consolidations and/or modifications will be made to existing runs.

A. Zone 1 Seniority District

1. Territory Covered: St. Louis/East St. Louis/Dupo to Dexter via Chester Sub  
  
St. Louis/East St. Louis/Dupo to Poplar Bluff/Dexter via DeSoto Sub  
  
Dexter to Memphis  
  
Salem to Metropolis (not including Salem)  
  
Salem to Dexter (not including Salem)  
  
Chester to Mt. Vernon  
  
Gorham to Benton Junction  
  
UP (former MP) lines governed by the M&I labor agreements  
  
St. Louis/East St. Louis/Dupo to Jefferson City

The above includes all UP, SSW and SPCSL main lines, branch lines, industrial leads, yard tracks and stations between or located at the points indicated. Where the phrase "not including" is used above, it refers to other than through freight operations, but does not restrict through freight crews from operating into/out of such terminals/points or from performing work at such terminals/points pursuant to the designated collective bargaining agreement provisions.

2. All former UP Dupo-Poplar Bluff and former SSW E. St. Louis-Illmo/Jonesboro pool freight service shall be combined into one (1) pool operating between St. Louis and Dexter, with St. Louis as the home terminal.
  - a. The pool described above shall be slotted, and Attachment "B" lists the slotting order for the pool. Former UP and SSW engineers shall have prior rights to said pool turns as set forth in said Attachment "B". The Carrier and the Organization shall mutually agree on the number of turns subject to this arrangement as set forth in said Attachment "B". If turns in excess of that number are established or any of such turns be unclaimed by a prior rights engineer they shall be filled from the zone roster, and thereafter from the common roster.

- b. **Engineers in this pool shall under normal conditions be confined to through freight service between St. Louis and Dexter, and will not be inducted into other service off the Chester Sub which is not connected with pool freight service in that corridor. Hours of Service relief of trains operating St. Louis to Dexter may be protected by the extra board at Dexter if the train has reached Illmo or beyond. If the extra board is exhausted, an away-from-home engineer may be used, and will thereafter either be deadheaded home or placed first out for service on his rest. Such trains which have not reached Illmo shall be protected on a straightaway move by a home terminal pool engineer at St. Louis. Hours of Service relief of trains in this pool operating from Dexter to St. Louis may be protected by the extra board at St. Louis if the train has reached Illmo or beyond; otherwise, a rested away-from-home terminal engineer at Dexter shall be used on a straightaway move to provide such relief.**
- c. **At Dexter, away from home terminal engineers called to operate through freight service to St. Louis may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through Dexter to their destination without claim or complaint from any other engineer. When so used, the engineer shall be paid an additional one-half (½) day at the basic pro rata through freight rate for this service in addition to the district miles of the run. If time spent beyond the terminal under this provision is greater than four (4) hours, then they shall be paid on a minute basis at the basic pro rata through freight rate.**
- d. **At Dexter the handling of New Madrid and Sikeston coal trains shall be consolidated into a single unassigned pool. This pool will be advertised and assigned based upon Zone 1 prior rights seniority, and thereafter from the common roster.**
- e. **Engineers of the North Little Rock/Pine Bluff Hub have certain rights, as defined in the merger implementing agreement for that hub, to receive their through freight trains up to twenty-five (25) miles on the far side (northward) of the terminal and run back through Dexter without claim or complaint from any other engineer.**
- f. **The terminal limits of Dexter shall extend between Mile Posts 46.0 and 53.0 on the SSW Illmo Subdivision and to Mile Post 188.0 on the UP Chester Subdivision.**

- g. Effective with implementation of the freight pool described in Article I.A.2. above, Illmo and Poplar Bluff shall cease to be considered a home terminal for pool service. As part of the interim arrangements negotiated in the North Little Rock/Pine Bluff Merger Implementing Agreement, it was agreed that engineers at Illmo and Poplar Bluff would be given certain options to relocate to Dexter rather than St. Louis. The specific details of such options are set forth in Side Letter No. 11 to this Implementing Agreement.
- h. Engineers protecting through freight service in the St. Louis - Dexter pool described in Article I.A.2 above shall be provided lodging at Dexter pursuant to existing agreements, and the Carrier shall provide transportation to engineers between the on/off duty location and the designated lodging facility.
- i. Pursuant to Side Letter No. 11 to this Agreement, engineers protecting through freight service in the St. Louis - Dexter pool described in Article I.A.2 above shall be afforded lodging at St. Louis, if requested, pursuant to the terms of this Agreement. The option to exercise "reverse lodging" at the home terminal must be initiated with CMS within thirty (30) days following the date of implementation of this Agreement and remains in effect for a one (1) year period, renewable annually thereafter unless or until this arrangement is terminated by agreement between the parties pursuant to Side Letter No. 11. The Carrier will, to the extent practicable, give such engineers a two-hour and thirty minute (2'30") call for service, but no penalty will be applied to the Carrier or the engineer if such is not afforded in any instance. These provisions do not apply to employees hired on or after the date of this Agreement.
- j. Engineers protecting through freight service in the St. Louis to Dexter pool, who have elected the "reverse lodging" option described in i. above shall have lay off privileges at the away from home terminal consistent with the designated collective bargaining agreement rules and practices. When an engineer lays off at the away from home terminal, such vacancy will be filled by the extra board at Dexter.
- k. Engineers protecting through freight service in the St. Louis to Dexter pool, who have elected the "reverse lodging" option described in i. above shall be paid HAHT at the reverse terminal pursuant to this Implementing Agreement. All other provisions of the designated collective bargaining agreement regarding HAHT remain unchanged.

**NOTE:** The provisions of Articles I A.2.i, I.A.2.j., and I.A.2.k. above shall only apply to engineers residing in Poplar Bluff or Illmo or vicinity, and protecting service at such locations or vicinity, on October 10, 1997 (date of Carrier's St. Louis Hub Notice).

- I. Carrier shall advertise and operate an unassigned service pool (known on the former UP as "Pool 1") to protect all unassigned Zone 1 service in Illinois. The home terminal of this pool shall be St. Louis. Pre-merger rules and practices pertaining to the former UP "Pool 1" are adopted herein, except as specifically amended in this Implementing Agreement, and as additionally set forth below:
  - (1) The scope of territory covered by this pool shall be all of Zone 1 as defined in this Agreement on the Illinois side of the Mississippi, and the Chester Sub to Dexter, as described below.
  - (2) The engineers in this pool shall not be used to supplant through freight crews or otherwise handle through freight trains between St. Louis and Dexter; however, in the course of handling normal Pool 1 unassigned business, Pool 1 engineers may handle their trains as far south as Dexter. Engineers under such circumstances may either be tied up at Dexter for rest and later used for Pool 1 service, or shall be deadheaded to the home terminal. It is understood such Pool 1 engineers may not be injected into the St. Louis-Dexter pool for work back to St. Louis in through freight service, except when there are no rested pool or extra engineers available at Dexter.
3. All UP and SSW pool freight service between Dexter and Memphis will be combined into one (1) pool with Dexter as the home terminal. Memphis will serve as the away from home terminal. Engineers operating between Dexter and Memphis may utilize any combination of UP or SSW trackage between such points. The former UP St. Louis (Dupo) to Memphis ID Agreement is suspended.
  - a. The pool described above shall be slotted and Attachment "C" lists the slotting order for the pool. Former UP engineers shall have prior rights to said pool turns as set forth in said Attachment "C". The Carrier and the Organization shall mutually agree on the number of turns subject to this

arrangement as set forth in said Attachment "C". If turns in excess of that number are established or any of such turns be unclaimed by a prior rights engineer they shall be filled from the zone roster, and thereafter from the common roster.

- b. Hours of Service relief of trains in this pool operating from Dexter to Memphis shall be protected by the extra board at Memphis if the train has reached Wynne or beyond. If this extra board is exhausted or no longer in existence, an away-from-home terminal engineer may be used and will thereafter either be deadheaded home or placed first out for service on their rest. Such trains which have not reached Wynne shall be protected on a straightaway move by a home terminal pool engineer at Dexter. Trains operating Memphis to Dexter may be protected by the extra board at Dexter if the train has reached Jay Siding or beyond (on the former SSW) or Corning (on the UP Hoxie Subdivision); otherwise, a rested away-from-home terminal engineer at Memphis may be used to provide such relief. If none rested and available, a home terminal pool engineer at Dexter may be used in turnaround service to provide such relief, and when so used, will be placed first out on his rest for additional service.
  
- c. In addition to protecting pool freight service between Dexter and Memphis, a sufficient number of engineers shall be maintained at Dexter to protect all other service requirements at or in the vicinity of said location, including but not limited to:
  - (1) Local, road switcher, yard, work, wreck, or any other service headquartered at or in the vicinity of Poplar Bluff, including operations on the DeSoto Subdivision between Poplar Bluff and Bismarck.
  - (2) Local, road switcher, yard, work, wreck, or any other service headquartered at or in the vicinity of Dexter, including Jonesboro, Illmo, Paragould and Malden.
  - (3) All Hours of Service relief of pool freight engineers within a fifty (50) mile radius of Dexter in any direction which are not performed by road engineers under a 25-mile zone provision.
  - (4) New Madrid coal trains operating between Dexter and the power plant, including handling thereof from/to Illmo when stored or staged at that location.

- (5) Sikeston coal trains operating between Poplar Bluff and Sikeston.
  - (6) Engineers in the Dupo/Dexter and Salem/Dexter pools laying off at Dexter while exercising "reverse layoff" privileges at Dexter.
4. All UP and SSW pool freight service between St. Louis and Jefferson City will be combined into one (1) pool with St. Louis as the home terminal. Jefferson City will serve as the away from home terminal. Engineers operating between St. Louis and Jefferson City may utilize any combination of UP or SSW trackage between such points.
- a. The pool described above shall be slotted, and Attachment "D" lists the slotting order for the pool. Former UP and SSW engineers shall have prior rights to said pool turns as set forth in said Attachment "D". The Carrier and the Organization shall mutually agree on the number of turns subject to this arrangement as set forth in said Attachment "D". If turns in excess of that number are established or any of such turns be unclaimed by a prior rights engineer they shall be filled from the zone roster, and thereafter from the common roster.
  - b. Hours of Service relief of trains in this pool operating from St. Louis to Jefferson City may be protected by the extra board at Jefferson City if the train has reached Hermann or beyond. If the extra board is exhausted, an away-from-home terminal engineer may be used and will thereafter either be deadheaded home or placed first out for service on their rest. Such trains which have not reached Hermann shall be protected on a straightaway move by a home terminal pool engineer at St. Louis. Hours of Service relief of trains in this pool operating from Jefferson City to St. Louis may be protected by the extra board at St. Louis if the train has reached Washington; otherwise, a rested away-from-home terminal engineer at Jefferson City shall be used on a straightaway move to provide such relief.
  - c. At Jefferson City, away-from-home terminal engineers called to operate through freight service to St. Louis may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through Jefferson City to their destination without claim or complaint from any other engineer. When so used, the engineer shall be paid an additional one-half (1/2) day at the basic pro rata through freight rate for this service in addition to the district miles of the run.

If time spent beyond the terminal under this provision is greater than four (4) hours, then they shall be paid on a minute basis at the basic pro rata through freight rate.

- d. Engineers of the Kansas City Hub may have certain rights to be defined, if any, in the Implementing Agreement for that hub, to receive their through freight trains up to twenty-five (25) miles on the far side of the terminal and run back through Jefferson City without claim or complaint from any other engineers.
- e. It is the intent of the parties that the territory between Jefferson City and Kansas City (not including Jefferson City) and the work and employees associated therewith shall belong to the Kansas City Hub. Effective upon implementation of this Agreement, all work within this territory shall be performed by such engineers who were home terminated at Jefferson City on the date of the notice served for this hub and shall not be under the jurisdiction of the St. Louis Hub in any manner.
  - (1) The integration of the above engineers and work into the Kansas City Hub shall be more definitively described in the merger Implementing Agreement covering such hub; however, the parties have agreed that the consolidated pool in this territory will be a slotted pool with prior rights UP and SSW engineers at Jefferson City maintaining prior rights to their respective pool slots.
  - (2) In the interim period between the implementation of this Agreement and a Merger Implementing Agreement for the Kansas City Hub, former SSW and UP engineers at Jefferson City shall be maintained on separate rosters and extra boards for purposes of continuing to protect their prior pools, assignments and extra service.
- f. All UP and SSW operations within the Jefferson City terminal limits shall be consolidated into a single operation. The terminal limits of Jefferson City shall be the same as the pre-existing terminal limits on the UP (M.P.128-M.P.124.3).
- g. Engineers protecting through freight service in the St. Louis - Jefferson City pool described in Article I.A.4. above shall be provided lodging at Jefferson City pursuant to existing agreements, and the Carrier shall provide transportation to engineers between the on/off duty location and the designated lodging facility.

- h. Engineers protecting through freight service in the St. Louis to Jefferson City pool described in Article I.A.4. above shall be afforded lodging at St. Louis, if requested, pursuant to the terms of this Agreement. The option to exercise "reverse lodging" at the home terminal must be initiated with CMS within thirty (30) days following the date of implementation of this Agreement and remains in effect for a one (1) year period, renewable annually thereafter. This provision does not apply to employees hired on or after the date of this Agreement.
- i. Engineers protecting through freight service in the St. Louis to Jefferson City pool, who have elected the "reverse lodging" option described in h. above shall have layoff privileges at the away from home terminal consistent with the designated collective bargaining agreement rules and practices. When an engineer lays off at the away from home terminal, such vacancy will be filled by the extra board at Jefferson City.
- j. Engineers protecting through freight service in the St. Louis to Jefferson City pool, who have elected the reverse lodging option described in h. above shall be paid HAHT at the reverse terminal pursuant to this Implementing Agreement. All other provisions of the designated collective bargaining agreement regarding HAHT remain unchanged.

**NOTE:** The provisions of Articles I.A.4.h., I.A.4.i, and I.A.4.j. above shall only apply to engineers residing in Jefferson City vicinity, and protecting service at such location or vicinity, on October 10, 1997 (date of Carrier's St. Louis Hub Notice).

- k. In the event capital improvements in the future permit operation between Jefferson City and Labadie on a turnaround basis, it is understood that nothing in this Agreement would prohibit establishment of a pool headquartered at Jefferson City for such purpose. Employees protecting such pool would do so as a seniority move utilizing their prior rights Zone 1 seniority, and thereafter from the common roster.
5. The current UP Salem-Poplar Bluff ID Agreement shall be suspended upon implementation of this Agreement. In lieu thereof, the pool will operate from Salem to Dexter with Salem as the home terminal. Dexter will serve as the away from home terminal.

- a. The pool described above shall be slotted, and Attachment "E" lists the slotting order for the pool. Former MP and CEI engineers shall have prior rights to said pool turns as set forth in said Attachment "E". The Carrier and the Organization shall mutually agree on the number of turns subject to this arrangement as set forth in Attachment "E". If turns in excess of that number are established or any of such turns be unfilled by a prior rights engineer they shall be filled from the zone roster, and thereafter from the common roster.
- b. Inasmuch as Salem was the home terminal for all pool freight engineers with former UP Illinois and C&E prior rights prior to the merger, such former UP Illinois and C&E engineers assigned to this pool after implementation shall not be entitled to relocation benefits to Salem unless required to exercise seniority to this pool because they were unable to hold any position at their former location. It is understood the existing three hour (3'00") call arrangement for this pool at Salem will be continued.
- c. Hours of Service relief of trains operating Salem to Dexter may be protected by the extra board at Dexter if the train has reached Illmo or beyond. If this extra board is exhausted, a rested away-from-home terminal engineer may be used, and will thereafter either be deadheaded home or placed first out for service on their rest. Such trains which have not reached Illmo shall be protected on a straightaway move by a home terminal pool engineer at Salem. Hours of Service relief of trains in this pool operating Dexter to Salem may be protected by the extra board at Salem if the train has reached Benton (MP303) or beyond; otherwise, an away-from-home terminal engineer at Dexter shall be used on a straightaway move to provide such relief. If none rested and available, the Salem extra board may be used beyond Benton.
- d. At Dexter and Salem road crews called to operate pool freight service may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through the terminal without claim or complaint from any other engineer. When so used, the crew shall be paid an additional one-half (½) day at the basic pro rata through freight rate for this service in addition to the district miles of the run. If the time spent beyond the terminal under this provision is greater than four (4) hours, then they shall be paid on a minute basis at the basic pro rata through freight rate.

- e. The terminal limits of Salem shall be the same as the pre-existing terminal limits on the UP.
- f. Engineers protecting through freight service in the Salem-Dexter pool described in Article I.A.5. above shall be provided lodging at Dexter pursuant to existing agreements, and the Carrier shall provide transportation to engineers between the on/off duty location and the designated lodging facility.
- g. Engineers residing at Poplar Bluff and Illmo protecting the Salem - Dexter ( former Salem-Poplar Bluff) pool may continue to reside at Poplar Bluff and Illmo under a "reverse lodging" arrangement. Those engineers protecting through freight service in the Salem-Dexter pool described in Article I.A.5. above shall be entitled to preservation of such arrangement as more specifically described in Side Letter No. 11 to this Agreement. The provisions set forth in Articles I.A.2.i., I.A.2.j., and I.A.2.k. of this Agreement shall be applicable to such engineers who elect not to relocate to St. Louis or Salem.

**B. Zone 2 - Seniority District**

- 1. Territory Covered: St. Louis/East St. Louis/Dupo to Chicago via Pana (not including Chicago Terminal Complex)  
  
St. Louis/East St. Louis/Dupo to South Pekin (not including South Pekin)  
  
St. Louis/East St. Louis/Dupo to Bloomington (not including Bloomington)  
  
Salem to Chicago via Villa Grove (not including Chicago Terminal Complex)

The above includes all UP/SSW/SPCSL main lines, branch lines, industrial leads, yard tracks and stations between or located at the points indicated. Where the phrase "not including" is used above, it refers to other than through freight operations, but does not restrict through freight crews from operating into/out of such terminals/points or from performing work at such terminals/points pursuant to the designated collective bargaining agreement provisions.

- 2. All St. Louis to Villa Grove, St. Louis to South Pekin and St. Louis to Bloomington pool freight service shall be combined into one (1) pool with St. Louis as the home terminal. Villa Grove, South Pekin and Bloomington will serve as the respective away from home terminals. Engineers operating between St. Louis and Villa Grove, South Pekin

or Bloomington may utilize any combination of UP/SSW/SPCSL trackage between such points. Crews may also be transported between the destination terminals for the return trip to the home terminal, subject to the terms set forth in Side Letter No. 13.

- a. The pool described above shall be slotted, and Attachment "F" lists the slotting order for the pool. Former UP and SPCSL engineers shall have prior rights to said pool turns as set forth in said Attachment "F". The Carrier and the Organization shall mutually agree on the number of turns subject to this arrangement as set forth in said Attachment "F". If turns in excess of that number are established or any of such turns be unclaimed by a prior rights engineer they shall be filled from the zone roster, and thereafter from the common roster.
- b. The existing agreement rules and practices which apply to the former St. Louis to Villa Grove/S. Pekin dual destination pool shall apply to the new three-destination pool established herein except as otherwise modified by this Implementing Agreement.
- c. The existing UP Salem to Villa Grove pool will be maintained under this Agreement with Salem as the home terminal. Villa Grove will serve as the away from home terminal.
- d. The existing UP Villa Grove to Chicago pool will be maintained under this Agreement with Villa Grove as the home terminal. Chicago will serve as the away from home terminal. As more specifically set forth in Article II - Seniority Consolidations hereof, a sufficient number of former SPCSL engineers home terminated at Bloomington on the date of the notice served for this hub shall be entitled to acquire Zone 2 prior rights seniority and transfer to Villa Grove to represent the former SPCSL (Bloomington to Chicago) equity in this through freight corridor.
- e. The current UP interdivisional pool operating between Salem and Chicago pursuant to Arbitration Award No. 553 shall be unaffected by this Implementing Agreement. The St. Louis-Chicago ID runs shall continue to operate as a separate pool so long as sufficient service exists to justify such pool. If not, such service shall be operated off the Zone 2 extra board as described in Article III.A.5.c. of this Agreement.
- f. (1) Hours of Service relief of trains operating St. Louis to Bloomington may be protected by the extra board at Bloomington, if in existence, if the train has reached Ridgley or beyond. If no extra board exists, such relief may be provided by a rested away-from-home engineer

at Bloomington, who will thereafter either be deadheaded home or placed first out for service on their rest. Such trains which have not reached Ridgley shall be protected on a straightaway move by a home terminal pool engineer at St. Louis. Hours of Service relief of trains operating Bloomington to St. Louis may be protected by the extra board at St. Louis if the train has reached Ridgley or beyond; otherwise, a rested away-from-home engineer at Bloomington shall be used on a straightaway move to provide such relief. If none rested and available, the St. Louis Zone 2 extra board may be used beyond Ridgley.

- (2) Hours of Service relief of trains operating St. Louis to S. Pekin may be protected by the extra board at S. Pekin, if in existence, if the train has reached Virden siding or beyond. If no extra board exists or it is exhausted, such relief may be provided by a rested away-from-home terminal engineer at S. Pekin, who will thereafter either be deadheaded home or placed first out for service on their rest. Such trains which have not reached Virden siding shall be protected on a straightaway move by a home terminal pool engineer at St. Louis. Hours of Service relief of trains operating S. Pekin to St. Louis may be protected by the extra board at St. Louis if the train has reached Virden siding or beyond; otherwise, a rested away-from-home engineer at S. Pekin shall be used on a straightaway move to provide such relief. If none rested and available, the St. Louis Zone 2 extra board may be used beyond Virden siding.
- (3) Hours of Service relief of trains operating St. Louis to Villa Grove may be protected by the extra board at Villa Grove, if in existence, if the train has reached Findlay Junction or beyond. If no extra board exists or it is exhausted, such relief may be provided by a rested away-from-home terminal engineer at Villa Grove, who will thereafter either be deadheaded home or placed first out for service on their rest. Such trains which have not reached Findlay Junction shall be protected on a straightaway move by a home terminal pool engineer at St. Louis. Hours of Service relief of trains operating Villa Grove to St. Louis may be protected by the extra board at St. Louis if the train has reached Findlay Junction or beyond; otherwise, a rested away-from-home engineer at Villa Grove shall be used on a straightaway move to provide such relief. If none rested

and available, the St. Louis Zone 2 extra board may be used beyond Findlay Junction.

- (4) Hours of Service relief of trains operating in ID service between St. Louis and Chicago or between Salem and Chicago shall be provided as set forth in Arbitration Award No. 553.
- g. At South Pekin, Bloomington, Villa Grove or Salem road crews called to operate pool freight service may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through the terminal without claim or complaint from any other engineer. When so used, the crew shall be paid an additional one half (½) day at the basic pro rata through freight rate in addition to the district miles of the run. If the time spent beyond the terminal under this provision is greater than four (4) hours, then they shall be paid on a minute basis at the basic pro rata through freight rate.
- h. Engineers of the Chicago Hub may have certain rights to be defined, if any, in the Implementing Agreement for that hub, to receive their through freight trains up twenty-five (25) miles on the far side of the terminal and run back through South Pekin or Bloomington without claim or complaint from any other engineer.
- i. The terminal limits of Salem, South Pekin, and Villa Grove shall be the same as the pre-existing terminal limits. The Terminal limits of Bloomington shall be established by this Implementing Agreement as being MP 124.1 to MP 140.9 on the former SPCSL Springfield Subdivision.
- j. Engineers will be provided lodging at all of the away-from-home terminal locations comprehended by the operations described in Article I.B.2. above pursuant to existing agreements, and the Carrier shall provide transportation to engineers between the on/off duty locations and the designated lodging facilities.

C. St. Louis Terminal

- 1. All UP, SSW and SPCSL operations within the new St. Louis Terminal limits shall be consolidated into a single operation. The terminal includes all UP/SSW/SPCSL main lines, branch lines, industrial leads, yard tracks and stations between or located at the points indicated. All UP/SSW/SPCSL road crews may receive or leave their trains at

any location within the terminal and may perform work within the terminal pursuant to the applicable collective bargaining agreement, including national agreements. The Carrier will designate the on/off duty points for all yard crews, with these on/off duty points having appropriate facilities as currently required in the collective bargaining agreement.

2. All yard assignments operating within the St. Louis Terminal shall be considered Zone 1 assignments for purposes of the application of Article II hereof.
3. All UP, SSW and SPCSL rail lines, yards and/or sidings within the St. Louis Terminal will be considered as common to all engineers working in, into and out of St. Louis. Interchange rules are not applicable to intra-carrier moves within the terminal.
4. Terminal limits for the consolidated St. Louis terminal are as follows:

<u>UP</u>	<u>Mile Post</u>
DeSoto Subdivision	10.8
Sedalia Subdivision	8.0
Chester Subdivision	9.16
St. Louis Subdivision (former CNW)	144.0
Pana Subdivision	273.7

<u>SSW</u>	<u>Mile Post</u>
Eldon Line	19.0

SSW terminal limits shall be established as shown above.

<u>SPCSL</u>	<u>Mile Post</u>
Springfield Subdivision	252.1

SPCSL terminal limits are established by this Agreement.

- D. At all terminals the Carrier will designate the on/off duty points for all road engineers, with these on/off duty points having appropriate facilities as currently required in the collective bargaining agreement.
  - a. In view of the close proximity thereof, the yard offices at the Alton and Southern (A&S) and Dupo shall be considered interchangeable as on/off duty locations for road crews in through freight service. Home terminal engineers will be advised at time of call which of these

facilities they should report to for commencement of service. Engineers arriving at St. Louis on their return trip, if not yarding their train and tying up at the same office where they reported on their outbound trip, shall be transported to said original reporting location (A&S or Dupo). Engineers so transported shall remain on duty and under pay for the service trip until they have arrived and tied up at said original reporting location. In addition, they shall be paid thirty (30) minutes at the basic pro rata through freight rate, separate and apart from the service trip.

- E. In all of the zones, when local, work, wreck, HOS relief or other such road runs are called or assigned which operate exclusively within the territorial limits of one of the zones established in this Agreement, such service shall be protected by engineers in such zone. If such run or assignment extends across territory encompassing more than one zone contemplated by this Agreement, it will be protected by engineers in the zone in which such service is home terminated.

## **ARTICLE II - SENIORITY CONSOLIDATIONS**

- A. To achieve the work efficiencies and allocation of forces that are necessary to make the St. Louis Hub operate efficiently as a unified system, a new seniority district will be formed and a master Engineer Seniority Roster -- UP/BLE St. Louis Merged Roster #1 -- will be created for the engineers holding seniority in the territory comprehended by this Agreement on the effective date thereof. The new roster will be divided into two (2) zones as described in Articles I.A and I.B. above.
- B. Prior rights seniority rosters will be formed covering each of the two (2) zones outlined above. Placement on these rosters and awarding of prior rights to their respective zones shall be based on the following:
  - 1. Zone 1 - This roster will consist of former SPCSL engineers with prior rights on SPCSL (Roster No. 310101), former SSW engineers with prior rights on SSW Jefferson City (Roster No. 311101), SSW Illmo (Roster No. 302101), SSW Eldon (Roster No. 306101), CEI-CNW (Roster No. 45101) and former UP engineers with prior rights on St. Louis Merged 1 (Roster Nos. 039111 and 040111), UP-MI East (Roster No. 046101) and UP-MI West (Roster No. 046102).
  - 2. Zone 2 - This roster will consist of former UP engineers with prior rights on CEI Villa Grove South (Roster No. 042101), CEI Villa Grove North (Roster No. 043101), CEI-CNW (Roster No. 045101), and SPCSL (Roster No. 310101).

- C. Seniority integration of the engineers from the above affected former rosters into one (1) common seniority roster will be done on a dovetail basis using the current date of seniority as a locomotive engineer.
- D. Entitlement to assignment on subject consolidated roster shall be by canvass of the employees contributing equity to each of the zones set forth herein.
- E. Any engineer working in the territories described in Article I. on the date of implementation of this Agreement, but currently reduced from the engineers working list, shall also be given a place on the roster and prior rights. Engineers currently forced to this territory will be given a place on the roster and prior rights if so desired; otherwise, they will be released when their services are no longer required and will not establish a place on the new roster.
- F. UP engineers currently on an inactive roster pursuant to previous merger agreements shall participate in the roster formulation process described above based upon their date of seniority as a locomotive engineer.
- G. Engineers on each of the prior rights zones described above will be afforded common seniority on the other zone outside their prior rights zone. All such common seniority shall be based upon the current date of seniority as a locomotive engineer. If this process results in engineers having identical common seniority dates, seniority will be determined by the age of the employees with the older employee placed first. If there are more than two (2) employees with the same seniority date, and the ranking of the pre-merged rosters would make it impossible for age to be a determining factor, a random process, jointly agreed upon by the Director of Labor Relations and the appropriate General Chairman(men), will be utilized to effect a resolution. It is understood this process may not result in any employee running around another employee on his former roster.
- H. With the creation of the new seniority described herein, all previous seniority outside the St. Louis Hub held by engineers inside the new hub shall be eliminated and all seniority inside the new hub held by engineers outside the hub shall be eliminated. All pre-existing prior rights, top and bottom, or any other such seniority arrangements in existence, if any, are of no further force or effect and the provisions of this Agreement shall prevail in lieu thereof. Upon completion of consolidation of the rosters and implementation of this hub, it is understood that no engineer may be forced to any territory or assignment outside the St. Louis Hub.
- I. The total number of engineers on the master UP/BLE St. Louis Merged Roster #1 will be mutually agreed upon by the parties.

### **ARTICLE III - EXTRA BOARDS**

- A. The following extra boards shall be established to protect vacancies and other extra board work into or out of the St. Louis Hub or in the vicinity thereof. It is understood whether or not such boards are guaranteed boards is determined by the designated collective bargaining agreement.
1. **Chester** - One (1) Extra Board (combination road/yard) to protect all extra service at or in the vicinity of Chester, including Sparta, and all other territories formerly covered by the former M&I Agreements not protected by Ste. Genevieve. If no extra board exists at Ste. Genevieve, this extra board will protect all extra service formerly protected by such extra board. This extra board may be used to perform relief of all locals, road switchers, work trains, and other regular assignments when the point of relief is closer to this board than St. Louis. It is not intended that this extra board be used for unassigned service comprehended by Pool 1 (Article I.A.2.I.) except Hours of Service relief of Pool 1 trains when the point of relief is closer to this board than St. Louis. The secondary source of supply when this extra board is exhausted will be St. Louis (Zone 1).
  2. **Ste. Genevieve** - One (1) Extra Board (combination road/yard) to protect all extra service at or in the vicinity of Ste. Genevieve but not including Bismarck, which includes all former M&I extra work on the Missouri side of the Mississippi River. At any time after one (1) year from date of implementation of this Implementing Agreement, this board may be consolidated into the extra board at Chester, subject to service of a 30-day notice of intent to do so by the Carrier. So long as this extra board remains at St. Genevieve, it shall be prior righted to former M&I engineers.
  3. **Salem** - Two (2) Extra Boards (combination road/yard) to protect the following:
    - a. All vacancies in the Salem-Villa Grove and Salem-Chicago through freight pools, and all extra service at or in the vicinity of Salem, including St. Elmo.
    - b. All vacancies in the Salem-Dexter through freight pool, and all extra service between Salem and Metropolis which originates at Salem or any point between Salem and Mt. Vernon, not including Mt. Vernon. This board will be staffed based upon the common seniority roster for the hub.

- c. The boards described in a. and b. above will supplement each other when one is exhausted. The boards described in a. and b. above, in that order, will supplement the Villa Grove extra board if that board is exhausted.
4. Villa Grove - One (1) Extra Board (combination road/yard) to protect all extra service at or in the vicinity of Villa Grove. This board will protect all Villa Grove-Chicago short pool vacancies and any HOS relief of Salem-Chicago or St. Louis-Chicago pool freight trains at or north of Findlay Junction. This board will supplement Salem if that board exhausted.
5. Dexter - One (1) Extra Board (combination road/yard) to protect all extra service at or in the vicinity of Dexter. The scope of this extra board includes all the service requirements outlined in Article I.A.3.c.
6. St. Louis - Three (3) Extra Boards (combination road/yard) to protect each of the following:
- a. All Zone 1 extra road service between St. Louis Terminal and Dexter via the Chester Sub and between St. Louis Terminal and Poplar Bluff/Dexter via the DeSoto Sub, except as modified above, but including extra service at Bismarck. This board will also protect all yard extra service in the St. Louis Terminal which originates on the Illinois side of the Mississippi River. This board will be headquartered at St. Louis.
- b. All Zone 1 extra service between St. Louis Terminal and Jefferson City. This board will also protect all yard extra service in the St. Louis Terminal which originates on the Missouri side of the Mississippi. This board will be headquartered at St. Louis.
- NOTE:** It is clearly understood that the Carrier's agreement to split the protection of extra yard service in the St. Louis Terminal in no way constitutes any restrictions upon the right of any yard engineer in the consolidated terminal to do any work at any location within the terminal.
- c. All Zone 2 extra service between St. Louis Terminal and Bloomington, South Pekin and Villa Grove. This extra board will protect all extra work on pool freight ID runs between St. Louis and Chicago, and in the event there is insufficient work in this service to justify a separate pool, such service will be protected by this extra board in its entirety.

d. The extra boards described in a. and b. above will supplement each other when one is exhausted.

7. Jefferson City - One (1) Extra Board (combination road/yard) to protect all Zone 1 vacancies headquartered at Jefferson City including vacancies created by engineers laying off while exercising "reverse lodging" privileges. This board shall also protect any yard or road switcher assignments with an origin/termination of Jefferson City. Local or irregular service originating at Jefferson City working east on the UP Sedalia Subdivision will also be protected by this board.

B. If additional extra boards are established or abolished after the date of implementation of this Agreement, it shall be done pursuant to the terms of the designated collective bargaining agreement. When established, the Carrier shall designate the geographic area the extra board will cover.

#### **ARTICLE IV - APPLICABLE AGREEMENTS**

A. All engineers and assignments in the territories comprehended by this Implementing Agreement will work under the Collective Bargaining Agreement currently in effect between the Union Pacific Railroad Company and the Brotherhood of Locomotive Engineers dated October 1, 1977 (reprinted October 1, 1991), including all applicable national agreements, the "local/national" agreement of May 31, 1996, and all other side letters and addenda which have been entered into between date of last reprint and the date of this Implementing Agreement. Where conflicts arise, the specific provisions of this Agreement shall prevail. None of the provisions of these agreements are retroactive. It is understood Side Letter Nos. 23 through 26 herein modify certain provisions of the designated Collective Bargaining Agreement as it pertains to the St. Louis Hub. It is further understood said Side Letters are made without prejudice to the positions of the respective parties and it may not be cited by any party in any other negotiations or proceedings.

B. All runs established pursuant to this Agreement will be governed by the following:

1. Rates of Pay: The provisions of the June 1, 1996 National Agreement will apply as modified by the May 31, 1996 Local/National Agreement.
2. Overtime: Overtime will be paid in accordance with Article IV of the 1991 National Agreement.

3. **Transportation:** When a crew is required to report for duty or is relieved from duty at a point other than the on and off duty points fixed for the service established hereunder, the Carrier shall authorize and provide suitable transportation for the crew.

**NOTE:** Suitable transportation includes Carrier owned or provided passenger carrying motor vehicles or taxi, but excludes other forms of public transportation.

4. **Suitable Lodging:** Suitable lodging will be provided by the Carrier in accordance with existing agreements.

C. Except where modified by this Implementing Agreement, the ID service provisions set forth in Arbitration Award No. 553 shall continue in full force and effect.

D. 1. Engineers performing service in the St. Louis to Dexter, Salem to Dexter and Dexter to Memphis pools will be governed by Section 4 (rates of pay) and Section 7 (straightaway service) of the UP St. Louis-Memphis ID Agreement dated April 5, 1991.

2. In addition, in order to expedite the movement of trains in these pools, engineers on such runs will not stop to eat except in cases of emergency or unusual delays. Engineers on such runs shall be paid the prevailing away-from-home meal allowance (presently \$6.00) for the trip.

3. Concurrent with the effective (implementation) date of this Merger Implementing Agreement, Section 5 of the St. Louis-Memphis ID Agreement dated April 5, 1991, and all other agreements or letters of understandings, if any, pertaining to a hand-up lunch at Illmo shall be extinguished and shall have no further force or effect. The practice of providing any engineers a hand-up lunch at Illmo will be discontinued.

E. Engineers will be treated for vacation, entry rates and payment of arbitraries as though all their time on their original railroad had been performed on the merged railroad. Engineers assigned to the Hub on the effective date of this Agreement (including those engaged in engineer training on such date) shall have entry rate provisions waived. Engineers hired/promoted after the effective date of the Agreement shall be subject to National Agreement rate progression provisions.

F. Engineers protecting pool freight operations on the territories covered by this Agreement shall receive continuous held-away-from-home terminal pay (HAHT) for all time so held at the distant terminal after the expiration of

sixteen (16) hours. All other provisions in existing agreement rules and practices pertaining to HAHT pay remain unchanged.

- G. Except where specific terminal limits have been detailed in the Agreement, it is not intended to change existing terminal limits under applicable agreements.
- H. Actual miles will be paid for runs in the new St. Louis Hub. Examples are illustrated in Attachment "G".

#### **ARTICLE V - FAMILIARIZATION**

- A. Engineers involved in the consolidation of the St. Louis Hub covered by this Agreement whose assignments require performance of duties on a new geographic territory not familiar to them will be given full cooperation, assistance and guidance in order that their familiarization shall be accomplished as quickly as possible. Engineers will not be required to lose time or ride the road on their own time in order to qualify for these new operations.
- B. Engineers will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualification shall be handled with local operating officers. The parties recognize that different terrain and train tonnage impact the number of trips necessary and the operating officer assigned to the merger will work with the local Managers of Operating Practices in implementing this Section. If disputes occur under this Article they may be addressed directly with the appropriate Director of Labor Relations and the General Chairman for expeditious resolution.
- C. It is understood that familiarization required to implement the merger consolidation herein will be accomplished by calling a qualified engineer (or Manager of Operating Practices) to work with an engineer called for service on a geographical territory not familiar to him.
- D. Engineers hired subsequent to the effective date of this document will be qualified in accordance with current FRA certification regulations and paid in accordance with the local agreements that will cover the merged St. Louis Hub.

#### **ARTICLE VI - IMPLEMENTATION**

- A. The Carrier will give at least thirty (30) days' written notice of its intent to implement this Agreement.

- B. 1. Concurrent with the service of its notice, the Carrier will post a description of Zones 1 and 2 described in Article I herein.**
- 2. Ten (10) days after posting of the information described in B.1. above, the appropriate Labor Relations Personnel, CMS Personnel, General Chairmen and Local Chairmen will convene a workshop to implement assembly of the merged seniority rosters. At this workshop, the representatives of the Organization will participate with the Carrier in constructing consolidated seniority rosters as set forth in Article II of this Implementing Agreement.**
- 3. Dependent upon the Carrier's manpower needs, the Carrier may develop a pool of representatives of the Organization, with the concurrence of the General Chairmen, which, in addition to assisting in the preparation of the rosters, will assist in answering engineers' questions, including explanations of the seniority consolidation and implementing agreement issues, discussing merger integration and familiarization issues with local Carrier officers and coordinating with respect to CMS issues relating to the transfer of engineers from one zone to another or the assignment of engineers to positions.**
- C. The roster consolidation process shall be completed in five (5) days, after which the finalized agreed-to rosters will be posted for information and protest in accordance with the applicable agreements. If the participants have not finalized agreed-to rosters, the Carrier will prepare such rosters, post them for information and protest, will use those rosters in assigning positions, and will not be subject to claims or grievances as a result.**
- D. Once rosters have been posted, those positions which have been created or consolidated will be bulletined for a period of seven (7) calendar days. Engineers may bid on these bulletined assignments in accordance with applicable agreement rules. However, no later than ten (10) days after closing of the bulletins, assignments will be made.**
- E. 1. After all assignments are made, engineers assigned to positions which require them to relocate will be given the opportunity to relocate within the next thirty (30) day period. During this period, the affected engineers may be allowed to continue to occupy their existing positions. If required to assume duties at the new location immediately upon implementation date and prior to having received their thirty (30) days to relocate, such engineers will be paid normal and necessary expenses at the new location until relocated. Payment of expenses will not exceed thirty (30) calendar days.**
- 2. The Carrier may, at its option, elect to phase-in the actual pool consolidations which are necessary in the implementation of this**

Agreement. Engineers will be given ten (10) days' notice of when their specific relocation/reassignment is to occur.

## **ARTICLE VII - PROTECTIVE BENEFITS AND OBLIGATIONS**

- A. All engineers who are listed on the prior rights St. Louis Hub (Zones 1 and 2) merged rosters shall be considered adversely affected by this transaction and consolidation and will be subject to the New York Dock protective conditions which were imposed by the STB. It is understood there shall not be any duplication or compounding of benefits under this Agreement and/or any other agreement or protective arrangement.
1. Carrier will calculate and furnish TPA's for such engineers to the Organization as soon as possible after implementation of the terms of this Agreement. The time frame used for calculating the TPA's in accordance with New York Dock will be August 1, 1996 through and including July 31, 1997.
  2. In consideration of blanket certification of all engineers covered by this Agreement for wage protection, the provisions of New York Dock protective conditions relating to "average monthly time paid for" are waived under this Implementing Agreement.
  3. Test period averages for designated union officers will be adjusted to reflect lost earnings while conducting business with the Carrier.
  4. National Termination of Seniority provisions shall not be applicable to engineers hired prior to the effective date of this Agreement.
- B. Engineers required to relocate under this Agreement will be governed by the relocation provisions of New York Dock. In lieu of New York Dock provisions, an employee required to relocate may elect one of the following options:
1. Non-homeowners may elect to receive an "in lieu of" allowance in the amount of \$10,000 upon providing proof of actual relocation.
  2. Homeowners may elect to receive an "in lieu of" allowance in the amount of \$20,000 upon providing proof of actual relocation.
  3. Homeowners in Item 2 above who provide proof of a bona fide sale of their home at fair value at the location from which relocated shall be eligible to receive an additional allowance of \$10,000.

- a) This option shall expire within five (5) years from date of application for the allowance under Item 2 above.
- b) Proof of sale must be in the form of sale documents, deeds, and filings of these documents with the appropriate agency.

**NOTE:** All requests for relocation allowances must be submitted on the appropriate form.

- 4. With the exception of Item 3 above, no claim for an "in lieu of" relocation allowance will be accepted after two (2) years from date of implementation of this Agreement.
- 5. Under no circumstances shall an engineer be permitted to receive more than one (1) "in lieu of" relocation allowance under this Implementing Agreement.
- 6. Engineers receiving an "in lieu of" relocation allowance pursuant to this Implementing Agreement will be required to remain at the new location, seniority permitting, for a period of two (2) years.

#### **ARTICLE VIII - SAVINGS CLAUSES**

- A. The provisions of the applicable Schedule Agreement will apply unless specifically modified herein.
- B. It is the Carrier's intent to execute a standby agreement with the Organization which represents engineers on the former Missouri and Illinois. Upon execution of that Agreement, said engineers will be fully covered by this Implementing Agreement as though the Organization representing them had been signatory hereto.
- C. Nothing in this Agreement will preclude the use of any engineers to perform work permitted by other applicable agreements within the new seniority districts described herein, i.e., engineers performing Hours of Service Law relief within the road/yard zone, ID engineers performing service and deadheads between terminals, road switchers handling trains within their zones, etc.
- D. The provisions of this Agreement shall be applied to all engineers covered by said Agreement without regard to race, creed, color, age, sex, national origin, or physical handicap, except in those cases where a bona fide occupational qualification exists. The masculine terminology herein is for the purpose of convenience only and does not intend to convey sex preference.

**ARTICLE IX - HEALTH AND WELFARE**

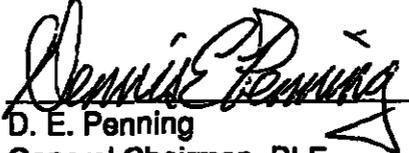
Engineers of the former UP who are working under the collective bargaining agreement designated in Article IV.A. of this Implementing Agreement belong to the Union Pacific Hospital Association. Former SSW/SPCSL engineers are presently covered under United Health Care (former Travelers GA-23000) benefits. Said former SSW/SPCSL engineers will have ninety (90) days to make an election as to keeping their old Health and Welfare coverage or coming under the health and welfare coverage provided by the designated CBA. Any engineer who fails to exercise said option shall be considered as having elected to retain existing coverage. Engineers hired after the date of implementation will be covered under the plan provided for in the surviving CBA. Copy of the form to be used to exercise the option described above is attached as Attachment "H" to this Agreement.

**ARTICLE X - EFFECTIVE DATE**

This Agreement implements the merger of the Union Pacific and SSW/SPCSL railroad operations in the area covered by Notice dated October 10, 1997.

Signed at Kansas City, Missouri, this 15th day of April, 1998.

**FOR THE BROTHERHOOD  
LOCOMOTIVE ENGINEERS:**

  
D. E. Penning  
General Chairman, BLE

  
D. E. Thompson  
General Chairman, BLE

  
J. R. Koonce  
General Chairman, BLE

**APPROVED:**

  
J. L. McCoy  
Vice President, BLE

  
D. M. Hahs  
Vice President, BLE

**FOR THE CARRIERS:**

  
M. A. Hartman  
General Director-Labor Relations  
Union Pacific Railroad Co.

  
J. M. Raaz  
Assistant Vice President - LR  
Union Pacific Railroad Co.

April 15, 1998

MR D E PENNING  
GENERAL CHAIRMAN BLE  
12531 MISSOURI BOTTOM RD  
HAZELWOOD MO 63042

MR D E THOMPSON  
GENERAL CHAIRMAN BLE  
414 MISSOURI BLVD  
SCOTT CITY MO 63780

MR JOHN R KOONCE  
GENERAL CHAIRMAN BLE  
5050 POPLAR AVE STE 501  
MEMPHIS TN 38157

Gentlemen:

This refers to the Merger Implementing Agreement for the St. Louis Hub.

During our negotiations your Organization raised some concern regarding the intent of Article VIII - Savings Clauses, Item C thereof. Specifically, it was the concern of some of your constituents that the language of Item C might subsequently be cited to support a position that "other applicable agreements" supersede or otherwise nullify the very provisions of the Merger Implementing Agreement which were negotiated by the parties.

I assured you this concern was not valid and no such interpretation could be applied. I pointed out that Item C must be read in conjunction with Item A, which makes it clear that the specific provisions of the Merger Implementing Agreement, where they conflict with the basic schedule agreement, take precedence, and not the other way around.

The purpose of Item C was to establish with absolute clarity that there are numerous other provisions in the designated collective bargaining agreement, including national agreements, which apply to the territory involved, and to the extent such provisions were not expressly modified or nullified, they still exist and apply. It was not the intent of the Merger Implementing Agreement to either restrict or expand the application of such agreements.

In conclusion, this letter of commitment will confirm that the provisions of Article VIII - Savings Clauses may not be construed to supersede or nullify the terms of the Merger Implementing Agreement which were negotiated in good faith between the parties. I hope the above elaboration clarifies the true intent of such provisions.

Yours truly,



M. A. Hartman  
General Director-Labor Relations

19

A G R E E M E N T  
between  
UNION PACIFIC RAILROAD COMPANY  
MISSOURI PACIFIC RAILROAD COMPANY  
and  
BROTHERHOOD OF LOCOMOTIVE ENGINEERS

The Interstate Commerce Commission (ICC) approved, in Finance Docket No. 30,000 and selected Subdockets 1-6, the merger of Union Pacific Railroad Company (UP), Missouri Pacific Railroad Company (MP) and Western Pacific Railroad Company (WP), effective December 22, 1982. The ICC, in its approval of the aforesaid Finance Docket, has imposed the employe protective conditions set forth in New York Dock Ry. - Control - Brooklyn Eastern District Terminal.

Therefore, to effect the consolidation and coordination of the Omaha/Council Bluffs Terminal, to ensure the Carriers achieve maximum efficiency in the terminal operations and to ensure the affected employes receive the protection benefits provided for,

IT IS AGREED:

ARTICLE I - PURPOSE:

(a) Effective on or after September 1, 1983, the Omaha/Council Bluffs Terminal will become consolidated into a single, combined terminal operation controlled by UP with all work performed under the applicable UP schedule rules.

(b) Effective on or after September 1, 1983, the Lincoln Terminal will become consolidated into a single, combined terminal operation controlled by UP with all work performed under the applicable UP schedule rules.

(c) Effective on or after September 1, 1983, UP and MP traffic between Omaha/Council Bluffs and Kansas City and between Kansas City and Omaha/Council Bluffs will be handled in MP trains. All work performed by MP road crews will be performed under applicable MP schedule rules.

ARTICLE II - SENIORITY:

(a)(1) On the effective date of the consolidation described in Article I(a) above, regular yard assignments in the consolidated Omaha/Council Bluffs Terminal shall be allocated between UP and MP employes on a 79.39% (UP) and 20.61% (MP) basis. The allocation of jobs between UP and MP flowing from this percentage division is set forth in Attachment "A".

(a)(2)(i) . Each regular yard assignment working in the consolidated terminal shall be designated as either a UP or MP assignment in accordance with the allocation formula. The designation of assignments on the allocation formula should be done by the appropriate Local Chairmen and the designated officer of the UP. This designation may be changed when engineers are permitted to exercise seniority in accordance with UP Schedule Rule 98.

When positions are abolished or added between the regular designation periods, the appropriate Local Chairmen and the designated UP officer shall determine whether re-designation of all assignments is necessary.

(a)(2)(ii) When designated assignments in the Omaha/ Council Bluffs Terminal are temporarily discontinued because of a holiday and the discontinuance does not exceed 96 hours from the scheduled starting time, the engineer on such discontinued assignment may remain with the assignment and, if qualifying, will receive holiday pay.

Designated assignments discontinued for more than 96 hours shall be governed by the provisions of the second paragraph of Article II(a)(2)(i), above.

(a)(3) Any extra assignments worked in the consolidated Omaha/Council Bluffs Terminal shall be manned by UP engineers in accordance with applicable UP schedule rules. Any temporary vacancies on UP designated assignments shall be filled in accordance with applicable UP schedule rules. Any temporary vacancies on MP designated assignments shall be filled in accordance with applicable MP schedule rules. Should no MP employe be available, the vacancy shall be filled by UP employes in accordance with applicable UP schedule rules.

(a)(4) It is understood that MP employes on the Omaha Subdivision, Northern Division, seniority roster on the effective date of this agreement shall retain seniority rights to the designated MP assignments in the consolidated Omaha/Council Bluffs Terminal. Employes hired by MP after the effective date of this agreement shall have no seniority rights to work in the consolidated Omaha/Council Bluffs Terminal. In addition, should a MP designated assignment in the Omaha/Council Bluffs Terminal go "no bid" (no prior rights MP employe elects to work the assignment), the assignment shall be filled by UP employes in accordance with applicable UP schedule rules. The failure of a prior rights MP employe to elect to work such designated MP assignment shall not constitute forfeiture of any seniority rights which prior rights MP employes have in the consolidated Terminal.

(a)(5) Each regular assignment, whether UP or MP designation, may work anywhere within the consolidated Terminal in accordance with applicable rules.

(a)(6) It is understood that in the application of Sections 1 and 2 of Article VIII of the July 26, 1978 BLE National Agreement, either MP or UP designated yard assignments within the Omaha/Council Bluffs Terminal may be used to meet customer service requirements or to handle disabled trains and trains tied-up under the Hours of Service Act regardless of where the customer is located or which Carrier's road crew manned the train.

(b) There shall be no seniority changes affecting the one MP engineer affected by the abolishment of the Lincoln-Union Local. This employe shall exercise MP engine service seniority in accordance with applicable MP rules.

(c) There shall be no seniority changes for either UP or MP engineers as a result of the pooling arrangement described in Article I(c) above.

#### ARTICLE III - INITIAL BULLETINS:

In order to accomplish the initial assignment of the employes holding seniority in the new consolidated terminal, there will be an advertisement and assignment of all assignments in the Omaha/Council Bluffs Terminal in such a manner so that the effective date of the assignments will be simultaneous with the effective date of the consolidation herein provided. (All prior rights employes may bid for the positions advertised in accordance with the seniority rights granted herein.)

#### ARTICLE IV - QUALIFICATIONS:

(a) Any employe involved in the consolidation herein provided, whose new assignment requires performance of duties on a geographic territory not familiar to him, will be given full cooperation, assistance and guidance in order that the employe's qualifications therefor shall be accomplished as quickly as possible.

(b) An employe whose new assignment requires performance of duties on a geographic territory not familiar to him will not suffer any loss of compensation while qualifying for such territory.

(c) Any prior agreements referring to the use of engineers as pilots in the application of the qualification procedures described in paragraphs (a) and (b), above, shall not apply.

ARTICLE V - SERVICE CREDIT:

MP employes working in the Omaha/Council Bluffs Terminal pursuant to this Agreement will be treated for agreement purposes as though their service on MP had been performed on UP.

ARTICLE VI - SWITCHING LIMITS AND ARRIVAL/DEPARTURE POINTS:

(a) The switching limits for the consolidated terminal of Omaha/Council Bluffs shall be:

Omaha/Council Bluffs

Union Pacific	Main Line	M.P. 9.57
Union Pacific	Old Main Line	M.P. 13.43
Missouri Pacific	West	M.P. 482.3
Missouri Pacific	South	M.P. 478.9 -

(b) The arrival and departure points for UP road crews will remain unchanged. The arrival and departure points for MP road crews shall be handled as an intra-MP matter.

ARTICLE VII - ROAD TRAIN OPERATIONS:

(a) Road employes of either UP or MP may be required to perform service throughout the consolidated Terminal in accordance with their applicable schedule agreements in the same manner as though the consolidated Terminal were a terminal of the railroad.

(b) Initial terminal delay and final terminal delay rules set forth in the applicable MP and UP Schedule Agreements shall remain unchanged for MP and UP road crews operating into and out of the consolidated Omaha/Council Bluffs Terminal.

ARTICLE VIII - ON AND OFF DUTY POINTS:

Yard employes at Omaha/Council Bluffs and road employes at Omaha/Council Bluffs and Lincoln may be required to report at designated points in the consolidated terminals in accordance with applicable schedule agreements, interpretations and practices.

ARTICLE IX - MEDICAL STANDARDS:

(a) Employes covered by this Agreement who meet the physical standards of their respective railroads will be considered qualified for service in the consolidated Omaha/Council Bluffs Terminal. The employes' continuance in

and having no earnings from any other employment, such employe shall submit, within the time period provided for in Paragraph (c) of this Article X, the appropriate form stating "Nothing to Report".

(f) The failure of any "dismissed employe" referred to in this Article X to provide the information required in this Article X shall result in the withholding of all protective benefits during the month covered by such information pending Carrier's receipt of such information from the employe.

(g) The dismissal allowance shall cease prior to expiration of the employe's protective period in event of the employe's resignation, death, retirement, termination for justifiable cause, failure to return to service upon recall or failure to accept a position pursuant to Article I, Section 6(d) of Attachment "B".

#### Displaced Employee

(h) Each "displaced employe" shall provide the Carrier with the information requested on a form provided by the Carrier. The form shall be submitted no later than the tenth day of the month following the month for which benefits are claimed.

(i) The failure of any "displaced employe" referred to in this Article X to provide the information required in this Article X shall result in the withholding of all protective benefits during the month covered by such information pending the Carrier's receipt of such information from the employe.

#### Form

(j) A copy of the "Monthly Claim Form" to be used by both "dismissed" and "displaced" employes is attached as Attachment "C".

#### ARTICLE XI - SAVINGS CLAUSES:

(a)(1) Where the rules of the UP/BLE Schedule Agreement conflict with this Agreement, this Agreement shall apply.

(a)(2) In connection with Paragraph (a)(1), above, those items not specifically covered in this Agreement shall be governed by and be subject to the agreement between UP and the BLE which governed UP operations at Omaha/Council Bluffs.

(b) The negotiations which led to this Agreement and this Agreement are independent from any other negotiations and shall not be cited by either party in any future negotiations.

(c) The parties realize that much of the impact of the transactions set forth in Article I, above, cannot be foreseen. Therefore, the parties agree that the Director Labor Relations-UP Eastern District, Assistant Vice President Labor Relations-MP, UP BLE General Chairman and MP BLE General Chairman will meet once a year, or more often if requested, to discuss any problems which may have arisen in the application of this Agreement.

Signed at Omaha, Nebraska, this 3rd day of August, 1983.

FOR THE BROTHERHOOD  
OF LOCOMOTIVE ENGINEERS:

E. Becker  
General Chairman, UP

R. W. Windham  
General Chairman, MP

FOR UNION PACIFIC  
RAILROAD COMPANY:

Richard A. Mudditz  
Director of Labor Relations-ED

FOR MISSOURI PACIFIC  
RAILROAD COMPANY:

J. O. B. Sayers  
Assistant Vice President -  
Labor Relations

APPROVED:

M. L. Hunt  
Vice President, BLE

E. E. Watson  
Vice President, BLE

20

A G R E E M E N T

between  
UNION PACIFIC RAILROAD COMPANY  
MISSOURI PACIFIC RAILROAD COMPANY  
and  
BROTHERHOOD OF LOCOMOTIVE ENGINEERS

The Interstate Commerce Commission (ICC) approved, in Finance Docket No. 30,398, the conveyance by MP to UP of a portion of MP's railroad and underlying realty known as the Hastings Subdivision extending from Milepost 574.7 near Muriel to Milepost 580.3 at Hastings. The ICC, in its approval of the aforesaid Finance Docket, has imposed the employe protective conditions set forth in New York Dock Ry. - Control - Brooklyn Eastern District Terminal.

Therefore, to effect the consolidation and coordination of UP and MP operations at Hastings, Nebraska and on the conveyed trackage into a single operation controlled by UP with all work performed under the applicable UP schedule rules,

IT IS AGREED:

ARTICLE I - PURPOSE:

(a) Effective on or after August 1, 1984, all work now being performed by UP at Hastings and all work performed by MP at Hastings and on the conveyed trackage will be consolidated into a single combined operation with all work performed by UP employes under the applicable UP Schedule Agreement. The work will be performed without any penalty payment or additional arbitrary allowance.

(b) The trackage presently identified as the Hastings Subdivision shall be added to the exception contained in Section 1 of the August 10, 1946 Agreement between MP and BLE.

ARTICLE II - SENIORITY:

MP employes affected by the application of Article I, above, shall exercise MP seniority in accordance with applicable MP rules.

ARTICLE III - QUALIFICATIONS:

(a) Any employe involved in the consolidation herein provided, whose new assignment requires performance of duties on a geographic territory not familiar to him, will be given full cooperation, assistance and guidance in order that the employe's qualifications therefor shall be accomplished as quickly as possible.

(b) An employe whose new assignment requires performance of duties on a geographic territory not familiar to him will not suffer any loss of compensation while qualifying for such territory.

ARTICLE IV - PROTECTIVE BENEFITS AND OBLIGATIONS:

General

(a) Employes directly affected by this transaction and consolidation will be subject to the protective benefits of the New York Dock conditions as prescribed by the Interstate Commerce Commission in Finance Docket No. 30,398. It is also understood there shall not be any duplication or compounding of benefits under this Agreement and/or any other agreement or protective arrangement. A copy of the New York Dock conditions is attached as Attachment "A".

(b) Should there be any conflict between this Article IV and the New York Dock conditions as prescribed by the ICC in Finance Docket No. 30,398, the New York Dock conditions shall apply.

Dismissed Employe

(c) Each "dismissed employe" shall provide the Carrier with the following information for the preceding month in which he is entitled to benefits no later than the tenth day of each month on a form provided by the Carrier:

- (1) The day(s) claimed by such employe under any unemployment insurance act.
- (2) The day(s) each such employe worked in other employment, the names and address of the employer and the gross earnings made by the "dismissed employe" in such other employment.

(d) In the event a "dismissed employe" is entitled to unemployment benefits under applicable law but forfeits such unemployment benefits under any unemployment insurance law because of failure to file for such unemployment benefits (unless prevented from doing so by sickness or other valid causes) for purposes of the application of Subsection (c) of Section 6 of Attachment "A", he shall be considered the same as if he had filed for, and received, such unemployment benefits.

(e) If the "dismissed employe" referred to herein has nothing to report under this Article account not being entitled to benefits under any unemployment insurance law and having no earnings from any other employment, such employe shall submit, within the time period provided for in Paragraph (c) of this Article IV, the appropriate form stating "Nothing to Report".

(f) The failure of any "dismissed employe" referred to in this Article IV to provide the information required in this Article IV shall result in the withholding of all protective benefits during the month covered by such information pending Carrier's receipt of such information from the employe.

(g) The dismissal allowance shall cease prior to expiration of the employe's protective period in event of the employe's resignation, death, retirement, termination for justifiable cause, failure to return to service upon recall or failure to accept a position pursuant to Article I, Section 6(d) of Attachment "A".

#### Displaced Employe

(h) Each "displaced employe" shall provide the Carrier with the information requested on a form provided by the Carrier. The form shall be submitted no later than the tenth day of the month following the month for which benefits are claimed.

(i) The failure of any "displaced employe" referred to in this Article IV to provide the information required in this Article IV shall result in the withholding of all protective benefits during the month covered by such information pending the Carrier's receipt of such information from the employe.

Form

(j) A copy of the "Monthly Claim Form" to be used by both "dismissed" and "displaced" employes is attached as Attachment "B".

ARTICLE V - SAVINGS CLAUSES:

(a) Where the rules of the UP/BLE Schedule Agreement conflict with this Agreement, this Agreement shall apply.

(b) The negotiations which led to this Agreement and this Agreement are independent from any other negotiations and shall not be cited by either party in any future negotiations.

(c) The parties realize that much of the impact of the transaction set forth in Article I, above, cannot be foreseen. Therefore, the parties agree that the Director of Labor Relations-UP Eastern District, Assistant Vice President of Labor Relations-MP, UP BLE General Chairman and MP BLE General Chairman will meet once a year, or more often if requested, to discuss any problems which may have arisen in the application of this Agreement.

Signed at ~~Omaha, Nebraska~~ <sup>Kansas City, MO</sup>, this 19th day of July, 1984.

FOR THE BROTHERHOOD OF  
LOCOMOTIVE ENGINEERS:

E. J. Becker  
General Chairman, UP

R. W. Windham  
General Chairman, MP

APPROVED:

W. G. Hunt  
Vice President, BLE

E. E. Larson  
Vice President, BLE

FOR THE UNION PACIFIC  
RAILROAD COMPANY:

P. D. Meredith  
Director-Labor Relations

FOR THE MISSOURI PACIFIC  
RAILROAD COMPANY:

O. B. Sayers  
Assistant Vice President  
- Labor Relations

21

A G R E E M E N T  
between  
UNION PACIFIC RAILROAD COMPANY  
MISSOURI PACIFIC RAILROAD COMPANY  
and  
BROTHERHOOD OF LOCOMOTIVE ENGINEERS

The Interstate Commerce Commission (ICC) approved, in Finance Docket No. 30,000 and selected Subdockets 1-6, the merger of Union Pacific Railroad Company (UP), Missouri Pacific Railroad Company (MP) and Western Pacific Railroad Company (WP), effective December 22, 1982. The ICC, in its approval of the aforesaid Finance Docket, has imposed the employe protective conditions set forth in New York Dock Ry. - Control - Brooklyn Eastern District Terminal.

Therefore, to effect the consolidation and coordination of the Kansas City Terminal, to ensure the Carriers achieve maximum efficiency in the terminal operations and to ensure the affected employes receive the protection benefits provided for,

IT IS AGREED:

ARTICLE I - PURPOSE:

(a) Effective on or after September 1, 1983, (1) all UP engineer functions now being performed at Kansas City and (2) all MP engineer functions now being performed at Kansas City, will be consolidated into a single combined terminal controlled by MP with all work being performed under the collective bargaining agreement identified as Attachment "A".

(b) As set forth in the preamble of the collective bargaining agreement identified as Attachment "A", items not specifically covered in Attachment "A" shall be governed by and be subject to the Agreement between MP and the BLE which governed MP operations at Kansas City.

ARTICLE II - SENIORITY:

(a)(1) On the effective date of the consolidation provided herein, a list shall be prepared showing the names and seniority dates of all engineers appearing on the applicable UP and MP seniority rosters (the rosters covering the work functions identified in Article I). Employes included on this list shall be regarded as prior rights employes.

(a)(2) Whenever prior rights UP employes work in the consolidated Kansas City Terminal, they will be regarded as MP employes.

(a)(3) UP employes on the Eighth Seniority District Roster on the effective date of this Agreement shall retain all seniority rights on that Seniority Roster, but will acquire no seniority rights on the MP Omaha Subdivision, Northern Division Seniority Roster.

(a)(4) MP employes on the Omaha Subdivision, Northern Division Seniority Roster on the effective date of this Agreement shall retain all rights on that Seniority Roster, but will acquire no seniority rights on the UP Eighth Seniority District Roster.

(b)(1) Regular and extra assignments in the consolidated Terminal shall be allocated between UP and MP on a 35% (UP) and 65% (MP) basis. The allocation of jobs between UP and MP flowing from this percentage division is set forth on Attachment "B".

(b)(2) Each regular assignment working in the Kansas City Terminal shall be designated as either a UP or a MP assignment in accordance with the allocation formula set forth in Attachment "B". The designation of assignments shall be done by the appropriate local chairmen and the designated terminal officer.

(b)(3) Each regular assignment, whether UP or MP designation, may work anywhere within the consolidated Terminal in accordance with applicable rules.

(b)(4) In the application of Sections 1 and 2 of Article VIII of the July 26, 1978 BLE National Agreement, either UP or MP designated yard assignments within the consolidated Kansas City Terminal may be used to meet customer service requirements or to handle disabled trains and trains tied-up under the Hours of Service Act regardless of where the customer is located or which Carrier's road crew manned the train.

(c)(1) There shall be a common rotary extra board protecting both designated UP and designated MP regular assignments. The total number of employes to be maintained on the common consolidated terminal extra board shall be determined by the procedure set forth in the applicable collective bargaining agreement. The respective number of UP and MP employes on the extra board shall be based on the allocation percentage set forth in (b)(1), above. Extra board employes may work either UP or MP designated assignments without restriction.

(c)(2) Should the extra board become exhausted and it is necessary to call additional engineers, a designated UP vacancy shall be filled by a prior rights UP employe and a designated MP vacancy shall be filled by a MP employe. The respective UP and MP vacancies shall be filled in accordance with applicable UP or MP rules and practices.

(d)(1) It is understood that UP employes on the Eighth Seniority District Roster on the effective date of this Agreement shall retain seniority rights to the designated UP assignments in the consolidated Kansas City Terminal. Employes hired by UP after the effective date of this Agreement shall have no seniority rights to work in the consolidated Kansas City Terminal.

(d)(2) Should a UP designated assignment in the Kansas City Terminal go "no bid", the assignment shall be filled by MP employes in accordance with the applicable collective bargaining agreement.

(d)(3) Should a MP designated assignment in the Kansas City Terminal go "no bid" by a prior rights MP employe, the assignment may be filled by a prior rights UP employe ahead of a non-prior rights MP employe.

#### ARTICLE III - INITIAL BULLETINS:

In order to accomplish the initial assignment of the employes holding seniority in the new consolidated terminal, there will be an advertisement and assignment of all assignments in the Kansas City Terminal in such a manner so that the effective date of the assignments will be simultaneous with the effective date of the consolidation herein provided. (All prior rights employes may bid for the positions advertised in accordance with the seniority rights granted herein.)

#### ARTICLE IV - QUALIFICATIONS:

(a) Any employe involved in the consolidation herein provided, whose new assignment requires performance of duties on a geographic territory not familiar to him, will be given full cooperation, assistance and guidance in order that the employe's qualifications therefor shall be accomplished as quickly as possible.

(b) An employe whose new assignment requires performance of duties on a geographic territory not familiar to him will not suffer any loss of compensation while qualifying for such territory.

(c) Any prior agreements referring to the use of engineers as pilots in the application of the qualification procedures described in paragraphs (a) and (b), above, shall not apply.

ARTICLE V - SERVICE CREDIT:

UP employes working in the Kansas City Terminal pursuant to this Agreement will be treated for agreement purposes as though their service on UP had been performed on MP.

ARTICLE VI - SWITCHING LIMITS AND ARRIVAL/DEPARTURE POINTS:

(a) The switching limits for the consolidated Kansas City Terminal shall be:

Kansas City

Union Pacific (West)	M.P. 6.59
Missouri Pacific (South)	M.P. 284.22
Missouri Pacific (East)	M.P. 276.32
Missouri Pacific (North)	M.P. 288.37

(b) The designated arrival and departure points for MP and UP road crews set forth in the applicable MP and UP Schedule Agreements shall remain unchanged for MP and UP road crews operating into the consolidated Kansas City Terminal.

ARTICLE VII - ROAD TRAIN OPERATIONS:

(a) Road employes of either UP or MP may be required to perform service throughout the consolidated Terminal in accordance with their applicable schedule agreements in the same manner as though the consolidated Terminal were a terminal of the railroad.

(b) Initial terminal delay and final terminal delay rules set forth in the applicable MP and UP Schedule Agreements shall remain unchanged for MP and UP road crews operating into and out of the consolidated Kansas City Terminal.

ARTICLE VIII - TRAVEL ALLOWANCE:

(a) Should a prior rights UP employe report to work east of the river, or a prior rights MP employe report to work west of the river, the employe will be compensated for twenty (20) round trip miles at the mileage rate based on the present Federal Travel Regulations (FTR) authorized

mileage rate. The FTR rate will govern for future mileage rate increases or decreases.

(b) The travel allowance provided for in paragraph (a), above, shall apply for six years from the effective date of the consolidation provided herein.

ARTICLE IX - MEDICAL STANDARDS:

(a) Employees covered by this Agreement who meet the physical standards of their respective railroads will be considered qualified for service in the consolidated Kansas City Terminal. The employees' continuance in service will likewise be governed by the physical standards of their respective railroads.

(b) The UP and MP will make every effort to apply medical standards uniformly in the consolidated Terminal.

ARTICLE X - PROTECTION BENEFITS AND OBLIGATIONS:

General

(a) Employees directly affected by this transfer and consolidation will be subject to the protective benefits of the New York Dock conditions as prescribed by the Interstate Commerce Commission in Finance Docket No. 30,000. It is also understood there shall not be any duplication or compounding of benefits under this Agreement and/or any other agreement or protective arrangement. A copy of the New York Dock conditions is attached as Attachment "C".

(b) Should there be any conflict between this Article X and the New York Dock conditions as prescribed by the ICC in Finance Docket 30,000, the New York Dock conditions shall apply.

Dismissed Employee

(c) Each "dismissed employe" shall provide the Carrier with the following information for the preceding month in which he is entitled to benefits no later than the tenth day of each month on a form provided by the Carrier:

- (1) The day(s) claimed by such employe under any unemployment insurance act.
- (2) The day(s) each such employe worked in other employment, the name and address of the employer and the gross earnings made by the "dismissed employe" in such other employment.

(d) In the event a "dismissed employe" is entitled to unemployment benefits under applicable law but forfeits such unemployment benefits under any unemployment insurance law because of failure to file for such unemployment benefits (unless prevented from doing so by sickness or other valid causes) for purposes of the application of Subsection (c) of Section 6 of Attachment "C", he shall be considered the same as if he had filed for, and received, such unemployment benefits.

(e) If the "dismissed employe" referred to herein has nothing to report under this Article account not being entitled to benefits under any unemployment insurance law and having no earnings from any other employment, such employe shall submit, within the time period provided for in Paragraph (c) of this Article X, the appropriate form stating "Nothing to Report".

(f) The failure of any "dismissed employe" referred to in this Article X to provide the information required in this Article X shall result in the withholding of all protective benefits during the month covered by such information pending Carrier's receipt of such information from the employe.

(g) The dismissal allowance shall cease prior to expiration of the employe's protective period in event of the employe's resignation, death, retirement, termination for justifiable cause, failure to return to service upon recall or failure to accept a position pursuant to Article I, Section 6(d) of Attachment "C".

#### Displaced Employe

(h) Each "displaced employe" shall provide the Carrier with the information requested on a form provided by the Carrier. The form shall be submitted no later than the tenth day of the month following the month for which benefits are claimed.

(i) The failure of any "displaced employe" referred to in this Article X to provide the information required in this Article X shall result in the withholding of all protective benefits during the month covered by such information pending the Carrier's receipt of such information from the employe.

#### Form

(j) A copy of the "Monthly Claim Form" to be used by both "dismissed" and "displaced" employes is attached as Attachment "D".

ARTICLE XI - SAVINGS CLAUSES:

(a)(1) Where the rules of the MP/BLE Schedule Agreement conflict with this Agreement or with the collective bargaining agreement identified as Attachment "A", this Agreement and Attachment "A" shall apply.

(a)(2) In connection with Paragraph (a)(1), above, and as set forth in Paragraph (b) of Article II and in the preamble of the collective bargaining agreement identified as Attachment "A", those items not specifically covered in this Agreement nor in Attachment "A" shall be governed by and be subject to the agreement between MP and the BLE which governed MP operations at Kansas City.

(b) Should any error or omission concerning the list described in Article II, Section (a)(1) be discovered, the parties will make the necessary correction without penalty to either party.

(c) The negotiations which led to this Agreement and this Agreement are independent from any other negotiations and shall not be cited by either party in any future negotiations.

(d) The parties realize that much of the impact of the transaction set forth in Article I, above, cannot be foreseen. Therefore, the parties agree that the Director Labor Relations-UP Eastern District, Assistant Vice President Labor Relations-MP, UP BLE General Chairman and MP BLE General Chairman will meet once a year, or more often if requested, to discuss any problems which may have arisen in the application of this Agreement or the collective bargaining agreement identified as Attachment "A".

Signed at Omaha, Nebraska, this 3rd day of August, 1983.

FOR THE BROTHERHOOD  
OF LOCOMOTIVE ENGINEERS:

E. J. Becker  
General Chairman, UP

R. W. Windham  
General Chairman, MP

APPROVED:

W. C. Hirst  
Vice President, BLE

E. E. Hutton  
Vice President, BLE

FOR UNION PACIFIC  
RAILROAD COMPANY:

Richard A. Munn  
Director of Labor Relations-ED

FOR MISSOURI PACIFIC  
RAILROAD COMPANY:

O. D. Lagers  
Assistant Vice President -  
Labor Relations

22

In the Matter of Arbitration :  
 Between :  
 Brotherhood of Locomotive Engineers :  
 and : DECISION  
 Union Pacific Railroad Company :  
 Missouri Pacific Railroad Company :  
 .. .. . :  
 .. .. . :

File : Finance Docket No. 30,000  
 Arbitrator : Jacob Seidenberg, Esquire  
 Hearing : December 13, 1984  
 Appearances : Brotherhood of Locomotive Engineers  
 W.A. Hirst - Vice President  
 E.E. Watson - Vice President

Carriers  
 R.D. Meredith-Director Labor Relations -  
 Union Pacific  
 R.P. Mitchell-Director Labor Relations -  
 Missouri Pacific

Post Hearing Briefs Received : December 29, 1984

- Issues : 1). Does Arbitrator have jurisdiction under  
 Section 4, Article I of the ICC imposed  
 New York Dock Conditions to permit Car-  
 riers to transfer work from Missouri Pa-  
 cific RR to Union Pacific and have trans-  
 ferred work performed under the operating  
 rules and collective bargaining agreement  
 between the Union Pacific RR and the BLE?  
 2). Does the proposed transfer of work consti-  
 tute a fair and equitable basis for the  
 selection and assignment of forces under  
 a New York Dock transaction?

Background: The instant dispute has been precipitated as a result  
 of the Interstate Commerce Commission approving on October 20,

We find that the Carriers have sought to select and assign the forces, in a fair and reasonable manner, and still achieve the efficiency and benefits which were the prime motivations for seeking the Consolidation. We find that conducting all three common point operations under the UP operating rules and schedule rules are not inconsistent with these objectives, since the UP has common control of the consolidation.

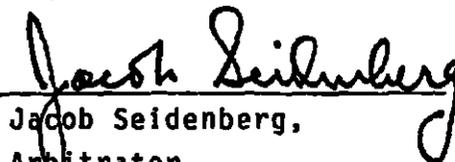
We conclude that the approved proposals, as amended, covering the three common points are an appropriate method for the selection and assignment of forces, and should be effected by the prescribed implementing agreements.

Decision:

Pursuant to Article I, Section 4 of the New York Dock Conditions, we find that the implementing agreement set forth in Carriers' Attachment No. 1 shall be the method for selecting and assigning the forces for the Salina operation.

We find further that implementing agreement, as amended, set forth in Carriers' Attachment No. 2, shall be the method for selecting and assigning the forces for the McPherson-El Dorado operation.

We also find that the implementing agreement set forth in Carriers' Attachment No. 3 shall be the method for selecting and assigning the forces in the Beloit operations.

  
Jacob Seidenberg,  
Arbitrator

January 17, 1985  


A G R E E M E N T

between  
UNION PACIFIC RAILROAD COMPANY  
MISSOURI PACIFIC RAILROAD COMPANY  
and  
BROTHERHOOD OF LOCOMOTIVE ENGINEERS

The Interstate Commerce Commission (ICC) approved, in Finance Docket No. 30,000, and selected subdockets 1 through 6, the merger of Union Pacific Railroad Company (UP), Missouri Pacific Railroad Company (MP), and Western Pacific Railroad Company (WP), effective December 22, 1982. The ICC, in its approval of the aforesaid Finance Docket, has imposed the employe protective conditions set forth in New York Dock Ry. - Control - Brooklyn Eastern District Terminal 354 ICC 399 (1978), as modified at 360 ICC 60 (1979) (New York Dock Conditions) in FD 29430.

Therefore, to achieve maximum efficiency of operation west of Frankfort, Kansas on the MP's Concordia, Burr Oak and Lenora Subdivisions; and to achieve maximum efficiency of operations at Beloit, Kansas; and, to achieve maximum efficiency of operations on the UP's Solomon Branch,

IT IS AGREED:

ARTICLE I - PURPOSE:

(a) Effective on or after October 1, 1984, all work now being performed by MP on the Concordia, Burr Oak and Lenora Subdivisions west of Frankfort, Kansas, will be consolidated into a single combined operation with all work performed under the applicable UP schedule rules and operating rules.

(b) The trackage presently identified as that portion of the Concordia, Burr Oak and Lenora Subdivisions west of Frankfort, Kansas, shall be added to the exception contained in Section 1 of the August 10, 1946 Agreement between MP and the BLE.

(c) The work performed by the UP on the Concordia, Burr Oak and Lenora Subdivisions may include, but will not be limited to, the following: assignments operating in all directions out of Beloit.

ARTICLE II - SENIORITY:

(a) MP employes affected by the application of Article I, above, shall have prior rights to UP assignments working on the conveyed trackage. When there are no longer any prior-rights MP employes or if no MP employe bids the assignment, all assignments on the conveyed trackage shall be exclusive UP assignments.

(b) MP employes affected by the application of Article I, above, and who are unable to hold a prior rights assignment, shall exercise MP seniority in accordance with applicable MP rules.

ARTICLE III - QUALIFICATIONS:

(a) Any employe involved in the consolidation herein provided, whose new assignment requires performance of duties on a geographic territory not familiar to him, will be given full cooperation, assistance and guidance in order that the employe's qualifications therefor shall be accomplished as quickly as possible.

(b) An employe whose new assignment requires performance of duties on a geographic territory not familiar to him will not suffer any loss of compensation while qualifying for such territory.

ARTICLE IV - PROTECTIVE BENEFITS AND OBLIGATIONS:

General

(a) Employes directly affected by this transaction and consolidation will be subject to the protective benefits of the New York Dock conditions as prescribed by the Interstate Commerce Commission in Finance Docket No. 30,000. It is also understood there shall not be any duplication or compounding of benefits under this Agreement and/or any other agreement or protective arrangement. A copy of the New York Dock conditions is attached as Attachment "A".

(b) Should there be any conflict between this Article IV and the New York Dock conditions as prescribed by the ICC in Finance Docket No. 30,000, the New York Dock conditions shall apply.

Dismissed Employe

(c) Each "dismissed employe" shall provide the Carrier with the following information for the preceding month in which he is entitled to benefits no later than the tenth day of each month on a form provided by the Carrier:

(1) The day(s) claimed by such employe under any unemployment insurance act.

(2) The day(s) each such employe worked in other employment, the names and address of the employer and the gross earnings made by the "dismissed employe" in such other employment.

(d) In the event a "dismissed employe" is entitled to unemployment benefits under applicable law but forfeits such unemployment benefits under any unemployment insurance law because of failure to file for such unemployment benefits (unless prevented from doing so by sickness or other valid causes) for purposes of the application of Subsection (c) of Section 6 of Attachment "A", he shall be considered the same as if he had filed for, and received, such unemployment benefits.

(e) If the "dismissed employe" referred to herein has nothing to report under this Article account not being entitled to benefits under any unemployment insurance law and having no earnings from any other employment, such employe shall submit, within the time period provided for in Paragraph (c) of this Article IV, the appropriate form stating "Nothing to Report".

(f) The failure of any "dismissed employe" referred to in this Article IV to provide the information required in this Article IV shall result in the withholding of all protective benefits during the month covered by such information pending Carrier's receipt of such information from the employe.

(g) The dismissal allowance shall cease prior to expiration of the employe's protective period in event of the employe's resignation, death, retirement, termination for justifiable cause, failure to return to service upon recall or failure to accept a position pursuant to Article I, Section 6(d) of Attachment "A".

#### Displaced Employe

(h) Each "displaced employe" shall provide the Carrier with the information requested on a form provided by the Carrier. The form shall be submitted no later than the tenth day of the month following the month for which benefits are claimed.

(i) The failure of any "displaced employe" referred to in this Article IV to provide the information required in this Article IV shall result in the withholding of all

protective benefits during the month covered by such information pending the Carrier's receipt of such information from the employe.

Form

(j) A copy of the "Monthly Claim Form" to be used by both "dismissed" and "displaced" employes is attached as Attachment "B".

ARTICLE V - SAVINGS CLAUSES:

(a) Where the rules of the UP/BLE Schedule Agreement conflict with this Agreement, this Agreement shall apply.

(b) The negotiations which led to this Agreement and this Agreement are independent from any other negotiations and shall not be cited by either party in any future negotiations.

(c) The parties realize that much of the impact of the transaction set forth in Article I, above, cannot be foreseen. Therefore, the parties agree that the Director of Labor Relations-UP Eastern District, Assistant Vice President of Labor Relations-MP, UP BLE General Chairman and MP BLE General Chairman will meet once a year, or more often if requested, to discuss any problems which may have arisen in the application of this Agreement.

Signed at Omaha, Nebraska, this \_\_\_\_\_ day of September, 1984.

FOR THE BROTHERHOOD OF  
LOCOMOTIVE ENGINEERS:

FOR THE UNION PACIFIC  
RAILROAD COMPANY:

\_\_\_\_\_  
General Chairman, UP

\_\_\_\_\_  
Director-Labor Relations

\_\_\_\_\_  
General Chairman, MP

FOR THE MISSOURI PACIFIC  
RAILROAD COMPANY:

APPROVED:

\_\_\_\_\_  
Assistant Vice President  
- Labor Relations

\_\_\_\_\_  
Vice President, BLE

\_\_\_\_\_  
Vice President, BLE

23

# AGREEMENT

Between

UNION PACIFIC RAILROAD COMPANY

And

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS

In Finance Docket No. 30,800, the Interstate Commerce Commission imposed New York Dock labor protective conditions. The parties acknowledge that the provisions of this Agreement, though different from the provisions of New York Dock, satisfy the Interstate Commerce Commission's imposition of labor protective conditions in Finance Docket No. 30,800. Further, the provisions of this Agreement constitute a valid exchange of benefits and obligations. For every additional benefit received by the Carrier or the employees there is a corresponding obligation accepted by the Carrier or the employees.

Finally, the parties hereto, in keeping with their mutual good faith efforts to reach agreement on all the issues covered by this Agreement and in view of the nature of some of the terms of this Agreement, understand that such Agreement is without prejudice to the positions of either party regarding the proper application of New York Dock conditions, and is not to be cited by any party in any other proceeding as an example of the proper application of the New York Dock conditions or any other protective conditions.

**I. SENIORITY AND APPLICABLE AGREEMENTS**

**(A) MKT and OKT agreements will be eliminated and the employees covered thereby will be consolidated into the appropriate UP roster(s) as set forth in Attachment I.**

**(B) The agreements applicable on the territories comprised of the following:**

- 1. Kansas, Oklahoma and Gulf Railroad Co.**
- 2. Midland Valley Railway Co.**
- 3. Texas and Pacific Railway (including sub lines)**
- 4. Gulf Coast Lines:**
  - (a) International-Great Northern Railroad Co.**
  - (b) St. Louis, Brownsville & Mexico Railway Co.**
  - (c) Beaumont, Sour Lake & Western Railway Co.**
  - (d) San Antonio, Uvalda & Gulf Railroad Co.**
  - (e) Orange & Northwestern Railroad Co.**
  - (f) Iberia, St. Marie & Eastern Railroad Co.**
  - (g) San Benito & Rio Grande Valley Railway Co.**
  - (h) New Orleans, Texas & Mexico Railway Co.**
  - (i) New Iberia & Northern Railroad Co.**
  - (j) San Antonio Southern Railway Co.**
  - (k) Houston & Brazos Valley Railway Co.**
  - (l) Houston North Shore Railway Co.**
  - (m) Asherton & Gulf Railway Co.**

- (n) Rio Grande City Railway Co.
- (o) Asphalt Belt Railway Co.
- (p) Sugarland Railway Co.

5. **Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans**

will be eliminated and the employees covered thereby will be consolidated into the appropriate roster(s) set forth in Attachment I.

(C) The employees covered by Sections A and B above, and the work performed by them, will be covered by one consolidated collective bargaining agreement, as described in Attachment VIII.

II. **IMPLEMENTATION**

(A) The Carrier will give ninety (90) days written notice of its intent to implement this Agreement.

(B) During the first fifteen (15) days of the period set forth in (A) above, the Carrier will accept applications for separation from the service of the Carrier. Successful applicants will receive an amount equal to their earnings in the preceding twelve-month period with a minimum of Fifty Thousand Dollars (\$50,000), less all deductions required by law. Their separation will coincide with the completion of the ninety (90) day period set forth in (A) above. Employees electing separation shall be afforded the options set forth in Attachment III. The terms of said Attachment III shall govern in the granting of separations.

(C) Concurrent with the commencement of the fifteen (15) day separation period set forth in (B) above, the Carrier will post merged seniority rosters. The work equity ordering of such rosters shall be based upon the percentage equities of the interested rosters, as detailed in Attachment IV.

(D) 1. After close of the first thirty (30) day period, during which the severance program will be completed, all UP, MKT, OKT and KOG/MV employees (excluding those on disability, leave of absence, holding official or union positions, etc., who will be discussed below) will be canvassed, in seniority order, to make an election as to which roster and which designated position thereon they wish to occupy. Failure and/or refusal of an employee to make an election will result in the Carrier and Organization making the election for such employee. Designated roster positions shall be awarded on the basis of seniority on the interested roster. At the conclusion of this process merged seniority rosters will be finalized by the appropriate General Chairman and appropriate Director of Labor Relations. At the conclusion of the thirty (30) day roster formulation period, new merged seniority rosters will be posted. Employees will have sixty (60) days to protest these rosters in accordance with the applicable schedule agreement, such protest to be submitted to the General Chairman and Director of Labor Relations.

(D) 2. All those employees on interested rosters who are in an inactive status, such as disability, leave of absence, holding official or union positions, dismissed, etc., shall be placed on an inactive roster and will not be canvassed for participation in the election process. If at any future date any one of such employees is released to return to active service, such employee will, at that time, be allowed to exercise his election as to which roster and which designated position thereon he wishes to occupy in line with his original seniority. Once such returning employee elects a roster

placement, the junior employe occupying that designated position and all others below him will be repositioned to the next lower designated position on that merged roster. Active employes being canvassed to elect a roster and designated position thereon will be made aware of all inactive employes on their interested roster which could later impact the merged roster at the time they are canvassed to make their election.

(E) After the close of the thirty (30) day roster formulation period set forth in (D) above, the Carrier will bulletin all positions on each merged seniority district, listing the home terminal of the position, for a period of ten (10) calendar days. Attached, as Attachment V, is an exhibit illustrating run miles for the merged territory. Employes on each seniority district may bid on positions advertised on their merged seniority district. Within fifteen (15) days of the closing of the bulletins, assignments will be made based upon the employe's relative seniority standing on the new merged rosters.

(F) After all assignments are made, employes assigned to positions which require them to relocate will be given the opportunity to relocate within the next thirty (30) day period. During this period, the affected employes will continue to occupy their existing positions.

(G) The Carrier will give ten (10) days notice of the specific dates upon which the employes will be required to be available for their new positions.

(H) A summary of the implementation schedule contemplated by Sections (A) through (G) above is as follows:

- Day 1:** Carrier's ninety (90) day notice of intent to implement the Agreement.
- Carrier posting of merged seniority rosters and roster profiles.
- Carrier posting of severance offer.
- Day 16:** Severance "window" closes at 12:01 A.M.
- Day 21:** Written notice of acceptance or rejection of severance requests given to all applicants (copy of results to General Chairman).
- Day 31:** Commencement of canvassing for selection of rosters and designated positions.
- Day 61:** Posting of new merged seniority rosters, including names and sizing.
- Posting of bulletins covering all positions on the new merged seniority districts.
- Day 71:** Bulletins close.
- Day 86:** All assignments made.
- After Day 90:** Carrier will give employes ten (10) days notice of specific dates they will be required to be available for their new positions.
- Relocating employes will have thirty (30) days to relocate.
- Day 120:** Roster protest period ends.

### **III. SPECIAL TRAIN OPERATIONS**

**(A) Deregulation is an inescapable fact of the transportation environment in which the Union Pacific operates, and with deregulation has come increased competition. This increased competition applies to all Union Pacific business, but especially the business covered by the four special train operations listed in this Article. In order for Union Pacific to secure this special business, and in order for the employees to secure the job opportunities associated with this business, the parties agree the following four special train operations will be implemented:**

- (1) With implementation of this Agreement, turnaround freight service will be established between Chico and Dallas with Chico as the home terminal.**
- (2) With implementation of this Agreement, turnaround freight service will be established between Smithville and the Georgetown Railroad via either Granger or Round Rock with Smithville as the home terminal.**
- (3) With implementation of this Agreement, through freight service will be established operating McAlester to Mesquite and Mesquite to McAlester, with Mesquite the home terminal.**
- (4) With implementation of this Agreement, through freight service will be established operating Ft. Worth to Smithville and Smithville to Ft. Worth, with Ft. Worth the home terminal.**

**(B) With implementation of this Agreement, Carrier's rights under existing interdivisional run agreements are preserved.**

#### **IV. FAMILIARIZATION**

**(A) Employees involved in the consolidation herein provided, whose assignments require performance of duties on a geographic territory not familiar to them, will be given full cooperation, assistance and guidance in order that the employees' familiarization shall be accomplished as quickly as possible.**

**(B) Employees whose assignments require performance of duties on a geographic territory not familiar to them will not suffer loss of compensation while familiarizing themselves with such territory.**

**(C) Familiarization with a new territory should normally require no less than three (3), nor more than six (6) familiarization round-trips taken within a thirty (30) day period. In all cases, employees will not be considered approved to operate on such territory until approved by the Manager of Operating Practices. Should an employee have difficulty becoming familiar with the new territory within the limits set forth hereinabove, additional familiarization trips may be required by the Manager of Operating Practices without loss of compensation.**

**(D) It is understood that familiarization will be accomplished by calling a qualified engineer pilot (or Manager of Operating Practices) to work with an engineer called for service on a geographic territory not familiar to him.**

**NOTE: It is intended to complete the majority of the necessary initial familiarization on unfamiliar territories in the first ninety (90) days following implementation of this Agreement. In those instances where familiarization trips are required subsequent to said ninety (90)**

day period, a Manager of Operating Practices will not be used as a pilot for such purpose unless there is no qualified Engineer available on the extra board.

**V. PROTECTIVE BENEFITS AND OBLIGATIONS**

(A) **General:** All employes holding seniority on rosters listed on Attachment II to this Agreement shall be considered affected by this transaction and consolidation and will be subject to the protective benefits set forth in Attachment VI hereto. It is understood there shall not be any duplication or compounding of benefits under this Agreement and/or any other agreement or protective arrangement.

(B) In lieu of all relocation benefits provided under Article I(8) and I(10) of Attachment VI hereto, employes required to change their residence may elect to receive a lump sum allowance to homeowners of Seventeen Thousand Five Hundred Dollars (\$17,500). Non-homeowners may elect to receive a relocation allowance of Eight Thousand Dollars (\$8,000).

**NOTE:** A "change of residence" as referred to above shall only be considered "required" if the new reporting point of the employe is more than thirty (30) normal highway miles, via the most direct route, from the employe's point of employment at the time of implementation, and the new reporting point is farther from the employe's residence than his former point of employment.

(C) *Employees required to change their place of residence who elect the lump sum relocation benefits set forth in (B) above shall, upon reporting for and working the assignment at the new location, be accorded a special transfer allowance of Four Thousand Dollars (\$4,000.00) in consideration of travel and temporary living expenses while undergoing relocation. Employees receiving relocation allowances under (B) above and this Section shall not thereafter be permitted to voluntarily exercise seniority on a position which again will require a change in residence from the new point of assignment for a period of twenty-four (24) months from date of assignment, except in cases of documented hardship, and then only by written agreement between the Director of Labor Relations and the General Chairman.*

(D) Dismissed Employees: Each "dismissed employe" shall provide the Carrier with the following information for the month in which he is entitled to benefits no later than the twenty-fifth day of the month following the month for which benefits are claimed, on a form provided by the Carrier (copy attached as Attachment VII):

- (1) The day(s) claimed by such employe under any unemployment insurance act.
- (2) The day(s) each such employe worked in other employment, the name(s) and address(es) of the employer, and the gross earnings made by the "dismissed employe" in such other employment.

