

STB FD-30400 (SUB 21) 7-28-92 COMPLAINT VOL I 5 OF 10

SOUTHERN PACIFIC TRANSPORTATION COMPANY
(PACIFIC LINES)

and

PACIFIC FRUIT EXPRESS COMPANY

SPECIAL PREFERENTIAL BULLETIN NO. 22, SEPTEMBER 12, 1985

TO ALL CLERICAL EMPLOYEES ON SENIORITY DISTRICT NO. 1,
PACIFIC FRUIT EXPRESS COMPANY AND SAN FRANCISCO GENERAL
OFFICE MASTER ROSTER, PACIFIC LINES:

Pursuant to the provisions of Article III, Section 2(a), of the Agreement of September 16, 1971 and Section 4 (a) of the PFE Agreement of January 7, 1980, the following positions on Pacific Fruit Express Company, Seniority District No. 1, Brisbane, Loading Services & Freight Claims (PFE), will be abolished close of shift September 30, 1985 and work of said positions will be transferred to Loading Services and Freight claims Marketing and Sales Department of SPT at San Francisco (Bayshore).

<u>Position Number</u>	<u>Held By</u>	<u>Title</u>	<u>Department</u>
166	G. E. Shorb	Special Investigator	Loading Svc. &
158	M. A. Gregory	Junior Claim Investigator	Freight Claims

Effective October 1, 1985 the following permanent positions will be established on Southern Pacific Transportation Company (Pacific Lines) Loading Services and Freight Claims of Marketing and Sales Department San Francisco (Bayshore).

<u>Position Number</u>	<u>Title</u>	<u>Hours & Rest Days</u>	<u>Rate</u>
058	Special Investigator	8:00 AM - 4:00 PM	\$108.55
059	Special Investigator	Sat-Sun	108.55

*Rate includes \$1.04 Cost-of-Living Adjustment

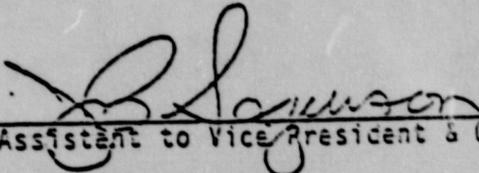
Preference of assignment will be made on the following basis:

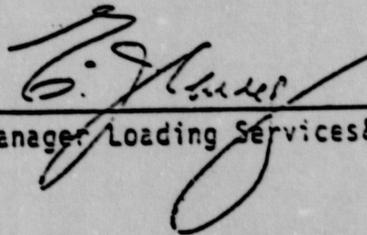
1. To incumbent of the position to be abolished as the result of transfer of work.
2. To employees who are displaced in chain of displacements resulting from abolishment of permanent position involved in transfer of work.
3. To other Pacific Fruit Express Employees, Seniority District No. 1.
4. To employees on Pacific Lines San Francisco General Office Master Roster.

STRUCTIONS:

Applications should state only positions advertised under this Special Preferential Bulletin. Combining advertised positions of other bulletins which are separate and apart from this special bulletin will result in voiding of said application.

Applications should be filed with Mr. M. A. McGourty, Manager Loading Services & Freight Claims, PFE Co. 100 Valley Drive, Brisbane, CA 94005. Applications are to be received not later than 4:00 P.M. Wednesday, September 25, 1985.


Assistant to Vice President & General Manager (PFE)


Manager Loading Services & Freight Claims (SFT)

cc: Mr. R. B. Brackbill (2)
Mr. J. M. balovich -
LC of Lodge 604 (BRAC)
Mr. W. L. Luque, LC of
Lodge 890 (BRAC)
Mr. T. D. Walsh

Disbursements Bureau

Position 150, Clerk, S. A. Hauff, \$ 98.84

Processes bills payable for payments through SPT system. Handles credit application from vendors. Maintains contracts for safekeeping by registering into log book, prepares brief of contract, files, etc. Prepares certain analysis of general ledger accounts. Assists on other duties as required.

Position 147, Head Control Clerk, K. Kotronakis, 105.68

Controls payroll functions to ensure proper pay. Inputs on TCC all deductions, pay adjustments, time voucher data, job changes, pay rate tables, etc. Daily contact with timekeepers on outside regarding pay data. Reviews daily time book for accuracy. Handles all aspects of Group Life insurance, including verification of cash paid is applied correctly to retirees account, making payroll changes for active Group Life participants as they are furloughed, retire, new employees etc. Handles and prepares voucher payment of premium to Equitable Life. Processes death claims as they are reported to Equitable Life or to Metropolitan Insurance. Logs death claims into book, maintains death claim files. Prepares Forms 4239s for payment of payroll deductions (excluding credit unions-now prepared by SPT.) Balances deductions for control purposes and to prepare Dept. Bill to enter into accounts. Prepares Dept. bill to enter audited payrolls into accounts. Handles all Railroad Retirement forms for retirees as required. Maintains personal records for retirees. Prepares certain analysis of General Ledger accounts.

Position 141, Miscellaneous Clerk, S. M. Tu, \$99.99

Controls input of documents into the account stream for closing of monthly accounts. Balances transmittals of these documents to Register of Accounts (we call a "DEI") Communicates with SPT regarding closing matters. Prepares "check sheet" of revenues and expenses for closing of accounts, to reflect net operating income. Corrects Form 176 errors and sends to SPT. Coordinates with all department to ensure all normal documents are in the accounts. Prepares Department Bills, and processes Department Bills, Bills Collectible, Forms 4911, Rush Vouchers, Personal Expenses. Prepares a number of analysis of General Ledger accounts. Maintains verification sheet of American Express charges. Maintains cash record for those employees who have Medical Insurance which is not deducted from pension check (several do not get a pension-but have medical) Handles store invoices by matching packing slip with invoice, and prepares report, and passes for payment.

Position 101, Asst Chief Clerk, G. L. Sumner, 109.92

Maintains a large file of personal computer programs and prepares reports from them each month. These reports include: budget, Form 390, daily budget, SPT version of 390 (consolidated), various details for major Department bills, fuel data, distributions for certain recurring bills payable, Timekeeper, for Audit 723 Brisbane, and reports daily on 222
and related timekeeping functions.

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C M BRASHER APPLICATION FOR VACANCY

Mr. RA FINKES AT SF

9-19 19 85

APPLICATION FOR VACANCY ADVERTISED IN NOTICE No. 23 DATED 9-19-85
 HAVING LOST MY POSITION THROUGH NO FAULT OF MY OWN, I HEREBY APPLY FOR THE FOLLOWING.

CHOICE	BULLETIN ITEM NO.	ASSIGNMENT NUMBER	POSITION	HOLD BY, VACATED BY, NEW RUN OR JOB
1		P-19	VOUCHER CLERK	
2		H-75	SR TRACING + CHECKING	
3		H-76	✓	
4		H-77	✓	
5		H-78	✓	
6				
7				

ECC
SEP 19 1985

SIGNED Sienna Tu

PRESENT POSITION AND CREW OR JOB NO. 141

OCCUPATION Clerk

CONDUCTOR - ENGINEER

LOCATION BRISBANE CA

SENIORITY NO. OR DATE AS: 5-15-62

BRAKEMAN - FIREMAN

TELEGRAPHER - CLERK

OTHER

Exh. b + B
S. M. Tu
5/11/87

P-6-21
November 5, 1985

Mr. J. M. Balovich, Local Chairman
BRAC Lodge 504
El Park Plaza, #10
Daly City, California 94015

Dear Sir:

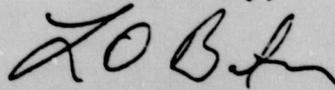
This has reference to "protection" claims for eight (8) Brisbane clerks that you filed under date of October 25, 1985, addressed to the former designated officer, J. P. Segurson, which is now before me to answer.

It was stated to you previously by Mr. Segurson in handling of your last claim that these reductions at issue here stem from a decline in business (DIB), for which, as you know, "protective pay provisions" do not apply. They are DIB layoffs, not dismissals, severances, or merger-related as you allege. The nine (9) other employees you mention in Paragraph 2 went to jobs on the railroad as a result of the duly-applied bulletining rules of the Agreement, and if there had been cause to so bulletin the job or jobs of your eight (8) named claimants, they, too, would have gotten preference and have become assigned in the same way; such latter bulletining was not called for nor feasible.

The reference you make to Rule 14 is not in the least relevant because offices or departments were not here being consolidated - only certain individual positions from several offices were rebulletined, a very different situation. As to your attempt to dismiss PFE loss-in-business data as ungenune, those current loss-in-business figures remain undisputed and unrefuted by your organization. Lastly, the listing from BRAC records of 1968-1983 separation allowances paid only serves to show this company lives up to its agreements as applicable, and those were proper cases for "separation allowances."

The instant case is, as verbally explained, totally different, having reference clearly to decline-in-business reductions which the Agreement exempts from "protective" exactions. Due to all of the foregoing, please be advised that these claims are declined by this letter.

Yours truly,



cc - Mr. T. D. Ellen
Mr. T. D. Walsh

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Exhibit C
sm Tu
5/11/87



Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees

J. M. Balovich

Lodge No. 504

Address 51 Park Plaza #10, Daly City, CA 94015 October 25, _____ 1985

J. P. Segurson, Claims Official
 Fishable Division (PFE)
 Southern Pacific Transportation Co.
 100 Valley Drive
 Brisbane, CA 94005

Dear Sir:

On October 1, 1985, and following, Mr. Thomas D. Ellen discontinued and abandoned our PFE operations at the headquarters facility here in Brisbane, (Seniority District 1) and transferred all our work to Southern Pacific Company Offices in San Francisco.

However, he allowed only nine (9) of the assigned Brisbane employees to follow the work even though the work of seventeen (17) positions were in transfer. The other eight employees affected were thus illegally and unjustly shut out from their right to follow their jobs, then taken from Seniority District 1 Roster to the General Offices (SPT) Roster, namely:

<u>Name of Claimant</u>	<u>Position Held</u>	<u>Seniority Date</u>	<u>Date Severed</u>
1. K. E. Armstrong	Misc. Clerk	12/17/63	10/09/85
2. J. M. Balovich	Misc. Clerk	8/19/71	10/01/85
3. B. M. Boutourlin	Secretary	12/16/68	11/01/85
4. J. E. Flores	Clerk	7/05/72	10/01/85
5. A. D. Lang	Asst. Chief Clerk	9/23/52	11/01/85
6. J. Lorentz	Misc. Clerk	10/13/69	10/09/85
7. J. J. Royer	Misc. Clerk	04/03/69	10/09/85
8. S. M. Tu	Misc. Clerk	05/15/62	10/09/85

The consequence of such company handling leading up to October 1 and November 1, 1985 resulted in the wrongful dismissals of Claimants 1 through 8 above. In this, the Agreement was heavily violated as follows:

1. Rule 14 reads: "When two or more offices or departments are consolidated, employees affected shall have prior rights to corresponding positions in the consolidated office or departments..."

This provision was not lived up to at all in your recent consolidating

risDane Offices with the General Offices in San Francisco. Claimants
ere barred from following their work, a basic agreement right recognized
y all.

2. Secondly, and more seriously, both the February 7, 1965 National
Agreement, and the January 7, 1980 TOPS Agreement directly provide in the
rest terms for continuing "protected pay" in favor of these Claimants
since they were displaced by management actions taken incident to the
forthcoming merger and such fact cannot be covered up by hoax Loss in
Business statistics or other gimmickry. The latter cunning tactics must
not deprive the Claimants in this claim of the protection due them under the
contract.

Earnest request is made that said violations of our contract be
corrected now - (1) by the reinstatement of Claimants to the payroll at
their protected rate immediately with backpay for all days unpaid to-date -
(2) by the placement of these eight Claimants' names with their earliest
seniority dates in the SP General Offices' Roster which due to the transfer
possesses their work and - (3) by making their Agreement mandated option
available to them so that Claimants, who so elect, shall recieve, in lieu
of all other benefits, a lumpsum Separation Allowance of 360 days pay at
their last assigned payrate or protected rate, whichever is higher.

Claim is formally made to the Company for the benefits described in
the foregoing for the agreement so provides, and that is how it has always
been handled in the past. As ready reference, this is a list of lumpsum
Separation Allowance payments paid under the Agreement to our members since
1968:

1968-25	1973-35	1978-21
1969-25	1974-13	1979- 2
1970- 2	1975- 8	1980-14
1971-35	1976- 8	1981- 1
1972-23	1977- 2	1983- 2

Please also allow this claim as presented and make Claimants whole as
stated above. If you do not agree, can you advise in writing wherein your
views differ so that and differences can be resolved in conference? If
claim is paid as presented conference will not be necessary.

Yours very truly,
Jim [Signature]

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Pacific Fruit Express Company

October 2, 1985

TO WHOM IT MAY CONCERN:

REGARDING: PFE Employee, Sieu Mei Tu.

This is a letter expressing my thoughts about a PFE employee who has worked for me for a period of 10 years, and possibly more, with occasional jobs in other departments due to job abolishments and subsequent displacements.

I had heard good reports of her when she first came to work under my supervision. My Head Clerk of Materials/Supplies gave her a 10 on the rating scale, which I downgraded to an 8, or thereabouts, after reaction from Asst. Controller who said "nobody is perfect."

She proved to be a very fine efficient worker and absorbed new information rather fast. Little supervision was required of her, but she always gave the opportunity to "check" her work, and would take correction in proper stride.

In later years, after the Split, Sieu held almost every job in Disbursements at one time or another, and she did not have to be "baby sat" to learn it. A few questions now and then to get the basics would get her going full speed ahead. Once acquainted with the job, she was very fast and efficient. In a pinch, due to job abolishments, she has performed three jobs at once.

She would anticipate ahead for deadlines, discounts, schedules, and "issue alert warnings" when a facet of work was falling behind.

She was furloughed effective October 9, 1985, and a good worker has been lost. This letter is for her personal record for whomsoever may read it.

Charles C. Carroll

Charles C. Carroll
Chief Clerk Disbursements

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Exhibit D

Siu Mei Tu

5/11/87

Brisbane, February 27, 1985

PACIFIC FRUIT EXPRESS COMPANY
BRISBANE, CALIFORNIA

SENIORITY DISTRICT 1
CLERKS' ASSIGNMENT AND VACANCY NOTICE NO. 7

ALL CONCERNED:

The following positions are abolished at close of shift March 8, 1985:

<u>Position No.</u>	<u>Position</u>	<u>Location</u>	<u>Incumbent</u>	<u>Seniority Date</u>
135	Clerk	Brisbane	J. E. Flores	7/05/72 ✓
140	Audit Bill Clerk	Brisbane	K. H. Feng	10/14/68 ✓
* 141	General Clerk	Brisbane	S. M. Tu	5/15/62
150	Clerk	Brisbane	K. E. Armstrong	12/17/63

These job abolishments are being effected under the conditions set forth in TOPS Article I, Section 2, Item 5, as provided for in Article II, Section ii thereof, and Section 3(C) of our January 7, 1980 agreement. As ready reference TOPS Article II, Section 10 provides in pertinent part: "...A protected employee shall not be entitled to the benefits of Article II during any period when furloughed because of reduction in force under the conditions set forth in Article I, Section 2, Item 2 and 5."

Employees furloughed pursuant to this notice should make sure their address on file with the company is current and also please have it include phone number, if any, where you may be reached.

D. M. Autrey
D. M. AUTREY

Mr. R. B. Brackbill
General Chairman/BRAC

Mr. J. H. Balovich
Local Chairman/Lodge 504

Mr. T. D. Walsh

* Note: Position is titled General Clerk.
Title later changed to miscellaneous clerk

220

Eth. b. + E
S. M. Tu
5/15/62 ✓

Per - 9

Brisbane, March 4, 1985

Mrs. Sieu M. Tu:

Refers to 1985 Reduction in Force Notice Number 7 which eliminates your position due to Business Decline effective March 8th, 1985.

As an answer to your inquiry, if you choose to go on furlough status under Rule 9(h), your protected rate upon later return to active service on an assigned job will be the same as that you currently hold under the terms of the PFE/BRAC Agreement.

Also, note that under the terms of the PFE/BRAC Agreement you will not be eligible for protection pay while furloughed herein, as Reduction in Force Notice No. 7 is an abolishment of assignment per the Decline in Business clause. Article II, Sections 10 and 11 of the PFE TOPS Agreement.

Trust this is the clarification you seek in the circumstances.

D. M. Autrey

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Brisbane, March 27, 1985

SENIORITY DISTRICT 1
CLERKS' ASSIGNMENT AND VACANCY NOTICE NO. 13

ALL CONCERNED

BIDS WILL BE ACCEPTED UNTIL CLOSE OF BUSINESS MARCH 29, 1985
FOR THE FOLLOWING POSITIONS:

POSITION NO.	POSITION	LOCATION	HRS. OF SERVICE	RATE OF PAY
141 ✓	MISC CLERK	DISBURSEMENT	*	99.99
150	CLERK	DISBURSEMENT	*	98.84

* 8:00 AM TO 4:30 PM, 30 MINUTES MEAL PERIOD AS ASSIGNED.
MONDAYS THROUGH FRIDAYS REST DAYS: SATURDAYS, SUNDAYS,
AND HOLIDAYS.

= INCLUDES \$1.24 COLA ON TOP OF ESTABLISHED RATE OF PAY.

Dm Autrey
D. M. AUTREY

MR. R. B. BRACKBILL
MR. J. M. BALOWICH
MR. T. D. WALSH

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Brisbane, April 1, 1985

SENIORITY DISTRICT 1
CLERKS' ASSIGNMENT AND VACANCY NOTICE NO. 14

ALL CONCERNED
POSITIONS ADVERTISED IN CLERKS' ASSIGNMENT AND VACANCY NOTICE
NO. 13 IS ASSIGNED AS FOLLOWS:

<u>POSITION NO.</u>	<u>POSITION</u>	<u>LOCATION</u>	<u>AWARDED TO</u>	<u>SENIORITY DATE</u>
141	MISC CLERK	DISBURSEMENT	SIEU TU	5-15-62
150	CLERK	DISBURSEMENT	S. HAUFF	7-1-68

DA
D.M. AUTREY

MR. R. B. BRACKBILL
MR. J. M. BALOVICH
MR. T. D. WALSH

Pacific Fruit Express Company

116 NEW MONTGOMERY STREET, SAN FRANCISCO, CALIFORNIA 94105

(415) 362-1212

V. G. SPANMER

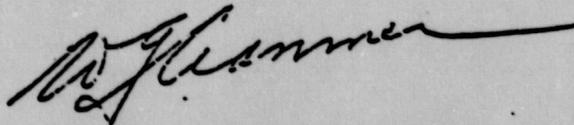
VICE-PRESIDENT AND GENERAL MANAGER

December 18, 1978

TO WHOM IT MAY CONCERN:

This letter is to advise and confirm that Mrs. Sieu-Mei Tu (Social Security No. 569-54-5736) of 1697 Hickory Avenue, San Leandro, CA 94579, a citizen of the United States, is a permanent employee of this company at this address. Mrs. Tu was employed by this company on May 31, 1962 and has worked continuously for us from that date. Her position with this company is not only permanent in nature but she also is, under our contract with the Brotherhood of Railway, Airline & Steamship Clerks, "fully protected" so that in the unlikely event we were not to have a job for her, she would continue to be paid under that contract until she reaches age 65 and can retire under the provisions of Railroad Retirement Act and receive the appropriate pension therefrom.

Mrs. Tu holds the position of Payroll Clerk and her current salary is over \$1,300 per month, and is due for an increase therein of some ten percent or more. She is, and has always been, a valued employee and even if her present position were to be eliminated, we would find some other position for her to hold as we would not want to lose her services.



200

Exh. bit F

S m Tu

5/11/87

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; see Privacy Act Statement on reverse before completing this form.

ENTER CHARGE NUMBER

FEPA FEP86-87 A4-0144ase
 EEOC 091863364

CA State Department of Fair Employment and Housing and EEOC
 (State or local Agency, if any)

NAME (Indicate Mr., Ms., or Mrs.)

SIEU MEI

HOME TELEPHONE NO. (Include Area Code)

(415) 856-3505

STREET ADDRESS CITY, STATE AND ZIP CODE COUNTY

c/o Lee J. Kubby, Inc. Palo Alto, CA 94306 Santa Clara
One Palo Alto Square, Suite 260

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME PACIFIC FRUIT EXPRESS CO.	NO. OF EMPLOYEES/MEMBERS 500 (47)	TELEPHONE NUMBER (Include Area Code) (415) 541-1000
--	---	---

STREET ADDRESS One Market Plaza	CITY, STATE AND ZIP CODE San Francisco, CA 94306	COUNTY (San Francisco County)
---	--	---

NAME	TELEPHONE NUMBER (Include Area Code)
------	--------------------------------------

STREET ADDRESS	CITY, STATE AND ZIP CODE
----------------	--------------------------

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

RACE COLOR SEX RELIGION NATIONAL ORIGIN
 AGE RETALIATION OTHER (Specify)

DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE (Month, day, year)
10/09/85

THE PARTICULARS ARE (If additional space is needed, attached cover sheet(s)):

I. I was hired on May 15, 1962, as a key punch operator and progressed to the position of General Clerk with a salary of \$2000.00 a month. I was denied a transfer in September of 1985. On October 9, 1985, I was terminated.

Mr. Tom Allen, President, placed me on indefinite furlough.

I. I believe I was terminated because of my age, 59, sex, female, national origin and ancestry, Chinese, for the following reasons:

1. I was originally employed by Pacific Fruit Express, a subsidiary of Southern Pacific Transportation Company. The other Respondents whose interest I served as an employee are by mutual agreement related in some business capacities.
2. In or about September or October, 1985, Respondent offered to male non-Chinese employees two alternatives; to those qualified to retire, early retirement, and to those young non-retirable, transfer to Southern Pacific Transportation. I was the most senior in service among my co-workers (of comparable level) the oldest (age 59) and only female who was not offered the same options.
3. I was terminated under the guise of a furlough, intentionally to deny me separation benefits among those whose position I was similiary situated.
4. During my employment I over heard my supervisors make comments that "foreigners are getting all the jobs and having all the money."

I have sent this charge filed with the EEOC.
 I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary to meet State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

SIGNATURE OF COMPLAINANT

Sieu Mei Tu
 10-1-86
 Charging Party (Signature)

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)

Filed: 10/01/86

SF:MBC:pw

Exh. b. 1 G
 S-m Tu
 5/11/87

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CHARGE OF DISCRIMINATION

ENTER CHARGE NUMBER

FEPA FEP 86-87 M-0141
 EEOC 09186 3365

This form is affected by the Privacy Act of 1974; see Privacy Act Statement on reverse before completing this form.

CA State Department of Fair Employment and Housing

(State or local Agency, if any)

NAME (Indicate Mr., Ms., or Mrs.)

TU, SIEU MEI

HOME TELEPHONE NO. (Include Area Code)

(415) 856-3505

STREET ADDRESS *c/o Lee J. Rubby, Inc.* CITY, STATE AND ZIP CODE

One Palo Alto Square, Suite 260 Palo Alto, CA 94306

(Santa Clara) COUNTY

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME SOUTHERN PACIFIC TRANSPORTATION CO. NO. OF EMPLOYEES/MEMBERS 500 (47)

TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS One Market Plaza San Francisco, CA 94105

CITY, STATE AND ZIP CODE (San Francisco)

NAME

TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS

CITY, STATE AND ZIP CODE

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

RACE COLOR SEX RELIGION NATIONAL ORIGIN / Ancestry
 AGE RETALIATION OTHER (Specify)

DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE (Month, day, year) 10/09/85

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

- I. I was hired on May 15, 1962 as a Key Punch Operator and progressed to the position of General Clerk with a salary of \$2000.00 a month. I was denied a transfer in September of 1985. On October 9, 1985, I was terminated.
- II. Mr. Tom Ellen, President, placed me on indefinite furlough.
- III. I believe I was terminated because of my age, 59, Sex, female, National Origin and Ancestry, Chinese, for the following reasons:
 - A. I was originally employed by Pacific Fruit Express, a subsidiary of Southern Pacific Transportation Company. The other Respondents whose interest I served as an employee are by mutual agreement related in some business capacities. I believe the Respondent aided and abetted in regard to the unlawful acts as part of a business merger with my employer.
 - B. In or about September or October, 1985, Respondent offered to male non-Chinese employees two alternatives; to those qualified to retire, early retirement and to those young non-retirable, transfer to Southern Pacific Transportation. I was the most senior in service among my co-workers (of comparable level) the oldest (age 59) and only female who was not offered the same options.
 - C. I was terminated under the guise of a furlough, intentionally to deny me all separation benefits among those whose position I was similarly situated.

Page 1 of 2

I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the foregoing is true and correct.

Sieu Mei Tu
 Date 10-1-86 Charging Party (Signature)

NOTARY (When necessary to meet State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)

Filing Date: 10/01/86 SP:MEC:bs

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; see Privacy Act Statement on reverse before completing this form.