(E) In the event a "dismissed employe" is entitled to unemployment benefits under applicable law but forfeits such unemployment benefits under any unemployment insurance law because of failure to file for such unemployment

benefits (unless prevented from doing so by sickness or other valid causes), for purposes of the application of Article I (4)(c) of Attachment VI, he shall be considered the same as if he had filed for, and received, such unemployment benefits.

(F) If the "dismissed employe" referred to herein has nothing to report under this Article account not being entitled to benefits under any unemployment insurance law and having no earnings from any other employment, such employe shall submit, within the time period provided for in Paragraph (D) of this Article V, the appropriate form stating "Nothing to Report".

(G) The failure of any "dismissed employe" referred to in this Article V to provide the information required in this Article V shall result in the withholding of all protective benefits during the month covered by such information pending Carrier's receipt of such information from the employe.

(H) The dismissal allowance shall cease prior to expiration of the employe's protective period in the event of the employe's resignation, death, retirement, termination for justifiable cause, failure to return to service upon recall or failure to accept a comparable position which does not require a change in his place of residence for which he is qualified and eligible after appropriate notification, if his return does not infringe upon the employment rights of other employes under a working agreement.

(I) Displaced Employes: Each "displaced employe" shall provide the Carrier with the information requested on a form provided by the Carrier (copy attached as Attachment VII). The form shall be submitted no later than the twenty-fifth (25) day of the month following the month for which benefits are claimed.

(J) The failure of any "displaced employee" referred to in this Article V to provide the information required in this Article V shall result in the withholding of all protective benefits during the month covered by such information pending the Carrier's receipt of such information from the employee.

## VI. TRANSFER POLICY

(A) As and when shortages of employes occur on a particular seniority district, in lieu of the Carrier being required to hire or promote additional employes to alleviate such shortages, the Carrier may, at its option, implement the following procedures:

(1) If surplus employes exist on other seniority districts, the required number of additional positions on the district where the shortage exists will be offered to all employes on the nearest adjacent seniority district where a surplus exists. If an insufficient number of employes on the nearest adjacent seniority district elect to make a voluntary transfer, voluntary transfers shall be offered to successive seniority districts in the order of their relative distances from the district where the shortage exists. Those voluntarily accepting transfer to the location where the shortage exists shall be transferred to such seniority district in seniority order and given a new seniority date on that seniority district. Such employes shall retain their seniority date on their former seniority district, but may not return unless or until they become furloughed on the seniority district to which transferred, and in any event not before the expiration of one year, during which period they will not be furloughed nor demoted. Employes voluntarily transferring under this provision shall be entitled to the relocation benefits and options set forth in Article V (B) and (C) of this Agreement.

(2) Notwithstanding the provisions of (1) above, an employe who has transferred shall have the right to return to the original location from which transferred prior to the Carrier hiring or promoting additional employes at that location, in which event the seniority date at the transferred location shall be forfeited. Further, a transferred employe who is offered a return to his home seniority district in advance of hiring or promotion on that district who declines such offer, shall at that time forfeit the seniority date on such home seniority district.

(3) No transfer of engineers under this Article VI shall occur without thirty (30) days advance written notice to the General Chairman, during which time a meeting will be held, if requested, with the Director of Labor Relations to insure that said Article VI is being properly applied.

#### **VII. TRANSPORTATION - COFFEYVILLE/PARSONS**

(A) The terms of this Agreement and the proposed MKT merger operating plan contemplate that Coffeyville, Kansas, will be the home terminal or away-from-home terminal for all assignments originating and terminating at Parsons, Kansas. So long as such operation continues, Carrier will provide transportation between Coffeyville and Parsons for all crews protecting a tour of duty which originates and/or terminates at Parsons.

(B) Crews transported Coffeyville to Parsons at the beginning of a tour of duty, or Parsons to Coffeyville at the conclusion of a tour of duty, shall be paid the established rail mileage (41 miles) between those two points at the basic through freight rate as an arbitrary travel allowance separate and apart from their service trip.

(C) In the event individual crew members elect not to avail themselves of transportation as described above, payment of the arbitrary travel allowance set forth in (B) above shall nevertheless be paid to such crew members.

(D) Individual crew members who reside at Parsons may, for a period of five (5) years from the effective date of this Agreement, request transportation from Parsons to Coffeyville for commencement of a trip out of Coffeyville, or from Coffeyville to Parsons at the end of a trip into Coffeyville. In such event, the crew member(s) shall not be considered on duty or under pay, nor shall they be entitled to the arbitrary travel allowance set forth in (B) above; rather, such transportation shall be considered merely as a convenience to crew members who may elect to maintain their personal residences closer to Parsons than to Coffeyville.

NOTE: In the event a crew member requests transportation at the conclusion of a trip either under (A) or (D) above, and time waiting for transportation from tie-up time until arrival of said transportation exceeds forty-five minutes (45"), all time waiting from expiration of said forty-five minutes (45") until arrival of said transportation shall be paid to the crew member at the pro rata basic through freight rate.

#### VIII. SAVINGS CLAUSES

(A) Where the rules of the Schedule Agreement conflict with this Agreement, this Agreement shall apply.

(B) The parties hereto recognize that there may be employees on other seniority districts on the merged Union Pacific System who, although not comprehended by the terms of this Agreement by virtue of not being identified on At-

tachment II, may believe they have suffered an adverse effect as a result of the ICC authorized acquisition of the MKT by Union Pacific in Finance Docket No. 30,800. It is understood that the ICC imposition of New York Dock Protective Conditions was intended to afford protection to all affected employes of the Carriers involved, and the terms of this Agreement are not intended to nullify or otherwise modify the application of New York Dock to other employes not covered by this Agreement should it be determined they have been adversely affected by the Union Pacific acquisition of MKT.

(C) The provisions of this Agreement shall be applied to all employes covered by said Agreement without regard to race, creed, color, age, sex, national origin, or physical handicap, except in those cases where a bonafide occupational qualification exists. The masculine terminology herein is for the purpose of convenience only and does not intend to convey sex preference.

(D) The negotiations which led to this Agreement and this Agreement are independent from any other negotiations and shall not be cited by either party in any future negotiations.

(E) The parties realize that much of the impact of this Agreement cannot be foreseen; therefore, the parties agree that the appropriate Directors of Labor Relations and BLE General Chairmen will meet quarterly, or more often if requested, to discuss any problems which may have arisen in the application of this Agreement.

Signed at Corpus Christi, Texas this 9th day of December, 1988.

**FOR THE BROTHERHOOD OF  
LOCOMOTIVE ENGINEERS:**

R. W. Windham  
General Chairman  
MP Upper Lines

C. E. Houston  
General Chairman,  
Former MP Gulf

W. J. ...  
General Chairman,  
Former TP

M. D. Murray  
General Chairman, KOG/MV

B. W. ...  
General Chairman, MKT/OKT

**APPROVED:**

R. P. McLoughlin  
1st Vice President, BLE

E. E. ...  
Vice President, BLE

E. L. Hayden  
Vice President, BLE

**FOR THE UNION PACIFIC  
RAILROAD COMPANY  
(INCLUDING MKT):**

R. D. ...  
General Director-Labor Relations

M. ...  
Director-Labor Relations

T. L. Wilson, Jr.  
Director - Labor Relations

24

407-74-A-9

ARTICLE IX - INTERDIVISIONAL SERVICE

Note: As used in this Agreement, the term interdivisional service includes interdivisional, interseniority district, intradivisional and/or intraseniority district service.

An individual carrier may establish interdivisional service, in freight or passenger service, subject to the following procedure.

Section 1 - Notice

An individual carrier seeking to establish interdivisional service shall give at least twenty days' written notice to the organization of its desire to establish service, specify the service it proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such service. .

Section 2 - Conditions

Reasonable and practical conditions shall govern the establishment of the runs described, including but not limited to the following:

(a) Runs shall be adequate for efficient operations and reasonable in regard to the miles run, hours on duty and in regard to other conditions of work.

(b) All miles run in excess of the miles encompassed in the basic day shall be paid for at a rate calculated by dividing the basic daily rate of pay in effect on May 31, 1986 by the number of miles encompassed in the basic day as of that date. Weight-on-drivers additives will apply to mileage rates calculated in accordance with this provision.

(c) When a crew is required to report for duty or is relieved from duty at a point other than the on and off duty points fixed for the service established hereunder, the carrier shall authorize and provide suitable transportation for the crew.

Note: Suitable transportation includes carrier owned or provided passenger carrying motor vehicles or taxi, but excludes other forms of public transportation.

(d) On runs established hereunder crews will be allowed a \$4.15 meal allowance after 4 hours at the away from home terminal and another \$4.15 allowance after being held an additional 8 hours.

(e) In order to expedite the movement of interdivisional runs, crews on runs of miles equal to or less than the number encompassed in the basic day will not stop to eat except in cases of emergency or unusual delays. For crews on longer runs, the carrier shall determine the conditions under which such crews may stop to eat. When crews on such runs are not permitted to stop to eat, crew members shall be paid an allowance of \$1.50 for the trip.

(f) The foregoing provisions (a) through (e) do not preclude the parties from negotiating on other terms and conditions of work.

the protection afforded by Sections 6, 7, 8 and 9 of the Washington Job Protection Agreement of May 1936, except that for the purposes of this Agreement Section 7(a) is amended to read 100% (less earnings in outside employment) instead of 60% and extended to provide period of payment equivalent to length of service not to exceed 6 years and to provide further that allowances in Sections 6 and 7 be increased by subsequent general wage increases.

Any employee required to change his residence shall be subject to the benefits contained in Sections 10 and 11 of the Washington Job Protection Agreement and in addition to such benefits shall receive a transfer allowance of four hundred dollars (\$400.00) and five working days instead of the "two working days" provided by Section 10(a) of said agreement. Under this Section, change of residence shall not be considered "required" if the reporting point to which the employee is changed is not more than 30 miles from his former reporting point.

If any protective benefits greater than those provided in this Article are available under existing agreements, such greater benefits shall apply subject to the terms and obligations of both the carrier and employee under such agreements, in lieu of the benefits provided in this Article.

- - - - -

This Article shall become effective June 1, 1986 except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before such date. Article VIII of the May 13, 1971 Agreement shall not apply on any carrier on which this Article becomes effective.

25

KLA-6-420  
6-421

BLE

May 13, 1971

145  
205

**AGREEMENT**

**DATED MAY 13, 1971**

**BETWEEN RAILROADS REPRESENTED**

**by the**

**NATIONAL RAILWAY LABOR CONFERENCE**

**and the**

**EASTERN, WESTERN AND SOUTHEASTERN  
CARRIERS' CONFERENCE COMMITTEES**

**and**

**EMPLOYERS OF SUCH RAILROADS**

**REPRESENTED BY THE**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

- (a) The outlying point must be either 30 miles or more from the terminal limits of the location where the extra list from which called is maintained, or 60 miles or more from the reporting point of the extra list from which called.
- (b) Lodging or allowances in lieu thereof where applicable will be provided only when extra men are held at the outlying point for more than one tour of duty and will continue to be provided for the periods held for each subsequent tour of duty.

2. It is agreed that the parties signatory to this agreement will continue negotiations on the matter of further increasing expenses-away-from-home allowances. Any such increase agreed upon to become effective January 1, 1973.

ARTICLE VIII - INTERDIVISIONAL, INTERSENIORITY DISTRICT,  
INTRADIVISIONAL AND/OR INTRASENIORITY  
DISTRICT SERVICE (FREIGHT OR PASSENGER)

Article 4 of the May 23, 1952 Agreement is amended to read as follows:

1. Where an individual carrier not now having the right to establish interdivisional, interseniority district, intradivisional or intraseniority district service, in freight or passenger service, considers it advisable to establish such service, the carrier shall give at least thirty days' written notice to the General Chairman or Chairmen of the committee(s) of the Brotherhood of Locomotive Engineers involved, of its desire to establish service, specifying the service it proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such service.

The parties will negotiate in good faith on such proposal and shall recognize each others fundamental rights, and reasonable and fair arrangements shall be made in the interest of both parties. Such rights and arrangements shall include, but not be limited to the following:

- (a) Rms shall be adequate for efficient operations and reasonable in regard to the miles run, hours on duty and in regard to other conditions of work.
- (b) All miles run over one hundred (100) shall be paid for at the mileage rate established by the basic rate of pay for the first one hundred (100) miles or less.
- (c) When an engine crew is required to report for duty or is relieved from duty at a point other than the on and off duty points fixed for the service established hereunder, the carrier shall authorize and provide suitable transportation for the engine crew.

note: Suitable transportation includes carrier owned or provided passenger carrying motor vehicles or taxi, but excludes other forms of public transportation.

- (d) On runs established hereunder engine crews will be allowed a \$1.50 meal allowance after 4 hours at the away from home terminal and another \$1.50 allowance after being held an additional 8 hours.

2. The foregoing provisions (a) through (d) do not preclude the parties from negotiating on other terms and conditions of work.

3. In the event the carrier and such committee or committees cannot agree on the matters provided for in Section 1(a) and the other terms and conditions referred to in Section 2 above, the parties agree that such dispute shall be submitted to arbitration under the Railway Labor Act, as amended, within 60 days from the date of notice by the carrier of its intent to establish services pursuant to this Article VIII.

The decision of the arbitration board shall be final and binding upon both parties, except that the award shall not require the carrier to establish interdivisional, interseniority district, intradivisional, or intraseniority district service in the particular territory involved in each such dispute but shall be accepted by the parties as the conditions which shall be met by the carrier if and when such interdivisional, interseniority district, intradivisional, or intraseniority district service is established in that territory. Provided further, however, if carrier elects not to put the award into effect, carrier shall be deemed to have waived any right to renew the same request for a period of one year following the date of said award, except by consent of employees party to said arbitration. In its decision the Arbitration Board shall include among other matters decided the provisions set forth in Section 5 below for protection of employees adversely affected as a result of the discontinuance of any existing runs or the establishment of new runs resulting from application of this rule.

4. Interdivisional, interseniority district, intradivisional or intraseniority district service and/or agreements in effect on the date of this Agreement are not affected by this Article VIII.

5. Every employee adversely affected either directly or indirectly as a result of the application of this rule shall receive the protection afforded by Sections 6, 7, 8, and 9 of the Washington Job Protection Agreement of May 1936, except that for the purposes of this Agreement Section 7(a) is amended to read 100% (less earnings in outside employment) instead of 60% and extended to provide period of payment equivalent to length of service not to exceed 5 years and to provide further that allowances in Sections 6 and 7 be increased by subsequent general wage increases.

Any employee required to change his residence shall be subject to the benefits contained in Sections 10 and 11 of the Washington Job Protection Agreement and in addition to such benefits shall receive a transfer allowance of four hundred dollars (\$400.00) and five working days instead of the "two working days" provided by Section 10(a) of said agreement. Under this Section, change of residence shall not be considered "required" if the reporting point to which the employee is changed is not more than 30 miles from his former reporting point.

If any protective benefits greater than those provided in this Article are available under existing agreements, such greater benefits shall apply subject to the terms and obligations of both the carrier and employee under such agreements, in lieu of the benefits provided in this Article.

6. This rule shall become effective September 1, 1971, except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before August 1, 1971.

#### ARTICLE IX - VACATIONS

Insofar as applicable to employees represented by the Brotherhood of Locomotive Engineers, the vacation agreement dated April 29, 1949, as amended, is further amended effective January 1, 1973, by substituting the following Section 1 for the amended Section 1 contained in the agreement of November 17, 1964 as amended, substituting the following Section 2 for the amended Section 2 contained in the agreement of August 17, 1954 as amended, and substituting the following Section 9 for Section 9 as amended:

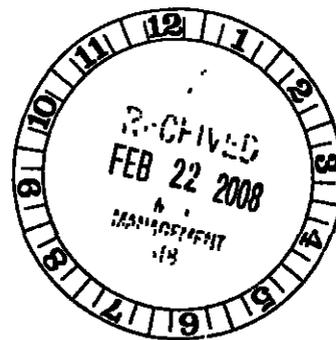
Section 1 (a) - Effective January 1, 1973, each employee, subject to the scope of schedule agreements held by the organizations signatory to the April 29, 1949 Vacation Agreement, will be qualified for an annual vacation of one week with pay, or pay in lieu thereof, if during the preceding calendar year the employee renders service under schedule agreements held by the organizations signatory to the April 29, 1949 Vacation Agreement amounting to one hundred sixty (160) basic days in miles or hours paid for, as provided in individual schedules.

Beginning with the effective date of the provisions of Article 3 of Agreement "A" dated May 23, 1952, on an individual carrier, but not earlier than the year 1960, in the application of this Section 1(a) each basic day in yard service performed by a yard service employee or by an employee having interchangeable road and yard rights shall be computed as 1.3 days, and each basic day in all other services shall be computed as 1.1 days, for purposes of determining qualifications for vacations. (This is the equivalent of 120 qualifying days in a calendar year in yard service and 144 qualifying days in a calendar year in road service.) (See NOTE below.)

Beginning with the year 1960 on all other carriers, in the application of this Section 1(a) each basic day in all classes of service shall be computed as 1.1 days for purposes of determining qualifications for vacation. (This is the equivalent of 144 qualifying days.) (See NOTE below.)

(b) - Effective January 1, 1973, each employee, subject to the scope of schedule agreements held by the organizations signatory to the April 29, 1949 Vacation Agreement, having two or more years of continuous service with employing carrier will be qualified for an annual vacation of two weeks with pay, or pay in lieu thereof, if during the preceding calendar year the employee renders service under schedule agreements held by the organizations signatory to the April 29, 1949 Vacation Agreement amounting to one hundred sixty (160) basic days in miles or hours paid for as provided in individual schedules and during the said two or more years of continuous service renders service of not less than three hundred twenty (320) basic days in miles or hours paid for as provided in individual schedules.

BEFORE THE  
SURFACE TRANSPORTATION BOARD



\_\_\_\_\_  
FINANCE DOCKET NO. 32760, SUB-FILE 45  
\_\_\_\_\_

IN THE MATTER OF ARBITRATION BETWEEN UNION PACIFIC RAILROAD  
COMPANY AND BROTHERHOOD OF LOCOMOTIVE ENGINEERS & TRAINMEN

(Arbitration Review)

\_\_\_\_\_  
APPENDIX  
VOLUME II  
\_\_\_\_\_

Respectfully submitted,

THOMPSON COBURN LLP

Clifford A. Godiner  
Rodney A. Harrison  
One US Bank Plaza  
St. Louis, Missouri 63101  
314-552-6000  
FAX 314-552-7000

Attorneys for Carrier

ENTERED  
Office of Proceedings  
FEB 22 2008  
Part of  
Public Record

## TABLE OF CONTENTS

- UP EX. 26     Articles IV and VII of the 1952 BLET National Agreement
- UP EX. 27     Article X of the 1996 BLET National Agreement
- UP EX. 28     Article I of the 1971 and 1986 BLET National Agreements
- UP EX. 29     Chapter 11 from the 1962 Presidential Railroad Commission Report
- UP EX. 30     Award of Arbitration Board No. 1679 (Van Wart Award)
- UP EX. 31     Award of Arbitration Board No. 586 (Simon Award)
- UP EX. 32     Article IX of the 1996 BLET National Agreement
- UP EX. 33     Agreement Between UP and BLET to Establish Interdivisional Service Between Dallas and Sweetwater, Texas
- UP EX. 34     Agreement Between UP and BLET to Establish Interdivisional Service Between Mason City and Sioux City
- UP EX. 35     Agreement Between UP and BLET to Establish Interdivisional Service Between Mason City and St James
- UP EX. 36     Agreement Between UP and BLET to Establish Interdivisional Service Between Portland and Kalama
- UP EX. 37     Agreement Between UP and BLET to Extend Switching Limits in Longview, Texas
- UP EX. 38     Agreement Between UP and BLET to Establish Enhanced Customer Service, Salt Lake City Intermodal Facility
- UP EX. 39     Agreement Between UP and BLET to Establish Enhanced Customer Service, Toyota Motor Company
- UP EX. 40     Award of Arbitration Board No. 6771 (Zusman Award) – Chicago/Minneapolis Interdivisional Service
- UP EX. 41     Award of Arbitration Board No. 567 (Lynch Award) – South Morrill/Bill Interdivisional Service
- UP EX. 42     Award of Arbitration Board No. 580 (Richter Award) – Dolores/ICTF Interdivisional Service

- UP EX. 43 Award of Special Arbitration Board (Muessig Award) – Beaumont/Lavonia Interdivisional Service
- UP EX. 44 Award of Arbitration Board No. 6833 (Nash Award) – Ft. Worth/Halsted Interdivisional Service
- UP EX. 45 May 16, 2000 Notice to Establish Interdivisional Service Between El Paso and Pecos, Texas
- UP EX. 46 August 17, 2000 Notice to Establish Interdivisional Service Between South Pekin and Chicago/Clinton, Illinois
- UP EX. 47 July 20, 2005 Notice to Establish Interdivisional Service Between West Colton and El Centro, California
- UP EX. 48 June 27, 2001 Notice to Establish Enhanced Customer Service – Union Electric Meramec Coal Plant at Hillcrest, Missouri
- UP EX. 49 The Kenis Award
- UP EX. 50 Reply Brief of the BLET to the STB in the Kenis Appeal
- UP EX. 51 Brief of the BLET to the Seventh Circuit in Case No. 06-3282
- UP EX. 52 The Binau Award
- UP EX. 53 June 7, 2006 Notice to Establish Interdivisional Service Between Houston and Angleton/Freepport/Bloomington
- UP EX. 54 BLET's Submission to Arbitrator Perkovich
- UP EX. 55 BLET's Submission to Arbitrator Binau

Respectfully submitted,

THOMPSON COBURN LLP

By  \_\_\_\_\_

Clifford A. Godiner  
Rodney A. Harrison  
One US Bank Plaza  
St. Louis, Missouri 63101  
314-552-6000  
FAX 314-552-7000

Attorneys for Carrier

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon Gilbert Gore, 1448 MacArthur Avenue, Harvey, Louisiana 70058, by United States Mail, first class postage prepaid, this 21<sup>st</sup> day of February 2008.

  
\_\_\_\_\_

26

May 23, 1952

AGREEMENTS

for

- 1. WAGE INCREASES
- 2. COST-OF-LIVING BASIS FOR WAGE RATE ADJUSTMENTS
- 3. RULES CHANGES

and

in YARD, BELT LINE, TRANSFER and HOSTLING SERVICE  
for

- 4. 5-DAY WORK-WEEK, AND INTERIM 6-DAY WORK-WEEK

applicable to

ENGINEERS, FIREMEN, HOSTLERS AND HOSTLER HELPERS

represented by

Brotherhood of Locomotive Engineers

	Page
Interim agreement . . . . .	1
Agreement "B" . . . . .	15
Agreement "A" . . . . .	17
Exhibits A (Eastern Railroads) . . . . .	34
B (Western Railroads) . . . . .	35
C (Southeastern Railroads) . . . . .	38
B.L.E. withdrawal of certain items of January 6, 1950 proposal . . . . .	39
Exception from moratorium. union shop requests . . . . .	41
Approval by Railroad and Airline Wage Board . . . . .	43

21

terim

ARTICLE 3 - SIX-DAY WORK WEEK (continued)

Section 12 - (continued)

into additional written understandings to implement the purposes of this Article 3, provided that such understandings shall not be inconsistent with this Article 3.

ARTICLE 4 - INTERDIVISIONAL, INTERSENIORITY DISTRICT, INTRADIVISIONAL, AND/OR INTRASENIORITY DISTRICT SERVICE (FREIGHT OR PASSENGER)

Where a carrier desires to establish interdivisional, interseniority district, intradivisional, or intraseniority district runs in passenger or freight service, the carrier shall give notice to the General Chairman of the organizations involved of its desire to establish such runs, giving detailed information specifying the service it proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such service, the purpose being to furnish the employees with all the necessary information.

The parties will negotiate in good faith on such proposals and failing to agree, either party may invoke the services of the National Mediation Board. If mediation fails and the parties do not agree to arbitrate the dispute under the Railway Labor Act, then at the request of either party, the proposal will be considered by a National Committee consisting of the chiefs of the employee organizations involved and an equal number of carrier representatives who shall be members of the Carriers' Conference Committees, signatories hereto, or their successors or representatives, provided, however, that this procedure of appeal to the National Committee thus created shall not be made in any case for a period of six months from the date of this agreement.

If said National Committee does not agree upon the disposition of the proposal, then the conferees will in good faith undertake to agree upon a neutral chairman who will sit with the Committee, hear the arguments of the parties, and make representations and recommendations to the parties with the view in mind of disposing of the controversy. In the event the parties do not agree upon such neutral chairman, then upon the request of the parties, or either of them, the National Mediation Board will appoint the chairman.

While the recommendations of the Chairman are not to be compulsory or binding as an arbitration award, yet the parties hereto affirm their good intentions of arranging through the above procedure for the final disposition of all such disputes on a fair and reasonable basis.

Every effort will be made to settle disputes over interdivisional service on the property and thus to minimize the number of appeals to the above National Committee.

This rule shall become effective August 1, 1952, except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before July 1, 1952.

ARTICLE 5 - MORE THAN ONE CLASS OF ROAD SERVICE

The dispute as to this rule shall be submitted to arbitration. The arbitrators shall have the right to consider whether or not any rule covering more than one class of road service should be granted, and if so, the language of such rule.

Each party shall designate the exact questions, conditions or issues relating to such rule which it desires to submit to arbitration, and same shall constitute the questions to be submitted to arbitration.

CARRIER'S EXHIBIT 7

PAGE 2 OF 3

ARTICLE 5 - MORE THAN ONE CLASS OF ROAD SERVICE (continued)

The Board of Arbitration shall be composed of three members, one appointed by the Chairmen of the three Carriers' Conference Committees; one by the organization or organizations executing this agreement. The arbitrators selected by the parties shall in good faith endeavor to agree on the neutral arbitrator, and failing therein, said neutral shall be appointed by the President of the United States. Procedures, including time limits within which all actions provided for herein are to be taken, shall be according to the forms, procedures and stipulations contained in the Railway Labor Act, as amended.

The arbitration proceedings shall be commenced on or before August 12, 1952.

ARTICLE 6 - SWITCHING SERVICE FOR NEW INDUSTRIES

(a) Where, after the effective date of this agreement, an industry desires to locate outside of existing switching limits at points where yard crews are employed, the carrier may assure switching service at such location even though switching limits be not changed, and may perform such service with yard crews from a yard or yards embraced within one and the same switching limits without additional compensation or penalties therefor to yard or road crews, provided the switch governing movements from the main track to the track or tracks serving such industry is located at a point not to exceed four miles from the then existing switching limits. Road crews may perform service at such industry only to the extent they could do so if such industry were within switching limits. Where rules require that yard limits and switching limits be the same, the yard limit board may be moved for operating purposes but switching limits shall remain unchanged unless and until changed in accordance with rules governing changes in switching limits.

The yard engineer - fireman or yard engineers - firemen involved shall keep account of and report to the carrier daily on form provided the actual time consumed by the yard crew or crews outside of the switching limits in serving the industry in accordance with this rule and a statement of such time shall be furnished the BLE General Chairman or General Chairmen representing yard and road engineers - firemen by the carrier each month. The BLE General Chairman or General Chairmen involved may at periodic intervals of not less than three months designate a plan for apportionment of time whereby road engineers - firemen from the seniority district on which the industry is located may work in yard service under yard rules and conditions to offset the time consumed by yard crews outside the switching limits. Failing to arrange for the apportionment at the indicated periods they will be understood to have waived rights to apportionment for previous periods. Failure on the part of employee representatives to designate an apportionment, the carrier will be under no obligation to do so and will not be subject to claims.

(b) This rule shall in no way affect the servicing of industries outside yard or switching limits at points where no yard crews are employed.

(c) This rule shall become effective August 1, 1952, except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before July 1, 1952.

ARTICLE 7 - CHANGING SWITCHING LIMITS

(a) Where an individual carrier not now having the right to change existing switching limits where yard crews are employed, considers it advisable to change the same, it shall give notice in writing to the General Chairman or General Chairmen of such intention, specifying the changes it proposes and the conditions.

27

rules related to starting times and yard limits for yard crews which are at variance with existing agreements.

(c) A Joint Committee, comprised of an equal number of carrier representatives and organization representatives, shall be constituted to determine whether a bona fide need exists to provide the service. If the Joint Committee has not made its determination by the end of the 14 day advance notice period referenced in Paragraph (b), it shall be deemed to be deadlocked, and the service will be allowed on an experimental basis for a six-month period. If, after the six months have expired, the organization members of the Joint Committee continue to object, the matter shall be referred to arbitration.

(d) If the parties are unable to agree upon an arbitrator within seven days of the date of the request for arbitration, either party may request the National Mediation Board to appoint an arbitrator. The fees and expenses of the arbitrator will be shared equally by the parties.

(e) The determination of the arbitrator shall be limited to whether the carrier has shown a bona fide need to provide the service requested or can provide the service without a special exception to the existing work rules related to starting times and yard limits for yard crews being made at a comparable cost to the carrier.

- - - - -

Nothing in this Article is intended to restrict any of the existing rights of a carrier.

This Article shall become effective November 17, 1991 except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before such date.

#### ARTICLE X - INTERDIVISIONAL SERVICE

Article IX - Interdivisional Service of the May 19, 1986 Award of Arbitration Board No. 458, is amended as follows:

Section 4(b) of Article IX is renumbered Section 4(c) and a new Section 4(b) is hereby adopted:

(b) The carrier and the organization mutually commit themselves to the expedited processing of negotiations concerning interdivisional runs, including those involving running through home terminals, and mutually commit themselves to request the prompt appointment by the National Mediation Board of an arbitrator when agreement cannot be reached.

#### ARTICLE XI - GENERAL PROVISIONS

##### Section 1 - Court Approval

This Implementing Document is subject to approval of the courts with

28

## AGREEMENT

THIS AGREEMENT, made this 13th day of May, 1971, by and between the participating carriers listed in Exhibits A, B and C, attached hereto and made a part hereof, and represented by the National Railway Labor Conference and the Eastern, Western and Southeastern Carriers' Conference Committees, and the employees of such carriers shown thereon and represented by the Brotherhood of Locomotive Engineers, witnesseth:

IT IS HEREBY AGREED:

### ARTICLE I - WAGE INCREASES

#### Section 1 - First General Wage Increase

(a) Effective January 1, 1970, all standard basic daily rates of pay of employees represented by the BLE in effect on December 31, 1969, shall be increased by an amount equal to 5.0%.

(b) Effective January 1, 1970, all standard mileage rates of pay of employees represented by BLE in road service in effect on December 31, 1969, shall be increased by an amount equal to 5.0%.

(c) In computing the percentage increases under paragraphs (a) and (b) above, 5.0% shall be applied to standard basic daily rates of pay, and 5.0% shall be applied to standard mileage rates of pay, respectively, applicable in the following weight-on-drivers brackets, and the amounts so produced shall be added to each standard basic daily or mileage rate of pay:

Passenger - 600,000 and less than 650,000 pounds  
Freight - 950,000 and less than 1,000,000 pounds  
(through freight rates)

Yard Engineers - Less than 500,000 pounds  
Yard Firemen - 250,000 and less than 300,000 pounds  
(separate computations covering five-day rates and other than five-day rates)

(d) The standard basic daily and mileage rates of pay produced by application of the increases provided for in this Section 1 are set forth in Appendix 1, which is a part of this Agreement.

#### Section 2 - Second General Wage Increase

Effective November 1, 1970, all standard basic daily and mileage rates of pay of employees represented by the BLE in effect on October 31, 1970, shall be increased by the equivalent of 32¢ per hour or \$2.56 per day, computed and applied in the same manner as the first general wage increase provided under Section 1 above. The standard basic daily and mileage rates of pay produced by application of this increase are set forth in Appendix 2, which is a part of this Agreement.

#### Section 3 - Third General Wage Increase

Effective April 1, 1971, all standard basic daily and mileage rates of pay of employees represented by the BLE in effect on March 31, 1971, shall be

Increased by an amount equal to 4.0%, computed and applied in the same manner as the first general wage increase provided under Section 1 above. The standard basic daily and mileage rates of pay produced by application of this increase are set forth in Appendix 3, which is a part of this Agreement.

Section 4 - Special Adjustments

On carriers or segments thereof where the BLE standard five-day yard service rates of pay for yard engineers are in effect on May 12, 1971 effective May 13, 1971 the standard basic daily and mileage rates of pay of road engineers shall be reduced by the equivalent of 8¢ per day, and the five-day yard service standard basic daily rates of yard engineers shall be increased by 67¢ per day. The standard basic daily and mileage rates of pay produced by application of these adjustments, for the classes of service specified, are set forth in Appendix 4, which is a part of this Agreement.

Section 5 - Fourth General Wage Increase

Effective October 1, 1971, all standard basic daily and mileage rates of pay of employees represented by the BLE in effect on September 30, 1971, shall be increased by an amount equal to 5.0%, computed and applied in the same manner as the first general wage increase provided under Section 1 above. The standard basic daily and mileage rates of pay produced by application of this increase are set forth in Appendix 5, which is a part of this Agreement.

Section 6 - Fifth General Wage Increase

Effective April 1, 1972, all standard basic daily and mileage rates of pay of employees represented by the BLE in effect on March 31, 1972, shall be increased by an amount equal to 5.0%, computed and applied in the same manner as the first general wage increase provided under Section 1 above. The standard basic daily and mileage rates of pay produced by application of this increase are set forth in Appendix 6, which is a part of this Agreement.

Section 7 - Sixth General Wage Increase

Effective October 1, 1972, all standard basic daily and mileage rates of pay of employees represented by the BLE in effect on September 31, 1972, shall be increased by an amount equal to 5.0% computed and applied in the same manner as the first general wage increase provided under Section 1 above. The standard basic daily and mileage rates of pay produced by application of this increase are set forth in Appendix 7, which is a part of this Agreement.

Section 8 - Seventh General Wage Increase

Effective January 1, 1973, all standard basic daily and mileage rates of pay of employees represented by the BLE in effect on December 31, 1972, shall be increased by the equivalent of 15¢ per hour or \$1.20 per basic day, computed and applied in the same manner as the first general wage increase provided under Section 1 above. The standard basic daily and mileage rates of pay produced by application of this increase are set forth in Appendix 8, which is a part of this Agreement.

Section 9 - Eighth General Wage Increase

Effective April 1, 1973, all standard basic daily and mileage rates of pay of employes represented by the BLE in effect on March 31, 1973, shall be increased by the equivalent of 10¢ per hour or 80¢ per basic day, computed and applied in the same manner as the first general wage increase provided under Section 1 above. The standard basic daily and mileage rates of pay produced by application of this increase are set forth in Appendix 9, which is a part of this Agreement.

Section 10 - Application of Wage Increases

(a) All arbitraries, miscellaneous rates or special allowances, based upon mileage, hourly or daily rates of pay, as provided in the schedules or wage agreements, shall be increased commensurately with the wage increases provided for in this Article I.

(b) In determining new hourly rates, fractions of a cent will be disposed of by applying the next higher quarter of a cent.

(c) Daily earnings minima shall be increased by the amount of the respective daily increases.

(d) Existing money differentials above existing standard daily rates shall be maintained.

(e) In local freight service the same differential in excess of through freight rates shall be maintained.

(f) The differential of \$4.00 per basic day in freight and yard service, and 4¢ per mile for miles in excess of 100 in freight service, will be maintained for engineers working without firemen, the firemen's position having been eliminated pursuant to the provisions of Award 282. Effective as of the date of this Agreement such differential shall be applied in the same manner as the local freight differential.

(g) In computing the increased rates of pay effective January 1, 1970 under Section 1 for firemen employed in local freight service, or on road switchers, roustabout runs, mine runs, or in other miscellaneous service, on runs of 100 miles or less which are therefore paid on a daily basis without a mileage component, whose rates had been increased by "an additional \$.40" effective July 1, 1968, 5.0% of the daily rates, exclusive of the local freight differential and any other money differential above existing standard daily rates but including the \$.40 increase, in effect for such firemen December 31, 1969 applicable in the weight-on-drivers bracket 950,000 and less than 1,000,000 pounds, shall be added to each applicable weight on drivers daily rate of pay. The same procedure shall be followed in applying the percentage increases of 4.0%, 5.0%, 5.0%, and 5.0% effective April 1, 1971, October 1, 1971, April 1, 1972, and October 1, 1972, respectively.

(h) Other than standard rates:

(i) Existing basic daily and mileage rates of pay other than standard shall be increased, effective as of the effective dates specified in Sections 1 through 9 hereof, by the same respective percentages and amounts as set forth therein, computed and applied in the same manner; except that the special adjustments provided in Section 4 hereof shall not serve to increase other than standard five-day yard service rates of pay of yard engineers which already include the equivalent of the 67¢ per basic day adjustment for five-day yard service rates of engineers provided in Section 4.

(ii) The differential of \$4.00 per basic day in freight and yard service, and 4¢ per mile for miles in excess of 100 in freight service, will be maintained for engineers working without firemen, the firemen's position having been eliminated pursuant to the provisions of Award 282. Effective as of the date of this Agreement such differential shall be applied in the same manner as the local freight differential.

(iii) Daily rates of pay, other than standard, of firemen employed in local freight service, or on road switchers, roustabout runs, mine runs, or in other miscellaneous service, on runs of 100 miles or less which are therefore paid on a daily basis without a mileage component, shall be increased by 5.0% effective January 1, 1970 and by the percentage increases of 4.0%, 5.0%, 5.0%, and 5.0% effective April 1, 1971, October 1, 1971, April 1, 1972, and October 1, 1972, respectively, computed and applied in the same manner as provided in paragraph (g) above.

(i) Coverage -

All employees who had an employment relationship after December 31, 1969, shall receive the amounts to which they are entitled under this Article I regardless of whether they are now in the employ of the carrier except persons who prior to the date of this Agreement have voluntarily left the service of the carrier other than to retire or who have failed to respond to call-back to service to which they were obligated to respond under the Rules Agreement.

ARTICLE II - SWITCHING LIMITS

Article 7 - Changing switching limits of the May 23, 1952 Agreement is hereby amended to read as follows:

(a) Where an individual carrier not now having the right to change existing switching limits where yard crews are employed, considers it advisable to change the same, it shall give notice in writing to the General Chairman or General Chairmen of such intention, specifying the changes it proposes and the conditions, if any, it proposes shall apply in event of such change. The carrier and the General Chairman or General Chairmen shall, within 30 days, endeavor to negotiate an understanding.

February 20, 2008

Ms. Karlene Dittrich  
ERISA Appeals Department Supervisor  
Northside Hospital - Department 935  
1100 Johnson Ferry Road, Suite 780  
Atlanta, GA 30342

Re: Patient – Corina Marica  
ID No – 948327709  
Dates of Service – 2/6/07-2/10/07  
Charges – \$11,156.50

Dear Ms Dittrich:

This letter is in response to your letter dated January 21, 2008 to the Plan Administrator of the Enterprise Rent-A-Car Hospital Insurance Plan (the “Plan”) regarding charges incurred by Corina Marica, a Plan participant, at Northside Hospital (the “Hospital”).

The Hospital is requesting a full and fair review of denied claims on behalf of Ms. Marica under the ERISA claims and appeals procedures found in Department of Labor Regulation Section 2560.503-1. The Hospital asserts that certain charges should have been paid by the Plan because they were medically necessary. After reviewing all of the relevant correspondence and documentation regarding this matter, we have determined that the ERISA claims and appeals procedures do not apply in this case, because it involves a contractual issue between the Hospital and the Plan’s third party administrator, United HealthCare (“UHC”) Furthermore, medical necessity is not at issue because a threshold procedural requirement of pre-notification by the Hospital to UHC was not met.

The Plan’s post-delivery hospital stay policy provides coverage for 48 hours following a normal vaginal delivery and 96 hours following a cesarean section for the mother. The Plan and the network contract between the Hospital and UHC require prior notification if a post-delivery hospital stay extends beyond the length of stay noted above. If the provider fails to give prior notification, no payment is made by the Plan, and the Plan participant may not be billed for the charges

The facts as we understand them are as follows. Ms Marica’s Hospital stay was from 2/06/07–02/10/07. The Hospital failed to give prior notification to UHC for Ms. Marica’s extended stay

February 20, 2008

Page 2

from 02/09/07–02/10/07. The total amount billed by the Hospital was \$11,156.50. These charges were separated for processing by UHC, as follows:

<u>Dates of Service</u>	<u>Charges</u>	<u>Amount Paid by Plan</u>
02/06/07–02/08/07	\$8,367.37	\$4,597.73
02/09/07–02/10/07	\$2,789.13	\$0.00

Our understanding is that you do not dispute the total paid with respect to the dates of service 02/06/07–02/08/07.<sup>1</sup> Rather, you claim that the Hospital should have been paid with respect to the dates of service 02/09/07–02/10/07. According to the UnitedHealthcare EOBs dated 03/01/07 and 05/02/07, none of the charges for dates of service 02/09/07–02/10/07 were reimbursed under the Plan. The following explanation was given in both EOBs:

According to our records, a network health care facility was used. Under the Plan, notification was required but not received. Therefore, we have declined payment for the service because requirements of the Plan were not met. According to the network contract, the patient may not be billed for the declined amount. However, the patient is responsible for the network Plan copay, deductible, or coinsurance amounts.

The charges for the dates of service 02/09/07–02/10/07 were denied because the Hospital failed to give prior notification, not because they were not medically necessary; the issue of medical necessity was never reached because of the Hospital's failure to give pre-notification. And, because under the terms of the network contract the Hospital has no recourse against Ms. Marica for these charges, the ERISA claims and appeals procedures do not apply in this case.

The Employee Benefits Security Administration ("EBSA") of the U.S. Department of Labor has posted on its website a list of frequently asked questions about the ERISA claims and appeals procedure regulations.<sup>2</sup> Q/A 8 asks whether the regulations apply to contractual disputes between health care providers (e.g., physicians, hospitals) and insurers or managed care organizations (e.g., HMOs). The EBSA answers no, provided that the contractual dispute will have no effect on a participant's right to benefits under a plan. The Q/A continues:

The regulation applies only to claims for benefits. . . . The regulation does not apply to requests by health care providers for payments due them—rather than due the claimant—in accordance with contractual arrangements between the

---

<sup>1</sup> According to the UnitedHealthcare EOB dated 03/01/07, the Plan initially paid \$2,916.00 for the dates of service 02/06/07–02/08/07. In addition, according to the United HealthCare EOB dated 05/02/07, that claim was adjusted because an incorrect contractual allowance was used when the claim was processed initially, therefore, the Plan paid an additional \$1,681.73 for the dates of service 02/06/07–02/08/07, for a total of \$4,597.73.

<sup>2</sup> The list of FAQs can be found at [http://www.dol.gov/ebsa/faq/faq\\_claims\\_proc\\_reg.html](http://www.dol.gov/ebsa/faq/faq_claims_proc_reg.html).

provider and an insurer or managed care organization, where the provider has no recourse against the claimant for amounts, in whole or in part, not paid by the insurer or managed care organization

The following example illustrates this principle. Under the terms of a group health plan, participants are required to pay only a \$10 co-payment for each office visit to a preferred provider doctor listed by a managed care organization that contracts with such doctors. Under the preferred provider agreement between the doctors and the managed care organization, the doctor has no recourse against a claimant for amounts in excess of the co-payment. Any request by the doctor to the managed care organization for payment or reimbursement for services rendered to a participant is a request made under the contract with the managed care organization, not the group health plan; accordingly, the doctor's request is not a claim for benefits governed by the regulation.

On the other hand, where a claimant may request payments for medical services from a plan, but the medical provider will continue to have recourse against the claimant for amounts unpaid by the plan, the request, whether made by the claimant or by the medical provider (e.g., in the case of an assignment of benefits by the claimant) would constitute a claim for benefits by the claimant.

In sum, the ERISA claims and appeals procedures do not apply in this case because it involves a contractual issue between the Hospital and the Plan's third party administrator. Enclosed are the EBSA's Q/A 8 and the EOBs referenced in this letter.

Sincerely,

Enterprise Rent-A-Car Appeals Committee

By: \_\_\_\_\_

Title. \_\_\_\_\_

W E T

BEFORE THE  
ARBITRATION BOARD

Constituted Pursuant to a National Mediation Board Arbitration Agreement Made and Entered Into On April 15, 1986

By and Between

CERTAIN CARRIERS REPRESENTED BY )  
THE NATIONAL CARRIERS' CONFERENCE )  
COMMITTEE )

) Arbitration Board  
) No. 458

and )

CERTAIN OF THEIR EMPLOYEES )  
REPRESENTED BY THE )  
BROTHERHOOD OF LOCOMOTIVE ENGINEERS )

) National Mediation  
) Board

(National Mediation Board Case Nos.  
A-10712 and A-11472)

AWARD

\_\_\_\_\_

Washington, D.C.  
May 19, 1986

APPENDIX B

IT IS HEREBY AGREED:

ARTICLE I - GENERAL WAGE INCREASES

Section 1 - First General Wage Increase

(a) Effective July 1, 1986, all standard basic daily rates of pay (excluding cost-of-living allowance) of employees represented by the Brotherhood of Locomotive Engineers in effect on June 30, 1986 shall be increased by one (1) percent.

(b) In computing the increase under paragraph (a) above, one (1) percent shall be applied to the standard basic daily rates of pay applicable in the following weight-on-drivers brackets, and the amounts so produced shall be added to each standard basic daily rate of pay:

Passenger	- 600,000 and less than 650,000 pounds
Freight	- 950,000 and less than 1,000,000 pounds (through freight rates)
Yard Engineers	- Less than 500,000 pounds
Yard Firemen	- Less than 500,000 pounds (separate computation covering five-day rates and other than five-day rates)

Section 2 - Second General Wage Increase

Effective July 1, 1986, following application of the wage increase provided for in Section 1(a) above, all standard basic daily rates of pay (excluding cost-of-living allowance) of employees represented by the Brotherhood of Locomotive Engineers in effect shall be further increased by two (2) percent, computed and applied in the manner prescribed in Section 1 above.

Section 3 - Third General Wage Increase

Effective October 1, 1986, all standard basic daily rates of pay (excluding cost-of-living allowance) of employees represented by the Brotherhood of Locomotive Engineers in effect on September 30, 1986, shall be increased by one and one-half (1.5) percent, computed and applied in the manner prescribed in Section 1 above.

Section 4 - Fourth General Wage Increase

Effective January 1, 1987, all standard basic daily rates of pay (excluding cost-of-living allowance) of employees represented by the Brotherhood of Locomotive Engineers in effect on December 31, 1986, shall be increased by two and one-quarter (2.25) percent, computed and applied in the manner prescribed in Section 1 above.

Section 5 - Fifth General Wage Increase

Effective July 1, 1987, all standard basic daily rates of pay (excluding cost-of-living allowance) of employees represented by the Brotherhood of Locomotive Engineers in effect on June 30, 1987, shall be increased by one and one-half (1.5) percent, computed and applied in the manner prescribed in Section 1 above.

Section 6 - Sixth General Wage Increase

Effective January 1, 1988, all standard basic daily rates of pay (excluding cost-of-living allowance) of employees represented by the Brotherhood of Locomotive Engineers in effect on December 31, 1987, shall be increased by two and one-quarter (2.25) percent, computed and applied in the manner prescribed in Section 1 above.

Section 7 - Standard Rates

The standard basic daily rates of pay (excluding cost-of-living allowance) produced by application of the increases provided for in this Article are set forth in Appendix 1, which is a part of this Agreement.

Section 8 - Application of Wage Increases

(a) Duplicate time payments, including arbitraries and special allowances that are expressed in time, miles or fixed amounts of money, and mileage rates of pay for miles run in excess of the number of miles comprising a basic day, will not be subject to the adjustments provided for in this Article.

(b) Miscellaneous rates based upon hourly or daily rates of pay, as provided in the schedules or wage agreements, shall be adjusted under this Agreement in the same manner as heretofore increased under previous wage agreements.

(c) In determining new hourly rates, fractions of a cent will be disposed of by applying the next higher quarter of a cent.

(d) Daily earnings minima shall be changed by the amount of the respective daily adjustments.

(e) Existing money differentials above existing standard daily rates shall be maintained.

(f) In local freight service, the same differential in excess of through freight rates shall be maintained.

(g) The differential of \$4.00 per basic day in freight and yard service, and 4¢ per mile for miles in excess of the number of miles encompassed in the basic day in freight service, will be maintained for engineers working without firemen on locomotives on which under the former National Diesel Agreement of 1950 firemen would have been required. Such differential will continue to be applied in the same manner as the local freight differential.

(h) In computing the first increase in rates of pay effective July 1, 1986, under Section 1 for firemen employed in local freight service, or on road switchers, roustabout runs, mine runs, or in other miscellaneous service, on runs of miles equal to or less than the number comprising a basic day, which are therefore paid on a daily basis without a mileage component, whose rates had been increased by "an additional \$.40" effective July 1, 1968, the one (1) percent increase shall be applied to daily rates in effect June 30, 1986, exclusive of local freight differentials and any other money differential above existing standard daily rates. For firemen, the rates applicable in the weight-on-drivers bracket 950,000 and less than 1,000,000 pounds shall be utilized in computing the amount of increase. The same procedure shall be followed in computing the second increase effective July 1, 1986, and the subsequent increases effective October 1, 1986, January 1, 1987, July 1, 1987 and January 1, 1988. The rates produced by application of the standard local freight differentials and the above-referred-to special increase of "an additional \$.40" to standard basic through freight rates of pay are set forth in Appendix 1 which is a part of this Agreement.

(i) Other than standard rates:

(i) Existing basic daily rates of pay other than standard shall be changed, effective as of the dates specified in Sections 1 through 6 hereof, by the same respective percentages as set forth therein, computed and applied in the same manner as the standard rates were determined.

(ii) The differential of \$4.00 per basic day in freight and yard service, and 4¢ per mile for miles in excess of the number encompassed in the basic day in freight service, will be maintained for engineers working without firemen on locomotives on which under the former National Diesel Agreement of 1950 firemen would have been required.

(iii) Daily rates of pay, other than standard, of firemen employed in local freight service, or on road switchers, roustabout runs, mine runs, or in other miscellaneous service, on runs of miles equal to or less than the number encompassed in the basic day, which are therefore paid on a daily basis without a mileage component, shall be increased as of the effective dates specified in Sections 1 through 6 hereof, by the same respective percentages as set forth therein, computed and applied in the same manner as provided in paragraph (i)(i) above.

(j) Wage rates resulting from the increases provided for in Sections 1 through 6 of this Article I, and in Section 1(d) of Article II, will not be reduced under Article II.

**ARTICLE II - COST-OF-LIVING ADJUSTMENTS**

**Section 1 - Amount and Effective Dates of Cost-of-Living Adjustments**

(a) The cost-of-living allowance which, on September 30, 1986 will be 13 cents per hour, will subsequently be adjusted, in the manner set forth in and subject to all the provisions of paragraphs (e) and (g) below, on the basis of the "Consumer Price Index for Urban Wage Earners and Clerical Workers (Revised Series) (CPI-W)" (1967 = 100), U.S. Index, all items - unadjusted, as published by the Bureau of Labor Statistics, U.S. Department of Labor, and hereinafter referred to as the BLS Consumer Price Index. The first such cost-of-living adjustment shall be made effective October 1, 1986, based (subject to paragraph (e)(i) below) on the BLS Consumer Price Index for March 1986 as compared with the index for September 1985. Such adjustment, and further cost-of-living adjustments which will be made effective as described below, will be based on the change in the BLS Consumer Price Index during the respective measurement periods shown in the following table subject to the exception in paragraph (e)(ii) below, according to the formula set forth in paragraph (f) below as limited by paragraph (g) below:

<u>Measurement Periods</u>		<u>Effective Date of Adjustment</u>
<u>Base Month</u> (1)	<u>Measurement Month</u> (2)	
September 1985	March 1986	October 1, 1986
March 1986	September 1986	January 1, 1987
September 1986	March 1987	July 1, 1987
March 1987	September 1987	January 1, 1988

(b) While a cost-of-living allowance is in effect, such cost-of-living allowance will apply to straight time, overtime, vacations, holidays and to special allowances in the same manner as basic wage adjustments have been applied in the past, except that any part of such allowance generated after September 30, 1986 shall not apply to duplicate time payments, including arbitraries and special allowances that are expressed in time, miles or fixed amounts of money or to mileage rates of pay for miles run in excess of the number of miles comprising a basic day.

(c) The amount of the cost-of-living allowance, if any, which will be effective from one adjustment date to the next may be equal to, or greater or less than, the cost-of-living allowance in effect in the preceding adjustment period.

(d) On June 30, 1988 all of the cost-of-living allowance then in effect shall be rolled into basic rates of pay and the cost-of-living allowance in effect will be reduced to zero. Accordingly, the amount rolled in will not apply to duplicate time payments, including arbitraries and special allowances that are expressed in time, miles or fixed amounts of money, and mileage rates of pay for miles run in excess of the number of miles comprising a basic day, except to the extent that it includes part or all of the 13 cents per hour allowance in effect on September 30, 1986.

(e) Cap. (i) In calculations under paragraph (f) below, the maximum increase in the BLS Consumer Price Index (C.P.I.) which will be taken into account will be as follows:

<u>Effective Date of Adjustment</u> (1)	<u>Maximum C.P.I. Increase Which May Be Taken into Account</u> (2)
October 1, 1986	4% of September 1985 CPI
January 1, 1987	8% of September 1985 CPI, less the increase from September 1985 to March 1986
July 1, 1987	4% of September 1986 CPI
January 1, 1988	8% of September 1986 CPI, less the increase from September 1986 to March 1987

(ii) If the increase in the BLS Consumer Price Index from the base month of September 1985 to the measurement month of March 1986, exceeds 4% of the September base index, the measurement period which will be used for determining the cost-of-living adjustment to be effective the following January will be the twelve-month period from such base month of September; the increase in the index which will be taken into account will be limited to that portion of increase which is in excess of 4% of such September base index, and the maximum increase in that portion of the index which may be taken into account will be 8% of such September base index less the 4% mentioned in the preceding clause, to which will be added any residual tenths of points which had been dropped under paragraph (f) below in calculation of the cost-of-living adjustment which will have become effective October 1 during such measurement period.

(iii) Any increase in the BLS Consumer Price Index from the base month of September of one year to the measurement month of September of the following year in excess of 8% of the September base month index, will not be taken into account in the determination of subsequent cost-of-living adjustments.

(f) Formula. The number of points change in the BLS Consumer Price Index during a measurement period, as limited by paragraph (e) above, will be converted into cents on the basis of one cent equals 0.3 full points. (By "0.3 full points" it is intended that any remainder of 0.1 point or 0.2 point of change after the conversion will not be counted).

The cost-of-living allowance in effect on September 30, 1986 will be adjusted (increased or decreased) effective October 1, 1986 by the whole number of cents produced by dividing by 0.3 the number of points (including tenths of points) change, as limited by paragraph (e) above, in the BLS Consumer Price Index during the measurement period from the base month of September 1985 to the measurement month of March 1986. Any residual tenths of a point resulting from such division will be dropped. The result of such division will be added to the amount of the cost-of-living allowance in effect on September 30, 1986 if the Consumer Price Index will have been higher at the end than at the beginning of the measurement period, and subtracted therefrom only if the index will have been lower at the end than at the beginning of the measurement period and then, only, to the extent that the allowance remains at zero or above.

The same procedure will be followed in applying subsequent adjustments.

(g) Offsets. The amounts calculated in accordance with the formula set forth in paragraph (f) will be offset by the third through the sixth increases provided for in Article I of this Agreement as applied on an annual basis against a starting rate of \$12.92 per hour. This will result in the cost-of-living increases, if any, being subject to the limitations herein described:

(i) Any increase to be paid effective October 1, 1986 is limited to that in excess of 19 cents per hour.

(ii) The combined increases, if any, to be paid as a result of the adjustments effective October 1, 1986 and January 1, 1987 are limited to those in excess of 48 cents per hour.

(iii) Any increase to be paid effective July 1, 1987 is limited to that in excess of 20 cents per hour.

(iv) The combined increases, if any, to be paid as a result of the adjustments effective July 1, 1987 and January 1, 1988 are limited to those in excess of 51 cents per hour.

(h) Continuance of the cost-of-living adjustments is dependent upon the availability of the official monthly BLS Consumer Price Index (CPI-W) calculated on the same basis as such Index, except that, if the Bureau of Labor Statistics, U.S. Department of Labor, should during the effective period of this Agreement revise or change the methods or basic data used in calculating the BLS Consumer Price Index in such a way as to affect the direct comparability of such revised or changed index with the CPI-W Index during a measurement period, then that Bureau shall be requested to furnish a conversion factor designed to adjust the newly revised index to the basis of the CPI-W Index during such measurement period.

#### Section 2 - Application of Cost-of-Living Adjustments

In application of the cost-of-living adjustments provided for by Section 1 of this Article II, the cost-of-living allowance will not become part of basic rates of pay except as provided in Section 1(d). In application of such allowance, each one cent per hour of cost-of-living allowance will be treated as an increase of 8 cents in the basic daily rates of pay produced by application of Article I and by Section 1(d) of this Article II. The cost-of-living allowance will otherwise be applied in keeping with the provisions of Section 8 of Article I.

#### ARTICLE III - LUMP SUM PAYMENT

A lump sum payment, calculated as described below, will be paid to each employee subject to this Agreement who established an employment relationship prior to the date of this Agreement and has retained that relationship or has retired or died.

Employees with 2,150 or more straight time hours paid for (not including any such hours reported to the Interstate Commerce

29

\* Chapter 11INTERDIVISIONAL RUNSThe Proposal

The Carriers propose the elimination of all agreements, rules, regulations, interpretations and practices, however established, applicable to any class or grade of road train or engine service employees which prohibit or restrict the Carriers' right to establish, move, consolidate or abolish crew terminals, merge or consolidate seniority districts, or establish interdivisional, interseniority district, intradivisional and intraseniority district runs. The proposal also calls for the elimination of all agreements, rules, regulations, interpretations and practices which prohibit or provide penalties for running crews through established crew terminals or provide for automatic release of crews upon arrival at terminals or end of run, or when off any assigned territory.

The Carriers' proposal contemplates the establishment of a rule which would permit a Carrier to make any of the types of changes outlined above and to establish interdivisional, interseniority district, intradivisional and intraseniority district runs in either assigned or unassigned service (including extra service), on either a one way or turnaround (including short turnaround) basis and through established crew terminals subject to the following conditions:

- (1) The Carriers would be required to distribute mileage ratably between the employees of the seniority districts affected.
- (2) Where a new run is established, in a situation in which a carrier does not now have the unilateral right to establish such a run, and where the run would include the establishment of a new home terminal for the class of service involved and operation through an established crew terminal or terminals for the class of service, notice would be given to the organizations involved and an effort would be made to agree on the conditions which would apply if the change were effected. Upon failure to agree the matter would be referred to binding arbitration. The authority of the arbitrator would be limited to deciding what protective conditions must be met, if and when the run should be established.

The right to operate such runs as may be established under the Carriers' proposal would not be subject to the imposition of any restrictions as to class of traffic which may be handled or as to the origin or destination of any empty or loaded cars moving on such runs.

Discussion

The Carriers' proposal in the main is directed to obtaining the right (where it does not now exist) to establish runs which extend over territories where more than one group of employees hold seniority rights. Although the Carriers have referred to these runs as interdivisional, interseniority district, intradivisional and intraseniority district, in our discussion we shall use the term "interdivisional runs" as applying to all runs of these types.

By and large present-day railroad operating divisions were established when steam locomotives were the primary source of motive power and the length of divisions was determined largely by the operational range of the steam locomotive. While steam locomotives could run greater or lesser distances dependent upon such factors as the length and weight of the train, nature of the terrain and weather conditions, they normally required attention after approximately 100 miles. Consequently, facilities for fuel and water and for running maintenance were provided at points approximately 100 miles apart. Each point was designated as a division point and the distance from one point to the next was termed an operating division.

Operating divisions generally constituted the territory over which employees in road service accrued seniority. Hence seniority districts were established which were practically coextensive with operating divisions. In some instances, more than one seniority district was established within an operating division. Because of these seniority arrangements, when a carrier sought to operate a crew over more than one seniority district the rights of men on their home seniority district had to be taken into account. Thus, there developed a practice of prorating (or "distributing ratably") the mileage accrued on interdivisional runs between the employees in the seniority districts over which such runs operated.

As railroads were built and extended it was, of course, impossible for the Carriers to establish division points exactly 100 miles apart. Factors such as terrain and the locations of towns and industries had to be taken into account. As a result there are divisions less than 100 miles in length and others which extend over more than 100 miles. Except when working in interdivisional service road crews are normally confined to operating within their own seniority districts. Since seniority districts are generally coextensive with divisions, many road service employees are restricted to working less than 100 miles in an assignment, and the carriers by application of the basic day rule are in these cases required to pay for miles not run. To illustrate:

the present basic day rule applicable to freight service provides that a basic day shall consist of "100 miles or less, 8 hours or less." Thus, a crew operating solely over a division of 80 miles must be paid (in addition to any other special payments, e.g., arbitraries) for an additional 20 miles not run. This is known as "constructive mileage." The basic day rule in passenger service brings about a similar result.

When crews are restricted solely to operating in their respective seniority districts, stops must be made to change crews, as well as to change cabooses, despite the fact that otherwise there would be no need for such stops. The practice of changing cabooses grows out of the traditional requirement that train crews be assigned their own cabooses. This requirement has been relaxed since the adoption of a national rule (following a recommendation of Emergency Board 81 in 1950) which permits the "pooling" of cabooses (use of the same caboose by consecutive crews on a given run). This, however, does not eliminate the necessity of a stop to permit a crew change.

During the steam era, particularly as the design and operating capabilities of steam locomotives were improved, restriction of runs to given divisions slowed down the movement of traffic. That effect is now more marked because of the development of the diesel as well as other advances in

technology, such as centralized control of signaling and traffic. Changes in the right of way, such as elimination of some grade crossings, and reductions in grades and track curvatures have also facilitated the movement of traffic. These developments have resulted in an increased potential for non-stop operation of trains over greater distances.

A survey made by the Carriers in July 1958 on the major railroads indicated that a considerable number of crews were assigned to runs involving less than the minimum number of miles encompassed within a basic day. For example, in through freight service approximately 20 percent of the runs were 95 miles or less. Over a third of these runs were completed in less than 5 hours. The results of the survey with respect to other crew members were similar. In general the findings of this survey were borne out by the pay structure study conducted by the staff of the Commission. For example, in the Commission study slightly over 20 percent of engineer assignments in through freight service were on runs under 100 miles.

Examples were cited by the Carriers to illustrate the frequency of crew changes on given runs. On a Santa Fe through freight run between Chicago, Illinois and Richmond, California (a distance of 2,498 miles), for example, engine crews were changed 19 times. The maximum total time on duty of any one of the twenty crews handling this train was 5 hours

and 25 minutes; the minimum was 2 hours and 10 minutes. Average time on duty was 3 hours and 23 minutes. Of course, less time was spent in the actual running of the train by the various crews assigned. In connection with crew changes it should be noted that the carriers must maintain terminals for that purpose and on occasion incur additional expense in the nature of initial and final terminal delay payments.

From the early days of railroading until the early 1930's there did not appear to be much question about the right of management to establish, arrange or re-arrange runs in interdivisional service, subject only to the condition that mileage be equitably apportioned between the men on the seniority districts involved. Beginning about 1937 several National Railroad Adjustment Board awards held that carriers had no right to establish interdivisional service without agreement with their employes, despite express provisions in the collective bargaining agreements providing formulae for dividing mileage on runs covering all or a portion of two divisions. A review of a number of these awards reveals both inconsistency and conflict of opinion. This probably accounts to some extent for the fact that today some carriers have considerably more latitude than others in establishing interdivisional service, depending upon whether they received favorable or adverse awards when their rights were questioned.

It appears that the first step which the carriers took to obtain a national rule permitting the establishment of interdivisional runs was in the 1945 national wage and rules movement. Nothing significant with respect to this matter was accomplished in these negotiations. Eventually, in May of 1951, the Brotherhood of Railroad Trainmen agreed to a national rule concerning the establishment of interdivisional service. Under that agreement the carrier and employees involved were to negotiate on proposed runs and make reasonable and fair arrangements in the light of the interests of both parties. The agreement provided for eventual resolution of the matter by final and binding arbitration.

The Engineers, Firemen and Conductors were not parties to the 1951 Trainmen agreement. In 1952 these organizations agreed to the establishment of a national rule similar to that of the Trainmen but with one significant difference. The 1952 agreements provided that where individual carriers did not have the right to establish interdivisional runs, and proposed to do so, the matter would be subject to negotiation, mediation, and eventually, referral to a national committee composed of the chief executives of the organizations involved and an equal number of carrier representatives. If the national committee failed to agree, a neutral chairman was to be selected to sit with the committee and make representations and non-binding recommendations. Apparently, because of a feeling that

the 1951 Trainmen's agreement availed little so long as the other organizations were not bound in the same manner, the carriers agreed to bring the 1951 Trainmen's agreement into conformity with the others. The rule incorporated in the 1952 agreements has not been changed since its adoption and it is presently applicable to the four operating brotherhoods other than the Switchmen, who do not represent road operating employees.

In essence, the Organizations' objections to the Carriers' proposal are based on the argument that this is a matter which is better left to local collective bargaining. The Organizations are also concerned with the economic and social consequences of rearrangements in runs. They fear that the Carriers will establish extremely long runs with concomitant increases in hours on duty; that constructive mileage will be absorbed; that there will be loss of job opportunities and that it will be necessary for employees continually to shift their residences because of frequent changes in the location of terminals, with consequent adverse effect not only upon the employees involved but also upon the communities in which they reside.

We are in sympathy with the Organizations' view that the institution of interdivisional service and the conditions relating to its establishment are legitimate subjects for collective bargaining. Therefore, we reject the proposal of the Carriers insofar as it would give management non-reviewable discretion to establish interdivisional service. We sincerely

hope that all problems which may arise in this area will be resolved by the collective bargaining process. We are convinced, however, that, failing agreement, there should be provision for terminal resolution of the differences between the parties rather than ultimate disposition by economic force. We are further convinced that the 1952 agreement does not provide efficient machinery for the resolution of disputes in this area. The probable increase in the rearrangement of runs to accommodate the revised basis of pay rules makes even more necessary improved machinery for the expeditious adjudication of questions arising in connection with the establishment of interdivisional service.

Experience on carriers which presently have the right to establish interdivisional runs indicates that the Organizations' fears that unduly burdensome runs would be established are not borne out by historical facts. However, to guard against arbitrarily long runs and resultant burdensome working conditions, provision can be made for review by a neutral whenever it is claimed that a proposed run would result in burdensome working conditions.

With respect to the absorption of constructive miles, we see no basis in reason why the Carriers should not be permitted to rearrange runs to absorb these miles. Under the present basic day rule the carrier guarantees an employee who reports for duty a full day's pay; this payment is made even

though the employee is not furnished sufficient work to occupy him for the length of the workday or is not required to perform the full measure of the task prescribed as the equivalent of a day's work. This means that a road service employee who operates less than 100 miles is not penalized because of the employing carrier's present inability to arrange its operations so as to utilize him to the normal extent, and he is paid as if he had been so utilized. When an employer in industry generally is unable to use the services of an employee to the extent contemplated by the agreed wage there is no justification for concluding that the employee acquires an equity in the continuance of that situation. When conditions change so that the employer is able to use the employee's services to the full extent of a day's work or task, as defined in the collective bargaining agreement, it is only fair and equitable that the employee respond without the expectation of anything more than his agreement requires. It is true that where constructive mileage can be absorbed there could be, theoretically, a minimal loss of job opportunities but this has always been a latent aspect of the agreement, as carriers have been able to lengthen runs up to 100 miles within a seniority district. In all other respects, with mileage proration the establishment of interdivisional runs as such would have no effect on employment opportunities for the employees who man the trains.

It is, of course, not pleasant to be required to uproot a family, break community ties and move to another locality to maintain one's employment. Mobility, however, has always been characteristic of many kinds of employment. Prudent management does not arbitrarily make changes which require relocation of personnel, but economic necessity frequently dictates change.

Enlightened employers recognize that employees should be protected from some of the adverse effects which may be attendant upon a managerial decision to relocate facilities. Such protection usually takes the form of assuring employees that they will suffer no losses in the sale of their homes because of decreased market values occasioned by such decisions to relocate and reimbursing them for moving expenses.

The adverse effects upon a given community of a relocation of an industrial facility involving the movement of a number of people raises problems involving serious social and economic implications. While in such a situation one community may be adversely affected, another is beneficially affected. This is a normal concomitant of progress and change in an industry so widely dispersed as is the railroad industry and raises questions beyond the scope of this Commission's task.

We believe that there are important advantages which should accrue to employees when longer runs are established. They can accumulate more mileage per trip which, in turn, would lessen

the number of away-from-home layovers required to earn the same amount of mileage. The elimination of some advance reporting time and of some stops would also contribute to cutting down the amount of time required to accumulate the same amount of mileage or earnings.

The efficient, expeditious movement of trains requires as a matter of public interest that machinery be devised under which the Carriers will be able to propose and eventually secure definitive judgment with respect to the establishment of interdivisional runs. The parties to the Trainmen's Agreement of 1951, which in many respects is a model agreement on this subject, clearly recognized this need. We do not feel that the solution to the problem is to go back to some of the earlier rules which allowed complete freedom to the Carriers to establish interdivisional runs subject only to proration of mileage, which is essentially what the Carriers now propose. Since the turn of the century there has been increasing consciousness of the importance of factors other than the retention of job rights in connection with geographical shifts of employment, and of the impact of dislocations on obligations incurred by employees in anticipation of continuous employment in a given locale. Recognition of these factors is basic to any proposed rule in this area.

Recommendations

In the light of the foregoing, it is recommended that the parties negotiate a national rule which will incorporate the following:

1. Provision for recognition of the right of a carrier, subject to the requirements of paragraphs 2, 3, and 4 below, (a) to establish runs in interdivisional service as defined in the first paragraph of the preceding discussion, (b) to establish, move, consolidate or abolish crew terminals in connection therewith, (c) to operate such runs in assigned or unassigned service (including extra service) on a one way or turnaround basis (including short turnaround) and through established crew terminals; and on such runs to handle any class of traffic as may be required regardless of origin or destination.

2. Provision for subjecting the aforesaid right to the qualifications (a) that such interdivisional runs as are established shall not create working conditions that are unreasonably burdensome or onerous; (b) that the mileage on such interdivisional runs be distributed ratably as between employees from the seniority districts affected; (c) that employees required to move their homes as the result of the establishment, movement, abolishment or consolidation of crew terminals be protected against loss from sale of their homes, be compensated for moving expenses in connection with any such moves, and be given reasonable allowance for wage loss directly attributable to the time involved in relocation; and (d) that the carrier shall not arbitrarily establish, move, consolidate or abolish crew terminals

so often as to require unduly frequent relocation of homes of employees affected.

3. Provision that where a carrier proposes to establish new runs in interdivisional service or to rearrange existing runs in interdivisional service it shall give reasonable written notice (such as 15 days) of the proposed runs to the representatives of the employees involved and:

- (a) Following the notice period, the parties shall negotiate in good faith with respect to matters set forth in paragraph 2 above.
- (b) If after a negotiating period, not to exceed 60 days, the parties fail to agree, the matter may be submitted by either party for final and binding determination by the special tribunal referred to in recommendation 2 of Part 1 of Chapter 6. The tribunal shall determine, in accordance with the qualifications set forth in paragraph 2 above, whether or not such runs may be established and the conditions to be attached to the establishment of such runs.
- (c) The award of the tribunal shall be final and binding except that it may not require the carrier to establish the proposed run.

The decision of the tribunal shall serve as a bar to the carrier from proposing the same or similar runs for a period of at least one year from the award.

4. Provision that the initial rearrangement or establishment of interdivisional runs shall be made by the carrier in the form of a general or overall proposal within an agreed period of time (not to exceed one year) following the adoption of this rule. Any unresolved disputes concerning the proposed runs should be consolidated in one proceeding for submission to the special tribunal. The carrier shall not propose any further changes in interdivisional runs for a period of at least six months after the disposition of the initial group of proposals. Any further proposals for new runs or rearrangements of existing runs should thereafter be governed by the procedure set forth in paragraph 3 above.

5. Provision that on carriers which now have the right to establish such interdivisional service, the rights described in paragraph 1 above shall be applicable to the operation of such existing interdivisional service, and that paragraphs 1, 2,

3, and 4 above shall be applicable to the rearrangement of existing runs and to the establishment of new runs in such service.

The other three operating Organizations did not reach accord with the Carriers in the general movement which resulted in the agreement cited. That dispute was then referred to Emergency Board Number 57 which filed a report, dated May 27, 1948, in which the Board stated:

"The problem involved in this proposal affects all crafts engaged in yard work and can best be solved through the application of the processes of collective bargaining. Because of the absence of some of the parties concerned we are constrained to remand the matter, without more comment, to subsequent negotiations, first, on an industry-wide basis, and failing settlement there, to local negotiation."

According to Carrier testimony, the attempts of individual Carriers to negotiate rules which effectively permit the abolishment of yard service have met with little success in the majority of instances.

3. Switching Limits. As appears from our discussion of the historical development of distinctions between road and yard service, there were also restrictions on yard crews performing work on the road. Early in 1950 the Carriers took steps to secure relief from these restrictions.

The Switchmen's Union of North America and the Western Carrier Conference Committee entered into an agreement, dated September 15, 1950, which in effect afforded the Carriers involved the right to expand and contract switching limits to conform to the needs of the service. This agreement has been extended to cover all carriers on which the Switchmen's Union represents the yardmen.

The Carriers represented by the Eastern, Western and South-eastern Carriers Conference Committees entered into a national agreement dated May 25, 1951 with the Brotherhood of Railroad Trainmen. Under the agreement the Carriers were afforded the right to use yard crews to serve new industries provided the switch governing movement from the main track to the track serving the industry was located at a point no more than four miles from the existing switching limits. The agreement also provided for negotiation, mediation and final and binding arbitration with respect to proposed changes in switching limits. Agreements of the same nature were consummated with the other three organizations representing operating employees under date of May 23, 1952.

D. Analysis

The proposal as made by the Carriers involves broad and sweeping changes in the traditional concepts of the separability of road and yard service. The record does not support the need for such changes although there is ground for relief in some of the areas we have heretofore discussed.

Extension of Switching Limits. There is little need to discuss at length the question of extending switching limits. The agreements with the five Organizations representing the operating employees in most respects appear to be working satisfactorily. The Carriers have attained a degree of flexibility in the use of yard crews to service new industries and in most instances road service employees affected are protected by provision for "equalization of time" spent by yard crews working beyond the switching limits. The machinery provided for the extension of switching limits has been working well; so well, as a matter of fact, that in the majority of instances in which the carriers have proposed switching limit extensions, agreements have been reached without resort to arbitration. Accordingly, there is no need to disturb the existing situation in this area.

Road Crews Performing Work in Yards. It is clear that the line of demarcation which has been drawn between road and yard work has given rise to a number of inefficient and wasteful practices, particularly with respect to road crews performing

30



Search Results  
Search Page  
Exit

<<Previous Full Record in Retrieved Set

Document Type	Award
Board Type	PLB
Board Number	1679
Award Number	1
Carrier	SCL
Union	Brotherhood of Locomotive Engineers (BLE)
Date	25 January 1977

PUBLIC LAW BOARD NO 1679>>>

Award No  
Case No

Parties to Dispute Brotherhood of Locomotive Engineers and Seaboard Coast Line Railroad Company

Question at Issue "Is Carrier's Notice dated October 22, 1975, which was served pursuant to Article VIII of the May 13, 1971, National Agreement Interdivisional Freight Service between the terminal of Manches Waycross, Georgia, through the terminal of Fitzgerald, Georgia when the restrictive provisions of Article VIII specifically ex the application of Article VIII to existing Rules on a property which have Inter-Intra divisional and/or Inter-Intra Seniority District Run Rule such as the extended run rule between the pa here in dispute "

Findings The Board finds, after hearing upon the whole record and all ev that the parties are Carrier and Employee within the meaning of Railway Labor Act, as amended, that this Board is duly constitu by Agreement dated March 26, 1976, that it has jurisdiction of parties and the subject matter and that the parties were given notice of the hearing held hereon

Fitzgerald, Georgia, was, on October 22, 1975, the home termina for all through freight service crews operating between Fitzger Manchester Georgia, and Fitzgerald and Waycross, Georgia

The instant dispute was precipitated by Carrier's October 22, 1 Notice served under Article VIII on the May 13, 1971 BLE Nation

CARRIER'S EXHIBIT 9  
PAGE 1 OF 23

Agreement Carrier, in said notice, sought to establish intra-seniority district through freight operations by abolishing Fitzgerald as a terminal for such operations, and establishing Waycross as the new home terminal and Manchester as the away-from home terminal for the contemplated through freight operations and thus run through Fitzgerald

Before, during and subsequent to the conference held on Carrier's October 22, 1975 Notice, the Employees contended that such Notice was invalid because there was an existing agreement, effective July 1, 1967, between the parties and which agreement encompassed extended through freight runs in the territory in question Further, that Section 4 of said Article VIII stated that the adoption of Article VIII was not to affect existing service or agreements in effect prior thereto In light of their position, the Employees refused to bargain on Carrier's Notice They requested establishment of a Public Law Board to determine Carrier's right to serve such a Notice

Carrier disagreed therewith, contending that it had acquired a right under said Article VIII, that it did have such right to serve a request to establish intra-seniority district through freight service thereunder, that it had paid a big price therefor by the National settlement entered into on May 13, 1971 Carrier had requested the establishment of an Arbitration Board, as provided in Article VIII, of said May 13, 1971 National Agreement, to resolve the question as to its right, as well as recommending the terms and conditions for the new proposed service

-3-

Award No 1

The difference between the views of the parties led to the establishment of this Board to resolve the procedural issue raised

Carrier, as the result of a merger, is the successor railroad company of the former Seaboard Air Line and the Atlantic Coast Line Railroads A Master Merger Agreement in connection therewith, was negotiated by the parties and pursuant thereto, District Implementing Agreements also were negotiated and made effective July 1, 1967 The latter agree-

CARRIER'S EXHIBIT 9  
PAGE 2 OF 23

ments covered, among other things, the consolidation of all engineers' former seniority districts into six (6) new seniority districts. The seniority district here involved is the Western District which is covered by Implementing Agreement No. 4, effective July 1, 1967.

Article II, therein - "Western Seniority District-Zoning", provides in Section 1, "Seniority Zones", Paragraph (c) "Fitzgerald Zone", that

"Road service originating at and/or terminated at Fitzgerald including road service up to but not including Manchester and down to but not including Waycross on the Waycross-Manchester lines."

"Note: Engineers of this district will have the right to operate the extended through freight service in accordance with the provisions of Article IV herein between Fitzgerald, Georgia, and Jacksonville, Florida (Via Waycross, Georgia)."

"Section 2 - District Terminal Restrictions

"(a) Freight engineers will not be operated through the terminal of Atlanta, Manchester, Fitzgerald, Birmingham, (excluding those through freight assignments specifically covered in Article IV herein...)"

During the negotiations of the aforementioned Implementing Agreements, and at the insistence of Carrier that there be a rule to cover inter-

divisional, inter-seniority, intra-divisional and intra-seniority runs, the parties negotiated a rule on the subject matter, i.e., Article IV -

"Extended Through Freight Runs," effective July 1, 1967. The Carrier, thereafter, advised the employees that the expanded seniority districts and Article IV had now disposed of its November 2, 1959 Section 6 Notice on the subject matter of inter-divisional, etc., service.

Said Article IV is a detailed, comprehensive rule providing terms and conditions covering the establishment, implementation and operation of inter-divisional and inter-seniority service. However, such service, by the provisions of Article IV, is predicated exclusively on its being operated solely on a traffic or corridor concept instead of an operation between two designated terminals.

Article IV - "Extended Through Freight Runs" - provides, in part

"Section I - Conditions

"Extended through freight runs such as 215, 103, and 81 (and correspond-

CARRIER'S EXHIBIT 9

PAGE 3 OF 23

ing northbound trains) may be operated between terminals designated in paragraph (c) below within the Western Seniority District under the following conditions

"(a) When extended through freight runs are assigned or contemplated by this Article, they will operate each way throughout the new merged system in the following corridors

.....

"(6) Birmingham and/or Atlanta to Lakeland-Winston via Manchester-Fitzgerald-Waycross-Dupont-High Springs-Dunnellon

"(7) Birmingham and/or Atlanta to Jacksonville (Baldwin via Manchester-Fitzgerald-Waycross) .

"NOTE Those runs assigned Atlanta to Lakeland will operate either straightaway or turnaround between Fitzgerald and Waycross "

(b) Paragraph (b) provides that while the extended runs are not intended to do local work, etc , that if performed the engineer will be allowed actual time with a minimum of 1 hour for each such occurrence

(c) Paragraph (c) provides that if such runs stop at more than three points enroute for the purpose of making a change in train content, the same monetary consideration in paragraph (b) also applies, i e , 1 hour minimum

(d) Paragraph (d) prohibits calling engineers off extended runs to perform other service except in emergency, but if so used they are to be made whole

(e) Paragraph (e) provides for deadheading the engineers to the opposite terminal should one leg of his run be annulled

"Section 5 - Compensation", paragraphs (a), (b) and (c) provide that, among other things

"Engineers assigned to such runs will receive payment for all miles of that assignment up to 200 at the same basic rate as provided for the first 100 miles under the June 25, 1964 National Agreement, that engineers on these runs may operate through Fitzgerald, that overtime is to be computed on the basis of 25 miles per hour, and that held-away-from-home terminal time is to be paid engineers in such service for all time in excess of 20 hours

"Section 4 Additional Extended Through Service"

"Additional extended through freight service may be assigned to supplement the service described hereinabove, but it must meet the same criteria as set forth in Sections 1, 2 and 3 of this Article. New assignments and/or runs involving service through Manchester, Fitzgerald or Waycross to terminals other than Fitzgerald, Waycross and Jacksonville will not be inaugurated except by Agreement between the parties

"Section 6

"When extended assignments are made on this seniority district, they will be given a special identification symbol or name and, if operated over an adjoining district or districts as part thereof, the same rules and conditions will apply to these runs on the adjoining district or dis-

tricts or part thereof and through the entire corridor, e g , Richmond

to Miami and/or Tampa "

The record shows that there are no "Extended Through Freight Runs" currently in operation under Article IV

The Employees served Section 6 Notices in May and October, 1969, to revise rates of pay and for some new rules. Carrier served a Section 6 Notice in November, 1969, for some new rules, one of which proposed

"B Establish a Rule to Provide that:

"1 The Carrier shall have the right to establish, move, consolidate and abolish crew terminals to merge and consolidate seniority districts and to establish inter-divisional, inter-seniority district, intra-divisional intra-seniority district runs in assigned and unassigned (including extra) service, on either a one-way or turn-around (including short turn around) basis and through established crew terminals. The right to operate such runs as may be established under the provisions of this rule will be free of the imposition of any restrictions as to the class of traffic which may be handled or as to the origin or destination of any empty or loaded cars moving on such runs "

Carrier turned said Section 6 Notice, along with its power of attorney, over to the National Railway Labor Conference, Carrier's National negotiating representative, for handling and disposition on a National or industry-wide basis. Carrier tried to prevail upon the Employees to do likewise with its National negotiating group. They refused. The Employee sought a Court Order restraining Carrier, or their representative, from attempting to require the Employees to bargain nationally. Ultimately, when assured by the Employees National representatives that by adding the appropriate language "and/or agreements in effect" to proposed Article VIII's Section 4, that Article IV of their District Implementing Agreements, effective July 1, 1967, would thereby be protected, the Em-

ployees then moved to have the court case dismissed. The Employees then, gave their power of attorney to their National bargaining representatives and the Employees then became a party to the National Settlement of Carrier's November 1969 Notice resulting in the May 13, 1971 BLE National Agreement. Included therein was Article VIII which, in part, provides:

"Article VIII - Inter-divisional, Inter-seniority District, Intra-divisional and/or Intra-seniority District service (Freight or Passenger)

"Article 4 of the May 23, 1952 Agreement is amended to read as follows

CARRIER'S EXHIBIT 9  
PAGE 5 OF 23

"1 Where an individual Carrier not now having the right to establish intra-seniority district service, in freight service the Carrier shall give at least thirty (30) days' written notice to the General Chair of the Committee involved, of its desire to establish service "

"3 In the event the Carrier and such committee cannot agree on the matters provided for in Section 1(a) and the other terms and conditions referred to in Section 2 above, the parties agree that such dispute shall be submitted to arbitration under the Railway Labor Act, as amended within 60-days from the date of notice by the Carrier of its intent to establish service pursuant to Article VIII

"4 Inter-divisional, inter-seniority districts, intra-divisional or intra-seniority district service and/or agreements in effect on the date of this agreement are not affected by this Article VIII " (Underscoring supplied )

"6 This rule shall become effective September 1, 1971, except on such Carriers as may elect to preserve existing rules in practice, and so notify the authorized employee representatives on or before August 1, 1971 "

Article VIII, in the absence of any Carrier notice served under paragraph 6 quoted above, became effective on this Carrier September 1, 1971 The parties, subsequent thereto, incorporated said Article VIII into their schedule Agreement as present Article 42.

The Employees are to be complimented for the quality of their presenta-

tion They presented their case in a most eloquent manner which helped to clarify a complex situation concerning the Western District Implementing Agreement The position of the Employees, essentially, was that Carrier, insofar as its Notice was concerned, has a right to establish intra-seniority district service sought therein, but can only do so under the terms of the Western District's Agreement Article IV, "Extended Through Freight Runs", that said Article IV prohibits the Carrier from running through Fitzgerald except on the basis of an extended run, that the prohibiting language of Section 4 of Article VIII (now Article 42), specifically bars Carrier from using said Article as a basis for service its October 21, 1975, Notice, that if Carrier desires the service to open in the same manner as outlined in their October 22 Notice, then it must wait for the expiration of the current moratorium and then Carrier would be free to serve a Section 6 Notice to achieve same

Thus, as the Employees viewed this situation, except for an application

CARRIER'S EXHIBIT 9  
PAGE 6 OF 23

of Article VIII to passenger service and freight service operated total outside the defined corridors, Carrier achieved nothing from serving their Section 6 Notice in November 1969, which ultimately resulted in the adoption of Article VIII in the BLE National May 13, 1971 Agreement. Carrier disagrees therewith. It argues that both rules, the 1967 Implementing Agreements and Article VIII, are applicable on this property. It avers that prior to adoption of said Article VIII, in the May 13, 1971 BLE National Agreement, Carrier had an agreement rule providing for the establishment of intra-divisional runs, but only with a "corridor" requirement. Carrier avers that both Agreement Rules, the July 1967 Implementing Agreement and Article 42, have a side by side posture without a thread of conflict in their provisions or intent with respect to operation.

The conflicting positions bring into focus a question as to the significance if any, of Section 4 of Article VIII on Agreements existing prior to adoption of said Article. Section 4 thereof provides:

"Inter-divisional, inter-seniority district, intra-divisional or intra-seniority district service and/or Agreements in effect on the dates of this Agreement are not affected by this Article VIII." (Underscoring supplied.)

The Board understands that the purpose of the above underscored words was to accomplish the preservation of any terms and conditions governing inter-divisional, etc., service and/or agreements in effect, or agreed to prior to May 13, 1971. At best such language could only be construed as having been intended to act as a status quo on the then existing service or agreements covering the services contemplated by Article VIII. The Board finds that the local Agreements of July 1, 1967 were preserved. Such finding of course raises the question, as to the rights, if any, of both parties under both Agreements, i.e., Article VIII and the July 1, 1967 Agreement. The Employees offered Awards to demonstrate that where inter-divisional service, etc., was in existence Article VIII was held to be not applicable and where "service" and "agreements" appear in Article VIII they are synonymous and thus this Board should likewise

CARRIER'S EXHIBIT 9  
PAGE 7 OF 23

hold that Article VIII to be not applicable. The Board would understand,

from Awards No. 1 of Public Law Board No. 1229 and Public Law Board No. 1505, submitted by the Employees, that the right to rearrange or increase such service that existed prior to May 13, 1971, was found to be not covered by said Article VIII. Such changes, of course, are not he involved.

Having found that the July 1, 1967 Agreements were preserved, a key question that must be first answered is, "Does Carrier have the right under Article IV of the July 1, 1967 Implementing Agreement No. 4 to establish the specific intra-seniority district freight service as sought in its October 22, 1975 Notice to the BLE General Chairman?" Article IV of such Agreement grants Carrier the right to establish, or implement, only a freight service operation called "extended freight runs." Such runs under the 1967 Agreement must be operated on a "corridor" concept within that particular seniority district involved and also the established freight corridor of any other seniority district over which that train may be operated. Simply stated, this rigid contractual requirement means that if Carrier desired, as here, to operate from Terminal "C" through Terminal "D" to Terminal "E", the mandatory requirements of Article IV mean that in addition to operating the service "C" to "E", Carrier must either operate the inter-divisional or intra-seniority service or pay as if so operated, the engineers involved in, from Terminals "A" and "B" and Terminals "F" to "Z", if the traffic were destined that far. This contractual requirement means that such freight service runs would then be caused to run or Carrier would pay as if they were so run, far

beyond the territorial limitations that Carrier, from a sound operating and efficiency viewpoint, might otherwise desire or contemplate. Consequently, the answer therefore to the question raised herein is, "No, Carrier does not have such right." The Employees, as did Carrier, have stipulated that the type of service as sought and requested under the October 22, 1975 Notice could not be established under Article IV.

CARRIER'S EXHIBIT 9  
PAGE 8 OF 23

of the July 1, 1967 Implementing Agreement

The record thus impels the conclusion that while the terms and conditions of the July 1, 1967 Implementing Agreements were not affected by the adoption of Article VIII, said terms and conditions neither contemplated nor permit of the type of freight service that may be requested under Article VIII. The Board finds that the May 13, 1971 BLE National Agreement was designed, in exchange for large wage increases, to remove certain artificial contractual barriers as reflected by the various Rules agreed to therein and to thereby improve the efficiency of Carrier's operations. Article VIII was one such Rule. In such circumstances, it would be unreasonable to conclude that Article IV of the 1967 Agreement should be here held applicable which when compared to National Article VIII tends to restrict the efficiency sought in Carrier's operations. Further, if there be a conflict between two Agreements on the same subject, the later Agreement thereon is construed to be held applicable. Consequently, the Board finds that in such circumstances the prerequisite to an application of Article 42 (Article VIII) which, in part, provides

-12-

Award No

"Where an individual carrier not now having the right to establish intradivisional or intraseniority district service, in freight service, considers it advisable to establish such service, the carrier shall give at least thirty days' written notice to the General Chairman has been met. This Carrier does not now have the right to establish the service that it desires.

Therefore, the Board finds that Carrier's Notice of October 22, 1975 was properly served pursuant to Article VIII of the May 3, 1971 BLE National Agreement. Carrier had the contractual right to serve such notice. We thus find that the Question at Issue must be answered in the affirmative. While it may well be that the terms and conditions contained in Article IV may well ultimately be made applicable to this proposed service, such must result from the subsequent negotiations required under the October 22, 1975 Notice.

CARRIER'S EXHIBIT 9

PAGE 9 OF 23

Award The Question at Issue is affirmatively answered i e , "Yes, the Carrier's Notice of October 22, 1975, was, and is, valid "

R B Curtis Employee Member  
Dissent Attached

D C Sheldon, Carrier Member

Arthur T Van Wart, Chairman  
and Neutral Member

Issued at Jacksonville, Florida, January 25, 1977

EMPLOYEE'S DISSENT TO AWARD  
NO 1 CASE No 1 OF PUBLIC  
LAW BOARD NO <<<1679>>

It is extremely difficult to write a cogent dissent to an erroneous Award as this one without getting into an in depth exposure of the salient facts that should have been controlling in this Award

#### QUESTION AT ISSUE

"Is Carrier's Notice dated October 22, 1975, which was served pursuant to Article VIII of the May 13, 1971, National Agreement for Interdivisional Freight Service between the terminal of Manchester and Waycross, Georgia, through the terminal of Fitzgerald, Georgia valid when the restrictive provisions of Article VIII specifically exempt the application of Article VIII to existing Rules on a property which have Inter-Intra divisional and/or Inter-Intra Seniority District Runs Rule such as the extended run rule between the parties here in dispute "

To determine whether Carrier's Notice is valid one must look to the provisions of Article VIII of the May 13, 1971 National Agreement and the provisions of the "Extended Through Freight Runs" rule which became effective on the property July 1, 1967 These rules are set forth in part in the Award on pages 4, 5, 6 and 7, however, the "Extended Through Freight Runs" rule is quoted below in its entirety

#### ARTICLE IV

##### EXTENDED THROUGH FREIGHT RUNS

##### Section 1 Conditions

Extended through freight runs, such as 214, 103 and A1 (and corresponding non-blended trains), may be operated between terminal designated in paragraph (f) below within the Western Seniority District under the following conditions

(a) When extended through freight runs are assigned as contemplated by this Article they will operate each way throughout the new merged system in the following corridors

(1) Richmond to Miami via Rocky Mount---Florence---

CARRIER'S EXHIBIT 9  
PAGE 10 OF 23

Savannah---Jacksonville---(Baldwin)---Wildwood, or Raleigh  
---Hamlet---Florence---(either straightaway or turna-  
round between Hamlet and Florence )

(2) Richmond to Tampa via Rocky Mount---Florence---  
Savannah---Jacksonville---Sanford (or Jacksonville---  
(Baldwin)---Wildwood)

(3) Richmond to Birmingham via Raleigh---Hamlet---  
Monroe---Abbeville---Atlanta

(4) Richmond to Boston via Raleigh---Hamlet

(5) Savannah to Spartanburg via Yemassee or Fairfax  
---Augusta

(6) Birmingham and/or Atlanta to Lakeland---Winston  
via Manchester---Fitzgerald---Waycross---DuPont---High  
Springs---Dunnellon

(7) Birmingham and/or Atlanta to Jacksonville  
(Baldwin) via Manchester---Fitzgerald---Waycross

(8) Jacksonville to Columbus and/or Montgomery via  
Tallahassee---Bainbridge

(9) Lakeland---Winston to Montgomery via Dunnellon  
---Wildwood---Jacksonville (Baldwin)---Savannah---Florence  
---Rocky Mount

(10) Winston---Lakeland to Richmond via Dunnellon  
---Wildwood---Jacksonville (Baldwin) ---Savannah---  
Florence---Rocky Mount

NOTE Those runs assigned Atlanta to Lakeland---Winston  
via Manchester---Fitzgerald---Waycross---DuPont will  
operate either straightaway or turnaround between  
Fitzgerald and Waycross

(b) It is understood that the extended through freight  
runs contemplated by this Article IV are bona fide through  
freights, and it is not intended that these runs be re-  
quired to perform local freight work such as station,  
plant and industry switching. If, however, such service  
is required of a crew in this extended through freight  
service said engineer will be allowed the actual time  
consumed with a minimum of 1 hour at pro rata rate for  
each occurrence in addition to all other compensation  
for the day or trip.

(c) If an engineer in extended through freight service  
is required to stop at more than three points enroute for  
the purpose of making any change in the train content  
(other than setting out a bad order car from his train)  
said engineer in this extended through freight service  
will be allowed actual time in the aggregate with a  
minimum of 1 hour at pro rata rate in addition to all  
other compensation for the day or trip.

NOTE It is understood that the provisions of the  
conversion rule of the engineers' schedule agree-  
ment are hereby set aside in the application of  
paragraphs (b) and (c) of this Section 1

CARRIER'S EXHIBIT 9 --  
PAGE 11 OF 23 --

(d) Engineers assigned to the extended through runs contemplated hereby will not be called off their assignments to perform other service except in emergency, and when so used will be guaranteed not less than the earnings of their regular assignment, subject to temporary passenger vacancy rule in the schedule agreement

(e) In the event a leg, or one (1) side of any of these extended through runs is annulled, the affected engineer will be deadheaded to the opposite terminal of the run to protect the return trip of his run

(f) Engineers so assigned between

- (1) Manchester and Waycross via Fitzgerald will be allowed 201 miles in each direction
- (2) Atlanta and Fitzgerald via Manchester will be allowed 206 miles southbound and 207 miles northbound
- (3) Fitzgerald and Jacksonville via Waycross will be allowed 144 miles in each direction with the work between Fitzgerald and Jacksonville to be prorated with the engineers of the Eastern Seniority District

Section 2 Compensation

(a) Engineers assigned to these extended through freight runs shall be compensated for all miles of the assignment up to 200 at the basic rates provided for the first 100 miles under the June 25, 1964 National Agreement

Engineers on extended through freight runs may be operated through terminal of Manchester, Fitzgerald or Waycross

(b) For the purpose of computing overtime in extended through freight service time shall be computed on a basis of 25 miles per hour

(c) Engineers in extended through freight service held at the away-from-home terminal of their assignment in excess of 20 hours shall be placed on duty for pay purposes at the regular rate per hour paid them for the last service performed. The held-away-from-home terminal time shall cease at the time pay begins or when deadheading at the time the train leaves the terminal. Payments accruing under this rule shall be paid for separate and apart from pay for subsequent service or deadheading. Should an assignment be annulled after the expiration of 20 hours, the affected engineer will remain on duty for pay purposes (at the rate of service last performed) up to actual deadhead departure

- 4 -

Section 3 Assigning Home Terminals

It is further agreed that with the establishment of extended through runs, consideration will be given by the parties locally to the establishing of home terminals at

CARRIER'S EXHIBIT 9  
PAGE 12 OF 23

either end of the assignments, and additionally, if necessary, a step off arrangement at Manchester, Fitzgerald or Waycross on one leg of the trip, for the purpose of accommodating engineers on the seniority roster as of the effective date of this agreement, who are assigned thereto and now have their residence at one of these terminals. Should the parties locally fail to settle any request made in the application of this paragraph, same with all the facts will be referred jointly to the Director of Personnel and General Chairman and settled in conference. Engineers changing off at Manchester, Fitzgerald or Waycross will be compensated for the first 100 miles only at the basic through freight rates.

#### INTERPRETATION

**Question** Would the extended through rates as contemplated in Section 2 (a) apply to those engineers operating one leg of the extended run through Manchester, Fitzgerald or Waycross?

**Answer** Yes, it is intended that all extended run rules would apply except for Section 2 (a) when changing off at Manchester, Fitzgerald or Waycross.

#### Section 4 Additional Extended Through Service

Additional extended through freight service may be assigned to supplement the extended through freight service described hereinabove, but it must meet the same criteria as set forth in Sections 1, 2 and 3 of this Article. New assignments and/or runs involving extended through freight service through Manchester, Fitzgerald or Waycross to terminals other than Fitzgerald, Waycross and Jacksonville will not be inaugurated, except by agreement between the parties.

#### Section 5 Qualifying

(a) Engineers initially assigned to the extended through freight runs as set forth herein, and those who bid in or claim them as regular assignments beginning with their inauguration will be qualified, by Seaboard Coast Line Engineer Pilots, for the same under full pay of the assignment. Engineers who stand to perform relief service on the extended runs, as set forth herein, will take their turns and be qualified, by Seaboard Coast Line Engineer Pilots, under full pay of the assignment. In no event will engineers be qualified until they have made at least five round trips over the unfamiliar territory.

(b) In order to provide for the prompt qualification, all engineers called for pilot service on an extended run over their old seniority district and who are not qualified over the entire territory of the assignment may be required to begin or extend their trip over the entire territory of the run for which called in pilot service and to qualify on that territory of the run over which not qualified.

#### Section 6

When extended assignments are made on this seniority district they will be given a special identification symbol or name and, if operated over an adjoining district or districts or part thereof, the same rules and conditions

CARRIER'S EXHIBIT 9 ---

PAGE 13 OF 23 - 5/2/2007

will apply to these runs on the adjoining district or districts or part thereof and through the entire corridor, e g , Richmond to Miami and/or Tampa

It is recognized that, due to traffic requirements, in some instances it would not be feasible to operate the extended through freight runs over the entire length of the corridor and the freight moving into the designated final terminal of the assignment within the corridor would be dispersed out of that terminal on other than extended through freight assignments. In this event, the extended through freight run would be so assigned and would lose its identification symbol or name at the designated final terminal and engineers handling portions of the connection will be covered under the standard freight rules and rates of pay.

Further, it is recognized that consolidated extended through freight assignments may originate at a designated terminal within the corridor and diverge at an intermediate terminal to alternate or paralleling routes within the same corridor or to an intersecting corridor if such extended runs are assigned to so operate, in which event the symbols comprising the consolidated trains would operate in the corridor or corridors as assigned subject to the above conditions and Section 2 of this Article.

The Management will designate the originating and terminating points, within the corridor, for each extended through freight run.

#### EXAMPLES

Question 1 If Train 109 is designated as an extended through freight run and operated from Richmond to Tampa on the Virginia, Eastern and Florida Seniority Districts through the terminals at Rocky Mount and Sanford, would the run lose its designation as an extended run at Savannah simply because No. 109 may carry connections for Macon and Waycross?

Answer: No. The run would carry the identification symbol or name for the entire distance from Richmond to Tampa, but the extended run rules would not apply to those connections unless the connections were forwarded on another train assigned as an extended run with a symbol or name.

Question 2 Using the example set forth in Question 19 is it intended that all provisions of Section 7 apply to Train 109's operations from Richmond to Tampa?

Answer: Yes.

Question 3 Train No. 211, for example, is assigned as an extended through freight run operating Richmond to Jacksonville, and on arrival at Savannah the traffic is insufficient to justify continued operation. No. 211 is not operated south of Savannah and the connections are dispersed and handled on other trains. Would the extended run rules apply to engineers handling No. 211's connection?

Answer: No, provided the connection lost its identification symbol. In this case where there was not sufficient traffic to justify the run between Savannah and Jackson-

CARRIER'S EXHIBIT 9

PAGE 14 OF 23

5/2/2007

ville, the engineer would be deadheaded to the opposite terminal (Jacksonville) to protect the return trip of the assignment

Question 4 Train TT23-175, for example, is assigned as an extended through freight run Richmond to Savannah. At Savannah, the train is split, with TT23 operating Savannah to Miami via Wildwood and 175 Savannah to Jacksonville. Would the extended run rules apply to engineers handling both TT23 and 175?

Answer. Yes, as TT23 is assigned as an extended run operating through Baldwin to Miami and 175 is assigned as an extended run operating Savannah to Jacksonville.

Question 5 Train 175-27, for example is assigned as an extended through freight run operating Richmond to Jacksonville with a diversion at hamlet of No. 27 Hamlet to Birmingham. Would the extended run rules apply to engineers handling No. 175-27 and No. 175 and No. 27?

Answer. Yes, because the symbolized trains are so assigned to operate in the specified corridors.

Question 6 Train 105 is not assigned as an extended through freight run, yet this assignment operates through the same corridor, e.g., Richmond to Tampa, as does Train 109, which is assigned as an extended run. Would the extended run rules apply to train 105?

Answer: No. The run must be designated and assigned as an extended run in accordance with this Article IV before the extended run rules apply.

Question 7 Train 109 is assigned as an extended run from Richmond to Tampa. If the number and/or symbol of the train is changed intermittently at Florence and 109's connection is operated through to Tampa under another number, would the extended run rules apply to engineers protecting the assignment from Florence through the remainder of the corridor to Tampa?

Answer. Yes. It is not contemplated that the extended run rules would be nullified simply by changing of the number or symbol of the train if there is sufficient traffic to justify continued operation through the corridor.

Section 1 of Article VIII reads in part:

"Where an individual Carrier not now having the right to establish interdivisional, interseniority district, intradivisional or intraseniority district service in freight or passenger service, -----" (Underscoring supplied)

Section 1 and Paragraph (a) thereof, of the "Extended Through Freight Runs" rule reads as follows:

"Extended through freight runs such as 215, 103 and 81 (and corresponding northbound trains) may be operated between terminal designated in Paragraph (f) below within the Western Seniority District under the following conditions (Underscoring supplied)

(a) When extended through freight runs are assigned as

CARRIER'S EXHIBIT 9  
PAGE 15 OF 23

contemplated by this Article they will operate each way throughout the new merged system in the following corridors: (Underscoring supplied)

Section 6 of the "Extended Through Freight Runs" rule reads in part as follows:

"When extended assignments are made on this seniority district, they will be given a special identification symbol or name and, if operated over an adjoining district or districts or part thereof, the same rules and conditions will apply to these runs on the adjoining district or districts or part thereof and through the entire corridor, e g , Richmond to Miami and/or Tampa ---." (Underscoring supplied)

The Carrier had, and still has, the right to establish the service they seek, provided they comply with the terms and conditions of the Agreement presently in effect. They agree that the present "Extended Through Freight Runs" rule and Article 42 (Article VIII of the May 13, 1971 Agreement) of the schedule agreement, have a side by side posture without a thread of conflict in their provisions or intent with respect to the operation.

The Employees are in full agreement with the Carrier to the extent that, Article VIII of the May 13, 1971 Agreement has system wide application to passenger service and freight service totally outside of the corridor operation specified in the "Extended Through Freight Runs" rule, and that the "Extended Through Freight Runs" rule has application to service totally or partly within the specified corridors, such as the service Carrier is now seeking.

The Neutral states at the top of page 6, "The record shows that there are no "Extended Through Freight Runs" currently in operation under Article IV." The Employees stated during the "executive sessions" that the "Extended Through Freight Runs" rule had been placed into effect on the property and although, none were presently assigned, there were runs operated under such rule subsequent to the effective date of Article VIII of the May 13, 1971 National Agreement. In fact such runs have been operated in the same territory herein dispute. Despite the relevance of this information, the Neutral chose either to ignore or to "distinguish" it because of his aversion to nullify the applicable sections of the "Extended Through Freight Runs" rule in preference to adopting a negative answer to the question at issue.

Section 4 of Article VIII of the May 13, 1971 National Agreement reads:

"Interdivisional, interseniority district, intradivisional or intraseniority district service and/or agreements in effect on the date of this Agreement are not affected by this Article VIII."

The Employees cited Awards No. 1 of Public Law Board No. 1229 and Public Law Board No. 1505. In both of these cases the Carriers took the position that Section 4, of Article VIII of the May 13, 1971 National Agreement were controlling. They contended that "Interdivisional interseniority district service and/or agreements in effect on the date of this Agreement are not affected by this Article

CARRIER'S EXHIBIT <sup>9</sup>  
PAGE 16 OF 23

VIII " (Underscoring supplied) Neutrals Harold M Weston of Public Law Board No 1505 and Jacob Seidenberg of Public Law Board No 1229 both held that Carrier's position was correct. Neutral Weston had this to say

"Since Carrier did not notify the Organization prior to August 1, 1971, of any election pursuant to Section 6 of Article VIII, it is clear that all of the terms of Article VIII became effective on its system on September 1, 1971. Among the terms of Article VIII and part and parcel of that Rule is Section 4 which stipulates that interdivisional, interseniority district service in effect on May 31, 1971 is not affected by Article VIII " (Underscoring supplied)

"As of May 13, 1971, and for a number of years prior to that date, interdivisional, interseniority district service was in effect on Carrier's property only between Whitehall and Oneonta and between Wilkesbarre and Oneonta. Accordingly, if Carrier desires to establish interdivisional service between other points, it must of course first comply with all the terms of Sections 1, 2, 3 and 5 of Article VIII since a timely election within the meaning of Section 6 has not been made. However, under the plain language of Section 4, no election was necessary for service that already had been established by May 13, 1971, inasmuch as Article VIII's requirements never applied to such service. We are satisfied that there is no ambiguity or restriction in the parties' contractual language regarding that point " (Underscoring supplied)

The position of the Carriers in these two Awards is identical to the position taken by the Employees in this case. The term "district service" which was in dispute in the above-referred to cases is without question synonymous with the term "Agreements" as those terms appear in Section 4 of the May 13, 1971 National Agreement. Yet in the face of the opinions of two Neutrals who ruled on the same question herein dispute, this Neutral chose to ignore for reasons best known to himself.

The Employees in Attachment 5 (A through G) of their Submission to this Board set forth the negotiating history of Article VIII which included copies of the proposals and counter-proposals exchanged by the parties. Also included as Attachment 4 was a copy of a letter dated May 12, 1976, addressed to General Chairman M. L. Geiger, from President B. N. Whitmire, of the Brotherhood of Locomotive Engineers, who at that time was one of the principal Employee negotiators and a signatory party to the May 13, 1971 Agreement. His letter reads as follows:

May 12, 1976

Mr. M. L. Geiger  
General Chairman  
Seaboard Coast Line  
301 W. Orange Street, Rm. 22B  
P. O. Box 1232  
Leesburg, Florida 32748

Dear Sir and Brother:

This is in response to your request for an explanation of the negotiating history of Section

CARRIER'S EXHIBIT 9  
PAGE 17 OF 23

of Article VIII of the BLE National Agreement of May 13, 1971 which reads

"Interdivisional, interseniority district, intradivisional, or intraseniority district service and/or agreements in effect on the date of this Agreement are not affected by this Article VIII "

The above provision became a part of Article VIII as a result of the negotiations, and was intended

- 1 To preserve the terms and conditions governing interdivisional, interseniority district, intradivisional, or intraseniority district service and/or agreements which had been agreed to on individual railroad properties prior to the May 13, 1971 Agreement, and especially such terms and conditions resulting from the Merger Agreements. The Merger Agreements specifically considered during negotiations included, but was not limited to, the Burlington Northern Incorporated, Penn-Central Transportation Company, and the Seaboard Coast Line Railroad
- 2 To insure that the provisions of Section 1 of Article VIII providing for the full mileage rate of pay, for miles over one hundred (100), suitable transportation, and meal allowances would be extended to interdivisional, interseniority district, intradivisional, or intraseniority district service and/or agreements in effect on May 13, 1971

I am sure that you will recall that the phrase, "service and/or agreements" as finally included in Section 4, came about as one of the conditions of your General Committee of Adjustment becoming a party to the National Agreement of May 13, 1971. You will also recall that the inclusion of your General Committee of Adjustment was a condition which the carriers insisted upon before agreement could be reached. In other words, the carrier's negotiating committee advised, that unless our General Committee of Adjustment on the Seaboard Coast Line Railroad became a party to the National Movement, there would be no Agreement.

I believe the evolution of Section 4 of Article VIII can best be depicted by showing the emergence of that particular part of Article VIII as it developed throughout the negotiations in the form of proposals and counterproposals passed across the table. These proposals are attached hereto and identified below, by date and the sponsoring party.

Attachment 1 - Carrier's Proposal handed across the table on December 7, 1970. There is no provision comparable to Section 4 of Article VIII in this proposal.

Attachment 2 - BLE Counterproposal dated February 8, 1971. Item sixteen (16) of

CARRIER'S EXHIBIT 9  
PAGE 18 OF 23

this proposal contemplated the preservation of prior Agreements

Attachment 3 - Carrier's Counterproposal handed across the table on March 11, 1971. There is no provision comparable to Section 4 of Article VIII in this proposal.

Attachment 4 - BLE Counterproposal dated April 26, 1971, Item 5 of this proposal contemplated the preservation of prior Agreements.

Attachment 5 - Carrier's Counterproposal of April 28, 1971. Item 4 of this proposal contemplated preservation of prior Agreements.

Attachment 6 - BLE Counterproposal of May 3, 1971. Item 5 of the proposal contemplated preservation of prior Agreements.

- 12 -

Attachment 7 - Carrier's Counterproposal of May 7, 1971 which was initialed by the Chief Negotiators of the carriers and the BLE. With exception of the term "and/or agreements" Section 4 of this proposal is the same as it appears in Article VIII of the May 13, 1971 Agreement.

Between May 7 and May 13, 1971, and at the insistence of your General Committee of Adjustment, the language "and/or agreement," was agreed upon and became a part of Section 4 of Article VIII.

In my opinion, this written evidence of the negotiating history of Section 4 shows that it was clearly the intent of this Section 4 to prohibit the application of any part of Article VIII, including Section 1, to interdivisional, interseniority district intradivisional, or intraseniority district service and/or agreements, in effect on May 13, 1971.

Fraternally yours,

/s/ B N Whitwire  
President

The Carrier took no exception to the inclusion of Attachments 4 or 5 (A through G), nor did they present any evidence either written or orally from the Carrier signatory parties to the Agreement, which contradicted the information furnished by the Employees. Nor did the Neutral ask for or in any way seek information from the Carrier negotiators as to their understanding of the intent of Section 4 as related to the instant dispute. It should be noted that Mr. C. E. Mervine, Jr., then Vice President of Personnel and Labor Relations, of the Seaboard Coast Line, was a signatory party to the Agreement. Yet the Neutral, in his frustrated attempts to sustain the Carrier position, chose to ignore the documented factual history of the rule in addition to the interpretation of one of the drafters of the rule.

CARRIER'S EXHIBIT 9  
PAGE 19 OF 23

When Article VIII of the 1971 Agreement was adopted on this property there is no question but what Section 4 became just as much a part of the Agreement as any other provision of the Agreement. It clearly stated in part, "----district

service and/or agreements in effect on the date of this agreement are not affected by this Article VIII " (Underscoring supplied)

Simply stated the terms, "district service and/or agreements in effect" means that the "Extended Through Freight Runs" rule is an "Agreement in effect" and is not affected by Article 42 (Article VIII of the May 13, 1971 Agreement) of the present schedule agreement. (Underscoring supplied)

The Neutral set forth a part of the Carrier position on pages 8 & 9 of the Award

"It avers that prior to adoption of said Article VIII, in the May 13, 1971 BLE National Agreement, Carrier had an agreement rule providing for the establishment of intra-divisional runs, but only with a "Corridor" requirement. Carrier avers that both Agreement Rules, the July 1, 1967 Implementing Agreement and Article 42, have a side by side posture without a thread of conflict in their provisions or intent with respect to operations " (Underscoring supplied)

The Neutral states on page 10

"Having found that the July 1, 1967 Agreements were preserved, a key question that must be first answered is, "Does Carrier have the right under Article IV of the July 1, 1967 Implementing Agreement No. 4 to establish the specific intra-seniority district freight service as sought in its October 22, 1975 Notice to the BLE General Chairman?" (Underscoring supplied)

As previously stated the Carrier does have the right under Article IV to establish the specific service sought providing they comply with the terms and conditions thereof such Agreement having been preserved as stated by the Neutral above. Without question both the Carrier and the Neutral agree that the "Extended Through Freight Runs" rule is still in effect. There are no exceptions taken to any part of the rule, therefore, it is still in effect in its entirety.

Carrier admits the existing agreement did "???" provide for the establishment of intradivision runs with "?????" requirement.

This is further affirmed by the fact that such service was established and ever operated in the territory now in question subsequent to the effective date of Article VIII of the May 13, 1971 Agreement.

At this point the Neutral certainly had sufficient evidence to answer his question, "Does Carrier have the right under Article IV ----- to establish the specific-service as sought in its ----- Notice -----" But no, in continuing his diligent search for some basis for sustaining the Carrier's position in this Case, no matter how tenuous, he goes into great detail on pages 10 & 11 of the Award to explain the

CARRIER'S EXHIBIT 9

PAGE 20 OF 23

operation of the "Extended Through Freight Runs" rule and its adversities from the Carrier view point. It is interesting to note that his explanation definitely set out the procedure in which the proposed operation of the Carrier could be operated under the "Extended Through Freight Runs" rule.

The entire theme of the Award rings with such observations in behalf of the Carrier as, "that it had paid a big price therefor", "this rigid contractual requirement means that if Carrier desired, as here, to operate from Terminal "C" through Terminal "D" to Terminal "E", the mandatory requirements of Article IV mean that in addition to operating the service "C" to "E" Carrier must either operate the inter-divisional or intra-seniority service, or pay as if so operated, the engineers involved in, "Carrier would pay as if they were so run", "far beyond the territorial limitations that Carrier from a sound operating and efficiency viewpoint, might otherwise desire or contemplate"; "The Board finds that the May 13, 1971 BLE National Agreement was designed, in exchange for large wage increases", "to thereby improve the efficiency of Carrier's operations", "it would be unreasonable to conclude that Article IV of the 1967 Agreement shall be here held applicable which when compared to National Article VIII tends to restrict the efficiency sought in Carrier's operations" (Underscoring supplied)

The Neutral was informed several times during the hearings and the Executive sessions that followed, as to the "cost" or "price" the employees paid for the various merger related Agreements, including the "Extended Through Freight Runs" rule, however, not one time in the Award does he mention the cost or price paid by the Employees. Nor the fact that this Carrier got a rule nearly four years prior to many Carriers receiving such a rule.

The Employees stated during the hearings that if Carrier's position were upheld the "Extended Through Freight Runs" rule may never be used by the Carrier again. They would then have the vehicle to "piece meal" an Inter-Intra divisional operation almost system wide without ever having to comply with the terms and conditions of the "Extended Through Freight Runs" rule. Yet, he chose not to mention these facts and quite obviously ignored them.

The Neutral in his desperate search for some basis to sustain the Carrier position states, "Further, if there be a conflict between two Agreements on the same subject, the later Agreement thereon is construed to be held applicable." He attempts to ground this statement on the following:

"The record thus impels the conclusion that while the terms and conditions of the July 1, 1967 Implementing Agreements were not affected by the adoption of Article VIII, said terms and conditions neither contemplated nor permit of the type of freight service that may be requested under Article VIII. The Board finds that the May 13, 1971 BLE National Agreement was designed, in exchange for large wage increases, to remove artificial contractual barriers as reflected by the various Rules agreed to therein and to thereby improve the efficiency of Carrier's operations. Article VIII was one such Rule. In such circumstances, it would be unreasonable to conclude that Article IV of the 1967 Agreement should be here held applicable which when compared to National Article VIII tends to restrict the efficiency sought in Carrier's operations."

CARRIER'S EXHIBIT 9

PAGE 21 OF 23

It is quite obvious, from the record before this Board and the shallow attempt of the Neutral to justify his position, there are no conflicts between the contractual provisions of the two Agreements, therefore, is it possible that "compassion" may have superceded "judgement" in reaching the conclusions set forth herein

Much more could be written to show that the Award of Public Law Board No <<<1679>>> goes far beyond the jurisdiction of the Board. The record of this case is voluminous with respect to facts, argument and evidence. A large portion of this material was completely ignored by the Neutral Member as is obvious from a reading of his Findings.

It would appear that the Neutral has bowed to the whims and fantasies of the Carrier rather than relying upon judgement of the integrity of the involved agreements, in reaching his conclusions, and in doing so, has added another dimension, not provided for in the procedures set forth in the Railway Labor Act, as amended, nor the agreement that established this Board.

We are left with the question which was asked the Neutral reading:

If the "Extended Through Freight Runs" rule is still in effect, and both the Carrier and Neutral says it is, what effect will that part of Section 6 thereof, reading,

"When extended assignments are made on this seniority district they will be given a special identification symbol or name and, if operated over an adjoining district or districts or part thereof, the same rules and conditions will apply to these runs on the adjoining district or districts or part thereof and through the entire corridor "

have on any agreement that may be reached in the application of Article VIII of the May 13, 1971 National Agreement (Article 42 of the SCL Schedule

CARRIER'S EXHIBIT 9

PAGE 22 OF 23

Agreement)

For these reasons, as well as numerous others which are patently obvious to anyone with any knowledge of railroad labor negotiations and agreements, I dissent

Further, should this Award be contested before any tribunal, that may have jurisdiction thereof, I will not willingly participate in any defense of this erroneous Award

R B Curtis  
Employee Member

Date 1-25-77

---

CARRIER'S EXHIBIT 9  
PAGE 23 OF 23

31

Organization File No  
Carrier File No 111-163

ARBITRATION BOARD NO. 586

PARTIES ) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN  
TO )  
DISPUTE ) ELGIN, JOLIET & EASTERN RAILWAY COMPANY

STATEMENT OF ISSUE

*What shall be the terms and conditions governing the establishment of the additional interdivisional freight service described in the Carrier's proposal*

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held

On January 24, 2005, Director Labor Relations J M Hayes sent the following letter to BLET Division 520 General Chairman Ricky Jackman

The carrier hereby gives notice pursuant to Article IX - Interdivisional Service - of the Award of Arbitration Board No 458, dated May 19, 1986, of its desire to establish additional interdivisional freight service.

The new runs the carrier proposes are as follows

1. Pool crews running out of Kirk Yard on a turnaround basis between points on the Lake Front Line and points on the Eastern and/or Western Subdivisions, and
2. Pool crews running out of East Joliet on a turnaround basis between Kirk Yard and/or points on the Lake Front Line and points on the Eastern and/or Western Subdivisions, running through East Joliet more than once in a single trip.

These runs would be governed by the conditions set forth in Article IX, Section 2 of the May 19, 1986 Arbitration Award

I suggest we begin discussion of the carrier's proposal immediately following our Section 6 conference on Tuesday, January 25, 2005.

The Carrier and the Organization met to discuss this notice, and by letter dated April 21, 2005, General Chairman advised Director Labor Relations Hayes that the "Organization will agree to allow the carrier to use Pool Engineers to handle unit coal trains to State Line, that have been rerouted to Kirk Yard, and was [*sic*] originally destined to State Line, with the understanding that this agreement may need [to be] ratified by the membership " When the agreement was not ratified, the Carrier notified the National Mediation Board of its desire to submit the dispute to arbitration. On March 20, 2006, the National Mediation Board established Arbitration Board No. 586 and certified Barry E Simon as the Neutral Member of the Board, mutually selected by the parties

Subsequent to the issuance of the Award of Arbitration Board No 458, which produced the 1986 Brotherhood of Locomotive Engineers' National Agreement, the Carrier exercised its right to serve notice upon the Organization for the establishment of interdivisional freight service<sup>2</sup> The Carrier's notices were settled by Arbitration Board No 463 (Referee Joseph A Sickles) with the United Transportation Union (UTU) and by Arbitration Board No 476 (Referee Jacob Seidenberg) with the BLET Those decisions authorized the Carrier to operate trains in interdivisional service as follows, with the stipulation that crews could not be run through a terminal more than once

---

<sup>1</sup>Now known as the Brotherhood of Locomotive Engineers and Trainmen The initials "BLET," when used in this Award, will refer to the Organization, regardless of its name at the relevant time

<sup>2</sup>The terms of Article IX of the 1986 BLET National Agreement, dealing with interdivisional freight service, are patterned after Article IX of the 1985 UTU National Agreement. For the purposes of this Award, the relevant provisions of the two Agreements are identical.

Kirk Yard to Waukegan  
Kirk Yard to Western Subdivision to Joliet  
Waukegan to Lake Front Line to Kirk Yard  
Waukegan to Kirk Yard  
Joliet to Lake Front Line to Western Subdivision to Joliet  
Joliet to Western Subdivision to Lake Front Line to Joliet  
Kirk Yard to Lake Front Line to Western Subdivision to Joliet  
Joliet to Western Subdivision to Lake Front Line to Kirk Yard  
(Lake Front Line includes South Chicago)  
Kirk Yard to Joliet and return (turnaround service)  
Joliet to Kirk Yard and return (turnaround service)

Two years later, the Carrier again served notices upon the UTU and the BLET to establish interdivisional service with pool crews working turnaround out of Kirk Yard in Gary, Indiana. The purpose of this notice, according to the Carrier, was to expedite the movement of unit coal trains received from foreign lines on the Western Subdivision to coal-fired electric generating plants located on the Lake Front Line between Gary and South Chicago. The Carrier reached an agreement with the UTU with respect to this notice, but proceeded to arbitration with the BLET before Arbitration Board No 516 (Referee Marty E. Zusman), which held as follows.

The Carrier's proposal is answered in the affirmative. The Carrier may establish the additional interdivisional freight service involving crews running out of Kirk Yard terminal on a turnaround basis between points on the Western Subdivision and points on the Lake Front Line as proposed and discussed in the Findings. All the terms and conditions set by the Award of Arbitration Board No. 476, which presently govern existing interdivisional service shall be in effect, except there shall be no restrictions on crews in interdivisional service running through a terminal more than once during a single trip.

Two months later, the Carrier served a new notice to establish additional interdivisional runs using pool crews from Joliet, Illinois in turnaround service to handle unit coal trains to plants on the Lake Front Line. Agreement was reached with the BLET to establish such assignments under the same terms and conditions set forth by Arbitration Board No 516, again eliminating any restrictions on running through a terminal more than once on a single trip.

In explaining why it served the notice on January 24, 2005, the Carrier states it is still servicing one coal-fired electric generating plant on the Lake Front Line, Midwest Generation's State Line generating station. Unit coal trains destined for this plant are received from the BNSF at Eola, Illinois on the Western Subdivision. Under the existing interdivisional agreements, the Carrier may operate these trains with crews from either Joliet or Kirk Yard. If time permits, the same crew will operate back to Eola with empties. There are times, however, when it is necessary for the crew to leave the coal train on a siding west of Kirk Yard. Another road crew will be used later to bring the train into the State Line plant

Since late 2001, because of plant security and railroad capacity problems, the Carrier sometimes finds it necessary to leave the coal train in the Kirk Yard Terminal. The Carrier had been using pool engineers in interdivisional service to bring the trains from Kirk Yard to the plant, and then perform other work consistent with their assignments. The BLET argued such work was reserved to yard transfer crews, and this position was sustained by Public Law Board No 6603 in Award Nos 1 and 3 (Referee Martin H. Malin). According to the Carrier, it has less freedom to assign additional work to yard transfer crews than if it were using pool crews. Consequently, it has served this notice for the purpose of being permitted to perform the work with interdivisional pool engineers

The Carrier submits that its proposal for this interdivisional service, including the terms and conditions that apply to the runs, are reasonable and practical and in compliance with the provisions of Article LX, Section 2 of the 1986 National Agreement. These terms and conditions, according to the Carrier, are identical to those of its existing interdivisional assignments. The Carrier notes it has been running interdivisional service out of Kirk Yard and Joliet for more than fifteen years, giving

evidence that the runs are "adequate for efficient operations and reasonable in regard to the miles run, hours on duty and in regard to other conditions of work." It says the runs will be compensated in the same manner as existing interdivisional runs, and suitable transportation will be provided if engineers are required to go on or off duty at a point other than their fixed on and off duty points. As with other existing interdivisional runs, the Carrier says it will pay engineers \$18 when they are not permitted to stop to eat, regardless of their total time on duty.

The Carrier asks that this Board approve the proposed interdivisional assignments subject to the following terms and conditions.

Such runs will be subject to all of the terms and conditions set forth in the Award of Arbitration Board No 476, as amended, governing existing interdivisional service, with the exception that any restrictions on crews in interdivisional service running through a terminal more than once during a single trip are eliminated

The Organization argues that the Carrier is not truly seeking to establish new interdivisional service. Rather, it says the Carrier is merely attempting to rearrange existing service to take advantage of the more favorable conditions of Article IX, Section 2 of the 1986 National Agreement. Noting that the Carrier already enjoys the right to operate unit trains to and from the Lake Front Line, the Organization submits the Carrier is trying to avoid claim liability to yard and transfer service engineers when it places those trains within the confines of Kirk Yard, thereby requiring transfer crews to move them to the generating plant as dictated by Award No 1 of Public Law Board No 6603

The Organization cites the March 31, 1987, decision of the BI E-NCCC Informal Disputes Committee (Referee John B LaRocco) in Issue No 3, addressing whether established interdivisional service may be extended or rearranged under Article IX of the 1986 National Agreement. On the

same question, the Organization also relies upon Arbitration Board No. 505 (Referee William E. Fredenberger, Jr.), involving the Southern Pacific and the UTU, as well as a Special Board of Adjustment (Procedural) (Referee David P. Twomey) between the BLET and BNSF. The Organization concludes from these decisions that the Carrier's notice is improper under Article IX and asks this Board to decline jurisdiction

Alternatively, the Organization argues that the Board should not establish any conditions that are different from those agreed upon by the parties, but not ratified by the membership. In interest arbitrations, says the Organization, arbitrators generally attempt to do what the parties themselves would have done, had they been able to do so. The best evidence of what the parties would have done, according to the Organization, is what they actually agreed to do.

The 1986 National Agreement Informal Disputes Committee, in Issue No. 3, addressed the question, "Can established Interdivisional Service be extended or rearranged under this Article?" We first note that the Committee broke this question down to two questions, the first being "whether Carriers may extend or rearrange interdivisional service *established prior to the effective date of Article IX of the 1986 Arbitrated National Agreement*" (emphasis added). As the instant case does not involve any interdivisional operations that predate the 1986 Agreement, this question is not applicable herein. Nevertheless, we note the Committee determined that "Section 5 of Article IX does not restrict the Carriers from rearranging or extending existing interdivisional service."

The second question, which follows from the Committee's threshold question, and therefore applies only to extending or rearranging service that was established prior to the 1986 Agreement, asked what terms and conditions apply to such extended or rearranged interdivisional service. In answering this question, the Committee looked at the possibility of a carrier serving a notice seeking

relief from undesirable terms and conditions imposed upon the earlier interdivisional operation. That is clearly not the case here. The Carrier is not attempting to seek relief from restrictions found in any other interdivisional agreement. In fact, it is seeking terms and conditions identical to those in existing agreements. It is, rather, seeking to establish service out of Kirk Yard or Joliet on a turnaround basis, to work on the Lake Front Line and the Eastern and/or Western Subdivisions. This is work that is not covered by existing interdivisional service agreements. Contrariwise, Arbitration Board No 505 addressed the type of issue considered by the Disputes Committee when the Southern Pacific proposed an interdivisional assignment that would replace another assignment that had been established prior to the 1985 UTU National Agreement, but would be governed by the more liberal conditions of the National Agreement. It was for this reason that the Board rejected the carrier's notice. It is also for this reason that the Award of Arbitration Board No. 505 is not applicable to this case. Similarly, in the procedural dispute before Referee Twomey, the carrier was attempting to change the terms and conditions of an interdivisional assignment that predated the 1986 National Agreement.

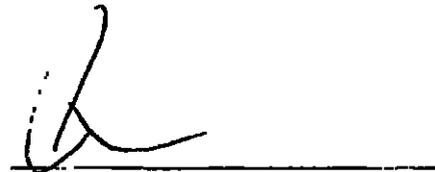
After careful consideration, the Board does not find the Organization's objections to the Carrier's notice to have merit. While it is evident that the Carrier's notice has the objective of avoiding the use of transfer or yard crews to move the coal trains from Kirk Yard to the power plant, we do not find that to be a basis for rejecting the Carrier's efforts. The entire purpose for establishing interdivisional assignments was to permit carriers to improve the efficiency of their operations by expanding the nature of work that may be performed by road crews and the territory over which they operate. When interdivisional assignments are created, other employees stand to lose work. That is a harsh reality, but it has been the reality since 1971.

We agree with the Organization that this Board should attempt to impose those conditions that the parties would have if they had been able. In this case, the Carrier is looking for nothing more than it had tentatively agreed upon with the Organization. Accordingly, we shall impose those terms and conditions

AWARD. The Carrier may establish interdivisional service pursuant to its notice dated January 2, 2005. Such runs will be subject to all of the terms and conditions set forth in the Award of Arbitration Board No. 476, as amended, governing existing interdivisional service, with the exception that any restrictions on crews in interdivisional service running through a terminal more than once during a single trip are eliminated.

  
Barry E. Simon  
Chairman and Neutral Member

  
R. K. Radek  
Employee Member

  
J. F. Ingham  
Carrier Member

Dated: February 12, 2007  
Arlington Heights, Illinois

32

(b) The next adjustment to an employee's position on the rate progression scale after the adjustment specified in subsection (a) of this Section shall be made when such employee completes one year of "active service" (as defined by the aforementioned Article IV, Section 5) measured from the date on which that employee would have attained the position on the rate progression scale provided pursuant to subsection (a) of this Section.

### Section 2

Local rate progression rules applicable on a carrier that is not covered by the aforementioned Article IV, Section 5 are hereby amended in the same manner as provided in Section 1.

### Section 3

This Article shall become effective ten (10) days after the date of this Agreement and is not intended to restrict any of the existing rights of a carrier except as specifically provided herein.

## ARTICLE IX - ENHANCED CUSTOMER SERVICE

Article IX - Special Relief, Customer Service - Yard Crews of the 1991 National Implementing Document is amended to read as follows and furthermore shall be applicable to all carriers party to this Agreement:

### Section 1

(a) When an individual carrier has a customer request for particularized handling that would provide more efficient service, or can show a need for relaxation of certain specific work rules to attract or retain a customer, such service may be instituted on an experimental basis for a six-month period. ;

(b) Prior to implementing such service, the carrier will extend seven (7) days advance notice where practicable but in no event less than forty-eight (48) hours' advance notice to the General Chairman of the employees involved. Such notice will include an explanation of the need to provide the service, a description of the service, and a description of the work rules that may require relaxation for implementation. Relaxation of work rules that may be required under this Article shall be limited to: starting times, yard limits, calling rules, on/off duty points, seniority boundaries, and class of service restrictions.

(c) A Joint Committee, comprised of an equal number of carrier representatives and organization representatives, shall determine whether a need exists, as provided in paragraph (a), to provide the service. If the Joint Committee has not made its

will be allowed on an experimental basis for a six-month period. If, after the six-months has expired, the organization members of the Joint Committee continue to object, the matter shall be referred to arbitration.

(d) If the parties are unable to agree upon an arbitrator within seven days of the date of the request for arbitration, either party may request the National Mediation Board to provide a list of five potential arbitrators, from which the parties shall choose the arbitrator through alternate striking. The order of such striking shall be determined by coin flip unless otherwise agreed by the parties. The fees and expenses of the arbitrator shall be borne equally by the parties.

(e) The determination of the arbitrator shall be limited to whether the carrier has shown a bona fide need to provide the service requested or can provide the service without a special exception to existing work rules being made at a comparable cost to the carrier. If the arbitrator determines that this standard has not been met, the arbitrator shall have the discretion to award compensation for all wages and benefits lost by an employee as a result of the carrier's implementation of its proposal.

## Section 2

This Article shall become effective June 1, 1996 and is not intended to restrict any of the existing rights of a carrier.

## ARTICLE X - DISPLACEMENT

### Section 1

(a) Where agreements that provide for the exercise of displacement rights within a shorter time period are not in effect, existing rules are amended to provide that an employee who has a displacement right on any position (including extra boards) within a terminal or within 30 miles of such employee's current reporting point, whichever is greater, must, from the time of proper notification under the applicable agreement or practice, exercise that displacement right within forty-eight (48) hours.

(b) Failure of an employee to exercise displacement rights, as provided in (a) above, will result in said employee being assigned to the applicable extra board, seniority permitting. (The applicable extra board is the extra board protecting the assignment from which displaced.)

May 31, 1996  
#9

Mr. Ronald P. McLaughlin  
President  
Brotherhood of Locomotive Engineers  
Standard Building  
1370 Ontario Street  
Cleveland, OH 44113-1702

Mr. B. D. MacArthur  
General Chairman, BLE  
217 Fifth Avenue South  
Suite 502  
Clinton, IA 52732

Mr. D. E. Penning  
General Chairman, BLE  
12531 Missouri Bottom Rd.  
Hazelwood, MO 63042

Mr. M. L. Royal, Jr.  
General Chairman, BLE  
413 West Texas  
Sherman, TX 75090-3755

Mr. D. L. Stewart  
General Chairman, BLE  
44 N. Main Street  
Layton, UT 84041

Mr. M. A. Young  
General Chairman, BLE  
1620 Central Avenue #201  
Cheyenne, WY 82001

Gentlemen:

This confirms our understanding regarding Article IX -  
Enhanced Customer Service of the Agreement of this date.

In recent years the rail freight sector of the transportation market place has taken steps toward a more competitive discipline which, if successful, could point the rail industry toward more growth. The parties to this Agreement are intent on nurturing these improvements. In this respect we mutually recognize that an important reason underlying the recent improvement has been enhanced focus on customer needs and improved service as the framework for working conditions. Increased employee productivity and more immediate responses to customer needs by railroad employees at all levels have been and will continue to be at the very heart of this effort.

In order to continue these recent improvements, the parties intend to respond to customers' needs with even greater efforts. In Article IX, we have developed a framework for achieving our mutual goal of retaining existing customers and attracting new business by providing more efficient and expedient service, including relaxation of work rules specified therein where and to

the extent necessary for those purposes. We are also in accord that these undertakings should appropriately recognize the interests of affected employees in fair and equitable working conditions.

This will confirm our understanding that the NCCC Chairman and the BLE President shall promptly confer on any carrier proposal under Article IX that the BLE President deems to be egregiously inconsistent with our mutual intent. Such proposal shall be held in abeyance pending conference and shall not be implemented until adjusted by agreement of the parties or, absent such agreement, resolved by expedited, party paid arbitration as set forth in the attachment hereto.

Please acknowledge your agreement by signing your name in the space provided below.

Yours very truly,

Robert F. Allen

I agree:

R. P. McLaughlin  
R. P. McLaughlin

B. D. MacArthur  
B. D. MacArthur

D. E. Fenning  
D. E. Fenning

M. L. Royal, Jr.  
M. L. Royal, Jr.

D. V. Stewart  
D. V. Stewart

M. A. Young  
M. A. Young

Ken C. Loran

J. B. Dorman

J. J. Jones

K. L. Peifer

H. J. Salmon

F. J. Dennis

Sh. Math

Q-4: Where existing promotion rules or practices provide for the automatic promotion to conductor and engineer upon promotion to either conductor or engineer, will an employee be elevated two (2) steps on the wage scale?

A-4: Yes.

ARTICLE IX - ENHANCED CUSTOMER SERVICE

Q-1: What is the intent of the parties with respect to the provision in paragraph (b) which states "...., the Carrier will extend seven (7) days advance notice where practicable but in no event less than forty-eight (48) hours advance notice...?"

A-1: The intent was for the Carriers to routinely give as much advance notice as possible to the involved BLE General Chairmen(s) prior to implementation of the proposed service under paragraph (a).

Q-2: Should the Carrier notify the General Chairmen(s) in writing when and where it intends to establish such service and identify the involved customer?

A-2: Yes, and such notification should include the specific rule(s) where relief or relaxation is requested.

Q-3: What will prevent the Carrier from routinely furnishing the minimum notice under the rule, i.e., 48 hours, prior to implementing the desired service?

A-3: The intent was for the Carriers to routinely give as much advance notice as possible to the involved BLE General Chairmen(s) prior to implementation of the proposed service under paragraph (a).

Q-4: Is it the intent of the parties that the Joint Committee referred to in paragraph (c) will be established and meet at the location where the proposed service is to be implemented?

- A-4: The Committee will confer by whatever means are appropriate and practical to the circumstances, including telephonically.
- Q-5: Can the Carrier require a yard crew from one seniority district to meet the service requirements of a customer if such customer is located in road territory in another seniority district on that Carrier within the combination road-yard service zone?
- A-5: The carrier's rights under this Article are limited to certain identified rules under defined circumstances, provided that the carrier has complied with all applicable requirements set forth therein. Any carrier proposal under this Article which, in the opinion of the BLE President, is egregiously inconsistent with the intent of the rule will not be implemented without conference between the BLE President and the NCCC Chairman.
- Q-6: Does this rule permit the use of road crews to perform customer service within switching limits?
- A-6: The carrier's rights under this Article are limited to certain identified rules under defined circumstances, provided that the carrier has complied with all applicable requirements set forth therein. Any carrier proposal under this Article which, in the opinion of the BLE President, is egregiously inconsistent with the intent of the rule will not be implemented without conference between the BLE President and the NCCC Chairman.
- Q-7: Can the Carrier be considered a customer in the application of this rule?
- A-7: The word "customer", as used in paragraph (a), was not meant to apply to the Carrier.
- Q-8: Is there any limitation as to the number of miles a yard crew may be required to travel in road territory in order to provide the customer service contemplated by this rule?

- A-8: *Yes. Yard crews are limited to the minimum number of miles necessary to accomplish the service consistent with the spirit and intent of the parties.*
- Q-9: *Where customer service can be accomplished by a road crew, is the Carrier within the intent of the rule to establish the use of a yard crew to perform this work?*
- A-9: *The Carrier's use of yard crews must meet the requirements of the rule.*
- Q-10: *Does this Article IX supersede the Road/Yard Service zone established under Article VIII, Section 2(a)(iii) of the May 19, 1986 National Agreement or the agreed upon interpretations pertaining thereto?*
- A-10: *No, this Article amends Article IX - Special Relief, Customer Service - Yard Crews of the BLE Implementing Document of November 7, 1991.*
- Q-11: *Does Article IX contemplate the use of yard crews from one seniority district or Carrier to perform service for a customer which is located on the line of another Carrier?*
- A-11: *It is not the intent of the rule to permit yard crews from one Carrier to substitute for yard crews of another unrelated Carrier.*
- Q-12: *Are any employee protective provisions applicable to employees adversely affected by the institution of service under Article IX?*
- A-12: *As set forth in paragraph (e).*
- Q-13: *Does Article IX contemplate the establishment of split-shifts in yard service?*
- A-13: *No.*

- Q-14: Paragraph (e) requires that the Carrier show a "bona fide" need for the rule relief requested or that it cannot provide the service at a "Comparable Cost" under the existing rules. Will the Carriers burden of proof in this regard be met simply by showing that the customer service can be accomplished at a reduced cost?
- A-14: No, a carrier will also have to demonstrate compliance with Section 1(a).
- Q-15: If a yard crew is providing particularized service to a customer under this rule, may the Carrier properly require the yard crew to provide service to other industries located in the area or along the line?
- A-15: The carrier's rights under this Article are limited to certain identified rules under defined circumstances, provided that the carrier has complied with all applicable requirements set forth therein. Any carrier proposal under this Article which, in the opinion of the BLE President, is egregiously inconsistent with the intent of the rule will not be implemented without conference between the BLE President and the NCCC Chairman.
- Q-16: May the Carrier use a road crew to provide service to a customer within the switching limits of a terminal?
- A-16: The carrier's rights under this Article are limited to certain identified rules under defined circumstances, provided that the carrier has complied with all applicable requirements set forth therein. Any carrier proposal under this Article which, in the opinion of the BLE President, is egregiously inconsistent with the intent of the rule will not be implemented without conference between the BLE President and the NCCC Chairman.
- Q-17: Will a yard crew used in accordance with this Article have its work confined solely to meet the specific service requirements?

A-17: The carrier's rights under this Article are limited to certain identified rules under defined circumstances, provided that the carrier has complied with all applicable requirements set forth therein. Any carrier proposal under this Article which, in the opinion of the BLE President, is egregiously inconsistent with the intent of the rule will not be implemented without conference between the BLE President and the NCCC Chairman.

Q-18: Can Employees of a Carrier who may be restricted by physical disabilities or for disciplinary reasons from performing road service on that Carrier be used to perform such service under this Article?

A-18: No.

Q-19: If a carrier fails to comply with the provisions of Article IX, what remedy is available to employees adversely affected by the carrier's implementation of its proposal?

A-19: The arbitrator is authorized to fashion a remedy appropriate to the circumstances under Section 1(e).

#### ARTICLE X - DISPLACEMENT

Q-1: On those properties where employees have less than 48 hours to exercise displacement rights, are such rules amended so as to now apply a uniform rule?

A-1: No, the existing rules providing for less than 48 hours continue, unless the parties specifically agree otherwise.

Q-2: Is an employee displaced under Section 1, electing to exercise seniority placement beyond thirty (30) miles of the current reporting point, required to notify the appropriate crew office of that decision within 48 hours?

A-2: Yes.

33

**MEMORANDUM OF AGREEMENT**

**Between**

**UNION PACIFIC RAILROAD COMPANY**

**And the**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN**

\*\*\*\*\*

**ESTABLISHMENT OF INTERDIVISIONAL SERVICE  
BETWEEN DALLAS AND SWEETWATER, TEXAS  
Carrier File 920.20-37**

\*\*\*\*\*

On April 4, 2005, Union Pacific Railroad Company ("Carrier" or "UP") served notice of its intention to establish new Interdivisional Service between Dallas and Sweetwater, Texas, under conditions set forth in Article IX of the May 19, 1986 BLET National Implementing Agreement, as amended.

Parties signatory hereto have, pursuant to the above-cited Article, agreed to the terms governing this Interdivisional Service. Specifically, **IT IS AGREED:**

**I. Interdivisional Service**

**Section 1: Operations**

- A. Carrier may establish Interdivisional Service to operate between Dallas and Sweetwater, Texas.
- B. Dallas, Texas will be the home terminal and Sweetwater, Texas the away-from-home terminal for employees working in this Interdivisional Service.
- C. Route miles are as follows:

- Between Dallas and Sweetwater - 245 miles
- Between Sweetwater and Dallas - 245 miles
- Between Dallas and Sweetwater via Mesquite - 250 miles
- Between Sweetwater and Dallas via Mesquite - 250 miles

**Note 1:** Where multiple/separate routes exist between Dallas and Sweetwater, crews may operate over any and all routes or combination of routes as part of their assignment. If the miles operated over multiple/separate routes exceed

the miles specified in Article I, Section 1, Item C above, the actual miles operated will be paid.

- D. Nothing herein shall preclude the Carrier from utilizing pre-existing pools and protecting extra boards to handle traffic between Dallas and Fort Worth and between Fort Worth and Sweetwater.

**Section 2: Meals En Route**

Meals en route for employees working in this service will be governed by Article IX, Section 2, Paragraph (e) of the May 19, 1986 BLET National Agreement.

**Note:** The meal en route provision set forth in this Section 2, as well as any other pay element(s) contained in Article V of the December 16th, 2003 BLET National Agreement, will be included in any trip rate established for this run.

**Section 3: Away-From-Home Terminal Meals**

Away-from-home terminal meal allowances for employees working in this service will be governed by Article IX, Section 2, Paragraph (d) of the May 19, 1986 BLET National Agreement.

**Section 4: Transportation**

The provisions of Article IX, Section 2, Paragraph (c) of the May 19, 1986 BLET National Agreement will apply for employees working in this Interdivisional Service.

**Section 5: Suitable Lodging**

The Carrier will, in accordance with applicable existing Agreement requirements, provide suitable lodging at the away-from-home terminal for employees working in this Interdivisional Service.

**Section 6: Turnaround/Hours-of-Service Relief**

- A. Except as otherwise specified herein, the protecting extra board at Dallas, if available, shall handle usual extra board work associated with this Interdivisional Service and hours of service relief for trains destined to Dallas that are east of Eastland, Texas prior to using pool crews on a turnaround basis.

- B. Except as otherwise specified herein, the protecting extra board at Sweetwater, if available, shall handle turnaround and hours of service relief for trains destined to Sweetwater that are west of Eastland, Texas prior to using pool crews on a turnaround basis.
- C. Extra crews used in this turnaround or hours of service relief shall be considered called in combination deadhead/service and shall be paid actual miles as such.
- D. Nothing herein shall prevent the use of other crews to perform work currently permitted by prevailing agreements, including, but not limited to yard crews performing hours-of-service relief within road/yard service zones, pool crews performing through freight combined service/deadheads between terminals, road switchers handling trains within their zones and/or using an engineer from a following train to work a preceding train.
- E. Nothing herein shall preclude the Carrier from utilizing pre-existing pools and protecting extra boards to handle traffic between Dallas and Fort Worth and between Fort Worth and Sweetwater.

**Section 7: DFW Hub Provisions**

Applicable provisions of Article III, Section B of the Dallas – Fort Worth Hub Implementing Agreement shall apply to this Interdivisional Service.

**Section 8: Implementation**

The Carrier shall give the General Chairman fifteen (15) days written notice of its intent to implement this Agreement.

**Section 9: Extra Board**

A separate Guaranteed Extra Board shall be established at Dallas pursuant to controlling agreements to protect vacancies in this Interdivisional Service and work specified in Section 6 of this agreement.

**Section 10: Assignments**

Employees who apply for, or make seniority moves to this Interdivisional Service shall be assigned in seniority order using their DFW Hub consolidated seniority date.

**Section 11: Pool Regulation**

- A. For the purpose of adjusting the Dallas – Sweetwater Interdivisional Service pool board and the Fort Worth – Sweetwater pool board, a weekly review will be made to determine the number of turns to be assigned consistent with terms and conditions set forth in this Section 11.
- B. The Dallas – Sweetwater Interdivisional Service pool board shall have the number of turns assigned thereto adjusted to average 19 to 23 starts/trips in a calendar month. The term starts/trips includes terminal to terminal working trips, terminal to terminal deadhead trips, combined deadhead and service or combined service and deadhead trips, turnaround trips, etc.
- C. The Fort Worth – Sweetwater pool board shall have the number of turns assigned thereto adjusted to average 20 to 24 starts/trips in a calendar month. The term starts/trips includes terminal to terminal working trips, terminal to terminal deadhead trips, combined deadhead and service or combined service and deadhead trips, turnaround trips, etc

**Note:** It is understood and agreed this Section 11 and/or agreement does not establish any pool guarantees or assured earnings.

- D. Dallas – Sweetwater Interdivisional Service pool crews and Fort Worth – Sweetwater pool crews will have individual boards and operate independently of one another out of Sweetwater.

**Note:** It is understood this Section 11, D will not serve to restrict the Carrier from operating any of its trains in either pool(s).

**Section 12: Employee Protection**

Employees adversely affected as a direct result of the implementation of Interdivisional Service established pursuant to this agreement will be entitled to protective benefits set forth in Article IX, Section 7 of the May 19, 1996 BLET National Agreement.

## II. Operation to and/or from the Dallas Intermodal Facility

### Section 1: Operation

- A. Crews from this Interdivisional Service and/or existing pools working into or out of the Dallas Terminal may be required to extend their run at the end of their in-bound trip or at the beginning of their out-bound trip by operating through the southern switching limit on the Ennis Subdivision for the Dallas Terminal to/from the Dallas Intermodal Facility in the vicinity of Wilmer, Texas located near mile post 252.2 on the Ennis Subdivision. Movement of traffic to and from the Dallas Intermodal Facility under the terms of this Agreement is restricted to trains and/or equipment associated with and/or originating or terminating at this facility.
- B. Crews may be required to enter the Dallas Intermodal Facility by heading or backing their train into the facility at either end.
- C. Crews leaving their train at the Dallas Intermodal Facility will be transported to their tie up point and crews receiving their train at the Dallas Intermodal Facility will be transported to the facility.

### Section 2: Compensation:

Pool crews operating to/from the Dallas Intermodal Facility pursuant to Section 1 above will be paid as follows:

- A. Inbound pool crews passing the Dallas Terminal Limits at milepost 257.1 on the Ennis Subdivision will yard their train at the Dallas Intermodal Facility and will receive ten (10) miles at the pro rata rate in addition to all other earnings for the trip. Final terminal delay shall commence upon the train's arrival at the Dallas Intermodal facility and cease commensurate with existing agreements. No additional miles will be paid for transportation between the Dallas Intermodal Facility and their tie up point.
- B. Outbound pool crews transported to the Dallas Intermodal Facility and who work back through the Dallas Terminal and on to destination will receive ten (10) miles at the pro rata rate in addition to all other earnings for the trip. Initial terminal delay shall commence seventy-five (75) minutes after the crew's arrival at the Dallas Intermodal Facility and cease commensurate with existing agreements. No additional miles will be paid for transportation between the on duty point and the Dallas Intermodal Facility.

- C. The ten (10) mile arbitrary specified in this Section 2 will be subject to all future COLA wage increases, will not be considered a duplicate time payment and will be paid to all qualifying crews in this service.
- D. The ten -(10) miles arbitrary in this Section 2 will not apply and will not be paid to pool crews operating between Dallas and Taylor/Heame.

**III. General**

**Section 1: Savings Clause**

- A. In the event the provisions of this Agreement conflict with any other agreements, understandings or practices, the provisions set forth herein shall prevail and apply.
- B. The terms and conditions of this Agreement are intended to address and/or apply to this Interdivisional Service between Dallas and Sweetwater, Texas. Accordingly, except as specified herein, such terms and conditions shall not be applied, or interpreted to apply, to other locations, runs, etc.
- C. This agreement will not prejudice the position of either party, will not be referred to in connection with any other agreement (local or national) and is thus not to be viewed as guiding or setting a precedent in any other interdivisional service disputes.

Signed this 26<sup>th</sup> day of August 2005 in Spring, Texas.

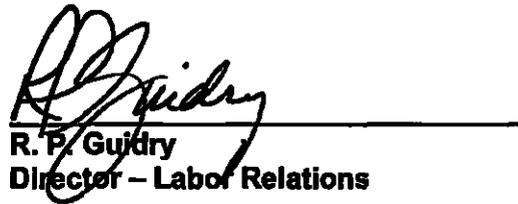
FOR THE BLE



A handwritten signature in black ink, appearing to read 'Gil Gore', written over a horizontal line.

Gil Gore  
General Chairman, BLET

FOR THE UNION PACIFIC  
RAILROAD:



A handwritten signature in black ink, appearing to read 'R. P. Guldry', written over a horizontal line.

R. P. Guldry  
Director - Labor Relations

## UNION PACIFIC RAILROAD COMPANY



August 26, 2005  
Side Letter 1

Mr. Gil Gore  
General Chairman  
Brotherhood of Locomotive Engineers  
1448 Mac Arthur Ave.  
Harvey, Louisiana 70058

Dear Sir:

This refers to questions raised by the Organization during negotiations relating to Article I, Section 12 of the Dallas to Sweetwater Interdivisional Service Agreement.

Provisions contained in this Side Letter 1 are contingent upon successful ratification and execution of this Interdivisional Agreement on or before August 29, 2005. Moreover, the Organization agrees to waive notice requirements contained in Article I, Section 8 of this Agreement should its ratification interfere with implementation of this Interdivisional Service by August 29, 2005. The signing of this Interdivisional Agreement by all parties on or before August 26, 2005 is considered a successful execution thereof.

Consistent with terms, conditions and timelines outlined above, the following Questions and Answers will be agreed to in connection with Article I, Section 12 of the Dallas – Sweetwater Interdivisional Service Agreement.

Q 1. Who would be required to relocate pursuant to Article I, Section 12?

A 1. An employee who can no longer hold a position at Fort Worth and must relocate to hold a position as a direct result of the implementation of this service.

Q 2. Will the Carrier consider any "seniority moves" by senior engineers voluntarily applying for this Interdivisional Service as being required to relocate?

A 2. Only to the extent specified in Q 3 and A 3 below.

Q 3. Will employees be offered an "in lieu of" relocation allowance?

- A 3. Up to five- (5) engineers applying for and initially assigned to the Dallas – Sweetwater pool board and up to two (2) engineers applying and initially assigned to the Dallas extra board protecting this Interdivisional Service shall be considered eligible for the "in lieu of" relocation allowance specified herein. The parties understand and agree this exception will not be available after the initial bids are closed and this Interdivisional Service is implemented.

Only as it relates to the seven engineers specified above, should the employee's new reporting point at Dallas, Texas be farther from his/her residence than the old reporting point and in excess of thirty (30) miles from his/her place of residence, that employee may elect the following option in lieu of the relocation, transfer and moving benefits stipulated in Sections 10 and 11 of the Washington Job Protection Agreement and transfer allowances set forth in Article IX, Section 7 of the May 19, 1986 BLET National Implementing Agreement

1. Homeowners and Non-homeowners/renters may elect to receive an "in lieu of" allowance in the amount of \$5,000.00. Applications/requests for this "in lieu of" allowance must be submitted on the required form within sixty -(60) days from the date this Interdivisional Service is implemented.
2. If an employee elects the "in lieu of" allowances stipulated above, such election is in lieu of any and all relocation benefits to which the employee is entitled. No employee is entitled to more than one (1) moving allowance as a result of this transaction.

**Note: 1.** Employees accepting the "in lieu of" relocation benefits pursuant to this Side Letter 1 will be required to remain at the new home terminal (Dallas), seniority permitting, for a period of not less than one (1) year. The parties may, by mutual agreement, relieve an individual employee from the one (1) year obligation.

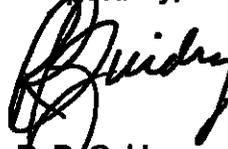
4. It is understood and agreed that the "In lieu of" allowances stipulated in this Side Letter 1 will not be included in any test period calculations, determinations and/or payments.

It is understood and agreed this Side Letter 1 is limited to Interdivisional Service established pursuant to this agreement, will not establish any precedent and will not be

referred to in connection with any other case, agreement (local and/or national), negotiation, arbitration, and/or dispute resolution.

If you agree with the terms and conditions outlined above, please indicate by signing in the space provided.

Respectfully,



R. P. Guldry  
Director - Labor Relations

Agreed:



Mr. Gil Gore  
General Chairman - BLET

**DALLAS – SWEETWATER INTERDIVISIONAL SERVICE  
IN LIEU OF RELOCATION BENEFITS APPLICATION**

Please accept this as my application for the "In lieu of" relocation allowance in the amount of \$5,000.00 as outlined in Side Letter 1 of the Dallas – Sweetwater Interdivisional Service Agreement dated August 26, 2005. In connection therewith, I hereby represent, understand and agree to the following:

1. This allowance is in lieu of any and all relocation benefits to which I am entitled in connection with the implementation of the Dallas - Sweetwater Interdivisional Service. Employees accepting this allowance will be required to remain at the new home terminal (Dallas), seniority permitting, for a period of not less than one (1) year from the date assigned.
2. Only seven (7) engineers who apply and are initially assigned at Dallas, Texas will be eligible for this allowance. No employee is entitled to more than one (1) moving allowance as a result of this transaction.
3. Applications for this allowance will not be accepted after initial bids are closed and this Interdivisional Service is implemented.
4. The new reporting point at Dallas, Texas is farther from my residence than my old reporting point and in excess of thirty (30) miles from my primary residence on file with the company as of April 4, 2005. A computer generated map denoting the distance/miles from my primary residence to my old reporting point and the new reporting point at Dallas, Texas will be accepted as verification of the distance requirements.

I hereby certify with my signature that I am eligible for this allowance and all information on this form is accurate and correct. Attached are documentation verifying job assignment prior to April 4, 2005 and the location of my primary residence relative to the old and new reporting points.

Name (Print) \_\_\_\_\_ Employee No. \_\_\_\_\_

Signature \_\_\_\_\_ Craft \_\_\_\_\_

Primary Residence Address \_\_\_\_\_

Assignment prior to April 4, 2005 \_\_\_\_\_

Date of application \_\_\_\_\_ Date assigned at Dallas \_\_\_\_\_

## UNION PACIFIC RAILROAD COMPANY



August 26, 2005  
Side Letter 2

Mr. Gil Gore  
General Chairman  
Brotherhood of Locomotive Engineers  
1448 Mac Arthur Ave.  
Harvey, Louisiana 70058

Dear Sir:

This refers to our negotiations relative to Article II, Section 2 of the Dallas to Sweetwater Interdivisional Service Agreement.

Provisions contained in this Side Letter 2 are contingent upon successful ratification and execution of this Interdivisional Agreement on or before August 29, 2005. Moreover, the Organization agrees to waive notice requirements contained in Article I, Section 8 of this Agreement should its ratification interfere with implementation of this Interdivisional Service by August 29, 2005. The signing of this Interdivisional Agreement by all parties on or before August 26, 2005 is considered a successful execution thereof.

Consistent with terms, conditions and timelines outlined above, the following is agreed to in connection with and will be added to Article II, Section 2 of the Dallas - Sweetwater Interdivisional Service Agreement as Item E reading:

- E. The ten- (10) mile arbitrary specified in this Section 2 will not be included in calculating overtime thresholds on respective runs operating to/from the Dallas Intermodal Facility.

It is understood and agreed this Side Letter 2 is limited to Interdivisional Service established pursuant to this agreement, will not establish any precedent and will not be referred to in connection with any other case, agreement (local and/or national), negotiation, arbitration, and/or dispute resolution.

If you agree with the terms and conditions outlined above, please indicate by signing in the space provided.

Respectfully,



R. P. Guidry  
Director - Labor Relations

Agreed:



Mr. Gil Gore  
General Chairman - BLET

## UNION PACIFIC RAILROAD COMPANY



August 26, 2005  
Side Letter 3

Mr. Gil Gore  
General Chairman  
Brotherhood of Locomotive Engineers  
1448 Mac Arthur Ave.  
Harvey, Louisiana 70058

Dear Sir:

This refers to our negotiation of the Dallas to Sweetwater Interdivisional Service Agreement

Provisions contained in this Side Letter 3 are contingent upon successful ratification and execution of this Interdivisional Agreement on or before August 29, 2005. Moreover, the Organization agrees to waive notice requirements contained in Article I, Section 8 of this Agreement should its ratification interfere with implementation of this Interdivisional Service by August 29, 2005. The signing of this Interdivisional Agreement by all parties on or before August 26, 2005 is considered a successful execution thereof.

Consistent with terms, conditions and timelines outlined above, the following Questions and Answers will be agreed to in connection with the Dallas – Sweetwater Interdivisional Service Agreement.

**Q1. How are weekly regulations of the Dallas – Sweetwater and Fort Worth – Sweetwater pools to be accomplished?**

**A1. Adjustments will be made each Monday in the following manner. The total trips made in the last 7 days will be divided by 7 and multiplied by the number of days in the month and divided by the number of crews desired in the regulation.**

**Example for a desired regulation of 22 trips per month:  
A total of 100 crews/trips were used in a 7 -day check from Sunday – Saturday.  
100 Divided by 7 = 14.2857, Multiplied by 31 = 442.8571, Divided by 22 = 20.12**

20 crews should be assigned to the pool.

**Q2. May pool crews arriving Dallas with cars on their train for the Dallas Intermodal Terminal (DIT) facility at Wilmer, Texas be required to pick up additional cars at Dallas proper for DIT and move them to the DIT facility.**

**A2. Yes, Dallas will be considered an intermediate point in this instance subject to the conditions in the National Agreement.**

**Q3. A short pool crew working between Ft. Worth and Dallas delivers a train to the DIT and is transported back Fort Worth. The entire trip takes 11' 30" minutes. What compensation do they receive?**

**A3. Since the miles run do not exceed those encompassed in the basic day, this crew would be paid 8 hours straight time, 3 hours and 30 minutes overtime and 10 miles at the pro rata daily rate of the assignment as provided in Article II, Section 2, Paragraph A**

**Q4. A short pool crew working between Ft. Worth and Dallas delivers a train to the DIT and thereafter also operates a train from the DIT back to Ft. Worth. They are on duty a total of 11 hours and 45 minutes. What compensation would they receive for operating trains into and out of the DIT facility?**

**A4. Since the miles run do not exceed those encompassed in the basic day, the crew would be paid 8 hours straight time, 3 hours and 45 minutes overtime and two 10 mile payments since they handled a separate train into and out of the DIT facility.**

**Q5. Would Questions and Answers 2, 3 and 4 apply to other short pools such as the Longview – Dallas pool?**

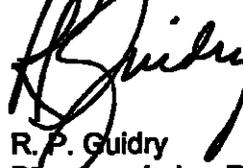
**A5. Yes.**

**Q6. A short pool crew operating to Dallas does not have any cars or equipment on their train for the DIT facility. Can this short crew be required to shuttle cars to the DIT facility under the terms of this Agreement?**

**A6. No, pool crews arriving Dallas with no cars or equipment on their train for the DIT Facility will not be required to shuttle cars from Dallas to the DIT facility.**

If you agree with the terms and conditions outlined above, please indicate by signing in the space provided.

Respectfully,



R. P. Guidry  
Director - Labor Relations

Agreed:



Mr. Gil Gore  
General Chairman - BLET

**UNION PACIFIC RAILROAD COMPANY**



**August 26, 2005  
Side Letter 4**

**Mr. Gil Gore  
General Chairman  
Brotherhood of Locomotive Engineers  
1448 Mac Arthur Ave.  
Harvey, Louisiana 70058**

**Dear Sir:**

**This refers to our negotiation of the Dallas to Sweetwater Interdivisional Service Agreement.**

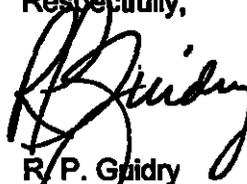
**Provisions contained in this Side Letter 4 are contingent upon successful ratification and execution of this Interdivisional Agreement on or before August 29, 2005. Moreover, the Organization agrees to waive notice requirements contained in Article I, Section 8 of this Agreement should its ratification interfere with implementation of this Interdivisional Service by August 29, 2005. The signing of this Interdivisional Agreement by all parties on or before August 26, 2005 is considered a successful execution thereof.**

**Consistent with terms, conditions and timelines outlined above, the Carrier will withdraw its Enhanced Customer Service Notice dated May 31, 2005 upon implementation of this Interdivisional Service. Should other or additional service be necessary, due notice shall be provided as required by controlling agreements.**

**It is understood the terms of this Side Letter 4 will not prejudice the position of either party and will not be referred to in connection with any other case, agreement (local and/or national) and/or dispute resolution.**

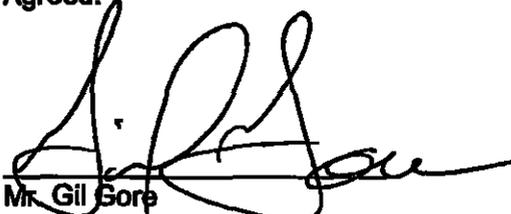
If you agree with the terms and conditions outlined above, please indicate by signing in the space provided.

Respectfully,



R. P. Guidry  
Director - Labor Relations

Agreed:



Mr. Gil Gore  
General Chairman - BLET

**UNION PACIFIC RAILROAD COMPANY**



**August 26, 2005**

**Mr. Gil Gore  
General Chairman  
Brotherhood of Locomotive Engineers  
1448 Mac Arthur Ave.  
Harvey, Louisiana 70058**

**Dear Sir:**

**This has reference to Article I, Section 11, D, Note, of the Dallas to Sweetwater Interdivisional Service Agreement relative to concerns expressed by the Organization during our negotiations.**

**As we discussed, the Carrier will make every reasonable effort to have Fort Worth crews operate trains destined to Fort Worth and Dallas crews operate trains destined to Dallas out of Sweetwater.**

**The parties understand operating circumstances may occasionally require Fort Worth - Sweetwater crews at Sweetwater to operate trains that are destined to Dallas and/or Dallas - Sweetwater crews at Sweetwater to operate trains destined to Fort Worth. Notwithstanding, Fort Worth - Sweetwater crews will not be required to operate trains destined to Dallas through Fort Worth to Dallas. Dallas - Sweetwater crews operating a train destined to Fort Worth will thereafter be transported to Dallas. Should concerns arise in this regard, the Local Chairman may contact the General Superintendent directly to discuss the matter and reasoning therefor.**

Respectfully,

**R. F. Guidry  
Director - Labor Relations**

UNION PACIFIC RAILROAD COMPANY



January 19, 2006

Mr. Gil Gore  
General Chairman  
Brotherhood of Locomotive Engineers  
1448 Mac Arthur Ave.  
Harvey, Louisiana 70058

Dear Sir:

This refers to our negotiations of the Dallas to Sweetwater Interdivisional Service Agreement.

As we discussed, the parties have agreed that the Dallas to Sweetwater Interdivisional crews may be assigned to go on/off duty at the Dallas Intermodal Facility at Wilmer.

This will confirm our understanding that crews working in the Dallas-Sweetwater Interdivisional Service who are required to go on or off duty at Wilmer will continue to receive the 10-mile arbitrary as though they handled the train in accordance with Article II, Section 2 of the Interdivisional Service Agreement,

It is also understood that crews working in the Dallas-Sweetwater Interdivisional Service who are required to take a train into or out of Mesquite will be allowed the 10-mile arbitrary provided in Article II, Section 2 of the Interdivisional Service Agreement as though they handled the train out of the Dallas Intermodal Facility at Wilmer.

It is understood this Side Letter is limited to Interdivisional Service established pursuant to this agreement, will not establish any precedent and will not be referred to in connection with any other case, agreement (local and/or national) negotiation, arbitration, and/or dispute resolution

This Side Letter may be cancelled by either party upon ten (10) days' advance written notice to the other party of its intent to cancel. During the intervening time or as mutually agreed, the parties will meet to discuss the reasons precipitating the cancellation in an effort to resolve those issues and avoid termination of this Side Letter.

In the event efforts to resolve conflicting issues are not successful and this Side Letter is cancelled, the parties shall revert back to the Interdivisional Service established pursuant to this agreement.

If you agree with the terms and conditions outlined above, please indicate by signing in the space provided

Respectfully,

S. F. Boone  
Director - Labor Relations

Agreed

Gil Gore  
General Chairman - BLET

34

**MEMORANDUM OF AGREEMENT**  
between the  
**UNION PACIFIC RAILROAD COMPANY**  
and the  
**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**  
And **TRAINMEN**  
For The Former C&NW Lines Territory

-----  
**INTERDIVISIONAL SERVICE BETWEEN MASON CITY, SIOUX CITY  
AND ST. JAMES**  
-----

On January 2, 2002, July 16, 2002, August 2, 2002 and August 8, 2003, Union Pacific Railroad Company ("Carrier" or "UP") served notice, pursuant to Article IX of Arbitration Award 458 ( May 19, 1986 BLE National Agreement), on the Brotherhood of Locomotive Engineers ("Organization" or "BLE") of its intent to establish new interdivisional service between the Midwest Seniority District crews on the Fairmont and Rake Subdivision and the Central 5 Seniority District crews on the Worthington Subdivisions. In connection therewith, such service is to be governed and operated in accordance with the provisions of Article IX of Arbitration Award 458, as amended. The parties signatory hereto have agreed, pursuant to the above-cited Article, to the terms and conditions governing this new interdivisional service which will be combined with existing service on the respective seniority districts.

Accordingly, IT IS AGREED:

**ARTICLE I - INTERDIVISIONAL SERVICE - OPERATIONS** 29

UP may establish unassigned interdivisional pool freight service to operate over the Fairmont and the Worthington Subdivisions, utilizing unassigned engineers

located at Mason City, Iowa (Midwest Seniority District) and St. James, Minnesota (Central 5 Seniority District).

**Section 1: Operations - Mason City, Iowa - Home Terminal**

**A. UP may establish unassigned interdivisional pool freight service, home terminated at Mason City, Iowa (Fairmont Subdivision), operating to dual destination away from home terminals at Sioux City, Iowa and St. James, Minnesota. Mason City, Iowa will be the home terminal, Sioux City and St. James will be the away-from-home terminals. Crews may be called to operate to either of the away-from-home terminals.**

**B. Crews assigned to this interdivisional service may be called to operate from one away-from-home terminal to another away-from-home terminal, provided the crew is tied up at the home terminal at the conclusion of their tour of duty.**

**Example: An engineer is called to operate from Mason City to Alton, and is tied up at Sioux City. After securing his/her rest the engineer is called to operate from Sioux City to St. James. After arriving St. James the engineer will be transported to Mason City.**

**C. The single unassigned freight pool protecting this ID service will be sequenced to the home terminal and away-from-home terminal board(s) based on their tie-up time.**

**D. Vacancies in this pool will be filled by the engineers extra board, and if the extra board is depleted, the engineers next out in the pool will be utilized to fill the vacancies.**

**E. Engineers will go on and off duty at Mason City and St. James or Sioux City. Said on-/off-duty point facilities shall comply with existing Agreement rules pertaining to requirements for such facilities, except that lockers will not be provided at the away-from-home terminal(s), when hotel rooms are provided.**

- **F. Nothing herein shall preclude the Carrier from utilizing other crews to handle traffic between Mason City, St. James, and Sioux City pursuant to Section 2 of this Agreement, and other controlling Agreements. This Agreement will not limit the Mason City crews from performing service on the Midwest Seniority District as set forth in the CNW Merger Agreement.**

**Section 2: Operations - St. James, Minnesota - Home Terminal**

**A. UP may establish unassigned interdivisional pool freight service, home terminated at St. James, Minnesota (Worthington Subdivision), operating to dual destination away-from-home terminals at Sioux City, Iowa and Mason City, Iowa. St. James will be the home terminal, Sioux City and Mason City will be the away-from-home terminals. Crews may be called to operate to either of the away-from-home terminals.**

**B. Crews assigned to this interdivisional service may be called to operate from one away-from-home terminal to another away-from-home terminal, provided the crew is tied up at the home terminal at the conclusion of their tour of duty.**

**Example: An engineer is called to go on duty at St. James to operate a train from an elevator at Worthington to Mason City, and is tied up at Mason City. After securing his/her rest the engineer is called to operate from Mason City to Alton. After arriving Alton the engineer will be transported to St. James.**

**C. The single unassigned freight pool protecting this ID service will be sequenced to the home terminal and away-from-home terminal board(s) based on their tie-up time.**

**D. Vacancies in this pool will be filled by the engineers extra board, and if the extra board is depleted, the engineers next out in the pool will be utilized to fill the vacancies.**

**E. Engineers will go on and off duty at St. James or Sioux City and Mason City. Said on-/off-duty point facilities shall comply with existing Agreement rules pertaining to requirements for such facilities, except that lockers will not be provided at the away-from-home terminal(s), when hotel rooms are provided.**

**F. Nothing herein shall preclude the Carrier from utilizing other crews to handle traffic between Mason City, St. James, Sioux City and Estherville pursuant to Section 1 of this Agreement, and other controlling Agreements.**

**Section 3: Operations**

**This agreement allows Midwest Seniority District crews (Mason City) and Central 5 Seniority District crews (St. James) to operate in unassigned interdivisional pool through freight service over the two seniority districts between St. James, Mason City and Sioux City. Crews may handle trains to and from any industry within this geographical area, and perform all work necessary to yard their trains, or prepare the train for departure. This agreement will also permit crews performing service under Sections 1 and 2 of this agreement to utilize trackage on the Rake Subdivision between Bricelyn and Mile Post 3 to meet other trains and/or pick up or leave a train.**

**Note: Central 5 District crews on the Rake Subdivision will not perform any station work including the spotting or pulling of cars from industries thereon.**

**Section 4: Deadheads**

**Crews may be deadheaded in either direction to meet the needs of the service. All deadheading will be combined with service, unless notified otherwise.**

**Section 5: Meals En Route**

**Meals en route for engineers working in this service will be governed by Article IX, Section 2, Paragraph (e) of Arbitration Award 458.**

**Section 6: Away-From-Home Terminal Meals**

Away-from-home terminal meal allowances for engineers working in this service will be governed by Article IX, Section 2, Paragraph (d) of Arbitration Award 458, as amended.

**Section 7: Transportation**

The provisions of Article IX, Section 2, Paragraph (c) of Arbitration Award 458 shall apply for engineers working in this service.

**Section 8: Suitable Lodging**

The Carrier will provide, in accordance with applicable existing Agreement requirements, suitable lodging at the away-from-home terminal for engineers working in this service.

**Section 9: Rates of Pay**

The basic day, rates of pay and other operating conditions for employees engaged in Interdivisional service will be governed by the applicable Local and National Agreements.

**Section 10: Held-Away**

A. Employees in this interdivisional pool freight service held at other than their home terminal will be paid continuous time for all time held after the expiration of sixteen (16) hours from the time released from duty, until time on duty.

B. The term "time on duty" cited above shall be the time the employee goes on duty.

C. Engineers tied up at the away-from-home terminal(s) will be sequenced to and called from a board that is independent of the home terminal board(s).

**Section 11: Hours-of-Service**

Overtime for this interdivisional service shall be computed in accordance with the applicable Agreements, or after the expiration of twelve (12) hours on duty, whichever occurs first.

Note: The parties recognize that the overtime provision contained in this Section 11 is a departure from the traditional ID agreement negotiated under the terms and conditions of the 1985 National Agreement, and that the inclusion of this section will not set any precedent, nor be cited by either party in the future.

**Section 12: Hours-of-Service**

A. Crews operating under this agreement, and in ID service that fail to reach their destination, due to the hours-of-service, may be relieved by the first out pool or extra crew at either of the home or away from home terminals, or other crews set forth in paragraph C, below. If the first out away-from-home crew is utilized, the Carrier will deadhead the away-from-home crew to their home terminal after their handling of the train(s).

B. Crews used in turnaround and/or hours-of-service relief shall be considered called in combination deadhead/service and shall be paid actual miles worked with a minimum of a basic day for the turnaround and/or hours-of-service trip.

C. Nothing herein shall prevent the use of other crews to perform work currently permitted by prevailing agreements, including, but not limited to yard crews performing hours-of-service relief within road/yard service zones, pool crews performing through freight combined service/deadheads between terminals, and road switchers handling trains within their zones.

## **Section 12: Familiarization/Qualification**

To insure proper qualification/familiarization and compliance with applicable Federal Railroad Administration regulations, if any, employees new to the interdivisional service established by this Agreement will be provided with a sufficient number of familiarization trips over that territory which they are not currently qualified. Issues concerning individual qualifications shall be handled with local operating officers and local chairman. Employees will not be required to lose time or "ride the road" on their own time in order to qualify for these new operations. Pay will be made in the same manner as if the employee had performed service. If a dispute arises concerning this process, it will be addressed directly with the Director of Labor Relations and General Chairman.

## **Section 13 – Crew Equalization**

A. After the implementation of this ID service, equalization will be reviewed every three (3) months to adjust any inequities. CMS will maintain necessary and accurate records so that the equalization can be properly and accurately determined for this ID service. The records, upon request, will be furnished to the respective Local Chairmen having jurisdiction. The Local Chairmen will meet every three (3) months after implementation and shall review in good faith and mutual cooperation the equalization factors to determine any adjustments. If the Local Chairmen find it necessary to request a change to equalize the mileage, such request shall be signed jointly by the Local Chairmen having jurisdiction, with copies to the General Chairman. The General Chairman will notify the Director of Labor Relations and the Director of CMS, in writing, of any changes in the equalization adjustments that are necessary. If equalization is necessary, position(s) on the freight pool of the seniority district that owes the mileage will be bulletined. If there are no applications for the position(s) at the expiration of the bulletin, engineers will not be force assigned to the position(s) and the equalization will be considered satisfied for that period.

B. Any dispute(s) over equalization between the Local Chairmen will be resolved by the General Chairman's Office. Any dispute(s) over equalization between the Carrier and the

Organization will be referred to the Labor Relations Department and General Chairman for resolution.

## **Article II – Implementation**

### **Section 1 – Notice Section 1 – Notice**

The Carrier shall give the General Chairman fifteen (15) days written notice of its intent to implement the provisions of this Agreement.

### **Section 2 – Cooperation**

The BLET General Chairman, the Local Chairmen and the UP representatives from CMS, Timekeeping, Operating Department, Harriman Dispatch Center and Labor Relations shall work together to ensure the provisions of this Agreement are fully and properly implemented and that establishment of this new service shall be accomplished in an orderly and efficient manner.

## **ARTCILE III. PROTECTIVE CONDITIONS**

### **Section 1: General**

A. Engineers assigned to the Central 5 freight pool in St. James, protecting through freight service to Sioux City, Iowa, and its protecting extra board on February 29, 2004, have been identified and are listed on Attachment #1.

Engineers assigned to the Midwest Seniority District freight pool in Mason City, Iowa protecting through freight service to Butterfield, Minnesota, and its protecting extra board on February 29, 2004, have been identified and are listed on Attachment #1. The engineers listed on Attachment #1 will be treated as having been adversely affected by the implementation of this Interdivisional agreement and will be automatically afforded the wage protection contained in Article IX, Section 7 of Arbitration Award 458, and the conditions contained therein.

B. Engineers adversely affected as a direct or indirect result of implementation of this Agreement will be entitled to the

protective benefits and conditions set forth in Article IX, Section 7 of Arbitration Award 458.

**Section 2: Relocation Allowance**

It is anticipated that the interdivisional service provided for in this Agreement will not require any enginemen to relocate. However, in the event any employee is required to change his/her residence as a result of this Agreement they shall be subject to the benefits contained in Sections 10 and 11 of the Washington Job Protection Agreement, and in addition to such benefits, shall be entitled to the conditions provided within Article IX, Section 7 of Arbitration Award 458.

**Section 3: Duplication of Benefits**

There shall be no duplication of benefits by any employee under this Agreement, or any other agreements affording wage protection or relocation benefits.

**ARTICLE IV. General**

**Section 1: Savings Clauses**

A. This agreement does not prejudice the position of either party and will not be referred to in connection with any other case, agreement (local or national) and/or dispute resolution.

B. In the event the provisions of this Agreement conflict with any other agreements, understandings or practices, the provisions set forth herein shall prevail and apply. Agreements, understandings or practices not modified or in conflict with the provisions of this Agreement remain in full force and effect.

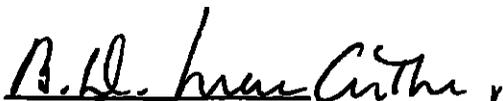
C. The terms and conditions of this Agreement are intended to address and/or apply to the interdivisional service run between Mason City, St. James, Sioux City and Estherville. Accordingly, such terms and

conditions shall not be applied, or interpreted or extended to apply, to other locations, runs, etc.

D. Except as specifically set forth otherwise in this Agreement, existing Agreement rules, provisions and practices shall continue to apply.

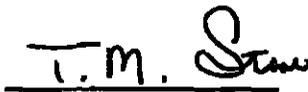
SIGNED THIS 27 DAY OF July, 2004, in OMAHA, NEBRASKA

FOR THE BROTHERHOOD OF  
LOCOMOTIVE ENGINEERS  
AND TRAINMEN:



B. D. MacArthur  
General Chairman

FOR THE UNION OF  
PACIFIC RAILROAD:



T.M. Stone  
Director-Labor Relations



D. McPherson  
Vice President - BLET



A.T. Olin  
General Director- Labor Relations

**Side letter #1**

**June 24, 2004**

**Mr. B. MacArthur  
Gen. Ch. - BLET  
501 N. Second Street  
Suite #2  
Clinton, Iowa 52732**

**Dear Sir:**

**During our discussions of the Fairmont/Worthington ID Agreement you requested a job rating list for St. James and Mason City engineers, for the purpose of occupying the highest rated position available under the terms and conditions of the protection benefits agreements. Under the protection agreements engineers are required to exercise their seniority to the highest rated position that their seniority will permit, or be treated as if they were occupying that position. Accordingly, the following will represent the job ratings for the St. James and Mason City engineers.**

**Thru freight service pools 300 miles or more  
Thru freight service pools less than 300 miles  
Extra Boards  
Local Freight - Switchers  
Yard Assignments/Yard Extra Boards**

**The Carrier reserves the right to amend the listing of these jobs in the future. In the event the listings are changed we will advise in writing so that the change may be communicated to the protected employees.**

**T. M. Stone**

**Attachment #1**

**Engineers In the Mason City and St. James pool and extra board on  
February 29, 2004**

2/29/04	485626370	UNDERBAKKE	WD	DM136	RE54	Mason City pool - 2
2/29/04	485866188	MEDLANG	JN	DM136	RE54	
2/29/04	482567702	FOSTER	CM	DM136	XE50	Mason City extra board - 4
2/29/04	484520157	WATT	LD	DM136	XE50	
2/29/04	482606112	SMITH	MJ	DM136	XE50	
2/29/04	482567627	WALLS	RA	DM136	XE50	
2/29/04	470729546	SCHILLER	SR	SX117	RE50	St. James pool - 7
2/29/04	482585182	HASSEL	SP	SX117	RE50	
2/29/04	469547767	BOECK	DA	SX117	RE50	
2/29/04	470020522	WIRTZFELD	KF	SX117	RE50	
2/29/04	455115192	MCLINN	JM	SX117	RE50	
2/29/04	155627612	GEORGIANA	N	SX117	RE50	
2/29/04	474649082	KLAUS	DW	SX117	RE50	
2/29/04	477026566	PETERSEN	JL	SX117	XE50	St. James extra board - 5
2/29/04	472680588	ZIMMERMAN	WF	SX117	XE50	
2/29/04	478544049	ERICKSON	JC	SX117	XE50	
2/29/04	481629511	JOHNSON	JL	SX117	XE50	
2/29/04	477489355	SING	WD	SX117	XE50	

35

**MEMORANDUM OF AGREEMENT**  
between the  
**UNION PACIFIC RAILROAD COMPANY**  
and the  
**BROTHERHOOD OF LOCOMOTIVE**  
**ENGINEERS AND TRAINMEN**  
For The Former C&NW Lines Territory

---

**Interdivisional Service between the Twin Cities/Valley Park,  
Minnesota; Mason City, Iowa Falls, Boone, Des Moines, and  
Sioux City, Iowa; and St. James, Worthington, Minnesota.**

---

On February 2, 2005, Union Pacific Railroad Company ("Carrier" or "UP") served notice, pursuant to Article IX of Arbitration Award 458, (May 19, 1986 BLE National Agreement), on the Brotherhood of Locomotive Engineers and Trainmen ("Organization" or "BLET") of its intent to establish new interdivisional service between the Twin Cities/Valley Park, Minnesota; to Mason City, Iowa Falls, Boone, Des Moines, and Sioux City, Iowa; and St. James, Worthington, Minnesota. In connection therewith, such service is to be governed and operated in accordance with the provisions of Article IX, Arbitration Award 458, as amended. The parties signatory hereto have agreed, pursuant to the above-cited Article, to the terms and conditions governing this new interdivisional service which will be combined with existing service on the respective seniority districts.

Accordingly, IT IS AGREED:

**ARTICLE I - INTERDIVISIONAL SERVICE - OPERATIONS**

**Section 1: Operations-Twin Cities/Valley Park, Minnesota - Home Terminal - Single Pool**

A. UP may establish unassigned interdivisional pool freight service between the Twin Cities/Valley Park and Mason City, Iowa Falls, Boone, Sioux City, and Des Moines, Iowa; and St. James, Worthington, Minnesota. The home terminal will be the Twin Cities/Valley Park

29

**Minnesota, and the away-from-home terminals will be Mason City, Iowa Falls, Boone, Des Moines, and Sioux City Iowa; and St. James, and Worthington, Minnesota. An engineer in this service may be called to operate to any of the away-from-home terminals, over any route.**

**B. Crews assigned to this Interdivisional service may be called to operate from one away-from-home terminal to any other away-from-home terminal, provided the crew is tied up at their home terminal (Twin Cities/Valley Park) at the conclusion of their tour of duty. Engineers may operate over any route between the Twin Cities /Valley Park, Sioux City, Boone, and Des Moines, and points in between, including the Fairmont Subdivision (see attachment no. 5). In the event crews need to be re-positioned to another location, crews will be paid continuous time or miles (whichever is greater) to their tie-up point, until trip rates (flip rate) are established by the parties.**

**Example no. 1: An engineer operates from Valley Park to Sioux City tying up at Sioux City. After securing his/her rest the engineer is called to operate from Sioux City to Mason City. After arriving Mason City the engineer will be deadheaded to Valley Park.**

**Example no. 2: Engineer operates from South St. Paul to Des Moines, over the Spine line. After securing his/her rest the engineer is called to operate from Des Moines to Mankato, via Butterfield over the Fairmont Subdivision. Upon arriving at Mankato, the crew will be deadheaded back to South St. Paul.**

**Example no. 3: Engineer is called to operate from Valley Park to Worthington. After securing his/her rest the engineer is called to operate a train from various industries on the Worthington Subdivision**

and Fairmont Subdivision into Mason City. Upon arriving Mason City, the crew will be deadheaded back to Valley Park (point of going on duty).

**Example No. 4:** Engineer is called to operate from the Twin Cities to Mason City. The crew needs to be repositioned to St. James and is transported from Mason City to St. James, with the applicable payment/flip rate.

**Example No. 5:** Engineer is called to operate from Valley Park to Mason City, over the Spine Line. After securing his/her rest in Mason City the engineer is called to return to Valley Park via Butterfield.

**C. Engineers working in this interdivisional service will be paid the actual miles (miles worked/deadhead) to the destination in which they are called. Time permitting, crews may operate past the terminal for which they were called and will be paid for the miles to the next terminal.**

**Example:** Crew is called to operate from the Twin Cities to Iowa Falls. Time permitting the crew could be operated to Des Moines, and will be paid for the miles between the Twin Cities and Des Moines.