ENTER CHARGE NUMBER

FEPA FEP 86-87 A4-0141
 EEOC 09186 3365

CA State Department of Fair Employment and Housing

(State or local Agency, if any)

NAME (Indicate Mr., Ms., or Mrs.)

TU, SIU MEI

PHONE TELEPHONE NO. (Include Area Code)

(415) 856-3505

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME	NO. OF EMPLOYEES/MEMBERS	TELEPHONE NUMBER (Include Area Code)
SOUTHERN PACIFIC TRANSPORTATION CO.	500	(47)

STREET ADDRESS

CITY, STATE AND ZIP CODE

NAME	TELEPHONE NUMBER (Include Area Code)
------	--------------------------------------

STREET ADDRESS

CITY, STATE AND ZIP CODE

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

RACE COLOR SEX RELIGION NATIONAL ORIGIN / *Ancestry*
 AGE RETALIATION OTHER (Specify)

DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE (Month, day, year) **10/09/85**

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

D. During my employment I overheard my supervisors make comments that "foreigners are getting all the jobs and having all the money."

RECEIVED
OCT 16 '86
SFDO-L

Page 2 of 2

I also want this charge filed with the EEOC

I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the foregoing is true and correct.

Siu Mei Tu

Date **10-1-86** Charging Party (Signature)

NOTARY - (When necessary to meet State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)

Notary Signature **10/01/86**

SF:MBC:bs

200

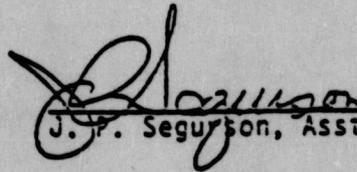
October 2, 1985

Brisbane, California

Ms. S. M. Tu:

Refers to the Clerks' Job Abolishment Notice No. 32 dated October 2, 1985 (copy attached), pursuant to which you are to become furloughed effective at and after the close of workshift October 9, 1985, under terms of the PFE/BRAC Agreement.

During the period of the running of the aforesaid Notice No. 32, October 2-9, 1985, complete lack of work resulting from the instant PFE decline in business leaves nothing at all for you to do, and you are, therefore, excused altogether from coming to work during that time. You are to take off with pay those five (5) working days of the Notice, and may consider them as excused personal leave preliminary to your furlough on October 10, 1985 and thereafter under the Agreement.


J. P. Segurson, Asst to VP & GM

Attachment

Exhibit H

S. M. Tu

5/11/87

230

LEE J. KUBBY, INC.
ATTORNEY AT LAW
A PROFESSIONAL CORPORATION

828 WEST REMINGTON DRIVE
SUITE ONE HUNDRED
SUNNYVALE, CALIFORNIA 94087
(408) 738-4863

2390 EL CAMINO REAL
ONE HUNDRED TEN
PALO ALTO, CALIFORNIA 94306
(415) 941-8883

October 18, 1985

PLEASE RESPOND TO
Palo Alto

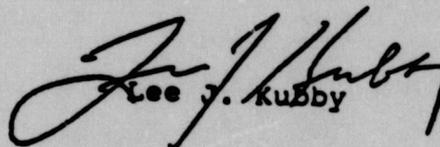
Mr. J. M. Balovich
Local Chairman BRAC
Lodge 504
100 Valley Drive
Brisbane, California 94005

Dear Mr. Balovich:

The enclosed letter to Southern Pacific Corporation is self explanatory.

Demand is hereby made for your union to protect its member, Sieu-Mei Tu, and to provide her legal representation and support in this time of great travail.

Very truly yours,


Lee J. Kubby

LJK:en
Enclosure

cc: James E. Weaver
G. S. Coleman

Exhibit I 207
S.M. Tu
5/11/87

LEE J. KUBBY, INC.
ATTORNEY AT LAW
A PROFESSIONAL CORPORATION

828 WEST REMINGTON DRIVE
SUITE ONE HUNDRED
SUNNYVALE, CALIFORNIA 94087
14081 738-4963

2380 EL CAMINO REAL
ONE HUNDRED TEN
PALO ALTO, CALIFORNIA 94306
14151 841-8883

October 18, 1985

CERTIFIED - RETURN RECEIPT REQUESTED

PLEASE RESPOND TO

Palo Alto

Mr. John Schmidt
Chairman
Santa Fe Southern Pacific Corporation
80 East Jackson Boulevard
Chicago, Illinois 60614

Re: Discharge Mrs. Sieu-Mei Tu

Dear Mr. Schmidt:

This is to advise I represent Mrs. Sieu-Mei Tu (Social Security No. 569-54-5736) (Mrs. Tu) of 1697 Hickory Avenue, San Leandro, California 94579. Mrs. Tu is a 59-year-old female naturalized citizen of the United States of Chinese origin. Mrs. Tu is a member of Brotherhood of Railway Airline and Steamship Clerks, Freight Handlers, Express and Station Employees Lodge No. 504 (BRAC).

Mrs. Tu has been an employee of a Santa Fe Southern Pacific corporation subsidiary since May 15, 1962, and was the most senior employee of that subsidiary on October 2, 1985. Her position of clerk was abolished on October 2, 1985, based on a contorted, belligerent, strained, and false claim that the abolishment was pursuant to a reduction in force. The facts clearly demonstrate that there has been a consolidation without consideration of Mrs. Tu's rights. Mrs. Tu is entitled to prior rights to corresponding positions in the consolidated office or departments. Instead, others were transferred to open positions in advance of this planned discharge and in anticipation of it. Mrs. Tu has been discharged without cause while Caucasian persons of lesser job seniority, younger age and different sex have been given positions in the consolidated office or departments corresponding to that enjoyed by Mrs. Tu in the past. She has been humiliated by being required to perform duties inconsistent with her position, and then summarily dismissed without benefits to which she is entitled.

Mr. John Schmidt
October 18, 1985
Page Two

In addition, Mrs. Tu was, on December 18, 1978, individually promised in writing by this employer that if the employer was ever not to have a job for her, she would be "fully protected" and would continue to be paid until reaching the age of 65, at which time she could retire and receive the appropriate pension to which she would then be entitled. Relying on this promise, Mrs. Tu continued to faithfully serve her employer.

The conduct of Santa Fe Southern Pacific Corporation and its subsidiaries, officers, shareholders and employees in this affair is unjust, unreasonable, unlawful, immoral, cruel, harsh, discriminatory, punitive, and tortious, demonstrating a lack of good faith, a breach of contract, and a violation of the civil rights of Mrs. Tu. Demand is hereby made for full restoration of all rights to Mrs. Tu immediately.

Demand is further made for institution of all administrative procedures applicable to this matter.

Adamantly yours,



Lee J. Kubby

LJK:en

cc: James E. Weaver
G. S. Coleman
John Swartz
D. M. Mohan
J. M. Balovich

LEE J. KUBBY, INC.
A PROFESSIONAL CORPORATION
One Palo Alto Square, Suite 260
Palo Alto, CA. 94306

Telephone: 415 856-3505

Attorney for Plaintiffs

**ORIGINAL
FILED**

AUG 21 1987

**WILLIAM L. WHITTAKER
CLERK, U. S. DIST. COURT
SAN FRANCISCO**

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SIEU MEI TU AND JOSEPH Z. TU,

Plaintiffs,

v.

SOUTHERN PACIFIC TRANSPORTATION
COMPANY, ET AL.,

Defendants.

Case No. C 87 1198DLJ

MOTION TO REMAND TO
SUPERIOR COURT
DECLARATION IN SUP-
PORT

Date: September 30,
1987

Time: 10:00 A. M.
Court: Court No. 3

LEE J. KUBBY DECLARES:

1. Declarant is an attorney at law authorized to practice before all the courts of the State of California, and represents the plaintiffs herein.

2. In the course of representing plaintiffs herein, declarant mailed the letters attached hereto as Exhibit A to the persons indicated on the dates indicated.

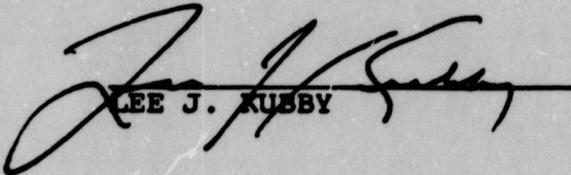
3. At no time prior to the filing of this law suit has declarant or his clients received any documentation exhibiting institution of RLA procedures regarding the claim of plaintiffs, nor any report of the status of any such proceedings. Declarant's only

1 conclusion was and is that the Union failed to act to protect the
2 rights of Sieu Mei Tu and her only recourse was to file an
3 independent action for her protection.

4 4. If called as a witness Declarant could competently testify to
5 the foregoing.

6 5. I declare under penalty of perjury that foregoing is true and
7 correct.

8 Executed on August 19, 1987 at Palo Alto, California.

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11 LEE J. KUBBY

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LEE J. KUBBY

ATTORNEY AT LAW

525 WEST REMINGTON DRIVE
SUITE ONE HUNDRED
SUNNYVALE, CALIFORNIA 94087
14081 738-4863

2380 EL CAMINO REAL
ONE HUNDRED TEN
PALO ALTO, CALIFORNIA 94306
14151 841-8883

January 20, 1986

PLEASE RESPOND TO
Palo Alto

Certified Mail #P 429 123 794

Mr. J. M. Balovich
Local Chairman BRAC
Lodge 504
100 Valley Drive
Brisbane, CA 94005

RE: Sue-Mai Tu
SSN: 569-54-5736

Wrongful Termination by Santa Fe Southern Pacific
Corporation, October 2, 1985

Dear Mr. Balovich:

On October 18, 1985, I wrote to you concerning the termination of Mrs. Tu from her position with Southern Pacific and demanded for you to protect her interest and support. You have made no response to that letter and taken no action to protect the interest of Mrs. Tu.

This is to advise unless you immediately take action no later than five (5) days from the date of this letter, I intend to include you in an action concerning her rights and to hold you responsible for a bad faith refusal to perform your contractual duties to Mrs. Tu regarding this distressing incident.

Very truly yours,



Lee J. Kubby

LJK:mbh

cc: Sue-Mai Tu
1697 Hickery Avenue
San Leandro, CA 94579

EXHIBIT A

242

LEE J. KUBBY
ATTORNEY AT LAW

525 WEST REMINGTON DRIVE
SUITE ONE HUNDRED
SUNNYVALE, CALIFORNIA 94087
(408) 738-4883

2390 EL CAMINO REAL
ONE HUNDRED TEN
PALO ALTO, CALIFORNIA 94306
(415) 841-5883

January 17, 1986

PLEASE RESPOND TO
Palo Alto

Certified Mail #P 429 123 789

Mr. Gary A. Laakso
Southern Pacific Transportation
Company
Southern Pacific Building
One Market Plaza
San Francisco, CA 94105

RE: Sue-Mai Tu
SSN: 569-54-5736

Wrongful Termination by Santa Fe Southern Pacific
Corporation, October 2, 1985

Dear Mr. Laakso:

Since receiving your letter of November 7, 1985, I have been patiently awaiting notification of any action being taken to resolve the matter of the dispute concerning the termination of Sue-Mai Tu by Southern Pacific.

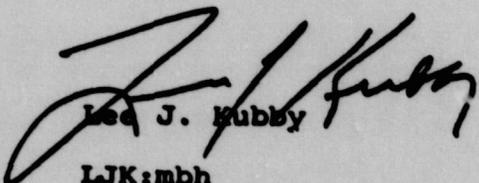
You have taken no administrative action regarding that matter or given Sue-Mai Tu any notification of any action to be taken, other than your letter of November 7, 1985. Nothing has happened in relationship to that letter. We intend, unless you fully pay Sue-Mai Tu her salary from October 2, 1985, until the present time and continue to pay the same through her retirement date and list her as an active employee accumulating retirement benefits, to bring a wrongful termination suit for your bad faith failure to meet your contractual obligations to Mrs. Tu and for your failure to meet your covenant of good faith, breach of your written contract, breach of implied contract, misrepresentation, discrimination, defamation, intentional infliction of emotional distress, invasion of privacy, fraud and punitive damages.

243

Mr. Gary A. Laakso
January 20, 1986
Page 2

Unless this matter is resolved within ten days of date, we will commence all necessary actions regarding this matter.

Very truly yours,



Lee J. Kubby

LJK:mbh

cc: Sue-Mai Tu
1697 Hickery Avenue
San Leandro, CA 94579

Mr. Thormund A. Miller
General Counsel
Southern Pacific Transportation
Company
Certified Mail #P 429 123 786

LEE J. KUBBY, INC.
ATTORNEY AT LAW
A PROFESSIONAL CORPORATION

828 WEST REMINGTON DRIVE
SUITE ONE HUNDRED
SUNNYVALE, CALIFORNIA 94087
(408) 736-4861

2300 EL CAMINO REAL
ONE HUNDRED TEN
PALO ALTO, CALIFORNIA 94306
(415) 941-8883

October 18, 1985

PLEASE RESPOND TO
Palo Alto

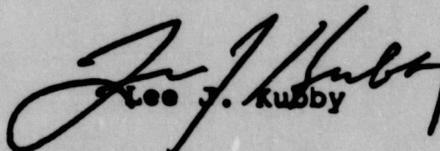
Mr. J. M. Balovich
Local Chairman BRAC
Lodge 504
100 Valley Drive
Brisbane, California 94005

Dear Mr. Balovich:

The enclosed letter to Southern Pacific Corporation is self explanatory.

Demand is hereby made for your union to protect its member, Sieu-Mei Tu, and to provide her legal representation and support in this time of great travail.

Very truly yours,


Lee J. Kubby

LJK:en
Enclosure

cc: James E. Weaver
G. S. Coleman

LEE J. KUBBY, INC.

ATTORNEY AT LAW

A PROFESSIONAL CORPORATION

525 WEST REMINGTON DRIVE
SUITE ONE HUNDRED
SUNNYVALE, CALIFORNIA 94087
14081 738-4863

2390 EL CAMINO REAL
ONE HUNDRED TEN
PALO ALTO, CALIFORNIA 94306
14181 941-8883

October 18, 1985

CERTIFIED - RETURN RECEIPT REQUESTED

PLEASE RESPOND TO

Palo Alto

Mr. John Schmidt
Chairman
Santa Fe Southern Pacific Corporation
80 East Jackson Boulevard
Chicago, Illinois 60614

Re: Discharge Mrs. Sieu-Mei Tu

Dear Mr. Schmidt:

This is to advise I represent Mrs. Sieu-Mei Tu (Social Security No. 569-54-5736) (Mrs. Tu) of 1697 Hickory Avenue, San Leandro, California 94579. Mrs. Tu is a 59-year-old female naturalized citizen of the United States of Chinese origin. Mrs. Tu is a member of Brotherhood of Railway Airline and Steamship Clerks, Freight Handlers, Express and Station Employees Lodge No. 504 (BRAC).

Mrs. Tu has been an employee of a Santa Fe Southern Pacific corporation subsidiary since May 15, 1962, and was the most senior employee of that subsidiary on October 2, 1985. Her position of clerk was abolished on October 2, 1985, based on a contorted, belligerent, strained, and false claim that the abolishment was pursuant to a reduction in force. The facts clearly demonstrate that there has been a consolidation without consideration of Mrs. Tu's rights. Mrs. Tu is entitled to prior rights to corresponding positions in the consolidated office or departments. Instead, others were transferred to open positions in advance of this planned discharge and in anticipation of it. Mrs. Tu has been discharged without cause while Caucasian persons of lesser job seniority, younger age and different sex have been given positions in the consolidated office or departments corresponding to that enjoyed by Mrs. Tu in the past. She has been humiliated by being required to perform duties inconsistent with her position, and then summarily dismissed without benefits to which she is entitled.

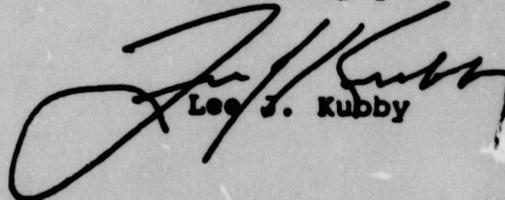
Mr. John Schmidt
October 18, 1985
Page Two

In addition, Mrs. Tu was, on December 18, 1978, individually promised in writing by this employer that if the employer was ever not to have a job for her, she would be "fully protected" and would continue to be paid until reaching the age of 65, at which time she could retire and receive the appropriate pension to which she would then be entitled. Relying on this promise, Mrs. Tu continued to faithfully serve her employer.

The conduct of Santa Fe Southern Pacific Corporation and its subsidiaries, officers, shareholders and employees in this affair is unjust, unreasonable, unlawful, immoral, cruel, harsh, discriminatory, punitive, and tortious, demonstrating a lack of good faith, a breach of contract, and a violation of the civil rights of Mrs. Tu. Demand is hereby made for full restoration of all rights to Mrs. Tu immediately.

Demand is further made for institution of all administrative procedures applicable to this matter.

Adamantly yours,



Lee J. Kubby

LJK:en

cc: James E. Weaver
G. S. Coleman
John Swartz
D. M. Mohan
J. M. Balovich

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE D. LOWELL JENSEN, JUDGE

SIEU MEI TU AND JOSEPH Z. TU,)
)
 PLAINTIFFS,)
)
 VS.)
)
 SOUTHERN PACIFIC TRANSPORTATION)
 COMPANY, ET AL.,)
)
 DEFENDANTS.)

NO. C 87-1198 DLJ

SAN FRANCISCO, CALIFORNIA
FRIDAY, SEPTEMBER 30, 1987

APPEARANCES:

FOR PLAINTIFF: LEE J. KUBBY, ESQ.
755 PAGE MILL ROAD
SUITE A180
PALO ALTO, CALIFORNIA 94304

FOR DEFENDANT: MC LAUGHLIN & IRVIN
111 PINE STREET
SUITE 1200
SAN FRANCISCO, CALIFORNIA 94111

BY: WAYNE M. BOLIO, ESQ.

REPORTED BY: JAMES YEOMANS, CSR
COURT REPORTER, USDC

COMPUTERIZED TRANSCRIPTION BY XSCRIBE

248

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FRIDAY, SEPTEMBER 30, 1987

10:00 A.M.

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THE CLERK: CALLING CIVIL MATTER 87-1198, JOSEPH AND SIEU TU VERSUS SOUTHERN PACIFIC TRANSPORTATION.

4

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COUNSEL, PLEASE COME FORWARD AND STATE THEIR APPEARANCES.

6

7

MR. KUBBY: GOOD MORNING. LEE KUBBY FOR THE PLAINTIFFS.

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MR. BOLIO: GOOD MORNING. WAYNE M. BOLIO FOR DEFENDANT SOUTHERN PACIFIC TRANSPORTATION COMPANY.

11

12

THE COURT: THE ISSUE IS WHETHER WE'RE GOING TO STAY HERE OR NOT?

13

14

MR. KUBBY: THAT'S CORRECT.

15

THE COURT: COUNSEL, DO YOU WANT TO ADD TO YOUR MOTION FOR REMAND?

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MR. KUBBY: WELL, YOUR HONOR, I THINK IT'S IN THE PLEADINGS. THERE ARE MULTIPLE DEFENDANTS. THIS IS A TORTIOUS CROSS-COMPLAINT, TORTIOUS COMPLAINT AND BELONGS IN THE STATE COURT, BUT THAT'S FOR THE COURT TO DECIDE.

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THE COURT: I GUESS SO.

MR. BOLIO: I WOULD ADD ONLY ONE FURTHER POINT WITH REFERENCE TO THE LAST BRIEF THAT WAS FILED BY PLAINTIFF. THAT IS, WITH REFERENCE TO THE CONTENTION THAT THE COMPLAINT SOMEHOW STATES A CAUSE OF ACTION FOR VIOLATION OF THE FELA, THE FEDERAL EMPLOYERS' LIABILITY ACT, THAT THEREFORE MAKES THAT ACTION

200

1 NONREMOVABLE.

2 WE ONLY LIKE TO POINT OUT TO THE COURT, NO WHERE IN THE
3 COMPLAINT IS THERE A CLAIM FOR ANY PERSONAL INJURY UNDER THE
4 FELA OR ANY RELATED CLAIM. THAT PURELY ARISES OUT OF A
5 DISCHARGE ACTION WHICH IS COVERED BY THE RAILWAY LABOR ACT AND
6 THEREFORE REMOVABLE.

7 MR. KUBBY: I DISAGREE WITH THAT CONTEXT, YOUR HONOR.

8 THE COURT: OKAY. I THINK THAT WE'RE PROPERLY HERE.

9 SO, IN EFFECT, I DISAGREE WITH YOU. I AGREE WITH COUNSEL. THIS
10 IS APPROPRIATELY HERE IN TERMS OF THE FEDERAL CAUSE OF ACTION.
11 SO I'M GOING TO DENY THE MOTION TO REMAND.

12 COUNSEL, IF YOU'D PREPARE AN ORDER TO THAT EFFECT.

13 MR. BOLIO: YES, I WILL.

14 THE COURT: I THINK WE ALSO OUGHT TO SCHEDULE A STATUS
15 CONFERENCE ON THIS MATTER FOR ABOUT 60 DAYS.

16 COULD YOU GIVE US A DATE IN NOVEMBER?

17 MR. KUBBY: YOUR HONOR, IF IT'S GOING TO BE NECESSARY
18 TO SERVE ALL OF THE OTHER DEFENDANTS, I WONDER IF 60 DAYS --

19 THE COURT: MAYBE WE'LL GIVE YOU SOME MORE TIME THAN
20 THAT. THERE ISN'T ANY REAL REASON TO HAVE IT EARLIER. LET'S
21 PUT IT ON DECEMBER 16TH. THAT WILL BE AT 9:00 O'CLOCK AND WE'LL
22 REVIEW WHERE WE ARE AT THAT TIME.

23 IN THE MEANTIME YOU CAN DISCUSS THIS ISSUE AMONG
24 YOURSELVES.

25 (THE ABOVE MATTER ADJOURNED AT 10:15 A.M.)

CERTIFICATE OF REPORTER

I, JAMES YEOMANS, CERTIFIED SHORTHAND REPORTER FOR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 450 GOLDEN GATE AVENUE, SAN FRANCISCO, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, PAGES NUMBERED 1 THROUGH 4 INCLUSIVE, CONSTITUTES A TRUE, FULL AND CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS SUCH PRO TEM REPORTER OF THE PROCEEDINGS HEREINBEFORE ENTITLED, AND REDUCED TO TYPEWRITING THROUGH THE USE OF THE XSCRIBE COMPUTER SYSTEM TO THE BEST OF MY ABILITY.

DATED: OCTOBER 3, 1989

James Yeomans
JAMES YEOMANS, CSR 4039
USDC SHORTHAND REPORTER

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ROBERT S. BOGASON
SOUTHERN PACIFIC TRANSPORTATION
COMPANY

Southern Pacific Bldg., Room 837
One Market Plaza
San Francisco, CA 94105
Telephone: (415) 541-1786

WILLIAM L. WHITTAKER
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ORIGINAL
FILED

OCT 09 1987

WILLIAM L. WHITTAKER
CLERK, U. S. DIST. COURT
SAN FRANCISCO

PATRICK W. JORDAN
WAYNE M. BOLIO
McLAUGHLIN AND IRVIN
100 Pine Street, Suite 770
San Francisco, CA 94111-5109
Telephone: (415) 433-6330

Attorneys for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SIEU MEI TU AND JOSEPH TU,)
)
Plaintiffs,)
)
v.)
)
SOUTHERN PACIFIC)
TRANSPORTATION COMPANY,)
et al.,)
)
Defendants.)

No. C87-1198-DLJ
ORDER DENYING
MOTION TO REMAND

The matter, having come for hearing on Plaintiffs' Motion to Remand, and the Court having considered Plaintiffs' moving papers, Defendants Pacific Fruit Express Company and Southern Pacific Transportation Company's opposing papers, declarations of counsel, pleadings on file, and oral argument, hereby ORDERS as follows:

- 1. Plaintiffs' Motion to Remand is denied.

ORDER

COPY

MCLAUGHLIN AND IRVIN
LOS ANGELES - SAN FRANCISCO - NEWPORT BEACH

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2. At all relevant times herein, Plaintiff was a member of a union whose terms and conditions of employment were governed by a collective bargaining agreement negotiated pursuant to the Railway Labor Act. Any claim that an individual has been wrongly terminated or transferred implicates the collective bargaining agreement and thus raises a federal question.

Good cause appearing, it is hereby ordered that the Motion to Remand is denied.

DATED: Oct. 9, 1987.

D. LOWELL JENSEN

The Hon. D. Lowell Jensen
Judge of the United States
District Court

McLAUGHLIN IRVIN
LOS ANGELES - SAN FRANCISCO - NEWPORT BEACH

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF

I have read the foregoing

and know its contents.

CHECK APPLICABLE PARAGRAPH

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner a of

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on 19 at California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Type or Print Name

Signature

ACKNOWLEDGMENT OF RECEIPT OF DOCUMENT

(other than summons and complaint)

Received copy of document described as

on 19

Type or Print Name

Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

San Francisco State of California.