**A sample list of mileage's between the home terminal and away-from-home terminal has been attached as Attachment no. 4.**

**D. The single unassigned freight pool protecting this service will be sequenced to the home terminal and away-from-home terminal board(s) based on their tie-up time. Engineers tied up at the away-from-home terminal(s) will be sequenced to and called from a board that is independent of the home terminal and any other away-from-home terminal board(s).**

**E. Vacancies in this pool will be filled by the engineers extra board, and if the extra board is depleted, the engineers next out in the pool will be utilized to fill the vacancies.**

**F. Engineers will go on and off duty in the Twin Cities and Valley Park (home terminal), and Mason City, Iowa Falls, Boone, Des Moines, St. James, Worthington, and Sioux City, as the away-from-home terminals. Said on/off-duty point facilities shall comply with existing Agreement rules pertaining to requirements for such facilities, except that lockers will not be provided at the away-from-home terminal(s), when hotel rooms are provided.**

**Note 1: The parties have agreed that unassigned pool and extra board engineers working in this Interdivisional Service will be required to report and go on/off duty at Valley Park, driving their personal vehicle, in addition to reporting for duty in the Twin Cities. It was further agreed that engineers would not be provided a locker at Valley Park, when a single pool is operated.**

**Note 2: When two pools are operated under Section 2 of this agreement, engineers assigned to the former CMO pool will have a locker at Valley Park, and the CGW engineers will have a locker in the Twin Cities.**

**Note 3: Des Moines, Boone, St. James and Mason City will continue to be the home terminal for their respective pools and extra boards.**

**G. Crews in this service may leave or receive their train at any location. Crews may handle trains to and from any industry, performing all work necessary to yard their trains or prepare their trains for departure.**

**H. Nothing herein shall preclude the Carrier from utilizing other crews to handle traffic between the Twin Cities and Sioux City; the Twin Cities and Des Moines or Boone; or between Mason City and Butterfield, pursuant to this Agreement, and other controlling Agreements.**

**Section 2: Implementation – Operations-Twin Cities and Valley Park, Minnesota - Home Terminals – Two Pool Operations**

**The parties have agreed to initially implement the ID service set forth in Section 1, above, by retaining the two existing pools (CMO & CGW).**

**Note: Any reference to CMO or CGW in this Section 2 is strictly for identification of the geographical areas that are currently associated with those former Railroads.**

**Accordingly, paragraph D of Section 1, above, which permits a single pool to be established, will be amended by this Section 2, only to the extent that two pools will be utilized in the initial implementation of this ID service. All other provisions contained in Section 1 (paragraphs A-H) will apply in this Section 2, except for the call procedures contained in paragraph E. The call procedures for multiple pools under this Section 2 have been set forth in paragraph (f) below.**

**The parties agree that the initial implementation with two pools will be under the following conditions:**

- a) The Carrier shall have the right to establish a single pool operation for the Twin Cities/Valley Park ID service (merging the CMO and CGW pools), when the Carrier determines qualifications of the crews is not an issue.**
- b) Pool #1: Twin Cities crews currently identified as the CMO pool will report for duty at Valley Park, and Valley Park will be**

designated as their home terminal. Engineers reporting for duty at Valley Park, and meeting the conditions set forth in side letter no. 11, will be provided a daily travel allowance. The Carrier currently has the right under existing agreements to establish an extra board at Valley Park, and if an extra board is established at this location, the parties agree that it will be utilized to fill engineer vacancies at Valley Park, New Prague, and Mankato (Mankato vacancies will only be those that are currently filled from the Twin Cities board). If a separate extra board is not established at Valley Park, the Twin Cities extra board will be utilized to fill vacancies.

Valley Park crews may be required to report for duty in the Twin Cities under the call procedures set forth in paragraph (f), below.

c) Pool #2: Twin Cities engineers currently identified as the CGW pool will continue to have the home terminal at the Twin Cities, with the supporting extra board. Twin Cities engineers may be required to report for duty at Valley Park if called under the provisions of Item (f) below.

d) Both pools (CMO & CGW) may operate in any direction, over any route, on the tracks between the Twin Cities, Valley Park and Mason City; Twin Cities, Valley Park and Butterfield; as well as between Mason City and Butterfield over the Fairmont subdivision, as well as operate through their home terminal, without penalty.

e) Trains initiated in the Twin Cities or Valley Park area that are to be operated beyond Butterfield or Mason City will have primary pools for these extended runs. CMO pools will be primarily utilized to operate trains beyond Butterfield, toward

and to Sioux City. CGW pools will be the primary pool utilized to operate trains beyond Mason City toward and to Des Moines or Boone. Either pool may be operated beyond Mason City or Butterfield, if qualified or provided a pilot.

f) If a primary pool and the extra board is exhausted, the other pool and its' extra board (if a second extra board is established) may be utilized to fill a vacancy. Call procedures for pool vacancies will be: 1) the primary pool, 2) the primary extra board, 3) rested engineers in the primary pool, 4) engineers from the secondary extra board (if established), 5) engineers from the secondary pool.

g) This Section 2 has set forth the conditions in which the parties have agreed to implement this new ID service, utilizing two pools. The parties have agreed that the Carrier may operate with a single pool, as set forth in Section 1, above, and the Carrier will provide the General Chairman with a ten day advance written notice of its intent to adopt a single pool operation. The parties have further agreed that the Carrier will have the right to operate with a single pool or two pools in the Twin Cities/Valley Park to meet the needs of the service. In the event the Carrier elects to move from a single pool operation to a two pool operation (or vice versa), a ten day written notice will be furnished to the General Chairman.

Article I, Section 1 of this Agreement outlines the manner in which a single pool will be operated, and Article I, Section 2 contains the manner in which two pools will be operated. Section 1 contains many paragraphs that apply equally to single and

two pool operations. Whether operating in single or two pool operations, Sections 3-13 of Article I, Articles II and III, as well as all applicable side letters of this ID Agreement will remain in full effect.

**Section 3: Deadheads**

Crews may be deadheaded in either direction to meet the needs of the service. All deadheading will be in combined service, unless notified otherwise.

**Section 4: Meals En Route**

Meals en route for engineers working in this service will be governed by Article IX, Section 2, Paragraph (e) of Arbitration Award 458.

**Section 5: Away-From-Home Terminal Meals**

Away-from-home terminal meal allowances for engineers working in this service will be governed by Article IX, Section 2, Paragraph (d) of Arbitration Award 458, as amended.

**Section 6: Transportation**

The provisions of Article IX, Section 2, Paragraph (c) of Arbitration Award 458 shall apply for engineers working in this service.

**Section 7: Suitable Lodging**

The Carrier will provide, in accordance with applicable existing Agreement requirements, suitable lodging at the away-from-home terminal for engineers working in this service.

**Section 8: Rates of Pay**

The basic day, rates of pay and other operating conditions for employees engaged in interdivisional

service will be governed by the applicable Local and National Agreements.

**Section 9: Hours-of-Service**

A. Crews operating under this agreement, and in ID service that fail to reach their destination, due to the hours-of-service, may be relieved by the first out pool or extra crew at either of the home or away from home terminals, or other crews set forth in paragraph E, below.

B. Home terminal crews will be utilized in hours of service relief before an away-from-home terminal crew, when available.

C. If the first out away-from-home terminal crew is utilized, the Carrier will either work or deadhead the away-from-home terminal crew to their home terminal after their handling of the train(s).

D. Crews used in turnaround and/or hours-of-service relief shall be considered called in combination deadhead/service and shall be paid actual miles worked with a minimum of a basic day for the turnaround and/or hours-of -service trip.

E. Nothing herein shall prevent the use of other crews to perform work currently permitted by prevailing agreements, including, but not limited to yard crews performing hours-of-service relief within road/yard service zones, pool crews performing through freight combined service/deadheads between terminals, and road switchers handling trains within their zones.

**Section 10: Familiarization/Qualification**

To insure proper qualification/familiarization and compliance with applicable Federal Railroad

Administration regulations, if any, employees new to the interdivisional service established by this Agreement will be provided with a sufficient number of familiarization trips over the territory which they are not currently qualified. Issues concerning individual qualifications shall be handled with local operating officers and local chairman. Employees will not be required to lose time or "ride the road" on their own time in order to qualify for these new operations. Pay will be made in the same manner as if the employee had performed service. If a dispute arises concerning this process, it will be addressed directly with the Director of Labor Relations and General Chairman.

### Section 11 – Crew Equalization

A. During our negotiations, we discussed various alternatives for mileage equalization, that would minimize or even eliminate the need for Mid-West employees to be temporarily assigned in the Twin Cities/Valley Park, in order to obtain equalization of miles.

B. Des Moines, Boone, Mason City - It is agreed that the Carrier will make every effort to equalize the miles run by Central 5 employees on the Mid-West seniority district, by allowing Mid-West engineers home terminalled in Des Moines, Boone and/or Mason City to operate over the Central 5 seniority district, without the necessity of being temporarily assigned in the Twin Cities/Valley Park. The goal of this arrangement would be for the Des Moines, Boone and Mason City engineers to operate over the Central 5 seniority district, north of Mason City toward and to the Twin Cities; and/or north of Butterfield toward and to the Twin Cities, while working out of their home terminals.

The parties have agreed, that the Carrier may bulletin a Twin Cities/Valley Park position(s) to the engineers in the Mid-West seniority district with home terminal(s) of Mason City, Des Moines and/or Boone. Engineer(s) assigned to these separate board(s) could be utilized in ID service over the Central 5, as well as to other Mid-West points listed in their bulletin. Engineers assigned to the Twin Cities/Valley Park pool(s) with the

home terminal of Mason City, Des Moines and/or Boone will be called from a board that is separate and apart from other Central 5 engineers, at both the home and away-from-home terminals.

**Note:** A Twin Cities/Valley Park pool assignment bulletined with the home terminal of Mason City, will not be utilized in the calculation of mileage equalization, unless the assignment is occupied by a Midwest District engineer without prior rights C-5 seniority.

It was further agreed that additional away-from-home terminals would have to be established to accommodate the operation of Mid-West crews north of Mason City and Butterfield. Accordingly, when (if) the equalization is implemented in the manner set forth above, the following away-from-home terminals will be established for these Mid-West crews (Albert Lea, Twin Cities/Valley Park, St. James and Mankato).

**C. St. James** - In order to equalize work opportunities for the crews in St. James, the parties have agreed to allow St. James crews the right to operate into the Twin Cities/Valley Park. Any and all existing seniority rights held by the St. James crews at the time of this agreement will remain unchanged, and in addition, crews may operate to and from any point in-between St. James and the Twin Cities. St. James crews operating into the Twin Cities/Valley Park will not be tied up in the Twin Cities/Valley Park, except in cases of unsafe weather conditions. Crews arriving the Twin Cities/Valley Park may operate a train back toward St. James, or will be deadheaded back to St. James in combined service.

St. James crews may operate through St. James on north and southbound trains, without penalty. St. James crews will be compensated for actual miles operated, until trip rates are implemented. Crews assigned to this service may be called to operate from one away-from-home terminal to any other away-from-home terminal, (including the Twin Cities/Valley Park) provided the crew is tied up at St. James (home

terminal) at the conclusion of the second tour of duty/deadhead.

**D. General - Mid-west crews described in paragraphs B above, operating north of Butterfield and Mason City in this ID service, as well as St. James crews operating north of St. James, C above, will be governed by all Articles and provisions of this ID agreement. In addition, Mid-west crew operating into Mason City from Des Moines and Boone will be governed by Section 12 and 13 of Article I.**

**The unassigned freight pool(s) protecting this service will be sequenced to the away-from-home terminal board(s) based on their tie-up time. Engineers tied up at the away-from-home terminal(s) will be sequenced to and called from a board that is independent of the home terminal and any other away-from-home terminal board(s).**

**The provisions contained in this Section 11 are contingent on the qualification of the engineers, as well as securing a similar arrangement with the UTU. If this equalization arrangement is adopted by both the BLET and UTU, the miles will be worked off by the Mid-West crews from the home terminal(s) of Des Moines, Boone and/or Mason City. If such arrangement cannot be finalized with both Organizations the standard ID conditions set forth in paragraph (E), below will govern in the equalization process.**

**E. Standard Equalization - CMS will maintain necessary and accurate records so that the equalization can be properly and accurately determined for this ID service. The records, upon request, will be furnished to the respective Local Chairmen having jurisdiction. The Local Chairmen will meet every six (6) months after implementation and shall review in good faith and mutual cooperation the equalization factors to determine any adjustments. If the Local Chairmen find it necessary to request a change to equalize the mileage, such request shall be signed jointly by the Local Chairmen having jurisdiction, with copies to the General Chairman. The General Chairman will notify the Director**

of Labor Relations and the Director of CMS, in writing, of any changes in the equalization adjustments that are necessary. If equalization is necessary, position(s) on the freight pool of the seniority district that owes the mileage will be bulletined. If there are no applications for the position(s) at the expiration of the bulletin, engineers will not be force assigned to the position(s) and the equalization will be considered satisfied for that period.

Any dispute(s) over equalization between the Local Chairmen will be resolved by the General Chairman's Office. Any dispute(s) over equalization between the Carrier and the Organization will be referred to the Labor Relations Department and General Chairman for resolution.

**Section 12 - Held away-from-home terminal :**

A. Employees in this interdivisional pool freight service held at other than their home terminal will be paid continuous time for all time held after the expiration of sixteen (16) hours from the time released from duty, until time on duty.

B. The term "time on duty" cited above shall be the time the employee goes on duty.

C. Engineers tied up at the away-from-home terminal(s) will be sequenced to and called from a board that is independent of the home terminal and other away-from-home terminal board(s).

D. The undisturbed rest for pools afforded the benefits of this Section 12 will be eight (8) hours UDR at the away-from-home terminals.

**Section 13 - Overtime after 12 hours:**

Overtime for this interdivisional service shall be computed in accordance with the applicable Agreements, or after the expiration of twelve (12) hours on duty, whichever occurs first.

## **ARTCILE II. PROTECTIVE CONDITIONS**

**Employees adversely affected as a direct or indirect result of implementation of this Agreement will be entitled to the protective benefits set forth in Article IX, Section 7 of Arbitration Award 458.**

### **A. Automatic Certification:**

**The following protection benefits are being afforded as a result of the Organization's request for automatic certification for engineers assigned in pool service, as well as engineers previously certified under the Fairmont ID Agreement. In order to settle all the outstanding issues surrounding this ID Agreement, the Carrier has agreed to provide engineers the protection benefits set forth below. Protection is being afforded without prejudice to the Carrier's position and is not to be referred to in future negotiations.**

**The parties have identified two groups of engineers that will be afforded protection upon implementation of this agreement, as set forth below:**

#### **1) Twin Cities, Des Moines and Boone Pools:**

**Pool engineers that were assigned in the Twin Cities on the RE 51, RE 53 and RE 55 boards on February 2, 2005, have been identified and are listed on attachment no. 6.**

**Pool engineers that were assigned in Des Moines and Boone on the RE 35 and RE36 boards on February 2, 2005, have also been identified and are listed on attachment 7.**

**Engineers listed on attachments 6 and 7 will be treated as having been adversely affected with the implementation of the Twin Cities ID Agreement and will**

be automatically afforded the wage protection and the conditions contained in Article IX, Section 7 of Arbitration Award 458.

In exchange for the automatic certification at these three locations, the protection payments to the engineers on attachment 6 and 7 will be calculated and paid on a quarterly basis. Protection payments will be made every quarter of the calendar year, on the second half pay period of the month following the close of the quarter. (Payments will be made on the second half of April, July, October and January)

**Example 1:** An engineer has a \$5,000 a month TPA, which equates to \$15,000 for the first quarter. In January he/she earns \$4,500, February \$5,500, and March \$4,500. Total earnings for the quarter is \$14,500, and assuming there are no financial offsets, the engineer would be provided the protection payment of \$500 ( $\$15,000 - \$14,500 = \$500$ ) in the second half of April.

**Example 2:** The ID agreement is implemented on May 15, 2006, and an engineer has a \$5,000 month TPA, which equates to \$7,500 for the second quarter of 2006. The engineer earns \$2,800 in the last half of May and \$4,500 in June, total earnings for the quarter \$7,300. Assuming there are no financial offsets, the engineer would be provided a protection payment of \$200 ( $\$7,500 - \$7,300 = \$200$ ) in the second half of July 2006.

Other than the method of calculating and paying the protection, all other conditions of Arbitration Award 458 and the WJPA will remain in effect, which includes, but is not limited to the employees obligation to occupy the highest rated position, as well as financial offsets if the employee fails to remain available for service, etc.

2) **St. James and Mason City**

The engineers identified on attachment no. 8 of this agreement were certified under the provisions of the Fairmont/Worthington ID Agreement dated July 27, 2004. These engineers will have their certification and protection period restarted with the implementation of this ID Agreement, utilizing the TPA established under the Fairmont/Worthington ID Agreement.

3) Engineers certified under the provisions of paragraph 1 above will have their TPA's calculated from earnings for the period of February 1, 2004 through January 31, 2005.

B. **Relocation Allowance**

Subsequent to the implementation of this Agreement, any engineer required to change their point of employment as a result of the implementation of this Agreement, (their new reporting point is a minimum of thirty (30) miles from their old reporting point) shall be entitled to the relocation benefits contained in Sections 10 and 11 of the Washington Job Protection Agreement as amended by Article IX, Section 7 of Arbitration Award 458.

**ARTICLE III. General**

**Section 1 -- Notice**

The Carrier shall give the General Chairman five (5) days written notice of its intent to implement the provisions of this Agreement.

**Section 2 -- Cooperation**

The BLET General Chairman, the Local Chairmen and the UP representatives from CMS, Timekeeping, Operating Department, Harriman Dispatch Center and Labor Relations shall work together to ensure the

provisions of this Agreement are fully and properly implemented and that establishment of this new service shall be accomplished in an orderly and efficient manner.

**Section 3: Savings Clauses**

**A. This agreement does not prejudice the position of either party and will not be referred to in connection with any other case, agreement (local or national) and/or dispute resolution.**

**B. In the event the provisions of this Agreement conflict with any other agreements, understandings or practices, the provisions set forth herein shall prevail and apply. Agreements, understandings or practices not modified or in conflict with the provisions of this Agreement remain in full force and effect.**

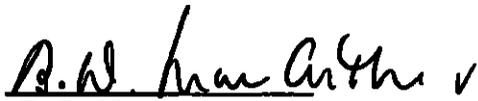
**C. The terms and conditions of this Agreement are intended to address and/or apply to the interdivisional service between the Twin Cities/Valley Park, Mason City, Iowa Falls, Boone, Sioux City and Des Moines, Iowa; and St. James, Worthington, Minnesota. Accordingly, such terms and conditions shall not be applied, or interpreted or extended to apply, to other locations, runs, etc.**

**D. Except as specifically set forth otherwise in this Agreement, existing Agreement rules, provisions and practices shall continue to apply.**

**E. This Agreement does not in any manner amend or alter the Carrier's right to implement ID service between the OMC and Worthington, as contained in Article I, paragraph D of the 1996 Merger Implementing Agreement (Mikrut Award). If such notice is served by the Carrier, this agreement will govern operations of CNW crews operating north of Worthington.**

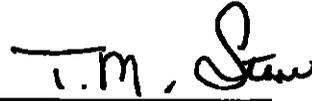
SIGNED THIS 8<sup>th</sup> DAY OF March, 2006, in Chicago, Illinois.

FOR THE BROTHERHOOD OF  
LOCOMOTIVE ENGINEERS  
AND TRAINMEN:



**B. D. MacArthur**  
General Chairman

FOR THE UNION OF  
PACIFIC RAILROAD:



**T.M. Stone**  
Director-Labor Relations

**March 8, 2006**

**Side letter No. 1**

**Mr. B. MacArthur  
General Chairman - BLET**

**Dear Sir;**

**This will confirm our understanding of the 25 mile zones, as they pertain and apply to the ID Agreement dated March 8, 2006, at Twin Cities/Valley Park, Sioux City, Des Moines and Boone, Iowa.**

**TWENTY-FIVE (25) MILE ZONES:**

**A. Engineers in through freight service may receive trains up to twenty-five (25) miles on the far side of the Twin Cities, Boone, Des Moines, and Sioux City, when a reciprocal agreement has been negotiated for the territories and seniority districts involved.**

**Under current agreements the only reciprocal agreement is with the Northern 4 seniority district, Altoona Subdivision. With this previous agreement in place, Twin Cities engineers may now obtain their train within the 25 mile zone on the Altoona Subdivision and operate back through the initial terminal of the Twin Cities. Northern 4 engineers may also receive their trains up to twenty-five (25) miles on the far side of the Twin Cities (toward St. James and toward Mason City) and operate through the Twin Cities toward Altoona.**

**This agreement does not allow engineers to receive their trains in the 25 mile zone on the far side of Des Moines (toward KC, except as permitted in the Mikrut Award), Boone (OMC side) or Sioux City (OMC side), or the Twin Cities toward Duluth, until a reciprocal arrangement has been made with those seniority districts**

**B. For the purpose of this agreement the twenty-five (25) mile zones will be calculated from the defined switching limits of the terminal. Through freight crews that receive their train in the twenty-five (25) mile zone will be paid time or miles, whichever is greater, with a minimum of one-half basic day, payable at the same time the working trip earnings are paid. The time or miles paid in the twenty-five (25) mile zone will be treated separately from the miles and time of the assignment for which they operate.**

**C. Crews relieving trains or extra crews called for this service may perform all work in connection with the train regardless of where the train is received in the zone.**

**D. The one-half day payment will be a separate allowance and will not affect overtime, if applicable. Initial terminal delay payments (if applicable) will cease upon the crew departing on their train and will not again commence when the crew operates back through the initial terminals set forth in paragraph B, above. When a crew picks up a train at the far side of the listed initial terminals, and within the twenty-five (25) mile zone, the crews will receive the payment set forth above, and the initial terminal will then be considered as an intermediate point.**

**E. No additional compensation, beyond the payment provided for in paragraph B, will be allowed for this special operation to include any claims for "terminal release". If a crew goes on duty and are transported into the twenty-five (25) mile zone and operates their train back through the listed initial terminals, no claims or additional allowance will be made, except for the allowance provided within paragraph B.**

**F. Departure and/or terminal runarounds will not apply for crews arriving/departing within the twenty-five (25) mile zone(s).**

**G. Nothing in this Memorandum of Agreement prevents the use of other engineers to perform work within their respective seniority districts/territories which is currently permitted by other agreements, including, but not limited to yard crews, road switchers, road crews, crews from a following train to work a preceding train, etc. Twenty-five mile zones are not being established at any point in between the**

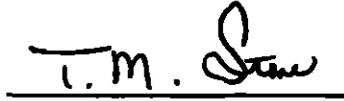
**Twin Cities, Sioux City, Boone and Des Moines, as crews may receive their trains at any point within this geographical area, as set forth in the Twin Cities ID Agreement.**

**H. The terms and conditions of this Memorandum of Agreement are intended to address the 25 mile zones at the Twin Cities, Sioux City, Des Moines and Boone, Iowa. Accordingly, such terms and conditions shall not be applied, or interpreted or extended to apply, to other locations or runs.**

**Signed and effective this 8th day of March, 2006, in Chicago, Illinois.**



**B. MacArthur  
Gen. Ch - BLET**



**T. Stone  
Dir. Labor Relations**

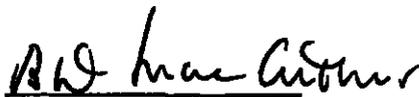
March 8, 2006

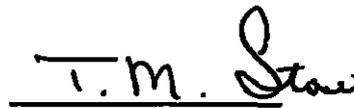
Mr. B. MacArthur  
General Chairman - BLET

Dear Sir;

This will confirm our understanding that the ID Agreement dated July 27, 2004, which established ID service between Mason City, Sioux City and St. James will remain in effect and will operate in concert with the Twin Cities ID Agreement. St. James and Mason City crews will continue to operate under the July 27, 2004 Fairmont/Worthington ID Agreement, as well as any part of the Twin Cities ID Agreement that effects those locations and crews. It is further understood that the Twin Cities ID agreement does permit other crews to operate over the territory encompassed by the July 27, 2004 Agreement (Fairmont and Worthington Subdivisions), as well as handle trains to and from industries within this area.

If this accurately reflects our understanding, please sign in the space provided below.

  
B. MacArthur

  
T. M. Stone

March 8, 2006

Mr. B. MacArthur  
General Chairman - BLET

Dear Sir;

This will confirm our understanding that when two pools are operated out of the Twin Cities/Valley Park, under the provisions of Section 2 of this ID Agreement, the two basic CBA's in effect prior to the signing of this ID agreement will continue to govern within the respective territories. The CMO Collective Bargaining Agreement will be utilized on the former CMO property, and the CGW Collective Bargaining Agreement will be utilized on the territory identified as the former CGW.

It is not the intent of the parties to restrict operations when a crew operates over the territories of both CBA's, during a single tour of duty.

Whenever a single pool is utilized under Section 1 of the ID Agreement, the CMO Agreement will govern both the former CMO and CGW road territories encompassed in this ID Agreement.

The parties further agree that the CMO Agreement, pertaining to temporary vacancies, will be amended as set forth below:

- 1) An engineer must be at the home terminal of the assignment and available for service before he/she will be allowed to place on a temporary vacancy in the pool or a regular assignment.
- 2) The pool turn or regular assignment must be at the home terminal before an engineer will be permitted

to exercise seniority onto a temporary vacancy in the pool or regular assignment.

If this accurately reflects our understanding, please sign in the space provided below.

B. W. MacArthur  
B. MacArthur

T. M. Stone  
T. M. Stone

**Attachment no. 4**

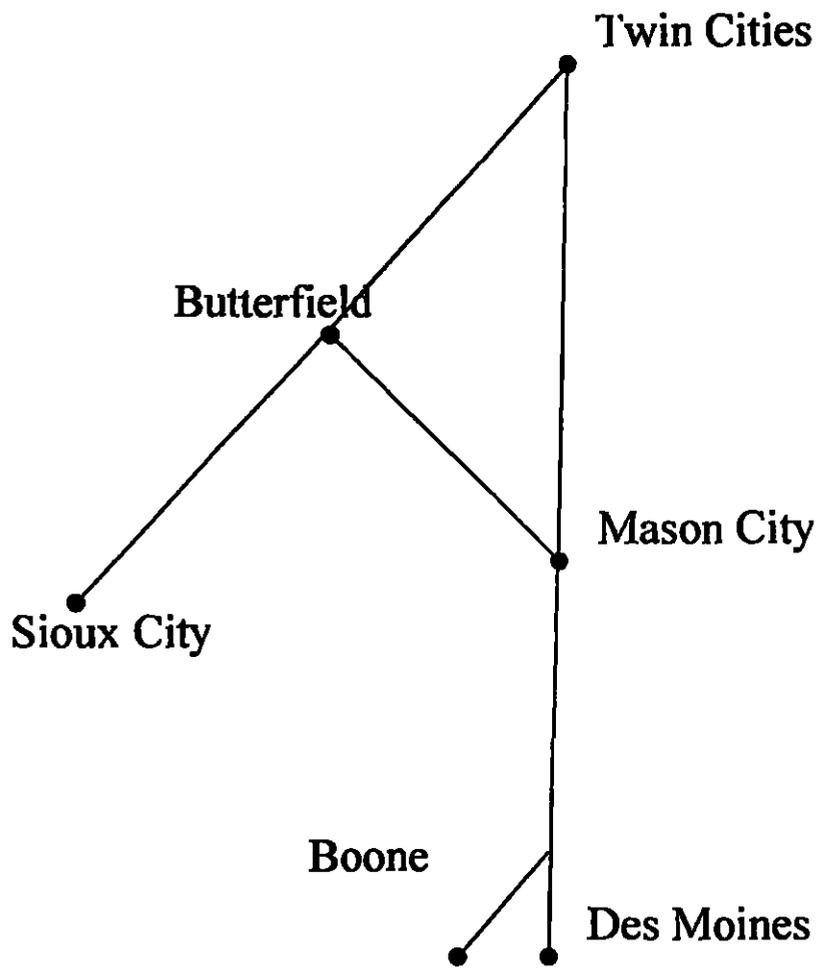
**List of mileages between the home terminals and away-from-home terminals:**

<b>Twin Cities to St. James</b>	<b>121</b>
<b>Twin Cities to Worthington</b>	<b>178</b>
<b>Twin Cities to Sioux City</b>	<b>268</b>
<b>Valley Park to St. James</b>	<b>99</b>
<b>Valley Park to Worthington</b>	<b>156</b>
<b>Valley Park to Sioux City</b>	<b>246</b>
<b>Twin Cities to Mason City</b>	<b>132</b>
<b>Twin Cities to Iowa Falls</b>	<b>177</b>
<b>Twin Cities to Des Moines</b>	<b>251</b>
<b>Twin Cities to Boone</b>	
<b>Valley Park to Mason City (via Butterfield)</b>	<b>215</b>
<b>Valley Park to Mason City ( via Minneapolis)</b>	<b>159</b>
<b>Valley Park to Des Moines (via Butterfield)</b>	
<b>Valley Park to Boone (via Butterfield)</b>	
<b>Mason City to Twin Cities (via Butterfield)</b>	<b>241</b>

**(mileages subject to verification)**

**The list provided above is not restrictive as to the points or routes that may be operated to or from, under the terms and conditions of this Agreement.**

Attachment no. 5  
(Routes)



**DM004 RE53**

Merritt RW  
Hopkins GE  
Wirtzfeld KF  
Denison DR  
Bristol JH  
Marlin VC  
Rumler GE  
Billings De  
Suter DJ  
Anderson MD  
Ott JM  
Winfield PS  
Heinze DL  
Sutherland PA  
Thomas MK

Twin Cities Pool (15)

**DM004 RE55**

Volkman BR  
Hellem RC  
Mercier M

Twin Cites Pool (3)

**DM004 RE51**

Riehle DJ  
Pulley MT  
Ekstrum MJ  
Stepanek JA  
Leach JA  
Carnes JJ  
Koonce RB

Twin Cities Pool (7)

**Attachment #7**

**DM255 RE36**

TL Dehart  
TG Thramer  
FG Knudson  
BA Dandridge  
KD Mutchler  
LD Love  
BJ Bennett  
DW Dennis  
DC Allen  
BJ Lewis  
TD Tometich  
SC Nicholson  
WJ Little Sr  
JD Lukehart

Des Moines Pool (14)

**NZ335 RE35**

SP Thomas  
DB Allen  
DL Dewit  
MA Nickens  
SM Erdman  
SW Haley  
CA Scott  
MG Hatfield  
AJ Bartonek

Boone Pool (9)

Attachment no. 8

2/29/04	485626370	UNDERBAKKE	WD	DM136	RE54	Mason City pool - 2
2/29/04	485866188	MEDLANG	JN	DM136	RE54	
2/29/04	482567702	FOSTER	CM	DM136	XE50	Mason City extra board - 4
2/29/04	484520157	WATT	LD	DM136	XE50	
2/29/04	482606112	SMITH	MJ	DM136	XE50	
2/29/04	482567627	WALLS	RA	DM136	XE50	
2/29/04	470729546	SCHILLER	SR	SX117	RE50	St. James pool - 7
2/29/04	482585182	HASSEL	SP	SX117	RE50	
2/29/04	469547767	BOECK	DA	SX117	RE50	
2/29/04	470020522	WIRTZFELD	KF	SX117	RE50	
2/29/04	455115192	MCLINN	JM	SX117	RE50	
2/29/04	155627612	GEORGIANA	N	SX117	RE50	
2/29/04	474649082	KLAUS	DW	SX117	RE50	
2/29/04	477026566	PETERSEN	JL	SX117	XE50	St. James extra board - 5
2/29/04	472680588	ZIMMERMAN	WF	SX117	XE50	
2/29/04	478544049	ERICKSON	JC	SX117	XE50	
2/29/04	481629511	JOHNSON	JL	SX117	XE50	
2/29/04	477489355	SING	WD	SX117	XE50	

**March 8, 2006**

**Mr. B. MacArthur  
General Chairman - BLET**

**Dear Sir;**

**This will confirm our understanding concerning the handling of hours of service trains under Section 9 of this ID Agreement. As set forth in Section 9, home terminal crews will be utilized in hours of service relief before an away-from-home terminal crew, whenever possible. The location of the train, as well as other factors will have an affect on whether a home terminal or away-from-home terminal crew will be utilized in hours of service relief.**

**The Organization has expressed a desire to establish the order in which home terminal crews will be called in hours of service relief. The following guidelines establish the calling order for each location whenever a home terminal road crews is utilized for hours of service relief.**

**Trains operating to Boone:**

- 1) home terminal (Boone) pool crew (RE35)**
- 2) home terminal extra board**

**Trains operating to Des Moines:**

- 1) home terminal (Des Moines) extra board crew**
- 2) home terminal pool crew (RE36)**

**Trains operating to the Twin Cities or Valley Park:**

- 1) home terminal (Twin Cities/Valley Park) extra board crew**
- 2) home terminal pool crew**

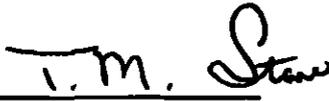
**Trains that will terminate in Mason City or St. James:**

- 1) home terminal (Mason City or St. James) extra board crew**

2) home terminal pool crew

The Carrier retains the options set forth in paragraph E of Section 9 in the handling of hours of service trains. As well as the right to call home terminal or away-from-home terminal crews to meet the needs of the service.

If this accurately reflects our understanding, please indicate your concurrence by signing in the space provided below.

  
T. M. Stone

  
B. MacArthur

**Side letter #10**

**March 8, 2006**

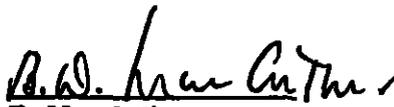
**Mr. B. MacArthur  
General Chairman – BLET**

**This will confirm our discussion and understanding concerning two of away-from-home terminals that are being added under the new ID Agreement dated March 8, 2006.**

**Mankato, Minnesota will be an away-from-home terminal for Mason City, Boone and Des Moines crews, but will not be an away-from-home terminal for Twin Cities, Valley Park or St. James crews.**

**Iowa Falls, Iowa will be an away-from-home terminal for Twin Cities and Valley Park crews, but will not be an away-from-home terminal for St. James, Mason City, Boone or Des Moines crews.**

**If this accurately reflects our understanding, please indicate your concurrence by signing in the space provided below.**

  
**B. MacArthur**

  
**T. M. Stone**

**Side Letter #11**

**March 8, 2006**

**Mr. B. MacArthur  
General Chairman – BLET**

**This will confirm our understanding concerning road crews reporting for duty at Valley Park, under the new ID Agreement dated March 8, 2006.**

**Engineers reporting for duty at Valley Park, under this agreement, that are required to drive a greater distance (measured from the engineer's current residence to South St. Paul) will be compensated a \$12.00 daily travel allowance. Engineers bidding or displacing onto an assignment home terminated at Valley Park will not be entitled to the \$12.00 travel allowance. The \$12.00 allowance is frozen and will only be payable to employees currently listed on the engineer/trainmen's seniority rosters. The single \$12.00 daily payment represents the travel allowance for an engineer to drive their personal vehicle from their residence to Valley Park and return home. The travel allowance will only be payable to engineer assignments established under this agreement, and the payment will count as earnings toward any guarantee or protection payment.**

**Engineers assigned to the Twin Cities pool or extra board, (listed below) that are required to report for duty at Valley Park under the vacancy procedures will provided the travel allowance.**

**Employees meeting the mileage criteria based upon Expedia mileage charts ("greater distance") have been identified and are listed below.**

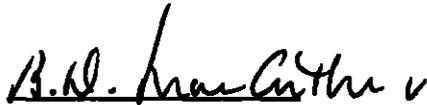
**RW Merritt  
GE Hopkins  
DR Denison  
JH Bristol  
VC Marlin  
GE Rumler**

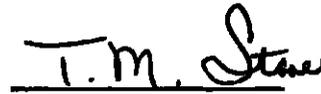
**MD Anderson  
PS Winfield  
DL Heinze  
PA Sutherland  
DJ Riehle  
MT Pulley**

DE Billings  
DJ Suter  
RB Koonce  
RC Hellem  
RL Behne  
JR Pike  
JM McLinn  
ML Mercier

JA Leach  
JJ Carnes  
BR Volkman  
SL Kennedy  
MW Lanik  
TP Wolf  
EM Schwendeman  
MK Thomas

If this accurately reflects our understanding, please indicate your concurrence by signing in the space provided below.

  
B. MacArthur

  
T. M. Stone

June 15, 2006

BLET signed the ID agr on 3/8/06, with the assurance the UTU would not get a better deal. These changes equalize the two Agreements.

Mr. B. D. MacArthur  
General Chairman – BLE  
501 N. 2<sup>nd</sup> Street, Suite 2  
Clinton, Iowa 52732

Dear Sir;

This will confirm our discussion concerning various changes and clarifications to the March 8, 2006 Twin Cities ID Agreement. The following items represent the changes that we have agreed to make to the ID Agreement.

- 1) Side letter number 11 will be cancelled in it's entirely. This side letter provided for a travel allowance if engineers were required to drive a farther distance to report for duty at Valley Park. The following language will replace side letter 11, and will be added as paragraph (i) to Article I, Section 1; and paragraph (h) to Article I, Section 2, as specified below.

Article I, Section 1, paragraph (i).

\*Engineers with the home terminal of the Twin Cities that are called to fill a vacancy at Valley Park will continue to be handled and compensated in the manner they were prior to this agreement, except that engineers may be required to report to Valley Park, driving their personal vehicle.

Engineers home terminalled in the Twin Cities that are called to report at Valley Park, and required to drive their personal vehicle, will be allowed the payment of thirty-one (31) miles at the applicable IRS mileage rate.

Twin Cities engineers will be placed on duty at their home terminal forty (40) minutes prior to the reporting time at Valley Park, will report to Valley Park at the designated reporting time, and their daily compensation of time or miles will be calculated from their home terminal.

Upon returning to Valley Park, an engineer will have the mileage of his/her return trip calculated to the Twin Cities (home terminal); engineer will be placed off duty at the Twin

Cities forty (40) minutes after the completion of duties at Valley Park.

The parties recognize that this agreement does not supercede the provisions of the National Agreement, as it pertains to trip rates, and that the implementation of trip rates may amend all or part of the payment process provided within this paragraph (i).

(This agreement is not intended to place any restrictions on the hours of service laws that is not included in the FRA regulations. This paragraph (i) is intended to provide the method of calculating the compensation and reimbursement of vehicle expenses for reporting to Valley Park, when home terminated in the Twin Cities.)”

Article I, Section 2, paragraph (h):

“The provisions contained in Section 1 (i), concerning engineers home terminated in the Twin Cities filling vacancies at Valley Park will apply to this Section 2, for two pool operations. In addition, engineers home terminated at Valley Park under this Section 2 that are called to fill a vacancy in the Twin Cities will be handled in a similar manner.

Engineers with the home terminal of Valley Park that are called to fill a vacancy in the Twin Cities may be required to drive their personal vehicle to the Twin Cities, and allowed the payment of thirty-one (31) miles at the applicable IRS mileage rate. Valley Park engineers will be placed on duty at their home terminal forty (40) minutes prior to the reporting time in the Twin Cities, will report to the Twin Cities at the designated reporting time, and their daily compensation of time or miles will be calculated from their home terminal of Valley Park.

Upon returning to the Twin Cities, an engineer will have the mileage of his/her return trip calculated to Valley Park (home terminal); engineer will be placed off duty at Valley Park forty (40) minutes after the completion of duties in the Twin Cities.

The parties recognize that this agreement does not supercede the provisions of the National Agreement, as it pertains to trip rates, and that the implementation of trip

rates may amend all or part of the payment process provided within this paragraph (h).

(This agreement is not intended to place any restrictions on the hours of service laws that is not included in the FRA regulations. This paragraph (h) is intended to provide the method of calculating the compensation for employees reporting to another location, other than their home terminal, as set forth above.)"

- 2) The following language will be added to Article I, Section 11, paragraph B, to clarify the intent of the parties, as it pertains to the existing Mason City crews and operations at Mankato.

"The Fairmont/Worthington ID agreement is amended to include trains operating through St. James that are destined, originated or interchanged at Mankato. Mankato will not be an away-from-home terminal for crews in this service."

- 3) Side letter number nine will be amended to establish a different call order for St. James, as follows:

"Trains that will terminate in St. James:

- 1) home terminal (St. James) pool crew
- 2) home terminal (St. James) extra board crew"

- 4) The note contained in Article I, Section 11, paragraph B will be amended to read as follows, and note 2 will be added to this paragraph:

"Note 1: A Twin Cities/Valley Park pool assignment bulletined with the home terminal of Mason City, Boone and Des Moines will not be utilized in the calculation of mileage equalization, unless the assignment is occupied by a Midwest District engineer without prior rights C-5 seniority."

"Note 2: If a single pool is operated under Section I of this agreement, the designated home terminal for the crews would be the away-from-home terminal for the crew identified in this Section 11."

5) Example 1, in Article II, A (1), will be amended to read as follows:

"Example 1: An engineer has a \$5,000 a month TPA, which equates to \$15,000 for the first quarter. In January he/she earns \$4,500, February \$5,500, and March \$4,500. Total earnings (pursuant to Article IX, Section 7, of Arbitration Award 458) for the quarter is \$14,500, and assuming there are no financial offsets, the engineer would be provided the protection payment of \$500 ( $\$15,000 - \$14,500 = \$500$ ) in the second half of April."

6) The following paragraph will be added to Article II, A (1):

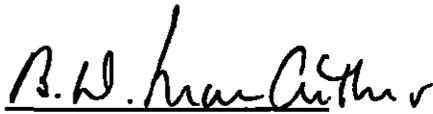
"The method of calculating and paying protection is limited to the terms and conditions of this agreement and does not constitute precedent in any other agreement."

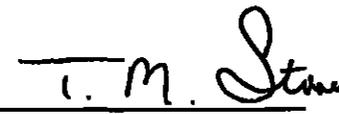
7) Article II, A (2) will be amended to read as follows:

"St. James and Mason City

The engineers identified on attachment no. 8 of this agreement were certified under the provisions of the Fairmont/Worthington ID Agreement dated July 27, 2004. These engineer's will have their certification and protection period restarted with the implementation of this ID Agreement, utilizing the TPA that was established under the Fairmont/Worthington ID Agreement, adjusted to reflect wage and cost of living adjustments. Engineers listed on attachment no. 8 will continue to have their calculations and payments handled on a monthly basis."

If you are agreeable to these changes to the March 8, 2006 Twin Cities ID agreement, please indicate your concurrence by signing in the space provided below.

  
B.D. MacArthur  
General Chairman 8/17/06

  
T.M. Stone  
Director Labor Relations

**Side Letter #12**

**March 8, 2006**

**Mr. B. MacArthur  
General Chairman – BLET**

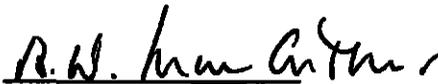
**This will confirm our understanding concerning Des Moines and Boone road crews operating north of Mason City, as well as changes in the switching limits at St. James and Mason City, under the ID agreement dated March 8, 2006.**

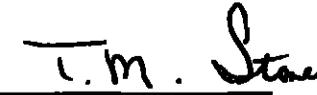
**It is anticipated that Des Moines and Boone crews operating north to Mason City may be required to yard their trains at Manly. Engineers yarding their trains at Manly will be compensated actual miles operated. It is further understood that this specific movement north of Mason City is not confined to position(s) bulletined for equalization at Des Moines or Boone, and may be performed by any qualified engineer assigned at these two locations.**

**Mason City switching limits will be changed to MP 195.5 on the north end, and the south switch at Flint siding on the south end to accommodate operations. Mason City crews will be permitted to operate through Mason City, without penalty.**

**A new siding is scheduled to be built south of St. James to accommodate the increase in business and to improve operations. Upon its completion, the switching limits will be extended at St. James to include the south switch of the new siding (MP 125.65 ).**

**If this accurately reflects our understanding, please indicate your concurrence by signing in the space provided below.**

  
**B. MacArthur**

  
**T. M. Stone**

**Side Letter #13**

**March 8, 2006**

**Mr. B. MacArthur  
General Chairman – BLET**

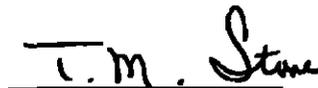
**This will confirm our understanding concerning the handling of regular assignments in the territory covered by the Twin Cities/Valley Park ID agreement dated March 8, 2006.**

**If the Carrier elects to bulletin regular assigned road crews to go on duty at any of the terminals subject to the Twin Cities/Valley Park ID Agreement, the assignments will be governed by the ID terms and conditions contained in the March 8, 2006 agreement, in addition to the following:**

- 1) Regular assigned engineers will be governed by the terms and conditions set forth in Rule 17 and 33, of the CNW Collective Bargaining Agreement.**
- 2) Regular assigned crews will be placed in pool service at the away-from-home terminal, returning to the board on their tie-up time, and may be called to handle any train.**
- 3) Existing call times will remain in effect.**

**If this accurately reflects our understanding, please indicate your concurrence by signing in the space provided below.**

  
**B. MacArthur**

  
**T. M. Stone**

June 15, 2006

Mr. B. D. MacArthur  
General Chairman – BLE  
501 N. 2<sup>nd</sup> Street, Suite 2  
Clinton, Iowa 52732

Dear Sir,

This will confirm our understanding concerning three issues of protection under Article II of our March 8, 2006, ID agreement:

The Organization has expressed a concern that employees *not automatically certified could be adversely affected* from this transaction at a later date, as a result of further implementation of the provisions of this ID agreement. It is the Carrier's position the initial implementation of the ID service will determine which employees will be placed in a worse position as to compensation. The Carrier does recognize other factors such as the completion of the St James siding and crew qualifications will afford the Carrier greater opportunity to run trains through St. James and Mason City. Accordingly, employees not initially certified for protective benefits as a result of this transaction have the right to progress claims for protective benefits under Article IX, Section 7 of Arbitration Award 458 at a later date if they should become adversely affected as result of the transaction.

It is further understood that the term "engineer" utilized in Article II, A, (2), will be amended to "employee" This will permit engineers that were auto certified under the Fairmont/Worthington ID agreement, to restart their protection period, under the terms of Article II, A, (2), even if they are demoted into train service

If you are agreeable to these changes to the March 8, 2006 Twin Cities ID agreement, please indicate your concurrence by signing in the space provided below.

B.D. MacArthur ✓  
B.D. MacArthur  
General Chairman 9/24/06

T.M. Stone  
T.M. Stone  
Director Labor Relations

36

**MEMORANDUM OF AGREEMENT**  
**between the**  
**UNION PACIFIC RAILROAD COMPANY**  
**and the**  
**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

---

**TURNAROUND POOL FREIGHT OPERATIONS**  
**PORTLAND – KALAMA - PORTLAND**

---

On October 25, 2002, Carrier served notice of its intent to establish new turnaround pool freight operations Portland – Kalama – Portland. On November 6, 2002, the parties met to discuss the proposed new service. In an effort to implement/establish this pool in accordance with Articles II (G) and III (F) of the Portland Hub Zone 1 Merger Implementing Agreement, the following is hereby adopted without prejudice to either parties' position:

**IT IS AGREED:**

1. Pool Operations.  
New turnaround pool freight service may be established with the on/off duty point of Portland, Oregon. This operation will be to Kalama, Washington with crews tying up back at Portland, Oregon
2. Terms and Conditions.  
The provisions of the Zone 1 Merger Implementing Agreement will apply.
3. Transportation.  
When a crew is required to be relieved from duty at other than the on/off duty point identified in Item 1 above, the Carrier shall authorize and provide suitable transportation. Any necessary deadheading will be in combined service.
4. Familiarization  
To ensure proper familiarization and compliance, employees will be provided with a sufficient number of familiarization trips over the territory where they are not currently qualified. Issues concerning individual qualification shall be handled with local operating officers. Employees will not be required to lose time to "ride the road" on their own time in order to qualify for this new operation. If a dispute arises concerning this process,

it will be addressed directly with the appropriate Labor Relations Officer and the General Chairman.

5. Implementation.

This Agreement will become effective on November 14, 2002, as no crews are to be relocated from existing home terminals nor any designated home terminals to be subject to any run through operations. Pool positions will be bulletined in accordance with Schedule Rule 85.

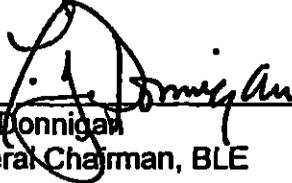
6. This Agreement is made without to prejudice to either parties' position.

7. Carrier's notice dated October 25, 2002 is hereby withdrawn without prejudice to the either parties' position.

8. Where in conflict with any other agreements, understandings or practices, the provisions of this agreement will apply.

Signed this 14th day of November, 2002.

FOR THE  
BROTHERHOOD OF LOCOMOTIVE  
ENGINEERS:

  
\_\_\_\_\_  
T. J. Donnigan  
General Chairman, BLE

FOR THE  
UNION PACIFIC RAILROAD COMPANY:

  
\_\_\_\_\_  
S. F. Boone  
Director of Labor Relations



Side Letter No. 1

May 15, 2003

920-40

Mr. T. J. Donnigan  
General Chairman, BLE  
P.O. Box 609  
Pocatello, ID 83204-0609

Dear Sir:

This refers to the Memorandum of Agreement dated November 14, 2002, wherein the parties agreed to establish new turnaround pool freight operations between Portland, Oregon and Kalama, Washington

Subsequent to the implementation of the agreement, the parties recognized the need for crews assigned to this pool to operate to Longview, Washington and/or to wye their power at Longview, Washington. The parties agree that crews assigned to this service may operate to Longview and/or wye their power at Longview and will not be considered as being used off their assignment. In conjunction therewith engineers operating to Longview and/or wying power at Longview will be paid one (1) hour at the straight time rate of pay, in addition to all other earnings of the trip. It is understood no more than one (1) such payment will be allowed in a tour of duty for performing this service

**EXAMPLE 1.** An engineer operates a train from his/her home terminal, Portland, to Kalama, a distance of 38 miles Upon arrival at Kalama, he/she is instructed to go to Longview to setout cars at a customer's facility and/or wye his/her power, a distance of 8 miles He/she is then deadheaded in combined service or takes a train back to Portland The total round trip from Portland and return is 92 miles, and time consumed is eight (8) hours or less What payment is due?

**ANSWER** A basic day plus one-hour

**EXAMPLE 2** What would the engineer in Example 1 be paid if the time consumed was 9 hours and 30 minutes?

**ANSWER** A basic day, 1 hour and 30 minutes overtime plus one-hour

If the foregoing properly and accurately reflects our understanding on this matter, please so indicate by affixing your signature in the space provided below.

Yours truly,

S. F. Boone

AGREED

37

**AGREEMENT**

between the  
**UNION PACIFIC RAILROAD COMPANY**

and

its employees represented by the  
**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

\*\*\*\*\*  
**EXTENDING SWITCHING LIMITS AT LONGVIEW, TEXAS**  
\*\*\*\*\*

Changes in operations due to implementation of the UP/SP merger have resulted in a need to move the east switching limit at Longview. In that regard, the parties hereto recognize extension of the east switching limit at Longview, Texas will help promote efficient service to Carrier's shippers and facilitate operations. Accordingly, **IT IS AGREED:**

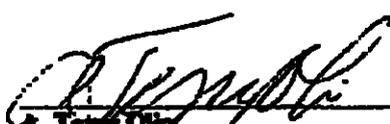
1. The east switching limit at Longview, Texas, is changed from its present location to Milepost 85.0 on the Dallas Subdivision.
2. Carrier will properly and promptly advise all affected employees of the above switching limit change.
3.
  - (a). The mileage paid to crew members on through freight runs operating in either direction between Fort Worth and Longview will be increased by two (2) miles for each trip.
  - (b). The mileage paid to crew members on through freight runs operating in either direction between Heame/Valley Junction and Longview will be increased by two (2) miles for each trip.
  - (c). The mileage paid to crew members on through freight runs operating in either direction between Houston and Longview will be increased by two (2) miles for each trip.
4. The changes set forth herein will become effective on the date the parties sign this Agreement.

SIGNED IN FORT WORTH, TEXAS, THIS 16<sup>th</sup> DAY OF MARCH, 1998.

**FOR THE UNITED TRANSPORTATION UNION:**

  
M. L. Royal, Jr.  
General Chairman

**FOR UNION PACIFIC RAILROAD COMPANY:**

  
A. Terry Olin  
General Director - Labor Relations  
Ops - South

38

**MEMORANDUM OF AGREEMENT**

**between**

**UNION PACIFIC RAILROAD COMPANY**

**and the**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

**AND TRAINMEN**

.....  
**Enhanced Customer Service:**  
**Salt Lake City Intermodal Facility**  
.....

Pursuant to Article IX, Section 1, Paragraph (b) of the 1996 BLE National Agreement, Union Pacific Railroad Company ("UP") served notice on August 8, 2005, of its intent to implement new service to the new Salt Lake City Intermodal Facility (located near 5600 West and 800 South) in Salt Lake City, Utah. The essential element of the new service is to operate certain train crews through the Salt Lake City Terminal to/from the Salt Lake City Intermodal Facility without a crew change in Salt Lake City. The objective of this new operation is to ensure UP's service to existing and potential customers is cost-effective, reliable and competitive and that the cycle times (service levels) requested by those customers are achieved. Pursuant to Article I, Section 1, Paragraph (c) of Article IX of the 1996 BLE National Agreement, this new operation will be implemented on a trial basis on or about December 26, 2005.

Union Pacific ("UP") and the Brotherhood of Locomotive Engineers and Trainmen ("BLET") enter into this agreement to provide the particularized service referenced above and to help ensure efficient and reliable service to accommodate the new Salt Lake City Intermodal Facility ("SLCIF") located near 5600 West and 800 South in Salt Lake City, Utah, so UP may retain its current customer base and grow traffic levels. The parties recognize the SLCIF currently as an intermodal loading and unloading facility but which may in the future be joined by other facilities/operations requiring similar particularized and expedited service (auto-ramp, transload facilities, Roadrailer, etc). Accordingly, BLET and UP agree the following shall apply in connection with operations/service to/from the Salt Lake City Intermodal Facility.

**I. OPERATIONS**

- A. Regular or extra engineers working in through freight service on trains operating into the Salt Lake City Terminal, and terminating at SLCIF, from

Pocatello, Ogden, Provo, Helper, Grand Junction, and/or Green River, or points between those locations and Salt Lake City, including crews providing hours-of-service relief for such employees, may operate through the Salt Lake City Terminal and beyond the Salt Lake City Terminal (switching) limits on the Lynndyl Subdivision to the SLCIF.

NOTE 1: The switching limit referenced in this Article I, Section A, is presently located at Milepost 781.17 on the Lynndyl Subdivision.

---

B. Regular or extra employees working in through freight service on trains originating at the SLCIF (or between the SLCIF and the Salt Lake City Terminal (switching) limit on the Lynndyl Subdivision) and operating towards Pocatello, Ogden, Provo, Helper or Grand Junction, including crews providing hours-of-service relief for such employees, may operate through the Salt Lake City Terminal and beyond the Salt Lake City Terminal (switching) limits towards their destination(s)

NOTE 1: The Salt Lake City Terminal switching limits referenced in this Article I, Section B, are presently located at the following mileposts.

Provo Subdivision	MP 739.0
Evanston Subdivision	MP 989.0
Ogden Subdivision	MP 3.25

This Agreement will not artificially extend the current road/yard service zone or the 25-mile zone identified in Article IV B. 1. of the Salt Lake Hub Agreement, nor will crews who receive their train at the SLCIF be eligible for the one-half (1/2) basic day under the 25-mile zone provisions of the Salt Lake Hub Agreement.

NOTE 2: It is the parties' specific intent in Sections A and B, above, to permit all engineers working in through freight service on trains received at or delivered to the SLCIF to operate through the Salt Lake City Terminal without changing crews in the Salt Lake City Terminal. While it is the parties' intent that UP may use a single crew in the operations described herein, nothing herein shall require UP to use one crew. UP may, at its discretion or due to service or operating needs, use more than one crew on these trains – i.e., change crews in Salt Lake City. Crews relieved prior to departing Salt Lake City en route to their objective terminal will be handled in accordance with Q&A #23 of the Salt Lake Hub Agreement.

**NOTE 3:** It is not intended that trains normally operating over the Lynndyl Subdivision between the mileposts identified above to be covered by this Memorandum of Agreement.

- C. 1. The existing on/off-duty point at Salt Lake City will remain as the on/off-duty point for employees utilized under this Agreement. Employees will be transported to and from the SLCIF to the existing on/off-duty point at Salt Lake City.
2. In the application of this Agreement, no additional miles will be paid for transporting employees between the on/off-duty point in the Salt Lake City Terminal and the SLCIF.
3. Employees utilized under this Agreement will not be used to perform local or work train service between the Salt Lake City Terminal (switching) limit on the Lynndyl Subdivision and the SLCIF. Similarly, employees utilized under this Agreement will not be used to shuttle cars and/or engines to/from the Salt Lake City Terminal to points between the Salt Lake City Terminal (switching) limit on the Lynndyl Subdivision and the SLCIF, while they are working in through freight service on trains operating to/from the SLCIF.

**NOTE 1:** Nothing in this Memorandum of Agreement shall prohibit or restrict crews currently operating over the Lynndyl Subdivision (e.g. crews working between Salt Lake City and Milford) from performing work currently allowed under collective bargaining rules at the SLCIF or between the SLCIF and the Salt Lake City Terminal.

- D. Except as set forth herein, nothing herein shall serve, or is intended, to restrict UP's existing right(s) under collective bargaining agreement rules to use other crews to serve the SLCIF and/or handle cars or trains to/from the SLCIF as may be dictated by service or operational needs.

## **II. COMPENSATION**

- A. Employees operating trains through the Salt Lake City Terminal to/from the SLCIF pursuant to Article I of this Memorandum of Agreement will be paid an additional eight (8) miles when said employee receives or delivers his train at the SLCIF or between the SLCIF and the Salt Lake City Terminal (switching) limit on the Lynndyl Subdivision. Crews may be required to enter SLCIF by heading or backing their train into the facility. This payment will be in addition to the trip rate or mileage paid for their

assignment and will be subject to all future general wage increases and/or cost of living adjustments.

**NOTE.** The payment provided in Section A, above, is intended to be made only when an employee operates a train through the Salt Lake City Terminal (switching) limit. If the employee (crew) does not operate through the Salt Lake City Terminal – e.g., is tied-up or relieved before passing the Lynndyl Subdivision switching limit – he or she will be paid only the trip rate or the mileage of their assignment.

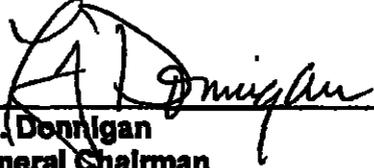
- 
- B. The payment provided in Section A of this Article II shall apply only to those employees specifically covered by Article I of this Memorandum of Agreement, including employees used in accordance with applicable agreement provisions to protect positions on trains operating to/from the SLCIF.
  - C. Upon delivering their train at the SLCIF, engineers waiting to be transported for final tie-up will be compensated at the pro rata rate for all time in excess of forty-five (45) minutes from the time their train comes to rest at the SLCIF ("stop time") until transported to the appropriate on/off duty point in the Salt Lake City Terminal.
  - D. The payment provided in Section A of this Article II will not be used to extend the onset of overtime for employees working on any of the through freight runs covered by Article I of this Memorandum of Agreement.

### **III. GENERAL AND SAVINGS CLAUSES**

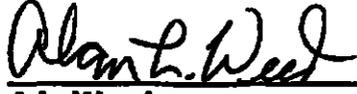
- A. The provisions set forth in this Agreement are made to address a unique and special circumstance and are accordingly made without prejudice to the position(s) of the parties signatory hereto.
- B. The terms and conditions set forth herein are intended to apply only to employees working in through freight service to and from the Salt Lake City Intermodal Facility (SLCIF) and will not be extended or applied to any other freight pool or operation covered by the UP/BLET Idaho collective bargaining agreement.
- C. In the event the provisions of this Agreement conflict with existing collective bargaining agreement provisions, rules and/or practices, the provisions of this Agreement shall prevail

SIGNED THIS 19 TH DAY OF October, 2006 IN OMAHA, NEBRASKA

**FOR THE BROTHERHOOD OF LOCOMOTIVE  
ENGINEERS AND TRAINMEN**

  
\_\_\_\_\_  
**T.J. Donnigan**  
**General Chairman**  
**Brotherhood of Locomotive**  
**Engineers and Trainmen**

**FOR THE UNION PACIFIC  
RAILROAD COMPANY:**

  
\_\_\_\_\_  
**A.L. Weed**  
**Director - Labor Relations**  
**Arbitration & Negotiations**

**AGREED:**

  
\_\_\_\_\_  
**E.L. Pruitt**  
**International Vice President**  
**Brotherhood of Locomotive**  
**Engineers and Trainmen**

October 19, 2006

Side Letter No. 1

Mr. T.J. Donnigan  
General Chairman  
Brotherhood of Locomotive Engineers  
and Trainmen  
P.O. Box 609  
Pocatello, ID 83204-0609

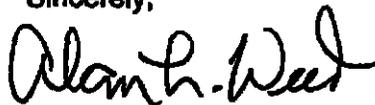
---

Dear Sir:

This refers to the parties' Memorandum of Agreement dated October 19, 2006, covering operations to/from the Carrier's Salt Lake City Intermodal Facility (SLCIF).

During our negotiations the parties discussed a dispute concerning the proper calculation of certain trip-rate pay elements on certain through-freight pools within the Salt City Hub territory, and whether such pools were to be treated as if coming under interdivisional (ID) pay conditions. Trip rates for these pools have already been implemented using pay elements calculated in accordance with ID pay conditions and the Carrier's interpretation that such pools were not to be covered by ID pay conditions would reduce the trip rates on these pools. Accordingly, contingent with the successful ratification by the BLET of the parties' Memorandum of Agreement covering the SLCIF, the Carrier will adopt the Organization's interpretation and position that all through-freight pools in the Salt Lake City hub territory should fall under interdivisional (ID) pay conditions. Should the Memorandum of Agreement fail to ratify, this Side Letter No.1 is withdrawn and will be of no force or effect.

Sincerely,



Alan L. Weed  
Director Labor Relations  
Arbitration & Negotiations

Agreed:



T.J. Donnigan  
General Chairman, BLET

39

**MEMORANDUM OF AGREEMENT**

**between**

**UNION PACIFIC RAILROAD COMPANY**

**and the**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN  
(San Antonio Hub)**

=====

**Service to/from Toyota Motor Company  
San Antonio, Texas**

=====

Union Pacific Railroad Company ("UP") and the Brotherhood of Locomotive Engineers and Trainmen ("BLET") agree the following shall apply concerning UP's operations and service to/from Toyota's San Antonio facility:

**I. OPERATIONS**

- A. Regular or extra employees working in through freight service on trains operating to San Antonio from Del Rio, Eagle Pass, Taylor, Heame, Houston, Bloomington, Laredo and/or Smithville, or points between those locations and San Antonio, and are destined to Toyota's manufacturing facility on the Corpus Christi Subdivision, including crews providing hours-of-service relief for such employees, may operate through the San Antonio terminal and beyond the San Antonio switching limit on the Corpus Christi Subdivision to Toyota's facility.**

**NOTE:** The switch leading to Toyota's facility is presently located at or near Milepost 12 on the Corpus Christi Subdivision.

- B. Regular or extra employees working in through freight service on trains from Toyota's facility on the Corpus Christi Subdivision (or between Toyota's facility and the San Antonio switching limit on the Corpus Christi Subdivision) and are destined to Del Rio, Eagle Pass, Taylor, Heame, Houston, Bloomington, Laredo and/or Smithville, or points between those locations and San Antonio, including crews providing hours-of-service relief for such employees between the Toyota facility and San Antonio,**

may operate through the San Antonio terminal and beyond the San Antonio switching limits towards their destination(s).

**NOTE 1:** It is the parties' intent in Sections A and B, above, to permit engineers working in through freight service on trains received at or to be delivered to the Toyota facility to operate through the San Antonio terminal without changing crews in San Antonio.

**NOTE 2:** Nothing herein shall require UP to operate through freight trains to/from the Toyota facility to run through the San Antonio terminal.

- C.
1. San Antonio will continue to be the off-duty location for employees working to Toyota's facility pursuant to this Agreement. Likewise, San Antonio will continue to be the on-duty location for employees working from (receiving their train at) Toyota's facility pursuant to this Agreement. Said employees will be transported to/from the Toyota facility to/from their on/off-duty point in San Antonio.
  2. No additional miles will be paid for employees being transported between their on/off-duty point in San Antonio and the Toyota facility.

**NOTE:** The understanding set forth in this Section C, Paragraph 2 is made without prejudice to the parties' respective positions regarding payment to crews being transported to/from their on/off duty point and will not be cited by either party.

3. Employees covered by this Agreement will not be used to perform local, switching or work train service between the San Antonio switching limit on the Corpus Christi Subdivision and the Toyota facility.

**NOTE:** Nothing herein shall prohibit or restrict crews currently operating over the Corpus Christi Subdivision (e.g. crews working between San Antonio and Corpus Christi/Kingsville) from performing work currently permitted under existing Agreement rules at the Toyota facility or between the Toyota facility and the San Antonio terminal.

4. Crews operating to/from the Toyota facility pursuant to this Agreement will not operate beyond the switches (located near MP

12) leading to the Toyota facility, except as what may be necessary to provide adequate head/tail room.

**NOTE:** It will not be considered a violation of this Agreement if a crew is required to operate beyond the eastern most switch leading to the Toyota facility for the purpose of backing onto the track leading into the Toyota facility. Likewise, it will not be considered a violation of this Agreement if a crew is required to back around the easternmost leg of the wye and eastward on the Corpus Christi Subdivision for a train to depart the Toyota facility.

5. Except for those circumstances when it may be necessary for UP crews to move BNSF cars/traffic within Toyota's facility out of the way or into the clear in order to permit UP crews operating to/from the Toyota facility pursuant to this Agreement to complete their work or finish their move, said crews will not handle BNSF cars/traffic.
6.
  - a. After their arrival at the Toyota facility, crews operating to the Toyota facility pursuant to this Agreement will not be required to operate another train from the Toyota facility back to San Antonio.
  - b. A crew going on duty at San Antonio who is to subsequently operate a train from the Toyota facility back through the San Antonio terminal pursuant to this Agreement will not be required to operate a train out of San Antonio to the Toyota facility prior to operating his/her train from the Toyota facility.
  - c. Paragraphs a and b of this Section 6 shall not bar or otherwise restrict crews operating to/from the Toyota facility pursuant to this Agreement from operating locomotive consists – "light power" – between the Toyota facility and San Antonio.
7. For a crew that operates through San Antonio to the Toyota facility pursuant to this Agreement, San Antonio shall be considered as an intermediate point for said crew. Similarly, for a crew that operates through San Antonio from the Toyota facility pursuant to this Agreement, San Antonio shall be considered as an intermediate point for that crew.

- D. 1. Nothing herein shall serve to restrict UP's right(s) under applicable Agreement rules to use other crews to serve Toyota's facility and/or handle cars or trains to/from Toyota's facility, as may be dictated by service or operational needs.
2. Nothing herein shall restrict, subject to applicable agreement rules, including National Agreement, provisions, UP's right to require crews covered by this understanding to perform work, including setting out or picking up cars or locomotives, in San Antonio.
- E. The provisions of this Article I shall not affect the location of the "25-mile zone" limit(s) provided in Article III, Section D of the Merger Implementing Agreement (San Antonio Hub) between the Union Pacific Railroad Company/Southern Pacific Transportation Company and the Brotherhood of Locomotive Engineers and Trainmen, dated January 6, 1999.
- F. Except as specifically set forth herein, applicable Collective Bargaining Agreement rules and associated interpretations and applications pertaining to operations in and around San Antonio are unaffected by this Agreement.

## II. COMPENSATION

- A. Employees operating through freight trains through San Antonio to/from Toyota's facility pursuant to Article I of this Agreement will be paid an additional sixteen miles at the applicable pro rata through freight rate when said employees receive or deliver their trains at the Toyota facility or anywhere between Toyota's facility and the San Antonio switching limit on the Corpus Christi Subdivision. This payment will be in addition to the trip rate or mileage paid for their assignment and will be subject to future general wage and/or cost of living adjustments.

**NOTE 1:** The payment provided in this Section A will be made only when an employee operates a train through the San Antonio switching limit. If the employee covered by this Agreement does not operate his or her train through San Antonio terminal -- e.g., is tied-up or relieved in San Antonio before passing the Corpus Christi Subdivision switching limit -- he or she will be paid only the trip rate or mileage of their assignment and will not be entitled to this payment.

**NOTE 2:** The payment provided in Section A, above, will not be paid to employees working on assignments that

regularly work, or are bulletined to work, on/over the Corpus Christi Subdivision.

**NOTE 3:** A crewmen who has operated his/her train through the San Antonio terminal to the Toyota facility pursuant to this Agreement and who is subsequently required to operate a locomotive consist – "light power" – from the Toyota facility back to San Antonio during the same tour of duty will be paid eight miles at the applicable pro rata through freight rate in addition to his/her earnings for the tour of duty and the payment provided in this Section A. Likewise, a crewmen who is required to operate a locomotive consist – "light power" – from his/her on-duty point in San Antonio to Toyota's facility prior to operating his/her train from the Toyota facility through San Antonio pursuant to this Agreement and to his/her destination terminal during the same tour of duty will be paid eight miles at the applicable pro rata through freight rate in addition to his/her earnings for the tour of duty and the payment provided in this Section A.

**NOTE 4:** The provisions of Article III, Section D of the Merger Implementing Agreement (San Antonio Hub) between the Union Pacific Railroad Company/Southern Pacific Transportation Company and the Brotherhood of Locomotive Engineers and Trainmen, dated January 6, 1999, will not apply for employees operating from the Toyota facility and through the San Antonio terminal pursuant to this Agreement.

B. The payment provided in Section A of this Article III will not be used to extend the onset of overtime for employees working on through freight runs covered by Article I of this Memorandum of Agreement.

**III. GENERAL AND SAVINGS CLAUSES**

A. The terms and conditions set forth herein are applicable only to employees working in through freight service to/from the Toyota manufacturing facility located on UP's Corpus Christi Subdivision south of San Antonio and accordingly will not be extended or applied to any other freight pool or operation covered by the controlling UP/BLET Collective Bargaining Agreement.

B. The provisions of this Agreement are made to address a specific and unique situation and to help enhance service for Toyota Motor Company

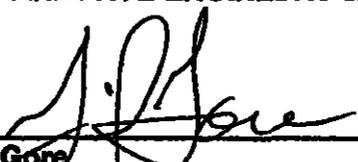
at San Antonio, Texas. Accordingly, the terms and conditions set forth herein are made without prejudice to either party's position(s) and, except for that necessary for administration of this Agreement, will not be cited in any forum.

- C. In the event the provisions set forth herein conflict with existing Agreement rules, the provisions set forth herein shall prevail.

SIGNED THIS 12TH DAY OF OCTOBER, 2006 IN SPRING, TEXAS

FOR THE BROTHERHOOD OF  
LOCOMOTIVE ENGINEERS & TRAINMEN:

FOR UNION PACIFIC RAILROAD  
COMPANY:

  
 \_\_\_\_\_  
 G. Gore  
 General Chairman

  
 \_\_\_\_\_  
 S. F. Boone  
 Director - Labor Relations  
 Arbitration & Negotiations

AGREED:

  
 \_\_\_\_\_  
 E. L. Pruitt  
 International Vice President

  
 \_\_\_\_\_  
 R. Orosco  
 Asst. Vice President-Labor Relations  
 Arbitration & Negotiations

**SIDE LETTER NO. 1**

**Mr. G. Gore  
General Chairman  
Brotherhood of Locomotive Engineers and Trainmen  
4411 Old Bullard Road, Suite #800  
Tyler, TX 75703**

**Dear Mr. Gore:**

**This has reference to the Memorandum of Agreement between Union Pacific Railroad Company and the Brotherhood of Locomotive Engineers and Trainmen (San Antonio Hub) (Service to/from Toyota Motor Company, San Antonio, TX), dated October 12, 2006.**

**This Side Letter No.1 will confirm the parties' understanding that coincident with the parties' signing of the Memorandum of Agreement referenced in the paragraph above, UP's notice, served pursuant to Article IX (Enhanced Customer Service) of the 1996 BLET National Agreement, dated May 1, 2006, will be automatically withdrawn.**

**If the foregoing properly reflects our understanding, please so indicate by affixing your signature in the space provided below.**

**Yours truly,**



**S. F. Boone  
Director – Labor Relations  
Arbitration & Negotiations**

**AGREED:**



**G. Gore  
General Chairman, BLET**

**SIDE LETTER NO. 2**

**Mr. G. Gore  
General Chairman, BLET  
4411 Old Bullard Road, Suite #600  
Tyler, TX 75703**

**Dear Mr. Gore:**

**This has reference to the Memorandum of Agreement between Union Pacific Railroad Company and the Brotherhood of Locomotive Engineers and Trainmen (San Antonio Hub) (Service to/from Toyota Motor Company, San Antonio, TX), dated October 12, 2006.**

**During our discussions, your organization raised a number of other issues. In connection with those discussions, the following shall summarize our commitments regarding those matters:**

- 1. UP and BLET agree to meet expeditiously and explore possible modifications to the process for regulating freight pools. In connection therewith, the parties likewise agree to explore the viability of using "starts" in lieu of "mileage" as the basis for regulating freight pools.**
- 2. UP and BLET also agree to meet and explore opportunities for abating fatigue risk for engineers. This endeavor will include investigation of options for providing engineers rest opportunities that are more predictable and rules or practices that might contribute to fatigue.**
- 3. The provisions of the Memorandum of Agreement are intended to specifically address Toyota's service needs at San Antonio and to enhance UP's ability to attract and retain Toyota's business. With the foregoing in mind, the parties commit to address promptly issues or problems that may arise concerning the application of this Memorandum of Agreement.**

**If the foregoing properly reflects our understanding, please so indicate by affixing your signature in the space provided below.**

**Yours truly,**

*S. F. Boone*  
**S. F. Boone  
Director - Labor Relations  
Arbitration & Negotiations**

**AGREED.**

*G. Gore*  
**G. Gore  
General Chairman, BLET**

**SIDE LETTER NO. 3**

**Mr. G. Gore  
General Chairman  
Brotherhood of Locomotive Engineers and Trainmen  
4411 Old Bullard Road, Suite #600  
Tyler, TX 75703**

**Dear Mr. Gore:**

**This has reference to the Memorandum of Agreement between Union Pacific Railroad Company and the Brotherhood of Locomotive Engineers and Trainmen (San Antonio Hub) (Service to/from Toyota Motor Company, San Antonio, TX), dated October 12, 2006.**

**Pursuant to our discussions in connection with the above-referenced Memorandum of Agreement, this letter will serve to confirm the parties agreement to eliminate the current "trip rate overtime offset" for the through freight runs referenced in Section 1(A) of this Agreement. The referenced "trip rate overtime offset" is the amount of time used to set back the overtime eligibility threshold due to the inclusion of terminal delay time in the trip rate. The elimination of this offset will be effective on the first day of the first pay period following implementation of the above-referenced Memorandum of Agreement and commencement of UP's service to the Toyota facility.**

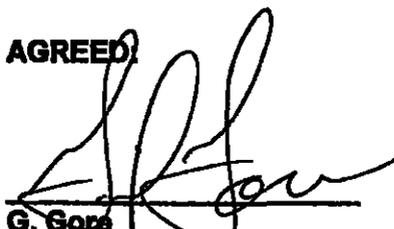
**If the foregoing properly reflects our understanding, please so indicate by affixing your signature in the space provided below.**

**Yours truly,**



**S. F. Boone  
Director - Labor Relations  
Arbitration & Negotiations**

**AGREED**

  
**G. Gore  
General Chairman, BLET**

Question and Answers Toyota Facility San Antonio

- Q1. May Union Pacific crews identified in Article I of this Agreement handle BNSF cars / traffic while working within the Toyota facility?**
- A1. Yes, but only when necessary to move BNSF cars / traffic out of the way or in the clear to permit crews operating to / from the Toyota facility pursuant to this Agreement to complete their work.**
- Q2. May pool freight crews identified in Article I in this Agreement who arrive San Antonio with cars destined for the Toyota facility be required to pick up additional cars within the San Antonio Terminal that are destined to Toyota and move them to the Toyota facility?**
- A2. Yes. San Antonio will be considered an intermediate point in this instance subject to the conditions in the National Agreement.**
- Q3. Pool freight crews identified in Article I of this Agreement are called to go to the Toyota facility to get their train pursuant to this Agreement. The crew is delayed in returning to San Antonio. A managerial decision is made to relieve them at San Antonio. How will they be handled under this agreement?**
- A3. Crew will handled in accordance with existing agreement provisions.**
- Q4. Article II (A), Note 4 provides that the 25-mile zone provisions will not apply for employees operating from the Toyota facility and through the San Antonio terminal pursuant to this Agreement. Can you provide examples of when the 25-mile zone provisions would/would not be applicable under this Agreement?**
- A4. EXAMPLE 1: A pool freight crew goes on duty at Del Rio and is destined to San Antonio. He/she is instructed to operate his/her train to the Toyota facility. The employee expires under the Hours of Service at milepost 8 on the Corpus Christi Subdivision. How will the employee be compensated?**

The employee will be paid the trip rate of his/her assignment (in this case, the San Antonio – Del Rio trip rate) plus an additional 16 miles pursuant to Article II, Section A of this Agreement because he/she was destined to the Toyota facility. The employee would not be entitled to the 25-mile zone payment.

**EXAMPLE 2: A pool freight crew goes on duty at San Antonio and is destined to Del Rio. He/she is instructed to go to the Toyota facility, operate back through the San Antonio terminal and on to Del Rio. How will the employee be compensated?**

The employee will be paid the trip rate of his/her assignment (in this case the San Antonio – Del Rio trip rate) plus an additional 16 miles pursuant to Article II, Section A of this Agreement and any overtime, if applicable. He/she will not be entitled to the 25-mile zone payment.

**EXAMPLE 3:** A pool freight crew goes on duty at San Antonio and is destined to Laredo. He/she gets his/her train at MP 8 (the involved train had originated at the Toyota plant) and operates it back through San Antonio to Laredo. How will the employee be compensated?

The employee will be paid the 25-mile zone payment pursuant to Article III, Section D of the San Antonio Hub Agreement. He/she will not be entitled to the 16-mile payment provided in this Agreement.

**EXAMPLE 4:** A pool freight crew goes on duty at San Antonio, gets his/her train at MP 13 and operates it back through the San Antonio terminal towards their destination terminal. How will the employee be compensated?

The employee will be paid the 25-mile zone payment pursuant to Article III, Section D of the San Antonio Hub Agreement. The employee will not be entitled to the 16-mile payment in this Agreement.

**EXAMPLE 5:** The employee in Example 4 above, makes a pickup and/or set-out at the Toyota facility, how will the employee be compensated?

The employee under this scenario made an ordinary industry pick-up and/or setout at the Toyota facility as previously allowed by agreement provisions and is thus not entitled to additional compensation for this work pursuant to this Agreement. The employee will be paid the 25-mile zone payment pursuant to Article III, Section D of the San Antonio Hub Agreement. The employee will not be entitled to the 16-mile payment in this Agreement.

- Q5.** A pool freight crew identified in Article I of this Agreement destined to Toyota expires under the hours of service at mile post 10 on the Corpus Christi Subdivision. Are they entitled to the payment provided in Article II, A of this agreement?
- A5.** Yes, because the crew operated through the San Antonio Terminal and beyond mile post 4.8 on the Corpus Christi Subdivision toward their destination.
- Q6.** Will a pool freight crew identified in Article I of this Agreement who has operated a train into the Toyota facility be required to operate a different train out of the Toyota facility back to San Antonio?

- A6. No. Upon arrival at the Toyota facility, the crew will not be required to operate another train from the Toyota facility back to San Antonio.
- Q7. Will a pool freight crew identified in Article I of this Agreement who goes on duty at San Antonio and is to subsequently operate a train from the Toyota facility back through the San Antonio Terminal pursuant to this Agreement be required to operate another train out of San Antonio back to the Toyota facility prior to operating his/her train from the Toyota facility?
- A7. No.
- Q8. A pool freight crew identified in Article I of this Agreement arrives San Antonio with no Toyota cars in their train. Can they be required to pick up Toyota cars in San Antonio and move them to the Toyota facility?
- A8. No, crews identified in Article I of this Agreement arriving San Antonio with no cars or equipment on their train for Toyota will not be required to shuttle cars from San Antonio to Toyota.
- Q9. A pool freight crew identified in Article I of this Agreement arrives San Antonio with 60 manifest cars and 10 Toyota cars in their train. Can they be required to set out the 60 manifest cars in San Antonio and deliver their 10 Toyota cars to the facility?
- A9. Yes, since the crew had Toyota cars in their train upon arriving San Antonio, which is an intermediate point, they are permitted to deliver their Toyota cars to the facility subject to the conditions of the National Agreement.
- Q10. Will pool freight crews identified in Article I of this Agreement be required to perform switching within the San Antonio Terminal?
- A10. Pool freight crews identified in Article I of this Agreement can perform any work road crews may perform subject to the conditions of the National Agreements.
- Q11. A San Antonio – Corpus Christi pool crew is called at San Antonio and required to make a set out at the Toyota facility enroute to Corpus Christi. Are they entitled to any additional compensation pursuant to Article II of this Agreement?
- A11. No. The payment provided in Article II of this Agreement will not be paid to employees working on assignments that regularly work, or are bulletined to work, on/over the Corpus Christi Subdivision.

40

**Public Law Board No. 6771**

**PARTIES TO DISPUTE:** ( **Brotherhood of Locomotive  
(Engineers and Trainmen**  
( vs.  
(  
**(Union Pacific Railroad Company**

**STATEMENT OF CLAIM:**

**“Issue: What are the appropriate terms and conditions of the Carrier’s proposed interdivisional operation between Chicago, Illinois and Minneapolis, Minnesota?”**

**FINDINGS:**

**This Board, after hearing upon the whole record and all the evidence finds that the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended: this Board has jurisdiction over the dispute involved herein: and, the parties were given due notice of hearing thereon.**

**As background, the Board issued a bench decision authorizing the implementation of the Union Pacific’s Plan B. We stated at that time that we would follow with a written Award. That Award was issued on July 9, 2004, but remanded the “issue of payment for . . . service” back to the parties. We also indicated that in our final Award we would detail the reasoning for allowing, “service within the 25, 38 and 39 mile zones.” The Board retained jurisdiction to consider the overall dispute after the parties had time to respond.**

**The parties concluded an Agreement which was forwarded to this Board by letter dated August 23, 2004. The Board has carefully reviewed this Agreement in regards to the dispute and payment issue. We reach the following conclusions.**

**The Carrier served notice to the Organization by letter dated March 15, 2004, that in compliance with Article IX of the UTU 1985 National**

Agreement, as well as Article IX, Section 3 of Arbitration Award No. 458, it was the Carrier's intent to establish Interdivisional Service. The parties met on March 24, 2004 and the Carrier discussed its proposed Agreement. The Board notes that the proposed Agreement "A" was modified, submitted for ratification, rejected by the employees, and withdrawn by the Carrier. Subsequently, a disputed plan "B" was presented to this Board.

The Organization has strongly argued that the Carrier's one meeting on March 24, 2004 with proposal to establish Interdivisional Service is clear evidence of a lack of "good faith" bargaining. The Board finds that the meeting was a negotiation under Article IX of Arbitration Award No. 458. Negotiations of Interdivisional Service are not new or novel in the rail industry, as the terms and conditions are generally known by the parties. The number of meetings is not critical, so long as what was in the negotiated package was consistent and met the requirements of Article IX. The Board concludes that one meeting is not, in and of itself, sufficient evidence of bad faith bargaining.

The proposed Agreement "A", which was rejected by the employees, *exceeded* the requirements of Article IX. Obviously, the negotiators understood Interdivisional Service and produced an Agreement whose terms and conditions not only complied with Article IX, but also had some provisions that went beyond the requirements. Agreement "A" should have been accepted. This Board has no authority granted to it by Article IX or jurisdiction under any Agreement language to revisit Agreement "A" which was withdrawn, or to go beyond what now stands before us.

This Public Law Board issued an implementing Award adopting the Carrier's proposed Agreement "B" for Interdivisional Service between Chicago, Illinois and Minneapolis, Minnesota. It fully met all of the requirements of Article IX, of Arbitration Award No. 458. We have carefully reviewed the Memorandum of Agreement signed by the parties on August 14, 2004 as a response to our remanded implementing

**Award over payment. We note that it is an Agreement that involved "the establishment of 25 mile (also 38 and 39 miles) zones and the payment for service within those zones." This includes the issue we remanded back to the parties.**

**The Organization and Carrier argued at great length before us concerning the establishment of 25 mile zones, and the 38 and 39 mile zones at Adams. We are persuaded by the Carrier that the zones are necessary for efficient and timely operations, and for providing expedited hours of service relief. We note that there is a precedent for including the 25 mile zones in other arbitrated Interdivisional Service Agreements on this property; notably the Pokegama-Butler, Wisconsin, and the operations between South Morrill, Nebraska and the Coal Mines of the Powder River Basin. For these reasons, the 25 mile zones are found by this Board to be proper and are included in the implementing Agreement (including the 38 and 39 mile zones at Adams).**

**The Board remanded back to the parties the issue of payment for service for crews operating in the 25, 38 and 39 mile zones. Having reviewed the August 17, 2004 Memorandum Agreement, it will not be necessary to approach this issue further. The parties have fully complied with the Board's implementing Award on the issue of payment and the August 17, 2004 Memorandum is accepted and adopted by this Award.**

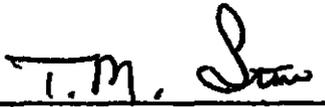
**Accordingly, the Board concludes that Carrier's Agreement "B" having met the conditions of Article IX of Arbitration Award 458 meets the criteria of appropriate terms and conditions for interdivisional service between Chicago, Illinois and Minneapolis, Minnesota. This decision herein pertains to the unique circumstances of this instant case and is not to be viewed as guiding or setting a precedent in other interdivisional or intradivisional service disputes.**

**AWARD:**

**As indicated in the Findings.**

  
**Marty E. Zusman, Chairman**  
**Neutral Member**

  
**D.L. McPherson**  
**Organization Member**  
*Discontinuing*

  
**T. M. Stone**  
**Carrier Member**

Date: 1/19/05

41

ARBITRATION BOARD NO. 567

PARTIES TO DISPUTE:

UNION PACIFIC RAILROAD COMPANY

AND

UNITED TRANSPORTATION UNION

AND

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

QUESTIONS AT ISSUE:

Brotherhood of Locomotive Engineers:

May the Union Pacific Railroad (UPRR) establish new Interdivisional Pool Freight service at the South Morrill terminal and Bill terminal as proposed in Memorandum of Agreement #1607019848, pursuant to Article IX of the BLE Arbitration Award No. 458 dated May 19, 1986 as amended by BLE Implementing Document effective November 1, 1991 which set forth the report and recommendations of Presidential Emergency Board No. 219, as modified by Special Board No. 102-29?

If the answer is yes, under what conditions may such Interdivisional service be operated?

United Transportation Union:

May the Union Pacific Railroad (UPRR) establish new Interdivisional Pool Freight service at the South Morrill terminal and Bill terminal as proposed in Memorandum of Agreement #2607019848, pursuant to Article IX of the UTU National Agreement dated October 31, 1985 as amended by UTU Implementing Document effective November 1, 1991 which set forth the report and recommendations of Presidential Emergency Board No. 219, as modified by Special Board No. 102-29?

If the answer is yes, under what conditions may such Interdivisional service be operated?

Carrier:

Under what conditions may Interdivisional train operation between South Morrill, Nebraska and the coal mines of the Powder River Basin be implemented?

### FINDINGS

Under date of August 7, 1998, the parties to this dispute jointly petitioned the National Mediation Board to establish an Arbitration Board to hear and decide the dispute here involved relating to the proposed establishment of Interdivisional/Intraseniority Service. The parties agreed upon the undersigned to serve as the Neutral Chairman of this Board. The agreement of the parties establishing the Board clearly provides "The Award of this Board shall contain only the Neutral Member's signature."

The Board met in Washington, D.C., on August 27, 1998. At the hearing Carrier was represented by Director Labor Relations C. R. Wise. The United Transportation Union was represented by General Chairman J. W. Babler. The Brotherhood of Locomotive Engineers was represented by General Chairman B. D. MacArthur. During the hearing the parties presented extensive written submissions and oral arguments reflecting their respective positions concerning Carrier's intent to establish Interdivisional Service between South Morrill, Nebraska, and the coal mines of the Powder River Basin.

The record presented to the Board reveals that on August 14, 1997, Carrier served notice on both Organizations (BLE and UTU) pursuant to Article IX of the UTU 1985 National Agreement and the BLE Arbitration Board 458 to establish ID service from South Morrill through Bill, Wyoming. A proposed agreement was sent to the Organizations on August 26, 1997. Subsequently meetings were held on September 3 and November 22, 1997, and January 13, April 28 and 29, and May 28, 1998. As a result of these extended negotiations a proposed agreement was reached by the parties. A final edition of the proposed agreement was sent to the Organizations on June 28, 1998, in that such agreement was then subject to ratification. The agreement failed to pass the ratification vote. For this record, the Board will refer to the final agreement reached by the parties as "PROPOSAL A."

When the employees failed to ratify PROPOSAL A, Carrier thereafter withdrew PROPOSAL A from further consideration and has submitted to this Board a so-called "Plan B" which it contends contains all of the contractual conditions for Interdivisional Service as stipulated in Article IX of the UTU 1985 National Agreement as well as the BLE Arbitration Board 458.

The Organizations have notified this Board that there were three areas which led to the rejection of PROPOSAL A and these three areas are characterized as follows:

-3-

(1) The service between South Morrill and Bill is not ID service, but Carrier receives all the benefits of ID conditions of the proposed agreement. The Employees argue that if Carrier elects to relieve a crew at Bill, it should be required to pay this crew mileage to the mine (this is commonly referred to as payment for "district miles").

(2) The employees allege that the employees at Bill are granted automatic certification for the protection benefits outlined in Article IV of the proposal, while the South Morrill employees at the South Morrill Terminal received no protection benefits but are subject to displacement by Bill employees.

(3) The employees further allege that overtime is calculated in a less favorable fashion for this group of employees. It is argued that the employees here involved should be compensated overtime after ten (10) hours on runs of 166 miles or greater.

While this Board can certainly understand the feelings of the employees who will be working under the final agreement covering this proposed Interdivisional Service from South Morrill to the mines, the Board must also recognize that it is virtually impossible to satisfy the desires of each employee when negotiating a contract covering many employees. Neither do such negotiated contracts grant to the Carrier all that it desires to secure in order to improve its operations in the most economical manner. The bargaining table is a "give and take" proposition and there is ample evidence that such "give and take" was displayed during the lengthy negotiations between the parties. The Board is confident that the issues raised by the employees, as set forth above, were clearly and concisely presented at the bargaining table and that such issues did not survive. This Board therefore is not inclined at this time to insert such provisions in an agreement which was reached by competent and experienced negotiators for both the Carrier and the Organizations.

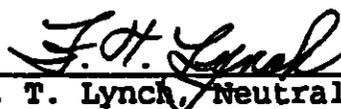
The Board does believe, however, that the language of PROPOSAL A should be clarified so as to indicate the minimum mileage guarantees for the Interdivisional Service contemplated by the agreement. To assist in this clarification, the Board has revised the language in PROPOSAL A and copies of certain pages of the proposal, necessary to effect this clarification, are attached to this Award. The parties should cooperate in making certain the additional language (shaded for emphasis) is properly incorporated into the agreement and that the language to be omitted (lined out for emphasis) is properly deleted.

While it is true that Carrier has argued before this Board that it has withdrawn PROPOSAL A and is now resting on its so-called Plan B, the Board finds this to be nothing more than an immediate adverse reaction to the notice that PROPOSAL A was not ratified. Carrier likewise has much invested in the bargaining talks which led to the agreement on PROPOSAL A and it is the opinion of this Board that the adoption of PROPOSAL A, as agreed upon at the bargaining table, and amended by this Award, will amply cover its request to implement Interdivisional Service between South Morrill, Nebraska, and the coal mines of the Powder River Basin.

Inasmuch as the Board has made certain recommendations to clarify the language of PROPOSAL A, the Board will retain jurisdiction of this dispute for a period of sixty (60) days following the date hereof so as to permit the Board to assist the parties in finalizing the agreement should such assistance become necessary.

As noted in the Bench Decision rendered at the meeting of this Board on August 27, 1998, and confirmed in an Interim Decision sent to the parties on August 31, 1998, Carrier was granted the right to commence implementation of this Interdivisional Service.

The answer to the questions posed by the Organizations is in the affirmative and the conditions for operation of this Interdivisional Service are as set forth in PROPOSAL A as agreed upon by the parties and sent to the Organizations on June 28, 1998, and amended by this Award. (For identification purposes the BLE Agreement bears number 1607019848 whereas the UTU Agreement bears number 2607019848.) The adoption of PROPOSAL A as amended by this Arbitration Board also serves to answer the question posed by Carrier.

  
\_\_\_\_\_  
F. T. Lynch, Neutral Chairman

Date September 29, 1998

**MEMORANDUM OF AGREEMENT  
#1612169972**

**between the  
UNION PACIFIC RAILROAD COMPANY  
For The Former CNW Territory**

**and the**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

---

**Order Of Turns  
South Morrill – Bill Pool Operations**

---

At the request of the Organization the Carrier is agreeable to amending the First-In, First-Out provisions set forth in MOA#1607019848, Article I, Section 3 – Rotary Pools of the South Morrill – Bill Interdivisional Pool Agreement under the following conditions:

**1. First-In, First-Out Operations Home Terminal.**

Engineers in the South Morrill – Bill Interdivisional pool will operate on a First-In, First-Out basis at the home terminal, South Morrill.

**2. Order Of Turns Operation Far Terminal.**

At the away from home terminal, Bill, Wyoming, Engineers will be placed in the order they left the home terminal, South Morrill.

**3. Claims/Grievances.**

It is understood there will be no claims/grievances or run arounds filed, or progressed on behalf of anyone as a result of the application of any portions of this agreement.