I am employed in the county of

I am over the age of 18 and not a party to the within action; my business address is:

100 Pine Street, Suite 770, San Francisco, CA 94111-5109

On Oct. 6, 1987, I served the foregoing document described as

ORDER DENYING MOTION TO REMAND [proposed]

on plaintiffs' attorney

in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Lee J. Kubby, Inc.
A Professional Corporation
One Palo Alto Square, Suite 260
Palo Alto, CA 94306

(BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at San Francisco, California.

Executed on October 6, 1987, at San Francisco California.

(BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.

Executed on 19 at California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Chere Bondie

Type or Print Name

Signature

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 SIEU MEI TU AND JOSEPH Z. TU, Plaintiffs)
4)
5)

Civil Action,
File Number C
87 1198 DLJ

6 v.)
7)
8)

9 SOUTHERN PACIFIC TRANSPORTATION COMPANY,)
10 ATCHISON, TOPEKA, SANTA FE RAILROAD)
11 COMPANY, PACIFIC FRUIT EXPRESS COMPANY,)
12 T. ALLEN, E. E. CLARK, R. W. FEND, T. R.)
13 ASHTON, DOE DEFENDANTS ONE TO TWO THOUSAND)
14 WHITE COMPANY, BLACK CORPORATION)
15 Defendants)

NOTICE AND
ACKNOWLEDG-
MENT OF
RECEIPT OF
SUMMONS AND
COMPLAINT

16 NOTICE

17 To: Santa Fe Southern Pacific Corporation
18 Sued herein as Black Corporation

19 The enclosed summons and complaint are served pursuant
20 to Rule 4(c)(2)(C)(ii) of the Federal Rules of Civil Procedure.

21 You must complete the acknowledgment part of this form
22 and return one copy of the completed form to the sender within
23 20 days.

24 You must sign and date the acknowledgment. If you are
25 served on behalf of a corporation, unincorporated association
26 (including a partnership), or other entity, you must indicate
27 under your signature your relationship to that entity. If you
28 are served on behalf of another person and you are authorized to
receive process, you must indicate under your signature your
authority.

If you do not complete and return the form to the sender
within 20 days, you (or the party on whose behalf you are being

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served) may be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law.

If you do complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within 20 days. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

I declare, under penalty of perjury, that this Notice and Acknowledgment of Receipt of Summons and Complaint will have been mailed on November 2, 1987.

Date of signature: November 2, 1987.

**ACKNOWLEDGMENT OF RECEIPT OF
SUMMONS AND COMPLAINT**

I declare, under penalty of perjury, that I received a copy of the summons and complaint in the above captioned matter at: (insert address)

John F. D...
Signature
VICE PRESIDENT-LAW
Relationship to Entity/ Authority
Receive Service of Process
12-8-87
Date of Signature

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 SIEU MEI TU AND JOSEPH Z. TU, Plaintiffs)

) Civil Action,
) File Number C
) 87 1198 DLJ

4)
5 v.)

6 SOUTHERN PACIFIC TRANSPORTATION COMPANY,)
7 ATCHISON, TOPEKA, SANTA FE RAILROAD)
8 COMPANY, PACIFIC FRUIT EXPRESS COMPANY,)
9 T. ALLEN, E. E. CLARK, R. W. FEND, T. R.)
ASHTON, DOE DEFENDANTS ONE TO TWO THOUSAND)
WHITE COMPANY, BLACK CORPORATION)
Defendants)

) NOTICE AND
) ACKNOWLEDG-
) MENT OF
) RECEIPT OF
) SUMMONS AND
) COMPLAINT

10 NOTICE

11
12 To:

13 Atchison, Topeka, Santa Fe Railroad Company

14 The enclosed summons and complaint are served pursuant
15 to Rule 4(c)(2)(C)(ii) of the Federal Rules of Civil Procedure.

16 You must complete the acknowledgment part of this form
17 and return one copy of the completed form to the sender within
18 20 days.

19 You must sign and date the acknowledgment. If you are
20 served on behalf of a corporation, unincorporated association
21 (including a partnership), or other entity, you must indicate
22 under your signature your relationship to that entity. If you
23 are served on behalf of another person and you are authorized to
24 receive process, you must indicate under your signature your
25 authority.

26 If you do not complete and return the form to the sender
27 within 20 days, you (or the party on whose behalf you are being
28

1 served) may be required to pay any expenses incurred in serving a
2 summons and complaint in any other manner permitted by law.

3 If you do complete and return this form, you (or the
4 party on whose behalf you are being served) must answer the com-
5 plaint within 20 days. If you fail to do so, judgment by default
6 will be taken against you for the relief demanded in the com-
7 plaint.

8 I declare, under penalty of perjury, that this Notice
9 and Acknowledgment of Receipt of Summons and Complaint will have
10 been mailed on November 2, 1987.

11 _____
12
13 Date of signature: November 2, 1987.
14

15
16 **ACKNOWLEDGMENT OF RECEIPT OF**
17 **SUMMONS AND COMPLAINT**

18 I declare, under penalty of perjury, that I received a
19 copy of the summons and complaint in the above captioned matter
20 at: (insert address)
21

22
23 P. E. Cooney
24 Signature
25 P. E. COONEY, LEGAL AGENT
26 THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
27 Relationship to Entity/ Authority
28 Receive Service of Process
December 8, 1987
Date of Signature

1 JOHN H. ERNSTER
JOSEPH O. COSTELLO
2 One Santa Fe Plaza
5200 E. Sheila Street
3 Los Angeles, CA 90040
(213) 267-5605

4 Attorneys for Defendants,
5 THE ATCHISON, TOPEKA AND
SANTA FE RAILWAY COMPANY
6 AND SANTA FE SOUTHERN PACIFIC
CORPORATION

7

8

UNITED STATES DISTRICT COURT

9

NORTHERN DISTRICT OF CALIFORNIA

10

11 SIEU MEI TU AND JOSEPH Z. TU,

CASE NO. C 87 1198 DLJ

12 Plaintiffs,

THE ATCHISON, TOPEKA AND
SANTA FE RAILWAY COMPANY'S
AND SANTA FE SOUTHERN
PACIFIC CORPORATION'S
ANSWER TO VERIFIED
COMPLAINT, AND DEMAND
FOR JURY TRIAL

13 v.

14 SOUTHERN PACIFIC TRANSPORTATION
COMPANY, ATCHISON, TOPEKA, SANTA
15 FE RAILROAD COMPANY, PACIFIC
FRUIT EXPRESS COMPANY, T. ALLEN,
16 E.E. CLARK, R. W. FEND, T.R. ASHTON,
DOE DEFENDANTS ONE TO TWO THOUSAND,
17 WHITE COMPANY, BLACK CORPORATION,

18 Defendants.

19

20 COME NOW defendants, THE ATCHISON, TOPEKA AND SANTA
21 FE RAILWAY COMPANY and SANTA FE SOUTHERN PACIFIC CORPORATION,
22 for themselves and for no other entities, by way of Answer
23 to the Complaint on file herein, allege, aver, and deny as
24 follows:

25 1. In answering paragraphs 1 and 2 of said Complaint,
26 defendants admit the allegations contained therein.

27 2. In answering paragraphs 3,4,5,6,7,8 and 9, defendants
28 lack sufficient information or belief as to the truth or falsity

1 of each and every allegation contained therein, and, basing
2 their denial on such lack of information and belief, deny
3 generally and specifically each and every allegation contained
4 therein.

5 3. In answering paragraphs 10, 11 and 12, defendants
6 deny that plaintiff was injured or damaged in the sums alleged,
7 deny that plaintiff was injured or damaged in any sum whatsoever,
8 deny that prejudgment interest is available pursuant to California
9 Civil Code Section 3287 or any other provision of law, and
10 specifically deny each and every allegation contained therein.

11 4. In answering paragraphs 14 and 15, defendants
12 lack sufficient information or belief as to the truth or falsity
13 of each and every allegation contained therein, and, basing
14 their denial on such lack of information and belief, deny
15 generally and specifically each and every allegation contained
16 therein.

17 5. In answering paragraphs 17 and 18, defendants
18 lack sufficient information or belief as to the truth or falsity
19 of each and every allegation contained therein, and, basing
20 their denial on such lack of information and belief, deny
21 generally and specifically each and every allegation contained
22 therein.

23 6. In answering paragraph 19, defendants deny that
24 plaintiff was injured or damaged in the sums alleged, deny
25 that plaintiff was injured or damaged in any sum whatsoever,
26 and specifically deny each and every allegation contained
27 therein.

28 //

1 7. In answering paragraph 20, defendants deny generally
2 and specifically each and every allegation contained therein.

3 8. In answering paragraphs 22 and 23, defendants
4 lack sufficient information or belief as to the truth or falsity
5 of each and every allegation contained therein, and, basing
6 their denial on such lack of information and belief, deny
7 generally and specifically each and every allegation contained
8 therein.

9 9. In answering paragraphs 25 and 26, defendants
10 deny generally and specifically each and every allegation
11 contained therein.

12 10. In answering paragraph 28, defendants deny generally
13 and specifically each and every allegation contained therein.

14
15

FIRST AFFIRMATIVE DEFENSE

16 1. As a first, separate and affirmative defense
17 to each and all causes of action of the complaint on file
18 herein, defendants allege that said complaint fails to state
19 facts sufficient to constitute a cause of action against these
20 answering defendants.

21
22

SECOND AFFIRMATIVE DEFENSE

23 2. As a second, separate and affirmative defense
24 to each and all causes of action of the complaint on file
25 herein, defendants allege that plaintiff's sole and exclusive
26 remedy against her employer, PACIFIC FRUIT EXPRESS, is a claim
27 under the Railway Labor Act.

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THIRD AFFIRMATIVE DEFENSE

3. As a third, separate and affirmative defense to each and all causes of action of the complaint on file herein, defendants allege that each and every cause of action contained in plaintiffs' complaint is the subject of a valid, binding and enforceable written contract between plaintiff, Sieu Mei Tu, and her employer, PACIFIC FRUIT EXPRESS, which has been fully performed, and the benefits of which plaintiff has accepted.

FOURTH AFFIRMATIVE DEFENSE

4. As a fourth, separate and affirmative defense to each and all causes of action of the complaint on file herein, defendants allege that each and every of plaintiffs' causes of action are the subject of an accord and satisfaction that would bar any further recovery by plaintiffs in this action.

FIFTH AFFIRMATIVE DEFENSE

5. As a fifth, separate and affirmative defense to each and all causes of action of the complaint on file herein, defendants allege that plaintiffs have waived each and every cause of action herein by bargaining for and accepting benefits under a separation agreement.

SIXTH AFFIRMATIVE DEFENSE

6. As a sixth, separate and affirmative defense to each and all causes of action of the complaint on file

1 herein, defendants allege that plaintiffs are estopped from
2 asserting each and every cause of action herein as a result
3 of an agreement between plaintiff, Sieu Mei Tu, and co-defendants
4 herein pursuant to which plaintiff received full and total
5 compensation for each and every cause of action herein alleged.

6
7 SEVENTH AFFIRMATIVE DEFENSE

8 7. As a seventh, separate and affirmative defense
9 to each and all causes of action of the complaint on file
10 herein, defendants allege that plaintiffs' action is barred
11 by the provisions of California Civil Code §1624(a).

12
13 EIGHTH AFFIRMATIVE DEFENSE

14 8. As an eighth, separate and affirmative defense
15 to each and all causes of action of the complaint on file
16 herein, defendants allege that plaintiffs' action and each
17 and all causes of action thereof are barred by the provisions
18 of California Code of Civil Procedure §340(3) and other sections.

19
20 NINTH AFFIRMATIVE DEFENSE

21 9. As a ninth, separate and affirmative defense
22 to each and all causes of action of the complaint on file
23 herein, defendants allege that plaintiff's action and each
24 and all causes of action thereof are barred by the Doctrine
25 of Laches.

26 TENTH AFFIRMATIVE DEFENSE

27 10. As a tenth, separate and affirmative defense
28 to each and all causes of action of the complaint on file

1 herein, defendants allege that plaintiff's termination from
2 employment was due to her failure to meet bona fide requirements
3 of her employment, which would estop plaintiffs from asserting
4 any of the causes of action herein alleged.

5

6

ELEVENTH AFFIRMATIVE DEFENSE

7 11. As an eleventh, separate and affirmative defense
8 to each and all causes of action of the complaint on file
9 herein, defendants allege that any injuries or damages sustained
10 by plaintiff of the nature alleged in said complaint were
11 solely and proximately caused or contributed to by plaintiffs'
12 own actions and conduct, among other things, failing to conduct
13 themselves in a satisfactory, efficient and professionally
14 responsible manner.

15

16

TWELFTH AFFIRMATIVE DEFENSE

17 12. As a twelfth, separate and affirmative defense
18 to each and all causes of action of the complaint on file
19 herein, defendants allege that at all times material hereto
20 plaintiff, Sieu Mei Tu, was unfit for employment with defendants
21 and failed to discharge the responsibilities of her employment
22 in a satisfactory, efficient or professional manner.

23

24

THIRTEENTH AFFIRMATIVE DEFENSE

25 13. As an thirteenth, separate and affirmative defense
26 to each and all causes of action of the complaint on file
27 herein, defendants allege that plaintiffs have failed to mitigate
28 their damages, and are, therefore, precluded from recovering

1 any damages which they could reasonably have mitigated.

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FOURTEENTH AFFIRMATIVE DEFENSE

4

14. As a fourteenth, separate and affirmative defense
5 to each and all causes of action of the complaint on file
6 herein, defendants allege that plaintiffs have failed to state
7 a cause of action for conspiracy against these defendants.

8

9

FIFTEENTH AFFIRMATIVE DEFENSE

10

15. As a fifteenth, separate and affirmative defense
11 to each and all causes of action of the complaint on file
12 herein, defendants allege that this Court is without subject
13 matter jurisdiction to grant relief to plaintiffs upon the
14 claims asserted herein.

15

16

SIXTEENTH AFFIRMATIVE DEFENSE

17

16. As a sixteenth, separate and affirmative defense
18 to each and all causes of action of the complaint on file
19 herein, defendants allege that plaintiff, Sieu Mei Tu, failed
20 to exhaust her administrative remedies and, therefore, plaintiffs'
21 causes of action are barred.

22

23

WHEREFORE, defendants pray that plaintiffs take nothing
24 by way of their Complaint on file herein, that judgment be
25 entered for defendants and against plaintiffs, and that defendants
26 be awarded their costs of suit incurred in defending this
27 action, including reasonable attorneys' fees and expert fees,
28 and for such other and further affirmative relief as the Court

1 deems proper.

2

3 DATED: December 21, 1987

4

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6

JOHN H. ERNSTER
JOSEPH O. COSTELLO

7

8

9

By Joseph O. Costello
Joseph O. Costello

Attorneys for Defendant,
THE ATCHISON, TOPEKA AND
SANTA FE RAILWAY COMPANY
and SANTA FE SOUTHERN
PACIFIC CORPORATION

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DEMAND FOR JURY TRIAL

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Defendants, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY and SANTA FE SOUTHERN PACIFIC CORPORATION hereby
make demand for trial by jury.

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DATED: December 21, 1987

Joseph O. Costello
Joseph O. Costello

ILLINOIS VERIFICATION
STATE OF ~~CALIFORNIA~~ COUNTY OF COOK

I have read the foregoing THE ATSF RAILWAY COMPANY'S and SANTA FE SOUTHERN PACIFIC CORPORATION'S ANSWER TO VERIFIED COMPLAINT, AND and know its contents. DEMAND FOR JURY TRIAL CHECK APPLICABLE PARAGRAPH

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner of SANTA FE SOUTHERN PACIFIC CORPORATION

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for _____

a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on December 17, 19 87 at Chicago, Illinois ~~XXXXXXXX~~

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

R. B. BONNEVILLE,
Secretary, Santa Fe Southern
Type or Print Name Pacific Corp.

R. B. Bonneville
Signature

ACKNOWLEDGMENT OF RECEIPT OF DOCUMENT
(other than summons and complaint)

Received copy of document described as _____

on _____ 19 ____.

Type or Print Name

Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California.

I am over the age of 18 and not a party to the within action; my business address is: _____

5200 East Sheila Street, Los Angeles, CA 90040

On 12/23 19 87 I served the foregoing document described as _____

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY'S and SANTA FE SOUTHERN PACIFIC CORP.'S ANSWER/DEMAND FOR JURY TRIAL.

on interested parties

in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Lee J. Kubby, Inc.
One Palo Alto Square
Suite 260
Palo Alto, CA 94306

ATTORNEYS FOR PLAINTIFF

(BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California.

Executed on December 23, 19 87 at Los Angeles, California.

(BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.

Executed on _____, 19____, at _____, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Donna McGlothen
Type or Print Name

Donna McGlothen 200
Signature

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing THE ATSF RAILWAY COMPANY'S and SANTA FE SOUTHERN PACIFIC CORPORATION'S ANSWER TO VERIFIED COMPLAINT, and know its contents. AND DEMAND FOR JURY TRIAL. [X] CHECK APPLICABLE PARAGRAPH

[] I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

[X] I am [X] an Officer [] a partner [] a of THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. [X] I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. [] The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

[] I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on 12/15, 19 87, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Stuart Ondeck, Assistant Secretary, ATSF

[Signature] Signature

ACKNOWLEDGMENT OF RECEIPT OF DOCUMENT (other than summons and complaint)

Received copy of document described as

on 19

Type or Print Name Signature

PROOF OF SERVICE

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[X] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Donna McGlothen Type or Print Name

[Signature] Signature

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE D. LOWELL JENSEN, JUDGE

SIEU and JOSEPH TU,)
)
 PLAINTIFFS)
)
 VS.) CV-87-1198-DLJ
)
 SOUTHERN PACIFIC)
 TRANSPORTATION COMPANY,)
)
 DEFENDANT.)
)

WEDNESDAY, APRIL 6, 1988
SAN FRANCISCO, CALIFORNIA

APPEARANCES:

FOR THE PLAINTIFFS: LEE J. KUBBY, ESQUIRE
LEE J. KUBBY, INC.
BOX 60267
PALO ALTO, CA 94306

FOR THE DEFENDANT: KEVIN BLOCK, ESQUIRE
JOSEPH COSTELLO, ESQUIRE

REPORTED BY: NANCY J. PALMER
PRO TEM REPORTER

1 WEDNESDAY, APRIL 6, 1988

10:00 A.M.

2 * * * * *

3 P R O C E E D I N G S

4 THE CLERK: CIVIL MATTER 87-1198, SIEU AND JOSEPH TU
5 VERSUS SOUTHERN PACIFIC TRANSPORTATION.

6 COUNSEL, PLEASE STATE YOUR APPEARANCES.

7 MR. KUBBY: LEE KUBBY, YOUR HONOR, GOOD MORNING,
8 APPEARING FOR THE PLAINTIFFS AND RESPONDENTS TO THE
9 MOTION.

10 MR. BLOCK: GOOD MORNING, YOUR HONOR, KEVIN BLOCK FOR
11 SOUTHERN PACIFIC.

12 MR. COSTELLO: GOOD MORNING, YOUR HONOR, JOSEPH
13 COSTELLO FOR SANTA FE-SOUTHERN PACIFIC CORPORATION AND
14 THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

15 THE COURT: ALL RIGHT.

16 MR. BLOCK, WOULD YOU LIKE TO ADD TO THE PAPERS YOU
17 FILED SEEKING TO DISMISS THIS MATTER?

18 MR. BLOCK: UNLESS YOUR HONOR HAS ANY SPECIFIC
19 QUESTIONS, I THINK OUR ARGUMENTS ARE CONTAINED IN THE
20 PAPERS.

21 THE COURT: MR. KUBBY?

22 MR. KUBBY: YES, YOUR HONOR. THE FIRST THING I'D
23 LIKE TO DO IS I'D LIKE TO FORMALLY ENTER MY OBJECTION TO
24 THE DECLARATION OF MR. BLOCK, BEGINNING AT PAGE 2, LINE
25 7, THROUGH PAGE 3, LINE 14, ON THE BASIS THAT IT'S

1 IRRELEVANT AND IMMATERIAL.

2 THE MOTION TO DISMISS THE ONLY MATERIAL MATTER IS THE
3 FACE OF THE COMPLAINT AND THE MATTERS SET FORTH ARE
4 AFFIRMATIVE DEFENSE MATTERS WHICH DID NOT -- ARE NOT
5 APPROPRIATE IN THE MOTION TO DISMISS.

6 THE COURT: I GUESS THESE IN THE FEDERAL PLEADING
7 WORLD CROSS OVER A LITTLE BIT IN MOTIONS TO DISMISS AND
8 SUMMARY JUDGEMENT, BUT YOU'RE POINT IS THAT THE MOTION TO
9 DISMISS MUST BE DIRECTED TO THE PLEADINGS THEMSELVES, AND
10 THE COURT'S AWARE OF THAT AND I ACCEPT THAT.

11 MR. KUBBY: OKAY. THANK YOU, YOUR HONOR.

12 AND THEN ON THE QUESTION OF PREEMPTION, THE SUPREME
13 COURT IN THE MATTER OF METROPOLITAN VERSUS TAYLOR, WHICH
14 IS 107 SUPREME COURT REPORTER, PAGE 1542, AT PAGE 1548,
15 THE CONCURRING OPINION OF JUSTICE BRENNAN SETS FORTH THE
16 CLEAR POLICY OF THE UNITED STATES CONCERNING REMAND AND
17 DISMISSAL OF STATE COURT ACTIONS.

18 IN THAT DECISION THE CONCURRING OPINIONS STATES
19 FUTURE CASES INVOLVING OTHER STATUTES THE PRUDENT COURSE
20 FOR THE FEDERAL COURT THAT DOES NOT FIND A CLEAR,
21 CONGRESSIONAL INTENT TO CREATE THE REMOVAL JURISDICTION,
22 IT WILL BE TO REMAND THE CASE TO STATE COURT.

23 I THINK THAT IS STRONG POLICY CONCERNING ALLOWING THE
24 STATE COURTS TO DECIDE STATE ISSUES.

25

1 IN THE CASE OF PAIGE VERSUS KAISER AT 826 FEDERAL 2d
2 857, THE 1987 DECISION FOR THE NINTH CIRCUIT, IT IS CLEAR
3 THAT EMPLOYEES WHO ARE SUBJECT TO COLLECTIVE BARGAINING
4 AGREEMENTS MAY MAINTAIN, NONETHELESS, ACTIONS UNDER STATE
5 LAW FOR WRONGFUL DISCHARGE BASED UPON VIOLATION OF STATE
6 POLICIES.

7 IN THE INSTANT ACTION, SIEU MAY TU HAS BROUGHT HER
8 ACTION BOTH ON THE BASIS OF STATE POLICIES CONCERNING
9 DISCRIMINATION BECAUSE OF AGE, RELIGION AND NATIONAL
10 ORIGINAL, AND THAT ALSO ON THE BASIS OF THE CALIFORNIA
11 PUBLIC UTILITIES CODE FOUND IN SECTION 453 THAT PROVIDES
12 THAT NO PUBLIC UTILITY, AS A RAILROAD IS DESCRIBED AS A
13 PUBLIC UTILITY, SHALL SUBJECT ANY PERSON TO ANY PREJUDICE
14 OR DISADVANTAGE.

15 IN ADDITION, SHE HAS BROUGHT THE ACTION BASED UPON
16 THE WHISTLEBLOWER PROVISION CONCERNING AS THE STATE'S
17 CLEAR INTEREST TO SEE THAT ITS CRIMINAL LAWS ARE ENFORCED
18 AND IT IS ALSO IN THE INTEREST OF THE STATE TO SEE THAT
19 THE EMPLOYER'S POLICIES ARE ENFORCED.

20 AND THERE'S A QUESTION HERE. SHE WAS A CHIEF CLERK
21 IN CHARGE OF AUDITING FOR EXPENSE ACCOUNT STATEMENTS OF
22 OFFICERS OF THE CORPORATION. AND IT HAS BECOME CLEAR
23 THAT ANOTHER REASON THAT SHE WAS DISCHARGED WAS BECAUSE
24 SHE PERSEVERED IN INSISTING THAT THOSE OFFICERS ACCOUNT
25 FOR THEIR TRAVEL EXPENSES AND PETTY CASH EXPENSES.

1 BUT, IN ANY EVENT, THE CASE OF PAIGE VERSUS HENRY J.
2 KAISER ESTABLISHES THAT JUST BECAUSE A PERSON BELONGS TO
3 A UNION, WHICH HAS ENTERED COLLECTIVE BARGAINING
4 AGREEMENTS, DOES NOT PREEMPT STATE COURT ACTIONS FOR
5 WRONGFUL TERMINATION.

6 IN THIS CASE, THERE IS NO REQUIREMENT TO INTERPRET
7 THE COLLECTIVE BARGAINING AGREEMENT. THIS CASE IS BASED
8 UPON A SIMPLE ONE-PAGE DOCUMENT WHEREIN THE EMPLOYER
9 PROMISED THAT THERE WILL ALWAYS BE A JOB FOR THIS
10 PARTICULAR EMPLOYEE, WHICH THEY ABRIDGED.

11 AND IN ABRIDGING IT HAVE CAUSED HER EMOTIONAL
12 DISTRESS AND HER HUSBAND, THE LOSS OF CONSORTIUM, BOTH OF
13 WHICH ARE STATE TORT ACTIONS, AS WELL AS BEING BY VIRTUE
14 OF THAT ONE-PAGE DOCUMENT WAS A WRONGFUL TERMINATION
15 CALLING IN THE STATE POLICIES.

16 THE CASE IS ATELLIS VERSUS PG&E, WHICH ATELLIS IS AT
17 817 FEDERAL REPORTER 536. IT'S A 1987 DECISION. IT
18 CLEARLY ESTABLISHES THAT EMPLOYEES' CLAIMS AGAINST
19 EMPLOYERS FOR DEFAMATION OF INTENTIONAL INFLICTION OF
20 EMOTIONAL STRESS AND NEGLIGENT INFLICTION OF EMOTIONAL
21 DISTRESS WERE NOT PREEMPTED BY FEDERAL LABOR LAW WHERE
22 THE COMPLAINT ITSELF DID NOT RAISE THE ISSUE CONCERNING
23 THAT MATTER.

24 CLEARLY THE EXISTENCE OF A LABOR CONTRACT IN THIS
25 PARTICULAR CASE THE EMPLOYEES WENT TO THEIR LABOR

STB FD-30400 (SUB 21) 7-28-92 COMPLAINT VOL I 6 OF 10

1 REPRESENTATIVE BEFORE DECIDING TO FILE THEIR STATE COURT
2 ACTION, AND THE COURT IN THE ATELLIS CASE SAYS THAT THEY
3 PROPERLY FILED IN THE STATE COURT ACTION AND THE MATTER
4 SHOULD HAVE BEEN REMANDED TO THE STATE COURT.

5 THEN ALSO IN ALPHA BETA VERSUS SUPERIOR COURT, 160
6 CAL. AP. 3d. 1049. CALIFORNIA'S COURT HAS HELD THAT A
7 LEGITIMATE TORT COMPLAINT AGAINST AN EMPLOYER FOR
8 EMOTIONAL DISTRESS FALLS OUTSIDE THE SCOPE OF THE NLRA,
9 AND MAY BE MAINTAINED EVEN THOUGH IT IMPLICATES A
10 COLLECTIVE BARGAINING AGREEMENT BETWEEN THE EMPLOYEES'
11 UNION AND THEIR EMPLOYER.

12 NOW, THE FEDERAL COURT HERE, THE QUESTION IS: IS THE
13 COLLECTIVE BARGAINING AGREEMENT SO MUCH A PART OF THE
14 CLAIM AS TO PREEMPT THE STATE LAW?

15 AND I SUGGEST TO THE COURT THAT IT IS THE ONE-PAGE
16 CONTRACT WHICH GOES BEYOND THE COLLECTIVE BARGAINING UNIT
17 AND AS A PRIVATE AGREEMENT IS THE AGREEMENT SUED UPON BY
18 THE PLAINTIFF HEREIN.

19 THE COURT: SO YOUR POINT IS THE REMOVAL IS IMPROPER?

20 MR. KUBBY: YES, YOUR HONOR.

21 AND, WELL, -- AND THAT CERTAINLY IT COULD NOT BE
22 DISMISSED BY THIS COURT. EITHER THE COURT HAS TO DENY
23 THE MOTION FOR DISMISSAL OR -- AND REMOVE IT TO THE STATE
24 COURT. WHETHER OR NOT I NEED TO BRING A FURTHER MOTION,
25 A SECOND MOTION FOR REMOVAL, I GUESS, IS IN ISSUE. I

1 DON'T KNOW. IT'S BEEN SUGGESTED.

2 THE COURT: I'M NOT QUITE SURE I UNDERSTAND WHAT
3 YOU'RE SAYING.

4 MR. KUBBY: WELL, I'M SAYING --- THE MOTION BEFORE THE
5 COURT TODAY IS A MOTION TO DISMISS.

6 THE COURT: CORRECT.

7 MR. KUBBY: I THINK THE MOTION TO DISMISS IS NOT
8 PROPER FOR ALL THE REASONS STATED.

9 THE COURT: YOU MEAN BECAUSE IT SHOULDN'T BE HERE IN
10 THE FIRST PLACE?

11 MR. KUBBY: IT SHOULDN'T BE HERE IN THE FIRST PLACE.

12 THE COURT: ALL RIGHT. FINE.

13 MR. BLOCK?

14 MR. BLOCK: SPEAKING TO THE REMOVAL ISSUES, YOUR
15 HONOR, WE CITE IN OUR REPLY BRIEF THE NEWLY-AMENDED
16 REMOVAL STATUTE AT 28 USC, SECTION 1441, SUBSECTION E,
17 AND THAT ABOLISHED THE DERIVATIVE JURISDICTION DOCTRINE
18 UPON WHICH MR. KUBBY IS RELYING IN CONTESTING THE REMOVAL
19 AND CONTESTING THIS COURT'S POWER TO ENTERTAIN
20 DEFENDANTS' MOTION TO DISMISS.

21 THAT AMENDED STATUTE ALLOWS THE FEDERAL COURT TO
22 ASSUME JURISDICTION OVER A CLAIM REMOVED FROM STATE COURT
23 EVEN WHERE THE STATE COURT LACKED JURISDICTION AND TO
24 DETERMINE THE REMOVED CLAIM ON ITS MERITS.

25

1 SO. IN THE DEFENDANTS' VIEW REMOVAL IS PROPER. THIS
2 COURT HAS JURISDICTION TO ENTERTAIN THIS CASE ON THE
3 DEFENDANTS' MOTION AND TO DISMISS IT IF, INDEED,
4 DEFENDANTS ARE CORRECT THAT EXCLUSIVE JURISDICTION OF
5 MRS. TU'S COMPLAINT RESTS WITH THE ARBITRATION BOARD.

6 AS TO THE CASES MR. KUBBY CITED, IT'S VERY HARD FOR
7 ME TO SPEAK TO THOSE BECAUSE HE DID NOT CITE ANY OF THEM
8 IN HIS OPPOSITION PAPERS. I CANNOT SPEAK TO THE FACTUAL
9 SITUATIONS IN THOSE CASES. I BELIEVE MOST, IF NOT ALL OF
10 THEM, DEAL WITH PREEMPTION UNDER SECTION 301 OF THE LABOR
11 MANAGEMENT RELATIONS ACT. WHEREAS IN THIS CASE WE HAD A
12 CLAIM OF PREEMPTION BY THE RAILWAY LABOR ACT. THOSE ARE
13 TWO VERY DISTINCT STATUTES. IN SOME RESPECTS THEY ARE
14 ANALOGOUS AND IN OTHERS THEY ARE NOT.

15 ONE RESPECT IN WHICH THEY ARE NOT ANALOGOUS IS THE
16 SCOPE OF PREEMPTION. THE SUPREME COURT IN THE ANDREWS
17 CASE CITED IN DEFENDANTS' OPENING PAPERS NOTED THAT THE
18 PREEMPTIVE SWEEP OF THE RAILWAY LABOR ACT IS MUCH BROADER
19 THAN THAT OF SECTION 301, BECAUSE THE DUTY TO CONCILIATE,
20 MEDIATE, ARBITRATE EMPLOYMENT-RELATED DISPUTES IN THE
21 RAILWAY FIELD APPLIES FROM THE STATUTE ITSELF RATHER THAN
22 FROM THE TERMS OF ANY COLLECTIVE BARGAINING AGREEMENT
23 ENTERED INTO BETWEEN THE PARTIES.

24 FINALLY, I WOULD ADD, YOUR HONOR, THAT THIS IS NOT A
25 CASE IN WHICH MRS. TU IS WITHOUT ANY REMEDY. SHE SIMPLY

1 HAS PURSUED THE WRONG REMEDY BY SUING THE DEFENDANT
2 RAILROADS IN STATE COURT.

3 HER PROPER REMEDY WOULD BE TO ARBITRATE HER LAYOFF
4 BEFORE THE NATIONAL RAILROAD ADJUSTMENT BOARD.

5 ALTERNATIVELY, SHE COULD HERSELF SUE THE RAILROAD FOR
6 A BREACH OF THE COLLECTIVE BARGAINING AGREEMENTS IF SHE
7 CAN PLEAD AND PROVE THAT HER UNION BREACHED ITS DUTY OF
8 FAIR REPRESENTATION AND THEREBY ESCAPE HER DUTY TO
9 ARBITRATE.

10 I THINK IT'S TOO LATE AT THIS POINT FOR HER TO PURSUE
11 THE DUTY OF FAIR REPRESENTATION REMEDY. HOWEVER, THE
12 ARBITRATION REMEDY MAY STILL BE OPEN TO HER.

13 IN ANY EVENT, BY GRANTING DEFENDANTS' MOTION, YOUR
14 HONOR, YOU ARE NOT DEPRIVING THESE PLAINTIFFS OF A
15 REMEDY. YOU ARE SIMPLY DIRECTING THEM TO FOLLOW THE
16 PROPER COURSE FOR RESOLVING THEIR CLAIMS AS DIRECTED BY
17 CONGRESS IN THE RAILROAD LABOR ACT.

18 THE COURT: DO YOU HAVE A BRIEF RESPONSE TO THAT, MR.
19 KUBBY?

20 MR. KUBBY: YES, YOUR HONOR.

21 QUITE HONESTLY, I AM CONFUSED. THE REPLY BRIEF OF
22 THE DEFENDANTS TO MY BRIEF RAISES THIS QUESTION ABOUT 29
23 USC 1441(E) AND THEY TAKE THE POSITION THAT MY POSITION
24 IS THAT THE STATE COURT DOES NOT HAVE JURISDICTION. I
25 DON'T UNDERSTAND THE ARGUMENT.

1 I MEAN, IT IS MY POSITION THAT THE STATE COURT HAS
2 JURISDICTION AND THAT'S WHERE THIS MATTER BELONGS. AND
3 THE LANGUAGE OF SECTION (E) REQUIRES THAT THE STATE COURT
4 FROM WHICH THE CIVIL ACTION IS REMOVED DOES NOT HAVE
5 JURISDICTION OVER THAT CLAIM.

6 I MEAN, THERE IS NO CLAIM BEING MADE ON THE FACE OF
7 THE COMPLAINT OVER WHICH THE STATE COURT DID NOT HAVE
8 JURISDICTION.

9 THE COURT: THAT'S WHAT WE DECIDED BEFORE.

10 MR. KUBBY: YES.

11 THE COURT: IN TERMS OF PROPER REMOVAL IN A CASE OF A
12 CAUSE OF ACTION, SO WE ALREADY DECIDED THAT. YOU MADE
13 THE POINT BEFORE THAT REMOVAL WAS IMPROPER. THE COURT
14 HAD ALREADY RULED ON THAT.

15 IN ESSENCE, WHAT WE'RE DOING IS REEVALUATING THAT
16 RULING.

17 YOUR POINT HERE IS THAT THE CASE SHOULD NOT BE HERE
18 IN THE FIRST PLACE AND SHOULD BE REMANDED.

19 MR. KUBBY: THAT IS ONE OF MY POINTS, BUT THE POINT
20 IS THAT THERE IS NO PROPER SHOWING FOR DISMISSAL -- FOR
21 DISMISSAL IS ---

22 THE COURT: DISMISSAL IS -- IT'S PROPER HERE. THE
23 CASE IS HERE AFTER REMOVAL THE COURT HAS THE POWER TO
24 DEAL WITH THE CASE IN TERMS OF THE COMPLAINTS BROUGHT
25 BEFORE IT. IF THE COMPLAINT IS SUCH THAT THE REMEDY IS

1 ARBITRATION. THE COURT SHOULD DISMISS IT.

2 MR. KUBBY: WELL, THE QUESTION OF ARBITRATION IN THE
3 CASE WAS, IN FACT, ARBITRATED.

4 I MEAN, IF ONE WAS RELYING PURELY ON THE COLLECTIVE
5 BARGAINING AGREEMENT, THE CASE DID GO THROUGH ARBITRATION
6 AND THE PLAINTIFF JUST LEARNED OF THE FACT OF THE
7 DECISION, BOTH OF THE ARBITRATION AND OF THE FACT THAT
8 THE DECISION IN JANUARY OF THIS YEAR.

9 SO THAT IF THE COURT WERE GOING TO GRANT THE MOTION
10 TO DISMISS, IT SHOULD NOT BE WITHOUT A RIGHT OF THE
11 PLAINTIFF TO AMEND ITS COMPLAINT FOR PURPOSES OF ALLEGING
12 BREACH OF FAIR DEALING BY THE UNION.

13 APPARENTLY WHAT HAPPENED WAS THE UNION, NEGOTIATING
14 TO BUY THE RAILROAD, FAILED TO PRESENT ANY EVIDENCE AT
15 THE ARBITRATION HEARING OTHER THAN THE CONTRACTS AND SOME
16 NEWSPAPER ARTICLES. IT DID NOT CONSULT WITH THE
17 PLAINTIFF, IT DID NOT SEEK TO KNOW WHAT HER BASIS OF HER
18 CLAIM WAS. IT DID NOT SEEK TO PROTECT HER RIGHTS.

19 AND WHEREAS, THE RAILROAD PUT IN EVIDENCE CONCERNING
20 DECREASE IN BUSINESS UNDER THE COLLECTIVE BARGAINING
21 AGREEMENT THE UNION FAILED TO MEET ANY OF THAT. THE
22 PLAINTIFF HAD EVIDENCE --

23 THE COURT: BRIEFLY.

24 MR. KUBBY: I MEAN, IT'S A ---
25

1 THE COURT: THAT CASE IS THE SAME THING YOU WERE
2 SAYING BEFORE. IS THAT IF I'M LOOKING AT THIS IN TERMS OF
3 WHETHER OR NOT IT BEING DISMISSED, I LOOK AT THE
4 COMPLAINT AND I DON'T LOOK AT WHAT HAPPENED, ARBITRATION.
5 I THINK IT'S -- WHAT APPEARS TO BE PROPERLY REMOVED
6 COMPLAINT THAT IS SUBJECT TO ARBITRATION ON ITS FACE AND
7 ALSO SOME OF YOUR CLAIMS SEEM TO BE, IN ESSENCE, STATE
8 CLAIMS.

9 AND YOUR FOURTH CLAIM, FOR EXAMPLE, IS A LITTLE HARD
10 TO FIGURE OUT WHAT IT IS AS TO WHETHER OR NOT YOU'RE
11 STATING A STATE CAUSE OF ACTION OR A FEDERAL CAUSE OF
12 ACTION. IT MAY BE THAT SOMEWHERE IN THAT CLAIM IS A
13 FEDERAL CAUSE OF ACTION. I CAN'T FIND IT RIGHT NOW.

14 I SEE IT AS A STATE CAUSE OF ACTION. I THINK THAT'S
15 WHAT YOU'RE TRYING TO DO.

16 SO I THINK WHAT WE'RE GOING TO DO IS THE MOTION IS
17 GOOD IN TERMS OF DISMISSAL, BUT I THINK THAT THERE ARE
18 ENOUGH OUT THERE THAT I'LL GIVE YOU LEAVE TO AMEND, BUT
19 MAKE SURE WE KNOW WHERE WE ARE IN REFERENCE TO THIS AND I
20 DON'T KNOW WHERE YOU ARE IF YOU'RE DISCUSSING THIS WITH
21 REFERENCE TO THE REMEDY OF ARBITRATION.

22 SO, I AM GOING TO GRANT THE MOTION TO DISMISS. I AM
23 GOING TO GIVE YOU 30 DAYS LEAVE TO AMEND.

24 MR. BLOCK: MAY I SPEAK TO THE ISSUE OF LEAVE TO
25 AMEND, YOUR HONOR?

1 THE COURT: YES.

2 MR. BLOCK: VERY BRIEFLY, AS FAR AS THE PREEMPTION OF
3 THESE CLAIMS BY THE RAILWAY LABOR ACT DEFENDANTS HAVE
4 BROUGHT A MOTION FOR SUMMARY JUDGMENT. THAT IS WHAT MY
5 DECLARATION OF MATERIALS ATTACHED TO IT WENT TO AND IT
6 WAS NECESSARY TO BRING SUMMARY JUDGMENT IN ORDER TO BRING
7 THE COLLECTIVE BARGAINING AGREEMENTS INTO EVIDENCE.

8 SO, THE PROPER COURSE IN THE DEFENDANTS' VIEW AT THIS
9 POINT WOULD BE TO GRANT THE MOTION FOR SUMMARY JUDGMENT,
10 ENTER JUDGMENT FOR THE DEFENDANTS AND THAT WOULD
11 PRECLUDE LEAVE TO AMEND.

12 IF MR. KUBBY WISHES TO REFILE IN A STATE COURT SOME
13 SORT OF ACTION THAT WOULD BE AN OPTION OPEN TO HIM.

14 THE COURT: PERHAPS HE CAN DO THAT ALSO. I AM NOT AT
15 ALL SURE THAT I'M SATISFIED THAT IT IS APPROPRIATE AT
16 THIS POINT TO GRANT SUMMARY JUDGMENT ON ALL THE CLAIMS
17 THAT ARE HERE, SO THAT I AM NOT GOING TO GRANT THAT.

18 I'M GRANTING THE MOTION TO DISMISS AND THAT LEAVES
19 OPEN ANY NUMBER OF FUTURE CLAIMS OF SCENARIOS, BUT I
20 DON'T KNOW WHAT THEY ARE, BUT I THINK IT IS BEST IN TERMS
21 OF WHAT I SEE IN TERMS OF THE COMPLAINT'S THAT HERE, AND
22 THAT'S LEAVE TO DISMISS BUT I WILL GIVE 30 DAYS LEAVE TO
23 AMEND.

24 SEE, WHAT WE ARE -- THAT DOESN'T FORECLOSE ANYTHING
25 THAT HAPPENS IN THE FUTURE. IT MAY VERY WELL BE IF

1 SUMMARY JUDGMENT IS WHERE WE ARE. BUT I DON'T THINK IT'S
2 APPROPRIATE NOW.

3 MR. BLOCK: THANK YOU, YOUR HONOR.

4 THE COURT: SO AS I SAID, THE MOTION WILL BE GRANTED
5 WITH 30 DAYS LEAVE TO AMEND.

6 MR. KUBBY: THANK YOU, YOUR HONOR.

7 THE CLERK: YOUR HONOR, WILL THE COURT PREPARE AN
8 ORDER?

9 THE COURT: YES. WE'LL PREPARE AN ORDER.

10 (WHEREUPON, THE ABOVE PROCEEDINGS CONCLUDED AT 10:33
11 A.M. OF THE SAME DAY.)

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McLAUGHLIN AND IRVIN
SAN FRANCISCO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WILLIAM L

CLERK

SIEU MEI TU AND JOSEPH Z. TU,)
)
Plaintiffs,)
)
v.)
)
SOUTHERN PACIFIC TRANSPORTATION)
COMPANY, et al.,)
)
Defendants.)

C 87 1198 DLJ

ORDER

Defendants brought this motion on April 6, 1988 to dismiss, or in the alternative, for summary judgment. For the following reasons, this Court grants the motion to dismiss with leave to amend.

Plaintiff originally brought this wrongful termination lawsuit in state court, alleging that defendants fired her in violation of a promise of full employment or salary until she turned 65. Defendants properly removed to federal court on the grounds of federal preemption. In September 1987, this Court denied plaintiff's motion to remand, finding that the complaint implicated a collective bargaining agreement covered by the Railway Labor Act, 45 U.S.C. §151 et. seq.

The Railway Labor Act establishes that any "minor disputes" must be referred to the National Railroad Adjustment Board for final and binding arbitration. 45 U.S.C. §153, Lewy v. Southern Pacific Transp. Co., 799 F.2d 1281, 1290 (9th Cir. 1986). Wrongful termination is deemed to be a "minor dispute".
Id.

1 Accordingly, on its face, plaintiffs' first and second
2 causes of action, for wrongful termination, establish a claim
3 which must be referred to the National Railroad Adjustment
4 Board for final and binding arbitration.

5 Plaintiffs' fourth and fifth causes of action, for
6 discrimination and loss of consortium, are pendent state
7 claims. This Court declines to exercise its pendent
8 jurisdiction.

9 Accordingly, this Court GRANTS defendants' motion to
10 dismiss. Plaintiffs are granted leave to amend the complaint
11 to state a federal cause of action. Such amendment must be
12 filed with the Court within thirty (30) days of this Order.

13 IT IS SO ORDERED.

14 Dated: April 6, 1988.



D. Lowell Jensen
United States District Judge

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LEE J. KUBBY, INC.
A PROFESSIONAL CORPORATION
755 Page Mill Road, Suite A180
Palo Alto, CA. 94304

Telephone: 415 856-3505
Attorney for Plaintiffs

**ORIGINAL
FILED**

JUN 29 1988

**WILLIAM L. WHITTAKER
CLERK, U. S. DIST. COURT
SAN FRANCISCO**

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

SIEU MEI TU AND JOSEPH Z. TU,)
)
Plaintiffs,)
)
v.)
)
SOUTHERN PACIFIC TRANSPORTATION)
COMPANY, ET AL.,)
)
Defendants.)

Case No. C 87 1198DLJ

**SUPPLEMENTAL DECLAR-
ATION MOTION TO DIS-
MISS OPPOSITION**

Date: June 29, 1988

Time: 10:00 A. M.
Court: Court No. 3

LEE J. KUBBY DECLARES:

1. Declarant is an attorney at law authorized to practice before all the courts of the State of California, and represents the plaintiffs herein.

2. In the course of representing plaintiffs herein, declarant received the letters attached hereto as Exhibits A, B, and C shortly after the date of each of said letters.

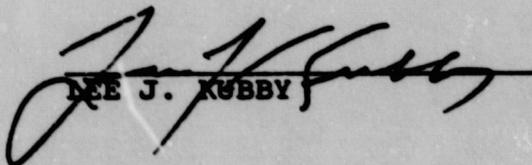
3. At no time prior to January 4, 1988 has declarant or his clients received any documentation exhibiting the nature of the claim made by "BRAC" nor any report of the status of any such proceedings, so that January 4, 1988, was the first date that

1 Plaintiff Sieu Mei Tu received notice of the failure of BRAC to
2 fairly represent said Plaintiff regarding her rights under the
3 collective bargaining agreements between her employer and her
4 union.

5 4. If called as a witness Declarant could competently testify to
6 the foregoing.

7 5. I declare under penalty of perjury that foregoing is true and
8 correct.

9 Executed on June 28, 1988 at Palo Alto, California.

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Southern Pacific Transportation Company

Southern Pacific Building - One Market Plaza
San Francisco, California 94105
(415) 541-1000

JOHN J. CORRIGAN
GENERAL SOLICITOR

JOHN MACDONALD SMITH
RICHARD S. KOPF
SENIOR GENERAL ATTORNEYS

ROBERT S. BOGASON
DOUGLAS E. STEPHENSON
MICHAEL A. SMITH
LOUIS P. WARCHOT
GREG CUNNINGHAM
WILLIAM E. SAUL
STUART E. VAUGHN
ANN FINGARETTE MASSE
DAVID W. LONG
CAROL A. HARRIS
CRAIG J. WHITNEY
GENERAL ATTORNEYS

HAROLD S. LENTZ
GARY A. LAAKSO
JONATHAN M. PIL
DORENE M. CURTIS
STEPHEN A. ROBERTS
ASSISTANT GENERAL ATTORNEYS

LAWRENCE P. RIPP
CLAUDE F. HOLM
ATTORNEYS

WRITER'S DIRECT DIAL NUMBER

(415) 541-1785

THORMUND A. MILLER
VICE PRESIDENT AND GENERAL COUNSEL

November 7, 1985

Lee J. Kubby, Esq.
2390 El Camino Real
One Hundred Ten
Palo Alto, CA 94306

Dear Mr. Kubby:

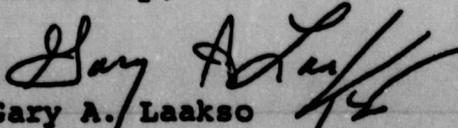
Re: Mrs. Sieu-Mei Tu

I have been asked to reply to your letter of October 18, 1985. As you are no doubt aware, Mrs. Tu's claim under the collective bargaining agreement has been already made by her union, the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees ("BRAC"). Her claim is now being handled under the Railway Labor Act ("RLA") procedures.

Mrs. Tu has been furloughed due to a decline in business at Pacific Fruit Express Company ("PFE"). The adjustment process under the RLA will resolve the dispute on the nature of PFE's action.

We reject categorically your characterization of PFE's action and expect to be vindicated under the RLA process. Rest assured that Mrs. Tu will receive all that she is entitled to by that process.