**4. General.**

This Memorandum Of Agreement will become effective December 27, 1999 and may be canceled by either party serving a ten (10) day advance written notice upon the other. Should this Agreement be canceled, the provisions outlined in Article I, Section 3 of the South Morrill – Bill Interdivisional agreement shall automatically apply.

Signed this 20<sup>th</sup> day of December, 1999.

**FOR THE  
BROTHERHOOD OF  
LOCOMOTIVE ENGINEERS**

B. D. MacArthur  
B.D. MACARTHUR  
GENERAL CHAIRMAN

**FOR THE  
UNION PACIFIC  
RAILROAD COMPANY:**

F. A. Tamisiea  
F.A. TAMISIEA  
FIELD DIRECTOR LABOR RELATIONS  
OPERATING - NORTH

42

**ARBITRATION BOARD NO. 580  
ESTABLISHED UNDER THE PROVISIONS OF  
ARTICLE IX OF ARBITRATION AWARD 458  
EFFECTIVE MAY 16, 1986**

<b>Union Pacific Railroad</b>	)	
	)	<b>PARTIES TO DISPUTE</b>
<b>Brotherhood of Locomotive Engineers</b>	)	

**BACKGROUND**

On January 23, 2002, the Carrier served an interdivisional/intradivisional service notice on the Organization in accordance with Article IX of the May 19, 1986 BLE National Agreement as revised. The notice proposed establishment of three (3) new freight pools, all of which had Dolores/ICTF (International Container Transfer Facility) in the Los Angeles Basin as their home terminal.

Item #1 in the proposal contemplated creation of an "intradivisional" turnaround freight pool to handle traffic in the terminal area defined by the Ports of Los Angeles and Long Beach on the south and City of Industry on the east with the home terminal at Dolores/ICTF located between those limits.

Item #2 in the proposal contemplated creation of a new freight pool operating between Dolores/ICTF and Yermo, California, with Dolores/ICTF as home terminal.

Item #3 in the proposal contemplated creation of a new freight pool operating between Dolores/ICTF and Yuma, Arizona, with Dolores/ICTF as home terminal.

At this time traffic originating at the Ports of Los Angeles and Long Beach (usually about three trains per day) and traffic originating at Dolores/ICTF (usually about six trains per day) is handled by crews from Los Angeles or West Colton to either Los Angeles (LATC) or to West Colton. The trains are then handled from those points by through freight crews to Yermo, California or Yuma, Arizona. Movement of traffic between the Ports and Dolores/ICTF has historically been a slow and time-consuming process. Train tracks in the area were intermixed with streets and there were literally hundreds of street crossings. Trains would be lucky to make 10 miles an hour in working their way through this territory. It was not unusual for trains to take three hours to traverse this territory.

Creation of this new service headquartered at Dolores/ICTF was made possible by a municipal project in which 20 miles of track was relocated into a subsurface trench with no road crossings. This eliminated in excess of 200 road crossings between the Ports and Dolores/ICTF. Trains are now able to make this run at a steady 45 miles per hour. This improvement in running time makes possible single crew operations from the Ports and/or Dolores/ICTF to Yuma, Arizona and Yermo, California. It is this interdivisional service that is created by items no. 2 and 3 in the interdivisional/intradivisional service notice.

The parties met on several dates, exchanged proposals, negotiated changes and clarified understandings relating to functioning of the new interdivisional/intradivisional service operation.

The negotiations reached a successful conclusion on all three proposed operations and a basic agreement was initialed. The parties intended to add final clarifying Side Letters and/or notes before finalizing the deal. Pursuant to the bylaws of the Brotherhood of Locomotive Engineers, the General Chairman submitted the basic agreement to each of the involved local committees for a ratification vote. The Agreement failed ratification. Accordingly, the parties jointly requested the appointment of this Arbitration Board in accordance with Section 4 of Article IX, and the parties now come before this Board seeking closure of this matter.

### FINDINGS

The Organization, which filed a voluminous submission, argues that the Agreement failed ratification because the employees wanted three items. These items are:

1. Away from home terminal hours of service relief performed by the pool that needed relief. In other words, long pool patch the long pool and the short pool patch the short pool. No co-mingling of away from home terminal crews for hours of service relief.
2. Three (3) hour call to report to duty.
3. Basin trip rates on the proposed service to Yermo, CA.

In Item number 1 the Organization wants each pool to do its own dog catching for crews that die under the Hours of Service Law. The Agreement proposed in Section 9d) that the West Colton Yuma Pool perform all Hours of Service Relief at Yuma if the Yuma Extra Board is exhausted. The Organization argues that the Engineers in the West Colton Yuma Pool will be stuck at Yuma.

The Carrier counters the argument by stating the crews established by the Agreement are in a longer run service and will be hauling the "hottest" commodities. Also, the Collective Bargaining Agreement limits the crews at Yuma to one short trip per time at Yuma.

The provision agreed to by the parties is not unreasonable, ergo it will not be changed.

The Organization argued vigorously because of the traffic around Los Angeles that engineers should be given a three hour call for work. The Carrier argues it cannot anticipate the readiness of a train by more than two hours, and that nobody presently has a three hour call in the Los Angeles area.

The Protective Conditions for Interdivisional Service provide for moving assistance if an employee is required to move because of the implementation of this service. A two hour call should be sufficient.

Finally, the Organization requests that assignments working on the West Colton to Yermo service be covered under the "Basin Trip Rates" established in a July 1, 1991 Agreement with the then Southern Pacific.

This Board lacks any authority to change rates of pay.

**AWARD**

After listening to the vigorous arguments of the Organization on all issues as well as Carrier's strong resistance to change the tentative agreement, this Board believes the tentative agreement adequately handles all issues. Accordingly, this Board adopts the parties tentative agreement, including the rates and such provisions as were effectively agreed upon by the parties which are included in the Attachment A to this Award. The Attachment will serve as the Implementing Agreement for the Carrier's proposed Interdivisional Service.

  
\_\_\_\_\_  
Robert G. Richter  
Chairman

\_\_\_\_\_  
Bill Hannah  
Employee Member

\_\_\_\_\_  
Al Hallberg  
Carrier Member

Dated May 27, 2003

**ARBITRATION AGREEMENT**

**between the**

**UNION PACIFIC RAILROAD COMPANY**

**and its engineers in the Los Angeles HUB represented by**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS (UP Western Lines)**

**ALAMEDA CORRIDOR INTERDIVISIONAL SERVICE**

*Pursuant to the Company's notice dated January 23, 2002, served under the provisions of Article IX of the May 1986 BLE National Agreement, as amended, three new freight pools will be created subject to the following conditions:*

**IT IS AGREED**

**Except as specifically provided herein the provisions of the Union Pacific Western Lines Collective Bargaining Agreement, as modified, including the Los Angeles Hub Implementing Agreement shall prevail.**

**Section 1: Terminals**

**All Engineers assigned to and filling vacancies, in this service will report at Dolores/CTF. (The on/off duty point has not yet been constructed and the precise location remains to be determined.)**

**Section 2: New Pool Freight Operations at Dolores/ICTF operating to Yermo and Yuma**

- a) **Dolores/ICTF shall be home terminal for a freight pool with Yermo as the away-from-home-terminal.**
- b) **Dolores/ICTF shall be home terminal for a freight pool with Yuma as the away-from-home-terminal.**
- c) **Engineers in these pools may be used on any of the routes in the Basin and can receive or leave their trains anywhere on their respective assignments (including on Dock locations).**

**Section 3: Multiple Trip Turnaround Pool Freight Service**

- a) **Unassigned turnaround pool freight service will be established to operate between ICTF/Dolores and Spadra and Walnut, via any route and return. Crews in this service can get or leave their trains anywhere in the territory covered by this pool.**
- b) **This also includes the territory south of ICTF/Dolores. These moves shall be made only in connection with their own trains for traffic to and from dockside, and to handle trains as necessary within the territory covered by this pool. It is recognized that the dock may be expanded and such expansions shall automatically be included as part of this agreement.**
- c) **Engineers shall not be required to depart the terminal limits on a subsequent trip after ten (10) hours on duty. Specifically no engineer can go east of C.P. Alameda after 10 hours on duty in the Alameda Corridor. Engineers will be under pay until returned to their on duty points. This Section 3(c) also applies to the engineers in the Colton Pool working at Dolores.**
- d) **This service will NOT operate beyond the following points:**
  - 1) **Walnut - MP 506.8**
  - 2) **Spadra -MP 27.8**

- 3) **LATC - MP 482.9 (Including Taylor Yard, and including movements on the Alhambra Subdivision.)**
- e) **Engineers operating in this service may be required to pick up or set out en route, but will not perform industrial switching.**  
**Note: This is subject to the "Road/Yard" provisions of applicable National Agreements.**
- f) **All engineers in violation of item 3(e) above will be compensated a basic day at Engineer Road Switcher rate of pay, in addition to and without deduction, from their earnings for this trip.**
- g) **All engineers in violation of item 3(d) above who are required to go beyond the limits of this assignment, or who exceed the 10 hour provision in Section 3(c), will be compensated a payment of a new day at the rate identified in Section 4, below, in addition to and without deduction from their earnings for their trip. Engineers who properly stood for this service will be compensated in accordance with Section 1 (e) of Article 12.**

**Section 4: Rates of Pay.**

- a) **All Pool engineers in this Section 3 Turnaround Pool service (excluding Yuma/Yermo) shall be paid in accordance with Sections 1, 2, 5, and 6 of the flat rate road switcher agreement effective September 16, 1996. (Currently identified in Los Angeles Hub Agreement VI Agreement Coverage B 2.d.)**
- b) **Made up assignments and/or extra assignments called to operate within the scope of this agreement will qualify for the trip rate created by this agreement.**

**Section 5: Transportation**

Engineers who are required to report for duty or are relieved from duty at a point other than the on duty and off duty points fixed for the service established hereunder, the Carrier shall authorize and provide suitable transportation for the crew.

**Note:** Suitable transportation includes Carrier owned or proved passenger carrying motor vehicles or taxi, but excludes other forms of public transportation.

All Engineers destined to Yuma covered by this agreement who are relieved en route will be deadheaded to the far terminal, except in cases of emergency, but will be allowed full mileage/earnings of assignment in either case. This language does not prohibit the Carrier from staging trains, (in the same direction).

**Section 6: Separation of Service**

The assignments established pursuant to this agreement are not intended to supplant or be supplanted by road switcher or local freight assignments.

**Section 7: Rest**

- a) In lieu of any other agreement provisions governing rest, engineers assigned to West Colton Yuma Pool will be permitted to mark eight (8), ten (10), or (12) hours of undisturbed rest at the away from home terminal.
- b) West Colton/Yuma Pool engineers deadheading back from Yuma, either separate and apart, or after completing service, will be allowed to mark eight (8), ten (10), twelve (12), or eighteen (18) hours UNDISTURBED rest at the home terminal, without any offset of New York Dock Protection. Engineers who mark additional rest will not have their protection offset if they are

available for and accept the next call tendered following expiration of the undisturbed rest.

**Note:** This paragraph is based on and is subject to the May 23, 1998 agreement titled "Action Plan for West Colton".

**Section 8: Call**

- a) Engineers assigned to or filling vacancies in this service shall be called two (2) hours prior to the on-duty time and will be placed to their respective board at ICTF/Dolores in the order of their tie-up time at the location where they reported for duty.
- b) Engineers called for a separate and apart deadhead will not be required to work back, until getting required rest, when reaching the far terminal, if there are other engineers rested and available.

**Note:** This paragraph (b) applies to the Dolores/ICTF/Yuma and the Dolores/ICTF/Yermo pools only.

**Section 9: Away from home terminals**

- a) Engineers arriving at the away from home terminal shall be placed on the bottom of the pool list at tie-up time.
- b) Engineers shall be allowed to voluntarily "blueprint" at their home terminals.
- c) Yuma shall operate as two away from home terminal pools (long and short) and crews shall be called on a first in/first out basis. Dolores/ICTF and LA engineers will be in the "long" pool. West Colton engineers will be in the "short" pool.
- d) The West Colton Yuma Pool (the short pool) will perform all hours of service relief not covered by the Yuma Extra List, (Side Letter #2, dated November

6, 1998, paragraph 2, of the Los Angeles Hub Implementing Agreement).  
This language creates a calling order for said service.

- e) It is not the intent of this Section to circumvent the provisions of Section 3(b) of Article 6 of the current agreement covering engineers.
- f) The Carrier shall work with the Local Chairmen to insure that the train identifiers are properly coded at the away from home terminals.

Note: This paragraph (f) does not limit the right of the Company to operate any train in any pool.

**Section 10: Lodging**

All engineers will be paid in lieu lodging if so requested.

Note: This applies in the Dolores/ICTF/Yuma-Yermo Pools only.

**Section 11: Familiarization.**

- a) Engineers covered by this Agreement whose assignments require performance of duties of a new geographic territory not familiar to them will be given familiarization opportunities as quickly as possible. Engineers will not be required to lose time or ride the road on their own time in order to qualify for these new operations.
- b) Engineers will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualification shall be handled with local operating officers. The parties recognize that different terrain and train tonnage impact the number of trips necessary and an operating officer will be assigned to this new operation that will work with the local managers of Operating practices in implementing this Section. If disputes occur under this Agreement they may be addressed

directly with the appropriate Director of Labor Relations and the General Chairman for expeditious resolution.

- c) It is understood that familiarization required pursuant to this agreement will be accomplished by calling a qualified engineer, peer engineer, (or qualified Manager of Operating Practices) to work with an engineer called for service on a geographical territory not familiar to the engineer.
- d) Engineers who work their assignment accompanied by an engineer taking a familiarization trip shall be paid one (1) hour at the pro rata rate, in addition to all other earnings for each tour of duty. This payment shall not be used to offset any extra board payments. The provisions of 3 (a) and (b) Training Conditions of the System Instructor Engineer Agreement shall apply to the regular engineer when the engineer taking the familiarization trip operates the locomotive.
- e) Locomotive Engineers will not be required to make the decision on whether or not an engineer being familiarized is sufficiently familiarized for the territory.

Section 12: Protection

- a) The provisions of Section 7 of Article IX of the May 19, 1986 Agreement shall apply to employees adversely affected by the application of this Agreement for wage protection and relocation benefits.
- b) Employees with New York Dock merger salary protection will be permitted to retain that protection while at the same time opting for relocation benefits pursuant to Section 7 of Article IX of the May 19, 1986 National Agreement.
- c) Section 3 of New York Dock permits engineers to elect which labor protection they wish to be protected under. By agreement between the parties, engineers may elect the protection governing this agreement and then switch to the number of years remaining under New York Dock or remain under New York Dock and switch to the remainder of the protection that this

agreement provides. Pursuant to New York Dock and Washington Job protection provisions an engineer may not receive duplicate benefits or count protection payments under another protection provision toward their test period average.

**Section 13: Temporary Lodging**

If, as a consequence of this transaction an employee is unable to hold a position at the original location, and is required to relocate to follow the work to Dolores, temporary lodging at the Company lodging facility in Long Beach will be provided for a period of up to ninety (90) calendar days. This benefit is intended to apply only to those employees who actually relocate.

**Section 14: Savings Clause**

The parties recognize that this Agreement was reached pursuant to Article IX of Arbitration Award 458, effective May 16, 1986, and agree that all agreements, side letter agreements, moratoriums, and understandings of the December 1, 1997, Southern Pacific Western Lines Modification Agreement, will remain in full force and effect subject to their terms unless specifically changed and/or modified by this Agreement and shall be subject to change pursuant to the Railway Labor Act, as amended.

7

**Section 15: Effective Date**

The Carrier will give the General Chairman fifteen (15) days' written notice of its intent to implement this agreement.

43

SPECIAL ARBITRATION BOARD

1...D  
FEB 20 2000  
Labor Relations

PARTIES TO DISPUTE:

Brotherhood of Locomotive Engineers  
(UP Southern General Committee of Adjustment)  
and  
Union Pacific Railroad

STATEMENT OF CLAIM:

The Carrier's proposed Terms and Conditions to be applied to interdivisional train service from a new home terminal at Beaumont, Texas does not conform to the requirements of Section 2-Conditions of Article IX of the Arbitrated 1986 BLE National Agreement.

BACKGROUND

On August 17, 1998, the Carrier served notice, pursuant to Article IX of the BLE 1986 National Agreement, to establish interdivisional train operations from a new home terminal at Beaumont, Texas to various away-from-home terminals. On December 3, 1998, the parties agreed to an Interim Beaumont Interdivisional Operation, without prejudice to either parties' position.

Following further negotiations, the parties were unable to reach agreement. Accordingly, the dispute was arbitrated on January 18, 2000.

FINDINGS

The General Chairman has provided a well-reasoned brief which he expanded upon at the arbitration hearing. The General Chairman recognizes that, pursuant to Article IX and a long-line of Arbitral Awards, the Carrier has the right to establish new interdivisional train service. However, he points out that Section 2-Conditions of Article IX requires that "reasonable and practical conditions shall govern the establishment" of train runs. Moreover, Section 2 provides

flexability in that it also states that the parties are "not limited" to the guidelines. In summary, he contends that the Carrier has not properly recognized and given weight to certain circumstances unique to the BLE. Accordingly, he argues that these elements, as explained in his brief and as argued at the arbitration hearing, should be incorporated in the final Award.

I have carefully reviewed the position of both parties in this matter. The same Article IX notice became the subject for arbitration between the Carrier and the United Transportation Union. On November 26, 1999, Arbitration Board No. 570 (Arbitrator John B. Criswell) issued its Award. I have no basis for not abiding my the substance of that Award. Accordingly, as is customary in these matters, there is attached to this Award an Agreement in the form of Terms and Conditions for final settlement of the dispute which is hereby imposed on the parties.

Dated this 25<sup>th</sup> day of February, 2000, at Arlington, VA.

  
\_\_\_\_\_  
Ekehard Muessig  
Arbitrator

**Terms and Conditions**  
**between the**  
**Union Pacific Railroad**  
**and the**  
**Brotherhood of Locomotive Engineers**  
**Interdivisional Service - Beaumont**

**ARTICLE I**

**Section 1: Service**

A. New Interdivisional Service shall be established from Beaumont, as the new home terminal, to the following points and paid the miles shown below with a minimum of a basic day when performing service or combination deadhead and service:

Home Terminal	Away from Home Terminal	Miles
Beaumont - E. Pool	LIVONIA	161 via Beaumont Subdivision 167 via Lafayette Subdivision
Beaumont - E. Pool	LAFAYETTE	129 via Lafayette Subdivision
Beaumont - E. Pool	ALEXANDRIA	148 via Beaumont Subdivision 153 via Lafayette Subdivision
Beaumont - W. Pool	HOUSTON	88 via Beaumont Subdivision to Settegast 85 via Beaumont Subdivision to Englewood 81 via Lafayette Subdivision to Settegast 82 via Lafayette Subdivision to Englewood
Beaumont - W. Pool	Hearne	195 miles via BN & SP to Hearne 213 miles via BN & Valley Jct. To Hearne

B. Crews may operate via any combination of UP and former SP trackage over the Lafayette or the Beaumont Subdivision between Beaumont and Livonia, Lafayette, Alexandria and Houston. Crews will be paid the miles run if routing is different than identified in Section A.

C. Beaumont pool turns established under this Agreement as well as the east long pool turn at Houston established under the Houston Hub Merger Agreement will operate on a

first in/first out basis at both the home and away-from-home terminals. As such, runarounds en route do not apply. The off duty time of a crew determines the first in conditions. If more than one (1) crew arrives at the same time, the order of first in will be based on the crew's order at time of call for original service.

**Section 2: Rates of Pay**

The provisions of the 1986 National Arbitration Award as amended by subsequent agreements shall apply.

**Section 3: Overtime**

Overtime will be calculated in accordance with the National Agreements.

**Section 4: Call**

All crews headquartered at Beaumont will receive a two (2) hour call for any service.

**Section 5: Transportation**

When a crew is required to deadhead or is required to take charge of a train or is relieved from duty at a point other than the on and off duty points identified in Section 1, the Carrier shall authorize and provide suitable transportation for the crew.

**Section 6: Meal Allowance and Eating Enroute**

In order to expedite the movement of interdivisional service, the Carrier shall determine the conditions under which such crews may stop to eat. When crews covered by this agreement are not permitted to stop and eat, such crews will be paid an allowance of \$1.50 for the trip in accordance with the provisions set forth in the 1986 National Arbitration Award.

**Section 7: Suitable Lodging**

Suitable lodging will be provided by the Carrier in accordance with existing Agreements.

**Section 8: Seniority / Pools and Extra Boards.**

A. Service from Beaumont to Livonia, Lafayette, Alexandria. A new east pool shall be established at Beaumont with multiple away-from-home terminals.

B. Service from Beaumont to Houston. A new west pool shall be established at Beaumont with Houston as the away-from-home terminal.

C. Service from Beaumont to Hearne/Valley Junction. This service will be protected by the new west pool.

**D. Beaumont Extra Board.** The existing engineer extra board at Beaumont shall protect vacancies in this new Interdivisional Pool Freight Service, other miscellaneous service the board currently protects, as well as all other service previously protected by the DeQuincy extra board. The Carrier will have the right to eliminate the DeQuincy extra board.

**E. Force Assigning.** All new positions not filled by employees voluntarily, will be filled by force assigning the junior engineer not working as such in the Houston Hub.

**Section 9: Repositioning Crews at the Away-From-Home Terminals**

**A.** The highway miles shown below will govern when crews are repositioned/ deadheaded between the following away-from-home terminals:

Alexandria – Lafayette	=	93 miles
Alexandria – Livonia	=	104 miles
Lafayette – Livonia	=	51 miles.

**B.** The repositioning conditions set forth in this Section are restricted to the terminals listed above.

**C.** Article 1,B,3,a. of the Houston Hub Merger Agreement regarding repositioning crews from one away from home terminal to another will apply.

**D.** This is subject to the conditions contained in Side Letter No. 1 of the Houston Hub Agreement.

**Section 10: Familiarization**

To ensure proper familiarization and compliance with applicable FRA regulations, if any, employees new to the territory will be provided with a sufficient number of familiarization trips over territory where they are not currently qualified. Issues concerning individual qualification shall be handled with local operating officers. Employees will not be required to lose time or "ride the road" on their own time in order to qualify for these new operations. Pay will be made in the same manner as if the employee had performed service. If a dispute arises concerning this process, it will be addressed directly with the appropriate Labor Relations Officer and the General Chairman.

**Section 11: Hours of Service Relief**

A. The provisions for Hours of Service Relief and the utilization of crews as set forth in the Livonia Interdivisional Agreement and the Houston Hub Merger Agreement for both the Houston east long pool and the DeQuincy Operation (short pools) will continue to apply with the exception the Beaumont extra board will replace the DeQuincy extra board.

**Section 12: Mileage Regulation**

Pools established by this Agreement shall be regulated in accordance with existing Agreements and practices.

**Section 13: Beaumont/Amelia**

A. Road crews at Beaumont may get or leave their trains at Amelia.

B. When west pool crews get or leave trains at Amelia, it will not change the road miles established in Section 1 of this Agreement. When east pool crews get or leave trains at Amelia, the Beaumont/Amelia road miles will be added to the trip mileage. The miles shall be both over and back as if in combination service.

C. This clause does not change the Beaumont Terminal limits.

**Section 14: Held-Away-From-Home Terminal Payments**

Crews covered by this Agreement will receive continuous held-away-from-home terminal payments for all time held at the far terminal after the expiration of sixteen hours.

**Section 15: Work Train/Turnaround Service**

All unassigned work train and/or turnaround service operating out of Beaumont will be protected by the Beaumont extra board.

**ARTICLE II**

**Section 1: Interim Pool and Extra Board Positions**

A. On the date of implementing this Agreement, the existing Beaumont Interim operation pool turns, the additional Interim operation extra board positions at Beaumont and any remaining extra board positions at DeQuincy will be abolished.

B. No less than fifteen (15) days prior to the date of implementing this Agreement, the new Beaumont short pool turns (east and west) along with all new additional Beaumont extra

board positions will be advertised. Assignment of employees to the new positions will be made ten (10) days from the date of advertisement and employees so assigned will assume their new positions at 12:01 a.m. on the date of implementing the Agreement.

**Note:** It is understood on the time and date of implementing this Agreement, employees may already be on duty and/or at the away from home terminals. Those employees will assume their new positions upon final tie-up at the home terminal.

**Section 2:** With the advance advertisement of new positions, employees whose positions will be abolished under Section 1 above, will not be permitted to exercise their seniority over junior employees who are assigned to the new positions so advertised. Employees who desire the new positions must obtain such through the advertisement process set forth in Subsection 1 B above.

### **ARTICLE III**

**Section 1 -** Subsequent to the implementation of this Agreement, employees who were occupying positions which were abolished as set forth in Article II, Section 1 of this Agreement and who as a result of this Agreement were required to change their place of residence from DeQuincy to Beaumont as defined in National Agreements and applicable Job Protection Agreements, will be provided Interdivisional Income and Homeowner/Moving Expense Protection pursuant to the relevant National Agreement provisions.

### **ARTICLE IV**

**Section 1 -** This Agreement will become effective on the date Carrier advertises the new positions as set forth in Article II, Section 1 B of this Agreement.

**Section 2 -** This Agreement is in compliance with the provisions set forth in the National Agreements.

**Section 3 -** Where in conflict with any other agreements, understandings or practices, the provisions of this Agreement will apply.

Imposed this 25<sup>th</sup> day of February, 2000 in accordance with Article IX Arbitration in conjunction with the attached award.

44

**PUBLIC LAW BOARD 6833**

**Award 40  
Case 40  
File No. 1418910**

**PARTIES TO DISPUTE:**

**Brotherhood of Locomotive Engineers and Trainmen  
And  
Union Pacific Railroad Company**

**QUESTION AT ISSUE:**

**"Issue: What shall be the terms and conditions for the Carrier's proposed interdivisional service operation between Fort Worth and Halsted, Texas?"**

**FINDINGS:**

**This Board, after hearing upon the whole record and all the evidence finds that the Carrier and the Employees involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.**

**On November 19, 2004, Union Pacific Railroad Company ("Carrier" or "UP") served notice upon the Brotherhood of Locomotive Engineers and Trainmen ("BLET") to establish new Interdivisional Service between Fort Worth and Halsted, Texas, pursuant to Article IX of the May 19, 1986 BLET National Implementing Agreement, as amended. Several negotiating sessions ensued yielding a proposed agreement that exceeded in several respects the conditions specified in Article IX. However, on March 21, 2005 the employees rejected this tentative agreement. Upon advise from BLET that the tentative agreement had failed ratification, UP withdrew its endorsement of the proposed agreement and has instead resubmitted the terms and conditions outlined in its initial notice, terms that were characterized by BLET during these proceedings as a "bare bones" agreement.**

The tentative agreement was withdrawn by UP primarily for two reasons. First and foremost, UP asserts that longstanding applications and interpretations of Article IX and strong and uniform arbitral precedents precludes this Board or any other forum from adopting the terms contained in the tentative agreement. Secondly, those same arbitral precedents hold that employees who reject the good faith effort of negotiators do so at their own peril and should not be rewarded therefor. Rejecting the tentative agreement that was negotiated in good faith hoping to embellish it in arbitration flies in the face of Article IX. UP argues the failure by BLET's constituents to ratify the generous terms of the tentative agreement is tantamount to a willful disregard of its obligation, as set forth in Article X of the 1991 National Agreement, to expediently progress negotiations governing new interdivisional service.

Carrier further submits that the United Transportation Union adopted certain enhanced customer service provisions that are unique to this service and therefore should be imposed due to the "commonality of interests" in implementing an efficient operation. Carrier points out Neutral R. E. Dennis in Arbitration Award 458 stipulates:

"The commonality of interests that these two groups of employees share is obvious. It is equally obvious that harmony among the pay and work rules governing these two groups must exist. As a practical matter, efficient rail operations demand no less."

In connection with the unique requirements of this particular service, the Board does not disagree.

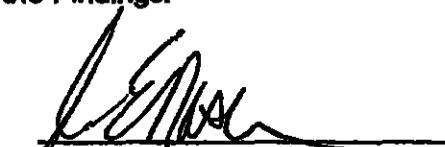
It was clear the negotiators fully understood the process and requirements for negotiating new interdivisional service runs. During this Board's hearing, both parties argued extensively on a wide range of issues and concerns regarding the appropriate terms and conditions of the new operation and cited substantial arbitral precedent dictating the appropriate terms to be incorporated into an arbitrating implementing agreement.

This tribunal's authority is not limitless and is in fact framed by the specific

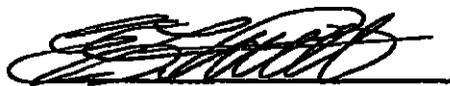
language of Article IX and by substantial arbitral precedent. As has been properly claimed by both parties, some items, arguendo, in the proposed agreement are not within the jurisdictional purview of this Board and thus cannot be imposed. However, given the parties understanding of the unique service requirements, as well as the compatible content of the tentative agreement, this Board concludes the terms and conditions, contained in the agreement, attached hereto, meet the conditions of Article IX of Arbitration Award 458 and constitute "reasonable and practicable conditions" for interdivisional service between Fort Worth and Halsted, Texas. This decision is predicated on the parties' specific, non-referable and non-presidential understanding to expand jurisdictional restraints placed on this Board and is thus not to be viewed as guiding or setting a precedent in any other interdivisional service disputes.

**AWARD:**

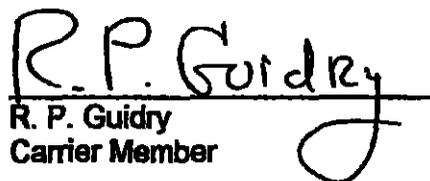
As indicated in the Findings.



J. E. (Jim) Nash  
Chairman and Neutral Member



E. L. Pruitt  
Organization Member



R. P. Guidry  
Carrier Member

June 1, 2005

**MEMORANDUM OF AGREEMENT**

**Between**

**UNION PACIFIC RAILROAD COMPANY**

**And the**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN**

**File No. 920.20**

\*\*\*\*\*

**ESTABLISHMENT OF INTERDIVISIONAL SERVICE  
BETWEEN FORT WORTH AND HALSTED, TEXAS**

\*\*\*\*\*

On November 19, 2004, Union Pacific Railroad Company ("Carrier" or "UP") served notice of its intention to establish new Interdivisional Service between Fort Worth and Halsted, Texas, under conditions set forth in Article IX of the May 19, 1986 BLET National Implementing Agreement, as amended.

Parties signatory hereto have, pursuant to the above-cited Article, agreed to the terms governing this new interdivisional service. Specifically, **IT IS AGREED:**

**I. Interdivisional Service**

**Section 1: Operations**

- A. Carrier may establish Interdivisional Service to operate between Fort Worth and Halsted, Texas.**
- B. Fort Worth, Texas will be the home terminal and Halsted, Texas the away-from-home terminal for employees working in this Interdivisional Service.**
- C. Route miles are as follows:**

**Between Fort Worth and Halsted via Hearne - 281 miles.  
Between Halsted and Fort Worth via Valley Junction - 259 miles.**

**Note 1: The mileage specified above that is to be paid for this Interdivisional Service is subject to final verification by the parties.**

**Note 2: Crews in this Interdivisional Service may**

operate over any and all routes or combination of routes as part of their assignment. Crews required to operate over alternate routes between Fort Worth and Halsted, Texas will be paid the actual miles operated center-of-yard Fort Worth (Centennial Yard) to center-of-yard Halsted or center-of-yard Halsted to center-of-yard Fort Worth (Centennial Yard) as may be the case. Questions regarding mileage over alternate routes may be handled with the Director - Labor Relations

**Note 3:** It is understood crews may also operate through Heame and Valley Junction over a longer and more circuitous route. In such a case, the actual miles operated will be paid as stipulated in Note 2 above.

D. Nothing herein shall preclude the Carrier from utilizing pre-existing pools and protecting extra boards as outlined in the Dallas - Fort Worth Hub and San Antonio Hub Implementing Agreements. It is understood the use of pre-existing pools to handle traffic between Fort Worth and Halsted or Halsted and Fort Worth shall be consistent with respective Hub Implementing Agreements.

**Section 2: Meals En Route**

Meals en route for employees working in this service will be governed by Article IX, Section 2, Paragraph (e) of the May 19, 1986 BLET National Agreement.

**Note:** The meal en route provision set forth in this Section 2, as well as other pay elements contained in Article V of the December 16th, 2003 BLET National Agreement, will be included in the trip rate established for this service consistent with trip rates implemented for other pools.

**Section 3: Away-From-Home Terminal Meals**

Away-from-home terminal meal allowances for employees working in this service will be governed by Article IX, Section 2, Paragraph (d) of the May 19, 1986 BLET National Agreement as amended.

**Section 4: Transportation**

The provisions of Article IX, Section 2, Paragraph (c) of the May 19, 1986 BLET National Agreement will apply for employees working in this service. Side Letters 1 and 2 of the Dallas - Fort Worth Hub Implementing agreement are applicable to this Interdivisional Service.

**Section 5: Suitable Lodging**

The Carrier will, in accordance with applicable existing Agreement requirements, provide suitable lodging at the away-from-home terminal for employees working in this service.

**Section 6: Hours-of-Service Relief**

- A. Except as otherwise specified in this agreement, the protecting extra board at Fort Worth, if available, shall handle turnaround and hours of service relief for trains in this Interdivisional Service that are North of Hearne, Texas and destined to Fort Worth prior to using crews from the Fort Worth - Halsted or Fort Worth - Taylor/Hearne/Smithville pools on a turnaround basis.
- B. Except as otherwise specified in this agreement, the protecting extra board at Smithville, if available, shall handle turnaround and hours of service relief for trains in this Interdivisional Service that are South of Hearne, Texas and destined to Halsted prior to using Fort Worth - Halsted pool crews laying over at Halsted on a turnaround basis or pool crews from Smithville. Smithville crews used in turnaround and hours of service relief for trains in this Interdivisional Service destined to Halsted will tie-up at Smithville upon completion of their trip.
- C. Nothing herein shall prevent the use of other crews to perform work currently permitted by prevailing agreements, including, but not limited to, yard crews performing hours-of-service relief within road/yard service zones, pool crews performing through freight combined service/deadheads between terminals, TSE/road switchers

handling trains within their zones, enhanced customer service TSE assignments, and/or using an engineer and/or trainman from a following train to work a preceding train.

### **Section 7 - Familiarization**

To insure proper familiarization upon implementation of this Interdivisional Service, employees assigned to the ID run established by this Agreement will be provided with a sufficient number of familiarization trips over territory where they are not currently qualified. Issues concerning individual qualifications shall be handled with local operating officers. Employees will not be required to lose time or "ride the road" on their own time in order to qualify for these new operations. Pay will be made in the same manner as if the employee had performed service. If a dispute arises concerning this process, it will be addressed directly with the appropriate Labor Relations officer and General Chairman.

### **Section 8 - Conditions**

Without prejudice to the position of either party, Article III, Section B and related questions and answers contained in the DFW Hub Implementing Agreement shall apply to this Interdivisional Service. However, it is understood the terms and conditions hereby extended to this Interdivisional Service are intended to address and/or apply to the interdivisional service run between Fort Worth and Halsted, Texas. Such terms and conditions will not be referred to in connection with any other case, agreement (local or national) and/or dispute resolution.

## **II. Seniority Assignments**

### **Section 1: Allocation**

Work opportunities in this Interdivisional Service shall be allocated to employees of the DFW and San Antonio Hubs as follows:

<b><u>Turn #</u></b>	<b><u>Hub Allocation</u></b>	<b><u>Turn#</u></b>	<b><u>Hub Allocation</u></b>
1	DFW	11	DFW
2	San Antonio	12	DFW
3	DFW	13	San Antonio
4	DFW	14	DFW
5	DFW	15	DFW
6	San Antonio	16	DFW

7	DFW	17	San Antonio
8	DFW	18	DFW
9	San Antonio	19	DFW
10	DFW	20	San Antonio

## **Section 2: Assignments**

- A.** All applications, bids, and seniority moves that are made to assignments in this Interdivisional Service shall be considered a voluntary exercise of seniority. Respective employees from the DFW and San Antonio Hubs who apply for or make seniority moves to this Interdivisional Service shall be assigned in seniority order among their peers according to the work allocation table set forth in Section 1 above.
- B.** Employees from the DFW Hub may apply or make seniority moves to the San Antonio Hub positions should employees from the San Antonio Hub not apply for or make seniority moves to their respective positions. When a DFW Hub employee is assigned to a San Antonio position consistent with this Section B, a San Antonio Hub employee may not displace to or on that position until the DFW Hub employee assigned thereto has made at least one (1) round trip.
- C.** Should CMS not receive any applications for an advertisement or assignment in this Interdivisional Service, an employee from the DFW Hub shall be assigned to that position consistent with controlling agreement provisions.
- D.** Except as otherwise provided in this agreement, the appropriate extra board at Fort Worth shall protect extra vacancies that occur in this Interdivisional Service.

## **III. Protective Conditions**

Employees adversely affected as a result of implementation of this Agreement will be entitled to the protective benefits set forth in Article IX, Section 7 of the May 19, 1986 BLET National Agreement.

## **IV. Implementation**

The Carrier shall give the General Chairman fifteen (15) days written notice of its intent to implement this Agreement.

**V. General**

**Section 1: Savings Clauses**

- A. This agreement will not prejudice the position of either party and will not be referred to in connection with any other case, agreement (local or national) and/or dispute resolution.
- B. In the event provisions of this Agreement conflict with any other agreements, understandings or practices, the provisions set forth herein shall prevail and apply. Agreements, understandings or practices that were not modified by, or in conflict with, the provisions of this Agreement remain in full force and effect.
- C. The terms and conditions of this Agreement are intended to address and/or apply to the interdivisional service run between Fort Worth and Halsted, Texas. Accordingly, such terms and conditions shall not be applied, or interpreted to apply, to other locations, runs, etc.

**Section 2:**

This Agreement was signed March 21, 2005 in Spring, Texas and may be implemented as outlined in Article IV of this agreement.

**FOR THE BLET**

**FOR THE UNION PACIFIC  
RAILROAD:**

\_\_\_\_\_  
**Gil Gore**  
**General Chairman, BLET**

\_\_\_\_\_  
**R. P. Guidry**  
**Director – Labor Relations**

**UNION PACIFIC RAILROAD COMPANY**



March 21, 2005  
Side Letter 1

Mr. Gif Gore  
General Chairman  
Brotherhood of Locomotive Engineers  
1448 Mac Arthur Ave.  
Harvey, Louisiana 70058

Dear Sir:

This will confirm our discussions regarding Article II, Sections 1 and 2 of the Agreement dated March 21, 2005 establishing Interdivisional Service between Fort Worth and Halsted, Texas.

Consistent therewith, it is agreed that employees from the San Antonio Hub who make seniority moves to work opportunities allocated in Article II, Section 1, will be permitted to opt for an in lieu of lodging allowance under terms and conditions outlined below.

1. The provisions contained in this Side Letter 1 are contingent upon a successful ratification and execution of this Interdivisional Agreement on or before April 1, 2005. The Organization agrees to waive notice requirements contained in Article IV of this Interdivisional Agreement should its ratification process interfere with a April 1, 2005 timeline. The signing of this Interdivisional Agreement by all parties on or before April 1, 2005 is considered a successful execution thereof.
2. If a San Antonio Hub employee is regularly assigned to a position at Fort Worth that is allocated to the San Antonio Hub and, by working such assignment would be contractually entitled to suitable lodging at Halsted, he/she may, in lieu of using the Carrier-provided lodging at Halsted, claim and receive a \$25.00 cash allowance. It is understood said allowance is to be paid only when the San Antonio Hub employee actually works the assignment and would have qualified for lodging.
3. San Antonio Hub employees who opt for the \$25.00 in lieu of lodging allowance must commit to this allowance for minimum of

one year, must not use Carrier-provided lodging at Halsted in the intervening time and must advise the Regional CMS Director and Regional Timekeeping Director in writing or via VMX of their election.

4. It is understood this in lieu of lodging allowance is only extended to San Antonio Hub employees that are assigned to this Interdivisional Service. Accordingly, such terms and conditions will not apply to employees in any other service within the San Antonio Hub and will not apply to any other employees or any other service in any other Hub. This agreement will not prejudice the position of either party, will not be referred to in connection with any other case, agreement (local or national) and/or dispute resolution.
5. This Side Letter 1 will automatically terminate effective 12:01 A.M, April 1, 2010 and the in lieu of lodging allowance specified herein shall cease to be paid.

If you agree with the terms and conditions outlined above, please indicate by signing in the space provided.

Respectfully,

R. P. Guidry  
Director - Labor Relations

Agreed:

---

Gil Gore  
General Chairman - BLET

UNION PACIFIC RAILROAD COMPANY



March 21, 2005

Mr. Gil Gore  
General Chairman  
Brotherhood of Locomotive Engineers  
1448 Mac Arthur Ave.  
Harvey, Louisiana 70058

Dear Sir:

This will confirm our discussions with regard to improving cycle times for coal trains and other specific service issues involving the LCRA Coal Facility at Halsted, Texas. In connection therewith, the parties have agreed to the following relaxation of work rules to enhance service to the LCRA Coal Facility.

1. As necessary, the Carrier may operate enhanced customer service TSE assignments that will facilitate and expedite movement of coal trains to, from and within the LCRA Coal Facility at Halsted, Texas.
2. Enhanced customer service TSE assignments operated or established pursuant to this agreement may operate to and/or from sidings and/or track facilities at Caldwell, Taylor and Sealy, Texas during their tour of duty.
3. Enhanced customer service TSE assignments operated or established pursuant to this agreement need not be regularly assigned and may not have fixed starting times. All other work and operating parameters applicable to traditional TSE assignments are applicable to these customer enhanced TSE assignments.
4. Crews from the Smithville extra board will be called for enhanced customer service TSE assignments that are not regularly assigned and will go on and off duty at Smithville, Texas.
5. Should an enhanced customer service TSE assignment operate with enough reasonable regularity and predictability so as to establish a regular assignment five (5) or more days per week, a

regular assignment shall be advertised.

6. There are no restrictions on work that may be performed by enhanced customer service TSE assignments, however it is understood the preponderance of service must be affiliated with the movement of coal trains to, from and within the LCRA Coal Facility.

It is understood provisions of this agreement will not prejudice the position of either party, will not be referred to in connection with any other case, agreement (local or national) and/or dispute resolution and may be cancelled by either party upon serving thirty (30) days written notice to the other. Moreover and with the same understanding, should the LCRA Coal Facility at Halsted opt to use another operator for its facility, this agreement will automatically cancel and terminate ten (10) days from the date the other operator commences its operation.

If you agree with the terms and conditions outlined above, please indicate by signing in the space provided.

Respectfully,

R. P. Guidry  
Director - Labor Relations

Agreed.

---

Gil Gore  
General Chairman - BLET

45

**UNION PACIFIC RAILROAD COMPANY**



May 16, 2000  
920.20-32

1416 Dodge Street  
Omaha, Nebraska 68179

920.40-25

Mr. S. B. Rudel  
General Chairman UTU  
137 Sycamore School Road Suite 101  
Fort Worth, TX 76134

Mr. E. L. Pruitt  
General Chairman BLE  
2414 Edison Hwy  
Bakersfield, CA 93307

Mr. W. R. Slone  
General Chairman BLE  
6207 Airport Freeway  
Fort Worth, TX 76117-5321

Mr. K. Klein  
General Chairperson UTU  
1860 El Camino Real, suite 201  
Burlingame, CA 94010

Mr. J. Previsich  
General Chairperson UTU  
1860 El Camino Real, suite 201  
Burlingame, CA 94010

Gentlemen:

Pursuant to Article IX "Interdivisional Service" of the October 31, 1985 UTU National Agreement (as amended) and the May 19, 1986 BLE Arbitration Award (as amended), this notice is served to establish interdivisional pool freight service with home terminals of El Paso and Sweetwater, Texas and a common away from home terminal of Pecos, Texas. A proposed Memorandum of Agreement on this new Service is attached for your benefit.

As provided in Section 3 of the above Article, Carrier suggests the parties meet in El Paso with the UTU meeting scheduled for June 21st and the BLE meeting for June 22nd.

Yours truly,

Handwritten signature of W. S. Hinckley in black ink.  
W. S. Hinckley

Handwritten signature of W. E. Loomis in black ink.  
W. E. Loomis

# MEMORANDUM OF AGREEMENT

between the

**UNION PACIFIC RAILROAD**

and the

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

---

## INTERDIVISIONAL OPERATIONS El Paso to Pecos

---

### IT IS AGREED:

On May 12, 2000, the Company served notice of its intention to establish new interdivisional operations between El Paso and Pecos, Texas, under the provisions of Article IX of the May 19, 1986 BLE Arbitration Award as amended.

The parties signatory hereto pursuant to the above cited Article, have reached the following interdivisional conditions:

### CONDITIONS

#### Article I – Interdivisional Service

##### Section 1 – Home Terminal

- (a) El Paso, Texas, shall be the home terminal for employees working in the interdivisional service and Pecos, Texas, shall be the away from home terminal.

##### Section 2 – Terminal Limits

- (a) The Pecos terminal limits shall be MP 644 on the East and MP 654 on the West.

##### Section 3 – Miles Run/Operation

- (a) The miles of the run shall be 211.

**Section 4 – Conditions of Service**

- (a) Except for the miles of the assignment the provisions of the DFW Hub agreement covering the former El Paso to Toyah pool run shall apply to this service.

**Article II – Implementation**

**Section 1.**

- (a) The Carrier shall give the General Chairman fifteen (15) days written notice of its desire to implement the Agreement. Assignments in this pool will not be rebulletined and employees in the El Paso to Toyah pool will be placed in this pool.

**Article III – Protection Conditions**

**Section 1.**

- (a) All engineers adversely affected by this Agreement will be entitled to the protective benefits of Article IX, Section 7 of the May 19, 1986 Award.
  - (1) Any engineer who has NYD protective benefits due to the implementation of the Southwest Hub Agreement will have the option of continuing those protective benefits or electing the benefits of Article IX, Section 7 of the May 19, 1986 Award.

**Article IV – Effective Date – General**

**Section 1.**

Where in conflict with any other agreements, understandings or practices, the provisions of this Agreement will apply.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2000.

**FOR THE BROTHERHOOD OF  
LOCOMOTIVE ENGINEERS:**

**FOR THE UNION PACIFIC  
RAILROAD COMPANY:**

\_\_\_\_\_  
E. L. Pruitt  
General Chairman BLE

\_\_\_\_\_  
W. E. Loomis  
General Director Labor Relations

46

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET  
OMAHA, NEBRASKA 68179



August 17, 2000

File: 920-10

**VIA FAX AND OVERNIGHT MAIL**

**MR J W BABLER  
GENERAL CHAIRMAN UTU  
307 W LAYTON AVE  
MILWAUKEE WI 53207  
(414) 489-3705**

**MR B D MACARTHUR  
GENERAL CHAIRMAN BLE  
217 FIFTH AVE S STE 502  
CLINTON IA 52732  
(319) 243-1109**

**Gentlemen:**

**In accordance with Article IX—Interdivisional Service—of the October 31, 1985 UTU National Agreement and the Award of Arbitration Board No. 458 (BLE) please accept this as notification of the Carrier's desire to establish interdivisional pool freight service between Chicago and South Pekin, Illinois, via Nelson, conditions as set forth in Section 2 thereof, as amended.**

**I suggest we meet in Omaha on August 24, 2000 at 1:00 p.m. in Hdqtrs., Conference Room 321-A to discuss this service. Please advise.**

**Sincerely,**

A handwritten signature in black ink that reads "J.G. Albano".

**Jim Albano  
Director Labor Relations**

**CC: John Raaz  
David Barnes  
Roger Lambeth  
Dick Meredith**

**MEMORANDUM OF AGREEMENT #1610010048**

between the

**UNION PACIFIC RAILROAD**

and the

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

---

**INTERDIVISIONAL OPERATIONS  
South Pekin to Chicago/Clinton**

---

**IT IS AGREED:**

On August 24, 2000 the Company served notice to establish dual-destination interdivisional service home terminated at South Pekin, Illinois operating via Nelson to Chicago/Clinton.

The parties signatory hereto pursuant to the above cited Article, agree to the following interdivisional conditions:

**CONDITIONS**

**Article I – Interdivisional Service**

**Section 1 – Home Terminal**

- (a) South Pekin, Illinois shall be the home terminal for employees working in the interdivisional service between South Pekin and Chicago/Clinton, the dual-destination away from home terminals for this interdivisional service.

**NOTE:** Effective with implementation of this IDR Agreement, the engineer pool operating between South Pekin, Illinois and Clinton, Iowa will be abolished and concurrently reestablished under the conditions-set forth in this IDR Agreement. The parties agree that in the event this IDR Agreement is suspended, canceled, or otherwise modified in relevant part, the conditions prevalent prior to its implementation will be concurrently reestablished. For example, but not limited thereto, the South Pekin to Clinton engineer pool will be reestablished under the conditions set forth at Art. II, Sec. 5(d) of the Mikrut Award implementing the 1996 C&NW/UP Merger Agreement

**Section 2 – District Miles/Miles Run/Operation**

- (a) Crews used in straight-away, terminal-to-terminal service will be paid district miles. For the purposes of this IDR Agreement, district mileage between

- South Pekin and Chicago is 200, and district mileage between South Pekin and Clinton is 133. In the application of this provision, neither terminal nor rubber tire miles will be paid. All service not covered by this provision will be paid miles run with a minimum of a basic day.
- (b) Crews used in turn-around service out of the away from home terminal at Clinton will be paid the miles of the assignment with a minimum of a basic day, and upon tie-up, may be deadheaded in combination service to the home terminal. AHT crews at Clinton performing turnaround service and not immediately deadheaded to the home terminal, will be held first-out for call pending legal rest for a thru-train, deadhead, or service and deadhead combined back to the home terminal. No runarounds will accrue as a result of this provision.
  - (c) Except in emergency (defined as when RE80 and XE80 at Proviso [NZ021] are exhausted), crews will not be used in turn-around service out of the away from home terminal at Chicago. Crews so used will be subject to the conditions set forth in (b) above.
  - (d) Crews will not be used in straight away service from one AHT to the other AHT (Clinton to/from Chicago)

### **Section 3 – Rates of Pay**

- (a) The basic day and rates of pay for employees engaged in interdivisional operations will be governed by the provisions of the Award of Arbitration Board No. 458, the November 7, 1991 BLE National Implementing Document, the 1992 Memorandum of Agreement (Crew Consist) as amended by the June 6, 1996 Understanding and the May 31, 1996 National Agreement.
- (b) Held away from home time at Chicago/Clinton shall be paid continuously for all time held after 16 hours from the time released from duty until time on duty. For AHT crews called to deadhead, held away ceases upon departure.
- (c) All service coupled with deadhead during any single tour of duty shall be paid as combination service without requiring such notification from the Carrier.

### **Section 4 – Overtime**

- (a) Overtime will be paid in accordance with Article IV(2) of the November 1, 1991 Agreed Upon Implementation of Public Law 102-29. For crews operating in straight-away, terminal-to-terminal service between South Pekin and Chicago [subject to this Article, Sec. 2(a)], overtime will begin after twelve (12) hours on-duty.

### **Section 5 – Transportation**

- (a) Transportation will be provided in accordance with Section 2(c) of Article IX of the Award of Arbitration Board No. 458.

### Section 6 – Meal Allowance and Eating Enroute

- (a) Meal allowances will be governed by Article VI of the PEB 219 Implementing Agreement.
- (b) Eating en route will be governed by Section 2(e) of Article IX of the Award of Arbitration Board No. 458.

### Section 7 – Lodging

- (a) Regular assigned and extra board engineers who are used in this service will be provided lodging by the Carrier in accordance with existing agreements.

### Section 8 – Extra Boards/Hours of Service

- (a) The existing extra board at South Pekin shall protect vacancies in the interdivisional pool freight service as well as all other services the extra board currently protects.
- (b) Hours of service relief may be effectuated by any means consistent with relevant agreement provisions currently in effect. For example, but not limited thereto, interdivisional crews may be called in combined service to deadhead and relieve crews between terminals; crews from a following train may relieve the crew of a preceding train; relief service may be effectuated from the extra board protecting interdivisional service.

## Article II – Implementation

### Section 1.

- (a) The Carrier shall give the General Chairman written notice of its desire to implement the Agreement. Assignments to the new turns will be made within five (5) days from the date of advertisement and employees so assigned will assume their new positions at 12:01 AM on the date of implementing the Agreement.
- (b) Upon implementation of this Agreement, any employees who are not qualified on the territory assigned will not be required to lose time or "ride the road" on their own time in order to qualify. The Carrier will determine the number of familiarization trips needed for each employee and for each run. Local union representatives will be advised of the number of trips. When possible, a qualified engineer from one portion of the new run will ride with a qualified engineer from another portion of the run. In this way, the employees will be able to assist one another during familiarization.

**NOTE:** It is understood on the time and date of implementing this agreement, employees may already be on duty or at away from home terminal. Those employees will assume their new positions upon final tie-up at the home terminal

### Article III – Protection Conditions

#### Section 1.

(a) All engineers adversely affected by this Agreement will be entitled to the protective benefits of Article IX, Section 7 of the Award of Arbitration Board No. 458.

- (1) Any engineer who has NYD protective benefits due to the implementation of the UP/C&NW Merger Agreement will have the option of continuing those protective benefits or electing the benefits of Article IX, Section 7 of the Award of Arbitration Board No. 458.

**NOTE:** For the purposes of this IDR Agreement, the phrase "adversely affected" means the employee has suffered diminished income by reference to his/her test period average (TPA) in at least four (4) months out of the second through seventh (7<sup>th</sup>) calendar month following implementation of this IDR Agreement. Unusual earnings associated with operational start-up issues will not be included in the calculation of income for the purpose of determining adverse affect. Side Letter No. 1 to this IDR Agreement will identify the calendar months relevant to the determination of those employees adversely affected, if any, as a result of the establishment of this interdivisional service.

### Article IV – Protection Benefit Provisions

#### Section 1.

(a) Subsequent to the implementation of this Agreement, each employee who, as a result of this Agreement, is required to relocate and elects to change his or her place of residence as defined in the following NOTE, may elect one (1) of the following Protection Benefit provisions:

**OPTION 1:** Accept the INCOME PROTECTION (*must be adversely affected as defined by the NOTE in Article III, Sec. 1*) and HOMEOWNER PROTECTION AND MOVING EXPENSE BENEFITS of the National Agreements and/or applicable Protection Agreements, or

**OPTION 2:** Accept the INCOME PROTECTION (*must be adversely affected as defined by the NOTE in Article III, Sec. 1*) of the aforementioned Agreements as amended BUT IN LIEU OF THE HOMEOWNER PROTECTION AND MOVING EXPENSE BENEFITS, accept a lump sum allowance of:

- a) \$20,000 for homeowners
- b) \$5,000 for non-homeowners, or

CARRIER'S EXHIBIT D  
PAGE 4 OF 12

**OPTION 3: Elect to Accept in LIEU OF THE INCOME PROTECTION (must be adversely affected as defined by the NOTE in Article III, Sec. 1) AND HOMEOWNER PROTECTION AND MOVING EXPENSE BENEFITS of the aforementioned agreements, a lump sum allowance of.**

- a) \$30,000 for homeowners, or
- b) \$10,000 for non-homeowners

**(Employees electing OPTION 3 who are found to be NOT adversely affected as defined by the NOTE in Article III, Sec. 1 will be treated as having elected OPTION 2.)**

**NOTE: For the purposes of this IDR Agreement, the phrase "change place of residence" contemplates an employee's actual, physical relocation, for a period of not less than one (1) year, seniority permitting, from his or her primary residence at a location distant from the home terminal identified in this Agreement to a new primary residence in the vicinity of the home terminal.**

**(b) The election for the Protection Benefit provisions will be made on the election form, which is Attachment "A" of this Agreement**

**(c) Each employee as defined in Subsection (a) of this Section 1 at their request will be provided the election form no later than ten (10) days from the date requested.**

**(d) Election of the benefits must be requested by the employee within one (1) year from the date of implementing this Agreement.**

**Section 2.**

**(a) The term "homeowner" as used in Section 1 is defined as an employee who, on the date of implementing this Agreement, owned his or her home or was under contract to purchase a home. Employees who do not own their home or are not under contract to purchase a home will be considered as non-homeowners (renters).**

**(b) The term "home" as used in any Section of this Article means the single primary, permanent residence of the employee which is used for residential purposes only.**

**(c) If an employee owns and is under contract to purchase and occupies a mobile home on a permanent foundation as his or her residence, such employee will be treated as "homeowner" under applicable provisions of this Article.**

**Section 3.**

**(a) Employees will be provided an income test period earning statement, and if adversely affected as defined in the NOTE in Article III, Section 1(a), they will be provided income protection as set forth by the applicable National and Protection Agreements.**

**(b) Employees who elect Option 1 will be provided the Moving Expense Benefits once said employee documents the relocation. In this regard, should there be any controversy with respect to the value of the home, the loss sustained in its sale, the loss under a contract of purchase, loss and cost in securing termination of lease, or any question in connection with these matters, it shall be decided through joint conference**

between the parties signatory hereto and in the event they are unable to agree, the dispute may be referred by either party to a Board of three competent real estate appraisers, selected in the following manner: One to be selected by the Organization and the Carrier, respectively; these two shall endeavor by agreement within ten (10) days to select the third appraiser, or to select some individual authorized to name the third appraiser and in the event of failure to agree, the Chairman of the National Mediation Board shall be requested to appoint the third appraiser. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the salary of the appraiser selected by such party.

#### Section 4.

(a) Employees other than those identified in Section 1 of this Article (not required to change place of residence) who are assigned to a new position under this Agreement and /or whose position is abolished as a result of this Agreement, will upon request be provided an income test period earning statement and if such employees are adversely affected, as defined in the NOTE in Article III, Section 1(a), they will also be provided the income protection as set forth in applicable National and Protection Agreements.

#### Section 5.

(a) There shall be no duplication of benefits receivable by any employee under this Agreement and any other agreement of protective arrangement.

(b) Employees referred to in this Article who are receiving the protective income benefits prescribed under this Agreement shall, at the expiration of their protective period, be entitled to such protective benefits under the other previous applicable protective agreements provided they have continued to maintain their responsibilities and obligations under the applicable protective agreements and arrangements.

#### Section 6.

(a) Carrier will not require an employee to change his or her place of residence solely for the purpose of having such employee obtain a higher rated position under the Income Protection Conditions. Such employee will however be required to obtain the highest rated position at their work location.

CARRIER'S EXHIBIT D

PAGE 6 OF 12

**Article IV – Effective Date – General**

**Section 1.**

Except as specifically provided herein, the system and national collective bargaining agreements awards and interpretations shall prevail. Where in conflict with any other agreements, understandings or practices, the provisions of this Agreement will apply.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2000.

**FOR THE BLE:**

**FOR THE UPRR:**

\_\_\_\_\_  
B D MacArthur  
General Chairman BLE

\_\_\_\_\_  
J. M. Raaz  
AVP Labor Relations

CARRIER'S EXHIBIT D  
PAGE 7 OF 12

**ATTACHMENT "A"**

**PROTECTION BENEFIT PROVISIONS  
ELECTION FORM**

In accordance with Article IV of Memorandum of Agreement #1610010048 establishing Interdivisional Freight Service operations between South Pekin, Illinois and Chicago/Clinton, I understand that I must make an election as to my Protection Benefit Provisions, choosing one (1) of the following options:

**(Check One OPTION only)**

OPTION 1. \_\_\_\_\_ The Income Protection (*must be adversely affected as defined by the NOTE in Article III, Sec. 1*) and Homeowner Protection and Moving Expense Benefits as provided in National and/or Protection Agreements.

OPTION 2. \_\_\_\_\_ The Income Protection (*must be adversely affected as defined by the NOTE in Article III, Sec. 1*), but in lieu of the Homeowner and Moving Benefits accept a Lump Sum Allowance of:

(Check one.) \_\_\_\_\_ \$20,000 as a homeowner, or

\_\_\_\_\_ \$5,000 as a non-homeowner

OPTION 3. \_\_\_\_\_ In lieu of Income Protection (*must be adversely affected as defined by the NOTE in Article III, Sec. 1*) and Homeowner Protection and Moving Expense Benefits as provided in the WJPA as amended, a Lump Sum Allowance of:

(Check one:) \_\_\_\_\_ \$30,000 as a homeowner

\_\_\_\_\_ \$10,000 as a non-homeowner

**(Employees electing OPTION 3 who are found to be NOT adversely affected as defined by the NOTE in Article III, Sec. 1 will be treated as having elected OPTION 2.)**

I understand the definitions of a "homeowner" and "home" as set forth in Article IV and if I am a homeowner, whether I elect OPTION 1, 2, or 3, I further understand that I must attach a copy of my deed to my home, with an original Notary Public signature, to this election form.

(Please Print)

NAME \_\_\_\_\_

SS# \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

This form is to be mailed to J. G. Albano, Director-Labor Relations, 1416 Dodge St., Rm 330, Omaha, NE 68179

ARRIERS EXHIBIT D

5 of 12

September 19, 2000

MOA #1610010048  
Side Letter #1

MR B D MACARTHUR  
GENERAL CHAIRMAN BLE  
217 FIFTH AVE S STE 502  
CLINTON IOWA 52732

Dear Sir:

Consistent with the NOTE at Article III, Section 1(a) of the above referenced IDR Agreement, this will confirm our understanding that the six (6) month post-implementation period beginning November 1, 2000 and running through April of 2001 will be used to determine whether or not an employee is "adversely affected."

This six (6) month period is being established to create a fair test period, that is unaffected by the increase in traffic due to the closure of the Mississippi River. To be considered "adversely affected," an employee must demonstrate diminished earnings in no less than four (4) of the six (6) months.

Please signify your concurrence by signing and dating in the space provided below.

Sincerely,

Jim Albano  
Director Labor Relations

CONCUR:

\_\_\_\_\_  
General Chairman BLE

\_\_\_\_\_  
Date

CARRIER'S EXHIBIT 2

PAGE 9 OF 12

September 19, 2000

MOA#1610010048  
Side Letter No. 2

MR B D MACARTHUR  
GENERAL CHAIRMAN BLE  
217 FIFTH AVE S STE 502  
CLINTON IA 52732

Dear Sir:

This refers to the above captioned agreement and our discussion held in conference in your office on September 13, 2000.

This will confirm our understanding that, so long as the IDR conditions set forth in MOA#1610010048 are in effect, crews working in the Chicago (CTC) to Clinton/South Pekin pool established pursuant to the "New Operations" set forth in the Mikrut Award Implementing the UP/C&NW Merger Agreement, Article II, Section 5(d), will not be used in straight-away, through freight service between Chicago and South Pekin. This is with the further understanding that such crews will continue to operate between Chicago and Clinton under Article II, Section 5(d) as referred to above. In the event MOA#1610010048 is suspended, cancelled, or otherwise modified in pertinent part, operations between Chicago and South Pekin will resume and be governed by Article II, Section 5(d) as referred to above.

Please signify your concurrence by signing and dating in the space provided.

Sincerely,

Jim Albano  
Director Labor Relations

CONCUR:

\_\_\_\_\_  
General Chairman BLE

\_\_\_\_\_  
Date

CARRIER'S EXHIBIT D  
PAGE 10 OF 12

September 18, 2000

MOA 1610010048

Side Letter No. 3

Mr. B. D MacArthur  
General Chairman BLE  
217 Fifth Ave S Ste 502  
Clinton, IA 52732

Dear Sir:

This is in reference to the above captioned agreement and our discussions held in conference in your office on September 13, 2000, regarding relocation provisions contained in Article IV.

During our discussions, both parties agreed that it is our intent to avoid force assigning any employees to South Pekin. In an effort to avoid having to force assign, we are agreeable to treating any employees who may be required to work out of South Pekin during the initial implementation of the interdivisional service described herein, in the same manner that we have handled furloughed employees making temporary transfers.

In other words, reasonable travel expenses to the new work location will be allowed, the Carrier will absorb the cost of lodging, and a per diem allowance for meals of \$35.00 per day will be provided.

In this particular instance, the Carrier is agreeable to providing these benefits for a period of 90 days after the implementation of the ID Service to any engine service employee forced to South Pekin (for employees who do not reside in or around South Pekin). At the conclusion of that 90-day period the manpower situation at South Pekin will be evaluated and if it is still necessary to supplement the work force at South Pekin with employees from Chicago, the above-described benefits will be extended for a second 90-day period.

At the conclusion of the two 90-day periods (180-days), the provisions of Article IV – Protection Benefit Provisions will be applicable to any employee who is forced to relocate to South Pekin.

CARRIER'S EXHIBIT D

PAGE 11 OF 12

Mr. MacArthur  
September 18, 2000  
File: MOA 1610010048  
Page 2

Again, this particular option is offered in an effort to avoid forced relocations to South Pekin, and to determine during the 180-day period whether additional manpower will be necessary at South Pekin. This will provide the Carrier with the opportunity to employ people, if necessary, at South Pekin to avoid forced relocation to the extent possible and to provide a reasonable period in which to assess manpower requirements.

If this accurately describes your understanding concerning this matter, please indicate your concurrence by signing in the appropriate space below.

Sincerely,

Jim G. Albano  
Director Labor Relations

AGREED:

\_\_\_\_\_  
GENERAL CHAIRMAN

\_\_\_\_\_  
(DATE)

47

**UNION PACIFIC RAILROAD COMPANY**

Western Region - Transportation

Al Hallberg, Dir. Labor Relations  
Tel: (916) 789-8345  
Fax: (916) 789-8446

10031 Foothills Blvd.  
Roseville, CA 95747



*110.61-14-300*

*920.40-28*

July 20, 2005

D. W. Hannah, General Chairman  
Brotherhood of Locomotive Engineers  
404 North 7<sup>th</sup> Street, Suite A  
Colton, CA 92324

Dear Mr. Hannah:

This refers to the new Interdivisional Service Operation, West Colton/El Centro.

As information, the Company intends to start operation of this new pool on or about August 1, 2005.

Sincerely,  
  
Al Hallberg  
Director, Labor Relations

AH-Hannah118

# UNION PACIFIC RAILROAD COMPANY

Western Region - Transportation

Al Hallberg, Dir. Labor Relations  
Tel: (916) 789-6345  
Fax: (916) 789-6445

10031 Foothills Blvd.  
Roseville, CA 95747



June 14, 2005

D. W. Hannah, General Chairman  
Brotherhood of Locomotive Engineers  
404 North 7<sup>th</sup> Street, Suite A  
Colton, CA 92324

Dear Mr. Hannah:

It is the intent of the Company to establish new interdivisional service between West Colton, California and El Centro, California. West Colton will be the home terminal for this service, and El Centro will be the away from home terminal. The mileage of this new interdivisional service will be 173 miles.

Article IX "Interdivisional Service" of the May 19, 1986 BLE National Agreement provides in pertinent part as follows for creation of new interdivisional service not operating through an existing home terminal:

## "ARTICLE IX - INTERDIVISIONAL SERVICE"

Note: As used in this Agreement, the term interdivisional service includes interdivisional, interseniority district, intradivisional and/or intraseniority district service.

An individual carrier may establish interdivisional service, in freight or passenger service, subject to the following procedure.

### Section 1 - Notice

An individual carrier seeking to establish interdivisional service shall give at least twenty days' written notice to the organization of its desire to establish service, specify the service it proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such service.

### Section 2 - Conditions

Reasonable and practical conditions shall govern the establishment of the runs described, including but not limited to the following:

(a) Runs shall be adequate for efficient operations and reasonable in regard to the miles run, hours on duty and in regard to other conditions of work.

(b) All miles run in excess of the miles encompassed in the basic day shall be paid for at a rate calculated by dividing the basic daily rate of pay in effect on May 31, 1986 by the number of miles encompassed in the basic day as of that date. Weight-on-drivers additives will apply to mileage rates calculated in accordance with this provision.

(c) When a crew is required to report for duty or is relieved from duty at a point other than the on and off duty points fixed for the service established hereunder, the carrier shall authorize and provide suitable transportation for the crew.

**Note:** Suitable transportation includes carrier owned or provided passenger carrying motor vehicles or taxi, but excludes other forms of public transportation.

(d) On runs established hereunder crews will be allowed a \$4.15 meal allowance after 4 hours at the away from home terminal and another \$4.15 allowance after being held an additional 8 hours.

(e) In order to expedite the movement of interdivisional runs, crews on runs of miles equal to or less than the number encompassed in the basic day will not stop to eat except in cases of emergency or unusual delays. For crews on longer runs, the carrier shall determine the conditions under which such crews may stop to eat. When crews on such runs are not permitted to stop to eat, crew members shall be paid an allowance of \$1.50 for the trip.

(f) The forgoing provisions (a) through (e) do not preclude the parties from negotiating on other terms and conditions of work.

### Section 3 - Procedure

Upon the serving of a notice under Section 1, the parties will discuss the details of operation and working conditions of the proposed runs during a period of 20 days following the date of the notice. If they are unable to agree, at the end of the 20-day period, with respect to runs which do not operate through a home terminal or home terminals of previously existing runs which are to be extended, such run or runs will be operated on a trial basis until completion of the procedures referred to in Section 4. This trial basis operation will not be applicable to runs which operate through home terminals."

By copy of this letter, I am requesting Alan Weed to develop a trip rate to cover this new run. By copy of this letter, I am also requesting Phyllis Lemonds to begin the arrangements for an away from home terminal lodging at El Centro, and also for transportation between the on and off duty point and the lodging facility.

Page 3  
D. W. Hannah, General Chairman  
BLE

---

I will call you to find a mutually convenient date for the meeting required by the contract.

Sincerely,  
  
Al Hallberg  
Director, Labor Relations

AH-Hannah111

cc: Superintendent Cromwell - West Colton  
Jeff Moore - West Colton  
Gary Taggart, Labor Relations - Omaha  
Phyllis Lemonds, CMS - Omaha

**bcc: Terry Olin, Labor Relations – Omaha**  
**Dave Martinez, CMS – Omaha**  
**F. Cliff Johnson, Timekeeping – Omaha**

# UNION PACIFIC RAILROAD COMPANY

Western Region - Transportation

Al Hallberg, Dir. Labor Relations  
Tel: (916) 789-8345  
Fax: (916) 789-8445

10031 Foothills Blvd  
Roseville, CA 95747



110-61-14-300  
920-40-28

July 20, 2005

J. Kevin Klein, General Chairman  
United Transportation Union  
UP-Western Lines  
501 Mission Street, Suite A  
Santa Cruz, CA 95060

Dear Mr. Klein:

This refers to the June 14, 2005 Notice addressing creation of Interdivisional Service West Colton/El Centro.

This will confirm our July 6, 2005 Conference, at which this topic was discussed. While we thoroughly explored the notice and the proposed operation, no final agreement was reached as to implementation of the new run. It was understood that in accordance with Article 9 of the October 31, 1985 UTU National Agreement, this run will be implemented prior to the conclusion of this negotiation. It is anticipated that the new run will be implemented on or about August 1, 2005.

In our discussions, you specifically preserved all your rights under Article 9 of the October 31, 1985 National Agreement.

Sincerely,

*A Hallberg*

Al Hallberg  
Director, Labor Relations

AH-Klein155

48

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET  
OMAHA, NEBRASKA 68179



June 27, 2001  
Files: 1450-1, 1450-20;  
110 61-21 (300) and (375)

Via Certified Mail and Facsimile

MR C R RIGHTNOWAR  
GENERAL CHAIRMAN BLE  
320 BROOKES DR STE 115-118  
HAZELWOOD MO 63042

RE: Notice Enhanced Customer Service -- Union Electric Meramec Coal Plant at Hillcrest

Dear Sir

Pursuant to Article IX, Enhanced Customer Service, of the 1996 BLE National Agreement (copy attached) the Carrier hereby serves advanced written notice to implement new service to Union Electric's Meramec Coal Plant located at milepost 17.4 on the DeSoto Subdivision on or about August 1, 2001. Union Electric Company has requested certain service commitments from Union Pacific which are necessary for Union Pacific to attract and retain Union Electric as a customer.

The following sets forth the need for enhanced customer service:

Description of the service: Pool crews will operate 135-car DPU trains between Jefferson City, Missouri, and the Meramec Power Plant at Hillcrest, Missouri. This new service is within Zone 1 of the St. Louis Hub consolidated seniority district. The crews will be routed via the DeSoto Subdivision to Hillcrest located at milepost 17.4, only 6.6 miles outside the St. Louis Terminal Complex. Crews will be transported to/from their tie-up point to Hillcrest (Meramec).

Explanation of the need to provide the service: The Meramec Power Plant is one of several power plants owned and operated by Union Electric Company. This facility historically used Illinois coal delivered via barge. Recently, the Meramec plant generators were converted to operate with Powder River Basin coal. The transportation cost and cycle times associated with delivery of coal have a direct bearing on the plant's efficiency and ability to provide electricity to customers of Union Electric. If Union Pacific can provide direct, one-crew service between Jefferson City and Hillcrest (Meramec) with the shortest cycle times possible and in a cost effective manner, Union Electric can double the amount of electricity currently generated by this facility. Providing single crew service between Jefferson City and the Meramec plant can satisfy these customer service requirements.

Union Electric will increase the capacity of the Meramec operations if Union Pacific can deliver coal at a competitive price and provide the shortest cycle times. Union Electric has other plants in the St. Louis area serviced via barge and by the BNSF that generate electricity at lower costs. The Meramec facility shuts down during off peak hours if it cannot compete with the operating efficiencies of other Union Electric facilities servicing customers in the St. Louis area. If Union Electric cannot operate the Meramec facility efficiently and at the lowest possible cost, the plant will shut down and Union Pacific will not be able to attract and retain the business.

Union Pacific must operate this new service with one crew to meet Union electric's service requirements. Cycle times will be dramatically increased if a crew change is required in the St. Louis Terminal Complex to deliver or receive trains at Hillcrest (Meramec). In addition, the yards closest to Hillcrest cannot accommodate a crew change for trains of this size. Therefore, a crew change must either be coordinated on the main line, resulting in additional delay to all trains operating through this area, or the train would have to be staged off the main line in Dupo Yard on the opposite side of the St. Louis Terminal Complex. Single crew service will avoid this delay. The road crews would not have to cross the river and travel through St. Louis Terminal Complex thereby cutting hours off the total transit time to/from Hillcrest (Meramec).

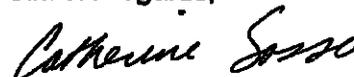
The delay created if a Jefferson City or St. Louis pool crew is required to deliver or receive their train within the St. Louis Terminal Complex is compounded if a second crew is required to service the Customer at Hillcrest (Meramec), less than seven miles from the switching limits. The second crew would be required to travel through the terminal to/from the Customer's facility, adding substantially more time and expense to the transportation product. Union Electric's service requirements and costs can be met if a single road crew operating between Jefferson City and St. Louis is permitted to deliver/receive trains directly at Meramec.

Description of the work rules requiring relaxation for implementation: Article I.C.4 of the St. Louis Terminal Hub Merger Implementing Agreement provides the terminal limits for the consolidated St. Louis terminal are at milepost 10.8 on the Union Pacific DeSoto Subdivision. To acquire and retain this business, the Carrier needs to modify the terminal limits only for this new service to permit single-crew operations directly to/from the Meramec facility at Hillcrest, milepost 17.4. The rules governing changes to road/yard limits require agreement negotiation and ratification by the Organization or arbitration prior to implementation of service that would extend well beyond the start date for this service.

Based on the foregoing, it is evident a need exists to provide this new service on an experimental basis for a six-month period. It is the Carrier's intent to implement this service on or about August 1, 2001. Therefore, pursuant to Section 1(b) of Article IX, the Carrier requests a meeting of the Joint Committee, comprised of an equal number of Carrier representatives and Organization Representatives. I have scheduled a conference room at Union Pacific Railroad's Omaha Headquarters building commencing at 9:00 a.m. until noon on July 6, 2001. Director Labor Relations Catherine Sosso, General Director Labor Relations Terry Olin, St. Louis Service Unit Superintendent Joe Beardon and a Marketing and Sales Department Representative will represent the Carrier.

Please contact Catherine Sosso at 402/271-6607 to confirm the Organization's attendance at this Joint Committee meeting.

Sincere regards,



Catherine Sosso  
Director Labor Relations

Attachment

Copy to: Mr. Meredith  
Mr. Olin  
Mr Beardon - St Louis  
Mr. Fritz - Room 500

Blind copy to. **Mr. J.J. Marchant**  
**Mr. S.R. Barkley - Spring**  
**Mr. G.P. Klym - Room 500**

**Mr. A.K. Gradia**  
**Director of Labor Relations - NRLC**  
**1901 L Street, N.W.**  
**Washington, D.C. 20036**

ST. LOUIS, MO MEETING  
 ST. LOUIS, MO 7/6/01  
 Conference Room 2A

<u>Name</u>	<u>Organization</u>	<u>Location</u>
Terry Olin	UPRR - Labor Relations	Omaha
Catherine Sasso	"	Omaha
Jeremy Klym	UP ENERGY MKTG	Emery
Joe Borden	UP - SLSU	ST. LOUIS
Ch. Fichtner	BLE	St. Louis
Al. Conroy	BLE	St. Louis / St. Charles
JP Watson	BLE	St. Louis
Don Schwanden	BLE	St. Louis - Jeff City
Richard R. Smith	BLE L.C.	DUPE SOUTH

UNION PACIFIC RAILROAD COMPANY

1418 DODGE STREET  
OMAHA, NEBRASKA 68179



July 20, 2001  
File: 1450-1, 1450-20  
110.61-21 (300) and (375)

VIA Facsimile and Overnight Mail

Mr. C.R. Rightnowar  
General Chairman BLE  
320 Brookes Drive, Suite 115-118  
Hazelwood, MO 63042

Dear Sir:

This refers to our meeting on July 6, 2001, in St. Louis regarding the Carrier's Notice for Enhanced Customer Service at the Ameren (Union Electric) Meramec Power Plant, Hillcrest, Missouri.

St. Louis Service Unit Superintendent Joe Beardon and Mr. Jerry Klym, the Marketing and Sales Senior Business Director responsible for the Ameren account, attended this meeting. They provided additional information concerning Ameren's business requirements and ongoing negotiations with Ameren. The following is a summary of this information and is incorporated by reference into the Carrier's original notice dated June 27, 2001:

- ◆ Ameren has invested millions of dollars in the Meramec facility to convert it to burn 100% Powder River Basin coal. This investment includes a rail loop track with a rapid discharge unloading facility capable of unloading a train in six hours. Currently, Union Pacific delivers approximately 1.5 million tons of coal per year for Meramec to a transfer facility at Sauget for final delivery via barge. As a result of the capital investment at Meramec, Union Pacific will now serve Meramec directly via rail. In addition, the volume will increase to approximately 3 million tons per year as a result of a new contract with Ameren commencing on or about August 1, 2001. This new business for Union Pacific will result in the operation of a train between Jefferson City and the Meramec plant every other day.
- ◆ Ameren is investing substantial capital dollars in a rail to water transfer facility at the Meramec plant. Union Pacific has the opportunity to deliver substantially higher volumes (with a potential of 8 million tons per year) to Meramec if Union Pacific can satisfy Ameren's requirements for rapid delivery/equipment cycle times at a competitive cost. This would include delivery of coal to Meramec to be barged to other Ameren plants currently served by the BNSF. If Union Pacific is successful in retaining the business scheduled to start August 1, 2001, the potential exists for attracting expanded service from one train every other day between Jefferson City and St. Louis to two loaded trains and two empty trains every day.

- ◆ **Union Pacific must provide expedited service to Meramec with a single crew to enable Ameren operate the Meramec plant efficiently and economically. Mr. Klym provided you with a letter from Ameren's Coal Transportation Director emphasizing the importance of speedy delivery. An additional copy is attached for your reference.**
- ◆ **St. Louis Service Unit Superintendent Joe Beardon advised the operations could be routed through the west end of the St. Louis terminal via the DeSoto Subdivision or the Leasperance Street Branch to avoid congestion on the main line within the consolidated terminal. Union Pacific will be successful in retaining this new business and attracting more business if Ameren is satisfied with Union Pacific's ability to meet its service requirements. In the future, there may be sufficient business to warrant establishing a separate pool to service Meramec.**
- ◆ **The Carrier participants repeatedly emphasized the importance of Union Pacific's ability to meet Ameren's service requirements in order to retain and attract Ameren as a customer at a number of power plants in the Ameren system including locations Union Pacific currently serves such as Labadie.**

**Therefore, pursuant to Article IX, Enhanced Customer Service, of the 1996 UTU National Agreement, the Carrier will implement single crew service between Jefferson City and Meramec on a trial basis for six months commencing on or about August 1, 2001. The Carrier will continue discussions and negotiations with the Organization during this interim period. The following conditions will govern the interim operations:**

- (1) OPERATION: Jefferson City/ St. Louis pool crews working in this service will operate to/from the Meramec facility and will spot or pull their train at the Meramec facility on the industry loop track.**
- (2) COMPENSATION: pool crews servicing Meramec will be paid as follows:**
  - (a) Actual miles run at the pro rata rate between Jefferson City and the St. Louis Terminal limits located at milepost 10.8.**
  - (b) Inbound crews passing the St. Louis Terminal limits at milepost 10.8 will remain on the clock until they spot their train at the Meramec facility and will receive 7 miles at the pro rata rate as an arbitrary in addition to all other earnings. No additional miles will be paid for transportation between the Meramec facility and the tie up point in St. Louis.**
  - (c) Outbound crews transported to the Meramec plant and who work back through the St. Louis Terminal and on to Jefferson City will receive 7 miles at the pro rata rate as an arbitrary in addition to all other earnings for service between the Meramec facility and St. Louis Terminal milepost 10.8. No additional miles will be paid for transportation between the on duty point in St. Louis and the Meramec facility.**

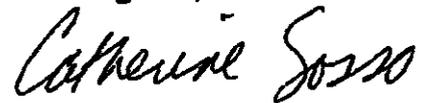
(d) All earnings, including the 7-mile arbitrary, will be subject to all future COLA wage increases. The 7-mile arbitrary will not be considered a duplicate time payment and will be paid to all qualifying crews in this service.

(3) OTHER.

(a) Outbound crews that go to the Meramec facility cannot be runaround or be runaround by crews that do not go to the plant.

(b) This interim operation does not restrict the Carrier's right under existing agreements to use other crews to spot and pull trains at Meramec as service and manpower conditions require. Except as provided in paragraph 2 above, all other existing agreement conditions apply to this service.

Sincere regards,



Catherine Sosso  
Director Labor Relations

Attachments

Copy to: Mr. Olin  
Mr. Beardon  
Mr. Klym



**Ameren Energy**

**Fuels & Services Company**

1901 Chouteau Avenue  
St. Louis, MO 63103

April 6, 2001

Mr. Lance Fritz  
Vice President-GM Energy  
Union Pacific Railroad  
Room 500  
1416 Dodge Street  
Omaha, NE 68179

Dear Lance:

As you know, our Meramec Plant at Hillcrest, Mo. historically has been supplied with coal from Illinois, and more recently the Powder River Basin, delivered via barge. We are in the process of looking for cost-effective alternatives to barge deliveries as a result of our current conversion to PRB coal, and our ongoing need to minimize our delivered fuel costs at Meramec and implementing new competitive transportation options at plants such as Rush, Sioux and others.

One of the primary drivers of cost-effective management of our transportation requirements is equipment cycle time. Consistent, speedy delivery of coal is necessary to gain the most from the capital investment in our equipment fleet and facility at Meramec. Therefore, it is imperative Union Pacific provide the fastest possible transit time to attract and retain our business.

As we discussed, the fastest delivery via the shortest route is obviously the key to meeting our requirements at Meramec. It appears to us minimizing time spent in the St. Louis terminal is the greatest opportunity to achieving the fastest possible cycle times. Direct delivery to Meramec with a single crew is paramount to insuring we receive the fastest, lowest cost transportation product.

We are considering every alternative to provide the lowest cost transportation options at our Meramec Plant and terminal. However, we anticipate Union Pacific will be able to offer the transportation service we need at Meramec. I look forward to our future discussions in an effort to form a partnership to handle our transportation service requirements at Meramec.

Sincerely,

Glennon P. Hof  
Coal Transportation Director

cc: R. K. Neff

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET  
OMAHA, NEBRASKA 68179



May 5, 2003

U-1450 20 214

Mr. C. R. Rightnowar  
General Chairperson  
Brotherhood of Locomotive Engineers  
320 Brookes Drive, Suite #115  
Hazelwood, MO 63042

Dear Mr. Rightnowar:

This has reference to our discussions Friday, May 2, 2003, in Kansas City, MO, regarding Union Pacific's notice, served pursuant to Article IX of the 1996 BLE National Agreement, to provide enhanced customer service to Ameren Corporation's Meramec Power Plant near Hillcrest, MO.

In connection with our conversation, and pursuant to your request, you will find accompanying this letter a copy of the arbitration award, rendered by Dr. F. X. Quinn, involving Union Pacific and the United Transportation Union on the same matter referenced above. As you will note, this award definitively addresses all relevant issues pertaining to the application of the "Enhanced Customer Service" provisions of 1996 National Agreement.

Once you have reviewed this award, I would like to suggest we immediately discuss this matter with the purpose of either resolving it or expeditiously proceeding to arbitration pursuant to Article IX.

I will wait further advise from your office.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Terry Olin".

A. Terry Olin  
General Director - Labor Relations  
Arbitration & Negotiations

Cc (w/o attach): Mr. R. D. Rock  
Mr. R. D. Meredith

49

**ARBITRATION COMMITTEE**

**In the Matter of the Arbitration Between:**

**BROTHERHOOD OF LOCOMOTIVE  
ENGINEERS,**

**(General Committee of Adjustment, Central  
Region),**

**Organization,**

**and**

**UNION PACIFIC RAILROAD COMPANY,**

**Carrier.**

Pursuant to Article 1, Sec. 11 of  
the New York Dock Conditions

U.C.C. Finance Docket 32760

**OPINION AND AWARD**

Hearing Date: February 12, 2004  
Hearing Location: Chicago, Illinois

**MEMBERS OF THE COMMITTEE**

Ann S. Kenis	Neutral Member
Charles R. Rightnowar	Organization Member
Richard Meredith	Carrier Member

**ORGANIZATION'S QUESTION AT ISSUE:**

Whether the provisions of the North Little Rock/Pine Bluff Hub Merger Implementing Agreement (October 9, 1997), the Kansas City Hub Merger Implementing Agreement (July 2, 1998), and the St. Louis Hub Merger Implementing Agreement (April 15, 1998), negotiated pursuant to the Surface Transportation Act, can be changed by the Carrier's former rights under Article IX of the 1986 National Agreement (May 19, 1986), negotiated pursuant to the Railway Labor Act, where the Carrier failed to expressly retain such rights in the aforementioned Hub Merger Implementing Agreements, and the specific language of each aforementioned Hub Merger Implementing Agreement otherwise prohibits such change?

**CARRIER'S QUESTION AT ISSUE:**

Does the New York Dock UP/SP Merger Implementing Agreement for the North Little Rock/Pine Bluff Hub bar Union Pacific Railroad Company from exercising its right

to establish interdivisional service pursuant to Article IX of the May 16, 1986 BLE National Agreement?

## **L INTRODUCTION**

In late 1995, the Union Pacific Corporation, including its wholly owned rail carrier subsidiaries, Union Pacific Railroad Company and the Missouri Pacific Railroad Company, announced its intent to acquire and exercise control over Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corporation, and the Denver and Rio Grande Railroad Company. The U. S. Department of Transportation, Surface Transportation Board (STB) approved the merger in Finance Docket 32760. As a condition of the merger, the STB imposed on the merged Carrier (Carrier herein) the employee protective conditions set forth in New York Dock Railway – Control-Brooklyn Eastern District Terminal, 360 I.C.C. 60, 84-90 (1979); affirmed, New York Dock Railway v. United States, 609 F. 2d 83 (2<sup>nd</sup> Cir. 1979).

Subsequent to the merger, the Carrier and the Organization negotiated a series of merger implementing agreements. These arrangements created centralized terminals, called hubs, with spokes going out to many points which were previously terminals or outlying points on the pre-merged railroads. Merger implementation agreements were negotiated on a hub basis. Among the implementing agreements reached pursuant to the merger were the North Little Rock/Pine Bluff Hub Merger Implementing Agreement, dated October 9, 1997, the Kansas City Hub Merger Implementing Agreement, dated July 2, 1998, and the St. Louis Merger Implementing Agreement, dated April 15, 1998.

The dispute in this case was precipitated on May 16, 2003, when the Carrier served notice to the Organization advising of its intent to establish new interdivisional (ID) service between North Little Rock and Memphis pursuant to Article IX of the May

19, 1986 Award of Arbitration Board No. 458 (hereinafter referred to as the 1986 National Agreement). Subsequently, by letter dated August 29, 2003, Carrier served an additional notice advising of its intent to establish interdivisional service at the Kansas City and St. Louis hubs. As in its May 16, 2003 notice regarding the interdivisional run at the North Little Rock/Pine Bluff hub, Carrier indicated that the terms and conditions governing the interdivisional service operations at the Kansas City and St. Louis hubs would be in accordance with applicable Article IX National Agreement provisions.

In a letter dated September 9, 2003, the Organization protested the Carrier's proposed interdivisional service at the three hubs. The Organization asserted that the implementing agreements controlled and were not subject to modification by Article IX of the pre-existing 1986 National Agreement. In the Organization's view, "to hold otherwise, is to render the Merger negotiations, and the Agreements consummated through those negotiations, approved by the Surface Transportation Board, a complete nullity."

Carrier responded by correspondence dated September 12, 2003 and advised the Organization that there was no provision in any of the merger implementing agreements that limited or eliminated the applicability of Carrier's rights under Article IX of the 1986 National Agreement. The Carrier stated its position as follows:

There is no doubt that if the parties had specifically included language in these agreements that limited or eliminated the applicability of Article IX, UP would be bound by the language of such provisions. There is not, however, any language in the referenced merger accords which limit or eliminate application of Article IX. Absent such language, the foundation for your argument evaporates.

By letter dated September 22, 2003, the Organization requested that the National Mediation Board (NMB) provide a selection list for the assignment of a New York Dock

Arbitrator “related to the Carrier’s improper attempt to change Surface Transportation Board approved Hub Merger Implementing Agreements in the St. Louis, Kansas City and Pine Bluff/North Little Rock Hubs by a conflicting superseded 1986 Railway Labor Act Agreement.”

Carrier opposed the Organization’s request on numerous grounds which will be discussed in further detail below. Suffice to say at this point that Carrier maintained the dispute was not within the scope of New York Dock. Instead, Carrier argued, the proper forum for arbitrating the matter was under Article IX of the 1986 National Agreement. Accordingly, Carrier requested that the NMB appoint an arbitrator to establish the terms and conditions for the new interdivisional service in the North Little Rock/Pine Bluff area.<sup>1</sup> The undersigned was ultimately designated to adjudicate both matters. Hearings on February 12, 2004 were scheduled for the New York Dock arbitration and the arbitration pursuant to Article IX, assigned as Arbitration Board No. 581.

By letter dated January 7, 2003, the Organization requested that only the New York Dock arbitration proceed on the scheduled hearing date. According to the Organization, Arbitration Board No. 581 would be moot if it were determined that Article IX was superseded by the hub implementing agreements. The parties were permitted to present written arguments on the subject, with Carrier opposing the request to bifurcate the proceedings. By letter dated February 1, 2004, the undersigned Neutral denied the Organization’s request and stated that the issues could best be addressed at hearing. Both matters proceeded as scheduled on February 12, 2004.

---

<sup>1</sup> Carrier acknowledges that it has not yet had discussions with the Organization concerning the ID notices for the St. Louis and Kansas City Hubs as required under Article IX of the 1986 National Agreement. Therefore, Carrier’s request to have the terms and conditions of the ID service imposed by arbitration is limited to the North Little Rock/Pine Bluff Hub.

## **II. FACTUAL BACKGROUND**

### **A. The North Little Rock/Pine Bluff Hub Implementing Agreement**

The Merger Implementing Agreement for the North Little Rock/Pine Bluff Hub includes specific provisions governing through freight service between North Little Rock/Pine Bluff and Memphis. Under Article I, Section A(4), North Little Rock/Pine Bluff became the home terminal for all North Little Rock to Memphis and Pine Bluff to Memphis pool freight service with Memphis as the away from home terminal. In addition, engineers operating North Little Rock/Pine Bluff and Memphis were permitted to utilize any combination of the former Union Pacific and Southern Pacific tracks between those points.

However, this expansive language was restricted in Article I, Section A(5), which states:

5. Pool freight engineers in the North Little Rock/Pine Bluff-Dexter and North Little Rock/Pine Bluff-Memphis pools may not be used to handle their through freight trains, either at the beginning or the end of their trip, from North Little Rock to Pine Bluff or vice versa. Such trackage may only be used by such engineers under the 25-mile zone provisions described below.

a. Pool freight engineers described above may receive their train up to twenty-five (25) miles on the far side of the terminal or receive or deliver their train up to twenty-five (25) miles on the UP Monroe Subdivision between North Little Rock and Pine Bluff without claim or complaint from any other engineer.

\* \* \*

c. When so used, the engineer shall be paid an additional one half (1/2) day at the basic pro rata through freight rate in addition to the district miles of the run. If the time spent beyond the terminal is greater than four (4) hours, then they shall be paid on a minute basis at the basic pro rata through freight rate.

Carrier contends that it agreed to the restrictions set forth in Paragraph 5, above, because traffic volume projections available at that time, along with expected customer demands, did not contemplate much growth in traffic or increase in service demands between North Little Rock and Memphis. Carrier further contends that, following implementation of the Hub Merger Implementing Agreement, daily train volumes through Memphis began to increase as a result of the service and operating improvements made possible by the merger. The Organization disputes this assertion. Nevertheless, in order to expedite service and relieve the congestion along these lines, Carrier determined that a "directional running" operation between North Little Rock and Memphis was in order. This concept contemplated using a combination of pre-merger routes to operate in one direction on one set of tracks from North Little Rock to Memphis and in the other direction on another set of tracks from Memphis to North Little Rock.