Sincerely,


Gary A. Laakso

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Representing Employees of
Southern Pacific Transportation Company
Pacific Fruit Express Company
Northwestern Pacific Railroad
Pacific Motor Trucking Company
Harbor Belt Line Railroad

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SYSTEM BOARD OF ADJUSTMENT No. 94

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

AFL-CIO

SUITE 1000 PHELAN BLDG. - PHONE (415) 989-9986
700 MARKET STREET, SAN FRANCISCO, CALIFORNIA 94102

R. B. BRACKBILL, General Chairman
C. I. FROST, General Secy-Treasurer
S. B. STEEVES, Vice General Chairman
W. D. MARTIN, Chairman Board Trustees
D. D. DEHART, Member Board Trustees
E. D. BAKER, Member Board Trustees

1 Refer to
File No. Lodge 504 PFE

January 28, 1986

Mr. Lee J. Kubby
2390 El Camino Real
One Hundred Ten
Palo Alto, California 94306

Dear Sir:

Reference your letter of January 20, 1986 to Mr. J. M. Balovich relative to matter you are handling in behalf of B.R.A.C. member Mrs. Tu.

Your letter was addressed to Mr. Balovich at 100 Valley Drive, Brisbane, California 94005, a building that is closed. Your letter was forwarded to SPTCO, One Market Plaza, SPTCO Headquarters, and finally to me. Let me assure you, Mr. Kubby, that B.R.A.C. is progressing a claim in accordance with the PFE/B.R.A.C. Agreement in behalf of Mrs. Tu and all other B.R.A.C. PFE clerical employes affected by PFE Management decision to close the Brisbane PFE office.

Any further communication in regard to Mrs. Tu's relationship with the Pacific Fruit Express Company should be directed to my office.

Yours very truly,

R. B. Brackbill

cc: Mrs. Sue-Mai Tu
1697 Hickery Avenue
San Leandro, Ca. 94579

Exhibit B

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BEFORE: THE HONORABLE D. LOWELL JENSEN, JUDGE

SIEU MEI TU AND JOSEPH Z. TU,)

PLAINTIFFS,)

VS.)

SOUTHERN PACIFIC TRANSPORTATION,)
ET AL.,)

DEFENDANTS.)

NO. C-87-1198 DLJ

SAN FRANCISCO, CALIFORNIA
WEDNESDAY, JUNE 29, 1988

APPEARANCES:

FOR PLAINTIFFS:

LEE J. KUBBY, ESQ.
A PROFESSIONAL CORPORATION
755 PAGE MILL ROAD, SUITE A180
PALO ALTO, CA 94304

FOR DEFENDANTS:

KEVIN P. BLOCK, ESQ.
MC LAUGHLIN AND IRVIN
100 PINE STREET, SUITE 770
SAN FRANCISCO, CA 94111-5109

JOSEPH O. COSTELLO, ESQ.
ONE SANTA FE PLAZA
5200 E. SHEILA STREET
LOS ANGELES, CA 90040

REPORTED BY: VIVIAN PELLA BALBONI
OFFICIAL COURT REPORTER, USDC

2 1 WEDNESDAY, JUNE 29, 1988

2
3 P R O C E E D I N G S

4
5 THE CLERK: CALLING CIVIL MATTER 87-1198, SIEU TU
6 VERSUS SOUTHERN PACIFIC TRANSPORTATION, ET AL.

7 COUNSEL, PLEASE COME FORWARD AND STATE THEIR
8 APPEARANCES.

9 MR. BLOCK: GOOD MORNING, YOUR HONOR.

10 KEVIN BLOCK FOR DEFENDANT SOUTHERN PACIFIC AND
11 PACIFIC FRUIT EXPRESS COMPANY.

12 MR. COSTELLO: GOOD MORNING, YOUR HONOR.

13 JOSEPH COSTELLO FOR DEFENDANTS SANTA FE SOUTHERN
14 PACIFIC CORPORATION AND THE ATCHISON, TOPEKA AND SANTA FE
15 RAILWAY COMPANY.

16 MR. KUBBY: GOOD MORNING, YOUR HONOR.

17 LEE KUBBY FOR THE PLAINTIFFS.

18 THE COURT: OKAY. THIS IS A MOTION TO DISMISS
19 THE FIRST AMENDED COMPLAINT. I DON'T KNOW WHICH ONE OF
20 YOU WANTED TO ADDRESS IT FIRST. IF YOU'D LIKE GO AHEAD.

21 MR. COSTELLO: YOUR HONOR, JOSEPH COSTELLO ON
22 BEHALF OF SOUTHERN PACIFIC AND SAINT FE RAILWAY COMPANY.

23 YOUR HONOR, THIS CASE WAS PENDING FOR OVER TWO
24 YEARS AND OVER 200 DAYS. I WON'T GO INTO RULE 4J. I
25 WOULD GO INTO THE AREA OF 49 USC SECTION 11347.

1 YOUR HONOR, THIS MERGER PROCEEDING OF THE TWO
2 RAILROADS WAS PENDING BEFORE THE INTERSTATE COMMERCE
3 COMMISSION WHO ISSUED MANY ORDERS, ONE OF WHICH WAS THAT
4 THE SOUTHERN PACIFIC TRANSPORTATION COMPANY WOULD BE RUN
5 AND HELD IN TRUST. THERE WERE VARIOUS ORDERS AS TO THE
6 PROHIBITING OF COMMUNICATIONS BETWEEN THE COMPANIES EXCEPT
7 ON A LIMITED BASIS, AND IF MR. KUBBY'S CLIENTS HAVE SOME
8 ALLEGATION THAT THE COMPANY'S VIOLATED THOSE ORDERS OF THE
9 ICC IT'S OUR POSITION THAT THAT IS AN IMPROPER FORUM.

10 THANK YOU.

11 THE COURT: ALL RIGHT. MR. BLOCK, DO YOU WISH TO
12 RESPOND?

13 MR. BLOCK: AS AGAINST DEFENDANT SOUTHERN PACIFIC
14 AND PACIFIC FRUIT EXPRESS COMPANY, YOUR HONOR, THIS IS AN
15 ACTION FOR WRONGFUL DISCHARGE.

16 MRS. TU WAS FURLOUGHED, LAID OFF DUE TO A SEVERE
17 DECLINE IN BUSINESS ON THE PART OF PFE, PFE IS A
18 REFRIGERATED RAILCAR SHIPPER AND HAS EXPERIENCED
19 COMPETITION FROM THE TRUCKING INDUSTRY WHICH HAS LEAD INTO
20 A LAYOFF OF MANY, MANY OF ITS EMPLOYEES AND, IN FACT,
21 CLOSED THE BRISBANE OFFICE WHERE THE PLAINTIFF WORKED.

22 SHE HAS ATTEMPTED TO SUE UNDER STATE LAW FOR
23 WRONGFUL DISCHARGE, ALTHOUGH SHE WAS A MEMBER OF THE
24 BROTHERHOOD OF RAILWAY CLERKS, A RAILROAD UNION AND WAS
25 COVERED BY AT LEAST THREE COLLECTIVE BARGAINING

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1 AGREEMENTS.

2 IT IS OUR POSITION THAT HER CLAIMS ARE PREEMPTED
3 UNDER THE RAILWAY LABOR ACT.

4 ON OUR MOTION TO DISMISS THE ORIGINAL COMPLAINT,
5 YOUR HONOR ISSUED AN ORDER DATED APRIL 6. MY READING OF
6 THAT ORDER IS THAT IT FINDS THE WRONGFUL TERMINATION
7 CLAIMS INDEED PREEMPTED. AND SO WE'RE BACK HERE TODAY
8 ESSENTIALLY MAKING THE SAME ARGUMENTS AS BEFORE.

9 THE COURT: OKAY. MR. KUBBY.

10 MR. KUBBY: IF THE COURT PLEASE, THE QUESTION OF
11 THE ICC FOR THE CONSOLIDATED RAILROADS ISSUE THE
12 CONSPIRACY AND THE TORTS COMMITTED AGAINST MRS. TU ALL
13 OCCURRED PRIOR TO ANY ORDER BEING ISSUED BY THE ICC, SO
14 THEREFORE, THE CONSOLIDATED RAILROADS CRY THAT MRS. TU
15 SHOULD BE BEFORE THE ICC I THINK IS WITHOUT MERIT.

16 ON THE ISSUE THAT WAS FILED THIS MORNING, A
17 SUPPLEMENTAL DECLARATION CONCERNING THE STATUTE OF
18 LIMITATIONS ISSUES WHICH I WOULD SUBMIT TO THE COURT WOULD
19 SHOW THAT SOUTHERN PACIFIC AND PFE AND THE UNION ALL
20 ADVISED MRS. TU THAT THERE WAS A PROCEEDING PENDING UNDER
21 THE RAILWAY LABOR ACT.

22 THE POSITION OF SOUTHERN PACIFIC PFE THAT THE
23 STATUTE HAD RUN ON HER CAUSES OF ACTION IS WITHOUT MERIT
24 BECAUSE THE FIRST KNOWLEDGE THAT MRS. TU HAD OF EITHER THE
25 CLAIMS BEING MADE BY THE UNION OR THE RESULTS OF THAT

1 ARBITRATION DID NOT OCCUR UNTIL JANUARY OF THIS YEAR. AND
2 SO, THEREFORE, THAT COMMENCED THE RUNNING OF THE STATUTE
3 OF LIMITATIONS BRINGING THE UNION IN AS A PARTY AND THE
4 AMENDED COMPLAINT WAS FILED IN APRIL SO IT'S WELL WITHIN
5 THE SIX-MONTH PERIOD.

6 THE IMPORTANT CONSIDERATION HERE IS THAT MRS. TU
7 IS NOT SEEKING -- HAD NOT SOUGHT ON HER ORIGINAL COMPLAINT
8 ENFORCEMENT OF PROVISIONS OF THE COLLECTIVE BARGAINING
9 AGREEMENT. THE ACTION WAS ON A PRIVATE CONTRACT WHICH WAS
10 ATTACHED AS EXHIBIT A TO THE AGREEMENT AND FOR THE
11 SPECIFIC TORTS OF DISCRIMINATION BECAUSE OF RACE, SEX,
12 NATIONAL ORIGIN AND RETALIATION FOR DOING HER JOB TOO
13 WELL.

14 THE DEFENDANTS HAVE NEVER OFFERED TO THIS COURT
15 ANY SPECIFICATION AS TO HOW THE COLLECTIVE BARGAINING
16 AGREEMENT IS NECESSARILY IMPLICATED IN THE TORT AND
17 PRIVATE CONTRACT ACTIONS THAT MRS. TU HAS BROUGHT.

18 AND IT'S INTERESTING TO NOTE THAT PURSUANT TO THE
19 COURT'S ORDER THAT A FEDERAL CAUSE OF ACTION BE ALLEGED
20 AND THAT'S THEREFORE THE ACTION AGAINST THE UNION AND SENT
21 FORTH THE COLLECTIVE BARGAINING AGREEMENTS WERE FILED,
22 THAT THE COLLECTIVE BARGAINING AGREEMENTS ARE SPECIFICALLY
23 SUBORDINATE TO FEDERAL, STATE OR MUNICIPAL LEGISLATION SO
24 THAT THERE IS A CLEAR INTENT, THAT'S ON PAGE 41 OF EXHIBIT
25 B TO THE AMENDED COMPLAINT, SO THAT THERE IS A SPECIFIC

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PROVISION IN THE CONTRACTS WHICH MAKES THEM SUBJECT TO STATE RULES AND REGULATIONS AND ENFORCEMENT OF STATE POLICIES.

AND THE STATE POLICIES THAT ARE INVOLVED IN THIS MATTER ARE POLICIES WHICH ARE BASIC RIGHTS GRANTED BY THE STATE AND NOT NECESSARILY JUST EMPLOYMENT RIGHTS ARISING OUT OF THE COLLECTIVE BARGAINING AGREEMENTS.

IT'S INTERESTING THAT THE DEFENDANTS THIS MORNING AGAIN RETREAT TO THE CONCEPT OF FURLOUGH AS OPPOSED TO DISCHARGE. THROUGHOUT THE DISCOVERY THAT'S BEEN COMPLETED AND THE PLEADINGS THAT HAVE BEEN FILED IN THIS MATTER THERE HAS BEEN AN ADMISSION OF THE DEFENDANTS THAT SHE WAS, IN FACT, TERMINATED AND NOT FURLOUGHED. AND THE QUESTION OF WHETHER SHE WAS FURLOUGHED UNDER THE COLLECTIVE BARGAINING AGREEMENT I THINK IS A NEW STRAW MAN THAT'S BEING RAISED HERE TODAY.

SHE WAS, IN FACT, TERMINATED. HER EMPLOYMENT CEASED. AND WHAT SHE IS SEEKING -- THE QUESTION OF HER DISCHARGE UNDER THE CIRCUMSTANCES DOES NOT ARISE OUT OF THE CONTRACT BUT ARISES OUT OF THE STATE POLICIES CONCERNING THESE VARIOUS MATTERS.

SHE'S NOT SEEKING REINSTATEMENT AND RELIANCE ON THE COLLECTIVE BARGAINING AGREEMENTS, AND AS SET FORTH IN OUR MEMORANDUM HER RIGHTS ARE OUTSIDE OF THE RAILWAY LABOR ACT AND ARE NOT NECESSARILY IMPLICATED IN THE COLLECTIVE

1 BARGAINING AGREEMENT.

2 THERE IS A CASE CITED BY ME IN MY BRIEF, WOOLLEY
3 VERSUS EASTERN AIRLINES WHICH SPECIFICALLY SAYS THAT WHERE
4 A PARTY MAY HAVE TWO DIFFERENT RIGHTS, I MEAN, THEY MAY
5 HAVE A RIGHT TO PROCEED UNDER THE COLLECTIVE BARGAINING
6 AGREEMENT AND THEY MAY ALSO HAVE A RIGHT TO BRING STATE
7 LAW ACTIONS.

8 BUT WHERE THE EMPLOYEE MAKES THE DETERMINATION
9 THAT THE REDRESS THAT THEY INTEND TO SEEK IS THROUGH THE
10 STATE COURT ACTIONS AND TO TREAT THEM AND WE'RE NOT
11 LOOKING TO THE CONTRACT TO REINSTATE THEMSELVES IN THE
12 EMPLOYMENT BUT CONSIDER THEMSELVES AS DISCHARGED THAT THEY
13 MAY SUE IN COURT FOR BREACH OF CONTRACT EMPLOYEE WITHOUT
14 GOING THROUGH THE ARBITRATION PROCEEDINGS OF THE RAILWAY
15 LABOR ACT.

16 AND THERE WERE TWO CASES CITED BY THE SOUTHERN
17 PACIFIC PFE IN THEIR RESPONSE MEMORANDUM TO MINE WHICH
18 WERE ADVANCE SHEETS -- NOT EVEN ADVANCE SHEETS, THEY'RE
19 NEWSPAPER PRINTOUTS OF TWO RECENT DECISIONS WHICH, I
20 THINK, BEAR COMMENT.

21 IN THE CASE OF THE UTILITY WORKERS VERSUS
22 SOUTHERN CALIFORNIA EDISON WHICH WAS A CASE INVOLVING THE
23 QUESTION OF DRUG TESTING, THERE WAS A SPECIFIC FINDING BY
24 THE COURT THAT THE UNION HAD WAIVED THE CONSTITUTIONAL
25 RIGHTS OF THE EMPLOYEES CONCERNING THE DRUG TESTING, AND

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1 THAT THE QUESTION WAS A PREEMPTION OF SECTION 301 WITHIN
2 THE COLLECTIVE BARGAINING AGREEMENTS.

3 THE COURT ADDRESSED ITSELF TO THE ALLIS-CHALMERS
4 CASE AND STATED THAT "PREEMPTION OF STATE LAW CLAIMS IS
5 INAPPROPRIATE WHERE STATE CAUSES OF ACTION CONFER
6 NON-NEGOTIABLE STATE LAW RIGHTS ON EMPLOYEES INDEPENDENT
7 OF ANY RIGHT ESTABLISHED BY CONTRACT," AND THAT'S EXACTLY
8 WHAT WE'RE DEALING WITH HERE IN MRS. TU'S CASE, THE RIGHT
9 TO BE FREE OF HARASSMENT, EMOTIONAL DISTRESS, WHETHER
10 NEGLIGENCE OR INTENTIONALLY INFLICTED, A RIGHT NOT TO BE
11 DISCRIMINATED BECAUSE OF HER SEX, AGE, NATIONAL ORIGIN OR
12 IN RETALIATION FOR TERMINATING HER JOB. AND THE STATE LAW
13 POLICIES GOVERNING THOSE TWO MATTERS ARE VERY STRONG.

14 THE COURT ALSO IN ADDRESSING THE PAIGE VERSUS
15 HENRY J. KAISER CASE STATES THAT THE IN THE PAIGE COURT
16 FOUND THAT A "PRIVATE RIGHT OF ACTION WAS CREATED TO
17 ENFORCE THE STATE REGULATORY SCHEME NOT TO REGULATE THE
18 EMPLOYMENT RELATIONSHIP," SO THAT THERE WAS NO PREEMPTION
19 UNDER SECTION 301.

20 AND IT ALSO COMMENTED IN THE TELLEZ CASE THAT
21 TELLEZ HELD THAT SECTION 301 DOES NOT PREEMPT CLAIMS
22 ALLEGING INTENTIONAL AND NEGLIGENT INFLICTION OF EMOTIONAL
23 DISTRESS WHERE THE COLLECTIVE BARGAINING AGREEMENT IS
24 SILENT IN WORKING CONDITIONS AND VAGUE IN DISCIPLINARY
25 FORMALITIES. HERE IS THE ISSUE OF DEFENDANT'S FAILURE TO

1 SPECIFY HOW AND IN WHAT WAY THE COLLECTIVE BARGAINING
2 AGREEMENTS DEAL WITH THIS. THERE IS NO PROVISION IN THESE
3 PARTICULAR AGREEMENTS CONCERNING THESE MATTERS.

4 THE COURT: LET ME ASK YOU ABOUT THE CLAIM OF
5 UNFAIR REPRESENTATION THAT YOU'VE ADDED IN YOUR AMENDED
6 COMPLAINT. NOW, THAT CLAIM CANNOT GO AGAINST THE
7 EMPLOYER.

8 MR. KUBBY: I'M SORRY?

9 THE COURT: THAT CLAIM IS NOT AGAINST THE
10 EMPLOYER. YOUR COMPLAINT SEEMS TO MAKE IT THAT WAY.

11 DO YOU AGREE WITH THAT?

12 MR. KUBBY: IT WAS NECESSARY TO ALLEGE --

13 THE COURT: YOU ARE SUING THE UNION, AREN'T YOU?

14 MR. KUBBY: WELL, BUT ALSO TO ALLEGE THE FEDERAL
15 CAUSE OF ACTION THAT THE COURT INSTRUCTED ME TO AMEND TO.

16 THE COURT: BUT IT'S AGAINST THE UNION.

17 MR. KUBBY: WELL, THE QUESTION OF FAIR
18 REPRESENTATION MAY BE AGAINST THE UNION BUT THE QUESTION
19 OF THE BREACH OF THE CONTRACT --

20 THE COURT: BUT THE EIGHTH CAUSE OR THE EIGHTH
21 CLAIM YOU HAD WAS UNFAIR REPRESENTATION, AN ISSUE OF FAIR
22 REPRESENTATION.

23 MR. KUBBY: AND BREACH OF THE CONTRACT.

24 THE COURT: AND THAT'S AGAINST THE UNION.

25 MR. KUBBY: I BELIEVE IT ALSO ALLEGES THE BREACH

1 OF THE CONTRACT OF THE COLLECTIVE BARGAINING AGREEMENT.

2 THE COURT: IT'S EITHER A FAIR REPRESENTATION
3 CLAIM OR IT'S A CONTRACT --

4 MR. KUBBY: WELL, I THINK --

5 THE COURT: WELL, LET ME PUT IT THIS WAY:

6 TO THE EXTENT THAT YOUR PLEADING SEEMS TO SUGGEST
7 THAT YOU HAVE A FAIR REPRESENTATION CLAIM AGAINST THE
8 EMPLOYER THAT THAT'S NOT A GOOD CLAIM AND WE'LL DISMISS
9 THAT.

10 MR. KUBBY: OKAY.

11 THE COURT: AND YOUR FIRST THREE CLAIMS ARE
12 ESSENTIALLY THE CLAIMS I'VE ALREADY RULED ON AND I
13 DISMISSED THOSE EARLIER AND THOSE CLAIMS ON THE SAME KIND
14 OF REASONING ARE GOING TO BE DISMISSED. THAT REALLY
15 LEAVES US WITH PENDANT STATE CLAIMS.

16 NOW, IN THE PREVIOUS ORDER I INDICATED THAT I
17 DECLINED TO EXERCISE JURISDICTION BUT I'M GOING TO VACATE
18 THAT ORDER AND I'M GOING TO CONSIDER WHETHER OR NOT YOU'RE
19 GOING TO RETAIN THOSE CLAIMS IN SOME FASHION AFTER WE HAVE
20 DEALT WITH THE OTHERS.

21 SO WHAT YOU HAVE IS I'M GOING TO DISMISS THE
22 FIRST THREE CLAIMS AND I WILL RECONSIDER MY ORDER IN TERMS
23 OF PENDANT JURISDICTION ON STATE CLAIMS, THE SEPARATE
24 CLAIMS. YOUR CLAIM AGAINST THE EMPLOYER ON FAIR
25 REPRESENTATION IS DISMISSED. ALL RIGHT.

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1 MR. KUBBY: THAT'S ON THE EIGHTH CAUSE OF ACTION.

2 THE COURT: IT'S THE CAUSE OF ACTION AGAINST THE
3 UNION, AND AS I UNDERSTAND IT YOU HAVEN'T EVEN SERVED
4 THEM.

5 MR. KUBBY: I HAVE.

6 THE COURT: YOU HAVE.

7 MR. KUBBY: WELL, I'VE SENT THEM MAIL NOTICE AND
8 THEY'VE ASKED FOR AN EXTENSION OF TIME.

9 THE COURT: BUT THERE'S NOTHING IN THE PAPERS
10 HERE THAT INDICATES THAT THEY KNOW ABOUT IT. IF THAT'S SO
11 WE HAVE A SEPARATE ISSUE WITH A SEPARATE DEFENDANT.

12 ALL RIGHT. WHAT I'LL DO IS I'LL CONSIDER THIS
13 AND THE COURT WILL ISSUE AN ORDER. IF I'M GOING TO RETAIN
14 ANY PENDANT JURISDICTION THEN I'LL HAVE YOU BACK HERE TO
15 DISCUSS THE FURTHER TRACK ON THIS. THAT WILL NOT
16 FORECLOSE ANY FURTHER MOTION PRACTICE WITH REFERENCE TO
17 THIS. IF I RETAIN IT THEN WE'LL HAVE TO SET UP ANOTHER
18 TRACK FOR THAT. ALL RIGHT.

19 MR. KUBBY: THE COURT'S RULING IS FOUR, FIVE,
20 SIX, SEVEN AND EIGHT.

21 THE COURT: EIGHT IS DISMISSED AGAINST RAILROADS.

22 MR. KUBBY: AGAINST THE EMPLOYER.

23 THE COURT: AGAINST THE RAILROADS. IT'S ONLY
24 VALID IF IT IS VALID AGAINST THE UNION AND THAT'S
25 SOMETHING THAT WILL HAVE TO BE LITIGATED.

1 ALL RIGHT. SO WE'LL ISSUE AN ORDER THAT
2 DISMISSES THE FIRST THREE CAUSES OF ACTION AND THE EIGHTH
3 CAUSE OF ACTION AGAINST THE RAILROADS AND THEN I'LL
4 CONSIDER THE PENDANT CLAIMS AND ISSUE AN ORDER WITH
5 REFERENCE TO THAT.

6 MR. COSTELLO: YOUR HONOR, WHAT IS THE COURT'S
7 RULING AGAINST OUR RULE 4J MOTION?

8 THE COURT: IT WILL BE A PART OF THIS. I WILL
9 CONSIDER THIS IN THE MOTION ALSO.

10 MR. KUBBY: I'M SORRY, YOUR HONOR, I MISSED THAT.

11 THE COURT: HE BROUGHT UP THE 4J ISSUE. AS FAR
12 AS AGAINST THE RAILROADS IT DOESN'T MAKE ANY DIFFERENCE
13 THERE IS NO CAUSE OF ACTION WHETHER IT'S SERVED OR NOT.

14 (PROCEEDINGS CONCLUDED)

15 * * * * *

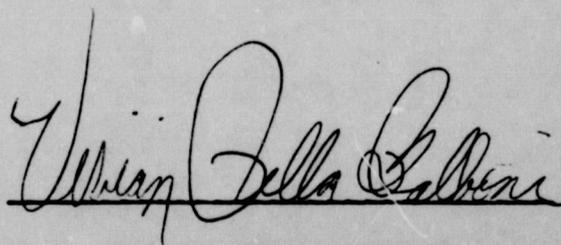
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CERTIFICATE OF REPORTER

I, VIVIAN PELLA BALBONI, THE UNDERSIGNED OFFICIAL COURT REPORTER FOR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 450 GOLDEN GATE AVENUE, SAN FRANCISCO, CALIFORNIA, DO HERESY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CONSTITUTES A FULL, TRUE AND CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS SUCH REPORTER TO THE PROCEEDINGS HEREINBEFORE ENTITLED, AND REDUCED TO TYPEWRITING TO THE BEST OF MY ABILITY.