This operation would require operation over the White Bluff subdivision, which is now restricted by the terms contained in Article I, Section A(5) of the Merger Agreement. Consequently, Carrier determined to pursue implementation of new directional runs through Article IX of the 1986 National Agreement. In the Organization's view, Carrier should not be permitted to pursue such a change because the Hub Merger Implementing must be given precedence over the pre-existing provisions of Article IX of the National Agreement. Carrier, on the other hand, contends that its Article IX rights survived the Hub Merger Implementing Agreement and are fully enforceable.

#### **B. The Jefferson City and Kansas City Hub Implementing Agreements**

Briefly, by way of background, the Jefferson City, Missouri terminal was the home terminal for former UP engineers working in pool freight service to Kansas City,

Missouri prior to the merger. As part of the merger, Carrier contemplated that St. Louis and Kansas City would become hubs. Jefferson City was eliminated as a home terminal and St. Louis became the home terminal for engineers in pool freight service between St. Louis and Jefferson City. The trackage between Jefferson City and Kansas City was inserted into the Kansas City Hub. The parties agreed that engineers residing in Jefferson City on the date of the Carrier's notice designating Kansas City as a hub would be granted the right to reside at Jefferson City on an attrition basis.

The Kansas City Hub Merger Implementing Agreement divided the pre-merger seniority districts into four zones, with the employees of each separate zone maintaining prior rights to the work of the zones, but holding common seniority rights to the work not filled by prior rights zone employees. The Jefferson City employees were placed in zone 3. In addition to maintaining prior rights for work in zone 3, the Jefferson City employees were also afforded prior rights to all work originating in the Jefferson City terminal, including the freight pools operating between Jefferson City and Kansas City. In a New York Dock proceeding, Arbitrator La Rocco affirmed that the "...Agreements provide special, and perhaps, unique rights to engineers indefinitely maintaining their residences in Jefferson City and these rights are expressly predicated on the engineers keeping their residences in Jefferson City." <sup>2</sup>

Carrier's August 29, 2003 notice seeks to establish ID service between Kansas City terminal and Jefferson City, with Kansas City as the home terminal. In addition, the notice advises the Organization of its intent to establish ID service between Marysville, Kansas and Jefferson City, Kansas City and Labadie, Missouri, and Kansas City and St.

---

<sup>2</sup> See, BLE and UP, New York Dock Arbitration Committee under Article I, Section 11 of the New York Dock Conditions, I.C.C. Finance Docket No. 32760 (LaRocco, 2000).

**Louis. The Organization maintains that Carrier relinquished its right to establish such ID service under the terms of the St. Louis and Kansas City Hub Merger Implementing Agreements. It asserts that the Carrier's August 29, 2003 ID service notice seeks, among other things, to abrogate the attrition rights of the employees at Jefferson City established under the Hub Merger Implementing Agreement. Carrier argues that it never affirmatively relinquished its rights under Article IX of the 1986 National Agreement and it is entitled to enforce those rights at this juncture.**

**C. Shared Provisions of the Hub Merger Implementing Agreements**

**As noted, this dispute concerns the language of the three Hub Merger Implementing Agreements and the impact of that language on Article IX of the 1986 National Agreement. There are several pertinent provisions which all three hub merger implementing agreements have in common. Each provides in Article IV.A that, if conflicts between an applicable collective bargaining agreement and an implementing agreement arise, the specific provisions of the implementing agreement prevail. Moreover, each of the implementing agreements contains a provision at Article VIII entitled "Saving Clause." Paragraph A reads:**

**The provisions of the applicable Schedule Agreement will apply unless specifically modified herein."**

**Paragraph C states:**

**Nothing in this Agreement will preclude the use of any engineers to perform work permitted by other applicable agreements within the new seniority district described herein, i.e., engineers performing Hours of Service Law relief within the road/yard zone, ID engineers performing service and deadheads between terminals, road switchers handling trains within their zones, etc.**

**In addition, the parties entered into a side agreement to each of the three hub merger implementing agreements which is pertinent herein. Although dated on**

separate occasions and numbered differently, the language is identical and states in pertinent part as follows:

During our negotiations your Organization raised some concern regarding the intent of Article VIII – Savings Clause, Item C thereof. Specifically, it was the concern of some of your constituents that the language of Item C might subsequently be cited to support a position that ‘other applicable agreements’ supersede or otherwise nullify the very provisions of the Merger Implementing Agreement were negotiated by the parties.

I assure you this concern was not valid and no such interpretation could be applied. I pointed out that Item C must be read in conjunction with Item A, which makes it clear that the specific provisions of the Merger Implementing Agreement, where they conflict with the basic schedule agreement, take precedence, and not the other way around.

The purpose of Item C was to establish with absolute clarity that there are numerous other provisions in the designated collective bargaining agreement, including national agreements, which apply to the territory involved, and to the extent such provisions were not expressly modified or nullified, they still exist and apply. It was not the intent of the Merger Implementing Agreement to either restrict or expand the application of such agreements.

In conclusion, this letter of commitment will confirm that the provisions of Article VIII- Savings Clauses may not be construed to supersede or nullify the terms of the Merger Implementing Agreement which were negotiated in good faith between the parties. I hope the above elaboration clarifies the true intent of such provisions.<sup>3</sup>

#### **D. Additional Evidence**

The Organization submitted seven additional Hub Merger Implementing Agreements which contain language stating: “New pool operations not covered in this implementing Agreement between Hubs or one Hub and non merged area will be handled per Article IX of the 1986 National Implementation Award.” This language does not appear in the three Hub Merger Implementing Agreements in this case, the Organization

---

<sup>3</sup> It is designated as Side Letter No. 20 in the North Little Rock/Pine Bluff Hub Merger Implementing Agreement; Side Letter No. 9 in the Kansas City Hub Merger Implementing Agreement, and Side Letter No. 10 in the St. Louis Hub Merger Implementing Agreement. An affidavit dated February 10, 2003 from former General Chairman D.E. Penning states that the side letter was written to prevent any pre-existing agreements from modifying or nullifying these Hub Merger Implementing Agreements.

points out. Moreover, there is no shared geographical territory between the Hubs at issue herein and those where the Carrier sought and obtained express contractual language regarding preexisting Article IX rights. On the contrary, the Organization states that each Hub has a "stand alone" agreement that was negotiated separately in time and thereafter ratified by only those voting BLE members who worked on the territory of the particular hub. The Organization also points to BLE and UP, New York Dock Arbitration Committee under Article 1, Section 11 of the New York Dock Conditions, I.C.C. Finance Docket No. 32760 (2001), wherein Arbitrator La Rocco concluded that the provisions of one hub merger implementing agreement could not be unilaterally applied to another hub where those provisions do not exist in that second hub's merger implementing agreement.

Carrier responds by saying that there are numerous interdivisional service runs that have been negotiated, arbitrated or implemented on a trial basis in territories covered by New York Dock merger implementing agreements. Of the eighteen interdivisional runs listed in Carrier's submission, Carrier states that approximately half have been instituted since the UP/SP merger. With one exception, Carrier did not encounter the arguments presented by the Organization in this proceeding during negotiations with other Organization General Committees or with UTU representatives regarding the implementation of ID runs.

The exception involved the Organization's General Committee for the SP Western Lines territory. Carrier served notice of its intent to establish new ID runs and the matter proceeded to arbitration. In Special Board of Arbitration No. 580, the Organization presented many of the same arguments seen in this case. In his May 27,

2003 Award, Arbitrator Richter proceeded directly to the merits without even addressing the alleged conflict with the merger implementing agreement.

More typical is the August 17, 1998 Article IX notice regarding the establishment of new ID runs in the Beaumont, Texas area. Pursuant to this notice, the BLE and UP negotiated five ID runs and ultimately progressed the matter to arbitration pursuant to Article IX. In Special Arbitration Board No. 573 (2000), Arbitrator Muessig imposed the terms and conditions for the ID service runs. Significantly, the Organization did not argue that there was a conflict between the merger implementing agreement and Article IX. Moreover, the relevant merger implementing agreement for the Houston Hub (Zones 1 and 2) did not contain language specifically addressing Article IX.

### III. THE JURISDICTIONAL ISSUE

Both the Carrier and the Organization agree that there is a threshold jurisdictional dispute.<sup>4</sup> They disagree, however, on the forum for resolution of that dispute.

#### A. Carrier's Position

Carrier asserts that the matter is not properly justiciable under Article 1, Section 11 of the New York Dock conditions. Carrier maintains that the arbitration procedures contained in Section 11 are reserved specifically for arbitrating disputes centered on application of the New York Dock conditions and not on an asserted conflict between the provisions of an implementing agreement and a National Agreement. The requirements of New York Dock are simple and straightforward. If a dispute involves "...the interpretation, application or enforcement of any provision of this appendix, except

---

<sup>4</sup> Carrier states in its submission that the question it posed at the outset does not represent an acquiescence of its position that the matter is not properly before this tribunal. Regardless of whether the question posed by the Carrier or the Organization is used, the subject matter falls outside the jurisdictional parameters of a New York Dock Arbitrator and compels the dismissal of the case, Carrier submits.

Sections 4 and 12..." of New York Dock, then it may be referred to arbitration under the procedure set forth in Section 11. The instant matter, in the view of the Carrier, unquestionably falls outside the jurisdictional scope of a New York Dock Arbitrator under that definition.

The Organization's stated position and characterization of the dispute compels no other conclusion, the Carrier submits. The Organization has repeatedly indicated that there is a threshold conflict between two agreements. It is not mere happenstance that the Organization failed to identify any provision of New York Dock as applicable herein, Carrier argues. Neither the acts cited by the Organization (the Railway Labor Act and the Surface Transportation Act) nor the collective bargaining agreement provisions cited by the Organization (the hub implementing agreements and Article IX of the 1986 National Agreement) are, as required by Article I, Section 11 of New York Dock, "any provision of this appendix..." As the Organization itself recognizes, this a dispute based on conflicts of law or of collective bargaining agreement provisions, and, as such, it falls outside the statutory limitations for arbitration under Article I, Section 11 of New York Dock.

Furthermore, it is clear to the Carrier that the Organization's position stands in stark contrast with existing arbitral authority and past practice. In the Arbitration Award between these same parties rendered pursuant to Article I, Section of New York Dock (Finance Docket 30800) (1989), Referees Richard Kasher and Robert Peterson declined to address interdivisional service issues within the context of the New York Dock proceeding. They stated:

The Carrier desires to establish special train operations, which would essentially call for the creation of interdivisional service runs. The Carrier's intention in this regard is contained in its Operating Plan as presented to the ICC.

This Arbitration Committee has no reason to conclude that the ICC had intended that the Carrier would have a unilateral right to establish interdivisional service and circumvent agreed-upon or recognized procedures for attainment of such service. Here, it is to be noted that creation of interdivisional service is not something that the collective bargaining agreements prohibit. Rather, current agreements provide an orderly manner and reasonably expeditious means by which such service may be implemented and myriad problems resolved; such agreements include final and binding arbitration provisions should such action be necessary.

Moreover, Carrier points out that the parties have negotiated, arbitrated and/or implemented more than fourteen (14) new interdivisional service runs on territories that are covered by a New York Dock merger implementing agreement. On those runs where arbitration was necessary, not one was progressed under the provisions of New York Dock – all were progressed in accordance with the procedure set forth in Article IX.

The foregoing factors plainly demonstrate to the Carrier that the instant matter is not one that should be arbitrated pursuant to New York Dock. That is not to say that the Organization is without recourse, however. Carrier insists that the proper forum is set forth in Article IX of the 1986 National Agreement. In this regard, the parties have specifically agreed to progress disputes over establishment of interdivisional service and the terms and conditions attendant thereto to final and binding arbitration. Section 4(a) of Article IX provides that "in the event the carrier and the organization cannot agree on the matters provided for in Section 1 and the other terms and conditions referred to in Section 2 above, the parties agree that such dispute will be submitted to arbitration under the Railway Labor Act..." (emphasis added) Thus, the Carrier asserts that the Organization is contractually bound to progress this unresolved dispute regarding

interdivisional service to final and binding arbitration under the Railway Labor Act in accordance with provisions contained in Article IX.

Since the matter in dispute is not properly before this New York Dock tribunal, it must be dismissed.

#### **B. Organization's Position**

In response to the Carrier's jurisdictional challenge, the Organization contends that the proposed questions raise issues properly within the province of a New York Dock proceeding. The hub merger implementing agreements were negotiated pursuant to the STB's authority under the Surface Transportation Act. Each contains a provision stating that such agreement supersedes any prior, conflicting agreements. Since the application of the plain language of the hub merger implementing agreements is at issue, an Arbitrator under Section 3 of the Railway Labor Act lacks jurisdiction to adjudicate the matter, the Organization submits.

That this issue is grist for the New York Dock Arbitrator's mill is fully understood by the Carrier, the Organization further argues. In a prior New York Dock proceeding involving these same parties and similar facts, the Arbitrator rejected Carrier's jurisdictional objection. See, BLE and UP, New York Dock Arbitration Committee under Article 1, Section 11 of the New York Dock Conditions, Award No. 1 (La Rocco, 2003). Moreover, Carrier has previously been successful in arguing that New York Dock issues are not subject to Section 3 Railway Labor Act jurisdiction. See, First Division Award No. 25418. The reasoning and logic in those cases should apply with equal force here, the Organization asserts. The instant case involves a New York

Dock issue and is properly before this Committee. Carrier's opposition on jurisdictional grounds is baseless and should be rejected.

### **C. Findings and Discussion**

*This Committee is mindful of the limits of its jurisdiction. Section 11(a) of the New York Dock Conditions states:*

11. Arbitration of disputes. –(a) In the event the railroad and its employees or their authorized representatives cannot settle any dispute or controversy with respect to the interpretation, application or enforcement of any provision of this appendix, except Sections 4 and 12 of this Article I, within 20 days after the dispute arises, it may be referred by either party to an arbitration committee...

*The foregoing provision restricts our adjudicatory power to interpreting, applying and enforcing the New York Dock Conditions. We lack jurisdiction to interpret and apply collective bargaining agreements outside the scope of the New York Dock Conditions.*

*In this case, however, the focus of this dispute is the language of the three hub merger implementing agreements. Carrier's own statement of the question at issue recognizes that it is the hub merger implementing agreements which must be interpreted and applied in order to determine whether they act as a bar to the establishment of ID service pursuant to Article IX of the parties' 1986 National Agreement.*

*Put another way, when carefully examined, it is clear that this Committee is not being asked to interpret a collective bargaining agreement that is outside the scope of a New York Dock proceeding. Instead, our task is to construe the provisions of the hub merger implementing agreements and decide the question of whether the language therein prevents the application of Article IX under the circumstances presented. If the answer is in the affirmative, then the Article IX interdivisional service notices must be*

rescinded. If the answer is in the negative, then the dispute regarding the implementation of the ID service can proceed to arbitration. In either case, it is the implementing agreements which are primarily the focus of the analysis and not Article IX.

As prior New York Dock awards involving these same parties have recognized, the interpretation and application of merger implementing agreements falls within the ambit of Article 1, Section 11 of the New York Dock Conditions.<sup>5</sup> Accordingly, we find that this Committee has jurisdiction over the instant dispute.

### III. THE MERITS

#### A. The Organization's Position

The Organization contends that Carrier's Article IX rights have been superseded by the language set forth in the Little Rock/Pine Bluff Hub Merger Implementing Agreement, the Kansas City Hub Merger Implementing Agreement, and the St. Louis Hub Merger Implementing Agreement. Article IV.A of those hub merger implementing agreements expressly provides that, if conflicts between the applicable collective bargaining agreement and the implementing agreement arise, the specific provisions of the implementing agreement prevail. Since the changes proposed by the Carrier's Article IX notices are in direct conflict with many of the provisions of these three hub merger implementing agreements, Carrier's Article IX rights must give way.

Assuming, *arguendo*, that the implementing agreement language is ambiguous, the Organization submits that there are two points of contract interpretation which bolster

---

<sup>5</sup> See, BLE and UP, New York Dock Arbitration Committee under Article 1, Section 11 of the New York Dock Conditions, I.C.C. Finance Docket No. 32760 (LaRocco, 2000) (dispute concerning the interpretation and application of two merger implementing agreements falls within the jurisdiction of Article 1, Section 11 of the New York Dock Conditions); BLE and UP, New York Dock Arbitration Committee under Article 1, Section 11 of the New York Dock Conditions, I.C.C. Finance Docket No. 32760 (LaRocco, 2001) (side letter to hub merger implementing agreement did not modify a schedule rule beyond the geographical territory of the St. Louis Hub).

its position. First, the negotiating history of the side letter -- set forth in full in Section 2C of this award -- plainly demonstrates the parties intended that no preexisting Agreement would be used by the Carrier to modify or nullify the hub agreements that were negotiated after the merger. It is a well established rule of construction that an interpretation that will give effect to the clear intent of the parties is preferred to one that will nullify all or any part of their objectives. See, Fist Division Award Nos. 15013 and 17590.

Second, the Organization argues that Carrier was successful in obtaining language in various other hub merger implementing agreements preserving its authority to serve ID notices under Article IX of the 1986 Agreement. The absence of such a provision in the three hub agreements at issue in this case plainly indicates that the parties did not intend to preserve those rights under these hub agreements. If it had been intended that Article IX was to survive the hub merger implementing agreements, it would have been a simple matter to spell it out, the Organization asserts.

In sum, the specific language of the three Hub Merger Implementing Agreements cannot be changed or nullified by Carrier's former rights under Article IX of the 1986 National Agreement. Since that is precisely the effect that Carrier's ID notices will have in this case, the Organization maintains that the question it has posed in this case must be answered in the negative.

#### **B. Carrier's Position**

Carrier argues that there is no merit to the Organization's contention that the implementing agreements extinguished its Article IX rights, for several reasons.

First, there is no language in any of the three hub merger implementing agreements that eliminates or restricts Carrier's rights under Article IX of the 1986 BLE National Agreement. The Organization, which has the burden of proof in this matter, has not explained how or where Carrier lost its Article IX rights and it can point to no language that supports its position.

Second, in point of fact, the hub merger implementing agreements specifically retain Carrier's pre-existing Agreement rights, including Article IX. The Savings Clauses contained in each of the hub merger implementing agreements at issue make it clear that the parties intended that "the provisions of the applicable Schedule Agreement will apply unless specifically modified herein." (Article VIII.A) The referenced provision is a specific acknowledgement by the parties that the provisions of existing collective bargaining agreements, including National Agreements and, in particular, Article IX of the 1986 National Agreement, are retained and will continue to be applicable. The only exception is if an existing rule or National Agreement is specifically modified in the merger agreement. In this case, Carrier argues, there has been no such modification.

Third, the practice of the parties clearly supports such a conclusion. In Carrier's view, the Organization's position in this case represents a complete departure from its position and handling in previous matters progressed pursuant to Article IX. The numerous interdivisional service runs that have been implemented since the UP/SP merger, under territories covered by New York Dock merger implementing agreements, leave no doubt that Carrier possesses the right to invoke the provisions of Article IX.

Finally, the Organization's reliance upon Article IV.A of the hub merger implementing agreements is unpersuasive. In order to apply the provision, there must first be a conflict between the applicable collective bargaining agreement and the merger implementing agreement. Here, Carrier asserts, there is no conflict between the merger implementing agreements and Article IX. Carrier has the right under Article IX to modify existing collective bargaining agreements to establish new ID service runs provided the procedure outlined in Article IX is followed and adversely affected employees are provided the appropriate protections. Carrier's right to exercise its Article IX rights does not constitute a conflict with the merger agreements. Indeed, the Organization has not identified any Article IX provisions that conflict with the merger implementing agreements. For all these reasons, the Carrier contends it retains the right to proceed under Article IX.

### **C. Findings and Discussion**

We begin our analysis of this dispute by examining the provisions of the Hub Merger Implementing Agreements at issue herein. This Committee's function in interpreting and applying the contractual provisions is to ascertain and then enforce the intention of the parties as reflected by the language of the pertinent provisions involved. If the language being construed is clear and unambiguous, such language is in itself the best evidence of the intention of the parties. We presume that the words used should be read as having their usual and ordinary meaning within the context of the overall agreement. If the language so selected by the parties leaves no doubt as to its intention, then we need not look to extrinsic evidence, and points of bargaining history or past practice become irrelevant.

After careful consideration of all contractual provisions applicable to this matter, we find that the language contained in the hub merger implementing agreements is patently clear. Carrier's Article IX rights under the 1986 National Agreement were not expressly modified or nullified under the hub merger agreements, and therefore they still exist and apply. However, when those rights have been exercised in a manner that conflicts with or modifies the provisions of the hub merger implementing agreements, the implementing agreements must be given precedence. In this case, the hub merger implementing agreements prevail.

Each of the three Hub Merger Implementing Agreements contains a Savings Clause that guarantees the continued existence of pre-existing agreements unless expressly modified. Article VIII.A states: "The provisions of the applicable Schedule Agreement will apply unless specifically modified herein." The dispute concerning this provision of the hub merger implementing agreements centers around the Organization's contention that Carrier's IX rights were eliminated by failing to incorporate those rights specifically in the hub merger implementing agreements. In other words, the Organization is arguing that the omission of reference to Article IX in the Hub Merger Implementing Agreements should be construed as a deliberate intent to surrender Article IX rights under the implementing agreements.

The Organization bases this contention on the fact that certain other hub merger implementing agreements incorporated contract language which addressed pre-existing rights under Article IX of the 1986 National Agreement. For example, the Merger Implementing Agreement for the San Antonio Hub reads, in Article III, Section G: "New pool operations not covered in this implementing Agreement between Hubs or one Hub

and a non-merged area or within a Hub will be handled per Article IX of the 1986 National Implementation Award.” The Organization argues that the absence of such language in the three Hub Merger Implementing Agreements at issue constitutes a relinquishment by Carrier of its Article IX rights and thus precludes it from exercising such rights.

There are two principal difficulties with the Organization’s argument, however. First, the provisions in hub merger implementing agreements other than the ones involved in this case are not particularly relevant. In a New York Dock case cited by the Organization, Arbitrator La Rocco agreed:

The parties bargained separately over the various hub merger implementing agreements and the Carrier implemented each merger implementing agreement at a different time. This bargaining process and environment strongly suggests that the parties contemplated that the provisions of each hub merger implementing agreement would pertain only to employees and property covered by the particular merger implementing agreement. Otherwise, the Carrier and the Organization would have negotiated a master hub agreement, the terms of which would pierce the boundaries of each hub.<sup>6</sup>

As Arbitrator LaRocco recognized, the parties intended that the terms and conditions of each hub merger implementing agreement would apply only to the territory expressly covered by the particular implementing agreement. Therefore, this Committee will not impute an intent to extinguish Article IX rights under the three Hub Merger Implementing Agreements at issue based on the language incorporated in other merger implementing agreements.

Second, and just as important, the language of the Savings Clause is not ambiguous and therefore extrinsic evidence is unnecessary to interpret the parties’ intent.

---

<sup>6</sup> BLE and UP, New York Dock Arbitration Committee under Article 1, Section 11 of the New York Dock Conditions, I.C.C. Finance Docket No. 32760 (LaRocco, 2001)(side letter to hub merger implementing agreement did not modify a schedule rule beyond the geographical territory of the St. Louis Hub).

The Savings Clause states that collective bargaining agreement provisions remain in effect unless "specifically modified" by the Hub Merger Implementing Agreements. By its own clear terms, this provision requires an affirmative expression of intention in order to modify the terms of a collective bargaining agreement. Silence is not sufficient. Thus, the mere fact that the parties failed to insert language in the three Hub Merger Implementing Agreements expressly preserving Carrier's rights under Article IX of the 1986 National Agreement does not mean that those rights were relinquished. In order to extinguish Carrier's Article IX rights, the parties would necessarily have had to include clear and unambiguous language stating that Article IX rights were no longer applicable at these Hubs. They did not do so.

That does not end our inquiry, however. Although Carrier's Article IX rights survive under the Savings Clause of the hub merger implementing agreements, their exercise is not unfettered. Each of the three implementing agreements negotiated by the parties includes the following provision:

#### **ARTICLE IV -- APPLICABLE AGREEMENTS**

- A. All engineers and assignments in the territories comprehended by this Implementing Agreement will work under the Collective Bargaining Agreement currently in effect between the Union Pacific Railroad Company and the Brotherhood of Locomotive Engineers dated October 1, 1977..., including all applicable national agreements the 'local/nations' agreement of May 31, 1996, and all other side letters and addenda which have been entered into between the date of last reprint and the date of this Implementing Agreement. Where conflicts arise, the specific provisions of this Agreement shall prevail... (emphasis added)**

As the foregoing language makes clear, the parties recognized, as they did in the Savings Clause, that prior agreements would remain in effect. They also recognized, however, that circumstances might arise in which the implementing agreements would

conflict with these pre-existing agreements. When that happens, the parties agreed that the implementing agreement provisions would prevail. The bargain that was struck is not ambiguous and it is entitled to enforcement.

Our reading of Article IV.A is supported by the express language of the side letter incorporated in each of the three hub merger implementing agreements. To dispel any doubt about the interplay between the pre-existing agreements and the implementing agreements, the side letter incorporated in the hub merger implementing agreements plainly states that, to the extent that there are other applicable collective bargaining agreements that were not expressly modified or nullified, "they still exist and apply." However, the parties expressly acknowledge that "the specific provisions of the Merger Implementing Agreement, where they conflict with the basic schedule agreement, take precedence, and not the other way around."

In the face of this unambiguous language, Carrier argues in its submission:

...a merger implementing agreement becomes, upon implementation, a part of the collective bargaining agreement fabric that defines the rules, rates of pay and working conditions for engineers at a particular location. There is no question that merger agreements may be used to make specific changes in an existing collective bargaining agreement. Of course, such changes would be done in order to accomplish the economies and efficiencies of the merger. However, once in place, the merger accord becomes nothing more than a part of the existing collective bargaining agreement and no longer a stand alone document. Moreover, unless there is a specific provision to the contrary, pre-existing contract (agreement) rights accordingly apply equally to a Merger Agreement as they do to any other Agreement provision. There is nothing in New York Dock, in the governing collective bargaining agreement or in the Merger Agreement itself that places it on a higher plane than any other provision or rule or insulates it from the exercise of a pre-existing right or rule, such as Article IX.

This Committee is not persuaded by the Carrier's logic. The parties are experienced negotiators. They must be held to have full knowledge of the provisions of the Hub Merger Implementing Agreements and the significance of the clear and

unambiguous language contained therein. Moreover, it must be presumed that they did not include language in those agreements with the understanding that the provisions would be rendered superfluous or meaningless. The Carrier and the Organization have plainly stated, not once, but twice, that the Hub Merger Implementing Agreements prevail when they conflict with other applicable agreements. If the Carrier's position were accepted in this case, although the parties made express promises in Article IV.A and the side letter to resolve conflicts in agreements in favor of the hub merger implementing agreements, the Carrier would be allowed to ignore those commitments. No such result is warranted here.

Carrier has also argued that there have been numerous interdivisional service runs that have been implemented in territories where a merger implementing agreement exists and, with one possible exception, no protest has been lodged by the Organization. Generally, however, the parties are entitled to insist on the enforcement of the plain and unambiguous provisions of an agreement, even when a contrary practice exists. This established rule of contract interpretation has even greater application in this context, since it is doubtful that any "practice" on other territories can be extrapolated to the instant case. We simply do not know whether the implementing agreement language is the same or even whether the facts giving rise to the interdivisional service changes were similar to those at bar. Carrier may have been successful in instituting new interdivisional runs in other locations, but that does not preclude the Organization from relying on the express language negotiated in the three Hub Merger Implementing Agreements at issue.

To summarize thus far, we conclude that the Hub Merger Implementing Agreements retained Carrier's rights under Article IX of the 1986 National Agreement

and, further, that when those rights conflict with the provisions of the merger implementing agreements, they must give way. The plain and unambiguous language of Article IV.A and the side letter affords no other conclusion.

The remaining issue is whether the provisions of the Hub Merger Implementing Agreements in fact stand in conflict with the interdivisional service runs Carrier seeks to establish pursuant to Article IX of the 1986 National Agreement. Based on the record before this Committee, it would appear that numerous provisions of the implementing agreements governing the operations of trains, methods of compensation and home terminal locations would be nullified or modified if the new ID service runs were put into effect. Accordingly, the provisions of the Hub Merger Implementing Agreements must prevail in accordance with Article IV.A and the side letter set forth in full above.

### **AWARD AND ORDER**

**1. This Committee finds that it has jurisdiction to resolve the dispute presented.**

**2. ORGANIZATION'S QUESTION AT ISSUE:**

Whether the provisions of the North Little Rock/Pine Bluff Hub Merger Implementing Agreement (October 9, 1997), the Kansas City Hub Merger Implementing Agreement (July 2, 1998), and the St. Louis Hub Merger Implementing Agreement (April 15, 1998), negotiated pursuant to the Surface Transportation Act, can be changed by the Carrier's former rights under Article IX of the 1986 National Agreement (May 19, 1986), negotiated pursuant to the Railway Labor Act, where the Carrier failed to expressly retain such rights in the aforementioned Hub Merger Implementing Agreements, and the specific language of each aforementioned Hub Merger Implementing Agreement otherwise prohibits such change?

**ANSWER TO THE ORGANIZATION'S QUESTION AT ISSUE**

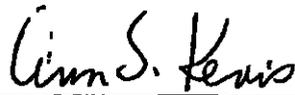
Carrier has retained its Article IX rights under the 1986 National Agreement, but the Hub Merger Implementing Agreements cannot be changed by the exercise of Carrier's Article IX rights under the circumstances presented herein.

**3. CARRIER'S QUESTION AT ISSUE:**

Does the New York Dock UP/SP Merger Implementing Agreement for the North Little Rock/Pine Bluff Hub bar Union Pacific Railroad Company from exercising its right to establish interdivisional service pursuant to Article IX of the May 16, 1986 BLE National Agreement?

**ANSWER TO THE CARRIER'S QUESTION AT ISSUE**

In the particular case before this Committee, the answer is yes.



**ANN S. KENIS**  
Neutral Member

**Charles R. Rightnowar**  
Organization Member

**Richard Meredith**  
Carrier Member

Dated this      day of March, 2004.

50

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**FINANCE DOCKET NO. 32760 (SUB NO. 43)**

---

**IN THE MATTER OF NEW YORK DOCK ARBITRATION  
BETWEEN UNION PACIFIC RAILROAD COMPANY  
AND  
BROTHERHOOD OF LOCOMOTIVE ENGINEERS & TRAINMEN  
  
(ARBITRATION REVIEW)**

---

**REPLY OF BROTHERHOOD OF LOCOMOTIVE  
ENGINEERS & TRAINMEN TO APPEAL**

---

**Mr. C. R. Rightnowar  
General Chairman - BLET  
320 Brookes Drive  
Suite 115  
Hazelwood, MO 63042  
314-895-5858  
FAX 314-895-0104**

**Harold A. Ross, Esq.  
Ross & Kraushaar Co., L.P.A.  
1548 Standard Building  
1370 Ontario Street  
Cleveland, Ohio 44113-1740  
216-861-1313  
FAX 216-696-4163**

**Attorney for Respondent  
Brotherhood of Locomotive  
Engineers & Trainmen**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**FINANCE DOCKET NO. 32760 (SUB NO. 43)**

---

**IN THE MATTER OF NEW YORK DOCK ARBITRATION  
BETWEEN UNION PACIFIC RAILROAD COMPANY  
AND  
BROTHERHOOD OF LOCOMOTIVE ENGINEERS & TRAINMEN  
(ARBITRATION REVIEW)**

---

**REPLY OF BROTHERHOOD OF LOCOMOTIVE  
ENGINEERS & TRAINMEN TO APPEAL**

---

**INTRODUCTION**

Contrary to the position taken by the petitioner, Union Pacific Railroad Company ("UP"), the matter before the Board does not assert any recurring or otherwise significant issue of general importance regarding the interpretation of the labor conditions imposed in Finance Docket No. 32760. The issue raised by UP involves only three of 16 Hub Implementing Agreements in effect on UP as a result of the UP/Southern Pacific merger. And those Agreements contain certain contractual provisions which are not in the remaining Hub Implementing Agreements or such agreements in general. The issue has not risen since the merger or the creation of the Little Rock/Pine Bluff, Kansas City and St. Louis Hubs by UP and, as we later show, is not likely to arise in those Hubs or elsewhere hereafter. Moreover, it is clear on the face of UP's appeal that the issue in this case only involves the interpretation and application of an implementing agreement which is

not a matter of major importance.

In addition, contrary to UP's argument, the New York Dock Arbitrator appointed by the National Mediation Board, Ann S. Kenis, had authority to determine if she had jurisdiction to interpret and apply the terms and conditions set forth in the Hub Implementing Agreement. Under the law, as defined by the courts and this agency and its predecessor, New York Dock arbitrators are to interpret and apply those implementing agreements, which bear the imprimatur of this agency. In fact, UP has admitted and advocated this principle in litigation arising out of the UP/SP Merger.

Furthermore, contrary to UP's assertion, the arbitrator's decision draws its essence from the protective conditions and the Hub Implementing Agreement and the arbitrator did not commit egregious error as that term has been defined. Actually, UP is claiming that it may evade the three Hub Implementing Agreements it negotiated and voluntarily entered into with the provisions it wanted in support of the hub-and-spoke concept it requested in its merger application and for which this agency granted authority. Thus, UP seeks a time line expiration from this Board in the guise of arbitration review on the basis that there is no other alternative by which it can obtain interdivisional runs through the Little Rock/Pine Bluff Hub. To raise the question, however, is to answer it. Unquestionably, and without much thought, it is clear that UP can get an agreement voluntarily or by service of a Section 6 notice and exhaustion of the Railway Labor Act procedures, as both are indicated in Article I, Section 2 of the New York Dock conditions. In addition, a carrier could do so through another New York Dock transaction.

Moreover, as we prove in our final argument, the facts will show that the UP's contentions supporting the use of Article IX of the 1986 National Agreement are absolutely wrong and the primary reason for its attempting to do so is not operational, but financial: an attempt to obtain a

change not permitted by the New York Dock conditions at the expense of the workers involved, *i.e.*, making them do the same work for lesser rates of pay. Stated somewhat differently, the reason advanced by UP is illusory and is a mere attempt by the Carrier to transfer wealth from the employees to UP. In Railway Labor Executives Ass'n v. United States, 987 F.2d 806, at 815 (D.C. Cir. 1993), the District of Columbia Circuit held that to satisfy the "necessity" predicate for overriding a collective bargaining agreement, the ICC must find that the underlying transaction yields a transportation benefit to the public (enhanced efficiency, greater safety or some other public gain), "not merely [a] transfer [of] wealth from employees to their employer." (Emphasis added). See also, American Train Dispatchers v. ICC, 26 F.3d 1157, at 1164, 1165 (D.C. Cir. 1994); CSX Corporation - Control - Chessie System, Inc., and Seaboard Coast Line Industries (Arbitration Review), Finance Docket No. 28905 (Sub-No. 23) (service date Sept. 15, 1989), 1989 ICC Lexis 274 at \*13 ("the conditions were . . . to ensure that the economies and efficiencies sought by the industry through consolidations and coordinations were not achieved at the sole expense of rail employees."). In the instant case, UP obtained extensive flexibilities and efficiencies in lieu of preserving certain provisions in pre-existing collective agreements, which flexibilities, efficiencies and exemptions became part of the agency imposed Little Rock/Pine Bluff Hub Implementing Agreement.<sup>1</sup> Now the Carrier is attempting to modify the New York Dock Implementing Agreement by unilaterally changing, in effect, the rates of pay, rules and working conditions of the employees in that Hub. Just as Implementing Agreements and changes in the pre-existing CBAs at the time of the consolidation

---

<sup>1</sup> Like UP and Arbitrator Kenis, respondent Brotherhood of Locomotive Engineers & Trainmen ("BLET") recognizes that the Award pertains to all three Hubs, but for convenience refers to the situation involving the Little Rock/Pine Bluff Hub.

must be "necessary" and not for the transfer of wealth from the employees to the employer, we submit the same principle is legally and equitably required with respect to the situation confronted here.

In sum, we submit that the arbitrator's decision does not present a recurring or significant issue warranting interpretation of the New York Dock conditions. Rather, the Arbitrator needed only to interpret and decide whether certain provisions in the Implementing Agreement constituted an agreement that Article IX of a pre-existing bargaining agreement would not override conflicting contractual language and expressions set forth in the implementing document. The Arbitrator properly resolved this issue through her interpretation of the implementing agreement and a side letter thereto, as well as its negotiating history, rather than interpreting the New York Dock conditions.

#### **COUNTERSTATEMENT OF FACTS**

Many of the relevant and operative facts pertinent to this matter are contained in the Award of Arbitrator Kenis. UP Ex. A at 2-10. However, the factual statement submitted by UP is incomplete and misleading.

Among other things, UP fails to disclose the Implementing Agreement's negotiating history presented to the arbitrator by BLET and the real life situation existing on UP at the time that it began its attempts to circumvent the terms of the Little Rock/Pine Bluff Implementing Agreement by serving notices under Article IX of the 1986 National Agreement; the purpose, in fact, for taking that action.

For convenience, like UP, we will start with a description of interdivisional service. In 1971, BLET and UP entered into an Article VIII that permitted establishing interdivisional runs, even

though that service would not otherwise be possible due to pre-existing agreement provisions such as the designation of home terminals, fixation of the wages paid the crew, establishing the lengths of runs, preventing change in terminals, and so forth. As UP states, the procedures were modified in Article IX of the 1986 National Agreement. Basically, the process was expedited and, if no agreement was reached on suitable conditions (not the institution of the service which in general automatically proceeded), those disputed conditions could be sent to interest arbitration. The 1986 provision also permits the commencement of the interdivisional service on a trial basis, *except, where as here, the run or runs would run through existing terminals.* These changes can virtually be made unilaterally by the Carrier unless the interest arbitrator finds the runs are unreasonable by reason of length, burdensome periods on duty, and other work conditions. In other words, the Carrier's burden is nonexistent as to commencing service and light as to the conditions. These provisions were contained in the pre-existing collective bargaining agreement.

In August 1996, this Board approved the UP/SP Merger. Union Pacific Corp. - Control and Merger - Southern Pacific Transp. Co., 1 S.T.B. 233 (1996). UP's operational plan requested authority to establish a "Hub and Spoke" system for the merger operations. The merger seniority districts and rosters were consolidated into large operational areas. Hubs were established at key locations of the merged railroad with spokes or different routes running out of the hubs. This case involves three hubs: North Little Rock/Pine Bluff, Arkansas; Kansas City, Missouri, and St. Louis, Missouri.

Under the Board's approval of this concept, the New York Dock conditions were imposed for the protection of the employees. Due to the magnitude of the changes, UP agreed to automatic certification of all employees represented by BLET. Article I, Section 4 of the employee conditions

required the parties to negotiate implementing agreements and, if negotiations failed, to arbitrate the terms and conditions of same.

The implementing agreements for each hub were negotiated separately in time and implemented separately in time. The North Little Rock/Pine Bluff Hub Implementing Agreement was signed October 9, 1997; the Kansas City Hub Implementing Agreement, July 2, 1998; and the St. Louis Hub Agreement, April 15, 1998. These agreements were different from any other of the Hub Implementing Agreements. They contained three distinctly different provisions. Those provisions are at the crux of this dispute and the subsequent arbitration.

Before we get to those provisions, we ought to point out that these three Implementing Agreements provided for new home terminals; established long runs that generally would have been considered interdivisional runs; established new crew change points (e.g., on the Missouri Pacific at Popular Bluff and the Cotton Belt at Ilmo, and agreed to Dexter to facilitate traffic); extended runs; and removed Jefferson City from its customarily associated territories and placed it in the Kansas City Hub for its work to be attrited. Moreover, the North Little Rock/Pine Bluff Implementing Agreement provided that trains could be run from Memphis, to Pine Bluff; however, the trains could not run from Memphis to Little Rock through Pine Bluff without a crew change.

In addition, it was agreed that the Missouri Pacific-Upper Lines bargaining agreement ("CBA") and several other agreements would be the CBA in the Hub.

As a result of these extreme changes that provided the Carrier with a more efficient and lower cost operation, the employees requested and obtained (1) a limitation for three interdivisional runs already in being; (2) a litany of extended runs; and (3) the three provisions relied upon by BLET in support of its position before the New York Dock Arbitrator. It was BLET's negotiating position

that the "necessity" test had been pushed to its limits and that these provisions were necessary to keep UP honest in interpreting and applying the Hub Implementing Agreement and to provide a modicum of labor stability.

Thus, each Hub Implementing Agreement adopted the collective bargaining agreement or schedule rules of the former Missouri Pacific Railroad Company-Upper Lines; however, each of the aforementioned Hub Implementing Agreements specifically provided that the Implementing Agreement provisions would supersede any prior agreement that was in conflict therewith. Article IV of the North Little Rock/Pine Bluff Hub Implementing Agreement, as well as Article IV of the two other Implementing Agreement, reads as follows (UP Ex. E at 19):<sup>2</sup>

#### ARTICLE IV - APPLICABLE AGREEMENTS

- A. All engineers and assignments in the territories comprehended by this Implementing Agreement currently in effect between the Union Pacific Railroad Company and the Brotherhood of Locomotive Engineers dated October 1, 1977 (reprinted October 1, 1991), including all applicable national agreements, the "local/nations" agreement of May 31, 1996, and all other side letters and addenda which have been entered into between the date of last reprint and the date of this Implementing Agreement. Where conflicts arise, the specific provisions of this Agreement shall prevail. None of the provisions of these agreements are retroactive. (Emphasis original).

Each of the Hub Implementing Agreements contains a provision entitled "Saving Clause." (UP Ex. E at 24). In Section C, all *non-conflicting* collective bargaining agreements were preserved, including the *existing* ID service between the terminals *within* the *new* seniority districts:

---

2

References to "UP Ex." are to the exhibits accompanying UP's Appeal or Petition for Review.

**ARTICLE VIII - SAVINGS CLAUSE**

A. The provisions of the applicable Schedule Agreement will apply unless specifically modified herein.

\* \* \*

C Nothing in this Agreement will preclude the use of any engineers to perform work permitted by other applicable agreements *within the new seniority districts* described herein, i.e., engineers performing Hours of Service Law relief within the road/yard zone, *ID engineers performing service and deadheads between terminals*, road switchers handling trains within their zones, etc.

D.

Several *existing* ID Agreements were preserved, either in total, or in part, and modified for Hub operations. See UP Ex. E at 20, Ex. F at 13, 20 and Ex. G at 13. However, pursuant to the language of Side Letters to the Hub Implementing Agreements, No. 20 in the North Little Rock/Pine Bluff Hub Implementing Agreement, none of the provisions of any *preexisting* Agreement could modify or change - - or in any way nullify or undermine - - any of the provisions of the Hub Implementing Agreements involved herein.

**NORTH LITTLE ROCK/PINE BLUFF  
HUB IMPLEMENTING AGREEMENT:**

Side Letter No. 20

October 9, 1997

MR D E PENNING  
GENERAL CHAIRMEN BLE  
12531 MISSOURI BOTTOM RD  
HAZELWOOD MO 63042

MR D E THOMPSON  
GENERAL CHAIRMAN BLE  
414 MISSOURI BLVD  
SCOTT CITY MO 63780

MR M L ROYAL JR  
GENERAL CHAIRMAN BLE  
313 WEST TEXAS  
SHERMAN TX 75092-3755

Gentlemen:

**This refers to the merger Implementing Agreement for the North Little Rock/Pine Bluff Hub.**

During our negotiations your Organization raised some concern regarding the intent of Article VIII - Savings Clause, Item C thereof. **Specifically, it was the concern of some of your constituents that the language of Item C might subsequently be cited to support a position that "other applicable agreements" supersede or otherwise nullify the very provision of the Merger Implementing Agreement which were negotiated by the parties.**

**I assure you this concern was not valid and no such interpretation could be applied.** I pointed out that Item C must be read in conjunction with Item A, **which makes it clear that the specific provisions of the Merger Implementing Agreement, where they conflict with the basic schedule agreement, take precedence, and not the other way around.**

The purpose of Item C was to establish with absolute clarity that there are numerous other provisions in the designated collective bargaining agreement, including national agreements, which apply to the territory involved, and to the extent such provisions were not expressly modified or nullified, they still exist and apply. It was not the intent of the Merger Implementing Agreement to either restrict or expand the application of such agreements.

In conclusion, **this letter of commitment will confirm that the provisions of Article VIII - Savings Clauses may not be construed to supersede or nullify the terms of the Merger Implementing Agreement which were negotiated in good faith between the parties. I hope the above elaboration clarifies the true intent of such provisions.**

Yours Truly,

/s/ M A Hartman

M. A. Hartman  
General Director - Labor Relations

(UP Ex. E at 64-65; emphasis original and added).

The chief negotiator for BLET at that time, then General Chairman D. E. Penning, testified in the arbitration involved herein as to the intent and purpose of the quoted Side Letters:

Since the Carrier obtained vast, sweeping changes in the operations of train in the newly formulated "Hubs" (and "Spokes" to the Hubs), combining what were formerly separate seniority districts, I insisted, and obtained, through Side Letter No. 20 in the North Little Rock/Pine Bluff Hub Merger Implementing Agreement, and Side Letter No. 10 in the St. Louis Hub Merger Implementing Agreement, an express, written promise from the Carrier's negotiator, M. A. Hartman, General Director-Labor Relations, that the Carrier would not use, through the "Savings Clause," any preexisting Collective Bargaining Agreement to undermine, change, modify, or nullify any of the very provisions of the Hub Merger Implementing Agreements under my jurisdiction that we were negotiating; these Side Letters were solely designed to provide stability to my members and their families as to their operations of trains, their methods of compensation for same, and the location of their home terminals, following the traumatic upheaval caused by the Union Pacific Railroad Company/Southern Pacific Transportation Company merger pursuant to Finance Docket No. 32760. (See BLET Ex. 1).

In other words, the preexisting agreements could not undermine or modify the later negotiated provisions of the Hub Implementing Agreements; otherwise, the Hub Implementing negotiations would be a nullity and absurd and their agreements a nullity under the normal rules of construction.<sup>3</sup>

---

3

Also, it needs to be noted that at those Hubs on all other parts of the merged railroad other than the former MP-Upper Lines involved herein, UP did not incorporate the above-quoted Side Letters. Rather, it sought and obtained *express* contractual language *to preserve* its preexisting right to serve Article IX Notices under the ID provisions of the 1986 BLET National Agreement in *those Hubs after* the effective date of the implementation. They specifically state:

New pool operations not covered in this Implementing Agreement between Hubs or one Hub and non-merged area will be handled per Article IX of the 1986 National Implementation Award.

Moreover, the contrary construction now sought by UP of this Board contravenes the quid pro quo for the broad, expansive rights otherwise given the Carrier by the Implementing Agreement.

For the six years following the effective date of the three Hub Implementing Agreements, those agreements were followed as BLET submits. However, on May 16, 2003 and on May 29, 2003, UP served notices, allegedly pursuant to Article IX of the 1986 BLET National Agreement, to establish interdivisional ("ID") service in the North Little Rock/Pine Bluff Hub Implementing Agreement, which notice, BLET submits, is contrary to and negates the specific provisions of the Hub Implementing Agreement. The specific provisions thereof pertinent to this dispute are those governing (a) the methods of operation of this same service, (b) the pay for this service, and (c) the status of Pine Bluff, Arkansas and North Little Rock, Arkansas, as "home" terminal locations for that Hub until changed by voluntary agreement, by agreement reached through the procedures of the Railway Labor Act, or by future transactions under the New York Dock conditions, which require such implementation. Stated somewhat differently, the notices, purportedly under Article IX of the 1986 BLET National Agreement, change the very provisions of the North Little Rock/Pine Bluff Hub Implementing Agreement that are to supersede the *conflicting* former rights of UP under Article IX and thusly, as found by the New York Dock Arbitrator, violate the provisions of Article IV.A and the side letter quoted above.

Notwithstanding these contractual restraints, and the guidance provided by Article I, Section 2 of the New York Dock conditions and the RLA in the process for dealing with the alleged problem, UP attempts to justify its invocation of Article IX on the basis of traffic pattern changes. As we subsequently show at pages 28-30, the facts upon which that claim is based are inaccurate and in any event do not support the leap in reasoning submitted by UP that this change would justify the Board

to interpret and apply the Hub Implementing Agreement differently than the Arbitrator.

As UP admits, BLET did meet with it after receipt of the I.D. notices and attempted to reach a voluntary agreement but UP was adamant in its position. BLET was also firm in its contention that the matter was one to be resolved under the New York Dock conditions. When BLET found it futile to discuss the matter with UP, it invoked New York Dock arbitration and requested the National Mediation Board to appoint a neutral. UP countered by insisting the NMB send the dispute to an arbitrator pursuant to Article IX of the 1986 National Agreement. BLET vigorously opposed that request. One of the reasons BLET opposed going to an arbitrator under Article IX is that Article IX does not provide for dispute resolution of the nature required by this situation. Rather, Article IX provides the arbitrator only with authority to determine the *conditions*, not the correctness, of the interdivisional service. By agreeing to that kind of interest arbitration, the issue raised by BLET could not be resolved. The NMB appears to have recognized this contention by furnishing a single arbitrator selected by the parties to hear both disputes.<sup>4</sup>

On February 12, 2004, a hearing was held in front of Arbitrator Kenis as to the New York Dock issues, and another hearing was held in the afternoon regarding Article IX of the 1986 BLET National Agreement. Following the hearing, Arbitrator Kenis entered an award in each matter.

Initially, Arbitrator Kenis concluded that jurisdiction over the parties' dispute fell under Article I, Section 11 of New York Dock. Specifically, relying upon the Carrier's own statements,

---

4

UP suggests at page 7 of its appeal that the NMB did something improper by refusing itself to address the jurisdictional issue. That Board has consistently held that the resolution of jurisdictional questions as to New York Dock conditions are for the New York Dock arbitrator. Denver & Rio Grande Western R.R., 7 NMB 409 (1980). This holding has been affirmed by the federal courts. Ozark Air Lines, Inc. v. National Mediation Board, 797 F.2d 557, 564 (8<sup>th</sup> Cir. 1986).

she found the parties recognized that "it is the hub merger implementing agreements which must be interpreted and applied in order to determine whether they act as a bar to the establishment of ID service pursuant to Article IX of the parties' 1986 National Agreement." UP Ex. A, Award in New York Dock Arbitration at 15. She stated, "[O]ur task is to construe the provisions of the hub merger implementing agreements and decide the question of whether the language therein prevents the application of Article IX under the circumstances presented. \* \* \* [I]t is the implementing agreements which are primarily the focus of the analysis and not Article IX." Id., 15-16. She then held:

As prior New York Dock awards involving these same parties have recognized, the interpretation and application of merger implementing agreements falls within the ambit of Article I, Section 11 of the New York Dock conditions.<sup>5/</sup> Accordingly, we find that this Committee has jurisdiction over the instant dispute.

<sup>5/</sup> See, BLE and UP, New York Dock Arbitration Committee under Article I, Section 11 of the New York Dock Conditions, I.C.C. Finance Docket No. 32760 (LaRocco, 2000) (dispute concerning the interpretation and application of two merger implementing agreements falls within the jurisdiction of Article I, Section 11 of the New York Dock Conditions); BLE and UP, New York Dock Arbitration Committee under Article I, Section 11 of the New York Dock conditions, I.C.C. Finance Docket No. 32760 (LaRocco, 2001) (side letter to hub merger implementing agreement did not modify a schedule rule beyond the geographical territory of the St. Louis Hub).

Id., 16. The agency's attention is also directed to the Arbitrator's references to BLE and UP, New York Dock Arbitration Committee under Article I, Section 11 of the New York Dock Conditions, Award No. 1 (LaRocco, 2003), and further to UP and BLE, NRAB First Division, Award No. 25418 (accepting UP's argument that New York Dock issues are not subject to Section 3 RLA jurisdiction). Id., at 14.

Arbitrator Kenis then turned to the merits of the dispute by interpreting and applying the terms of the Hub Implementing Agreements. Although finding the Hub Implementing Agreements had not taken away all of the railroad's rights to set up interdivisional service, she concluded that in those implementing agreements UP had given up its right to establish the herein desired *interdivisional service*. In so ruling, she relied upon Article IV(A) of the Hub Implementing Agreements, which states that conflicts between those agreements and preexisting CBAs would be resolved in favor of the Implementing Agreements. Arbitrator Kenis then ruled:

It would appear that numerous provisions of the implementing Agreements governing the operations of trains, methods of compensation and home terminal locations would be nullified or modified if the new service runs were put into effect. Accordingly, the provisions of the Hub Merger Implementing Agreements must prevail in accordance with Article IV.A and the side letter set forth in full above.

Id. at 25.

Arbitrator Kenis found that UP could not establish the purposed interdivisional services in each of the three Hubs because they conflicted with the terms of the Hub Implementing Agreements and with the agreed upon operations, the methods of compensating the engineers and home terminal locations. Specifically as to the proposed North Little Rock to Memphis ID service, the Arbitrator found that Article I(A)(5) of the North Little Rock/Pine Bluff Hub Implementing Agreement prohibited UP from having engineers operate between Pine Bluff and North Little Rock on their way to Memphis. UP's proposed ID run would have required them to do so with reduced earnings for the longer run. As a result of this interpretation and application of the Hub Implementing Agreement, she found the proposed ID service could not be established.

It is well settled by this Board that New York Dock Arbitrators have sole jurisdiction to

interpret and apply the terms and provisions of agency imposed implementing agreements. In this particular case, the Arbitrator's interpretation and application is not egregiously wrong and is not reversible under applicable law related to enforcing arbitration awards. As shown in the subsequent portion of this reply, the Award is final and binding and should be upheld.

### ARGUMENT

#### A. Standard of Review

Customarily, the Board describes the standard of review of arbitration decisions as follows:

Under 49 CFR 1115.8, the standard for review of arbitration decisions is provided in Chicago & North Western Tptn. Co.- Abandonment, 3 I.C.C. 2d 729 (1987) (Lace Curtain), aff'd sub nom. International Broth. of Elec. Workers v. ICC, 862 F.2d 330 (D.C. Cir. 1988). Under Lace Curtain, we accord deference to arbitrators' decisions and will not review "issues of causation, calculation of benefits, or the resolution of factual questions" in the absence of egregious error. Review of arbitral decisions has been limited to "recurring or otherwise significant issues of general importance regarding the interpretation of our labor conditions." Id. at 736. We generally do not overturn an arbitral award unless it is shown that the award is irrational or fails to draw its essence from the imposed labor conditions or it is outside the scope of authority granted by the conditions. Applying these standards here, we find no basis for reviewing and overturning the arbitrator's decision in this case.

BLET Ex. 2, Burlington Northern and Santa Fe Ry. Co. - - Petition for Review of Arbitration Award,

STB Finance Docket No. 32549 (Sub-No. 24) (service date of Sept. 25, 2002) at slip op. 3.

There are two phrases used in the standard that demand further definition. They are "recurring or otherwise significant issues of general importance regarding the interpretation of [the Board's] labor protective conditions" as the basis for the limited review, and vacation of the award for an alleged substantive mistake because of "egregious error." Of course, "egregious" means "extraordinarily bad" or "flagrant." And citing Loveless v. Eastern Air Line, Inc., 681 F.2d 1272,

1275-76 (11<sup>th</sup> Cir. 1982), the Board has said: “‘Egregious error’ means ‘irrational,’ ‘wholly baseless and completely without reason,’ or ‘actually and indisputably without foundation in reason and fact.’”

We also know that issues of causation, resolution of factual questions, criticism of the conclusion of the arbitrator, and the arbitrator’s failure to provide detailed discussion of the issues before him or her are not matters the Board reviews as recurring or significant. See Norfolk Southern Corporation - Control - Norfolk and Western Ry. Co. and Southern Ry. Co., Finance Docket No. 29430 (Sub-No. 20), 4 I.C.C. 2d 1080, 1086 (1988). Further, we know that the agency’s “deference to the arbitrator’s decision will vary with the nature of the issue involved, ranging from the most deferential treatment in [\*7] the case of evidentiary issues such as causation . . . [citation omitted] to significantly less deference when reviewing interpretation of Commission regulations or orders and matters of transportation policy.” See CSX Corporation - Control - Chessie System, Inc. and Seaboard Coast Line Industries (Arbitration Review), 1989 ICC Lexis 274 at \*6-7.

Under these standards of review and past application, UP has a heavy burden in obtaining review of the Arbitrator’s Award and, if review is granted, the Award’s vacation as sought.

**B. THIS CASE SHOULD NOT BE REVIEWED, BECAUSE THE SCOPE OF REVIEW IS LIMITED TO RECURRING OR OTHERWISE SIGNIFICANT ISSUES OF GENERAL IMPORTANCE REGARDING THE INTERPRETATION OF THE BOARD’S LABOR CONDITIONS.**

In Lace Curtain, the agency held that it would generally defer to an arbitration panel’s decision and would limit its review to “recurring or otherwise significant issues of general importance regarding the interpretation of our labor conditions.” 3 I.C.C. 2d supra at 735-36.

UP contends that due to dicta in Delaware & Hudson Ry. Co. - Lease and Trackage Rights

Exemption - Springfield Terminal Ry. Co., 7 I.C.C. 2d 1050 (1991) supplemented, 8 I.C.C. 2d 839 (1992) (“Springfield Terminal”), at some point of time disputes as to the interpretation and application of merger implementing agreements are not subject to New York Dock arbitration. 8 I.C.C. 2d at 846. From this premise, it leaps to the conclusion that the current issue is a significant issue of general importance. This reasoning, however, totally overlooks the Commission’s overall ruling set forth in both opinions that “[a]ny dispute concerning the proper interpretation of the effect of these critical terms [in the transaction imposed implementing agreement] must be resolved within the framework of the labor conditions we imposed . . . .” Id. In other words, the interpretation of the provisions of implementing agreements must be arbitrated pursuant to the provisions of Article I, Section 11 of the New York Dock conditions. Clearly, under the cited rulings, the involved Hub Implementing Agreement interpretation disputes were within the jurisdiction of New York Dock arbitration.

Any doubt that New York Dock arbitrators are to decide the interpretations of the parties’ implementing agreements has been affirmed by the Board in two recent cases. In USX Corporation-Control-Transtar, Inc., (Arbitration Review), STB Finance Docket No. 33942 (Sub-No. 1) (STB service date of September 24, 2002) (copy attached as BLET Exhibit 3), the Board held that the New York Dock arbitrator’s interpretation of who was to be considered a displaced employee under Article VII of the implementing agreement did “not involve the general applicability of the New York Dock conditions, nor, contrary to the railroad parties’ contentions, does it involve an interpretation of those conditions.” In the eyes of the Board “the arbitrators simply interpreted the parties’ implementing agreement carrying out the conditions.” Id. at 6. Likewise, in another case decided over ten years after Springfield Terminal, the Board found no basis under Lace Curtain to

review a garden variety matter routinely handled by New York Dock arbitration panels. Burlington Northern, Inc., etc. - Control and Merger - Santa Fe Pacific Corporation, et al. (Arbitration Review), STB Finance Docket No. 32549 (Sub-No. 23) (service date of September 25, 2002) (BLET Ex. 4).

In this regard, the Board stated:

We find no basis under Lace Curtain to review this Award and decline to do so. First, we reject BNSF's claim that the Board must review the Award because it implicates "recurring or otherwise significant issues." In this case, the Panel looked to see if a specific prior CBA, the National Agreement, applied to employees affected by certain specific operational changes. Finding that it did, the Panel then determined that the CBA could be given effect without depriving the public of the transportation benefits of the acquisition or preventing BNSF from implementing the proposed operational changes. The Panel's action here in interpreting a CBA is the kind of task in which arbitrators routinely engage and does not present an issue of general importance regarding the interpretation of our labor conditions.

Id. at 5.

As we previously have shown, the dispute here as to interpretation of the North Little Rock/Pine Bluff Hub Implementing Agreement is not a recurring dispute or one likely to arise again. Moreover, as the above cases consistently show that interpretations of implementing agreement provisions are grist for the mill of New York Dock arbitration. UP has offered no basis for considering the instant case different and unique, one that needs the Board's expertise.

**C. THE NEW YORK DOCK ARBITRATOR HAD AUTHORITY TO DETERMINE WHETHER SHE HAD JURISDICTION UNDER ARTICLE I, SECTION 11 TO INTERPRET AND APPLY THE TERMS OF THE HUB IMPLEMENTING AGREEMENTS.**

As the cited cases in the above section reveal, the Arbitrator did have authority under New York Dock, contrary to UP's assertion, to assume jurisdiction over any dispute involving the

interpretation of any terms of the Hub Implementing Agreement that may be involved. According to these authorities, Article I, Section 11 has not been limited to “dispute[s] or controvers[ies] with respect to the interpretation, application or enforcement of any provision of” New York Dock. At page 10 of the appeal, however, UP claims that New York Dock arbitration must have something to do with labor protective benefits or operational changes needed for the approved merger transaction; otherwise, the arbitrator has no jurisdiction. This assertion is wrong for at least four reasons.

First, ever since Lace Curtain, as stated most recently in Burlington Northern, Inc., Finance Docket No. 32549 (Sub-No. 23), (BLET Ex. 4 at 2, “if the parties . . . disagree on the interpretation of an implementing agreement, the issues are resolved by arbitration, subject to an appeal under our differential Lace Curtain standard of review.” (Footnote omitted).

Second, the interpretation sought by BLET is related to the operational changes needed for the merger transaction, which UP now wishes to circumvent, and, therefore, also relates to the employees’ protections provided through the language contended in the Hub Implementing Agreement and the applicable Side Letter.

Third, UP in judicial forums has submitted the argument that employees filing hybrid breach of collective bargaining agreement and breach of duty of fair representation cases arising from the Carrier’s application of the Hub Implementing Agreements must file and progress claims under Article I, Section 11 of the New York Dock conditions. See, e.g., UP’s Brief in Stroud v. Brotherhood of Locomotive Engineers and Union Pacific R.R., U.S. Court of Appeals for the Fifth Circuit, Case No. 02-40579, at 18-19 (BLET Ex. 5) (“well settled that disputes over the modification of seniority rights of employees in connection with STB approved mergers must be resolved under

the arbitration procedures contained in the New York Dock conditions. \* \* \* The mandatory arbitration procedures are set forth in Article I, Section 11 . . . .”); UP Brief in Moore v. Brotherhood of Locomotive Engineers and Union Pacific R.R., U.S. Court of Appeals for the Tenth Circuit, Case No. 00-3219, at 18 (BLET Ex. 6) (“Article I, Section 11 of the New York Dock conditions provides for *arbitration of disputes arising over the interpretation and application of the particular terms of a negotiated or arbitrated implementing agreement.*”); UP Brief in Kasel v. Brotherhood of Locomotive Engineers and Union Pacific R.R., U.S. Court of Appeals for the Tenth Circuit, Case No. 01-1088, at 33 (BLET Ex. 7). The UP was successful in all of these cases by having the Court dismiss for lack of jurisdiction on the basis that these claims required the interpretation of the provisions of the Hub Implementing Agreements, as to which Article I, Section 11 was provided exclusive primary jurisdiction. See, e.g., Stroud v. Brotherhood of Locomotive Engineers, Decision of Fifth Circuit (BLET Ex. 8); at 2, 3; also Kasel v. Brotherhood of Locomotive Engineers, Decision of Tenth Circuit (BLET Ex. 9), at 2.

Finally, UP has not provided any basis supporting its concept that some time after two years but before six years the Board’s jurisdiction over the Hub Implementing Agreements automatically expires, even if the Carrier has not sought to act under Article I, Section 2 of the New York Dock conditions. In pertinent part that condition states:

The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges, and benefits (including continuation of pension rights and benefits) of a railroad’s employees under applicable laws and/or existing collective bargaining agreements or otherwise *shall be preserved unless changed by future collective bargaining agreements* or applicable statutes. (Emphasis supplied).

Even though Carrier suggests the matters in dispute revert to Railway Labor Act status, UP has never

served a Section 6 Notice to bargain on the changes sought in the Hub Implementing Agreements. Why? By utilizing Article IX the Carrier can establish the interdivisional service without more; only the terms and conditions referred to in Sections 2 and 3 are subject to interest arbitration. UP Ex. D at 17, 18.

Moreover, the question is answered by the Commission's decision that followed Springfield Terminal by several years. CSX Corporation - - Control - - Chessie System, Inc., et al (Arbitration Review), Finance Docket No.28905 (Sub-No. 27) (service date of November 22, 1995) (BLET Ex. 10). In this case, the Carrier served notice in 1994 under New York Dock imposed in transactions which had been approved by the Commission as early as 30 years prior thereto. CSXT sought to merge operations in the proposed Eastern District by use of a single pool of employees. The employees objected on the basis that CSXT had to notice and implement New York Dock related coordinations when the former carriers first came under common control or soon thereafter. Even though the authority had been used and existed for thirty years, the Commission rejected the union's position and held that it had "never imposed a deadline on making merger-related operational changes," because "causality is not diminished with the basis of time." Id., 9. The decision of the New York Dock arbitrator was upheld upon the basis that there was a reasonably direct connection between the agency's decisions and the 1994 coordination. Id., 10. Here, there is such connection between the Hub Implementing Agreement, and the stealth bypass by UP to circumvent its merger-related obligations. The rationale in CSX Corporation is equally applicable to this case. CSXT bound itself to New York Dock procedures. UP also bound itself to those conditions as embodied in the Hub Implementing Agreement. The implementing agreements incorporated those procedures subject to change by voluntary agreement, an agreement under the RLA notice, negotiation and

mediation procedures, or by a future transaction under New York Dock.

- D. THE ARBITRATOR DID NOT COMMIT EGREGIOUS ERROR. HER DECISION DRAWS ITS ESSENCE FROM THE PROTECTIVE CONDITIONS AND THE HUB IMPLEMENTING AGREEMENTS, WHICH INTERPRETATIONS ESTABLISH THAT THE PRE-EXISTING CBAS ARE IN CONFLICT WITH THE IMPLEMENTING AGREEMENTS. THE LATTER SUPPLANT ARTICLE IX AS NECESSARY, AS FOUND BY THE ARBITRATOR.**

If the Board decides to review the New York Dock Arbitrator's decision, notwithstanding its recent decisions on similar issues involving the interpretation and application of implementing agreements - - and by raising the issue we do not mean to suggest the Board should - - we submit the opinion in CSX Corporation, supra, is informative. In that case, the Arbitrator's findings on linkage were entitled to deference and would only be reversed upon a showing of egregious error. In addition, as to that case, the Commission said that the issue of whether the railroad had bound itself to follow RLA procedures (the reverse of here), in undertaking the changes at issue, involved factual issues, which findings warranted the agency's deference. Here, the railroad bound itself to the New York Dock and the Hub Implementing Agreement procedures. From that observation, it is clear, we submit, that (1) the Arbitrator had before her an issue of causation, and (2) that she found on the facts before her that UP had bound itself on changes in home terminals, creation of new interdivisional service extending the ID service agreed upon in the Hub Implementing Agreement negotiations, and reducing the pay of the engineers on the extended runs. BLET requests the affirmance of the Arbitrator's award, as done in that case. Linkage in this case without a doubt, and as found by the Arbitrator, arose from the parties' decision to achieve the full transportation benefits of the merger by overriding to the extent necessary the existing collective bargaining agreement and replacing it with inter-railroad changes covered by the imposed New York Dock conditions.

Whether UP and BLET were right or wrong in that decision, is irrelevant to this Board's ruling, as it was in the cases cited by BLET herein.

In Burlington Northern, Inc. et al. - Control and Merger - Santa Fe Pacific Corporation, et al. (Arbitration Review), STB Finance Docket No. 32549 (Sub-No. 23), this agency had before it a similar case. In that case, BNSF and the United Transportation Union agreed upon an implementing agreement concerning a consolidation several years after the BN and Santa Fe had been approved. The parties could not agree on two matters, one of which was whether the protections under the New York Dock conditions or the National Agreement I.D. service applied. BNSF argued that subsequent extended run changes sought by it were unavailable to the separate carriers before the merger and, as such, were inter-railroad changes covered by the New York Dock conditions imposed in the merger case. UTU contended that the National Agreement protections applied. The New York Dock arbitration panel found that, as an unresolved matter, the runs at issue were interdivisional service changes, the National Agreement protections applied, and that it was not necessary to override the existing collective bargaining agreement which had been applied following the merger to achieve the transportation benefits of the transaction. BLET Ex. 4 at 2.

At the outset, the Board described the limited standard of review in a case of this nature and its "deference to the arbitrator's competence in this area and special role in resolving labor disputes." Id., 4. In this respect, the Board stated that it is "particularly deferential to findings of fact made by arbitrators, setting them aside only when shown they constitute egregious error" and accordingly established that its analysis would focus "on whether BNSF has met its burden of proof under these criteria." Id.

The reasoning of the Board in that case is fully applicable to that at bar and leads to the same

conclusion that was made by the agency in September 2002. Finding no basis to review the award under Lace Curtain, the Board rejected BNSF's contention that it implicated "recurring or otherwise significant issues." Id., 5. The Board explained that the Arbitrator looked to see if the prior CBA applied to the employees and then if it could be given effect without depriving the public of the transportation benefits of the acquisition. Id. Therefore, the Board held that the Arbitrator's action "in interpreting a CBA is the kind of task in which arbitrators routinely engage and does not present an issue of general importance regarding the interpretation of our labor conditions." Id. (Footnote omitted).

Next, this agency found that BNSF had not carried its "heavy evidentiary burden to show why" the Board must overturn the findings of the arbitral panel. Id. In this regard, the Board pointed out that BNSF had not shown that the Arbitrator's findings "reflect[ed] egregious error or that the Award is irrational." All the Arbitrator found was that "the changes at issue were, in fact, interdivisional changes of an existing railroad, ATSF." Id. In regard to the Board's holding that the Arbitrator had not acted irrationally, it said that the petitioner had not carried its burden of proof on that record that "the application of the CBA would prevent the intended transportation benefits of the transaction." Id. at 6.

The Board next rejected BNSF's assertion that the Award did not draw its essence from New York Dock. Relying, in part, on Article I, Section 3 of the New York Dock conditions, the Board disposed of this issue in these terms: "In this case, consistent with New York Dock, the Panel interpreted the prior CBA, found that it applied to the issue runs, and concluded that affected employees could properly choose the CBA protections over the New York Dock protections." Id. (Footnote omitted).

Finally, the Board rejected BNSF's claim that the Arbitrator "exceeded the scope of its authority." Id., 7. Reflecting upon the oft-stated judicial premise that the work of arbitrators is to interpret agreements and as long as they do so, even if they are totally wrong,<sup>5</sup> the award must be upheld, the Board stated:

As discussed above, the Panel did not abrogate or override the imposed New York Dock conditions. Instead, it interpreted the National Agreement and found that it was not necessary to abrogate that agreement in order to implement the transaction. [Footnote omitted]. Such a determination is a matter well within the expertise of arbitrators. [Footnote omitted].

o The same reasoning applies to the instant case. The Arbitrator interpreted both the New York Dock imposed Hub Implementing Agreement and the National Agreement. She found that the New

---

5

Contrary to the views expressed by UP, part by the ruling in Union Pacific R.R. v. Surface Transportation Board, 358 F.2d 31 (D.C. Cir. 2004), review of an Arbitration Award is not endless. As the Supreme Court stated in Major League Baseball Players Ass'n v. Garvey, 532 U.S. 504, 509 (2002), (per curiam), judicial review of a labor-arbitration decision . . . is very limited. Courts are not authorized to review the arbitrator's decision on the merits despite allegations that the decision rests on factual errors or misinterprets the parties' agreement . . . . "[T]he fact that "a court is convinced [the arbitrator] committed serious error does not suffice to overturn [the arbitrator's] decision."

Perhaps the concept of what is an egregious error is summed up best by Judge Posner of the Seventh Circuit in Hill v. Norfolk Western Ry., 814 F.2d 1192, 1194-95 (7<sup>th</sup> Cir. 1987):

As we have said too many times to want to repeat again, the question for decision by a federal court asked to set aside an arbitration award . . . is not whether the arbitrator or arbitrators erred in interpreting the contract, it is not whether they clearly erred in interpreting the contract, it is not whether they grossly erred in interpreting the contract . . . . If they did, their interpretation is conclusive . . . . [A] party will not be heard to complain merely because the arbitrators' interpretation is a misinterpretation.

Simply put, they just must interpret the agreement.

York Dock Implementing Agreement overrode the National Agreement in several respects so that only certain runs of an interdivisional nature and changes in terminals could be made at this time. While these actions did not abrogate the National Agreement, the parties saved or preserved those changes to its application so that changes to the involved runs could not subsequently be made unilaterally or on an ad hoc basis. The Implementing Agreement restrictions would have to be changed consistent with Article I, Section 2 of New York Dock by voluntary agreement or through the Section 6 procedures of the Railway Labor Act, or by New York Dock, or other Board-imposed conditions related to a subsequent transaction. The findings on which that determination was made are not egregious nor irrational, and the Award draws its essence from New York Dock and the New York Dock negotiated Hub Implementing Agreements. The Arbitrator did not abrogate the New York Dock Conditions; rather, she enforced them. The Award she drew is reasonable, well within her arbitral expertise, and did not exceed the scope of her authority. In sum, UP has failed to carry its burden to make any of the required showings under the Lace Curtain standard of review.<sup>6</sup>

---

6

UP's reliance on alleged past practice at pages 22-26 also fails to denigrate the Arbitrator's conclusions. Factually, as shown from the differences in agreement language, it is clear the UP and BLET intended a different result in these Hubs. If UP, as the draftsman of the Implementing Agreements, had intended the application to be similar, it knew how to obtain that result. Furthermore, past practice is difficult, if not impossible, to establish. In United Transp. Union v. St. Paul Depot Co., 434 F.2d 220, 222-23 (8<sup>th</sup> Cir. 1970), cert. denied, 401 U.S. 975 (1971), the Court said in terms destructive of UP's strained argument that a past practice existed which required Arbitrator Kenis to find that Article IX applied:

An "established practice under the [Railway Labor] Act should demonstrate not only a pattern of conduct but also some kind of mutual understanding, either express or implied. Thus, prior behavior by itself, although similar to the acts in dispute, falls short of an "established practice." Whether prior conduct establishes a working practice under the Act depends upon consideration of the facts and circumstances of the particular case. Among the factors one might

Any doubt that might remain, we submit, is removed by the Board's similar findings and holding in USX Corporation - Control Exemption - Transtar, Inc. (Arbitration Review), STB Finance Docket No. 33942 (Sub-No. 1) (September 19, 2002) (BLET Ex. 3, at 6-7. There too an Arbitrator "simply interpreted the parties' implementing agreement carrying out the conditions." And, as suggested here, the Board found and held:

Examining the language of the implementing agreement and other indicia of intent, the Arbitrator determined that the parties themselves intended to precertify affected employees so as to eliminate the need to show causation in this case, and the carrier's arguments accurately reflect the bargain it made with TCU.<sup>6</sup> We do not find that the Arbitrator's decision in this regard was egregious error, or that petitioner has demonstrated any other basis under our Lace Curtain standards that would warrant our review. [Footnote omitted].

<sup>6</sup> Thus, the Arbitrator's decision should not be broadly construed, nor read in any way as departing from the general principle that to receive benefits under the New York Dock conditions, an employee must demonstrate that he or she was adversely affected by a Board authorized consolidation.

In sum, the Arbitrator's decision does not warrant review and there is no basis upon which

---

Footnote 6 continued:

reasonably consider would be the mutual intent of the parties, their knowledge of and acquiescence in the prior acts, along with evidence of whether there was joint participation in the prior course of conduct, all to be weighed with the facts and circumstances in the perspective of the present dispute.

Here, in addition to the differences previously shown, i.e., different union committees and agreements were involved, UP never attempted to or placed into effect different extended runs or additional I.D. service in the North Little Rock/Pine Bluff Hub or the other two Hubs. Thus, there has been absolutely no "prior conduct of the[se] parties which has attained the dignity of a relationship understood by the parties to at least impliedly serve as if part of the [Hub Implementing Agreement]." Id., 222.

it can or should be set aside.

**E. MOREOVER, PETITIONER'S CLAIM THAT THE INVOLVED INTER-DIVISIONAL SERVICE IS NECESSARY IS INACCURATE AND SIMPLY DOES NOT JUSTIFY ITS ATTEMPT TO TRANSFER WEALTH FROM THE EMPLOYEES TO UP.**

In a last ditch attempt to provide some justification for review, UP asserts that as a result of increased traffic at Memphis there is congestion that requires that the service run through Pine Bluff to North Little Rock. Currently, some trains run to Pine Bluff where there is an exchange of the crew that proceeds with the train. No justification has been provided by UP for the interdivisional service through the Kansas City Hub and the St. Louis Hub.

There are at least three reasons why UP's contentions must be rejected. From the outset of the merger, UP's hub-and-spoke arrangement has caused congestion, which has continued since the UP/SP merger and still continues. See "Woes at Union Pacific Create a Bottleneck for the Economy," Wall Street Journal, July 22, 2004, at A1. (BLET Ex. 11). As well known and this article establishes, much of the congestion arises from UP's refusal to hire and train a sufficient force of operating employees. The institution of interdivisional service is, if at all, a band aid that will not heal the problem.

The claim that there has been a sudden surge of traffic in the Memphis - Little Rock Corridor does not withstand scrutiny as the reason that UP must seek operational relief under Article IX of the BLET 1986 National Agreement. On October 9, 1997, the date the North Little Rock/Pine Bluff Hub Implementing Agreement was signed, the parties agreed to adjust the work equity of the former St. Louis Southwestern ("SSW") engineers and the former UP engineers for the combined pool from Memphis to North Little Rock. BLET Ex. 12. Based upon preexisting equity mileage, it was agreed

that there would be thirty (30) prior-righted turns in the Memphis-North Little Rock freight pool (X344-RE30). The agreement addressed the preexisting equity to the 30 turns in that pool as of 1997. Further, it provided that any new turn above 30 would be protected based upon seniority rights in the Zone and, thereafter, from the Hub common engineers' seniority roster.

As of October 9, 1997, the UP and BLET *agreed that the preexisting mileage run by both the former SSW crews and UP crews, under the UP (Missouri Pacific-Upper Lines) mileage agreement, required that the pool be manned by 30 turns.* *Id.* at 25-a. This determination was computed on the basis of UP's data as stated in Side Letter No. 8 of the Hub Implementing. BLET Exhibit 13.

At the New York Dock Arbitration Hearing on February 12, 2004, UP was provided with a copy of BLE Exhibit "AB" and made no objection to making the exhibit a part of the record. A copy thereof is attached hereto as BLET Exhibit 14.

BLE Arbitration Exhibit "AB" established the number of turns in the Memphis to North Little Rock freight pool in February 10, 2004 to be thirty-one (31), with the thirty-first (31<sup>st</sup>) turn (AR 21) being added on January 21, 2004, and the thirtieth (30<sup>th</sup>) (AR 24) being added on January 20, 2004. As such, as of January 19, 2004, there were 29 turns in the Memphis to North Little Rock freight pool (X344-RE30), one less than in the freight pool as of February 15, 1998, the date of implementation of the North Little Rock/Pine Bluff Hub Merger Agreement.

If there had been an 81% increase in traffic in the Memphis to North Little Rock corridor, there should have been a corresponding increase in the number of pool turns protecting the alleged increase in traffic per the New York Dock Hub Implementing Agreement. In fact, as in January 2004, or September 30, 2004, at the filing of UP's appeal herein, UP had twenty-nine (29) turns in

the Memphis to North Little Rock freight pool, one (1) fewer than the 30 on the date of implementation of the North Little Rock/Pine Bluff Hub Agreement. See BLET Ex. 15, Declaration of Gary W. Bell, Local Chairman of BLET Division 182.

In short, the above facts show the primary reason for the Carrier's use of Article IX to be financial, not operational or for transportation benefits as that term is normally used. Here, there is no operational efficiency. It already has the right to provide directional traffic in this Corridor. Id., ¶11. If anything, operations may be reduced a few minutes, no more. Those minutes even can be limited by a running change of crews. The real change is the fact that UP can extend the run 51 miles and eliminate employee payments. By negating its commitments, UP will realize a reduction in labor costs exceeding at a *minimum* \$1.25 million annually. See BLET Ex. 14 at ¶¶8-11. This cavalier treatment of its employees results in a transfer of wealth from those employees to the Carrier. It does not constitute a benefit to the public.

#### CONCLUSION

Based upon the foregoing reasoning and authorities, the respondent Brotherhood of Locomotive Engineers & Trainmen, a Division of the Rail Conference, International Brotherhood of Teamsters, respectfully requests that the Board deny the petition for review.

Respectfully submitted,



**CHARLES R. RIGHTNOWAR**

**General Chairman**

**Brotherhood of Locomotive Engineers & Trainmen**

**320 Brookes Drive, Suite 115**

**Hazelwood, MO 63042**

**Telephone - 314-895-5858**

**Facsimile - 314-895-0104**



**HAROLD A. ROSS, ESQ.**

**Ross & Kraushaar Co., L.P.A.**

**1548 Standard Building**

**1370 Ontario Street**

**Cleveland, Ohio 44113-1740**

**Telephone - 216-861-1313**

**Facsimile - 216-696-4163**

**Attorneys for Respondent**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by first class mail, postage prepaid, upon Clifford A. Godiner, Esq., and Rodney A. Harrison, Esq., Thompson Coburn LLP, One US Bank Plaza, St. Louis, Missouri 63101, attorneys for petitioner on this 27<sup>th</sup> day of October 2004.



**HAROLD A. ROSS**

**Attorney for Respondent**

51

No. 06-3282

---

**UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

---

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN,  
GENERAL COMMITTEE OF ADJUSTMENT,  
CENTRAL REGION,**

*Plaintiff/Appellant*

v.

**UNION PACIFIC RAILROAD, CO.,**

*Defendant/Appellee.*

---

Appeal from the United States District Court  
for the Northern District of Illinois, Eastern Division

Case No. 05 C 7293

The Honorable Ronald Guzman

---

**BRIEF AND REQUIRED SHORT APPENDIX OF  
PLAINTIFF-APPELLANT, BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND  
TRAINMEN, GENERAL COMMITTEE OF ADJUSTMENT, CENTRAL REGION**

---

Jorge Sanchez  
Thomas H. Geoghegan  
Debbie Mahoney  
Carol Nguyen  
Despres Schwartz & Geoghegan  
77 West Washington Street, Suite 711  
Chicago, IL 60602  
(312) 372-2511

Attorneys for Plaintiff-Appellant

44

**Circuit Rule 26.1 Disclosure Statement**

**Appellate Court No. 06-2542**

**Short Caption: Brohd Engineers & Tr v. Union Pacific**

**The undersigned counsel of record furnishes the following list in compliance with**

**Circuit Rule 26.1:**

**(1) Brotherhood of Locomotive Engineers and Trainmen, General Committee of Adjustment, Central Region.**

**(2) Plaintiff was represented in the District Court by Thomas Geoghegan and Carol Nguyen of Despres, Schwartz & Geoghegan, 77 West Washington Street, Suite 711 Chicago Illinois 60602. On appeal plaintiff is represented by the same counsel and by Jorge Sanchez.**

**(3) N/A**

---

**Jorge Sanchez**

**TABLE OF CONTENTS**

**DISCLOSURE STATEMENT ..... i**

**TABLE OF CONTENTS ..... ii**

**TABLE OF AUTHORITIES ..... iv**

**I. JURISDICTIONAL STATEMENT ..... 1**

**II. STATEMENT OF THE ISSUES..... 1**

**III. STATEMENT OF THE CASE ..... 2**

**IV. STATEMENT OF FACTS ..... 3**

**V. SUMMARY OF ARGUMENT ..... 9**

**VI. ARGUMENT ..... 9**

**A. The Decision of the District Court Granting the Defendant’s Motion to Dismiss Under Rule 12(b)(6) should be Reviewed De Novo by this Court..... 9**

**B. The District Court Erred by Not Enforcing the Kenis Award Which Barred the Carrier from Establishing New Service Pursuant to Article IX of the 1986 National Agreement Abrogating the Rights of Engineers in Territory Covered by the Three Hub Merger Implementing Agreements..... 10**

**1. The Kenis Opinion and Award covered the North Little Rock/Pine Bluff, the St. Louis City and Kansas City Hub Merger Implementing Agreements..... 10**

**2. The Run Proposed from Labadie to Kansas City, Missouri Was among the Runs Found to Be Barred by the Kansas City and St. Louis Hub Merger Implementing Agreements ..... 13**

**3. The District Court Erred in Failing to Order Enforcement of the Kenis Opinion and Award ..... 13**

**C. The District Court Further Erred by Interpreting the Kenis Award in a Manner Which Would Require the Parties to Re-Submit to Arbitration Issues Already Arbitrated and Decided in the Kenis Opinion and Award ..... 15**

D. The District Court Erred by Dismissing the Suit and Not Remanding Any Issue Which Might Be Ambiguous to Arbitrator Kenis for Clarification .....18

VII. CONCLUSION.....19

CERTIFICATE OF COMPLIANCE WITH F.R.A.P. RULE 32(a)(7)..... 21

CIRCUIT RULE 31(e)(1) CERTIFICATION..... 22

PROOF OF SERVICE..... 23

CIRCUIT RULE 30(d) STATEMENT..... 24

ATTACHED REQUIRED SHORT APPENDIX..... 25

TABLE OF AUTHORITIES

CASES	PAGE(S)
<i>Baker v. Kingsley</i> , 387 F.3d 659, 664 (7 <sup>th</sup> Cir. 2004) .....	13
<i>Benson v. Cady</i> , 761 F.2d 335, 338 (7 <sup>th</sup> Cir. 1985) .....	10
<i>Cody v. Harris</i> , 609 F.3d 853, 857 (7 <sup>th</sup> Cir. 2005) .....	9, 13
<i>Conley v. Gibson</i> , 355 U.S.41, 24-46 (1957) .....	9
<i>Ethyl Corp. v. United Steelworkers of America, AFL-CIO-CLC</i> , 768 F.2d 180, 183-84 (7 <sup>th</sup> Cir. 1985) .....	15, 18
<i>Flender Corp. v. Techna-Quip Co.</i> , 953 F.2d 273, 279 (7 <sup>th</sup> Cir. 1992) .....	18
<i>Locals 2222, 2320-2327, Int'l Bhd. of Elec. Workers v. New Eng. Tel. &amp; Tel. Co.</i> , 628 F.2d 644, 647 (1 <sup>st</sup> Cir. 1980) .....	19
<i>Northern Ind. Gun &amp; Outdoor Shows v. City of S. Bend</i> , 163 F.3d 449, 452 (7 <sup>th</sup> Cir. 1998) .....	9
<i>Powe v. City of Chicago</i> , 664 F.2d 639, 642 (7 <sup>th</sup> Cir. 1981) .....	10
<i>Tri-State Business Machines, Inc. v. Lanier Worldwide, Inc.</i> , 221 F.3d 1015, 1017 (7 <sup>th</sup> Cir. 2000) .....	18
<i>United Food &amp; Commercial Workers Local 100A, AFL-CIO &amp; CLC v. John Hofmeister &amp; Son, Inc.</i> , 950 F.2d 1340, 1345 (7 <sup>th</sup> Cir. 1991) .....	18
<i>United Steelworkers of Am. v. Danly Mach. Carp.</i> , 852 F.2d 1024, 1027 (7 <sup>th</sup> Cir. 1988) .....	15
<i>United Steelworkers of America v. Enterprise Wheel &amp; Car Corp.</i> , 4 L. Ed. 2d 1424, 1428 (U.S. 1960) .....	17, 18
<i>W. Air Lines, Inc. v. Labor Comm'r of Div. of Labor Law Enforcement</i> , 167 F.2d 566, 567 (9 <sup>th</sup> Cir. 1948) .....	19
<i>Walters v. Roadway Express, Inc.</i> , 622 F.2d 162, 165 (5 <sup>th</sup> Cir. 1980) .....	15
 STATUTES	
28 U.S.C. § 1336 .....	1, 15
28 U.S.C. § 1291 .....	1

## **I. JURISDICTIONAL STATEMENT**

The district court had federal question jurisdiction pursuant to the 28 U.S.C. § 1336 which empowers federal district courts to enforce arbitration awards as final orders of the Surface Transportation Board ("STB").

This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1291 in that this case is on appeal from the district court's entry of a final judgment and order granting defendant's motion to dismiss.

The district court entered a memorandum opinion and order granting the motion to dismiss in favor of defendant on July 27, 2006. Plaintiff-appellant timely filed a notice of appeal on August 24, 2006.

## **II. STATEMENT OF THE ISSUES**

1. Whether the district court erred by not enforcing an unambiguous arbitration award and final order of the Surface Transportation Board, and requiring the parties to arbitrate anew an issue ruled upon in the same arbitration which plaintiff sought to enforce?
2. Alternatively if there were any ambiguity as to the award, whether the district court erred in its interpretation which required the parties to arbitrate anew an issue already ruled upon in the same arbitration which plaintiff sought to enforce?
3. Alternatively if the court could not interpret the award did it err by failing to remand the award to arbitrator Kenis to resolve any ambiguity?

their homes and relocate their lives and families in contravention of the home terminal rights of incumbent engineers. But for the Hub Agreements, such relocations would have been subject to Article IX of the national collective bargaining agreement and would happen with few checks or balances upon the Carrier and little recourse for the engineers and organization save the individual and very time-consuming arbitration of multiple individual claims. Numerous arbitrations would be required to address such issues as compensating engineers for the lost value of their homes and other incidental costs borne as a result of relocation. (Jefferson City is a small market and the sudden placement on the market of multiple homes would likely force down the sale value of their homes).

The court below considered the parties' briefs on defendant's motion to dismiss and erred: 1) by not enforcing the Kenis arbitration award; 2) by incorrectly finding and interpreting a purported "ambiguity" in the Kenis award and requiring the submission anew to arbitration of an issue already arbitrated and decided by Kenis; 3) if there were any ambiguity in the award (and there is not), by dismissing the case in its entirety and not ordering a remand of the issue to arbitrator Kenis for clarification.

#### IV. STATEMENT OF FACTS

The relevant facts have been set forth in the complaint and for Rule 12 purposes were to have been taken as true. These are also recounted with more detail in the Opinion and Award of Ann Kenis issued on March 12, 2004 which was attached to the original complaint. The original complaint as filed with the Opinion and Award are included as part of the short appendix here. For the Court's convenience, the facts in

brief are as follows:

Various hub merger implementing agreements were entered in 1997 and 1998 in connection with the Union Pacific's merger with Southern Pacific. These agreements gave certain engineers "lifetime rights" to work from their home terminals so long as they continued to work for UP. (R1 Complaint p. 3 ¶12, pp.18-19 (the original complaint as filed is attached as document three (3) in the required short appendix ) In May and August 2003, UP issued notices for new service or new "runs" requiring the relocation of certain of these engineers. (R1 p. 4 ¶14) They would be forced to move from their home terminals in Kansas City and Jefferson City Missouri. (R1 p. 4 ¶¶ 15-16) The BLET complained that the new runs were in conflict with the merger implementing agreements. (R1 p. 4 ¶¶ 15, 18) UP contended that despite the merger implementing agreements it could require such relocation under a different earlier labor agreement, namely, Article IX of the 1986 National Agreement, which preexisted the merger implementing agreement. (R1 p. 4 ¶ 16) Accordingly UP contended that any dispute as to its authority under Article IX was subject to arbitration under section 3 of the Railway Labor Act. (R1 p. 4 ¶17) The merger implementing agreements could be enforced however under a different arbitration procedure, namely, the New York Dock procedures imposed by the Surface Transportation Board in connection with and for the enforcement of the merger implementing agreements which protected the engineers from relocation. (R1 p. 4 ¶18)

Since the parties contended that two separate and distinct arbitration procedures applied, they agreed to a consolidated arbitration proceeding in which the neutral in essence wore "two hats." (R1 p. 4 ¶19) She would act as the neutral member

of the panel under the Railway Labor Act to hear UP's claim of right to move the engineers and she would act as the New York Dock arbitrator to hear the BLET's claim that UP could not move the engineers. (R1 p. 4 ¶19)

Arbitrator Kenis issued two Opinions and Awards in March 2004. In the first Opinion and Award, Kenis considered whether she had jurisdiction under the RLA to arbitrate the dispute over the Carrier's assertion of its Article IX rights under the 1986 National Agreement. (R1 pp. 9-12) After determining that she did not have jurisdiction under the RLA she issued a second Opinion and Award which resolved the dispute over the relocation of engineers pursuant to the New York Dock arbitral process and in favor of the Organization. (R1 pp. 13-38)

In the first Opinion and Award, Kenis presented the questions at issue and gave a brief answer:

**ORGANIZATION'S QUESTIONS AT ISSUE:**

1. Whether the Arbitrator has jurisdiction under Section 3 of the Railway Labor Act to interpret the provisions of the North Little Rock/Pine Bluff Hub Merger Implementing Agreement the Kansas City Hub Merger Implementing Agreement, and the St. Louis Hub Merger Implementing Agreement negotiated pursuant to the New York Dock Conditions, imposed by the Surface Transportation Board, pursuant to its authority under the Surface Transportation Act?

Answer: No.

2. If so, whether the provisions of the North Little Rock/Pine Bluff Hub Merger Implementing Agreement, the Kansas City Hub Merger Implementing Agreement, and the St. Louis Hub Merger Implementing Agreement negotiated pursuant to the Surface Transported= Act, can be changed by the Carrier's former rights under Article IX of the 1986 National Agreement?

Answer: No.

3. If so, whether the parties reached impasse under Article IX of the 1986 National Agreement as to the terms and conditions of the proposed

service in the Carrier's letters of May 16,2003, May 29,2003, and October 1, 2003, as to the North Little Rock/Pine Bluff Hub?

Answer: In light of the answer to questions 1 and 2, we do not reach this question.

4. If so, what *the proper terms and conditions of the proposed service?*

Answer: In light of the answer to questions 1 and 2, we do not reach this question.