DATED: SEPTEMBER 25, 1989

A handwritten signature in cursive script, reading "Vivian Pella Balboni", written over a horizontal line.

VIVIAN PELLA BALBONI

6/30/88

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WILLIAM L

CLERK

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SIEU MEI TU and JOSEPH Z. TU,)
Plaintiffs,)
v.)
SOUTHERN PACIFIC TRANSPORTATION,)
et al.,)
Defendants.)

C 87 1198 DLJ

ORDER

Defendants brought this motion to dismiss the First Amended Complaint. For the following reasons, this Court grants defendant's motion to dismiss the first, second, third, fifth, and seventh causes of action. Defendants The Atchison, Topeka and Santa Fe Railway Company and Santa Fe Southern Pacific Corporation are dismissed from all causes of action pursuant to Fed. R. Civ. P. 4(j). Defendant Southern Pacific Transportation Company is dismissed from the eighth cause of action. Finally, this Court vacates its April 6, 1988 Order as to the issue of pendent jurisdiction, and will exercise pendent jurisdiction over the fourth and sixth causes of action.

1. The first, second and third causes of action

In its April 6, 1988 Order, this Court held that plaintiff's causes of action for wrongful termination state a claim which must be referred to the National Railroad

1 Adjustment Board for final and binding arbitration, pursuant to
2 the Railway Labor Act. This Court granted plaintiff leave to
3 amend to state a federal cause of action.

4 The amended first, second, and third causes of action
5 still fail to state a cause of action which would give this
6 Court jurisdiction over plaintiff's claim for wrongful
7 termination. See, 45 U.S.C. §153, Lewy v. Southern Pacific
8 Transp. Co., 799 F.2d 1281, 1290 (9th Cir. 1986). Accordingly,
9 these claims are dismissed with prejudice.

10 2. The fifth cause of action

11 In the fifth cause of action, plaintiff alleges that the
12 defendant railroads conspired to merge, to cease the operation
13 of Pacific Fruit Express, and therefore to terminate plaintiff.
14 Absent more, the merger of two companies does not give rise to
15 a private federal or state action.

16 Insofar as a private cause of action might exist for
17 termination due to the aborted merger, this Court concludes
18 that it is not the proper forum for an initial determination of
19 this matter. The Interstate Commerce Commission is the
20 appropriate agency for an initial determination of any claimed
21 violation of 49 U.S.C. §11347, which provides for employee
22 protection in any rail carrier merger. See, Walsh v. United
23 States, 723 F.2d 570 (7th Cir. 1983), Engelhardt v.
24 Consolidated Rail Corp., 594 F.Supp 1157, 1164 (N.D.N.Y. 1984).

25 Accordingly, the fifth cause of action is dismissed with
26 prejudice.

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3. The fourth and sixth causes of action

Plaintiff's fourth cause of action purports to state a claim for wrongful discharge in "violation of the fundamental principles of public policy of the United States of America and the State of California...in that said termination was based on discrimination against plaintiff..." First Amended Complaint, p.10, ¶31.

This claim does not state a federal statutory claim for age or sex discrimination, nor a claim for employment discrimination under California law. In its April 6, 1988 Order, this Court construed this claim as a pendent state claim for discrimination. While the pleading is scarcely the model of clarity, the Court will continue to construe this claim as a state claim for discrimination, and will exercise its pendent jurisdiction.

The April 6, 1988 Order, insofar as it declined the exercise of pendent jurisdiction over the fourth, and seventh cause of action, is hereby vacated.

4. The seventh cause of action

Plaintiff's seventh cause of action states a claim for the infliction of emotional distress. This claim is preempted by federal labor law, since plaintiff's alleged emotional distress arises out of conduct covered by the collective bargaining agreement. Truex v. Garrett, 784 F.2d 1347, 1351 (9th Cir. 1985). The Ninth Circuit has specifically held that emotional

1 distress claims arising out of termination and brought by
2 railway workers covered by the Railway Labor Act must be
3 submitted to grievance and arbitration procedures. Lewy v.
4 Southern Pacific Transportation Company, 799 F.2d 1281, 1291
5 (9th Cir. 1986).

6 Accordingly, the seventh cause of action is dismissed.

7 5. The eighth cause of action

8 The eighth cause of action purports to state a claim for
9 breach of the duty of fair representation. Plaintiff cannot
10 state a claim against defendant railroads for breach of this
11 duty, but only against the Union, the Brotherhood of Railway,
12 Airline and Steamship Clerks.

13 Accordingly, this claim is dismissed against the defendant
14 railroads.

15 6. Defendants Santa Fe and Railway

16 Plaintiff's complaint was filed in state court on
17 September 26, 1986 and properly removed to this Court by
18 defendant Southern Pacific Transportation Company on March 20,
19 1987. Plaintiffs did not effectuate service on defendants
20 Santa Fe and Railway until December 8, 1987. Thus, plaintiffs
21 failed to serve these defendants within the 120-day time period
22 prescribed by Fed. R. Civ. P. 4(j).

23 Dismissal pursuant to 4(j) is mandatory absent a showing
24 of good cause. Wei v. State of Hawaii, 763 F.2d 370, 372 (9th
25 Cir. 1987). Plaintiff has been unable to demonstrate any good
26 cause for failure to serve these defendants.

1 LEE J. KUBBY, INC.
A PROFESSIONAL CORPORATION
755 Page Mill Road, Suite A180
2 Palo Alto, CA. 94304

3 Telephone: 415 856-3505

4 Attorney for Plaintiffs

5
6 UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

8 SIEU MEI TU AND JOSEPH Z. TU,)

9 Plaintiffs,)

10 v.)

11 SOUTHERN PACIFIC TRANSPORTATION)
12 COMPANY, ET AL.,)

13 Defendants.)
14)
15)

Case No. C 87 1198DLJ

ANSWERS TO DEFENDANTS
SECOND SET OF INTER-
ROGATORIES

16 PLAINTIFF SIEU MEI TU HEREWITH FILES HER ANSWERS TO DEFEN-
17 DANTS' SECOND SET OF INTERROGATOIES TO PLAINTIFF:

18 INTERROGATORY NO. 1: State all facts upon which you base the
19 allegation that you were terminated because of your age.

20 ANSWER:

21 Managerial people told me crude sexual jokes. When I didn't
22 understand they made fun of me.

23
24 When desk assignments were made, although I was one of the
25 most senior workers involved, I would be denied the more
26 favorable desk positions.
27
28

1 I was moved into jobs that would cause me to have the greatest
2 friction with management personnel.

3
4 I was advised to take jobs described at a lower pay but kept
5 in the same position as I had previously at a reduced pay
6 rate.

7
8 I was told not to apply for positions that were transferred to
9 SP, and the position I held was chosen by management not to be
10 transferred.

11
12 All persons other than myself that were "furloughed" have been
13 called back to work. I have not been.

14
15 Women were not promoted into management positions in relation-
16 ship to their percentage of the work force.

17
18 No Chinese were promoted into management positions.

19
20 There was a perceived attitude that persons who were not
21 native born were inferior.

22
23 I was assigned janitorial jobs and house cleaning jobs when
24 other persons less senior than I were not.

25
26 I was assigned job location that was located in an area that
27 was unsafe for me.
28

1 Another person, less senior than I, was transferred to SP into
2 the same job I had at PFE.

3
4 When my supervisor gave my job performance a 10 on a rating
5 scale of 1 to 10, the controller required that my rating be
6 reduced to an 8.

7
8 My discharge was timed so as to prohibit the maximization of
9 my retirement benefits.

10
11 The defendants attempted to make it appear that I was not dis-
12 charged but furloughed.

13
14 Management created an atmosphere of fear that if I exercised
15 my rights to seek damages against the company for personal
16 injuries received on the job, I would fall from grace and my
17 position would be in jeopardy.

18
19 When interviewed for employment at SP I was told my seniority
20 would not be recognized, that I would be required to submit to
21 a physical examination, and to work undesirable hours, be
22 required to take typing tests and other job performance exami-
23 nations, that my twenty-two years of performance with excel-
24 lent reviews would not be recognized.

25
26 When I requested initiation of administrative procedures to
27 determine my rights, the company refused to engage in such
28 proceedings with me individually.

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My age, race, and or sex were resented in relation to my assertive insistence that management personnel properly account for their use of cash funds and expenses, and my refusal to go along with and overlook their conduct.

Management in discussions for transfer of personnel to SP made it clear they did not want me transferred.

In determining who would be sponsored for benefit of enrolling in classes for improving English, a young non Chinese person was selected.

There was no just cause for my discharge.

I was never paid any severance pay, while others were.

Any mistake I made was attributed to my national origin and language inadequacies.

Chinese employees were treated differently than non-Chinese by management.

The reward for my dedication, loyalty, and hardwork for SP and PFE was discharge without cause.

My accent, language, and cultural differences were the point of ridicule by the company.

1 Recent studies demonstrate that supervisors have a bias
2 against older workers, non American born workers, female work-
3 ers. Since I combine all three elements the bias against me
4 was three fold.
5

6 Discovery is not completed as to existence of other facts.
7
8

9 INTERROGATORY NO. 2: State all facts upon which you base the
10 allegation that you were terminated because of your sex.
11

12 ANSWER:

13 Managerial people told me crude sexual jokes. When I didn't
14 understand they made fun of me.
15

16 When desk assignments were made, although I was one of the
17 most senior workers involved, I would be denied the more
18 favorable desk positions.
19

20 I was moved into jobs that would cause me to have the greatest
21 friction with management personnel.
22

23 I was advised to take jobs described at a lower pay but kept
24 in the same position as I had previously at a reduced pay
25 rate.
26

27 I was told not to apply for positions that were transferred to
28

1 SP, and the position I held was chosen by management not to be
2 transferred.

3
4 All persons other than myself that were "furloughed" have been
5 called back to work. I have not been.

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7 Women were not promoted into management positions in relation-
8 ship to their percentage of the work force.

9
10 No Chinese were promoted into management positions.

11
12 There was a perceived attitude that persons who were not
13 native born were inferior.

14
15 I was assigned janitorial jobs and house cleaning jobs when
16 other persons less senior than I were not.

17
18 I was assigned job location that was located in an area that
19 was unsafe for me.

20
21 Another person, less senior than I, was transferred to SP into
22 the same job I had at PFE.

23
24 When my supervisor gave my job performance a 10 on a rating
25 scale of 1 to 10, the controller required that my rating be
26 reduced to an 8.

27
28 My discharge was timed so as to prohibit the maximization of

1 my retirement benefits.

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3 The defendants attempted to make it appear that I was not dis-
4 charged but furloughed.

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6 Management created an atmosphere of fear that if I exercised
7 my rights to seek damages against the company for personal
8 injuries received on the job, I would fall from grace and my
9 position would be in jeopardy.

10
11 When interviewed for employment at SP I was told my seniority
12 would not be recognized, that I would be required to submit to
13 a physical examination, and to work undesirable hours, be
14 required to take typing tests and other job performance exami-
15 nations, that my twenty-two years of performance with excel-
16 lent reviews would not be recognized.

17
18 When I requested initiation of administrative procedures to
19 determine my rights, the company refused to engage in such
20 proceedings with me individually.

21
22 My age, race, and or sex were resented in relation to my
23 assertive insistence that management personnel properly
24 account for their use of cash funds and expenses, and my
25 refusal to go along with and overlook their conduct.

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27 Management in discussions for transfer of personnel to SP made
28 it clear they did not want me transferred.

1
2 In determining who would be sponsored for benefit of enrolling
3 in classes for improving English, a young non Chinese person
4 was selected.

5
6 There was no just cause for my discharge.

7
8 I was never paid any severance pay, while others were.

9
10 Any mistake I made was attributed to my national origin and
11 language inadequacies.

12
13 Chinese employees were treated differently than non-Chinese by
14 management.

15
16 The reward for my dedication, loyalty, and hardwork for SP and
17 PFE was discharge without cause.

18
19 My accent, language, and cultural differences were the point
20 of ridicule by the company.

21
22 Recent studies demonstrate that supervisors have a bias
23 against older workers, non American born workers, female work-
24 ers. Since I combine all three elements the bias against me
25 was three fold.

26
27 Discovery is not completed as to existence of other facts.
28

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3 INTERROGATORY NO. 3: State all facts upon which you base the
4 allegation that you were terminated because of your national
5 origin or ancestry.

6
7 ANSWER:

8 Managerial people told me crude sexual jokes. When I didn't
9 understand they made fun of me.

10
11 When desk assignments were made, although I was one of the
12 most senior workers involved, I would be denied the more
13 favorable desk positions.

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15 I was moved into jobs that would cause me to have the greatest
16 friction with management personnel.

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23 SP, and the position I held was chosen by management not to be
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13 was unsafe for me.

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16 the same job I had at PFE.

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19 scale of 1 to 10, the controller required that my rating be
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22 My discharge was timed so as to prohibit the maximization of
23 my retirement benefits.

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25 The defendants attempted to make it appear that I was not dis-
26 charged but furloughed.

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13 determine my rights, the company refused to engage in such
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17 assertive insistence that management personnel properly
18 account for their use of cash funds and expenses, and my
19 refusal to go along with and overlook their conduct.

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21 Management in discussions for transfer of personnel to SP made
22 it clear they did not want me transferred.

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25 in classes for improving English, a young non Chinese person
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I was never paid any severance pay, while others were.

Any mistake I made was attributed to my national origin and language inadequacies.

Chinese employees were treated differently than non-Chinese by management.

The reward for my dedication, loyalty, and hardwork for SP and PFE was discharge without cause.

My accent, language, and cultural differences were the point of ridicule by the company.

Recent studies demonstrate that supervisors have a bias against older workers, non American born workers, female workers. Since I combine all three elements the bias against me was three fold.

Discovery is not completed as to existence of other facts.

Executed under penalty of perjury this 7th day of September, 1988, at San Francisco, California.

SIEU MEI TU

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

---oOo---

SIEU MEI TU and JOSEPH Z. TU,)
)
 Plaintiffs,)

vs.)

No. C87-1198-DLJ

SOUTHERN PACIFIC TRANSPORTATION)
COMPANY; ATCHISON, TOPEKA,)
SANTA FE RAILROAD COMPANY;)
PACIFIC FRUIT EXPRESS COMPANY;)
T. ELLEN; E. E. CLARK; R. W.)
FEND; T. R. ASHTON; DOE)
DEFENDANTS ONE TO TWO THOUSAND;)
WHITE COMPANY; BLACK)
CORPORATION; BROTHERHOOD OF)
RAILWAY, AIRLINE AND STEAMSHIP)
CLERKS; R. B. BRACKBILL; J. M.)
BALOVICH; SANTA FE SOUTHERN)
PACIFIC CORP.)

Defendants.)

DEPOSITION OF
SIEU MEI TU

September 8, 1988

REPORTED BY: TERESA LOPEZ, CSR# 7627

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EXAMINATION BY:

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

--oOo--

SIEU MEI TU and JOSEPH Z. TU,)
)
 Plaintiffs,)

vs.)

No. C87-1198-DLJ)

SOUTHERN PACIFIC TRANSPORTATION)
COMPANY; ATCHISON, TOPEKA,)
SANTA FE RAILROAD COMPANY;)
PACIFIC FRUIT EXPRESS COMPANY;)
T. ELLEN; E. E. CLARK; R. W.)
FEND; T. R. ASHTON; DOE)
DEFENDANTS ONE TO TWO THOUSAND;)
WHITE COMPANY; BLACK)
CORPORATION; BROTHERHOOD OF)
RAILWAY, AIRLINE AND STEAMSHIP)
CLERKS; R. B. BRACKBILL; J. M.)
BALOVICH; SANTA FE SOUTHERN)
PACIFIC CORP.)

Defendants.)

--oOo--

BE IT REMEMBERED that, pursuant to Notice, and
on Thursday, September 8, 1988 commencing at 9:30 a.m.,
thereof, at 100 Bush Street, San Francisco, California,
before me, TERESA LOPEZ, a Notary Public in and for the City
and County of San Francisco, personally appeared

SIEU MEI TU

called as a witness by the Defendant, who having been first
duly sworn, was examined and testified as follows:

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LEE J. KUBBY, INC., 755 Page Mill Road, Suite A-180, Palo Alto, California 94304, represented by LEE J. KUBBY, Attorney at Law, appeared as counsel on behalf of the Plaintiffs.

TRANSPORTATION COMMUNICATIONS INTERNATIONAL UNION, 3 Research Place, Rockville, Maryland 20850, represented by JAMES M. DARBY, Attorney at Law, appeared as counsel on behalf of Transportation Communications International Union.

MCLAUGHLIN AND IRVIN LAWYERS, 111 Pine Street, Suite 1200, San Francisco, California 94111, represented by KEVIN P. BLOCK, Attorney at Law, appeared as counsel on behalf of Southern Pacific Transportation Company and Pacific Fruit Express Company.

ALSO PRESENT: Joseph Z. Tu and James Balovich

--oOo--

EXAMINATION BY MR. DARBY

MR. DARBY: Q. Morning, Mrs. Tu.

A. Good morning.

Q. My name is Jim Darby and I am an attorney representing the Transportation Communications International Union.

Just as a matter of information, the name of the union used to be the Brotherhood of Railway, Airline and

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1 Steamship Clerks and in September of 1987 at our convention
2 the name was changed to the Transportation Communications
3 International Union. So, that's just to eliminate any
4 confusion on that issue.

5 MR. KUBBY: From what you just said, you said
6 our union. Are you an employee of the union?

7 MR. DARBY: Yes. I am assistant general
8 counsel with the union. I'm an in-house attorney.

9 Q. Mrs. Tu, can you give your full name and
10 address for the record, please?

11 A. My name is Sieu Mei Tu, S-i-e-u, M-e-i, T-u.
12 1697 Hickory, H-i-c-k-o-r-y, Avenue, San Leandro. Zip code
13 94579.

14 Q. Okay. Mrs. Tu, you've given your deposition
15 before in this case, haven't you?

16 A. Yeah.

17 Q. Mr. Bogeson took your deposition in May of '87;
18 is that correct?

19 A. Yes.

20 Q. So you know what the purpose of deposition is
21 for, then?

22 A. Yes.

23 Q. I'm going to be asking you questions about the
24 lawsuit that you filed against the union. We want to find
25 out what the case is about so that we can properly defend

1 ourselves in this lawsuit. Now, I noticed in reading that
2 deposition that you have a very good command for the English
3 language.

4 MR. KUBBY: That's deceptive in that deposition
5 because Mrs. Tu has a -- is able to communicate on a simple
6 English basis.

7 MR. DARBY: Okay.

8 MR. KUBBY: But for complicated issues, her
9 native tongue is Chinese, Mandarin. In dealing with that
10 deposition, it was clear that she -- her comprehension of
11 complicated questions is not as good as it should be. And
12 so you're going to have to keep things rather simple to get
13 the best answer.

14 MR. DARBY: Okay. I will do that.

15 Q. And for that reason, it is very important,
16 Mrs. Tu, that if you don't understand a question that I ask
17 you, just ask me to rephrase it or tell me you don't
18 understand it, okay?

19 See, I'm a foreigner, too. I am originally
20 from New York and some people have trouble understanding me.
21 And so for that reason, I want to make sure we understand
22 each other.

23 A. If I say something you don't understand, you do
24 the same thing.

25 Q. Definitely I will. And finally, if you need a

1 break at any time, just let me know and we'll take a break,
2 okay?

3 - Mrs. Tu, in reading your prior deposition, Mr.
4 Bogeson got into a lot of information about your personal
5 background; I'm not going to go into that again. There are
6 a few things I'd like to cover with you, though. First of
7 all, I'm interested in learning about the occupations of
8 your children. First of all, how many children do you have?

9 A. Five.

10 Q. And what are the ages of each of them?

11 A. The older one is 43.

12 Q. And is male or female?

13 A. Girl.

14 Q. What is her name?

15 A. Elain.

16 Q. Elain?

17 A. Elain.

18 Q. Could you spell that? I'm sorry.

19 A. E-l-a-i-n. Second one is Norman; boy.

20 Q. Norman?

21 A. Norman.

22 Q. What is his age?

23 A. 42.

24 Q. Okay. What is Elain's occupation?

25 A. Her husband is a doctor.

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1 Q. Okay. And what is her occupation?

2 A. And she help her husband work in the office.

3 Q. So she assists her husband?

4 A. Yes.

5 Q. A medical assistant?

6 A. Yes.

7 MR. KUBBY: Office assistant.

8 THE WITNESS: Office assistant.

9 MR. DARBY: Q. And what is Norman's

10 occupation?

11 A. He have own company.

12 Q. What type of a company is that?

13 A. Software.

14 Q. Okay. Next child?

15 A. Next child; Ann and is girl.

16 Q. Ann, A-n-n?

17 A. A-n-n.

18 Q. What's her age?

19 A. 41.

20 Q. And what is her occupation?

21 A. He work some computer company. He's computer

22 specialist.

23 Q. And that's a female or a male?

24 A. Girl.

25 Q. Girl. Okay. Does she do the same type of work

1 that Norman does?

2 A. No. Different.

3 Q. Different?

4 A. Yeah.

5 Q. But she's in the computer field?

6 A. Yeah, yeah.

7 Q. Next child?

8 A. Harold. Harold.

9 Q. Harold?

10 A. Is boy.

11 Q. What is his age?

12 A. He's 40. He's a doctor. A dentist and M.D.

13 Q. What is -- his day-to-day profession is a
14 dentist?

15 A. Dentist. And M.D. teaching. He's teaching
16 school, too, medical school. Last one is David.

17 Q. David. And his age?

18 A. Is 37.

19 Q. And what is his occupation?

20 A. He's an engineer.

21 Q. Are any of your children attorneys, Mrs. Tu?

22 A. No.

23 Q. No? Do you have any relatives that are
24 attorneys?

25 A. No.

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STB FD-30400 (SUB 21) 7-28-92 COMPLAINT VOL I 7 OF 10

1 Q. Other than Mr. Kubby, do you have any friends
2 that are attorneys?

3 A. Oh, I have lots of friends attorneys.

4 Q. Close friends?

5 A. Oh, no, just -- just --

6 Q. Casual acquaintances?

7 A. Yeah.

8 Q. Who was your closest friend that's an attorney?

9 A. I think Mr. Kubby.

10 Q. Aside -- we know that. Aside from Mr. Kubby?

11 A. No. I just know Kubby.

12 Q. Mrs. Tu, my understanding is at the time you
13 took your last deposition -- or the last time your
14 deposition was taken, you had not been employed anywhere
15 since the time you had been laid off by PFE; is that
16 correct?

17 A. Yes.

18 Q. How about from the time in May of '87 that your
19 deposition was taken until now, have you had any employment
20 at all?

21 A. No.

22 Q. So how do you spend your time? Around the
23 house basically?

24 A. Yeah, yeah. Just a housewife.

25 Q. You're a housewife now?

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1 A. Yeah.

2 Q. Have you applied for any jobs since the last
3 time your deposition was taken in May of 1987?

4 A. Yeah. I tried to find something to do. But,
5 you know, I didn't find anything, you know.

6 Q. What kind of jobs did you attempt to apply for?

7 A. Oh, maybe some part-time job, you know.

8 Q. Doing what type of things?

9 A. Oh, I think I went to the -- some bakery store
10 near by my house because I don't drive so I saw the sign.
11 They needed old people. So I went there. But then after I
12 go there, they don't need any more people. So --

13 Q. Okay. So, they did not --

14 A. No.

15 Q. -- take you as an employee?

16 A. No.

17 Q. Any other part-time jobs that you became
18 interested in and applied for?

19 A. No.

20 Q. Have you been interviewed at all by the
21 Southern Pacific Corporation for a position?

22 A. Yeah, I did just the last -- well, this is '88,
23 right?

24 Q. Right.

25 A. On the April -- April -- I don't remember the

30

1 date they write to me. They say they have a job open for
2 clerk. In the same month they called me interview SP.

3 Q. Okay. And you went for the interview?

4 A. I did.

5 Q. And you were not hired?

6 A. No. The lady talked to me. She called me
7 first.

8 MR. KUBBY: The question was: Were you hired?

9 THE WITNESS: No.

10 MR. DARBY: Q. You were not hired?

11 A. No.

12 Q. That's fine. But they did interview you for a
13 position?

14 A. Yes.

15 MR. BLOCK: What year was that, please?

16 THE WITNESS: 1988. This year. April.

17 MR. DARBY: Q. Mrs. Tu, do you remember when
18 you became a member of the Brotherhood of Railway, Airline
19 and Steamship Clerks?

20 A. Yes. 1962. 1962. I think June. I started
21 work May; I work PFE. After one month you join the union,
22 if I remember right. Okay.

23 Q. And just for the purpose of making it easier,
24 instead of saying Brotherhood of Railway, Airline and
25 Steamship Clerks, I'm going to say BRAC, okay?

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1 A. BRAC?

2 Q. B-R-A-C.

3 MR. KUBBY: If you would, just refer to the
4 union. It would be simpler for her.

5 MR. DARBY: Q. Are you still a member of the
6 union, Mrs. Tu?

7 A. Yeah, I think so. They told me pay dollar
8 fifty a month now.

9 Q. So, you're paying 1.50 a month to maintain your
10 membership; is that correct?

11 A. Yeah.

12 Q. Do you get copies of the union's magazine?

13 A. Yeah.

14 Q. The Interchange Magazine; is that right?

15 A. Yeah.

16 Q. How often do you get that?

17 A. Every month or something.

18 Q. Do you read it at all?

19 A. No.

20 Q. No?

21 A. Sometimes.

22 Q. It's a good magazine though?

23 A. Sometimes. I don't know, I don't read the --

24 Q. But you do receive copies of it?

25 A. I did.

333

1 Q. Did you ever hold a position as a union officer
2 at any time, Mrs. Tu?

3 A. No.

4 Q. Did you ever have any desire to become a union
5 officer?

6 A. No.

7 Q. Did you attend union meetings?

8 A. Before -- I think before I very few attended
9 meeting when I worked San Francisco because they're always
10 having meeting at night, you know, after work. But I don't
11 drive, so I take a bus. So if I miss the bus, it's very
12 hard for me to get home. So I usually never attend. Only
13 once while there is something I want to know, then I go to
14 meeting. But usually I --

15 Q. Okay. Refresh my recollection. Now, when you
16 were hired in 1962, you were hired to work in San Francisco,
17 correct?

18 A. Yeah.

19 Q. And you were in San Francisco from 1962 until
20 when?

21 A. '80.

22 Q. 1980?

23 A. I think '80 they moved to Brisbane.

24 Q. So, for the period that you referred to before
25 when the meetings were held at night, you're referring to

1 the time when you were working in San Francisco between 1962
2 and 1980?

3 - A. Uh-huh.

4 Q. And is it correct for me to say that you
5 attended few meetings during that time?

6 A. Yeah.

7 Q. Maybe once a year?

8 A. I don't remember what exactly, but I don't go
9 there regularly; meeting.

10 Q. How about after PFE moved to Brisbane, did you
11 attend union meetings?

12 A. Usually. When we moved to Brisbane, the
13 meeting was in the lunchroom. So I usually have lunch
14 there, you know. I almost all the meeting if I -- you know.

15 Q. So, in Brisbane you went to just about all of
16 the meetings?

17 A. Not all the meeting, but I go there often.

18 Q. Often?

19 A. Yeah, yeah.

20 Q. More than half the time?

21 A. I can't exactly tell you because, you know, I
22 got to tell you truth. Sometimes I go, but sometimes I
23 don't. But I go more often than in San Francisco.

24 Q. You went more often in Brisbane than when you
25 were in San Francisco?

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1 A. Yeah.

2 Q. How often were the union meetings, do you
3 recall?

4 A. I don't remember.

5 Q. Do you remember how you were notified about
6 there being union meetings?

7 A. Our local union man always tell us and say,
8 "Today we have a union meeting."

9 Q. Do you remember if they posted notices on
10 bulletin boards?

11 A. They do. They do that.

12 Q. When you went to the union meeting, Mrs. Tu,
13 were there sign-in sheets for you to sign to show that you
14 had attended the meeting?

15 A. No. Never have a sign-in sheet. I don't
16 remember have a sign-in sheet.

17 Q. So, as far as you recall, there was no way for
18 the union to know whether or not you actually attended a
19 meeting or not?

20 A. Yeah, yeah.

21 Q. Did you participate vocally in the meeting?
22 Did you ask questions? Did you get involved in any
23 discussions at the union meetings?

24 A. I usually listen. Listen. But sometimes I ask
25 question, but not often.

333

1 Q. Do you know about the position of local
2 chairman of your union? Did you know what the local
3 chairman did?

4 A. You mean, what they do?

5 Q. Yes. Are you familiar with the position of
6 local chairman?

7 A. If I tell you, maybe I am wrong, but I thought
8 that they are if we have trouble, we ask them. And they
9 tell them. They were call Chairman Brackbill.

10 Q. Are you referring to Robert Brackbill?

11 A. Yes.

12 Q. Okay. Do you remember Jim Balovich as a union
13 representative?

14 A. Yeah.

15 Q. Do you remember him being the local chairman?

16 A. Yeah. '85, I think.

17 Q. So he was the one in 1985 that you would go to
18 if you had any questions or any problems; is that correct?

19 A. Right.

20 Q. Do you remember who the local chairman was
21 before Mr. Balovich?

22 A. Ron. The last name S-o-l-d-a-v-i-n.

23 Q. Ron Saldovini?

24 A. Yeah.

25 Q. And for how long was he your local chairman, do

337

1 you recall?

2 A. I think he have quite a while. Two or three
3 years, I don't know. And before him is Mike. Last name
4 G-r-e-g-o-r-y.

5 Q. Mike Gregory?

6 A. Yeah. Mike Gregory.

7 Q. And approximately how many years was Mike
8 Gregory your local chairman?

9 A. He was in San Francisco.

10 Q. I see. So that was back before 1980?

11 A. Yeah, before. And before that is Ron Stew.

12 Q. Ron Stewart?

13 A. Yeah.

14 Q. Okay. That's fine. So you were familiar with
15 who your local chairmen were?

16 A. Yeah.

17 Q. And you understood that they were the
18 individuals to go to if you had a problem, correct?

19 A. Yeah.

20 Q. Now, you mentioned Bob Brackbill's name.

21 A. Yeah.

22 Q. Did you know Bob Brackbill?

23 A. Yeah. After I stayed home this last -- after
24 October '85 and I call him quite often, you know.

25 Q. Does the term "general chairman" sound familiar

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1 to you? Would you recall that he was your general chairman
2 as opposed to Mr. Balovich being your local chairman?

3 A. I know when we talked to Jim, Jim call Bob. So
4 I know he is Jim's boss.

5 Q. So Mr. Balovich was below Mr. Brackbill in
6 terms of the union hierarchy?

7 A. Yes.

8 MR. DARBY: Mr. Kubby, at this time I'd like to
9 ask if you could present to me the documents that I
10 requested pursuant to the document request.

11 Q. Mrs. Tu, did you review any documents in
12 preparation for this deposition today?

13 A. No. No, I didn't. I forgot to. I didn't.
14 Notice too soon. Didn't time.

15 Q. So, before you came here today, you didn't look
16 at any documents pertaining to this case?

17 A. No.

18 MR. DARBY: Okay. I'm going to take just two
19 or three minutes to look through these. There is one thing
20 I would like to put on the record.

21 We asked Mr. Kubby to produce copies of Mrs.
22 Tu's income tax returns for the prior five years. Mr. Kubby
23 has objected to that on the basis -- the alleged basis that
24 it is not permitted, he's not required to produce them under
25 either federal or state law.

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1 It's the union's position, and there is federal
2 case law to support this, that such documents are
3 discoverable and that he has an obligation to produce them.

4 And I'd like to ask Mr. Kubby now, unless
5 you're willing to waive any claim for damages against the
6 union, we are going to pursue those documents and, if
7 necessary, file a motion to compel to get copies of those.
8 They directly go to the issue of damages and to mitigation
9 and as a result, they are discoverable documents.

10 MR. KUBBY: They are joint returns. They are
11 privileged under state and federal law. The union has a
12 contract as to what her pay was. And the railroad has
13 records as to what they paid her. So the information is
14 readily available to you from other sources.

15 MR. DARBY: But we don't know what money Mrs.
16 Tu may have earned in the interim since her layoff. And to
17 that extent, it is certainly relevant to the damages
18 involved in this case. And I will give you the cases, if
19 you want, from the 9th Circuit which clearly sets forth that
20 such documents are discoverable.

21 MR. KUBBY: I'll be happy to review it if it's
22 sent to me.

23 MR. DARBY: Okay. Just a few minutes, if I
24 may?

25 (Recess taken.)

310

1 (Mr. Block not present.)

2 MR. DARBY: Q. Mrs. Tu, do you ever recall
3 receiving a copy of the union's constitution?

4 A. What they look like?

5 Q. Have you ever seen a book like this before? I
6 am handing you a copy of the union's constitution.

7 A. No. We have a yellow one. You know, the
8 cover, I think --

9 MR. KUBBY: Could we mark that, please?

10 MR. DARBY: Q. Okay. But you don't recall --

11 MR. KUBBY: If you're going to question her
12 about it, I want it marked for the deposition.

13 MR. DARBY: It doesn't have to be an exhibit if
14 I don't want it to be an exhibit.

15 MR. KUBBY: I want it identified to what you're
16 asking her.

17 MR. DARBY: I am showing Mrs. Tu --

18 MR. KUBBY: You're showing her a booklet with a
19 cover and what's in it, we don't know.

20 THE WITNESS: I don't get that book.

21 MR. DARBY: Q. So you don't recall receiving
22 this book?

23 A. In the office they have a book, but not this
24 cover. But I -- yellow cover, I think, is the union book.

25 MR. KUBBY: Just answer the question.

34

1 THE WITNESS: Yeah.

2 MR. DARBY: Q. Do you recall at any time
3 receiving from the union in the mail a copy of a booklet
4 which was referred to as the union's constitution?

5 A. No, I never got one.

6 Q. Do you know what the union's constitution is?

7 A. No. They protect us. We furlough. Protect by
8 the union.

9 Q. What I am referring to now is a constitution
10 dealing not with any agreement that the union has with the
11 company, but a document which pertains solely to matters
12 involving the union. You don't recall receiving any
13 document --

14 A. No.

15 Q. -- any document along those lines, a document
16 which goes into the internal rules of the union?

17 A. No.

18 Q. Okay. And you don't recall seeing this
19 document that I'm showing you here?

20 A. No.

21 MR. KUBBY: Are you talking about the document
22 or the book that you're holding?

23 MR. DARBY: The book that I'm holding.

24 THE WITNESS: No. I never see that kind of
25 book.

3:2

1 MR. DARBY: Q. Okay. Mrs. Tu, do you ever
2 recall having a copy of a collective bargaining agreement
3 being given to you while you were employed for the PFE?

4 A. Bargaining agreement?

5 Q. Yes. Do you know what I mean when I say,
6 "collective bargaining agreement"?

7 A. No.

8 Q. A collective bargaining agreement is a contract
9 entered into between the company and the union and it sets
10 forth all of the rules and working conditions that cover you
11 as an employee. Do you recall at any time receiving a copy
12 of that document?

13 A. I don't remember.

14 Q. You don't remember. Is it possible you could
15 have received something like that?

16 A. I just don't remember.

17 Q. You're not denying --

18 A. Oh, no.

19 Q. -- that you received it, are you? You just
20 can't recall?

21 A. No.

22 Q. Do you remember anything referred to as a
23 "protective agreement"?

24 A. Yeah. As long I work PFE -- not just me --
25 everybody knows we are fully protect by the company. I

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1 think when the 1980 when UP/SP divided, you know, separated,
2 right. So the people in the Chicago, they're fully protect.
3 At that time I do the payroll because they are paid fully
4 protect, fully paid. Then the union, every time we go to
5 union meeting, there they told us we are fully protected.

6 Q. So you were aware there was a protective
7 agreement covering you as an employee --

8 A. Yeah.

9 Q. -- when you were employed for the PFE?

10 A. Union protect by the union members the company.

11 Q. Do you ever recall receiving a copy of that
12 agreement, that protective agreement?

13 A. There was on the book -- in the book rules it
14 says in the company because I saw lots of people they say on
15 agreement.

16 Q. Okay. So there was a document that was
17 available, if you wanted to see it, which described this
18 protection?

19 A. Yeah. We all knows. All the employee work
20 there, we all knows.

21 Q. You heard about it. But what if you wanted to
22 read it?

23 A. Yeah.

24 Q. Was that document available? For example,
25 could you have gone to Jim Balovich and asked, "Can I see

1 the protective booklet?"

2 A. When I go to the union, they all told me I'm
3 fully protected.

4 Q. I understand that, Mrs. Tu, but I am trying to
5 find out whether or not you ever saw or were given an actual
6 document which explained that to you.

7 A. They never give me document. I never read
8 document. But I know they tell me the truth. Not just me
9 knows, everybody knows.

10 Q. But you're aware there was a document?

11 A. I think so.

12 Q. Okay. Mrs. Tu, in your lawsuit against the
13 union there is a very, very thick package of materials that
14 we received when you brought suit against the union. And
15 attached to that lawsuit are three very thick documents.
16 Did you receive copies of these documents from anyone from
17 the union or how did you receive copies of these documents?

18 MR. KUBBY: Want to show her what they are?

19 MR. DARBY: Yes.

20 Q. I'm showing you a copy of the lawsuit that you
21 filed against us, okay?

22 MR. KUBBY: It's a copy of the First Amended
23 Complaint.

24 MR. DARBY: Q. First Amended Complaint dated
25 -- I believe it was April 30th. Attached --

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1 A. Yeah. I think they --

2 MR. KUBBY: Those are attachments to the
3 complaint. The complaint's not in here.

4 MR. DARBY: I'm sorry. Here's the complaint.

5 MR. KUBBY: He's talking about this document
6 entitled, "First Amended Complaint" and these are
7 attachments to that complaint. I want you to look at them.

8 MR. DARBY: Q. I'm not concerned about this
9 one right here, I know about this one. But everything else
10 from here on end, did you actually receive copies of these
11 from anywhere?

12 A. No. I got them from -- one time the union
13 meeting they give to us, you know.

14 Q. I see. So --

15 A. In the union meeting, they give to us.

16 Q. So when I asked you before whether or not you
17 received any documents from the union --

18 A. Oh, but sometimes they give all these papers,
19 so how I can remember?

20 Q. But they did provide you with this information?

21 A. Yeah.

22 MR. KUBBY: Let's go through. I want you to
23 look at the whole thing to make sure because some of it you
24 may have got after the lawsuit was started. First one is
25 entitled, "Agreement Between the Pacific Fruit Express

300

1 Company and Certain of Its Employees."

2 THE WITNESS: Yes.

3 -
4 MR. KUBBY: That goes on Exhibit B. This is
5 Exhibit C. It's entitled, "Mediation Agreement." And this
6 is Exhibit D. It's entitled, "Agreement Between Pacific
7 Fruit Express and All That Class of Clerks and Other
8 Office." Exhibit E is a letter dated January 4, 1988.

9 MR. DARBY: Let me interrupt just to cut down
10 the time in this.

11 Q. I'm only interested, Mrs. Tu, in these three
12 agreements, I believe B, C and D.

13 MR. KUBBY: Now, the question is: Do you know
14 from where these copies of B, C and D, how you got those?

15 THE WITNESS: Yeah. I think personnel
16 department give to us or union representative give to me. I
17 don't remember.

18 MR. DARBY: Q. Were they given to you prior to
19 your being laid off in October of 1985?

20 A. No. I think they give to everyone, you know,
21 in the clerk. Somebody want it. They put there, you know.

22 Q. So what I'm asking you, though, is did you
23 receive it before you --

24 A. No, I don't.

25 Q. Well, do you remember how you received it? Was
it put on your desk or was it sent to you in the mail?

1 A. I don't remember either.

2 Q. Okay. Can you recall whether or not you
3 received it before you left the company?

4 A. I don't remember. You know, the union -- I
5 think it take a genius to read all this document. I don't
6 think anybody in the PFE clerk understand all your
7 agreement. Everybody, we just know we are fully protected
8 according to agreement. That's all I know.

9 Q. I understand it and I'm just interested in
10 finding out when you received it. But what you're telling
11 me, you have no idea. Did you receive it back in 1962?

12 A. No. I tell the truth. I don't remember. I
13 have lots of mail, letter from my kids. So I don't remember
14 this.

15 Q. Are you suggesting that you might have received
16 this in the mail or was it handed to you by somebody?

17 A. I did tell you. I don't remember. Okay?

18 Q. But it was either somebody from the union or
19 somebody from the company that gave it to you?

20 A. Yeah, yeah, yeah.

21 Q. Mrs. Tu, did you understand when you were
22 working at the company that if the company did something
23 that it wasn't permitted to do under the agreement, that the
24 union could file a grievance for you on your behalf --

25 A. Yeah.

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1 Q. -- to protect you?

2 A. Yeah.

3 -
4 Q. You understood that that was a possibility for
5 the union to do that if the company did something they
6 weren't supposed to do?

7 A. Yeah, yeah.

8 Q. Okay. Do you recall that when the union did
9 that, that the agreement required that you had to follow
10 certain steps?

11 A. Yeah.

12 MR. KUBBY: Listen to the question.

13 MR. DARBY: Q. That you had to follow certain
14 steps. You would file a grievance with the company and if
15 they didn't agree with it and they turned it down, well then
16 the union had to appeal it to another level. Did you
17 understand that when you were working with the company?

18 A. Yeah. I think so. You say if something is
19 not -- they did something wrong, I file a grievance, tell
20 the union, right?

21 Q. Right. Tell the union. The union files a
22 grievance on your behalf and then the company -- well, you
23 know the company, they're going to say, "The union is wrong,
24 we're right." And then it's up to the union to file an
25 appeal to the next level.

A. Yeah, yeah.

1 Q. And that it keeps going up. Do you understand
2 that that was the procedure in the agreement?

3 A. Yeah, yeah.

4 Q. Okay. Do you recall at any time in your
5 employment for PFE that you had a grievance against the
6 company and the union filed a grievance on your behalf at
7 any time? Now, I'm not talking about the time surrounding
8 your being let go by the company, I'm talking about prior to
9 that. Can you remember any time in your years with the
10 company that a grievance was filed by the union on your
11 behalf because they did something wrong to you or to other
12 people?

13 A. I didn't, but I have complain to the union lots
14 time. You know, I complain Jim Balovich. In fact, I went
15 to Bob's office.

16 Q. Now, is that concerning your being let go from
17 the company in October of 1985 or is that prior, on other
18 occasions?

19 A. No. On another occasion I was have the same
20 job, same job. I was general clerk. Then they -- I go to
21 get another job and they call me back. I did the same work,
22 same desk. They change my name also, miscellaneous clerk
23 and they cut down my --

24 Q. Cut your pay?

25 A. But I complained to the union. I did complain.

- 1 Q. Who did you go to? Who did you talk to?
- 2 A. I went to Jim; also went to Bob's office.
- 3 Q. Bob Brackbill?
- 4 A. Office that we have a meeting together. I
- 5 complain to him, too.
- 6 Q. Do you recall when that was?
- 7 A. I think between '84, '85.
- 8 Q. So you went to Jim Balovich?
- 9 A. Yeah.
- 10 Q. And you went to Bob Brackbill?
- 11 A. Yeah.
- 12 Q. Because they had changed your title from
- 13 general clerk to miscellaneous clerk and you were doing the
- 14 same job?
- 15 A. Same job. Same desk.
- 16 Q. And they gave you less pay?
- 17 A. Yeah.
- 18 Q. Okay. What was the result of that?
- 19 A. Nothing.
- 20 Q. Nothing happened?
- 21 A. No.
- 22 Q. Did you ask Jim Balovich to file a grievance
- 23 for you?
- 24 A. No. I didn't ask a grievance, but I just want
- 25 them take care of me.

1 Q. Did you ever ask afterwards Jim Balovich "What
2 did you do for me?" Or "What happened with my complaint?"

3 A. Yeah. He always goes call Bob. But the Bob is
4 always busy. Either go to Chicago -- he never showed up.
5 So --

6 Q. What do you mean? Was there a meeting
7 scheduled?

8 A. Oh, sometimes he come. Then he has a meeting
9 lunch time. We have a lunch time 40 minutes, 30 minutes.
10 Maybe he come 15 minutes. Then he said -- we start ask
11 questions -- he said, "I got a plane to catch 10 minutes."
12 So --

13 Q. So, in other words --

14 A. We never have chance.

15 Q. Jim Balovich had Bob Brackbill come to a union
16 meeting. Is that what you're referring to?

17 A. Yeah.

18 Q. And did you ask Bob Brackbill about this
19 problem concerning your not being paid enough?

20 A. Yeah. He answer. Say, "I have a hard time to
21 deal with Tom Ellen." He always use the same words. He
22 say, "He's very hard to deal with, that man."

23 Q. Do you know if the union ever filed a grievance
24 for you on that problem?

25 A. No. I don't think so.

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1 Q. You don't know for sure. It's possible that
2 they had filed a grievance for you?

3 A. I don't know. He never say anything. I
4 complain all the time to him. And, in fact --

5 Q. To whom?

6 A. Jim and Bob. I call Bob.

7 Q. All right. Let's take one at a time. How many
8 times did you complain to Jim Balovich?

9 A. I don't know. We work together.

10 Q. Right.

11 A. So every time I see Jim, I say, "Do you call
12 Bob?" And you know, he said "Bob, nobody can reach Bob. He
13 always busy, you know."

14 Q. Okay. But did you ask Jim to file a grievance
15 for you --

16 A. No.

17 Q. -- with the company?

18 A. No, I didn't.

19 Q. Did Jim ever tell you that he was filing a
20 grievance --

21 A. No.

22 Q. -- with the company?

23 A. No.

24 Q. What did Jim tell you?

25 A. He said, "I tried to reach Bob."

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1 Q. Okay. Did Jim ever discuss with you whether he
2 thought the company was right or wrong in doing that?

3 A. No. He never said anything.

4 Q. He didn't say one way or the other?

5 A. No, no.

6 Q. He just said, "I'll call Bob"?

7 A. Yeah, yeah, yeah.

8 Q. How many times did you have these discussions
9 with Jim Balovich?

10 A. Not so many times because every time we in the
11 office -- I can't tell you exactly how many times.

12 Q. More than once a week?

13 A. Oh, no. I can't tell you that. You know,
14 every time I see him and I said, "Jim, well, you call Bob?"
15 He said, "Bob is not in the office. Bob is busy, you know."

16 Q. Did you ever on this issue about not being paid
17 enough after they changed your title, did you ever call Bob
18 Brackbill concerning that issue?

19 A. Yeah. I did.

20 Q. How many times did you call?

21 A. I don't remember. I am --

22 Q. I'm sorry. You don't remember how many times?

23 A. No.

24 Q. Ten times?

25 A. I told you truth. I don't want to give you

1 false statement.

2 Q. Okay.

3 A. I was worried about my job so I constantly call
4 him whenever I have a chance in the office. It's not just
5 me have a problem. Lots of people worry about job call Bob.

6 Q. I am just talking about their failure to pay
7 you the right amount for the position. Did you call Bob
8 concerning that problem?

9 A. I did. Yeah.

10 Q. And did you speak with Bob?

11 A. No. He never call back.

12 Q. Okay. Well, you left a message?

13 A. One time I -- face to face I told him that,
14 too. But he didn't say --

15 Q. And that was at one of those meetings?

16 A. I don't know it's phone or meeting. I don't
17 know.

18 Q. Well, "face to face." He was with you in the
19 room?

20 A. Yeah, yeah.

21 Q. And where did that take place?

22 A. I think his office. I think '85 we have a few
23 meeting at his office he call. We went there.

24 Q. Okay. Now, those meetings in the office in San
25 Francisco, were those meetings held around the time when the

1 Brisbane office was going to close?

2 A. The rumor that they going to close. So
3 everybody worry about their jobs, so we all went there.

4 Q. And it's at those meetings that you mentioned
5 to Bob about the company not paying you enough money for
6 when your title changed?

7 A. No. The last couple meeting, I didn't say
8 anything because we was worried about a job.

9 Q. But that was a different problem then?

10 A. Yeah.

11 Q. I'm just talking about the problem you're
12 referring to concerning the PFE failure to pay you enough
13 money on this job. You told me you spoke to Jim a couple of
14 times and he said he would call Bob. I asked you if you
15 ever called Bob Brackbill about that problem?

16 A. I did.

17 Q. And he didn't return your call?

18 A. No.

19 Q. Okay. Did you attempt --

20 A. I don't remember he call me back, you know.

21 Q. It's possible that he might have called you
22 back?

23 A. I don't remember him -- when I call him, I
24 don't -- verv, very few time he called back. But I don't
25 remember he called me back for that.

1 Q. But he did call you back?

2 A. For something else, you know.

3 Q. Could it have been for this problem?

4 A. No, I don't think so.

5 Q. Okay. So how many times did you call Bob
6 concerning this problem?

7 MR. KUBBY: You've asked her that several
8 times. She's told you she doesn't recall.

9 THE WITNESS: I don't remember.

10 MR. DARBY: Q. Okay. Was there somebody, at
11 that time, home at your house during the day?

12 A. No. I work.

13 Q. And your husband was working, correct?

14 A. Yeah.

15 Q. Do you have an answering machine at your house?

16 A. Nothing to do -- he wouldn't call home. My
17 work, he know my office phone number.

18 Q. I'm just asking.

19 A. No.

20 Q. Okay. So it's possible he may have called you
21 at home?

22 A. I call office, why he call me home?

23 Q. I'm just asking you. I'm not arguing with you.

24 A. No, I'm not arguing with you either.

25 Q. It's possible that he may have called you at

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1 home?