#### **CARRIER'S QUESTION AT ISSUE:**

1. What shall be the terms and conditions of the Interdivisional service between North Little Rock, Arkansas and Memphis, Tennessee, established pursuant to Union Pacific's notice dated May 16,2003?

Answer: In light of the answer to questions 1 and 2, we do not reach this question. (R1 pp. 11-12)

In addition to the short summary of issues and answers which appears in the first Opinion and Award under the RLA, arbitrator Kenis issued preliminary findings as part of that Opinion and Award. The findings included Kenis' agreement with the position of the Organization that the matter should be arbitrated under a New York Dock proceeding and not under the RLA. (R1 p. 11) Kenis explained that in the New York Dock proceeding "[t]he Arbitration Committee further determined that the North Little Rock/Pine Bluff Hub Merger Agreement, among others, could not be modified by the rights asserted by the Carrier pursuant to article IX of the 1986 national Agreement." (R1 p. 11)

The questions of the two parties were similarly presented in the New York Dock arbitration Opinion and Order:

#### **ORGANIZATION'S QUESTION AT ISSUE:**

Whether the provisions of the North Little Rock/Pine Bluff Hub Merger Implementing Agreement (October 9, 1997), the Kansas City Hub Merger

Implementing Agreement (July 2, 1998), and the St. Louis Hub Merger Implementing Agreement (April 15, 1998), negotiated pursuant to the Surface Transportation Act, can be changed by the Carrier's former rights under Article IX of the 1986 National Agreement (May 19, 1986) negotiated pursuant to the Railway Labor Act, where the Carrier failed to expressly retain such rights in the aforementioned Hub Merger Implementing Agreement, and the specific language of each aforementioned Hub Merger Implementing Agreement otherwise prohibits such change?

CARRIER'S QUESTION AT ISSUE:

Does the New York Dock UP/SP Merger Implementing Agreement for the North Little Rock/ Pine Bluff Hub bar Union Pacific Railroad Company from exercising its right to establish service pursuant to Article IX of the May 16, 1986[sic] BLE National Agreement? (R1 p. 13)

In the New York Dock proceeding, Kenis found that the notices for new service in the areas covered by the North Little Rock/Pine Bluff Hub Merger Implementing Agreement, St. Louis City Hub Merger Implementing Agreement and Kansas City Hub Merger Implementing Agreement were barred by those agreements in that they required engineers to relocate in contravention of the guarantees negotiated by the parties in the three Hub Merger Implementing agreements. (R1 p. 5 ) The notices at issue included a notice for new service to Labadie Missouri: "in addition the notice advises the Organization of its intent to establish ID service between Marysville Kansas and Jefferson City, *Kansas City and Labadie Missouri*, and Kansas City and St. Louis." (R1 p. 19 (emphasis supplied ))

Approximately a year after the award, UP issued the same and identical notice for new service to Labadie which necessarily would require engineers to relocate. (R1 p. 5 ¶¶ 26-27 ) UP again claimed the same right under Article IX of the 1986 National Agreement to establish new runs which would require engineers to relocate in violation

of the Hub Merger Implementing Agreements. This exact same issue had been addressed and decided in the Kenis award which ruled that the Hub Merger Implementing Agreements could not be superseded by the Carrier's Article IX rights and ruled this way as to the proposed service to Labadie as well as other runs which were covered by the March 12, 2004 award. (R1 p. 5 ¶¶ 26-27 )

Accordingly BLET sought enforcement of the award in district court and filed the complaint that led to this appeal. In the action filed in the district court the BLET did not seek an "interpretation" or "review" or "suspension" or "modification" of the Opinion and Award. Instead it sought merely to enforce the Award by the district court issuing a simple order giving legal force to the Award and Order as set out in the Opinion and Award of March 12, 2004. Among the allegations in the complaint, BLET properly alleged that the Kenis Opinion and Award barred the Labadie run and other proposed runs and that the Carrier nevertheless issued a notice which proposed the same run between Labadie and Kansas City which was barred by the Opinion and Award. (R1 p. 5 ¶¶ 22, 26) UP made various arguments in attempting to assert that the district court lacked jurisdiction to hear the case before it – that is to enforce an arbitration and award as a final order of the STB. (R 24 Memorandum Opinion and Order of July 27, 2006 attached as document one in the short appendix, pp. 3-6) The district court, found it did have such jurisdiction, but refused to enforce the Kenis award. The lower court interpreted the award to require that the parties arbitrate anew the issue already arbitrated and decided by arbitrator Kenis – whether the Carrier's Article IX rights were limited by the Hub Merger Implementing Agreements. Instead of remanding the issue to arbitrator Kenis to clarify any ambiguity which might be

present, it dismissed the case in its entirety. Plaintiff BLET timely filed a notice of appeal.

#### V. SUMMARY OF THE ARGUMENT

The court below erred in granting defendant's motion to dismiss and in failing to simply enforce the Kenis award which prohibited the Carrier from introducing new service runs, pursuant to Article IX of the 1986 National Agreement which conflicted with certain Hub Merger Implementing Agreements entered into after 1986. In failing to enforce the Kenis Award, the district court interpreted a purported ambiguity in the award to conclude that the parties must submit the issue already decided by Kenis anew to arbitration. Finally, if there were any ambiguity in the award (and there is not), the court erred by dismissing the case in its entirety and not ordering a remand of any perceived ambiguity to arbitrator Kenis for clarification.

#### VI. ARGUMENT

- A. The Decision of the District Court Granting the Defendant's Motion to Dismiss Under Rule 12(b)(6) should be Reviewed De Novo by this Court.

When a case has been dismissed under Rule 12(b)(6), this Court may review "de novo" the decision of the District Court. At such a stage in the proceedings, the complaint should be sustained if there is any set of facts on which plaintiff may prevail. To this end, the allegations of the complaint must be accepted as true and are to be interpreted in the light most favorable to plaintiff. *Northern Ind. Gun & Outdoor Shows v. City of S. Bend*, 163 F.3d 449, 452 (7th Cir. 1998). *Conley v. Gibson*, 355 U.S.41, 24-46 (1957 ); *Cody v. Harris*, 609 F.3d 853, 857 (7<sup>th</sup> Cir. 2005). The non-

moving party also is entitled the benefit of reasonable inferences drawn from its allegations. *Powe v. City of Chicago*, 664 F.2d 639, 642 (7th Cir. 1981). A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff is unable to prove any set of facts which would entitle the plaintiff to relief. *Benson v. Cady*, 761 F.2d 335, 338 (7th Cir. 1985). It is important to emphasize this last point since the District Court did not confine its review to the allegations of the complaint nor did it confine itself to enforcing, instead of interpreting, the award.

**B. The District Court Erred by Not Enforcing the Kenis Award Which Barred the Carrier from Establishing New Service Pursuant to Article IX of the 1986 National Agreement Abrogating the Rights of Engineers in Territory Covered by the Three Hub Merger Implementing Agreements.**

The BLET in its Complaint pleaded facts sufficient to state a claim. First BLET pleaded that there was an arbitration decision attached that found that the Carrier could not establish new runs which would have the effect of abrogating engineers' attrition rights under three Hub Merger Implementing Agreements. BLET also pled that a run covered by this Opinion and Award from Labadie, Missouri to Kansas City was being proposed again by the Carrier. Given the conflict between the Kenis Opinion and Award and the Carrier's re-submission of the Labadie Kansas City run, the BLET sought enforcement of the Opinion and Award in its Complaint

- 1. The Kenis Opinion and Award covered the North Little Rock/Pine Bluff, the St. Louis City and Kansas City Hub Merger Implementing Agreements.**

As recounted in the statement of facts above, the Kenis Opinion and Award dealt with issues beyond the single run, which precipitated the arbitration in the first instance. In the arbitration the Carrier sought to limit the issues considered by arbitrator Kenis to a consideration of whether the North Little Rock/Pine Bluff UP/SP

Hub Merger Implementing Agreement barred Union Pacific Railroad Company from exercising its right to establish service pursuant to Article IX of the May 16, 1986 BLE National Agreement. (R1 pp. 13-14) However, the BLET submitted the issue more broadly as to whether all three of the Hub Merger Implementing Agreements (the North Little Rock/Pine Bluff (October 9, 1997), (R1 p. 13) the Kansas City (July 2, 1998), and the St. Louis (April 15, 1998)), could "be changed by the Carrier's former rights under Article IX of the 1986 National Agreement (October 9, 1997)." (R1 p. 13)

There is no doubt that arbitrator Kenis was asked to decide that all three Hub Merger Implementing Agreements superseded the 1986 National Agreement and barred the institution of new runs which would abrogate the rights of incumbent engineers to reside in their home terminals on an "attrition basis." (R1 p. 19, 20) The questions presented in both the Article IX Opinion and Award and the New York Dock arbitration demonstrate that Kenis understood that the Carrier sought a decision only as to one run and one Hub Merger Implementing Agreement, while the BLET sought the same decision as to all proposed runs and the three Hub Merger Implementing Agreements. (R1 pp. 12,13-14)

It is equally clear from the Article IX and New York Dock Opinions and Awards that the decision applied to all three Hub Merger Implementing Agreements. In the first Opinion and Award in the section entitled "Findings", Kenis determined that a New York Dock arbitration was the proper forum for deciding the dispute, and then wrote, "[the] Arbitration Committee further determined that the North Little Rock/Pine Bluff Hub Merger Implementing Agreement, *among others* could not be modified by the rights asserted by the Carrier pursuant to Article IX of the 1986

**National Agreement.” (R1 p. 11)**

**In the New York Dock arbitration proceeding too, it is clear that Kenis ruled on all three agreements. If this were not the case, there would be no purpose to her recounting the provisions of the Jefferson City and Kansas City Hub Merger Implementing Agreements after she did so for the North Little Rock/Pine Bluff one. (R1 p. 19) Additionally, Kenis entitled section C of her Opinion and Award “Shared Provisions of the Hub Merger Implementing Agreements.” In this section Kenis reviewed the language of side agreements to each of the three hub merger implementing agreements, “although dated on separate occasions and numbered differently, the language is identical . . .” (R1 p. 19-20)**

**Such a comparison underlines that fact that Kenis is considering all Hub Merger Implementing Agreements in her Opinion and Award. Such an exercise would be unnecessary and irrelevant if Kenis intended to confine her ruling to the North Little Rock/Pine Bluff Implementing Agreement. Kenis further considered that these three Hub Implementing Agreements at issue were different from ones cited by the Carrier in that those contained language indicating that Article IX would apply to “new pool operations.” (R1 p. 23)**

**Kenis went on to find that although the Carrier had not relinquished its rights under Article IX of the 1986 National Agreement, these rights were limited to the extent that there was conflict with the rights found in the three Hub Merger Implementing Agreements:**

**“ . . . when those rights [Article IX rights] have been exercised in a manner which conflicts with or modifies the provisions of the hub merger implementing agreements the implementing agreements must be given precedence. In this case the hub merger implementing agreements**

prevail." (R1 p. 32)

Kenis found that "[t]he bargain struck is not ambiguous and it is entitled to enforcement" and cited matching language in the three agreements and accompanying side letters in support of her decision. (R1 pp. 34-35)

**2. The Run Proposed from Labadie to Kansas City, Missouri Was among the Runs Found to Be Barred by the Kansas City and St. Loui Hub Merger Implementing Agreements.**

Appellants in their Complaint pleaded, and the Opinion and Award they attached to it affirms, that the proposed run from Kansas City to Labadie, Missouri was one of the runs considered by Kenis and found to be barred by the Hub Merger Implementing Agreements. (R1 p. 4 ¶¶15, 21, 22; p.19) The BLET also pleaded in its Complaint that "[n]onetheless, in February 2005, defendant UP issued another notice for the same and identical proposed new service from Kansas City to Labadie, Missouri again under Article IX of the 1986 National Agreement" and that "UP has continued to insist on the same and identical new "run" from Kansas City through Jefferson City to Labadie, Missouri which is identical in all respects to the proposed new "run" that was among those barred by the arbitration award of March 12, 2004. (R1 p. 5 ¶ 26)

**3. The District Court Erred in Not Ordering Enforcement of the Kenis Opinion and Award**

The district court in deciding the Carrier's Motion to Dismiss should have accepted all of these well-pleaded facts as true. *Cody v. Harris*, 609 F.3d 853, 857 (7<sup>th</sup> Cir. 2005); *Baker v. Kingsley*, 387 F.3d 659, 664 (7<sup>th</sup> Cir. 2004). Indeed, the facts alleged in the Complaint must be taken as true to the extent found in the Opinion and Award since the Carrier has no ground upon which to challenge these – having forfeited its opportunity to appeal within the STB. The district court should only have

dismissed the case if there were no cause of action pled by the plaintiff-appellant.

Here there was clearly a cause of action in that BLET pleaded that the run proposed by the Carrier from Labadie, Missouri, through Jefferson City and to Kansas City was the same run proposed by the carrier and barred by the Kenis Opinion and Award. (R1 p. 5 ¶ 26) The district court at this stage was not to look beyond the bare allegations of the Complaint. If there were a dispute of fact, and there was not, the benefit of the dispute should have weighed in BLET's favor. If the court felt there was some issue as to whether the run was indeed the same run proposed and barred by the Kenis award, it should have ordered the Carrier to answer the complaint. This likely would have ended the litigation in that the Carrier would have to show that somehow this "new" proposed run would not run afoul of the Hub Merger Operating Agreement although the exact same proposed run was found to have done so. At any rate very little discovery would have been needed to easily establish this fact or prove it wrong. Instead of enforcing the award or even ordering the carrier to answer the Complaint the district court dismissed the case in its entirety.

Because the Kenis award was plain on its face and clearly covered the newly noticed Labadie - Kansas City run, plaintiff appellant seeks an order from this Court reversing the district court's dismissal, and ordering the district court to enter an order of enforcement of the Kenis Opinion and Award barring the proposal of new runs which conflict with the findings in that award.

**C. The District Court Further Erred by Interpreting the Kenis Award in a Manner Which Would Require the Parties to Re-Submit to Arbitration Issues Already Arbitrated and Decided in the Kenis Opinion and Award.**

The law is clear that 28 U.S.C. § 1336(a) grants district courts power to enforce STB orders, *Walters v. Roadway Express, Inc.*, 622 F.2d 162, 165 (5th Cir. 1980) ("We are limited, as the statute says, to enforcing the Order of the ICC, and have no power to expand and supplement it. ") Nor may the court interject itself into the arbitration process by "elaborating on or rewriting an arbitrator's award," *United Steelworkers of Am. v. Danly Mach. Carp.*, 852 F.2d 1024, 1027 (7th Cir. 1988). The district court recognized that it should not interpret an ambiguous arbitration award unless the ambiguity can be resolved from the record. *Ethyl Corp. v. United Steelworkers of Am.*, 768 F.2d 180, 188 (7th Cir. 1985). The court also was aware that in the case of an ambiguity, the court must send the case back to the arbitrator for further proceedings. *Id.*

Here the district court clearly erred by expanding upon and interpreting the Kenis award in a manner contrary to the award's plain language and in doing so instituted a process whereby the Carrier can resubmit runs to the arbitral process in an attempt to win a different decision from the Kenis Opinion and Award which barred this run and others due to the violation of the Hub Merger Implementing Agreements.

The district court rests its opinion and order dismissing the case on a tortured reading of statements made by Kenis in the Opinion and Award to find that the newly re-noticed Labadie – Kansas City run was different from the proposed Labadie – Kansas City run which was part of the arbitration ruled upon by Kenis:

In rejecting UP's contention that other successful service runs established after the negotiation of unrelated Merger Implementing Agreements

point to the legitimacy of new proposals, the arbitrator stated, "[w]e simply do not know . . . whether the facts giving rise to the interdivisional service changes were similar to those at bar." The same holds true here. Whether the factual circumstances involved in the Kansas City to Labadie run alone would have the same effect as the four intended interdivisional runs combined is unknown. (R24 p.10)

The district court's citation and use of Kenis' language completely out of context provides the meaning which the district court chose to imply from it and not what Kenis intended. The runs referred to by Kenis and cited by the district court, were runs which were proposed and instituted under different Hub Merger Implementing Agreements in different territories. Here the re-noticed Kansas City – Labadie run was found to have been covered by the language of the three Hub Agreements, and, as alleged by plaintiff, was the same run as one that was barred by the Kenis Opinion and Award. It is worth quoting directly from the Kenis Opinion and Award on this issue as the plain meaning of her words becomes patently clear:

Carrier has also argued that there have been numerous interdivisional service runs that have been implemented in territories where a merger implementing agreement exists and, with one possible exception, no protest has been lodged by the Organization. Generally, however, the parties are entitled to insist on the enforcement of the plain and unambiguous provisions of an agreement, even when a contrary practice exists. This established rule of contract interpretation has even greater application in this context since it is doubtful that any "practice" on other territories can be extrapolated to the instant case. We simply do not know whether the *implementing agreement language is the same* or even whether the facts giving rise to the interdivisional service changes were similar to those at bar. Carrier may have been successful in instituting new interdivisional runs in other locations, but that does not preclude the Organization from relying on the express language negotiated in the three Hub Merger Implementing Agreements at issue. (R1 p.38 (emphasis supplied))

What is clear from the quote when put in its proper context is that the interdivisional service runs established *in other territories* by the Carrier were under *different* Hub

Merger Implementing Agreements which did not contain the same language found in the three Hub Agreements which were the subject of the arbitration before Kenis (nor did the outside hub agreements have the same side agreements as the three at issue). Kenis did not compare the language of those Hub Merger Implementing Agreements to the three at issue here. Consequently, Kenis found that the Carrier's past practice argument had no application to the three Hub Merger Implementing Agreements at issue.

That the district court erred is highlighted by the result of the court's dismissal of the case. Even after interpreting the Opinion and Award not to apply to the run which plaintiff alleged (and must be taken as true for purposes of a 12(b)(6) motion), was the same run proposed by the Carrier and ruled upon by Kenis, the court explained that it "declines to interpret the ambiguous order and holds that this issue is more properly one for arbitration." (R 24 p. 11) The effect of such a ruling is to nullify the effect of the Kenis award and allow the Carrier to continuously resubmit, piecemeal, runs which it previously proposed and which were barred by the Opinion and Award. This of course is disfavored as the Supreme Court explained in *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 4 L. Ed. 2d 1424, 1428 (U.S. 1960):

The refusal of courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements. The federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards. As we stated in *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, ante, p. 574, decided this day, the arbitrators under these collective agreements are indispensable agencies in a continuous collective bargaining process. They sit to settle disputes at the plant level -- disputes that require for their solution knowledge of the custom and practices of a particular factory or of a particular industry as reflected in particular agreements.

If it were necessary, and it is not, a reasonable interpretation of the arbitration award would recognize that any proposed new route which abrogated engineers' rights under the Hub Merger Implementing Agreements would be barred. Here, the actual run from Labadie to Kansas City, previously submitted and rejected, but then re-noticed by the Carrier was already the subject of an arbitration award. This is the only reasonable interpretation which is consonant with Federal labor policy and the interest in using the arbitral process to settle disputes and of lending finality to arbitration awards. See *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 596, 4 L. Ed. 2d 1424, 80 S. Ct. 1358 (1960). The lower court's reading undermines this policy and forces the parties into endless rounds of litigation deciding issues already decided.

**D. The District Court Erred by Dismissing the Suit and Not Remanding Any Issue Which Might Be Ambiguous to Arbitrator Kenis for Clarification.**

As noted previously, this Circuit and many other courts have made clear that judicial review of arbitration awards is limited. A district court cannot substitute its judgment for the judgment of an arbitrator. See *Ethyl Corp. v. United Steelworkers of America, AFL-CIO-CLC*, 768 F.2d 180, 183-84 (7th Cir. 1985). Nor can a district court enforce an ambiguous award. See *Tri-State Business Machines, Inc. v. Lanier Worldwide, Inc.*, 221 F.3d 1015, 1017 (7th Cir. 2000) quoting *Flender Corp. v. Techna-Quip Co.*, 953 F.2d 273, 279 (7th Cir. 1992) (citations omitted); *United Food & Commercial Workers Local 100A, AFL-CIO & CLC v. John Hofmeister & Son, Inc.*, 950 F.2d 1340, 1345 (7th Cir. 1991). When a district court is requested to enforce an arbitration award and this generates or reveals a dispute requiring interpretation of the

award's scope or application, that dispute "must be referred to a reconvened board of arbitration for determination." *W. Air Lines, Inc. v. Labor Comm'r of Div. of Labor Law Enforcement*, 167 F.2d 566, 567 (9th Cir. 1948) (reversing district court order enforcing arbitration award and directing remand to arbitrator for clarification of award). See *Locals 2222, 2320-2327, Int'l Bhd. of Elec. Workers v. New Eng. Tel. & Tel. Co.*, 628 F.2d 644, 647 (1st Cir. 1980) (confirming authority of courts to resubmit arbitration award to original arbitrators for interpretation and affirming remand for that purpose). When a court is confronted with an ambiguous award, the proper procedure is to send the award back to the arbitrator for clarification. *Tri-State Business Machines*, 221 F.3d at 1017. Here the district court confronted with what it believed was an ambiguity in the Kenis Opinion and Award should have retained jurisdiction and remanded the case back to arbitrator Kenis for clarification.

## VII. CONCLUSION

Plaintiff-appellant BLET maintains that the Kenis Opinion and Award is clear and unambiguous and that this Court should reverse the district court's dismissal direct it to issue an order enforcing the Kenis Opinion and Award. Alternatively, the Court could reverse the district court and order it to allow the case to proceed beginning with the Carrier answering the allegations in the Complaint. This could resolve once and for all if there is any ambiguity in applying the award to the newly noticed Labadie – Kansas City run if the Carrier admits that the run is the same as the one it earlier proposed, the court could then order enforcement. Finally, to the extent any ambiguity cannot be resolved by the court, this Court should issue an order instructing the lower court to retain jurisdiction over the matter until arbitrator Kenis

is able to clarify her award. For all the above reasons, the judgment of the District Court should be reversed and the case remanded for further proceedings and appropriate relief as described above.

By: \_\_\_\_\_  
One of the attorneys for Plaintiff-Appellant

Jorge Sanchez  
Thomas H. Geoghegan  
Debbie Mahoney  
Carol Nguyen  
Despres Schwartz & Geoghegan  
77 W. Washington St. Suite 711  
Chicago, IL 60602  
(312) 372-2511

**CERTIFICATE OF COMPLIANCE WITH F.R.A.P. RULE 32(a)(7)**

**The undersigned, counsel of record for the Plaintiff-Appellant, Brotherhood of Locomotive Engineers and Trainmen, furnishes the following in compliance with F.R.A.P. Rule 32(a)(7):**

**I hereby certify that this brief conforms to the rules contained in F.R.A.P. Rule 32(a)(7) for a brief produced with a proportionally spaced font. The length of this brief is 6843 words.**

**Dated: December 19, 2006**

**Despres, Schwartz & Geoghegan**

---

**Jorge Sanchez**  
**One of the Attorneys for Plaintiff-Appellant**

**77 W. Washington St.  
Suite 711  
Chicago, IL 60602  
(312) 372-2511**

**CIRCUIT RULE 31(e)(1) CERTIFICATION**

**I hereby certify that the documents in the Required Short Appendix are not available in an unscanned format.**

**Dated: Decemer 19, 2006**

**Despres, Schwartz & Geoghegan**

---

**Jorge Sanchez  
Attorneys for Plaintiff-Appellant, BLET**

**77 W. Washington St.  
Suite 711  
Chicago, IL 60602  
(312) 372-2511**

**PROOF OF SERVICE**

The undersigned, counsel for the Plaintiff-Appellant, Brotherhood of Locomotive Engineers and Trainmen , hereby certifies that on December 19, 2006, two copies of the Brief and Required Short Appendix of Appellant as well as a digital version containing the brief, were delivered by U.S. mail to counsel for the Defendant-Appellee, Union Pacific, Co.

Dated: December 19, 2006.

Despres, Schwartz & Geoghegan

---

**Jorge Sanchez**  
Attorneys for Plaintiff-Appellant, BLET

77 W. Washington St.  
Suite 711  
Chicago, IL 60602  
(312) 372-2511

**CIRCUIT RULE 30(d) STATEMENT**

Pursuant to Circuit Rule 30(d), counsel certifies that all material required by Circuit Rule 30(a) and (b) are included in the appendix.

Dated: December 19, 2006

Despres, Schwartz & Geoghegan

---

**Jorge Sanchez**  
Attorneys for Plaintiff-Appellant, BLET

77 W. Washington St.  
Suite 711  
Chicago, IL 60602  
(312) 372-2511

52

**Arbitration Board No. 590**

Parties)                    **Brotherhood of Locomotive Engineers and Trainmen**  
To                    )                    **and**  
Dispute)                    **Union Pacific Railroad Company**

**Organization's Question at Issue:**

**"Shall the September 26, 2006, proposal submitted by the Company to the BLE (sic) extending switch limits at West Colton from Milepost 541.15 to Milepost 543.1 be adopted?"**

**Carrier's Question at Issue:**

**Shall Union Pacific be permitted to extend the east switching limit (Yuma line) at West Colton from Milepost 541.15 to Milepost 543.10, as set forth in its notice of September 26, 2006, and yard engineers performing service in such extended switching limits to be compensated under yard service rules and rates of pay but without additional compensation?**

**Background:**

**This dispute involves Union Pacific's notice of its intention to extend the switching limit at its West Colton, California terminal from Milepost 541.15 to Milepost 543.1, served pursuant to Article II of the May 13, 1971 BLE National Agreement. UP has a terminal at West Colton, California, which is at the east end of an area known as the Los Angeles basin. West Colton is a crew change point for crews operating in the Los Angeles basin.**

**UP have two routes between Colton and the western portion of the basin (the City of Los Angeles and the LA/Long Beach harbors). The northern route is the former Southern Pacific (SP) line. The southern route is the original UP line. Since the UP/SP merger in 1996, both lines have been operated by UP. In order to minimize**

the number of times trains operating on single track have to "meet" a train operating in the opposite direction, the Carrier implemented directional running in the Los Angeles basin. The predominant movement of trains on the former SP line tends to be westward and the movement of trains on the original UP line tends to be eastward. If one thinks of the UP lines in the Los Angeles basin as an oval, the primary flow of trains is counterclockwise.

A portion of the UP route between Los Angeles and Las Vegas has involved movement over BNSF Railway via trackage rights between Riverside and Daggett, California. Eastward trains operating on the original UP line still utilize the BNSF trackage rights beginning at Riverside. While on the BNSF trackage rights, the original UP route crosses the former SP route at grade within the switching limits of the West Colton terminal. Some of the eastward UP trains continue on the trackage rights to Daggett and Las Vegas. However, the majority of these eastward UP trains leave the trackage rights (i.e., turn right) within the terminal limits of Colton via a track that connects the BNSF line to the former SP line. The distance from the start of the connector track to the east switching limits of West Colton is a little more than two miles. One train will fit comfortably in this space. If, however, two trains are moved off the BNSF trackage rights in close succession, it is necessary to move the head end (locomotives and cars at the front) of the first train beyond the switching limit in order for the rear of the second train to move off the BNSF line

The UP lines in the Los Angeles basin carry a large number of trains. During the past few years, the number of carloadings has risen to an all-time high.

Additional cars cannot always be added to existing trains. The configuration of UP's physical plant, such as gradient, curvature and siding length, establishes a limit on the number of cars that can be handled in a single train. Therefore, the current level of business has resulted in an all-time high number of daily train starts.

The BNSF line over which UP operates is also a very busy piece of railroad. The BNSF track between Riverside and Colton was described as the most congested in Southern California in an Article from the Riverside Press-Enterprise. Eastward UP trains often have to wait at Riverside for a "slot" before the BNSF dispatcher will let them onto the BNSF track for the seven mile movement to where the connector track diverges. During 2006, an average of 18.5 eastward UP trains per day traveled over the BNSF track and left these tracks at Colton. When more than one eastward UP train is waiting at Riverside to enter the BNSF track, UP is faced with a decision when a "slot" becomes available. To move only the first UP train onto the BNSF track will leave the second train at Riverside subject to additional delay. To move two UP trains onto the BNSF track will result in the front of the first train being required to operate east of the switching limit at West Colton. West Colton is a crew change location for the engineers who bring the trains from Los Angeles or the harbor. Trains exiting the BNSF trackage rights at the connector track do not make a continuous movement through the West Colton terminal. They must stop to change crews.

In recent years a dispute has arisen over requiring road engineers to run through the terminal when two trains are moved over BNSF tracks and pulled into

Colton. An engineer, who operates beyond the switching limits, is paid additional compensation for being instructed to operate beyond the switching limits. The Organization contended that the movement of a train beyond the switching limits violated the agreement. In 2006 the Organization sought an injunction to prevent the Carrier from moving trains beyond the switching limits at the crew's final terminal. The Court denied the injunction and held that the dispute was minor.

On September 26, 2006, UP served BLET with a notice stating UP's desire to move the east switching limit at Colton 1.95 miles eastward, from Milepost 541.15 to Milepost 543.1. The notice was served pursuant to Article II of the May 13, 1971 BLE National Agreement. The parties met in the office of A. C. Hallberg, UP's Director of Labor Relations on October 19. Following a conference on the proposal held on October 19, 2006, the Organization responded in writing to the Carrier by letter dated October 30, 2006. That letter recapitulated the Organization's position, which briefly was as follows:

- Article 13, Section 1 of the Collective Bargaining Agreement ("CBA") is controlling.
- "The use of Article 2 of the [1971] Agreement was never designed to change existing CBA, but to allow extension of switching limits to facilitate industries. There are absolutely no industries in the defined territory of your notice; only two railroad main tracks."
- "The specific service covered in your Notice was created through negotiations with this Committee and became effective July 1, 1991, covered under file E&F 188-138. Section 6(b) of that agreement clearly states 'This service will not operate beyond the following points.' 'Yuma Line east of M.P. 541.15.'"

- UP waived its Article II rights when it filed notice on January 13, 1998, which led to the Los Angeles Hub Agreement, in which the original switching limits were explicitly retained, and relinquished any rights it may have had thereunder when it agreed to Article V of the Los Angeles Hub Agreement.
- The Award of Arbitration Board No. 581 also served to preempt Article II.
- This preemption is supported by the Award of Arbitration Board No. 581.

The Carrier responded by letter dated November 10, 2006. The Carrier stated that it considered it advisable to extend the switching limits at West Colton in order to improve the efficiency of the outbound move from the Los Angeles basin to Yuma. They further stated that by extending the switching limits from Milepost 541.15 to Milepost 543.1 it will be possible to bring two trains at a time across the BNSF from Riverdale to Colton. They noted that the threshold for extending switching limits is that the company considers it advisable to change the switching limits. They concluded that the Company considers it advisable to change the West Colton switching limits because the terminal is not big enough to handle the necessary crew change and train staging functions. They cited numerous awards that supported their position.

The Carrier also stated that nothing in the agreements at issue insulate the West Colton switching limits from change by the 1971 National Agreement. They pointed out that the Western Lines Merger Implementing Agreement contained a savings clause that stated that all agreements remain in full effect unless specifically changed. They further stated that the Award of Arbitration Board No. 581 was not

applicable and applied to interdivisional runs and different merger implementing agreements. They concluded that the switching limits notice met the standards of improved service to the customer and improved rail service.

Discussion:

The Carrier's position was that the proposed switching limit change was fully supported by Article II of the May 13, 1971 BLE National Agreement. The pertinent part of that agreement provides:

"(a) Where an individual carrier not now having the right to change existing switching limits where yard crews are employed, considers it advisable to change the same, it shall give notice in writing to the General Chairman or General Chairmen of such intention, specifying the changes it proposes and the conditions, if any, it proposes shall apply in event of such change.

The Carrier stated that extending the east switching limit at the West Colton terminal would improve operational efficiency by being able to utilize one "slot" on the BNSF to move two trains, without complaint from BLET. They further stated that the proposed extension would permit two trains to fit within the West Colton terminal without moving a portion of the first train beyond switching limits. The Carrier insisted that this would improve the efficiency of UP's train operation. They concluded that nothing in the language of Article II precludes the change in switching

limits proposed by UP, and nothing in the language speaks to disqualify UP's reasons for its proposal.

The Carrier listed several benefits from the proposed change. Moving two trains at a time over the BNSF trackage rights will reduce the waiting time for eastward trains to enter the BNSF track rights at Riverside and improve the performance of eastward trains between origin and destination. The Carrier stated that the proposed change would permit engineers to tie up and go home sooner. Finally, the Carrier stated that the proposed change will bring resolution to the dispute between BLET and UP concerning engineers operating beyond the east switching limit at West Colton.

As stated above, an engineer instructed to operate beyond switching limits is paid additional compensation for doing so. The Organization unsuccessfully sought injunctive relief to stop this practice. The Carrier readily admits that an ancillary benefit of extending switching limits will be the elimination of such additional compensation. Although the Carrier's primary objective is improved efficiency from the reduction in delay of UP trains entering the BNSF line at Riverdale, the Carrier stated that the elimination of the penalty payment does not alter the Carrier's right to make the switching limits change. The Carrier cited Arbitration Board No. 330 in support of its position. In this award Referee Friedman held:

"Although elimination of penalty payments is not a criterion under Article VI, the fact that this may be a by-product of an appropriate extension of switching limits, does not alter Carrier's rights under Article VI to obtain the kind of change which will enhance efficiency."

The Carrier also cited several other arbitration awards to support the proposed switching limit change.

The Organization objected to the Carrier proposal on several basis. First, the Organization argued that Article 13, Section 1, of the CBA governs the instant dispute, because it is more specific than the general provision set forth in Article II. Second, the Organization stated that the Carrier is estopped from invoking Article II in this instance because its Article II rights have been preempted by the Los Angeles Hub Agreement. Third, even if Article II was available to the Carrier, it failed to comply with the requirements of the rule. And, fourth, the Carrier's claimed rationale for changing the switching limits that are the subject of the instant dispute is a sham.

The Organization stated that when Article II is read in context with other applicable contractual provisions, it becomes clear that it cannot apply in the instant dispute. It is their position that this matter is governed by Article 13, Section 1 of the CBA which provides in pertinent part as follows:

**ARTICLE 13**  
**WHAT CONSTITUTES A TRIP**

**SECTION 1.** An engineer is understood to have reached the terminal of a trip when he reaches the division terminal at which engine crews are usually changed, or arrives at the established terminal of his train, as shown by assignment, and having done so and proceeding further with same train, or being sent out on another trip or train, he is, in either case, understood to have begun another trip.

When an engineer is called for service on other than assigned runs, he will not be run through terminals except when no engineer entitled to the service is available. When

run through, he will begin another trip upon leaving such terminal.

The points shown below constitute all division terminals at which engine crews are usually changed as defined by this section:

\* \* \*  
West Colton  
\* \* \*

(Yuma--West Colton and Bakersfield--West Colton engineers only)

The Organization stated Article 13, Section 1, provides that a road engineer's trip ends upon arrival at West Colton, and that the engineer may not be sent beyond the switching limits of the terminal without beginning a new trip for pay purposes. They also pointed out that those switching limits were established by an agreement that became effective on January 5, 1995. This agreement provides in part:

Section 5:

Engineers operating in this service may operate between Los Angeles or ICTF and West Colton via any route except for the restrictions in Section 6 below.

Section 6:

\* \* \*  
(b) This service will not operate beyond the following points.

<u>Location</u>	<u>Milepost</u>
* * *	
Yuma Line	east of M.P. 541.15
* * *	

(d) Engineers in this service used in violation of Items (a), (b) or (c) above will be compensated one hundred (100) miles in addition to and without deduction for their earnings for their trip. However, in the event the violation is an engineer in this service operating west of M.P. 461.50 (Coast) and M.P. 471.20 (Valley), a new \$275.00 trip rate day will commence in lieu of the one hundred mile penalty. (Examples: 1. Engineer Jones operates west of M.P. 461.50. What is he entitled to? Answer: \$275.00 trip rate. 2. Engineer Smith operates east of M.P.

541.15 and subsequently operates west of M.P. 461.50. What is he entitled to? Answer: 100 miles and \$275.00 trip rate.)

The Organization argued that these agreements are significant because they were negotiated a quarter of a century after Article II was written and second, the Carrier had two other opportunities to eliminate the above restrictions in the latter half of the 1990's and did not do so. The Organization concluded that the Carrier seeks to do nothing more than escape the penalty Article 13, Section 1, imposes for running road engineers through their final terminal, a purpose not contemplated by and, indeed, inconsistent with the intent of Article II.

The Carrier answered the Organization's argument by stating that Article 13 merely lists the division terminals at which engine crews are exchanged. They stated that by expanding the eastern limit of the terminal at West Colton by 1.95 miles, the definition of West Colton is not changed. They further stated that this is the purpose of Article II of the 1971 National Agreement and nothing in the present agreements restrict the Carrier's right to utilize this provision.

The Organization next argued that the Los Angeles Hub was created in a period during which a Carrier implementing a merger had the ability to unilaterally change almost any collective bargaining agreement provision in nearly any fashion it chose. They stated that the main two vehicles for exercising "cram down" rights in the UP merger were the development of hub agreements and the Carrier's unilateral selection of the collective bargaining agreement that would govern a particular hub.

The Organization argued that the Carrier did not change the switching limits during these processes and thus was preempted from doing so.

The Organization noted that on November 3, 1997, in preparation for the creation of the Los Angeles Hub, the parties negotiated an agreement (hereinafter "Modification Agreement") that conformed the former Southern Pacific Western Lines ("SP WEST") CBA then being utilized in the Los Angeles area to former Union Pacific CBAs. The Organization noted that the Modification Agreement made no changes whatsoever to either Article 13 of the CBA or to the switching limits identified in Section 1 thereof. Indeed, they noted the term "switching limits" appears nowhere in the Modification Agreement. Further, they stated the Modification Agreement included the following Savings Clause:

The parties agree that all agreements, side letters, understandings, or any other benefits of the former Southern Pacific (Western Lines) including the former El Paso and Southwestern (EP&SW) Engineer's Agreement will remain in full force and effect unless specifically changed, modified by, and/or in conflict with this Agreement, Side Letters, and Questions & Answers. If changed, modified and/or conflicting, then this Agreement shall govern. Future changes shall be subject to the Railway Labor Act as amended.

The Organization concluded that the limitation on requiring a road engineer to take his/her train beyond the terminal limits at milepost 541.15 not only survived the Modification Agreement, but it was expressly continued in full force and effect by virtue of the Savings Clause set forth in Article VIII.

The Organization argued that the second part of the merger process occurred when the Carrier served notice pursuant to New York Dock to create the Los Angeles

Hub. They stated that the Hub Agreement specifically covers the switching limits of the LA Hub. They noted that Article III of the Hub Agreement provided for the establishment of several pools with West Colton as the home terminal. Moreover, they stated, Article III, Section E, provided that "[n]one of the engineers ... shall be restricted, in or between the terminals of their assignment, as to where they may set out or pick up cars or leave or receive their train," and that the "type and amount of work shall be governed by the controlling CBA." They concluded that Article 13, Section 1 of the CBA continued to control, and road engineers could not be required to travel beyond the switching limits at West Colton without penalty.

The Organization also pointed to Article VI, Section B.1 as providing further support that the Carrier could not change switching limits. The Organization further argued that Article V, Terminal and Other Consolidations, of the HUB Agreement specifically stated that the Carrier cannot enlarge the limits of the terminal. This provision provides:

**V. TERMINAL AND OTHER CONSOLIDATIONS**

**"A. The SP LATC and UP LA East Yard shall be combined into a single terminal covering the existing terminal limits for each Carrier and the connecting trackage between the two terminals. Yard engineers shall not be restricted as to where in the terminal they can operate.**

**"B. The provisions of A above will not be used to enlarge or contract the current limits except to the extent necessary to combine into a unified operation.**

**"C. In the LA Hub, prior to this implementing Agreement, there existed several trackage rights, stations and Harbor areas used by both Carriers. With the implementation of the Agreement all areas, trackage, stations and facilities in the Hub shall be common to all engineers as a single unified system. Engineers shall not be restricted in the Hub where they can operate except on the basis of CBA provisions that set forth limits of an assignment such as the radius of a road switcher.**

**"D. Riverside Line -- When heading west, trains that pass Colton Crossing onto the Riverside line may be operated by West Colton-Basin crews as if "in the terminal". When heading East, trains that reach Streeter, a point directly south of West Colton on the Riverside line, may be operated by West Colton-Yuma or West Colton-Yermo crews as if "in the terminal". This does not apply to Mira Loma trains as those trains have separate provisions."**

Finally, the Organization noted that Article VI, Section C, of the Hub Agreement states as follows:

**Engineers working in the Los Angeles Hub shall be governed, in addition to the provisions of this Agreement, by the Collective Bargaining Agreement selected by the Carrier, including all addenda and side letter agreements pertaining to that agreement and previous National Agreement/Award/Implementing Document provisions still applicable. Except as specifically provided herein the system and national collective bargaining agreements, awards and interpretations shall prevail. None of the provisions of these agreements are retroactive. The Carrier has selected the SP WEST modified BLE Agreements.**

**It was the Organization's position that all National agreement provisions survived except as otherwise provided by the Hub Agreement. The Organization stated contrary to the Carrier's argument, Section II of the 1971 Agreement did not survive insofar as the facts and circumstances of this case are concerned.**

**The Organization cited the Award rendered by Arbitration Board No. 581 to support its position that Article II of the May 13, 1971 BLE National Agreement did not apply and was preempted by the Hub Agreement. The parties in**

that matter were this Carrier and another Organization General Committee with jurisdiction over a different portion of the system. At issue was an attempt by the Carrier to invoke the provisions of Article IX of the 1986 National Agreement to alter interdivisional runs it had established approximately five to six years earlier in a series of three hub agreements negotiated pursuant to the New York Dock process. The 581 Award held that, "although Carrier's Article IX rights survive under the Savings Clause of the hub merger implementing agreements, their exercise is not unfettered." The Board further held:

the parties recognized ... that prior agreements would remain in effect. They also recognized, however, that circumstances might arise in which the implementing agreements would conflict with these pre-existing agreements. When that happens, the parties agreed that the implementing agreement provisions would prevail. The bargain that was struck is not ambiguous and it is entitled to enforcement.

The Organization argued that the Board in rejecting the Carrier's argument that, once implemented, a hub agreement becomes indistinguishable from any other agreement, is subsumed within the whole fabric of agreements and understandings, "and is no longer a stand alone document," when it held as follows:

The parties are experienced negotiators. They must be held to have full knowledge of the provisions of the Hub Merger Implementing Agreements

and the significance of the clear and unambiguous language contained therein. Moreover, it must be presumed that they did not include language in those agreements with the understanding that the provisions would be rendered superfluous or meaningless. The Carrier and the Organization have plainly stated ... that the Hub Merger Implementing Agreements prevail when they conflict with other applicable agreements. If the Carrier's position were accepted in this case, although the parties made express promises ... to resolve conflicts in agreements in favor of the hub merger implementing agreements, the Carrier would be allowed to ignore those commitments. No such result is warranted here.

The Organization concluded that the issue decided in the 581 Award and the analysis employed by the 581 Board is absolutely on point in the instant matter.

The Carrier stated that nothing in the Hub Agreement precludes subsequent changes to switching limits. They noted that the Hub Agreement only dealt with switching limits in two places. First, in Article V (reproduced above) and again in Article VI, Section B.3., which provides for a "Twenty-Five Mile Zone" at Yuma, AZ and Yermo and West Colton, CA. The Carrier noted that the twenty-five mile zone at West Colton is not involved in the current dispute. They also stated that Article V is not applicable. They concluded that nothing in the Hub Agreement nailed down the switching limits and that there is no mention of Milepost 541.1 anywhere in the agreement.

The Carrier further argued that a review of the Los Angeles Hub Agreement language supports UP's position that Article II is alive and well. Article VI, Section C of the Los Angeles Hub Agreement (reproduced above) preserves all national agreements that existed prior to the creation of the Los Angeles Hub. They concluded that if Article II of the May 13, 1971 BLE National Agreement was "still applicable" at the time the Hub Agreement became effective, it was preserved by the language of Article VI, Section C.

The Carrier also argued that the 581 Award has no application to this case. The Carrier stated that there can be no doubt Arbitrator Kenis based her decision on specific language found in the three merger implementing agreements at

issue before her (Kansas City, St. Louis and North Little Rock/Pine Bluff Merger Implementing Agreements). Specifically, she said:

**"Accordingly, the provisions of the Hub Merger Implementing Agreements must prevail in accordance with Article IV.A. and the side letter set forth in full above."**

Article IV.A. contained in those three merger implementing agreements reads as follows:

**"ARTICLE IV - APPLICABLE AGREEMENT**

**"A. All engineers and assignments in the territories comprehended by this Implementing Agreement will work under the Collective Bargaining Agreement currently in effect between the Union Pacific Railroad Company and the Brotherhood of Locomotive Engineers dated October 1, 1977 (reprinted October 1, 1991), including all applicable national agreements, the 'local/national' agreement of May 31, 1996, and all other side letters and addenda which have been entered into between date of last reprint and the date of this Implementing Agreement. Where conflicts arise, the specific provisions of this Agreement shall prevail. None of the provisions of these agreements are retroactive."**

The Carrier noted that the key phrase in Article IV.A. for Arbitrator Kenis was "[W]here conflicts arise, the specific provisions of this Agreement shall prevail." They concluded that she emphasized this phrase in the Award and based her decision on the existence of this phrase:

They also argued that she made specific reference to Side Letter No. 20 and relied upon Side Letter No. 20 to support her decision when she said:

"Our reading of Article IV.A is supported by the express language of the side letter incorporated in each of the three hub merger implementing agreements. To dispel any doubt about the interplay between the pre-existing agreements and the implementing agreements, the side letter incorporated in the hub merger implementing agreements plainly states that, to the extent that there are other applicable collective bargaining agreements that were not expressly modified or nullified, 'they still exist and apply.' However, the parties expressly acknowledge that 'the specific provisions of the Merger Implementing Agreement, where they conflict with the basic schedule agreement, take precedence, and not the other way around.' "

The Carrier stated there can be no doubt Arbitrator Kenis based her decision on the specific language of Article IV.A and Side Letter No. 20. They noted that a comparison of the three merger implementing agreements in the Kenis Award with the Los Angeles Hub Merger Implementing Agreement reveals none of the language relied on by Arbitrator Kenis exists in the Los Angeles Hub Agreement. Finally, they stated there is no side letter to the Los Angeles Hub Agreement like Side Letter No. 20. They concluded that without the language noted above the Kennis award does not support the Organization's position.

The Organization disagreed with the Carrier's interpretation. Although Side Letter No. 20 was not contained in the Los Angeles Hub Agreement, they stated that it was the Carrier's interpretation of how Hub Implementing Agreements apply. They stated that the intent of that letter applies everywhere and not to the territories contained in the Kennis Award as the Carrier contended.

The Organization next argued that if Article II of the 1971 National Agreement was available, the Carrier is not entitled to relief from this Board because it failed to comply with the requirements of the provision. They stated Article II of the 1971 Agreement was a companion rule with Article III, governing switching service for new and other industries. They noted that the genesis for both rules was the 1952 Agreement, in which Article 6 dealt with switching service for new industries and Article 7 — Article II's direct predecessor — addressed switching limits. They argued that these two rules relaxed existing work rules to enable a railroad to provide more efficient service to industries that located outside switching limits, whether those switching limits were changed or not. They pointed out that the Carrier never identified any new industries that located outside the current switching limit at West Colton. Moreover, they noted that the Carrier never rebutted our statement that no new industries have located outside West Colton.

The Organization further argued that the Carrier's rationale for changing the switching limits is a sham. They argued that the Carrier conceded that its motivation was solely to escape the limitations imposed by Article 13, Section 1 of the CBA, as incorporated into the Hub Agreement. They further argued that the Carrier provided no support for its position but instead made a series of vague, unsubstantiated assertions with no data presented that would establish the veracity of its assertions. They concluded that the Carrier failed to meet its burden of proof.

The Organization cited a case that it stated was directly on point with its position that a Carrier may not automatically change switching limits simply because "the Company considers it advisable" to do so. This case involved Article II in the UTU National Agreement where Arbitration Board No. 318 held:

Nor are switching limits extended, as appears to be suggested in Carrier's brief, simply because Carrier "considers it advisable" to do so. That consideration triggers the negotiations required in Article VI, and arbitration if negotiations are unsuccessful. Either the Organization or the Arbitrator must be persuaded what contractual standards set forth in the preamble to Article VI are being met.

Among reasons suggested by Carrier in this case for proposed changes is cost-savings on penalty claims by road crews. While this may on occasion contribute to the justification for an extension of switching limits, it is apparent that Article VI anticipated a careful case-by-case approach using the criteria it contains.

Otherwise, any extension of switching limits which would reduce a carrier's cost of operation would have been stated as an appropriate reason. An extension of switching limits may not necessarily change the way switching service is performed and yet be a money-saver, as some of the Carrier's proposals indicate

The Organization concluded that the Carrier does not have the right to extend <sup>\*</sup>  
X  
switching limits as proposed.

The Carrier disagreed with the Organization interpretation of Article II. They stated that the language of Article II permits a Carrier to serve notice to change switching limits whenever that Carrier "considers it advisable to change" switching limits. They further argued that nothing stated or implied in the language of Article II restricts its use to situations involving switching service to industries. The Carrier further noted that the UTU National Agreement is different from Article II of the 1971 BLE Agreement in that the UTU Agreement has a preamble containing the stated purpose of the Agreement:

“... to the end that efficient and adequate switching service may be provided and industrial development facilitated...”

The Carrier further argued that although the preamble to Article VI of the 1971 UTU National Agreement does refer to “switching service”, various arbitrators have held that extension of switching limits under the UTU agreement is not restricted to instances where the purpose of the extension is ability to provide switching service to a particular industry or industries. They cited the decision of Arbitration Board 372 to support its position wherein Referee Brown held:

Vice President J. M. Hicks argues that the stated purpose of Section VI is to provide efficient and adequate *switching* service but that the avowed purpose of the L&N extension at Ravenna is to allow road crews to yard their trains at Calla – not to provide improved *switching* service. This is true, and the Referee has given much thought to this approach. There is no precedent apparently, and the numerous awards studied are helpful only in that they reflect uniformly liberal decisions in favor of the carriers. After much study the Referee concludes that the intent of Section VI is to allow Carriers to improve *service* to customers. To say that Article VI authorizes the extension of switching limits only where presently inadequate switching service is to be replaced by purely “switching” service as opposed to convenient yarding of a unit train by road crews is to adopt a narrow view that we cannot endorse.”

The Carrier concluded that its notice was proper and that the switching limit extension should be granted.

**Findings:**

In order for the Board to determine if the Carrier may extend switching limits as proposed, it must first address the Organization’s contention that the Carrier is estopped from invoking Article II in this instance because its Article II rights have been preempted by the Los Angeles Hub Agreement. Therefore, paramount to this

decision is whether the Los Angeles Hub Agreement contains any restrictions to the Carrier's right to utilize Article II of the 1971 National Agreement.

After carefully considering the entire record, the Board can not find any foundation for the Organization's claim that there is a conflict between the Los Angeles Hub Agreement and Article II of the 1971 BLE National Agreement. The Board reached this decision based on several factors.

The first factor was that the Award rendered by Arbitration Board No. 581 or Kennis award does not support the Organization's position. It is clear from the award that Referee Kennis based her decision on specific agreement language not found in the Los Angeles Hub Agreement. The Board agrees with the Carrier that a side by side comparison of Article IV.A. in the Kenis Award with Article VI, Section C of the Los Angeles Hub Agreement clearly shows the phrase "[W]here conflicts arise, the specific provisions of this Agreement shall prevail" is only in Article IV.A. and not in Article VI, Section C of the Los Angeles Hub Agreement . .

The Board also finds that the Organization recognizes this distinction. The Organization in a brief filed with the United States Court of Appeals for the Seventh Circuit wherein it stated:

"What is clear from the quote when put in its proper context is that the interdivisional service runs established in *other territories* by the Carrier were under *different Hub Merger Implementing Agreements* which did not contain the same language found in the three Hub Agreements which were the subject of the arbitration before Kennis (nor did the outside hub agreements have the same side agreements as the three at issue)."

It is clear the BLET Committee involved in the Kenis Award has unequivocally stated the Kenis Award is based on "the three Hub Agreements" and "the same side agreements" and other implementing agreements without the specific language of the "three Hub Agreements" and "the same side agreements" cannot be compared to the Kenis Award

The Board also disagrees with the Organization that while Side Letter No. 20 is not present in the Los Angeles Hub Agreement, it shows what the parties intended and should apply. The Board notes that the Los Angeles Hub Agreement was not a negotiated settlement but was imposed by arbitration pursuant to New York Dock. In its presentation to this Board, the Organization requested several items some of which were two side Letters dated March 8, 1996 and concerned matters not covered by Side letter No. 20. Arbitrator Muessig when imposing the agreement that failed ratification stated :

"... This conclusion is given greater substance by noting the lengthy process that led to the proposed Implementing Agreement and the experience of the individuals involved. The persons involved in this process were seasoned negotiators who have years of experience addressing and resolving complex rule, benefit and wage issues. The evidence in the record before this Board demonstrates that the negotiators were keenly aware of the various factors that influenced and lead to successful bargaining. They clearly took into account that their efforts could not be conducted in a vacuum and that success depended upon properly based compromises."

Referee Muessig clearly felt that the adopted agreement covered all the parties' intentions. If the parties intended Side Letter No. 20 to apply, it would have been part of the failed agreement.

The Board also notes that the Organization cited the Award of Arbitration Board No. 580 to support its position that the Carrier had several opportunities to extend switching limits in Los Angeles prior to its notice under Article II of the 1971 National Agreement. This award involved a notice served on January 23, 2002 in accordance with Article IX of the May 19, 1986 BLE National Agreement. The notice proposed the establishment of three freight pools in the Los Angeles Basin with Dolores as a home terminal. The parties reached an agreement but it failed ratification. In imposing the tentative agreement the Board considered several items brought up by the Organization, none of which was the Carrier was estopped from using provisions of the 1986 National Agreement because the Los Angeles Hub Agreement preempted those provisions. This award does not support the Organization's position but confirms that National Agreements prevail over the Los Angeles Hub Agreement.

Finally, the Board finds that the Carrier has shown that Article II of the 1971 BLE National Agreement is in force on the Los Angeles Hub. Article VI, Section C of the Los Angeles Hub Agreement preserves all national agreements that existed prior to the creation of the Los Angeles Hub. Article II of the May 13, 1971 BLE National Agreement was preserved by the language of Article VI, Section C.

The Board then turns to the question of whether the September 26, 2006, proposal submitted by the Company to the BLE (sic) extending switch limits at West Colton from Milepost 541.15 to Milepost 543.1 be adopted? The Board agrees with the Carrier that that the language of Article II permits a Carrier to serve notice to change switching limits whenever that Carrier

**"considers it advisable to change" switching limits. The Board further finds that numerous decisions of other Arbitration Boards support the Carrier's position that nothing in Article II restricts its use to situations involving switching service to industries.**

**The Board notes that Referee Seidenberg in Arbitration Board No. 338 held:**

**"The Board is also persuaded to grant the Carrier's request in view of the fact that there are no overt restrictions imposed on the Carrier by Article II. The Board would have to find substantial and material evidence in the record militating against extending the proposed new switching limits."**

**This Board also held:**

**"The Carrier's evidence reveals persuasive operating and financial reasons for extending the aforementioned yard switching limits."**

**This Board also agrees with the reasoning in Arbitration Board No. 337 cited above by the Carrier :**

**"... the intent...is to allow carriers to improve service to customers."**

**The Board notes that the above opinion was also endorsed by Arbitration Board No. 399 and 404**

**In the present case the Carrier has shown that extending the switching limits will allow two trains at a time to move over the BNSF trackage. This will reduce waiting time for eastbound trains and reduce congestion in this overcrowded corridor. While the Carrier can not point to any one**

customer that will benefit, the Board believes that the change will improve customer service.

The Board also does not agree with the Organization's contention that the reduction in expense not improved customer service is the Carrier's only motivation. While Article 13 is preserved in the modification agreement and does provide penalties to engineers operating beyond switching limits, it does not limit the Carrier's ability to extend switching limits pursuant to Article II. As previously shown by the Carrier, Arbitration Board 330 has held that while the elimination of penalty payments is not a criterion for extending switching limits, it may be a by-product of an appropriate extension and does not alter the Carrier's rights under Article II. Arbitration Board No. No. 318 also found that the reduction of penalty claims would not prevent a legitimate extension of switching limits by the Carrier.

The Board finds that the Carrier has justified its reasons for wanting to extend the switching limits at the east end of West Colton from Milepost 541.15 to Milepost 543.10. The Board finds nothing in the provisions of Article II of the 1971 BLE National Agreement that prohibits the proposed change. The change requested by the Carrier will be granted.

Award:

The Carrier's and Organization's questions are answered in the affirmative. The Carrier shall be permitted to extend the east switching limit (Yuma line) at West Colton from Milepost 541.15 to Milepost 543.10, as set forth in its notice of September 26, 2006

  
John R. Binsau  
Neutral Member

\_\_\_\_\_  
A.C Halberg  
Carrier Member

\_\_\_\_\_  
E. L. Pruitt  
Organization Member

53

# UNION PACIFIC RAILROAD COMPANY

Sharon F. Boone  
Director - Labor Relations



24125 Aldine Westfield  
Spring TX 77373  
Office (281) 350-7585

BUILDING AMERICA

June 7, 2006

File 920.20 - 38

## VIA E-MAIL, FAX & CERTIFIED U S MAIL

MR G. L. GORE  
GENERAL CHAIRMAN BLET  
1448 MAC ARTHUR AVE  
HARVEY, LA 70058

Dear Sir:

Pursuant to Article IX "Interdivisional Service" of the May 19, 1986 BLE National Agreement (Arbitration Award No. 458), this notice shall serve to advise of Union Pacific Railroad Company's intent to establish new interdivisional unassigned (pool) freight service with a home terminal at Houston and away-from-home terminals at Angleton, Freeport or Bloomington, Texas. Additionally, crews assigned to this service may leave/receive their trains at Spring, Texas, and may operate to other locations within the territory of the proposed service to meet customer and operational requirements. The terms and conditions of this service shall be governed by the applicable provisions of Article VIII of the 1971 National Agreement with the Brotherhood of Locomotive Engineers, Article IX of the 1986 Award of Arbitration Board No. 458 and the attached proposed Memorandum of Agreement.

As required in Section 3 of Article IX of the 1986 National Agreement, Carrier suggests the parties meet in Spring, Texas on June 16, 2006 at 10:00 a.m.

Sincerely,

S. F. Boone  
Director - Labor Relations

46

Attachment

CARRIER'S EXHIBIT 13  
PAGE 1 OF 8

# MEMORANDUM OF AGREEMENT

between the

**UNION PACIFIC RAILROAD COMPANY**

and the

**BROTHERHOOD LOCOMOTIVE ENGINEERS and TRAINMEN**

---

## INTERDIVISIONAL OPERATIONS HOUSTON - ANGLETON/FREEPORT/BLOOMINGTON

---

On June 7, 2006, the Union Pacific Railroad Company ("UP") served notice of its intention to establish new interdivisional operations between Houston, Texas and Angleton/Freeport/Bloomington, Texas, in accordance with the provisions of Article IX of the May 19, 1986 BLE National Agreement (Arbitration Award No. 458).

Accordingly, the parties signatory hereto have agreed to the following:

### **Article I – Interdivisional Service**

UP may establish a new operation between Houston, Texas, and Angleton, Freeport and/or Bloomington, Texas, in accordance with the following:

#### **Section 1 – Home / Away-From-Home Terminals**

Houston shall be the home terminal for employees working in this interdivisional service between Houston, Texas and Angleton, Freeport and/or Bloomington, Texas. Angleton, Freeport and/or Bloomington shall be the away-from-home terminals for this new interdivisional service.

#### **Section 2 – New Operations**

##### **A. Operations out of the Home Terminal**

1. Crews operating in this service to Angleton, Freeport or Bloomington will go on duty at Houston and may be transported to receive their train at Houston, Spring or any point between Houston and Spring.
2. Employees in this service may operate between the home terminal and the away-from-home terminals via any route, trackage or any combination of routes and trackage.

3. Employees in this service, regardless of the objective terminal, may receive/leave their train(s) at any location within the territory encompassed by this service and may perform work anywhere within that territory.
4. Employees in this service, regardless of the objective terminal, may be tied up and/or lodged at any of the identified away-from-home terminals.

**EXAMPLE 1:** The objective terminal is Angleton. The employee may be tied up at Angleton and transported to Bloomington for lodging.

**EXAMPLE 2:** The objective terminal is Bloomington. The employee may be tied up at Angleton and transported to Freeport for lodging.

#### B. Operations out of the Away-From-Home Terminals

1. Crews operating in this service toward Houston or Spring will go on duty at the lodging terminal, either Angleton, Freeport or Bloomington, and may be transported to receive their train at any location within the territory encompassed by this service.
2. Employees in this service may operate between the away-from-home terminal and the home terminal via any route, trackage or any combination of routes and trackage.
3. Employees in this service may receive/leave their train(s) at any location within the territory encompassed by this service, including Spring or any point between Spring and Houston, and may perform work anywhere within that territory.

**EXAMPLE 1:** The employee was tied up at Angleton, transported to Bloomington for lodging and subsequently received his/her train at Freeport. The objective terminal is Houston via Spring.

**EXAMPLE 2:** The employee was tied up at Bloomington, transported to Freeport for lodging and subsequently received his/her train at Angleton. The objective terminal is Houston via Spring.

4. Employees in this service will be transported from the location where they leave their train to their off duty point (Houston).

C. Employees in this service will be placed on the board at their home and away-from-home/lodging terminals based on their final off duty time.

D. 1. Employees in this service at any of the away-from-home/lodging terminals may be called from the away-from-home terminal board to any other location, irrespective of other employee standings on other away-from-home terminal boards.

2. Each terminal board, home and away-from-home terminal board(s), is operated independently. Employees may be called from any of these boards commensurate with the needs of the service.

Q 1: An employee is called at Angleton (lodging terminal), transported to Bloomington and operates a train to Houston or Spring. Are the employees that are tied up, rested and/or on duty at Bloomington (lodging terminal) considered runaround?

A 1: No, all boards are operated independently commensurate with the service.

Q 2: An employee is called at Houston (home terminal), transported to Angleton and operates a train in continuous service to Bloomington. Are the employees tied up, rested and/or on duty at Angleton (lodging terminal) considered runaround?

A 2: No, all boards are operated independently commensurate with the service.

Q 3: May an employee who is tied up at Angleton, Freeport or Bloomington (lodging terminal) be transported to Houston or Spring to operate a train to Angleton, Freeport or Bloomington in continuous service?

A 3: Yes, but the employee will be transported to the home terminal upon completion of the service trip.

Q 4: In Q 3 and A 3 above, are the employees tied up, rested and/or on duty at Houston considered runaround?

A 4: No, all boards are operated independently commensurate with the service.

Q 5: Is the Carrier required to consider or respond to runaround claims submitted in connection with Article I, Section 2 of this Agreement?

A 5: No.

E. Employees in this service may perform turnaround service out of the home terminal or away-from-home terminals to any location on the territory encompassed by this service. Crews in this service may be used for multiple trips without mileage limitation and will be paid actual miles worked, with a

minimum of a basic day. Employees called at their away-from-home terminal to perform this service will be transported to the home terminal upon completion of that tour of duty.

- F. Nothing herein shall preclude the Carrier from utilizing pre-existing pools and protecting extra boards to handle traffic between Houston and Angleton/Freeport/Bloomington.

**Section 3 - Compensation**

- A. Employees working in this service will be paid actual miles worked on a train, with a minimum of a basic day, in accordance with applicable agreement provisions.
- A. Employees working in this service will be paid the miles indicated in the table below for the run operated. Employees working beyond the terminal for which called will be paid actual miles worked.

**NOTE:** Nothing in the paragraph above is intended to permit crews in this service to operate beyond Bloomington or Spring.

Home Terminal	Away from Home Terminal	Actual Mileage Of Run	Miles Paid
Houston	Angleton	60	Basic Day
	-Via Spring	77	Basic Day
	-Side Trip to Freeport	80	Basic Day
	-Via Spring and Side Trip to Freeport	97	Basic Day
Houston	Freeport	75	Basic Day
	-via Spring	92	Basic Day
Houston	Bloomington	160	160
	-Via Spring	177	177
	-Side Trip to Freeport	180	180
	Via Spring and Side Trip to Freeport	197	197

**NOTE:** The mileage specified above shall be subject to final verification by the parties.

**Section 4 – Rates of Pay**

The provisions of the 1991 BLET National Agreement, as amended, shall apply.

**Section 5 – Overtime**

Overtime will be paid in accordance with Article IV of the 1991 BLET National Agreement.

### **Section 6 – Transportation**

Transportation will be provided in accordance with Section 2(c) of Article IX of the 1986 National Agreement.

### **Section 7 – Meals**

- (a) Meals will be governed by Article VII of the 1991 BLET National Agreement.
- (b) Meals enroute will be governed by Section 2(e) of Article IX of the 1986 BLET National Agreement.

### **Section 8 – Lodging**

Lodging will be provided by the Carrier in accordance with existing agreements.

### **Section 9– Hours of Service Relief**

(a) Hours of Service relief for crews working in the territory comprising this operation may be performed by any of the following without any order of preference:

1. Houston Zone 4 Extra Board
2. Pool Crews in this Service at either the home or away-from-home terminals
3. Bloomington Extra Board

Question: A pool crew is called for hours of service relief at either the home or away-from-home terminal. Are employees assigned to the Houston Zone 4 or Bloomington Extra Boards considered runaround?

Answer: No, hours of service relief may be performed without any order of preference.

(b) Crews used in hours of service relief may perform multiple dogcatches during a tour of duty

(c) The provision set forth above does not prevent other employees from performing hours of service relief (dogcatching) which are currently permitted by prevailing agreements including, but not limited to yard crews performing hours-of-service relief within road/yard service zones, road crews performing through freight combined service/deadheads between terminals, road switchers handling trains within their zones and/or using an engineer from a following train to work a preceding train.

**Section 10 – Turnaround Service**

In addition to other provisions in this Agreement addressing turnaround service, employees assigned to the Houston Zone 4 or Bloomington Extra Boards may continue to perform turnaround service in the territory comprising this service without mileage or trip limitations.

**Section 11 – Held Away from Home Terminal (HAHT)**

Held-away-from-home terminal payment shall be governed by Article II, Section C of the Houston Hub (Zones 3, 4 & 5) of the Merger Implementing Agreement.

**Section 12 – Assignment**

An employee voluntarily or involuntarily assigned to work a position on the run(s) established pursuant to this Agreement must remain on that assignment/position until he/she has completed all required qualification/familiarization trips and for a minimum of an additional 120 days thereafter, seniority permitting.

**Section 13 – Familiarization**

The Carrier will determine the number of familiarization trips needed, if any.

**Article II – Protective Conditions**

Employees adversely affected as a direct result of the implementation of this Agreement will be entitled to the protective benefits set forth in Article IX, Section 7 of the 1986 BLET National Agreement.

This protection is wage only and hours will not be taken into account.

**Article III – Implementation**

- (a) The Carrier shall give the General Chairman fifteen (15) days advanced written notice of its desire to implement this Agreement.
- (b) The BLET Local Chairman and representative from CMS, Timekeeping and Labor Relations shall work together to ensure the provisions of this Agreement are fully and properly implemented.

**Article IV – General**

- (a) In the event the provisions of the Agreement conflict with any other agreements, understandings or practices, the provision set forth herein shall prevail and apply.

(b) The terms and conditions of this Agreement are intended to address and/or apply to the interdivisional service run as described in Article I of this Agreement. Accordingly, such terms and conditions shall not be applied, or interpreted to apply, to other locations, runs, etc.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2006 in Spring, Texas.

**FOR THE BROTHERHOOD  
OF LOCOMOTIVE ENGINEERS  
AND TRAINMEN:**

**FOR THE UNION PACIFIC  
RAILROAD COMPANY:**

\_\_\_\_\_  
G. L. Gore  
General Chairman, BLET

\_\_\_\_\_  
S. F. Boone  
Director - Labor Relations

54

**Arbitration Board No. 589**

**BEFORE ARBITRATOR ROBERT PERKOVICH**

In the Matter of the )  
 Arbitration Between )  
 )  
 BROTHERHOOD OF LOCOMOTIVE ENGINEERS )  
 AND TRAINMEN )  
 GENERAL COMMITTEE OF ADJUSTMENT )  
 SOUTHERN REGION )  
 Organization, )  
 )  
 and )  
 )  
 UNION PACIFIC RAILROAD COMPANY, )  
 Carrier. )  
 )  
 )  
 )  
 )

---

**SUBMISSION ON BEHALF OF THE  
 BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN,  
 GENERAL COMMITTEE OF ADJUSTMENT – SOUTHERN REGION**

**INTRODUCTION**

On June 7, 2006, Union Pacific Railroad served notice on the BLET UP Southern Region General Committee to implement Interdivisional (ID) Service from Houston to Bloomington, Freeport, and Angleton (Copy attached hereto as Exhibit 1). The notice was served on both the undersigned and UTU General Chairman Larry Bumpurs and reads as follows:

12/27

File 920.20 – 38

June 7, 2006

**VIA E-MAIL, FAX & CERTIFIED U S MAIL**

**MR G. L. GORE  
GENERAL CHAIRMAN BLET  
1448 MAC ARTHUR AVE  
HARVEY, LA 70058**

Dear Sir:

Pursuant to Article IX "Interdivisional Service" of the May 19, 1986 BLE National Agreement (Arbitration Award No. 458), this notice shall serve to advise of Union Pacific Railroad Company's intent to establish new interdivisional unassigned pool) freight service with a home terminal at Houston and away-from-home terminals at Angleton, Freeport or Bloomington, Texas. Additionally, crews assigned to this service may leave/receive their trains at Spring, Texas, and may operate to other locations within the territory of the proposed service to meet customer and operational requirements. The terms and conditions of this service shall be governed by the applicable provisions of Article VIII of the 1971 National Agreement with the Brotherhood of Locomotive Engineers, Article IX of the 1986 Award of Arbitration Board No. 458 and the attached proposed Memorandum of Agreement. As required in Section 3 of Article IX of the 1986 National Agreement, Carrier suggests the parties meet in Spring, Texas on June 16, 2006 at 10:00 a.m.

Sincerely,

S. F Boone  
Director – Labor Relations

Attachment

(Copy attached hereto as Exhibit 1 at p. 1)

The parties scheduled their first meeting on June 9, 2006 in the Office of the undersigned in Harvey, Louisiana. The parties continued discussions on the following dates:

July 17, 2006 – Spring, Texas  
July 26, 2006 – San Antonio, Texas  
August 14, 2006 – Omaha, Nebraska  
September 7, 2006 – Harvey, Louisiana

The expeditious meeting date of June 9, 2006 involved the BLET and Union Pacific due to the undersigned serving as Chairman of the Bylaws Committee of the BLET National Convention in Las Vegas, Nevada later that month. During this initial meeting, BLET Vice President Pruitt made it very clear to the Carrier that BLET was prepared to participate in discussions to reach a mutual agreement, but BLET took exception to the Carrier's notice and the proposed agreement incorporated by reference (Exhibit 1). The two meetings in July were joint meetings attended by BLET, UTU and Union Pacific. The BLET and Union Pacific met in Omaha, Nebraska on August 14, 2006. While there appeared to be problems, the parties agreed to schedule one final meeting in attempt to reach an agreement. This meeting never reached fruition. Another joint meeting was held with UTU on September 7, 2006 in New Orleans covering some additional issues and other ID Service. This meeting involved only an "off the record" settlement discussion between BLET Vice President Pruitt and AVP Labor Relations Rene Orosco about our alleged impasse. On September 29, 2006 Director of Labor Relations Boone sent the undersigned a letter confirming Union Pacific's intent to pursue the matter to arbitration (Copy attached hereto as Exhibit 2). At this point, the Carrier broke off joint discussions with BLET and UTU. Some additional individual meetings were scheduled with UTU in an attempt to reach an agreement. On November 3, 2006 the undersigned received an e-mail from the Office of UTU General Chairman Bumpurs containing a proposal discussed with the UTU in their meeting on October 30, 2006 which was shared at the request of the Carrier (Copy attached hereto as Exhibit 3). An additional letter was penned by Director Boone on December 4, 2006 offering a Board Agreement to settle the dispute (Copy attached hereto

as Exhibit 4). The undersigned responded on December 7, 2006 rejecting the board agreement and proposed question noting the parties' intent to meet again subsequent to our August meeting in Omaha and receipt of the proposal provided by UTU Chairman Bumpurs on November 3, 2006 indicating continued discussions to reach agreement (Copy attached hereto as Exhibit 5). Director Boone responded to the undersigned's letter of December 7, 2006 in her communication of January 5, 2007 (Copy attached hereto as Exhibit 6). On January 22, 2007, UP Director Boone penned a letter to NMB Director of Arbitration Roland Watkins requesting the appointment of a Neutral to decide the dispute between UP and BLET on this notice (Copy attached hereto as Exhibit 7). Watkins responded on January 31, 2007 establishing Arbitration Board 589 and appointing Neutral Robert Perkovich, Esq. as Chairman of this Board (Copy attached hereto as Exhibit 8). The parties continued to meet on, attempting to settle this dispute, without prejudice to the position of either party. Following the "off the record" meeting in Spring, Texas, on March 30, 2007, Director Boone penned a letter, dated April 5, 2007, received by the undersigned on April 13, 2007, accusing the BLET of never having an intention to reach agreement with the Carrier (Copy attached hereto as Exhibit 9). General Chairman Gore responded to this letter on May 2, 2007, noting BLET's commitment to resolve the dispute, without waiver of the BLET's positions, indicating that the "good faith" attempts by the BLET were evidenced by Organization travel to Omaha, Kansas City, and Spring, for informal meetings on this issue (Copy attached hereto as Exhibit 10). The Organization's Questions at Issue are presented for this Board's consideration:

**QUESTIONS AT ISSUE:**

1. Does the Carrier, by its improper notice of June 7, 2006, purportedly through some authority of the Railway Labor Act, have the right to circumvent, alter or change existing conditions in effect between the parties, covering service on this territory, expressly established within the provisions of the Houston Hub Merger

Implementing Agreement ("HHMIA"), negotiated through the authority of the Surface Transportation Board, pursuant to its mandate under the ICC Termination Act?

2. Does the Carrier, by its improper notice of June 7, 2006, have the unilateral right to circumvent, alter or change existing interdivisional service agreements, already in effect between the parties, covering service on this territory, negotiated pursuant to Article IX of the May 19, 1986 Award of Arbitration Board 458, and which were specifically preserved by the Houston Hub Merger Implementing Agreement, negotiated through the authority of the Surface Transportation Board?
3. Without waiver of the Organization's positions as to Questions at Issue 1 and 2, above, where the Carrier's only option is to negotiate a change in the HHMIA under the New York Dock conditions - - in the alternative - - is the Carrier's notice of June 7, 2006, improperly seeking to establish interdivisional service from Houston to Bloomington /Angleton / Freport via Spring, outside the parameters established in Article IX of the May 19, 1986 Award of Arbitration Board 458 as amended, and thus beyond the interest arbitration jurisdiction as contained within Article IX, limiting the Carrier to traditional bargaining pursuant to Article 26(d), Schedule Rules?

### Notice is Procedurally Defective

The notice and proposed interdivisional service agreement, incorporated and attached to the notice, served by Union Pacific on the undersigned, June 7, 2006, is procedurally defective, and without authority, as noted below:

1. Carrier is barred from seeking relief under Article IX Section 4 in the BLET 1986 National Agreement to amend the Houston Hub Merger Implementing Agreement (HHMIA), negotiated under the New York Dock conditions, pursuant to a mandate from the Surface Transportation Board, authorized by the ICC Termination Act.
2. There is existing interdivisional service in place covering the runs in question, created pursuant to written interdivisional service agreements, negotiated between these parties, pursuant to Article IX, specifically preserved in the HHMIA, on the following territories.

A. Houston - Bloomington (B372 RE15 Pool)

B. Spring – Angleton (pool currently not in operation per Carrier's election)  
C. Houston – Freeport (B372 RE06 Pool)

3. Without waiver of the above, the Carrier's notice does not comport with the decision of Referee John B. LaRocco on Issue 3 of the 1986 BLET Informal Disputes Committee, having primary authority to interpret the 1986 BLET National Agreement, including Article IX (Exhibit 11), and other relevant authority that is in accord.
4. Without waiver of the above, the *ad hoc* miscellaneous service required by the Carrier's improper notice is outside of the parameters of authority granted by Article IX, and may not be imposed through Article IX; moreover, this vague, *ad hoc* miscellaneous service would also act to abrogate other Agreements within this General Committee's Schedule Rules, specifically preserved by the HHMIA as the "Applicable Agreements."

The Carrier's purported authority under the provisions of Article IX, 1986 National Agreement, Brotherhood of Locomotive Engineers ("BLE") as amended, cannot stand against the New York Dock negotiated provisions of the Houston Hub Merger Implementing Agreement (HHMIA) Zones 3, 4 and 5. Specifically, HHMIA Zones 3, 4 and 5, Article I – Seniority and Work Consolidations, Paragraph A, Subparagraphs 1 through 3 and Paragraph B Hearne/Kingsville Seniority District – Zone 4, Subparagraphs 1 – 4 which establish the seniority districts in question in the instant dispute.

The U. S. Department of Transportation, Surface Transportation Board ("STB") approved the merger of the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") and Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp., and the Denver & Rio Grande Western Railroad Company ("DRGW") (collectively referred to as "SP") in Finance Docket 32760, imposing the New York Dock conditions on the parties. The STB transaction mandated New York Dock conditions to be negotiated in the merger. The

Carrier's plan covering the jurisdiction of this General Committee in STB Finance Docket 32760 required the negotiation of four hub implementing agreements (Dallas – Fort Worth, Longview, San Antonio and Houston). Due to the logistical problems associated with implementation, the negotiation and implementation of these agreements were staggered over time in hopes of facilitating a smoother integration of the UP and SP Railroad operations. The first agreement to be negotiated under the jurisdiction of this General Committee was the Houston Hub Zone 4 which covers part of the territory in dispute. Those negotiations culminated in the execution of the following agreements:

1. Houston Hub Standby Seniority Merger Implementing Agreement (Exhibit 12)
2. Merger Implementing Agreement Houston Hub Zones 1 and 2 (Exhibit 13)
3. Merger Implementing Agreement Houston Hub Zones 3, 4 and 5 (Exhibit 14)

The Houston Hub Standby Seniority Merger Implementing Agreement and the HHMIA Zones 3, 4 and 5 cover the territory of this dispute. The Standby Seniority Merger Implementing Agreement dealt with the consolidation of the seniority between the former UP and SP in all zones (1, 2, 3, 4 and 5) of the Houston Hub in the merger. The HHMIA Zones 3, 4 and 5 outlined the New York Dock conditions negotiated between the parties covering some of the territory in the instant dispute. It is the position of the Organization that the Carrier cannot use Article IX of the 1986 BLET National Agreement as amended to circumvent the provisions contained in the HHMIA Zones 3, 4 and 5. The hub implementing agreement was negotiated in good faith in a quid pro quo fashion between the parties. The HHMIA contained "savings clause" language regarding two issues. The first is Article 1, Paragraph D (Exhibit # Page #) which specifically addresses the creation of the new Houston Terminal Limits which reads as follows:

D. Savings Clause - The creation of expanded terminal limits for the consolidated Houston Terminal shall not constitute restrictions which did not previously exist for any freight run which was in effect prior to this Agreement, or which Carrier had the right to operate with one crew, by UP Agreement or practice, prior to this Agreement.

In the above language, UP specifically preserved their rights to run though the newly established Houston terminal created in the hub implementing agreement on runs possessing that right pre merger. These rights are specifically identified in the Questions and Answers (Exhibit 15 page 3) accompanying the hub implementing agreement in reference to Article I, D which reads as follows:

Section D.

Q.1. Give an example of a pre-existing freight run which would be preserved under this savings clause.

A.1. The current UP runs between Spring and Angleton.

The Spring to Angleton run is the only interdivisional agreement covering this territory with the negotiated right to run through the Houston terminal. The Carrier's right to continue that run is preserved by clear unambiguous language in the hub implementing agreement. *It is interesting to note that the Carrier currently has the right to this service but has elected to not exercise their rights under this agreement* If the need for this service is essential to the Carrier's financial well being, this Board must ask the question why the Carrier has chosen to ignore their rights to this run and create the instant controversy.

Additionally, there is savings clause language in Article II – Applicable Agreements Paragraph A of the HHMIA that reads as follows:

- A. All engineers and assignments in the territories comprehended by this Implementing Agreement will work under the Collective Bargaining Agreement currently in effect between the Union Pacific Railroad Company and the Brotherhood of Locomotive Engineers dated October 1, 1977 (reprinted October 1, 1991), including all applicable national agreements, the "local/national" agreement of May 31, 1996, and all other side letters and addenda which have been entered into between date of last reprint and the date of this Implementing Agreement. **Where conflicts arise, the specific provisions of this Agreement shall prevail.** None of the provisions of these agreements are retroactive. (Emphasis added)

In the above the parties recognized agreements not specifically changed in the hub agreement would remain in effect. The parties also anticipated future circumstances where the implementing agreement would conflict with those pre-existing agreements. It is the Houston Hub Implementing Agreements that are to supersede pre-merger, conflicting Agreements, *and not the other way around. The pre-merger, conflicting Agreements are not to be used to supersede the post-merger Hub Merger Implementing Agreements, and nullify those Hub Merger Implementing Agreements.* Otherwise the bargaining by the parties as to the Hub Merger Implementing Agreements, under what the Organization was led to believe were the New York Dock conditions, was a nullity, *ab inito.*

Such negotiations could not be in good faith, nor would the parties ever have an actual understanding of the agreement that they were negotiating. There would never be a clearly understood exchange of promises, nor a "meeting of the minds." The ratification rights of the employees would be meaningless, as those employees could be "surprised" by unanticipated changes, *that cannot be reasonably anticipated.*

The parties fully discussed ID Service during the Hub Merger Implementing Agreement negotiations, and incorporated - - either in total or in part - - many of the pre-

merger ID Service Agreements, modifying same "to the extent necessary" by the merger transaction.

The Carrier does not have a right to nullify the provisions of the Hub Merger Implementing Agreement through a pre-merger Collective Bargaining Agreement, Article IX, 1986 BLE National Agreement. The Carrier's intended changes, which would nullify various provisions of the Hub Merger Implementing Agreements in the instant case, purportedly under authority of Article IX, are improper.

Similar circumstances were adjudicated associated with the North Little Rock / Pine Bluff, St. Louis, and Kansas City Hub Agreements where the Carrier attempted to impose the provisions of Article IX of the 1986 BLET National Agreement to override the provisions of the hub merger implementing agreements. In Arbitration Award 581 (Exhibit 16), Neutral Ann S. Kenis, Esq., acknowledged the Carrier's retention of their rights under Article IX of the BLET 1986 Agreement, but determined that "when those rights have been exercised in a manner that conflicts with or modifies the provisions of the hub merger implementing agreements, the implementing agreements must be given precedence. In this case the hub merger implementing agreements prevail." Her answer to the question at issue in that *on-property* arbitration, equally applicable here, is as follows:

**"ANSWER TO THE ORGANIZATION'S QUESTION AT ISSUE**

Carrier has retained its Article IX rights under the 1986 National Agreement, but the Hub Merger Implementing Agreements cannot be changed by the exercise of the Carrier's Article IX rights under the circumstances herein."

In the above referenced Award, the Carrier was seeking to extend the Pine Bluff to Memphis run through the home terminal of Pine Bluff established in the NLR / Pine Bluff

Hub Merger Implementing Agreement some 50 miles to North Little Rock. While Referee Ann S. Kenis, Esq., acknowledged the Carrier's rights under Article IX, she ruled that those rights must give way to the negotiated conditions contained in merger implementing agreements. The Merger Implementing Agreement Houston Hub Zones 3, 4 and 5 clearly established the service from Houston to Bloomington in HHMIA Article I, B, 4. Article IX cannot be used to circumvent the provisions negotiated in the Houston Hub Merger Implementing Agreement Zones, 3, 4 and 5.

If the Carrier seeks relief from, or changes to, the HHMIA, an Agreement negotiated and implemented pursuant to the ICC Termination Act, it must serve notice, and proceed through negotiations under the New York Dock conditions, as imposed by the Surface Transportation Board, under its authority pursuant to the ICC Termination Act, and not the Railway Labor Act, nor any agreement negotiated through the Railway Labor Act.

**HISTORY OF INTERDIVISIONAL SERVICE PURSUANT TO ARTICLE IX, 1986**  
**BLET NATIONAL AGREEMENT - ON PROPERTY HANDLING**

Without waiver of the above position, and in the alternative, should this matter come under the purview of the Railway Labor Act, the Carrier's notice of June 7, 2006, is defective as it exceeds the authority granted by Article IX of the BLET National Agreement. Article IX of the BLET National Agreement contains the following provisions:

**ARTICLE IX- INTERDIVISIONAL SERVICE**

Note: As used in this Agreement, the term interdivisional service includes interdivisional, interseniority district, interdivisional and/or intraseniority district service.

An individual carrier may establish interdivisional service, in freight or passenger service, subject to the following procedure

**Section 1 - Notice**

An individual carrier seeking to establish interdivisional service shall give at least twenty days' written notice to the organization of its desire to establish service, specify the service it proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such service.

### **Section 2 Conditions**

**Reasonable and practical conditions shall govern the establishment of the runs described, including but not limited to the following:**

(a) **Runs shall be adequate for efficient operations and reasonable in regard to the miles run, hours on duty and in regard to other conditions of work.**

(b) All miles run in excess of the miles encompassed in the basic day shall be paid for at a rate calculated by dividing the basic daily rate of pay in effect on May 31, 1986 by the number of miles encompassed in the basic day as of that date. Weight-on-drivers additives; will apply to mileage rates calculated in accordance with this provision.

(c) When a crew is required to report for duty or is relieved from duty at a point other than the on and off duty points fixed for the service established hereunder, the carrier shall authorize and provide suitable transportation for the crew.

Note: Suitable transportation includes carrier owned or provided passenger carrying motor vehicles or taxi, but excludes other forms of public transportation.

(d) On runs established hereunder crews will be allowed a \$4.15 meal allowance after 4 hours at the away from home terminal and another \$4.15 allowance after being held an additional 8 hours

(e) In order to expedite the movement of interdivisional runs, crews on runs of miles equal to or less than the number encompassed in the basic day will not stop to eat except in cases of emergency or unusual delays. For crews on longer runs, the carrier shall determine the conditions under which such crews may stop to eat. When crews on such runs are not permitted to stop to eat, crew members shall be paid an allowance of \$1.50 for the trip.

(f) **The foregoing provisions (a) through (e) do not preclude the parties from negotiating on other terms and conditions of work**

### **Section 3 - Procedure**

Upon the serving of a notice under Section 1, the parties will discuss the details of operation and working conditions of the proposed runs during a period of 20 days following the date

of the notice. If they are unable to agree, at the end of the 20-day period, with respect to runs which do not operate through a home terminal or home terminals of previously existing runs which are to be extended, such run or runs will be operated on a trial basis until completion of the procedures referred to in Section 4. This trial basis operation will not be applicable to runs which operate through home terminals.

#### **Section 4 - Arbitration**

(a) In the event the carrier and the organization cannot agree on the matters provided for in Section 1 and the other terms and conditions referred to in Section 2 above, the parties agree that such dispute shall be submitted to arbitration under the Railway Labor Act, as amended, within 30 days after arbitration is requested by either party. The arbitration board shall be governed by the general and specific guidelines set forth in Section 2 above.

(b) The decision of the arbitration board shall be final and binding upon both parties, except that the award shall not require the carrier to establish interdivisional service in the particular territory involved in each such dispute but shall be accepted by the parties as the conditions which shall be met by the carrier if and when such interdivisional service is established in that territory. Provided further, however, if carrier elects not to put the award into effect, carrier shall be deemed to have waived any right to renew the same request for a period of one year following the date of said award, except by consent of the organization party to said arbitration.

#### **Section 5 - Existing Interdivisional Service**

**Interdivisional service in effect on the date of this Agreement is not affected by this Article.**

#### **Section 6 - Construction of Article**

The foregoing provisions are not intended to impose restrictions with respect to establishing interdivisional service where restrictions did not exist prior to the date of this Agreement.

#### **Section 7 - Protection**

Every employee adversely affected either directly or indirectly as a result of the application of this rule shall receive the protection afforded by Sections 6, 7, 8 and 9 of the Washington Job Protection agreement of May 1936, except that for the purposes of this Agreement Section 7(a) is amended to read 100% (less earnings in outside employment) instead of 60% and extended to provide period of payment equivalent to length of service not to exceed 6 years and to provide further that allowances in Sections 6 and 7 be increased by subsequent general wage increases.

Any employee required to change his residence shall be subject to the benefits contained in Sections 10 and 11 of the Washington Job Protection Agreement and in addition to such benefits shall receive a transfer allowance of four hundred dollars (\$400.00) and five working days instead of the "two working days" provided by Section 10(a) of said agreement. Under this Section, change of residence shall not be considered "required" if the reporting point to which the employee is changed is not more than 30 miles from his former reporting point.

If any protective benefits greater than those provided in this Article are available under existing agreements, such greater benefits shall apply subject to the terms and obligations of both the carrier and employee under such agreements, in lieu of the benefits provided in this Article.

-----  
This Article shall become effective June 1, 1986 except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before such date. Article VIII of the May 13, 1971 Agreement shall not apply on any carrier on which this Article becomes effective.

(Copy attached hereto as Exhibit 11; emphasis added)

Pursuant to the last sentence, quoted-above, Article VIII of the May 13, 1971 Agreement shall not apply where the parties have adopted Article IX of the 1986 National Agreement, and where the Carrier relies on the language of Article IX of the 1986 National Agreement. Without waiver of the position that the HHMIA bars any Railway Labor Act notice to modify the existing interdivisional service, specifically preserved in the same, the Carrier's notice is also defective to the extent that it attempts to rely both on the provisions of Article VIII of the May 13, 1971 Agreement and Article IX of the 1986 National Agreement, which cannot be concurrently used by the Carrier as the basis of authority to implement an interdivisional notice, even under the Railway Labor Act Agreements cited by the Carrier for purported authority.

Without waiver of the above, subsequent to the 1986 National Agreement, the Carrier adopted that Agreement for its authority, and began asserting its rights to new interdivisional service, under Article IX. This National Agreement resulted in ratification

of two on property agreements under Article IX covering some of the territory currently in this dispute.

1. Houston / Freeport Interseniarity Freight Service dated May 20, 1988 (Exhibit 17)
2. Spring / Angleton Interseniarity Freight Service dated May 16, 1991. (Exhibit 18)

Additionally, the parties were able to negotiate a third Agreement, the Houston/Bloomington Intrascniarity Freight Service Agreement, signed on February 17, 1989 (Exhibit 19), which covers part of the territory in question in this dispute.

Each of the existing interdivisional service Agreements, referenced above, covers a portion of the territory involved in the Carrier's defective notice of June 7, 2006; further, **all of the territory contained within the Carrier's notice is covered by the combined effect of these three separate, currently existing interdivisional service agreements.**

It should be noted that on all of the above mentioned runs, even in the shadow of Article IX, the Organization was able to negotiate more favorable conditions in these agreements than those expressly provided in Article IX, Section 2 of the 1986 BLET National Agreement. Those more favorable conditions are summarized below

1. Houston/Freeport Interseniarity Freight Service Agreement (1989 Exhibit 17)
  - a. Paragraph 5 – Engineers assigned to this service were guaranteed 16 basic through freight days at with fireman rate of pay per half.
  - b. Paragraph 7 – Engineers assigned to this service were paid the prevailing meal allowance enroute instead of the minimum \$1.50 provided for in Article IX of the 1986 BLET National Agreement.
  - c. Paragraph 10 – Engineers assigned in this service will not be used in

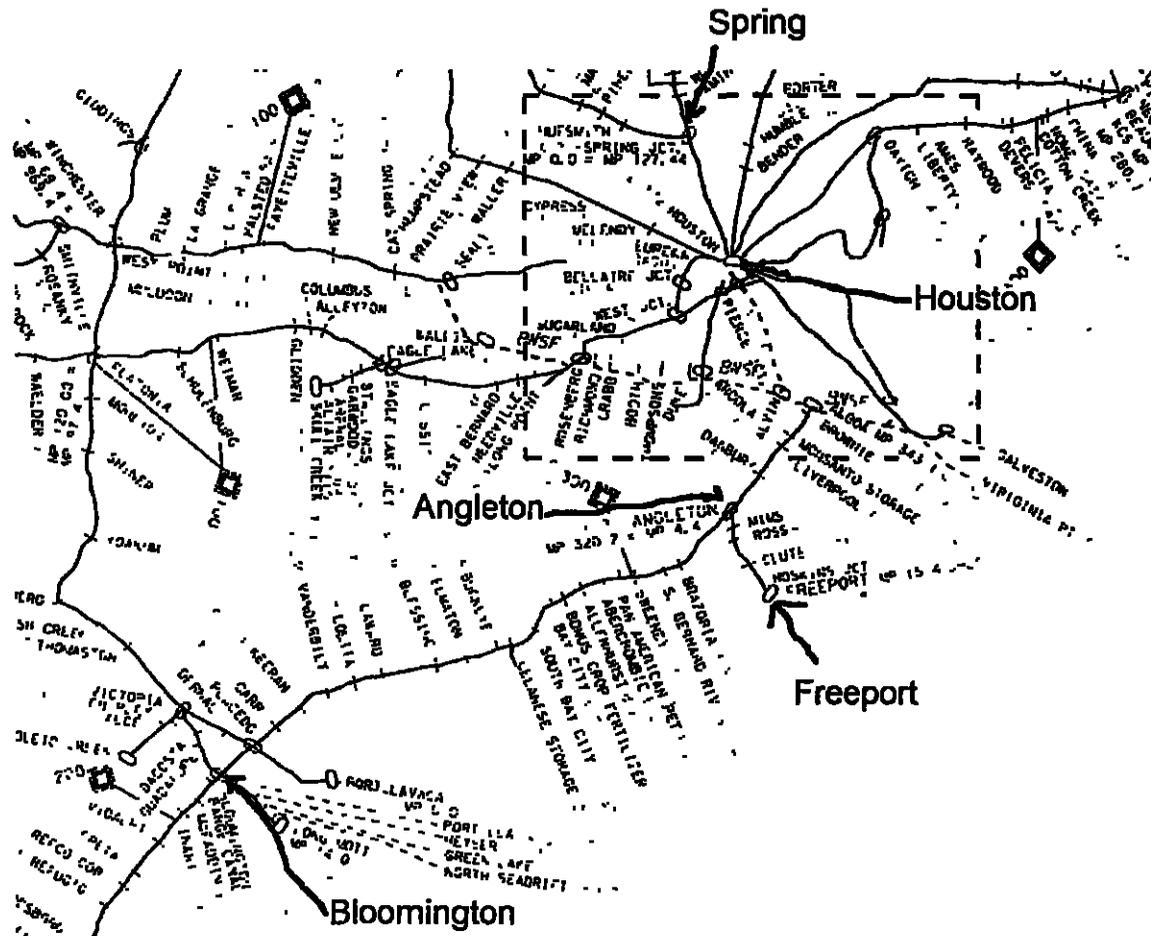
local, work or construction service nor will they be required to perform station switching.

- d. Paragraph 11 – Engineers in this service held for connection in excess of 30 minutes were paid for time so held at the pro rata frozen rate.
2. Spring/Angleton Interseniarity Freight Service Agreement (1991 Exhibit 18)
- a. Paragraph 5 – Engineers assigned to this service were guaranteed 16 basic through freight days at with fireman rate of pay per half.
  - b. Paragraph 7 – Engineers assigned to this service were paid the prevailing meal allowance enroute instead of the minimum \$1.50 provided for in Article IX of the 1986 BLET National Agreement.
  - c. Paragraph 10 – Engineers assigned in this service will not be used in local, work or construction service nor will they be required to perform station switching.
  - d. Paragraph 11 – Engineers in this service held for connection in excess of 30 minutes were paid for time so held at the pro rata frozen rate.
3. Houston/Bloomington Intraseniarity Freight Service Agreement (1989 Exhibit 19)
- a. Paragraph 6 – Engineers assigned to this service were guaranteed 16 basic through freight days at with fireman rate of pay per half.
  - b. Paragraph 7 – Engineers assigned to this service were paid the prevailing meal allowance enroute instead of the minimum \$1.50 provided for in Article IX of the 1986 BLET National Agreement.
  - c. Paragraph 10 – Engineers in this service held for connection in excess of 30 minutes were paid for time so held at the pro rata frozen rate.
  - d. Paragraph 11 – Crews in this service could not be used in short turnaround service except in cases of emergency or to go to Angleton.

- e. Paragraph 12 – Crews in this service were given pro rata rates of pay for performing station switching and work train service in addition to all other earnings.
- f. Paragraph 13 – Crews in this service held for more than 45 minutes waiting on transportation to the away from home terminal lodging facility in Bloomington, Texas would be allow actual wait time in addition to all other earnings.
- g. Paragraph 14 – Crews in this service on duty more than 6 hours without eating will be entitled to eat at Bloomington prior to performing any station switching.

The Carrier cannot serve an Article IX notice to re-negotiate existing interdivisional service, especially where such interdivisional service has already been negotiated pursuant to Article IX authority, and specifically preserved by the HHMIA, pursuant to arbitral authority, discussed *infra*.

Subsequent to the adoption of Article IX of the 1986 BLET National Agreement, the Carriers were empowered with the right to implement ID Service on a trial basis after serving notice if the same did not involve running through a crew's district home terminal. However, the Carrier may not unilaterally operate a train through a home terminal of the crew, even on a trial basis. All of the above-referenced interdivisional service Agreements involved extending or modifying service between a contractually designated home and away from home terminal. The Carrier now seeks to run crews in an ad hoc fashion into, out of and through the home terminal of the assignment (Houston) to Spring, Angleton, Freeport and Bloomington at their whim. To assist this Board in understanding the geography, a map of the proposed service is as follows:



As Railroad operating craft employees are required by the nature of the Carrier's operations to travel to an away from home terminal location on a basis that may be every other day. Any effort to increase the travel away from home by unilaterally operating through a home terminal, exacerbated by the Carrier's deliberately vague, expansive, and impermissible June 7, 2006 notice, in unpredictable and miscellaneous service, outside the ambit of Article IX, adversely impacts the families of every employee so treated. Assuming *arguendo*, but incorrectly, the Carrier had the right to serve a notice to run through the home terminal, in the absence of already existing interdivisional service Agreements covering this territory, specifically preserved by the HHMIA, such unforeseen,

unpredictable, miscellaneous service - - as indicated by the June 7, 2006 notice - - is beyond the authority granted through Article IX, and barred by any authority. Moreover, even if, *arguendo*, but incorrectly, Article IX was our *sole* reference for authority in this matter, Subsection (a) of Section 2 "Conditions," requires that **"Reasonable and practical conditions shall govern..."** and that these conditions shall be **"reasonable in regard to the miles run, hours on duty and in regard to other conditions of work."** For the sake of argument only, the Carrier's notice, even if, somehow permitted by Agreement authority, is prima-facie defective as to reasonableness of the conditions of the proposed service.

The history of interdivisional service will bear witness to the fact that the carriers' arguments have been replete with requests for a more expedited process to implement interdivisional service even when running through home terminals and requests for pay relief. However, the Carrier's general request to miscellaneous service, under the guise of Article IX, has neither precedent within any on-property Agreement negotiations, nor any National Agreement negotiations related to interdivisional service. Moreover, such a broad expanse of managerial discretion, beyond any imagined granting of authority through Article IX of the 1986 National Agreement, would have the effect of destroying not only the rights of the employees through the negotiated interdivisional service agreements currently in effect as indicated above, but would also serve to destroy additional Agreement rights under the Schedule Rule Agreements relative to the jurisdiction of this General Committee.

The *on-property* history of negotiations related to interdivisional service, begins in 1920, when the U. S. Government was operating the Nation's railroad industry, due to World War I. The 1920 provision, Article 25(d), Schedule Rule Agreement, provided the Carrier with a broad right to establish interdivisional service (Copy attached hereto as Exhibit 20). This same provision was recodified as Article 26(d) in 1930, in the Schedule Rule Agreement book, containing the following language:

...Engineers will not be permitted to run by terminal points where it affect

other engineers in like service, except in cases of wrecks or washouts; but this will not abridge the rights of the railroad to establish regular runs through terminal points without change of engineer....

(Copy attached hereto as Exhibit 21)

However, even with the open management authority to unilaterally establish interdivisional service under the then-existing language of Article 26(d) in 1930, the First Division, National Railroad Adjustment Board, with Referee Frank M. Swacker, held that the Carrier did not have the right to "hook up any kind of combination into and out of a terminal and by assigning it as a "through run" nullifying the major prohibition of running through terminals..." Award No. 3427, NRAB (1<sup>st</sup> Div. Swacker) (Copy attached hereto as Exhibit 22). Though this was an Award interpreting the Schedule Rule Agreements of the Brotherhood of Railroad Trainmen, it was incorporated into, and applied to, the interpretation of the BLET Schedule Rule Agreement, Article 26(d), by express incorporation and application, as stated by Referee Swacker in the immediately subsequent Awards. See, Award Nos. 3428, 3429, 3430 (1<sup>st</sup> Div. Swacker) (Copies attached hereto as Exhibits 23, 24, and 25). Subsequent to these First Division Awards limiting the Carrier's unilateral authority under the guise of interdivisional service, the parties negotiated an Agreement, dated August 3, 1948, that further restricted the Carrier's authority:

3. It is agreed that the Missouri Pacific Railroad Company will not establish additional freight runs for engineers and firemen through terminal points without first reaching agreement with the representatives of the Engineers and Firemen, and that negotiations of such agreement are to be on a reasonable and practical basis with both Carrier and Employee recognizing each other's fundamental rights.

(Copy attached hereto as Exhibit 26)

This language was made a part of Article 26(d), and has remained a part of the Agreement as the final sentence in Article 26(d), to the present, including the October 1,

1991 reprint (Copy attached hereto as Exhibit 27 at pp. 2-3), that was designated by the parties as controlling in the HHMIA as the "Applicable Agreement," *supra*. As such, even in the absence of the HHMIA, where the Carrier lacks authority for such miscellaneous service through a home terminal, and where such miscellaneous service is not provided by Article IX of the 1986 National Agreement, such service is in contravention to current interdivisional service Agreements applicable to this territory. The Carrier is barred by Article 26(d) from unilaterally implementing such service, and this Arbitration Board is without jurisdiction to impose an Agreement mandating such the service as expressly requested.

The Carrier has provided no evidence to the Organization during negotiations to demonstrate a need for the broad, miscellaneous service requested. They currently have runs in place today covering the requested service. Union Pacific also has tremendous flexibility in other agreements, such as the Traveling Switcher Agreement (Arbitration Award 554 Exhibit 28), which grants the carrier the flexibility to run in a 35 mile radius or 60 mile one way direction into and out of the terminal at will without cumulative mileage limitation. The Organization has also agreed to a Short Pool Agreement in Zone 3 (Exhibit 29) covering the territory between Houston to Spring and beyond to Lufkin and Palestine that by agreement can make multiple trips into and out of the Houston terminal between Spring and Houston with no mileage limitations. The Spring to Angleton Interdivisional Freight Service Agreement permits running through the Houston Terminal to Angleton. ***This service, although contractually preserved in the savings clause of HHMIA Zones, 3, 4 and 5, it not being utilized by the Carrier. This Board must seriously question the bon fide need for the requested service under these conditions.***

The Carrier's notice is in direct violation to the decision in Issue 3 of the 1986 Information Disputes Committee ruling.

*“Since the discretion is vested in the Carrier, a Carrier may not use Article IX as a pretext for taking advantage of the more favorable conditions set forth in Section 2 of Article IX. Section 5 of Article IX bars a Carrier from proposing only a minor modification in an existing interdivisional run with the motive of procuring the more favorable conditions.”* (Emphasis Added)

(Exhibit 30)

As outlined earlier in this submission, there are numerous provisions of existing agreements that contain more favorable conditions which include, but are not limited to, guarantee allowance, prevailing meal allowance en route, and held for tonnage payments. All of the three established agreements were negotiated and consummated in the shadow of the provisions of Article IX of the 1986 BLET National Agreement.

The current Interdivisional Notice dated June 7, 2006 (Exhibit 1), which incorporated by reference the proposed memorandum of agreement that the Carrier desires to impose on this service, and which seeks to abrogate the following collective bargaining provisions in the items noted below:

Item

1. Section 2, A, 3 governing operations out of the home terminal and Section 3, B, 3 governing operations out of the away from home terminal proposes that crews **“may perform any work within that territory”**. This language attempts to nullify all provisions of both the HHMIA and the BLET UP Southern Region Agreement as amended.

The ambiguous language in bold underline above if interpreted literally, would remove all restrictions contained in the current collective bargaining agreement as amended. That would include but not be limited to, the restrictions imposed under the road / yard work to three moves at terminals and intermediate points in connection with the crews own train.

Article IV (a) of the proposed ID Service Agreement reads as follows:

Article IV – General

- (a) In the event the provisions of this agreement conflict with any other agreements, understandings or practices, **the provisions set forth herein shall prevail and apply.** (Emphasis added)

In the face of such clear language the **Carrier's intent is obvious.** The Carrier's rights under Article IX of the 1986 National Agreement **DO NOT** provide a venue for requesting such broad sweeping changes to existing collective bargaining agreement provisions.

Item

2. Section 2, A, 4; Section 2, B, 1 and Section 2, B, 4 when combined with Section 3, A of the Carrier's notice seeks to prohibit payments for crews that are repositioned from one away from home terminal to another away from home terminal in violation of the HHMIA Zones 3, 4 and 5 Article II, D, which mandates payment of actual miles for service performed in this territory. (Exhibit 14 page 13)

Payment for miles for repositioning between terminals on runs with multiple away from home terminals has been historically recognized through both negotiations and arbitration. The Houston Hub Implementing Agreements recognized that right in Side Letter 1 of Zones 1 and 2 (Exhibit 13) and in arbitration of the Beaumont ID Service Agreement, specifically Section 9, Paragraph A which reads as follows:

“A. The highway miles shown below will govern when crews are repositioned deadheaded between the following away-from home terminals:

Alexandria -- Lafayette = 93 miles  
Alexandria — Livonia = 104 miles  
Lafayette — Livonia = 51 miles.

## (Exhibit 31)

Assuming arguendo the Carriers mileage chart is correct in the proposed agreement, a crew going on duty at Bloomington, deadheading to Freeport to get their train and working to Spring would receive 197 miles for that service. The highway mileage from Bloomington to Freeport is 122 miles per the online service Map Quest. The actual rail mileage per their proposed chart from Freeport to Spring is 97 miles. Deadheading back to Houston would add an additional 24 miles. Using the Carrier's mileage chart shorts the crew 46 total miles ( $122 + 97 + 24 = 243$ ). The total payment should be 243 miles using the mileage on their chart. It should also be noted that the Carrier in their mileage chart has proposed mileage going to Spring that is 5 miles less than the actual mileage of the run which would bring the total mileage to 248 miles for a crew performing service in this example. *The economic advantage they seek to gain here comes directly out of the paychecks of the employees working the service.*

## Item

3. In Section 2, D, 1 the Carrier seeks to eliminate the first in – first out provisions of the BLET UP Southern Region Agreement Article 26 Paragraph d “Calling” (Exhibit 27).

Article 26(d), Schedule Rules, is also the Agreement that provides for freight crews to work on a “first in, first out” basis. The Carrier's ludicrous proposal seeks to completely abrogate that provision of the Schedule Agreement, first codified within the Agreement book printed by the U. S. Government in 1920. Their examples contained in Section 2, D, 2, almost render the undersigned speechless. In addition to being a complete abrogation of the first in – first out language of the agreement schedule, they make it totally impossible for

a crew to gauge their required rest time at both the home and away from home terminal. Granting the Carrier the unfettered right to run crews in any fashion or order they desire will create nothing but chaos and confusion for crews trying to anticipate their next call to service. The Carrier's outrageous request is best debunked by examining Question and Answer 3 of Section 2, D, 2 of the proposed agreement which reads as follows:

Q 3: May an employee who is tied up at Angleton, Freeport or Bloomington (lodging terminal) be transported to Houston or Spring to operate a train to Angleton, Freeport or Bloomington in continuous service?

A 3: Yes, but the employee will be transported to the home terminal upon completion of the service trip.

The above example would allow the Carrier to deadhead a crew from any away from home terminal to Houston or Spring to get a train to take back to any away from home terminal irrespective of the availability of crews at the home terminal of Houston. Payment for such service under Compensation Section 3, A of their proposal would entitle the crew to only the "actual miles worked on a train". In reality, if the crew was at Freeport, they could be transported to Spring (86 auto miles) and work the train back to Freeport (92 miles per their chart) and then transported back to Houston (63 auto miles) all for payment of 92 actual miles run on a train which equates to a minimum of a basic 130 mile day. The crew has actually worked and deadheaded a total of 241 miles and would only be compensated a basic day plus overtime. It is painfully obvious that the Carrier is trying to achieve economic advantage over their employees via the Article IX arbitration process that they would never achieve through negotiations with their designated representatives.

Item

4. Section 2, D, 2 Question and Answer 5 seeks to circumvent the Organization's rights under the 1996 Union Pacific System Agreement

Attachment (b) Time Claim Handling Process.

Article IX of the BLET 1986 National Agreement provides no vehicle to demand indemnity against grievances properly filed under the collective bargaining agreement between the parties.

Item

5. Section 2, E seeks to eliminate the Organization's rights under the Short Turnaround Agreement (Page 3 BLET UP Southern Region Agreement).

Article 4 (k) of the BLET UP Southern Region Agreement reads as follows:

"k. Engineers in pool or irregular freight service may be called to make short trips and turn-arounds with the understanding that one or more turn around trips may be started out of the same terminal and paid actual miles with a minimum of 100 miles for a day, provided (1) that the mileage of all the trips does not exceed 100 miles, (2) that the distance run from the terminal to the turning point does not exceed 25 miles, and (3) that engineers shall not be required to begin work on a succeeding trip out of the initial terminal after having been on duty eight consecutive hours, except as a new day, subject to the first-in, first-out rule or practice

Crews to be notified when called that they are to make short trips or turn-arounds as provided in this paragraph

The language incorporated in Section 3, E of the proposed agreement reads as follows:

" E Employees in this service may perform turnaround service out of the home terminal or away-from-home terminals to any location on the territory encompassed by this service. *Crews in this service may be used for multiple trips without mileage limitation* and will be paid actual miles worked, with a minimum of a basic day. Employees called at their away-from-home terminal to perform this service will be transported to the home terminal upon completion of that tour of duty."

Clearly, the proposed language is intended to circumvent the above quoted language in Article 4, (k) of the agreement providing for "new day" payments when certain contractual thresholds agreed to by the parties are exceeded..

Item

6. Section 2, 3, B seeks to restrict payment for actual miles worked in Article II, D of the HHMIA Zones 3, 4 and 5 (Exhibit 14 page 13.)

Article II, D of the HHMIA reads as follows:

D. “Actual miles will be paid for runs in the new Longview/Shreveport Seniority District and the new Hearne/Kingsville Seniority District. Examples are illustrated in Attachment “G”.” (Emphasis added)

The Carrier seeks to circumvent this provision of the hub implementing agreement by limiting the miles paid to the chart in Section 3 of the notice. This is a blatant attempt by the Carrier to circumvent the HHMIA to the detriment of the employees who contractually participated in the ratification of this New York Dock transaction. Thus the Carrier is seeking to avoid their contractual responsibility in those negotiations to gain economic advantage over their employees covered by the same. This is specifically prohibited authority of the Kenis Award referenced earlier.

Item

7. Section 2, 3, B seeks to circumvent the provisions of Article V, B, Section 7 (Page 30) and Questions and Answers Document Page 13 Q&A 23 of the 2003 BLET National Agreement providing for payments of trip rates on newly established pools and service. This provision of their notice also seeks to eliminate the Post 1985 pay provisions contained in Article V, B, Section 9, (h) of the 2003 BLET National Agreement.

The Carrier makes no mention in the notice regarding compliance with the pay provisions negotiated in the 2003 BLET National Agreement. Specifically Article V, B, Section 7 reads as follows:

**Section 7 - New Runs/Pool**

Trip Rates for new runs/pools that existing agreements permit to be established may be so established based on Trip Rates for comparable runs/pools. Any dispute regarding such matters may be referred by either party to the Disputes Committee.

Question and Answer 23 of that agreement reads as follows:

Q-23 How will Trip Rates be determined for new runs/pools since there is no "Test Period"?

A-23 As provided in Article V, Part B, Section 7.

The above provisions in 2003 National Agreement eliminated the controversial two tier pay system forced on BLET via Arbitration Award 458 (1986 BLET National Agreement). The Carrier now seeks to use the arbitration provisions of Article IX to turn back the clock on those negotiated conditions. Reference to either of these issues is conspicuously missing in their proposal.

**Item**

8. Section 2, 3, B, Mileage Chart proposes to add only 17 miles to runs north to Spring in violation of Article II, D of the HIIMIA Zones 3, 4 and 5. The actual rail miles from Englewood Yard to Spring is 26 miles which equates to 52 round trip miles.

The Carrier's Article IX notice is a blatant attempt to extend the terminal limits of Houston 17 miles north to include Spring, Texas thus avoiding the agreements governing yard service following that extension to Lloyd Yard at Spring. Lloyd Yard as a Traveling Switch Engine Yard and is currently not covered by the yard start time rules or yard meal period agreement. The advantage they seek here is obvious and their proposal is in direct

conflict with the Kenis Award referenced above.

Their proposal to pay only one way miles from the north terminal limit of Houston (MP 227) to Spring, Texas (MP 210) is in direct violation of Article II, D of the HHMIA. They have excluded the milceage from Settegast and Englewood Yards in Houston to the terminal limit at (MP227) on the Palestine Subdivision. In addition, they have made no provisions for any deadhead miles back from Spring (located outside the terminal limits) to the crews final tie up point of Houston. Article VI of the 1986 BLET National Agreement covers deadheading. This provision was a substantial windfall for the Carriers in 1986, because it allowed them to deadhead crews either *separate and apart* from service and pay only a basic days pay or *combined with service* and pay actual miles at their discretion. It however also mandated that the Carriers give notice to the employecs of their decision as to which status the employecs were to be deadhead. Assuming arguendo, that they would select the most economical method (combined with service) on the return trip back from Spring, the actual miles are contractually payable. Public Law Board 4283, Awards 19 and 20 (Exhibit s 32 and 33) discuss the "deadheading" / "transporting" issue raised by the Carrier and are attached for the Boards review. Specifically in Award 20, Referee Eischen ruled in pertinent part:

**"For each of the claims, Claimants were paid on a continuous time basis from the time on-duty until they registered off duty after bringing the train or trains to the terminal. The separate and apart deadheads all were denied because Carrier believed "transporting not deadheading was involved and therefore it was not obligated to give the Article VI notice that service would be combined with deadheading. The issues, as well as the arguments and evidence advanced by each Party in the present case, are identical with those set forth in greater detail in Award No. 19, Case No. 19 of this Board. For reasons which this Board explained in Award No. 19, the claim in the present case likewise must be sustained.**

In both awards, the Carrier was trying to avoid payments associated with deadheading separate and apart by using similar terminology as in the instant case by alleging the crews were "transported" instead of deadheaded. The Organization fully understands that miles transported within the terminal limits to and from their train per Article VIII, Section 1, (a) of the 1986 BLET National Agreement can be done for no additional compensation. *Deadhead miles from outside the terminal limits back into the terminal for final release are required to be paid either actual miles if combined with service or a basic day if separate and apart from service.* Spring is NOT located within the terminal limits of Houston, therefore any deadheading to and from Spring either to duty or from duty is compensable under the deadhead rule discussed above supported by Awards 19 and 20 of Public Law Board 4283.

Item

9. Sections 4 and 5 abrogate the trip rate provisions noted above in item 7 of Article V of the 2003 BLET National Agreement.

As noted earlier the explanation of Item 7, the provisions of establishing new pool trip rates are supported in Article V of the 2003 BLET National Agreement and Question and answer 23.

Item

10. Section 7 seeks to eliminate more favorable conditions negotiated in the three ID Agreements including but not limited to payment of prevailing meal allowance in route; Houston - Bloomington (HHMIA Zones 3, 4 and 5 Article II, B 4, b); Houston - Freport and Spring - Angleton (Paragraphs 7 of both agreements).

The Carrier is attempting to use Article IX arbitration to abrogate those conditions

negotiated in the Houston Hub Merger Implementing Agreement, to the detriment of the employees, who were not only the real parties to that transaction, but who ratified the Agreement based upon the conditions contained therein, and preserved thereby. The Hub Merger Implementing Agreement was negotiated in a quid pro quo environment. Each party gained specific rights in that transaction. The prevailing meal allowance on the three runs in question was secured through negotiations. The current meal in route allowance on the Houston to Bloomington Pool is provided for in the HHMIA Zones 3, 4 and 5 Article II, B, 4, b. The Houston / Freeport and Spring / Angleton Interdivision Freight Service Agreements in Paragraph 7 provide the prevailing meal allowance for not stopping to eat enroute. The Carrier cannot now be allowed to escape their commitment in those negotiations by serving an Article IX notice and forcing arbitration in hopes of eliminating those and other agreement provisions. In a word, it is simply unethical to offer provisions to obtain ratification of the hub merger implementing agreement or interdivisional service agreements and then several years later attempt to eliminate those more lucrative provisions via Article IX arbitration.

11. Section 12 seeks to abrogate the provisions of Article 40 of the BLET UP Southern Region Agreement by restricting seniority of all engineers exercising seniority to this service either voluntarily or involuntarily for one hundred and twenty (120) days.

This proposed section contains an egregious condition, destroying seniority rights, perhaps the oldest and most sacred right gained in the history of American Labor. Article IX contains no language providing for the "restriction" of the seniority of each Engineer's right to freely exercise his or her entitlement to the job of their choice, via the seniority system. Article 40, Schedule Rules (Exhibit 34), as modified, clearly provides the traditional choice

to *all* Engineers to *every* job of this Carrier within the jurisdiction of this General Committee on a seniority basis. There is no basis whatsoever for this Carrier's bargaining demand, nor is it within the authority of this Board to impose such a provision.

The Carrier also maintains an erroneous position that Article IX, mandates unfettered Carrier discretion to run either regular or extra crews, irrespective of the positions of other, regular-assigned crews, at will. This erroneous position purports Article IX authority to essentially extend the terminal limits of Houston by seventeen (17) miles, improperly abrogating the current collective bargaining agreement requirement for the payment for deadheading. Their flawed position attempts to lay claim to rights to run crews into, out of, and through the home terminal of the assignment (Houston) at will, irrespective of current collective bargaining agreements. None of the on-property bargaining history provides for such authority; to the contrary, as indicated above, on-property bargaining history, as well as prior grievance adjudication, indicates that when the Carrier has previously asserted such authority, opposed by the Organization, the decisions of the Adjustment Board have resolved the matter in favor of the Organization. Moreover, the Carrier's reliance on National bargaining history is equally misplaced. Attached, in Addendum A, is a history of interdivisional service, with a detailed examination of the Carrier's requests in its various submissions to several Presidential Emergency Boards (PEB), recommendations of those PEBs, and subsequent National Agreements between the parties, which reference interdivisional service. Throughout the entire national, interdivisional service bargaining history, as contained in Addendum A, there is no mention of vague miscellaneous service, extension of terminal limits, for the purpose of creating flexibility to operate trains, back and forth, through terminals, *ad hoc*.

In line with the above, all of the prior interdivisional service Agreements on this Carrier, as well as those Agreements negotiated nationally, were all "through freight" service (previously referred to as "chain gangs"), and the new interdivisional runs were

created by combining previously separate end-to-end district runs, lengthening those runs by either running through “home” or “away from home” terminals, always making straight away moves, thus making these former terminals intermediate points, extending the runs to new “away” and “home” terminals, but always moving in one direction during the run, never back and forth *through* a “home” terminal.

The Terminal Limits of the Houston Terminal were specifically negotiated between these parties, and are identified in the HHMIA Article I, Paragraph C, 3, c, page 10, which reads as follows:

- c. Terminal limits for this new consolidated Houston Terminal are as follows:

<u>Southern Pacific</u>	<u>Mile Post</u>
Luffkin Subdivision	10.00
Galveston Branch	9.16
Glidden Subdivision	12.77
Lafayette Subdivision	354.59
Hearne Subdivision	9.00
Bellaire Branch	9.00
<u>Union Pacific</u>	<u>Mile Post</u>
Palestine Subdivision	227.0
Ft. Worth Subdivision	227.0
Galveston Branch	194.3
Houston Subdivision	170.8
Beaumont Subdivision	381.6
Baytown Branch	1.2
Brownsville Subdivision	19.4 (ATSF M.P./former Tower 81)
Houston Subdivision Main Line (BN)	60.8 (BN M.P.)
Popp Industrial Lead (Sugarland Branch)	0.25

The Carrier has historically acknowledged the above noted terminal limits. On July 31, 2004 the Carrier ran train GSHNGV – 28 through the Houston Terminal to Galveston, Texas. On August 2, 2004 a letter was penned by the undersigned noting the agreement violation and objecting to the practice to then Director of Labor Relations, Randy Guidry. That protest and supporting documentation is attached as Exhibit 35.

Additionally, a search of recent claims paid by Union Pacific for running through the assigned home terminal of Houston revealed the following basic day payments being made for this violation:

Name	Date	Service Performed	Paid
CG Wilson	02-11-07	Running through Houston Terminal to Dyersdale	\$178.76
MC Lewis	03-13-07	Running through Houston Terminal to Dyersdale	\$160.89 conductor
CG Wilson	03-29-07	Running through Houston Terminal to Dyersdale	\$178.76
CG Wilson	02-01-07	Running through Houston Terminal to Dyersdale	\$178.76
CG Wilson	01-18-07	Running through Houston Terminal to Dyersdale	\$178.76
ME Grigsby	12-14-06	Running through Houston Terminal to Dyersdale	\$183.54
PL Sonnier	03-30-07	Running through Houston Terminal to Dyersdale	\$178.76
SF Wallace	03-09-07	Running through Houston Terminal to Dyersdale	\$178.76
EE McDowell	03-03-07	Running through Houston Terminal to Dyersdale	\$178.76
RS Permcnter	03-30-07	Running through Houston Terminal to Dyersdale	\$160.90 conductor
SM Barras	02-22-07	Running through Houston Terminal to MP225	\$178.76
SM Barras	02-28-07	Running through Houston Terminal to A209	\$178.76

A copy of the specific work history detailing the first claim as an example for the Board for Engineer CG Wilson on February 11, 2007 is pasted below.

```

WORK HISTORY - CG WILSON
STATUS-03 ASGN-B 372 MSG-CURETS* - SEC/TRK UTU Q' DPU - NQ B219
PERM ASSIGN-B 372 RE03 EP06 ENG P ASN DATE-03/21/07 C
*****
* WORK HISTORY *
*****
02/11 CN 02/13/07 15 19 *** CLAIM ADDED TO INDEX TU
CN 02/13/07 15 19 CLAIM # 02966583 CLAIM DATE 02/11/07 SLIP #
CN 02/13/07 15 19 AMOUNT CLAIMED 00130 MILES POSITION ENR 041407
CN 02/13/07 15 19 LEAD CLAIMANT CG WILSON TRAIN/JOB 00VBT06
CN 02/13/07 15 19 AC SCHEDULE ***** COM 00130 MILES
CN 02/13/07 15-19 CLAIMING 130 MILES ACCOUNT RUNNING OFF ASSIGNED TR
CN 02/13/07 15 19 BECAUSE WE ENTERED THE TERMINAL LIMITS AT 19 30
CN 02/13/07 15 19 ON 02/11/06 AND DEPARTED THE TERMINAL AT
CN 02/13/07 15 19 19 55 ON 02/11/06 AND WAS RELIEVED AT 20 06 AT B38
CN 02/13/07 15 19 B(DYERSDALE) TERMINAL LIMITS ARE MP381 6 ON THE
CN 02/13/07 15 19 BEAUMONT SUB WE WERE INSTRUCTED TO TAKE THE
CN 02/13/07 15-19 TRAIN TO MP 385 4 ON THE BEAUMONT SUB FOR THE OUTH
CN 02/13/07 15 19 OUND CREW BY TTD2 (SLF)
CN 02/14/07 09 25 *** CLAIM PROCESSED BY OCHS677
02/11 DU 02/14/07 09 23 ORG-B 372 DES-AX171 QLF-V SERVICE-2 SLIP#-#FE HMD1405
TOTAL PAY FOR THIS CLAIM $ 178.76
CL 02/14/07 09 23 SELF-02/11/07 OCCUPATION-01 TRIP CREDITS-00
ALW- $ 00 00 DISTRIBUTION-000 PAY CD-151 VACDAYS-00
CONSTRUCTIVE ALLOWANCE CODE - M7
UNITS-000 TIME-08 00 $ 178.76
SERV MILES 0000 TRAIN ID /OVRT /06
CN 02/14/07 09 23 2966583 M7 R385 BEAUMONT SUR
CH 02/14/07 09 23 USERID OCHS677
    
```

Engineer Wilson's mandated FRA reporting via Union Pacific's computer system is provided below outlining his movement from AX171 (his away from home terminal of Hearne, Texas) at 1035 hours to B385 which is Dyersdale Jct. at 2006 hours outside the far east side of the Houston Terminal limit (Mile Post 381.6) on the Beaumont Subdivision.

Wilson's FRA Report

CM 02/13/07 05:13 FRA DATA ENG OWVBT 06 AX171 02111035 B 385 02112006+  
B 372 02112115  
CM 02/13/07 05:13 FRA DATA ENG DF T B 385 02112006 B 372 02112115 TOWIN

Beaumont Subdivision Timetable excerpt (Exhibit 36)

The Beaumont Subdivision Timetable above identifies Dyersdale Jct. as mile post 385.4. The documentation regarding the other claims listed above is included in Exhibit 37 for the Board's ready reference.

The Organization has entered into agreements providing the Carrier flexibility to "reach out" to get trains that have expired under the hours of service law with outbound freight crews. Specifically, we have reached agreements in all 4 of the hub agreements negotiated under the jurisdiction of this Committee (Houston, Longview, DFW and San Antonio Hubs). This agreement extends only to Zone 3 of the Houston Hub at the away from home terminal locations of Shreveport and Longview (HHMIA Zones 3, 4 and 5 Article I, A, 3) which read as follows:

3. Road Operation Consolidations

- a. All Houston-Longview/Shreveport pool operations shall be combined into one (1) pool with Houston as the home terminal. Longview and Shreveport shall be considered as one combined away from home terminal for this pool. *Pool and extra engineers may receive their trains up to 25 miles north of Shreveport on the Pine Bluff Subdivision. When such service is performed, engineers shall be paid an additional one-half (½) basic day for this service in addition to the district miles of the run. If the time spent beyond the terminal under this provision is greater than four (4) hours, then they shall be paid on a minute basis at the basic pro rata through freight rate.*
- b. When it is necessary due to wreck, washout or other main line service interruption to revert temporarily to bi-directional running, engineers in this service may leave or receive their trains anywhere between Longview and Marshall or between Shreveport and Marshall, depending upon which route is utilized for bi-directional running. *When so used, engineers will be paid on a minute basis or actual miles, whichever is greater, with a minimum of four (4) at the pro rata through freight rate. (Emphasis added)*

This agreement is referred to as the "25 Mile Zone Rule." It provides for payment of one-half a basic day, allowing a crew to reach 25 miles beyond the terminal limit to pick up a train that has tied-up on line of road, under the Hours of Service Law, and proceed back through the terminal to their designated away from home terminal. Additionally, in paragraph (b), there are emergency provisions for crews to operate through the terminal inbound, during main line service interruptions. An offer was made to extend paragraph (a) above to the entire Houston Hub during the discussions between the parties. At the time the Carrier doubted the crew's ability to be able to reach into the 25 mile zone in hours of service relief and make their objective terminal therefore this provision was not incorporated into the HHMIA other than Zone 3 as noted above. The above quid pro quo

exchange of rights provided needed flexibility for the Carrier and allowed the employees to share some of the savings generated from those negotiations. The Carrier has now come back to the table, ten years later, under the guise of Article IX, seeking not only the right to reach out to get trains expired on the hours of service, but to also take trains through the terminal to staging for less than one-third of the compensation negotiated in the 25 Mile Zone Rules, as contained within the HHMIA Zone 3 and other hub agreements. Article IX cannot be used by the Carrier to supersede, abrogate, or eliminate any provision of the HHMIA.

#### Merits of the Case

The improper June 7, 2006, proposal, as submitted by the Carrier, borders on a complete and total obliteration of several provisions of the current Houston Hub Merger Implementing Agreement, as well as several specific collective bargaining agreements, specifically preserved in the "Applicable Agreements" provision contained therein. Not only do these Agreements, as specifically preserved, include the Schedule Rules within the 1991 printing of same, but also several, prior interdivisional service Agreements, that, when read together, encompass the entire territory with the purview of the Carrier's improper notice.

Article IX of the BLLET 1986 National Agreement cannot be used to modify a later in time negotiated Hub Merger Implementing Agreement. The language of the HHMIA specifically provides that it will supersede any purported Agreement right that is in conflict with the provisions of HHMIA. Not only has the HHMIA specifically determined pools, runs, extra boards, terminals, zone seniority rights, protection, etc., that cannot be changed by the earlier in time 1986 National Agreement, but the Article IX interdivisional service Agreements that were currently in existence during the negotiation and implementation of the HHMIA, were specifically preserved, and incorporated into, the HHMIA, making them

a part of merger implementing agreement; as such, any Agreement right that is in conflict with these specifically preserved and incorporated interdivisional service Agreements, must fail as superseded by them as a part of the HHMIA. Ann S. Kenis, Esq., as quoted earlier, indicated that the Carrier cannot use an earlier in time Agreement to supersede the HHMIA, where the provisions of that earlier Agreement were in conflict with the HHMIA. Only those earlier in time Agreements *not in conflict with the HHMIA* (which includes these specifically preserved interdivisional service Agreements), can survive the implementation of the HHMIA. Ms. Kenis specifically found as to Article IX authority to change the provisions of the Hub Merger Implementing Agreement, that **“when those rights have been exercised in a manner that conflicts with or modifies the provisions of the hub merger implementing agreements, the implementing agreements must be given precedence. In this case the hub merger implementing agreements prevail.”** To hold that earlier in time Agreements can be used to change subsequent in time negotiated Agreements, through arbitrary means, with limited bargaining power, is nonsensical analysis, placing the entire collective bargaining process, regardless of statutory authority in jeopardy of being a nullity. This would violate public policy which favors the collective bargaining process, and call into question the validity of all future bargaining. It would in a word, create “chaos” in the negotiation process by creating a severe imbalance of power favoring only the Carriers.

“If the Carrier’s position were somehow accepted in this case although the Carrier made express promise and assumed clear obligations under Article 24 not to service notices for changing the identified subjects in Article 24 prior to attrition of all protected employees, the Carrier would be allowed to avoid its clear promises and obligations as expressed in Article 24. No agreement language or bargaining history supports such a result. **If acceptance of the arguments proposed by the Carrier in this case become the norm for contractual interpretation in this industry, no carrier or union could ever hope to rely on the plain language of their agreements, and chaos would result.”**”

Award No. 23910, NRAB (1<sup>st</sup> Div. Twomey) (Attached hereto as Exhibit 39, emphasis added).

The Carrier has the option of serving a notice under the STB authority, to reopen the HHMIA, applying the New York Dock conditions; however, Article IX, under the Railway Labor Act, cannot be used to change the HHMIA, or those interdivisional service agreements preserved by, and incorporated into, the HHMIA.

Without waiver of the above, Article IX of the BLET 1986 National Agreement contains no authority to support their notice and proposed conditions. Their strategy during these negotiations was to propose the most outrageous conditions imaginable and later soften their position on supercilious issues in hopes resetting the paradigm of the Organization's negotiators. Their continued threats to pursue arbitration, demanding these extreme conditions should the Organization fail to make an agreement, have resulted in this dispute being presented to this Board. They have no rights under Article IX to the extreme conditions that they have requested and never previously negotiated into interdivisional service Agreements on-property or nationally (See Addendum A). Moreover, other than the potential cost savings to the Carrier, at the expense of the employees, through the loss of the negotiated provisions of the HHMIA, *negotiated later in time* (signed April 23, 1997; see, Exhibit 14 at p. 18), as well as loss of the post-1986 Article IX negotiated interdivisional service Agreements, already applicable to this territory, *also negotiated later in time*, as they were negotiated subsequent to the creation of, and through the authority of, Article IX (signed May 16, 1991; see, Exhibit 18, at p. 3; signed May 20, 1988; see, Exhibit 17 \*, at p. 3; and signed February 17, 1989; see, Exhibit 19 at p. 3), the service to the shippers will remain the same. The Carrier is improperly attempting to renegotiate these interdivisional service Agreements *for the third time*, that were previously negotiated the first time, when they were created, under the authority of Article IX, of the 1986 National Agreement, and a second time, when they were specifically preserved, and incorporated by reference into the

HHMIA.

The Organization's position here, even as to pre-1986 negotiated interdivisional service agreements, was reaffirmed in Award No. 230, Public Law Board No. 5180, where Referee David P. Twomey ruled, in pertinent part:

**“However no language in Article IX gives the Carrier the right to cancel existing Schedule Agreement Rules which set forth how extra service is protected. There is absolutely no doubt but that the ID service sought by the Carrier can be provided without abrogating existing Schedule Agreement Rules within Articles 40 and 41. This Board has no authority to delete Schedule Agreement Rules because sizable economic saving would be obtained if the rules were unenforced. It is in the best interest of the parties to provide relief to each other when clear opportunities exist. However, this Board must leave such a matter to the wisdom of the parties themselves to resolve.**

**The Questions at Issue are answered within the previously set forth discussion, above. The parties are fully aware of the needs of Yelvington, Inc., the customer in question, and they should readily reach an agreement allowing for the operation of the intraseniority service on a day-by-day, trip-by-trip basis as needed by this customer. The matter is accordingly remanded to the parties.”**

(Exhibit 39, emphasis added)

In the above-quoted award, CSXT was seeking to establish ID Service from Hialeah, Florida to Ocala and Benson Junction, Florida through the established terminals of Wildwood and Sanford, Florida. The parties had an agreement in place to handle this rock train service between these locations. Under the guise of Article IX the Carrier sought to extend the run from Hialeah to Sanford to Benson Junction a total of approximately seven miles and the run from Hialeah to Wildwood to Ocala approximately 30 miles. They also sought to establish an extra board at these outlying locations, allegedly via Article IX. Referee David P. Twomey recognized

that the Carrier already had agreements in place to service Yelvington, Inc., with specific aggregate (rock) trains. He ultimately ruled that Article IX cannot be used to abrogate existing collective bargaining agreements.

Article 26(d), Schedule Rules, contains restrictive language which prevents crews from running through terminals, absent specific negotiations permitting same:

#### Article 26 Calling

d. Chain gang engineers will be run "first in, first out" of terminals. Available chain gang engineers run around by engineers of their own territory, or those of others, will be allowed a penalty equivalent to one half basic day. Engineers will not be permitted to run by terminal points where it affects other engineers in like service, except in cases of wrecks or washouts. It is agreed that the Missouri Pacific Railroad Company will not establish additional freight runs for engineers and firemen through terminal points without first reaching agreement with the representatives of the Engineers and Firemen, and that negotiations of such an agreement are to be on a reasonable and practical basis with both Carrier and Employees recognizing each other's fundamental rights.

(Exhibit 27)

The Carrier is asking this Arbitration Board to obligate the Organization to re-negotiate and re-arbitrate new interdivisional service over the same territory *ad infinitum*. Even though such service has previously been subject to post-1986 Article IX negotiations that culminated with interdivisional service agreements, covering the same territory and expressly incorporated into and preserved by the FHMIA. Attempting to create new contract language where contract language does not exist by requiring improper miscellaneous service movements through a terminal, *ad hoc* was prohibited by Neutral Member UPRR/BLET Special Board of Arbitration Dana Eischen (BLE-T Exhibit 40) ruling in pertinent part:

**"It is a fundamental maxim of contract construction that an arbitrator cannot ignore clear-cut contractual language nor may he legislate new language, since to do so would usurp the role of the, labor organization and employer. Clean Coverall Supply Company, 47 LA 272, 277 (Fred Witney, 1966). See also, Continental Oil Company, 69 LA 399, 404 (A. I. Wann, 1977) and Andrew Williams Meat Company, 8 LA 518, 524 (A. I. Chaney, 1947). Even when the parties to an agreement disagree on what contract language means, an arbitrator who finds the language to be unambiguous will enforce its plain meaning. See Safeway Stores, 85 LA 472, 476 (1985) (Thorp); Metropolitan Warehouse, 76 LA 14, 17-18 (1981) (Darrow). Arbitrators and courts alike presume that understandable language means what it says, despite the contentions of one of the parties that something other than the apparent meaning was intended. Independent School Dist No.4 7, 86 LA 97, 103 (1985) (Gallagher)**

If language is clear and unambiguous, both parties to a contract are presumed to know and understand the commitments they undertake when executing the contract. In Hecla Mining Co., 81 LA 193, 194 (1983) (M. LaCugna), the arbitrator articulated the majority view as follows

It is axiomatic in labor arbitration that clear and unambiguous language, decidedly superior to bargaining history, to past practice, to probable intent, and to putative intent, always governs. Clear language is the arbitrator's lodestar, his guiding light. He can neither ignore it, nor modify it; on the contrary, he must give it its full force and effect

Ohio Chemical & Surgical Equipment Co., 49 LA 377, 380-391, (Solomon, 1967) is another example of the hundreds of reported arbitral determinations which follow these principles:

It is a basic and fundamental concept in the arbitration process that an Arbitrator's function in interpreting and applying contract language is to first ascertain and then enforce the intention of the parties as reflected by the language of the pertinent provisions involved. As a necessary and essential corollary is the principle that if the language being construed is clear and unambiguous, such language is in itself the best evidence of the intention of the parties. And, when language so selected by the parties leaves no doubt as to the intention, this should end the arbitrator's inquiry. An arbitrator may not and should not thereafter resort to the application of "equitable" principles to becloud the other wise clear intentions reflected by the meaningful language adopted. He has no choice but to apply and enforce the provision as written.

Indeed, a whole host of reported arbitration decisions turns on these principles. See Parker White Metal Company, 86 LA 512, 516 (Ipavec, 1985), Anaheim Union School District,

84 LA 101, 104 (Chance, 1984); Arco Pipe Line Company, 84 LA 907, 901 (Nicholas, 1985) and Tri-County Metropolitan Transportation District, 68 LA 1369, 1370 (Tilbury, 1977). See also Weil-McClain, 86 LA 784, 786 (1986) (Cox); Houston Publishers Ass'n, 83 LA 767, 776 (1984) (Milentz).

Under the strict technical application of the so-called plain meaning rule, words must be given their ordinary everyday meaning, without resort to extrinsic evidence. See Mohawk Rubber Company, 83 LA 814, 816 (Flannagan, 1984). A less controversial corollary is the principle that words used by the Parties should be given their ordinary and popular meaning in the absence of an indication that they were intended mutually to convey some special meaning. See D. Nolan, Arbitration Law and Practice (1979), N.8 at 168; Walter Jaeger, Williston on Contracts, § 618 at 705 (4th Ed. 1961). The Restatement (Second) of Contracts is in accord: "In the absence of some contrary indication, therefore, English words are read as having the meaning given them by general usage, if there is one. This rule is a rule of interpretation in the absence of contrary evidence, not a rule excluding contrary evidence." (Restatement, N.13 at § 202, comment c[d].)

Thus, when each of the Parties to a collective bargaining agreement has a different understanding of what was intended by certain language, it is generally recognized by arbitrators that the party whose understanding is in accord with the ordinary meaning of that language should prevail in the absence of misrepresentation, fraud or mutual mistake. See Hanon & Wilson Company, (S. Katz 1967), 67-2 Arb paragraph 8583. Accord, Stewart Hall Company, 86 LA 370,372 (Madden, 1985) Application of these principles in the present case favors the Organization's characterization of the restructuring as a "combination" rather than the Carrier's characterization of that restructuring as a "discontinuation" or "disappearance" In that regard, reference to the Oxford University Dictionary and Roget's Thesaurus shows the following common-usage definitions and synonyms for the words in dispute Combine *to join or mix together; add together, compound, amalgamate* "Discontinue:" *to stop doing, providing, or making; cease, stop, quit, give up* — Disappear: *"to cease to exist or be in use, vanish, go away"* (Emphasis added)

## CONCLUSION

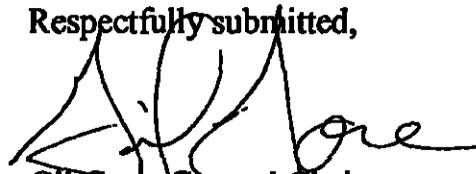
The Carrier's notice of June 7, 2006 and the proposed agreement incorporated by reference therein, is reminiscent of the "Robber Barons" controlling the railroads in the late 19<sup>th</sup> and early 20<sup>th</sup> Centuries. They have boldly walked into the room demanding that we surrender all we have that is valuable. They have offered no viable quid pro quo exchange for the conditions they have requested. Because their unworthy offer was rejected, they now come before this Board hoping to achieve a mandate to conditions outside the purview of Article IX, New York Dock and all other arbitral authority to grab conditions they had

hopped we would willing surrender. Like the arrogant “Robber Barons” of old, they stand defiantly before this Board seeking relief outside the jurisdiction of any arbitral authority or the current collective bargaining agreement. They are attempting to create self imposed “new law” in this venue and reset the paradigm of the entire rail industry. Such lascivious behavior reflects the “corporate greed” philosophy that has consumed Union Pacific and many other companies in America. Their recent advertised first quarter profits displayed on their web page demonstrates that Union Pacific as a company has never been more financially sound. Setting a new first quarter profit record of \$719 million dollars thus exceeding the old mark by 19%, is a clear indicator of their financial condition. This Committee has a proven track record of ratifying agreements to achieve valid operating efficiencies that recognize the employee’s contribution to those operations. As noted in the above submission, the proposal presented contains no quid pro quo exchange that fully recognizes the value of the employees’ contribution. It instead seeks to turn back the clock to the 1800’s taking economic advantage of the employees by proposing a pay structure that equates to millions of dollars in wage loss mandating work be performed without contractual compensation. The proposal contains risk and blatant violations of the HHMIA, New York Dock Transaction Authority and Scheduled Agreement as amended.

The Organization believes we have provided evidence and arbitral authority supporting our right to keep our contractual rights that Union Pacific is seeking us to force us to surrender. Interdivisional Service throughout history and via current Article IX authority was intended to provide relief to extend runs on an end to end basis to consolidate operations providing longer runs. Article IX was never intended, nor has it ever been used to create “willy nilly” operations in an ad hoc environment allowing crews to run into, out of and through terminals at will thus decimating scheduled rules of unassociated collective bargaining agreements with no nexus to the transaction.

In line with the foregoing, the Organization requests that this esteemed Arbitration Board find that the Carrier's notice, dated June 7, 2006, purporting to create interdivisional service improper and answer the Organization's questions at issue 1 and 2 in the negative and that question 3 be answered in the affirmative.

Respectfully submitted,



Gil Gore, General Chairman  
Brotherhood of Locomotive Engineers and Trainmen  
Southern Region - Union Pacific Railroad Company  
1448 Mac Arthur Avenue  
Harvey, LA 70058  
504-371-4760

55

**National Mediation Board**

**Arbitration Board No. 590**

**Parties ) Brotherhood of Locomotive Engineers and Trainmen**  
**To ) and**  
**Dispute ) Union Pacific Railroad Company**

**John Binau — Chairman and Neutral Member**  
**E. L. Pruitt — Organization Member**  
**A. C. Hallberg — Carrier Member**

**Submission of Brotherhood of Locomotive Engineers and Trainmen**



While we come at this issue from different directions, in the end it appears that our interests coincide. Your interest is based on (incorrect) reading of the contract as prohibiting the operation of engineers through objective terminals. The Company's interest goes to efficient and fluid operations. To resolve this matter, attached please find an agreement extending the east switch limits at West Colton to Milepost 543.1. If you decline to adopt the proposed agreement, we will then be obligated to proceed in accordance with the dispute resolution provisions of the National Agreement previously quoted herein.

Id. at p 2

Included with that letter was the Carrier's proposed switching limit change, a copy of which is appended hereto as Exhibit BLET-2. The Carrier's proposal, in its entirety, reads as follows:

This refers to extension of the West Colton switching limits pursuant to the May 13, 1971, B.L.E. National Agreement.

It is agreed that the switching limits on the east side of the West Colton Terminal will be changed from Milepost 541.15 to Milepost 543.1.

This change will be effective immediately.

Following a conference on the proposal held on October 19, 2006, the Organization responded in writing to the Carrier by letter dated October 30, 2006, a copy of which is appended hereto as Exhibit BLET-3. That letter recapitulated the Organization's position, which briefly was as follows:

- Article 13, Section 1 of the Collective Bargaining Agreement ("CBA") is controlling. *See p 1*
- "The use of Article 2 of the [1971] Agreement was never designed to change existing CBA, but to allow extension of switching limits to facilitate industries. I have clearly explained to you that there are absolutely no industries in the defined territory of your notice, only two railroad main tracks." Id.
- "The specific service covered in your Notice was created through negotiations with this Committee and became effective July 1, 1991, covered under file E&F 188-138

Section 6(b) of that agreement clearly states 'This service will not operate beyond the following points' 'Yuma Line east of M P 541 15' Id

- UP waived its Article II rights when it filed notice on January 13, 1998,<sup>1</sup> which led to the Los Angeles Hub Agreement, in which the original switching limits were explicitly retained, and relinquished any rights it may have had thereunder when it agreed to Article V of the Los Angeles Hub Agreement Id at p 2
- The Award of Arbitration Board No 580 also served to preempt Article II Id at p 3
- This preemption is supported by the Award of Arbitration Board No 581 Id at p 4

The Carrier replied by letter dated November 10, 2006, a copy of which is appended hereto as Exhibit BLET-4. It provided a narrative description of the operation and repeated its prior, unsubstantiated fluidity claim *See* pp 1-2. The Carrier also, again, acknowledged that the core of the matter was the dispute over requiring road engineers to run through the terminal Id at p 2. The Carrier further claimed that the Award of Arbitration Board No 581 was inapplicable, based on a ruling by a federal court judge in an action that sought to enforce the Award in a matter other than the dispute for which it was rendered. Id at pp 2-3. The Carrier then went on to list twenty-one arbitration awards it claimed "support[] the right of management to extend switching limits whenever it is advisable to do so," but did not produce the awards for review and rebuttal by the Organization Id at pp 3-5

By letter dated January 10, 2007, a copy of which is appended hereto as Exhibit BLET-5, the Carrier wrote the National Mediation Board ("NMB"), advising that an impasse had been

---

<sup>1</sup> The notice referred to was filed pursuant to Article I, Section 4, of the New York Dock conditions imposed by the Surface Transportation Board in Finance Docket No. 32760, involving the merger of the Union Pacific Corporation, Union Pacific Railroad Company/Missouri Pacific Railroad, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corporation, and The Denver & Rio Grande Western Railroad Company *See* Section III D, *infra*, for the New York Dock implications in this matter

reached, submitting its Question at Issue, and requesting the designation of an Arbitration Board and assignment of an arbitrator. On February 6, 2007, the NMB wrote the parties, advising of the establishment of this Board to adjudicate the dispute and appointing the Chairman and Neutral Member. A copy of this letter is appended hereto as Exhibit BLET-6.

### **III. ORGANIZATION'S POSITION**

The Organization's position should be sustained — and the Carrier's denied — for several reasons. First, Article 13, Section 1, of the CBA governs the instant dispute, because it is more specific than the general provision set forth in Article II. Second, the Carrier is estopped from invoking Article II in this instance because its Article II rights have been preempted by the Los Angeles Hub Agreement. Third, even if Article II was available to the Carrier, it failed to comply with the requirements of the rule. And, fourth, the Carrier's claimed rationale for changing the switching limits that are the subject of the instant dispute is a sham.

#### **A THE HISTORY AND EVOLUTION OF ARTICLE II OF THE 1971 AGREEMENT.**

It is essential that the context within which Article II was adopted is understood. This history is indispensable, because it exposes a fundamental flaw in the cornerstone of the Carrier's position. As the Board may know, when seniority rules were first negotiated in the railroad industry, separate yard and road rosters typically were established, and separate seniority rights for each group were maintained for decades. Switching limits provided lines of demarcation in yards and terminals. With some exceptions that were detailed in collective

bargaining agreements, work within switching limits accrued to engineers with yard seniority, while work outside switching limits accrued to engineers with road seniority. Work performed outside the permissible scope triggered a penalty payment.

On May 23, 1952, the Brotherhood of Locomotive Engineers entered into a National Agreement ("1952 Agreement") with the Eastern, Western, and Southeastern Carriers' Conference Committee. Of specific relevance to the case at bar were significant changes to this division of work rights that were set forth in Article 6 and 7,<sup>2</sup> which stated as follows:

**ARTICLE 6 - SWITCHING SERVICE FOR NEW INDUSTRIES**

(a) Where, after the effective date of this agreement, an industry desires to locate outside of existing switching limits at points where yard crews are employed, the carrier may assure switching service at such location even though switching limits be not changed, and may perform such service with yard crews from a yard or yards embraced within one and the same switching limits without additional compensation or penalties therefor to yard or road crews, provided the switch governing movements from the main track to the track or tracks serving such industry is located at a point not to exceed four miles from the then existing switching limits. Road crews may perform service at such industry only to the extent they could do so if such industry were within switching limits. Where rules require that yard limits and switching limits be the same, the yard limit board may be moved for operating purposes but switching limits shall remain unchanged unless and until changed in accordance with rules governing changes in switching limits.

The yard engineer - fireman or yard engineers - firemen involved shall keep account of and report to the carrier daily on form provided the actual time consumed by the yard crew or crews outside of the switching limits in serving the industry in accordance with this rule and a statement of such time shall be furnished the BLE General Chairman or General Chairmen representing yard and road engineers - firemen by the carrier each month. The BLE General Chairman or General Chairmen involved may at periodic intervals of not less than three months designate a plan for apportionment of time whereby road engineers - firemen from the seniority district on which the industry is located may work in yard service under yard rules and conditions to offset the time consumed by yard crews outside the switching limits. Failing to arrange for the apportionment at the indicated periods they will be understood to have waived rights to apportionment for previous periods. Failure on the part of employee representatives to designate an apportionment, the carrier will be under no obligation to do so and will not be subject to claims.

(b) This rule shall in no way affect the servicing of industries outside yard or switching limits at points where no yard crews are employed.

---

<sup>2</sup> A copy of these provisions is appended hereto as Exhibit BLET-7

(c) This rule shall become effective August 1, 1952, except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before July 1, 1952

#### ARTICLE 7 – CHANGING SWITCHING LIMITS

(a) Where an individual carrier not now having the right to change existing switching limits where yard crews are employed, considers it advisable to change the same, it shall give notice in writing to the General Chairman or General Chairmen of such intention, specifying the changes it proposes and the conditions, if any, it proposes shall apply in event of such change. The carrier and the General Chairman or General Chairmen shall, within 30 days, endeavor to negotiate an understanding.

In the event the carrier and the General Chairman or General Chairmen cannot so agree on the matter, any party involved may invoke the services of the National Mediation Board. If mediation fails, the parties agree that the dispute shall be submitted to arbitration under the Railway Labor Act, as amended. Upon such failure of mediation, the carrier shall designate the exact questions or conditions it desires to submit to arbitration and the General Chairman or General Chairmen shall designate the exact questions or conditions such General Chairman or General Chairmen desire to submit to arbitration. Such questions or conditions shall constitute the questions to be submitted to arbitration.

The arbitrators selected by the parties shall in good faith endeavor to agree on the neutral arbitrator or arbitrators in accordance with the provisions of the Railway Labor Act, as amended. In the event they fail to agree, the neutral arbitrator or arbitrators shall be appointed by the National Mediation Board, all in accordance with the provisions of the Railway Labor Act, as amended. The jurisdiction of the Arbitration Board shall be limited to the questions submitted to it. The award of the Board shall be final and binding upon the parties.

(b) This rule shall in no way affect the changing of yard or switching limits at points where no yard crews are employed.

(c) This rule shall become effective August 1, 1952, except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before July 1, 1952.

Article 6 eliminated penalty payments for work performed at new industries that located four miles or less from existing switching limits, and there was a provision for adjusting work equities between yard and road engineers. However, existing switching limits remained unchanged. Article 7 provided a vehicle for a carrier that otherwise lacked a contractual right to change switching limits. Specifically, a three-step process of negotiation, mediation and binding arbitration was created. These changes also triggered the eventual merger of the separate road and yard seniority rosters.

Both provisions remained unchanged until the May 13, 1971 National Agreement ("1971 Agreement") was reached<sup>3</sup> Article III of the 1971 Agreement amended Article 6 of the 1952 Agreement, effective September 1, 1971, in one significant respect The limitation on yard crews permitting servicing of only post-August 1, 1952 industries in the 4-mile zone without penalty was removed by Article III(a), henceforth, yard crews could provide service within the zone to any industry without penalty, provided that one or more industries had located there after August 1, 1952

However, Article III(d) specified that this change did not apply to "existing agreements involving full time switching service performed solely by road crews at industrial parks located within the 4-mile limit that have been negotiated on individual properties since the national agreement of 1952" Article II of the 1971 Agreement, which also was effective September 1, 1971, amended Article 7 of the 1952 Agreement by (1) eliminating the mediation step of the process and (2) establishing time limits for (a) submitting unresolved disputes to arbitration, (b) decision-making by the arbitration board, and (c) when the board's decision becomes effective

Since the 1971 Agreement, the line demarcating yard and road work was further adjusted as follows<sup>4</sup>

- Article VIII of the July 26, 1978 National Agreement supplemented Articles 6 and 7 of the 1952 Agreement by creating combination road/yard service zones extending the lesser of ten miles from the switching limit or the entrance switch to the last industry In these zones, yard crews could deliver, switch or pick up cars — without

---

<sup>3</sup> A copy of Articles II and III of the 1971 Agreement are appended hereto as Exhibit BLET-8

<sup>4</sup> The cited provisions of the various settlements identified below are appended hereto as Exhibits BLET-9 through BLET-12, respectively

penalty — not available or ready for handling by the road crew normally providing the service, provided that the use of such yard crews was not used to reduce or eliminate road crew assignments working within such zones. Unless otherwise already provided, yard crews also could be used up to fifteen miles beyond switching limits for the purpose of handling disabled trains or trains tied up under the Hours of Service Act, for which they would be paid miles or hours, whichever is the greater, with a minimum of one (1) hour for the class of service performed for all time consumed outside of switching limits. Time consumed by yard engine crews in Road/Yard Service Zones would not be subject to work equity adjustment.

- Article VIII of the May 19, 1986 Agreed-Upon Implementation of the Award of Arbitration Board No 458 broadened the scope of work road crews could perform within switching limits. It also increased the size of the road/yard service zone for purposes of handling disabled trains or trains tied up under the Hours of Service Act from fifteen to twenty-five miles, and permitted yard crews to complete the work that would normally be handled by the road crews, in most cases. Additionally, the size of the road/yard service zone for purposes of servicing industries was increased from ten to twenty miles, yard crews were permitted to perform hostling duties within switching limits, and nine categories of incidental work both yard crews and road crews could now perform without penalty were enumerated.
- Article VIII of the November 7, 1991 Agreed-Upon Implementation of Public Law 102-29, which enacted the report and recommendations of Presidential Emergency Board No 219 as the legislated settlement of the dispute, further increased the scope of yard work a road crew could perform, with adversely affected employees receiving modified New York Dock protections. Article IX, in part, established an enhanced customer service process by which a carrier could obtain special relief from yard limit restrictions in certain circumstances, including advance notice of the special relief sought, conferencing the matter, a 6-month period during which the relief would be effected on an experimental basis, and — barring a resolution of the dispute — binding arbitration of the question whether the carrier had shown a bona fide need to provide the service requested or could provide the service without a special exception to the existing work rules related to yard limits for yard crews being made at a comparable cost to the carrier.
- Article IX of the May 31, 1996 National Agreement broadened the bases upon which a carrier could invoke the enhanced customer process, and made several adjustments to the timeline and arbitration process.

Thus, over a roughly 45-year span, the rigid and strict line of demarcation between road work and yard work was significantly relaxed using two symbiotic methods: (1) an expanding ability for yard crews to work outside switching limits, with a concurrent shrinking of road

engineer work jurisdiction, and (2) a process for railroads to change switching limits if they lacked one. Both methods explicitly were intended to improve service to industrial customers located outside switching limits and facilitate movement of disabled trains or trains tied up under the Hours of Service Act

**B. THE HISTORY OF ARTICLE II ESTABLISHES THAT THE CARRIER'S CLAIM AS TO THE SCOPE OF THE RULE IS ERRONEOUS.**

This history also lays bare a fatal flaw at the very core of the Carrier's position. The Carrier posits — and invites the Board to infer — that Article II of the 1971 Agreement exists in a vacuum. Indeed, the Carrier's central argument is that Article II embodies "the right of management to extend switching limits whenever it is advisable to do so." See Exhibit BLET-4 at p. 3. However, this claim is demonstrably false.

Article II differs from Article 7 of the 1952 Agreement only with respect to the dispute resolution process; they are otherwise identical. If — as the Carrier mistakenly contends — Article 7 can be construed as broadly as it would have this Board believe, there would have been no need for the 1952 Agreement to include preceding Article 6, because invoking Article 7 would produce the same result. Similarly, there would have been no need for the significant changes to Article 6 wrought by Article III of the 1971 Agreement, or the numerous changes to the road/yard line of demarcation made in 1978, 1986, 1991 and 1996. All of those changes could have been effected by a carrier invoking Article II.

When construing collective bargaining agreements, particularly national agreements such as the six cited above, it is axiomatic that an arbitrator presume that both parties were represented by the most knowledgeable, sophisticated and experienced bargainers, and it must be further presumed that the matters comprising the agreements were carefully considered and, thus, the parties were well aware of the consequences of that to which they agreed. Indeed, this doctrine is so well founded that we need not burden the record with the plethora of arbitral precedent that has so held. The genesis and evolution of the blurring of the road/yard line of demarcation establishes beyond serious question that Article II cannot be read as broadly as the Carrier claims.

**C. ARTICLE II CANNOT BE UTILIZED IN SUCH A WAY AS TO NULLIFY OR NEGATE THE MORE SPECIFIC CBA PROVISION SET FORTH IN ARTICLE 13, SECTION 1, WHICH ESTABLISHES THE LIMIT OF A TRIP UPON ARRIVAL AT WEST COLTON.**

When Article II is read in context with other applicable contractual provisions, it immediately becomes clear that it cannot apply in the instant dispute. As previously noted, it has been our consistent position that this matter is governed by Article 13, Section 1 of the CBA, a copy of which is appended hereto as Exhibit BLET-13 and which provides in pertinent part as follows:

**ARTICLE 13**  
**WHAT CONSTITUTES A TRIP**

**SECTION 1** An engineer is understood to have reached the terminal of a trip when he reaches the division terminal at which engine crews are usually changed, or arrives at the established terminal of his train, as shown by assignment, and having done so and proceeding further with same train, or being sent out on another trip or train, he is, in either case, understood to have begun another trip.

When an engineer is called for service on other than assigned runs, he will not be run through terminals except when no engineer entitled to the service is available. When run through, he will begin another trip upon leaving such terminal.

The points shown below constitute all division terminals at which engine crews are usually changed as defined by this section

\* \* \*

West Colton

\* \* \*

(Yuma–West Colton and Bakersfield–West Colton engineers only)

**NOTE:** The Roseville, Los Angeles and Southwest Hub agreements show all division terminals where engine crews are usually changed in pool freight service.

As this Board knows, there is a long and well-established line of arbitral precedent holding that when more than one agreement provision may be applied to a situation — but produce contradictory or conflicting results — the controlling provision is the one that is the most specific. Article II is among the most general of contract provisions, as is the entire line of road/yard work demarcation rules that precede and follow Article II. Its source is a national agreement and potentially can be applied (at least as the Carrier construes the rule) to any and every location where switching limits exist.

On the other hand, Article 13, Section 1, is nearly as specific as a contract provision can be. It applies only in the area where the CBA is in effect and only to road crews arriving at the terminals specified in the section, which includes West Colton. What Article 13, Section 1, provides is that a road engineer's trip ends upon arrival at West Colton, and that the engineer may not be sent beyond the switching limits of the terminal without beginning a new trip for pay purposes.

Those switching limits were established in Agreement E&F 188-138, which became effective on January 5, 1995 (a copy is appended as Exhibit BLET-14 for the Board's ready reference) Specifically, that agreement provided

Section 5

Engineers operating in this service may operate between Los Angeles or ICTF and West Colton via any route except for the restrictions in Section 6 below

Section 6.

\* \* \*

(b) This service will not operate beyond the following points

<u>Location</u>	<u>Milepost</u>
* * *	
Yuma Line	east of M P 541 15
* * *	

(d) Engineers in this service used in violation of Items (a), (b) or (c) above will be compensated one hundred (100) miles in addition to and without deduction for their earnings for their trip However, in the event the violation is an engineer in this service operating west of M P 461 50 (Coast) and M P 471 20 (Valley), a new \$275 00 trip rate day will commence in lieu of the one hundred mile penalty (Examples 1 Engineer Jones operates west of M P 461 50 What is he entitled to? Answer \$275 00 trip rate 2 Engineer Smith operates east of M P 541 15 and subsequently operates west of M P 461 50 What is he entitled to? Answer 100 miles and \$275 00 trip rate )

See pp 2-3

The significance of the restriction on running road crews destined for West Colton beyond the terminal, as set forth in Section 6(b) of E&F 188-138, is two-fold First, it was negotiated and established nearly a quarter of a century after Article II amended the 1952 Agreement's process for changing switching limits for "an individual carrier *not now having the right* to change existing switching limits " Second — as will be detailed below — the Carrier had at least two nearly unilateral opportunities outside of Article II to eliminate the restriction on road crews in the latter half of the 1990s, and did not do so

As noted above, the purpose and effect of the process that includes Article II is to shrink road jurisdiction and expand yard jurisdiction in order to provide more efficient and effective service to industrial customers located outside switching limits, and to alleviate delays caused by disabled trains and trains tied up under the Hours of Service Act outside switching limits. In the instant matter, the Carrier seeks to do nothing more than escape the penalty Article 13, Section 1, imposes for running road engineers through their final terminal, a purpose not contemplated by and, indeed, inconsistent with the intent of Article II. Accordingly, the Carrier may not properly use the general Article II to emasculate the more specific Article 13, Section 1, and the Organization's position should be sustained on this basis.

**D. CONTRARY TO THE CARRIER'S CONTENTION, ARTICLE II CANNOT BE CONSTRUED AS BEING AVAILABLE FOR INVOCATION AT ANY TIME AND UNDER ANY CIRCUMSTANCE.**

Even if Article II was not preempted by Article 13, Section 1, the plain language of the provision identifies a threshold question that the Carrier simply cannot wish away. Article II provides as follows:

**ARTICLE II - SWITCHING LIMITS**

Article 7 - Changing switching limits of the May 23, 1952 Agreement is hereby amended to read as follows.

(a) Where an individual carrier not now having the right to change existing switching limits where yard crews are employed, considers it advisable to change the same, it shall give notice in writing to the General Chairman or General Chairmen of such intention, specifying the changes it proposes and the conditions, if any, it proposes shall apply in event of such change. The carrier and the General Chairman or General Chairmen shall, within 30 days, endeavor to negotiate an understanding. In the event the carrier and the General Chairman or General Chairmen cannot so agree on the matter, the dispute shall be submitted to arbitration as provided for in the Railway Labor Act, as amended, within sixty days following the date of the last conference. The carrier shall designate the exact questions or conditions it desires to submit to arbitration and the General Chairman or General Chairmen shall designate the exact questions or conditions such General Chairman or General Chairmen desire to submit to arbitration. Such questions or conditions shall constitute the questions to be submitted to arbitration. The

decision of the Arbitration Board will be made within 30 days after the Board is created, unless the parties agree at anytime upon an extension of this period. The award of the Board shall be final and binding on the parties and shall become effective thereafter upon 7 days notice by the carrier.

(b) This rule shall in no way affect the changing of yard or switching limits at points where no yard crews are employed.

(c) This rule shall become effective September 1, 1971, except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before August 1, 1971.

Read in context, both Article II and its predecessor — Article 7 of the 1952 Agreement — triggered a road/yard line of demarcation adjustment process that permitted a carrier the ability to join at its sole discretion. However, the plain language of Article II expressly limits the ability to utilize Article II only to “an individual carrier *not now having the right to change existing switching limits* where yard crews are employed.”

We have already shown that the West Colton switching limits were not established until almost 25 years after Article II of the 1971 Agreement and over 42 years after Article 7 of the 1952 Agreement became effective. As will be shown below, the Carrier also had at least two opportunities within the past decade to alter the restriction on road engineers running through the terminal at West Colton. The Organization, despite severe legal constraints, retained that limitation and the Carrier — in return for conceding the issue — received substantial benefits in return. Now, under the baseless claim that Article II applies, the Carrier is engaged in nothing more than an outrageous attempt for a fourth bite at the apple.

## **1. The Merger Approval Process and Preemption of Collective Bargaining Agreements.**

Approval by the Surface Transportation Board ("STB") of the merger creating the current Union Pacific system was conditioned on providing New York Dock protection for the workforces of the predecessor railroads. With regard to the instant matter, this resulted in two separate negotiations conducted a short time apart, because of recent changes in how predecessor collective bargaining agreements were viewed in the process of consolidating or combining operations.

The Los Angeles Hub was created in a period during which a carrier implementing a merger had the ability to unilaterally change almost any collective bargaining agreement provision in nearly any fashion it chose. Before turning to the details of the Los Angeles Hub Agreement, however, it is necessary to provide a brief history of how the requirements of Section 6 of the Railway Labor Act ("RLA") came to be preempted.

When operation of the nation's railroad industry was returned to private ownership following World War I, among the changes to the Interstate Commerce Act ("ICA") brought about by the Transportation Act of 1920 was the empowerment of the Interstate Commerce Commission ("ICC") to apply the principle of preemption, or overriding, of conflicting laws in its oversight of railroad mergers. Because a variety of state laws and federal anti-trust statutes often were used to derail mergers during the late 19<sup>th</sup> and early 20<sup>th</sup> Centuries, and since consolidation was the national rail transportation policy underlying the Act, preemption was needed in order for the Act's purpose to be fulfilled. However, nothing in the legislative history

of the Act — or in ICC or court decisions during that period — suggested that preemption was applicable to railroad labor relations, or to the CBAs between rail unions and the carriers involved in mergers or other transactions

Rail labor and management filled a void when they reached a national agreement in 1936, known as the Washington Job Protection Agreement (“WJPA”), which set forth protective standards to be applied when railroad workers were adversely affected by mergers or consolidations. WJPA required that changes in CBAs had to be negotiated and, although it did permit ultimate arbitration of disputes, there were no time limits for reaching merger implementing agreements.

In 1940, the ICA was amended again. The national policy embodied in the 1920 Act was abandoned, in favor of ICC promotion of voluntary mergers and consolidations. The preemption provisions were continued and language was added, mandating that ICC impose employee protective conditions as a prerequisite for merger approval. Again, however, nothing was said by Congress about using preemption to force changes in existing CBAs. Indeed, no carrier argued that either CBAs or the carrier’s duty to comply with the requirements of Section 6 of the RLA in changing CBAs was preempted, nor did any arbitrator so find.

It was not until the latter half of the 1950s — nearly 40 years after preemption had been included in the ICA — that the railroad industry tried, for the first time, to “cram down” changes to a CBA by relying on the preemption provisions of the ICA. The ICC explicitly rejected this approach in Chicago, St. Paul, Minneapolis & Omaha Ry — Lease, 295 I C C 701, 702 (1958),

holding that "Congress has not conferred upon us the power to determine the disputes which are subject to the Railway Labor Act or questions regarding the jurisdiction of the National Mediation Board, which, in effect, is what North Western requests us to do "

Nine years later, the ICC again expressly rejected a carrier's contention that the preemption provisions of the ICA relieved them of the obligations under their CBA, holding as follows

By its terms, [the ICA's preemption clause] applies only to antitrust and other restraints of law ... Neither the Washington [Job Protection] Agreement nor the specific collective bargaining agreements between these roads and their employees is such a restraint . . .

\* \* \*

The designated "exclusive and plenary power" of the [ICC] ... cannot be so broadly construed as to brush aside ... voluntary contractual agreements made binding by the force of law

Southern Ry — Control — Central of Georgia Ry, 331 I C C at 170 (1967)

In a 1979 ruling that has become known simply as New York Dock,<sup>5</sup> the ICC imposed employee protective conditions that continue today to be the standard in mergers involving Class I railroads. However, New York Dock did not expand preemption to the collective bargaining arena. In fact, as recently as 1983, in Brotherhood of Locomotive Engineers v Chicago & North Western Transp Co., 360 I C C 857, 861, the ICC once again acknowledged its lack of "expertise to place ourselves into the field of collective bargaining or labor management relations "

---

<sup>5</sup> New York Dock Railway — Control — Brooklyn Eastern District Terminal, 360 I C C 60 (1979), *aff'd sub nom* New York Dock Railway v United States, 509 F 2d 83 (2<sup>nd</sup> Cir 1979)

However, just months later, in Denver & Rio Grande Western Ry — Trackage Rights — Missouri Pacific R.R., Finance Docket No 30000 (Sub-No 18), the ICC held, for the first time, that CBA provisions could be preempted, and substitute provisions “crammed down” Subsequently, two New York Dock arbitrators relied upon this decision to “cram down” CBA changes in creating merger implementing agreements

What followed was a series of legal challenges that persisted for years The ICC affirmed the arbitration decisions The Unions appealed, and the U S Court of Appeals for the D C Circuit reversed the ICC The railroad appealed that decision to the United States Supreme Court, which ruled in 1991 that the application of “cram down” to CBAs was legal Norfolk & Western Ry v. American Train Dispatchers Ass’n, 499 U S 117

Although the power to preempt — or “cram down” — has historically been at the discretion of the ICC (and, since 1995, of the STB, which is the ICC’s successor agency), the lack of a clearly-defined standard has permitted “cram down” to be used arbitrarily and across the board In fact, there is no reported case of which we are aware where the ICC or STB overruled an arbitrator’s decision to “cram down” agreement changes. As a result, rail unions have been forced to accept inferior implementing agreements — including whatever modifications to the underlying collective bargaining agreement are demanded — for fear that a New York Dock arbitrator or the STB will “cram down” even worse conditions

## 2. Creation of the Los Angeles Hub

When the mergers that produced the current Union Pacific system became effective, "cram down" was the bargaining reality facing the Organization. The extension of preemption to bargaining previously governed solely by the RLA essentially gave a carrier the untrammelled ability to reshape the merged property in almost any manner it chose. The main two vehicles for exercising "cram down" rights in the UP merger were the development of hub agreements and the Carrier's unilateral selection of the collective bargaining agreement that would govern a particular hub.

On November 3, 1997, in preparation for the creation of the Los Angeles Hub, the parties negotiated an agreement (hereinafter "Modification Agreement") that conformed the former Southern Pacific Western Lines ("SP WEST") CBA then being utilized in the Los Angeles area to former Union Pacific CBAs. For the Board's ready reference, a copy of the agreement is appended hereto as Exhibit BLET-15. Notwithstanding significant changes reflected in the Modification Agreement, the Carrier expressly reserved the right to argue that it could "cram down" a different CBA when the Hub finally was created. See p. 1 at Art. I, § B.

The Modification Agreement made no changes whatsoever to either Article 13 of the CBA or to the switching limits identified in Section 1 thereof. Indeed, the term "switching limits" appears nowhere in the Modification Agreement. Further, the Modification Agreement included the following Savings Clause:

The parties agree that all agreements, side letters, understandings, or any other benefits of the former Southern Pacific (Western Lines) including the former El Paso and Southwestern (EP&SW) Engineer's Agreement will remain in full force and effect unless

specifically changed, modified by, and/or in conflict with this Agreement, Side Letters, and Questions & Answers. If changed, modified and/or conflicting, then this Agreement shall govern. Future changes shall be subject to the Railway Labor Act as amended.

Id. at p. 9, at Art. VIII. Accordingly, the limitation on requiring a road engineer to take his/her train beyond the terminal limits at milepost 541.15 not only survived the Modification Agreement, it was expressly continued in full force and effect by virtue of the Savings Clause set forth in Article VIII.

Less than two and one-half months after executing the Modification Agreement, the Carrier served notice pursuant to New York Dock Article I, Section 4, to create the Los Angeles Hub. The Organization was left with two options: reach whatever arrangement was available, or risk having the dispute referred to arbitration, where the Carrier could have whatever terms it wished "crammed down." Although it took almost ten months, the parties successfully negotiated the Los Angeles Hub Agreement ("Hub Agreement"), a copy of which is appended hereto as Exhibit BLET-16.

Article III of the Hub Agreement provided for the establishment of several pools with West Colton as the home terminal. *See pp. 5-7.* Moreover, Article III, Section E, provided that "[n]one of the engineers . . . shall be restricted, *in or between the terminals of their assignment*, as to where they may set out or pick up cars or leave or receive their train," and that the "*type and amount of work shall be governed by the controlling CBA*." Id. at p. 7 (emphasis added). On its face, then, Article 13, Section 1 of the CBA continued to control, and road engineers could not be required to travel beyond the switching limits at West Colton without penalty.

Indeed, with regard to the pool that is the subject of the instant matter, which is identified in Article III, Section A, of the Hub Agreement, the parties agreed — in Article VI, Section B.1 — that “[t]he terms and conditions of the pool operations are those of the *surviving collective bargaining agreement as modified by subsequent national agreements, awards and implementing documents and those set forth in this Agreement*” Id at p 9 (emphasis added)

This was underscored in Section B 5, which provided that

*Nothing in [the Hub Agreement’s provisions governing the 25-mile zone, turnaround service and Hours of Service relief] prevents the use of other engineers to perform work currently permitted by prevailing agreements, including, but not limited to yard engineers performing Hours of Service relief within the road/yard zone, ID engineers performing service and deadheads between terminals, road switchers handling trains within their zones and using a engineer from a following train to work a preceding train and payments required by the controlling CBA shall continue to be paid when this work is performed*

Id at p 11 (emphasis added) By way of further clarification, the parties agreed — in Q&A #31 — that the 25-mile zone established in Section B 3 applied only at the beginning of a trip, and could not be used to require road crews to “run[] through their destination terminal” Id at p 20

Lastly, Article VI, Section C, of the Hub Agreement states as follows

Engineers working in the Los Angeles Hub shall be governed, in addition to the provisions of this Agreement, by the Collective Bargaining Agreement selected by the Carrier, including all addenda and side letter agreements pertaining to that agreement and previous National Agreement/Award/Implementing Document provisions still applicable. Except as specifically provided herein the system and national collective bargaining agreements, awards and interpretations shall prevail. None of the provisions of these agreements are retroactive. The Carrier has selected the SP WEST modified BLE Agreements

Id at p 11

Thus, all applicable National Agreement provisions survived, except as otherwise provided by the Hub Agreement. Contrary to the Carrier’s argument, Section II of the 1971

Agreement did not survive insofar as the facts and circumstances of this case are concerned. First, and as previously noted, the agreement to pay additional compensation to road engineers required to run through their final terminal at West Colton was made almost 25 years after Article II of the 1971 Agreement and over 42 years after Article 7 of the 1952 Agreement became effective, therefore, Article II's condition predicate of "not now having the right to change existing switching limits" cannot be met.

Further, the Carrier had two opportunities in the merger implementation process to change the agreement if it wished to avoid having to pay road engineers extra to run through their final terminal at West Colton. One was in 1997, when the Modification Agreement was negotiated. The other occurred the following year, when the Hub Agreement was negotiated. In both cases the Carrier elected to maintain the status quo, for which it received valuable consideration that it has enjoyed for a decade.<sup>6</sup>

Finally, Article VI, Section B 1 of the Hub Agreement clearly and unambiguously states that "[t]he terms and conditions of the pool operations . . . are those of the surviving collective bargaining agreement as modified by *subsequent national agreements, awards and implementing documents* and those set forth in this Agreement." *Id.* at p. 9 (emphasis added). No mention is made of *previous National Agreement/Award/Implementing Document provisions still applicable*, as was the case with the more general Article VI, Section C.

---

<sup>6</sup> The Carrier actually had one more opportunity to address the prohibition against running road crews through West Colton without additional compensation when it sought to establish additional interdivisional service in 2002. The issue was referred to Arbitration Board No. 580 when the tentative agreement between the parties failed ratification. That Board declined to rule on the Organization's arguments concerning the conflict between the Hub Agreement and the National Agreement provision implicated in that matter, and simply imposed the terms of the rejected tentative agreement. For the Board's ready reference a copy of that Award is appended hereto as Exhibit BLET-17.

Indeed, this was precisely the core holding of the Award rendered by Arbitration Board No 581 and New York Dock Arbitration Committee Case No 03/074 ("581 Award"), a copy of which is appended hereto as Exhibit BLET-18<sup>7</sup> The parties in that matter were this Carrier and another Organization General Committee with jurisdiction over a different portion of the system. At issue was an attempt by the Carrier to invoke the provisions of Article IX of the 1986 National Agreement to alter interdivisional runs it had established approximately five to six years earlier in a series of three hub agreements negotiated pursuant to the process outlined in Section III D 1, *supra*

The 581 Award held that, "[a]lthough Carrier's Article IX rights survive under the Savings Clause of the hub merger implementing agreements, their exercise is not unfettered" *See p 22* This was so, notwithstanding the fact that

the parties recognized that prior agreements would remain in effect They also recognized, however, that circumstances might arise in which the implementing agreements would conflict with these pre-existing agreements. When that happens, the parties agreed that the implementing agreement provisions would prevail The bargain that was struck is not ambiguous and it is entitled to enforcement.

Id at pp 22-23

In rejecting the Carrier's argument that, once implemented, a hub agreement becomes indistinguishable from any other agreement, is subsumed within the whole fabric of agreements and understandings, "and is no longer a stand alone document," the Board further held as follows.

---

<sup>7</sup> This tribunal was a combined New York Dock arbitration panel and an arbitration board empanelled pursuant to Article IX of the 1986 National Agreement, with the same neutral member The parties disagreed over which tribunal had jurisdiction, an issue not before this Board in the instant matter

The parties are experienced negotiators. They must be held to have full knowledge of the provisions of the Hub Merger Implementing Agreements and the significance of the clear and unambiguous language contained therein. Moreover, it must be presumed that they did not include language in those agreements with the understanding that the provisions would be rendered superfluous or meaningless. The Carrier and the Organization have plainly stated that the Hub Merger Implementing Agreements prevail when they conflict with other applicable agreements. If the Carrier's position were accepted in this case, although the parties made express promises to resolve conflicts in agreements in favor of the hub merger implementing agreements, the Carrier would be allowed to ignore those commitments. No such result is warranted here.

Id. at pp 23-24

The parallel between the issue decided in the 581 Award and the instant matter could not be clearer. In both cases, hub agreements had been negotiated that — by the parties' agreement — had precedence over any conflicting agreement. In both cases, the Carrier attempted to renege on a bargain it had struck, after gaining and enjoying the advantage of that bargain. We believe the analysis employed by the 581 Board is absolutely on point and should guide this Board's decision.<sup>8</sup>

---

<sup>8</sup> In its November 10, 2006 rebuttal, the Carrier attacked the 581 Award on several grounds (*see* Exhibit BLET-4 at pp 2-3), all of which were facile, but compel a reply out of an abundance of caution. Our reliance on the 581 Award is based upon its analysis of how conflicts between hub agreements and national agreements are resolved. Therefore, contrary to the Carrier's argument, it is irrelevant whether the same agreements are involved in both cases, contract construction and interpretation is the issue. Moreover, that the 581 Award dealt with interdivisional runs — and not switching limits — is of no consequence. What is relevant is that the provisions upon which the Carrier attempted to rely were national agreement provisions negotiated long before the hub agreement provisions with which they conflicted.

Most shameful is the Carrier's misrepresentation with respect to subsequent litigation involving the 581 Award, in which it portrayed the Award as "unenforceable even on its own home turf." Id. at p 3. In order to expose this distortion for what it really is, we append hereto as Exhibit BLET-19 the legal opinion upon which the Carrier bases its "unenforceable" claim. Very briefly, after losing in the 581 Award, the Carrier next filed another Article IX notice, which sought something less than the original notice. This is what triggered the suit, in which the plaintiff sought enforcement of the 581 Award against the new notice. The judge declined to do so, because he was unable to determine to his satisfaction whether the 581 Award sustained the plaintiff's position because of the whole of the original Article IX notice, in contrast with any specific part. Rather than cast doubt as to the validity of the 581 Award, the judge's ruling was wholly consistent with the doctrine that "[i]t was the arbitrator's construction that was bargained for." United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 599 (1960).

**E. THE CARRIER FAILED TO COMPLY WITH THE REQUIREMENTS OF ARTICLE II.**

Without retreating from the above — and assuming *arguendo* that Article II was available to the Carrier — the Carrier is entitled to no relief from this Board, because it failed to comply with the requirements of the provision. We do not dispute either that the Carrier served a notice it styled as an Article II notice, or that it invoked the arbitration process that has brought the parties before this Board. However, compliance with only these two ministerial aspects of the rule cannot be confused with complying with Article II's requirements.

First, as previously noted, Article II of the 1971 Agreement is a companion rule with Article III, governing switching service for new and other industries. The genesis for both rules was the 1952 Agreement, in which Article 6 dealt with switching service for new industries and Article 7 — Article II's direct predecessor — addressed switching limits. Read in context, these two rules relaxed existing work rules to enable a railroad to provide more efficient service to industries that located outside switching limits, whether those switching limits were changed or not.

Neither the Carrier's September 26, 2006 letter, nor its November 10, 2006 letter identified any new industries that located outside the current switching limit at West Colton. Moreover, the Carrier has never rebutted our statement that no new industries have located outside West Colton. Even if such new industries had located outside the switching limits at West Colton, the Carrier's notice seeks to extend those limits by only 1.95 miles. See Exhibit BLET-2. Paragraph (a) of Article III of the 1971 Agreement provides, in pertinent part, that

either road or yard crews can service such industries “provided the switches governing movements from the main track to the track or tracks serving such industries are located at a point not to exceed four (4) miles from the switching limits,” and may also service all other industries within the 4-mile zone. Therefore, the relief sought is wholly unnecessary to accomplish the goals of these two rules.

Second, Article II requires that — after notice is served — that the “carrier and the General Chairman or General Chairmen shall, within 30 days, endeavor to *negotiate* an understanding” (emphasis added). According to the Random House Unabridged Dictionary, to negotiate means “to deal or bargain with another or others,” or “to arrange for or bring about by *discussion and settlement of terms*”<sup>9</sup>

In the case at bar, the Carrier engaged in no negotiation whatsoever. Rather, the Carrier demanded that the Organization simply accede to a scheme by which it could escape the obligation to make penalty payments pursuant to Article 13, Section 1, to road engineers it required to run their trains through West Colton after arrival. Value was demanded and no offsetting consideration was offered in return. Lacking clean hands, the Carrier cannot now have any reasonable expectation that this Board will grant its request to apply Article II for an illegitimate purpose.

---

<sup>9</sup> See <http://dictionary.reference.com/browse/negotiate>

**F. THE CARRIER'S CLAIMED RATIONALE FOR CHANGING THE SWITCHING LIMITS IS A SHAM.**

On both occasions when the Carrier argued its position in writing, it conceded that its motivation was solely to escape the limitations imposed by Article 13, Section 1 of the CBA, as incorporated into the Hub Agreement. Further, the Carrier claimed that our interpretation of Article 13, Section 1 was erroneous, and that it already had the right to do as it pleased. Clearly that was not and is not the case, because (a) the Carrier has identified no CBA provision in support of its argument, and (b) the Carrier has turned to Article II of the 1971 Agreement in a desperate attempt to escape the bargain it made and reaffirmed three times over the past decade.

Similarly, the Carrier provided no support whatsoever for its position. Rather, a series of vague, unsubstantiated assertions were made, with no data presented that would establish the veracity of its assertions. Indeed, having failed to produce such evidence during on-property handling, the Carrier is now barred from entering any new evidence at this time. Accordingly, no other conclusion can be drawn than that the Carrier has failed to satisfy its burden of proof.

Contrary to the Carrier's claims, this Board may not automatically change switching limits simply because "the Company considers it advisable" to do so. See Exhibit BLET-4 at p 1. In a case directly on point involving the companion to Article II in the United Transportation Union ("UTU") National Agreement, Arbitration Board No. 318 held as follows:

Nor are switching limits extended, as appears to be suggested in Carrier's brief, simply because Carrier "considers it advisable" to do so. That consideration triggers the negotiations required in Article VI, and arbitration if negotiations are unsuccessful. Either the Organization or the Arbitrator must be persuaded what contractual standards set forth in the preamble to Article VI are being met.

Among reasons suggested by Carrier in this case for proposed changes is cost-savings on penalty claims by road crews. While this may on occasion contribute to the justification for an extension of switching limits, it is apparent that Article VI anticipated a careful case-by-case approach using the criteria it contains.

Otherwise, any extension of switching limits which would reduce a carrier's cost of operation would have been stated as an appropriate reason. An extension of switching limits may not necessarily change the way switching service is performed and yet be a money-saver, as some of the Carrier's proposals indicate.

Board of Arbitration No 318 (UTU vs C&O, Friedman 1972) at p. 2, a copy of which is appended hereto as Exhibit BLET-20. Applying this analysis to each of the eight carrier proposals, the Board granted two in part, denied four, and granted only two as originally requested.<sup>10</sup>

The on-property record in this matter makes abundantly clear that the Carrier's only desire is to escape paying road crews a penalty for running through their final terminal, to which it agreed in 1991 and, then, at least three more times over the past ten years. Relying upon Article II not only perverts that rule, but also makes a complete mockery of the merger.

---

<sup>10</sup> Any attempt by the Carrier to distinguish the holding of Arbitration Board No 318 on the basis that a UTU — rather than a BLET — rule was involved is specious and should be dismissed out of hand, of the 21 cases cited by the Carrier in its November 10, 2006, 16 involved adjudication of a UTU rule. Further, although the Carrier failed to submit any of those awards for the on-property record, we were able to locate five, all of which are manifestly distinguishable from the case at bar. The dispute adjudicated by Arbitration Board No 338 arose just over a year after Article II was adopted, and involved a railroad that had not been involved in any merger implementation activity in the interim. Arbitration Board No 364 addressed a case involving service to a particular utility plant, and the arbitrator ordered an offsetting financial consideration the carrier refused to consider during on-property negotiations. In the matter decided by Arbitration Board No 378, one request was tied up with an abandonment petition, and was granted with considerations the carrier refused to consider during on-property negotiations, while the other was for the express purpose of improving switching of a dozen industries that were identified in the record. Arbitration Board No 384 decided a case in which the BLE had made an Article II agreement to accommodate a change in operations by a tenant railroad, but the UTU refused to make a companion Article VI agreement unless some outstanding time claims were paid. Lastly, in the matter decided by Public Law Board No 3494 in Case No 1, the record was replete with service details that provided ample justification for the proposed changes. None of the elements in the five awards we were able to locate are present here, therefore, none can be considered dispositive of the issues before this Board.

negotiations and the Hub Agreement it produced For all the reasons herein, we respectfully request that this Board answer the Carrier's question in the negative.

Respectfully submitted,

---

E L Pruitt  
Organization Member