2 MR. KUBBY: I object to the question. It's
3 calling for speculation and I instruct her not to answer.

4 MR. DARBY: Okay. The objection is noted.

5 Q. I'm going to ask you that question. Is it
6 possible he may have called you at home?

7 MR. KUBBY: I'm going to object to the
8 question. It's calling for speculation and I instruct her
9 not to answer.

10 MR. DARBY: Are you objecting to the form of
11 question?

12 MR. KUBBY: I'm objecting to the entire
13 question, the form and the content.

14 MR. DARBY: Well, the content -- I'm permitted
15 to obtain from her anything I want.

16 MR. KUBBY: What the possibilities are in the
17 world is not material to this case. She said that she did
18 not receive any calls from him.

19 MR. DARBY: Okay. The objection is noted.
20 I'll rephrase the question.

21 Q. You don't recall receiving any phone calls from
22 Bob Brackbill at the office concerning your problem
23 regarding the company's failure to pay you sufficient money?

24 A. No.

25 Q. Did you ever go back to Jim Balovich and ask

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1 him -- did you ever mention to Jim that Bob has not called
2 you back on that issue?

3 A. Yeah. I did tell Jim. Jim always say, "Bob is
4 very hard to reach."

5 Q. And you didn't file a grievance yourself?

6 A. No.

7 Q. Okay. Mrs. Tu, do you recall in 1983, do you
8 remember that the PFE was planning to abolish many jobs at
9 Brisbane and in doing so, they were going to rely on
10 something referred to as the "decline in business." Does
11 that ring a bell?

12 A. Yeah, yeah. The union. Yeah.

13 Q. Do you remember that the union filed a
14 grievance and took the case all the way to arbitration and
15 won the case and the result was everyone at Brisbane was
16 able to keep their jobs? Do you remember anything
17 pertaining to that?

18 MR. KUBBY: Could you give her more detail?
19 Where was it filed? What was the case name?

20 MR. DARBY: Well, I'm just trying to see if she
21 has any --

22 MR. KUBBY: Well, let's be specific about it.

23 MR. DARBY: Q. Do you remember in 1983 that
24 PFE wanted to abolish many jobs at Brisbane? Do you
25 remember the union fighting, at that time, the company and

1 ultimately winning an arbitration case which did not permit
2 the company to do that? Does that ring a bell with you?

3 A. No. But I know the union always -- Bob always
4 come and say, "I am fighting with the union, protect you."
5 That's what he always talk, but I don't remember the detail.

6 Q. Okay. So you don't recall any specifics about
7 the union going to arbitration with the PFE and winning a
8 case which helped you keep your job?

9 A. No, I don't.

10 Q. You don't recall that? Okay. Do you know what
11 "arbitration" is, Mrs. Tu?

12 A. Yeah.

13 Q. Let me explain it to you and you tell me
14 whether or not this is your understanding of it. The union
15 takes one position, the company takes the other and they
16 both argue to an arbitrator who is a neutral, and he decides
17 who wins. Are you familiar with that process?

18 A. Yeah. I just heard, but I don't know, you
19 know.

20 Q. But you don't know any specifics about this
21 event in 1983 that I just referred to?

22 A. No.

23 Q. No?

24 A. I heard them say, "Bob always fight for us,
25 fight for we keep our job," you know.

30

1 Q. Do you recall in 1983 at any time if a company
2 representative or management person, a supervisor took
3 everybody out to lunch? Do you remember that event?

4 A. What's the occasion?

5 Q. Do you remember ever being taken out to lunch
6 and having your lunch paid for by the company?

7 A. Only people retired or quit.

8 Q. But you don't recall being take.. out to lunch
9 yourself?

10 A. If they take me, but I don't remember. But,
11 you know, if you tell me which, what the -- you know, maybe
12 someone retired. Mention the name, maybe I remember.

13 Q. No. What I'm getting at, Mrs. Tu, in 1983 do
14 you recall the company taking everyone out to lunch after
15 the union had won a case against the company?

16 A. I don't remember.

17 Q. Okay.

18 A. I don't remember.

19 Q. Okay. That's fine. I mentioned to you before,
20 Mrs. Tu, something called the decline in business. Do you
21 have any knowledge as to what "decline in business" refers
22 to or means?

23 A. Yeah, yeah. The business no good, right?

24 Q. I'm sorry. Business is no good, is that what
25 you said?

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1 A. Yeah, yeah. Income. Yeah.

2 Q. Did you understand while you were working for
3 PFE that in the event that there was a decline in business,
4 that the company was permitted to abolish jobs?

5 MR. KUBBY: I'm going to object to the
6 question. It calls for a legal conclusion on her part and
7 interpretation of the agreement and she is not qualified as
8 the expert to make those kinds of assumptions. I object to
9 the question and instruct her not to answer it. I think the
10 reading of the agreement is decline in business is not --

11 MR. DARBY: I am not deposing you.

12 MR. KUBBY: -- intentional desire to refuse to
13 serve its customers.

14 MR. DARBY: Q. Mrs. Tu, do you ever recall
15 prior to your being let go in October of 1985, do you recall
16 having a job -- your job abolished because the company said
17 there was a decline in business?

18 A. They didn't tell me anything. They didn't say
19 anything.

20 MR. DARBY: Let me mark this Exhibit 1, if I
21 may.

22 (Whereupon, Defendant's
23 Exhibit 1 was marked
24 for identification.)

25 MR. DARBY: Q. Mrs. Tu, do you ever recall

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1 seeing this document?

2 A. Yeah. On the bulletin. Well, let me see.

3 Q. And if you could tell me what your
4 understanding of what this document represents?

5 A. Yeah. '85. Yeah.

6 Q. What did this document represent, Mrs. Tu, if
7 you can recall?

8 A. They abolish my job. Right.

9 Q. Okay. If you would look to the second page.
10 It's a letter dated March 4th, 1985 and this is addressed to
11 you -- or the salutation is to you. Do you recall receiving
12 that?

13 A. Yeah.

14 Q. Could you read the first sentence for me now?

15 A. Yeah. You read, I listen.

16 Q. I will read. "Refers to 1985 Reduction in
17 Force Notice Number 7 which eliminates your position due to
18 Business Decline effective March 8th, 1985." When you
19 received this letter, was it your understanding then that
20 your job was being abolished due to a decline in business?

21 A. Yeah.

22 MR. KUBBY: Let me give you some instruction
23 here. When he asks you, for instance, he just asked you if
24 you understood that it was because of the decline in
25 business and you answered yes. That's indicating that

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1 that's your opinion.

2 THE WITNESS: Yeah.

3 MR. KUBBY: And I don't believe that you really
4 know that.

5 THE WITNESS: No.

6 MR. KUBBY: And so you're going to have to
7 listen very carefully to his questions and answer the
8 question based upon what you actually know, not upon what
9 he's asking you or what he's indicating to you he believes
10 to be the situation.

11 THE WITNESS: Okay.

12 MR. KUBBY: So, did you know that there had
13 been a decline in business as of that date?

14 THE WITNESS: Okay. This letter addressed to
15 me. I remember this. Okay?

16 MR. DARBY: Q. Okay.

17 A. The reason in the 1984 to '85, I'm the only one
18 they abolish my job back, forwards, back, forwards, five
19 job, you know. They abolish this job, I bump to another
20 position and then I bump. They abolish the other job. So I
21 went to Dwaine -- I think he passed away -- so I said,
22 "Dwaine, why you do that to me?" Because, you know, I just
23 go there. They send me Bayshore, Bayshore SP freight and
24 now I learned that --

25 Q. Let me just interrupt you, Mrs. Tu. I'm sorry,

1 my question was not clear enough. How about I make this a
2 lot simpler.

3 - And I hope you're not suggesting I'm trying to
4 trick, Mrs. Tu.

5 MR. KUBBY: Well, that's the way I see it. Let
6 me get the record straight. Our claim is that there was no
7 decline in business under the agreement because the company
8 set out in 1980 to abolish PFE and they refused to service
9 their customers and refused to accept business from their
10 customers.

11 MR. DARBY: Okay.

12 MR. KUBBY: And the decline in business phrase
13 in the contract is, from my reading of the contract, is due
14 only to circumstances beyond the control of the company, but
15 when the company intentionally refuses business and causes
16 the decline in business, then that phrase no longer has the
17 significance which the company gives to it in Exhibit 1.

18 MR. DARBY: Well, being a representative for
19 the union, I understand exactly where you're coming from on
20 that. Let me state this simply.

21 Q. Mrs. Tu, do you recall receiving a copy of this
22 letter?

23 A. Yes, I did.

24 Q. Thank you.

25 A. But you didn't let me finish answering it.

1 Q. That's the only question I have for you on
2 this. Okay. Mrs. Tu, you mentioned to me earlier, and my
3 understanding is you also refer to this in your deposition
4 with Mr. Bogeson as well, that there were rumors circulating
5 that the Brisbane office was going to close, correct?

6 A. Yeah. I don't know it close or merge. I don't
7 know. Maybe go to transfer SP, I don't know.

8 Q. But did you hear rumors that the Brisbane
9 location was going to be actually closed and that you would
10 no longer be working at Brisbane?

11 A. I don't think I should tell you the rumor
12 because you got to know the fact. So I don't know the
13 facts.

14 Q. I'm very interested in facts, Mrs. Tu, and I
15 appreciate that as well, but I'm interested in finding out
16 whether or not you had any knowledge through facts or rumor
17 that the Brisbane office was going to be closing?

18 A. I don't know closed, but I know we are in
19 trouble. You know, we are -- maybe we don't have a job or
20 maybe something -- we don't know.

21 Q. I see. Okay. That's fine. Now, prior to your
22 being let go from the company in October of 1985, do you
23 recall attending union meetings in the lunchroom around that
24 period of time? And let me just put it in context for you.
25 I'm talking about either on July, August, or September of

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1 1985 prior to your being let go from the company.

2 A. Yes, I think I remember September they have a
3 bulletin put on. They have a job -- created lots new job.
4 And in fact when the union man, the Greg, he was 1-A job,
5 then he become clerk. They create one job for him; clerk.
6 Another bulletin they have people transfer to SP. So I did
7 went to the Jim. I think all the people were -- because I
8 have enough seniority, so I should exercise all the job in
9 the bulletin.

10 Q. Let me ask you something, Mrs. Tu. Are you
11 referring to the company's creating new positions in San
12 Francisco and transferring certain people up there?

13 A. No. Listen. You let me finish.

14 Q. Okay.

15 A. So now you disturb me. I don't remember.

16 Q. I'm sorry. Go ahead.

17 A. So they have a job in there in the bulletin. I
18 looked at bulletin. So I went to downstairs. I said, "Some
19 job I have a seniority to pick that job." But the
20 management say, "No, this job is go with the people." So I
21 don't have a chance. Nobody, not just me, nobody have a
22 chance to pick that job or the job in the bulletin. So we
23 did went to see Bob. Bob, I think, I did see -- went to
24 Bob. In fact, I told Bob I was a little upset. I said,
25 "You know I have enough according to union rule. You follow

3.

1 the seniority list. Whoever have seniority the job, I know
2 you know. I did it before, I know." So he didn't say
3 anything. I said, "Bob, do you know I pay you \$30 to
4 protect me?"

5 Then he did, as I do remember, he told me, he
6 said, "Sieu, if you didn't pay me \$30, you're out the door a
7 long time ago." That's --

8 Q. Well, Mrs. Tu, I just --

9 A. Well, listen.

10 MR. KUBBY: She has not completely answered the
11 question.

12 THE WITNESS: I can tell you the truth.

13 MR. DARBY: Q. I just want to make sure we're
14 talking about the same thing, Mrs. Tu.

15 A. It's the same thing. You say September, I
16 don't know. I remember the September, the bulletin put
17 there. I do remember.

18 Q. Mrs. Tu, let me show you a copy of the bulletin
19 and you can tell me whether or not that's the bulletin
20 you're referring to.

21 A. Yeah.

22 MR. KUBBY: Do you have another copy?

23 MR. DARBY: I might have another copy of this
24 one. I don't have it. I don't think I'm going to introduce
25 it. I just want to make sure we're talking about the same

1 thing.

2 MR. KUBBY: Is there a date on this?

3 THE WITNESS: I saw September 12, '85.

4 MR. KUBBY: It's entitled Special Preferential
5 Bulletin Number 22.

6 MR. DARBY: Q. Let me just, I'm going to ask
7 you one question, Mrs. Tu, and I would just like you to
8 respond to the question. Is that the bulletin that went up
9 in September where they transferred the nine positions to
10 San Francisco? This is an attachment to another letter.
11 Just referring to this now.

12 A. I think you have first page. This is the
13 second page.

14 Q. Okay. Is that the bulletin?

15 A. Yeah, that's the bulletin.

16 Q. Okay. Thank you.

17 MR. KUBBY: Wait a minute. Just a minute.
18 Before you take it away, when she responded to that, the
19 bulletin she was referring to, a document that's entitled --

20 THE WITNESS: See, I have written --

21 MR. KUBBY: -- Bulletin Number 4, Special
22 Preferential Bulletin Number 23.

23 THE WITNESS: I do have enough seniority,
24 but --

25 MR. DARBY: Q. I understand that, Mrs. Tu, I

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1 didn't ask you whether you had enough seniority. I am just
2 asking you if that was the bulletin?

3 MR. KUBBY: Are you talking about Special
4 Preferential Bulletin Number 22 or Number 23?

5 MR. DARBY: Q. 23. Is that the bulletin --

6 A. Yeah.

7 Q. -- that you saw in September?

8 A. Yeah.

9 Q. Okay. Now, do you recall seeing this bulletin
10 as well, Special Preferential Bulletin Number 22?

11 A. Yeah. In fact, I went to Jim and Bob.

12 Q. Just answer the question. All right. Did you
13 receive a copy? Do you remember seeing a copy of the
14 bulletin?

15 A. It was in the company bulletin.

16 Q. It was on the company bulletin board?

17 A. Yeah. But you represent union, so I got to
18 tell you what I tell union.

19 Q. I will ask you that question. I am asking the
20 questions, and all you have to do is respond to the
21 questions I'm asking.

22 A. That's what I tell you.

23 Q. Mrs. Tu, all I asked you is whether or not this
24 is the bulletin. That's all I asked you.

25 A. I got a bulletin. I went to talk to union --

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1 Q. I am going to ask you that. I'm very
2 interested in that. I'm just going to ask you one question
3 at a time, okay?

4 A. Yeah.

5 Q. So at the time then, you did go and speak to
6 Jim Balovich --

7 A. Yeah.

8 Q. -- and to Bob Brackbill? Now, with respect to
9 Mr. Brackbill, did he come to Brisbane and attend a union
10 meeting where you spoke to Mr. Brackbill?

11 A. Yeah. At that time I called him almost every
12 day. His secretary say, "He's a very busy work for us."

13 I said, "What are we going to do? You know,
14 what are we going to do?"

15 He said, "Don't worry, Bob is take care of us."
16 Okay. So I call every day until October the 5th.

17 Q. All right. Now, Mrs. Tu, I'm trying to isolate
18 on September, when this bulletin came out in September.

19 A. Yeah.

20 Q. Do you remember Bob Brackbill coming out to
21 Brisbane to meet with the employees?

22 A. I don't remember.

23 Q. You don't remember?

24 A. I did call him every day.

25 Q. Okay. I'm not asking you if you called him,

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1 I'm just asking if he came to Brisbane to meet with the
2 employees?

3 A. But I -- that I don't remember.

4 Q. Okay. Fine. That's fine. You did go to Jim
5 Balovich?

6 A. Jim Balovich. I called Bob.

7 Q. What did you say to Jim Balovich?

8 A. You know, that's three years ago.

9 Q. Okay. If you don't remember, tell me you don't
10 remember.

11 A. I did go to Jim. I did call Bob. I also
12 worried my job. Just not me, everybody didn't have a chance
13 to put a bid; they call. So then until October the 5th,
14 they give me letter. Between that time I thought maybe they
15 have created job for us or transferred that. But until
16 October 5th, nobody give me warning. Just give me letter
17 saying -- yeah.

18 Q. Okay. So let's isolate then. I think we're
19 talking about the same thing. Before October 5th, do you
20 recall attending any union meetings where any of this was
21 explained to you?

22 A. No. Nobody explained to me. I don't remember
23 anybody explained. I thought maybe union going to create
24 something, maybe severance pay, maybe create some job, maybe
25 you know, put a bulletin.

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1 Q. But you don't recall attending any of these
2 lunch time union meetings prior to October --

3 A. I don't remember.

4 Q. -- where either Mr. Balovich or Mr. Brackbill
5 discussed what the company was trying to do and what the
6 union was going to do to fight them?

7 A. Jim -- some time I think after that, Jim have a
8 few meeting the lunch time. You know, but I don't remember
9 what he said. But I think usually he told us Bob is working
10 on it. "I can't reach Bob." That's what he always tell us.

11 MR. KUBBY: I can or cannot?

12 THE WITNESS: Cannot reach. Cannot reach.

13 MR. DARBY: Let me mark this as Exhibit 2.

14 (Whereupon, Defendant's
15 Exhibit 2 was marked
16 for identification.)

17 MR. KUBBY: Do you have the document I
18 produced?

19 MR. DARBY: Yes, I do.

20 MR. KUBBY: I want to check the date.

21 MR. DARBY: Now, this is one document you did
22 not produce for us. You produced it for the company, but
23 you didn't produce it for us.

24 Q. Mrs. Lu, I've just handed you what's been
25 marked as Exhibit 2. Do you recall seeing this document?

1 A. Yeah. I don't remember. You know, I don't
2 remember.

3 Q. Okay. But you may have received this document?

4 A. I don't know. I don't know. I just told you I
5 don't remember.

6 Q. Okay. That's fine. That's fine. Do you
7 recall in any discussions you had with either Mr. Balovich
8 or Mr. Brackbill --

9 A. For what?

10 Q. Let me make it an easier question. Do you
11 remember anybody from the union telling you that they had
12 filed this document with the company in order to fight to
13 keep your job?

14 A. Bob always come to the meeting, always told us
15 that I'm going to work on it, take care of you.

16 Q. I'm working on taking care of you?

17 A. Yeah, yeah.

18 Q. Attached to this document, Mrs. Tu, is a
19 seniority roster.

20 A. Yeah.

21 Q. Can you show me where your name is on that
22 roster?

23 A. Number 23.

24 Q. Now, do you have any recollection as to what
25 this document constitutes or what this document was?

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1 A. Seniority list.

2 - Q. Right. But the letter --

3 - A. The letter --

4 Q. If you want to review the letter -- you may not
5 remember -- that's fine. But I'm just asking if you recall
6 what this letter, which was sent from Mr. Balovich to Mr.
7 Segurson, do you have any recollection as to what this
8 letter was?

9 A. No, I don't remember.

10 Q. Did you understand this letter --

11 A. No. Not, you know, the union that --

12 Q. I'm not finish with my question.

13 A. I'm sorry.

14 Q. Did you understand that the union was filing a
15 grievance on your behalf against the company?

16 A. After 1980, Jim -- every time we talked to Bob,
17 he say, "I'm going to file a grievance with you, to take
18 care of you." That's all. He always say that. We thought
19 whatever letter he give to us, you know.

20 Q. That was a grievance he was filing against the
21 company?

22 A. Yeah.

23 Q. Okay.

24 MR. KUBBY: Sieu, again I'm going to ask you
25 the question that he just asked. You assumed something. He

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1 said that that was a grievance that he was filing with the
2 company. When you use the phrase that he was going to
3 protect you, did you understand that to mean the filing of a
4 grievance against the company?

5 THE WITNESS: Really I don't understand the
6 whole thing what they -- between union and company. They
7 never explain that to us. Only thing they told us that
8 union man take care of us. That's all.

9 MR. DARBY: I think to make it easier, Mr.
10 Kubby, you will have your chance to ask your questions at
11 the end.

12 MR. KUBBY: I think I am going to ask you to
13 get an interpreter so she can understand the full input of
14 your questions because it's clear she's not getting the full
15 input of the questions.

16 MR. DARBY: Q. Mrs. Tu, when you look at this
17 letter, can you tell me today if you can recall, first of
18 all, ever seeing this document?

19 A. I don't remember.

20 Q. You don't remember. Okay. In reviewing -- in
21 looking at the letter now, can you tell me what this letter
22 refers to or what this letter is? Do you have any
23 understanding --

24 MR. KUBBY: I'm going to object to the question
25 as compound.

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1 MR. DARBY: Q. Do you have any understanding
2 as to what this letter is?

3 A. No, I don't.

4 MR. DARBY: Okay. Fine. Is that better?

5 MR. KUBBY: That's better.

6 MR. DARBY: Okay. I'd like to have this marked
7 as Exhibit 3.

8 (Whereupon, Defendant's
9 Exhibit 3 was marked
10 for identification.)

11 MR. DARBY: Q. Mrs. Tu, I've just handed you a
12 document marked as Exhibit 3 and it's a letter to Mr.
13 Segurson from Jim Balovich dated August 28, 1985. Do you
14 recognize anything in this letter?

15 A. No, I don't remember that.

16 Q. Do you ever recall receiving a copy of this
17 letter?

18 A. No.

19 Q. Do you ever recall this letter being discussed
20 with you by Mr. Balovich?

21 A. No. No, I don't.

22 Q. Mr. Balovich never spoke to you about this?

23 A. No, I don't remember.

24 Q. Okay. Do you see that little newspaper article
25 on there?

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1 A. Uh-huh.

2 Q. Do you recall seeing that newspaper article
3 anywhere before?

4 A. I don't remember.

5 Q. Okay. So, is this the first time you've ever
6 seen this document, Mrs. Tu?

7 A. If I see, I don't remember.

8 Q. Do you remember if Mr. Balovich ever handed out
9 copies of grievances to the members or posted them on the
10 bulletin board?

11 MR. KUBBY: I'm going to object to the
12 question. Would you explain what a grievance is, please?

13 MR. DARBY: Q. Do you recall Mr. Balovich
14 either handing out to you or posting on the bulletin board
15 any letters that he wrote to the company?

16 MR. KUBBY: I'm going to object to the question
17 as compound.

18 MR. DARBY: Q. Do you recall Mr. Balovich ever
19 handing out to you or any of the members or employees
20 letters that he would routinely write to the company?

21 A. I don't remember.

22 Q. You don't remember?

23 A. (Witness shakes head.)

24 Q. Is it possible that he may have and you just
25 don't recall?

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1 A. I don't remember.

2 MR. KUBBY: In seeing this, too, I would like
3 to square something with you as well. As far as production
4 of documents, when her deposition was taken, SP produced
5 documents. And whatever was in her deposition were not
6 necessarily those things that were produced by her, but may
7 have been produced by SP. I don't recall.

8 MR. DARBY: I think that's taken care of by, I
9 believe, page 17 of the deposition in which Mr. Boyeson
10 recites the documents that you had produced. So I think
11 that will square that away.

12 MR. KUBBY: Okay.

13 MR. DARBY: I'd like to have this marked as
14 Exhibit 4.

15 (Whereupon, Defendant's
16 Exhibit 4 was marked
17 for identification.)

18 MR. DARBY: Q. Mrs. Tu, I just handed you a
19 document marked as Exhibit Number 4, a letter dated
20 September 4th, 1985, to Mr. Walsh from Mr. Brackbill. Do
21 you know who Mr. Walsh was, by the way?

22 A. Yeah.

23 Q. Do you remember what his position was?

24 A. Personnel department.

25 Q. I'm sorry?

1 A. Personnel department.

2 Q. Have you ever seen this document before?

3 A. I don't remember.

4 Q. Is it possible you may have received a copy of
5 this at one time?

6 A. I don't remember.

7 Q. You don't remember. Is there anything familiar
8 with this letter?

9 A. I don't remember.

10 Q. Let me read to you something, Mrs. Tu, if I
11 may, off of this letter. "We hereby appeal from the
12 decision of Mr. J. P. Segurson, Assistant to Vice President
13 and General Manager, Brisbane, California, claim in behalf
14 of every employee who holds seniority on current PFE
15 Seniority District 1 Roster account Carrier is wrongfully
16 transferrng their work to other companies." Okay. How
17 about we stop there? In reading that now, can you
18 understand or do you understand by what he's saying there
19 that he is appealing to the company on your behalf?

20 A. Who is?

21 Q. Mr. Brackbill.

22 A. Yeah, yeah.

23 Q. Is that your understanding from what I just
24 read from "We hereby appeal" and then up to "other
25 companies"?

1 A. He's help us.

2 Q. Right. Is that your understanding --

3 A. Yeah.

4 Q. -- from what I just read to you?

5 A. Yeah.

6 Q. Okay. And I'll continue. "Seniority rosters
7 and/or exempt persons in violation of the Agreement and
8 Carrier has also in violation of the Agreement laid off and
9 is taking steps to further lay off Claimants through
10 misapplication of the Agreement's Decline in Business
11 provisions, to:" Let's just stop there. From what I just
12 read, is it your understanding that Mr. Brackbill was again
13 attempting to file an appeal on your behalf?

14 A. Yeah.

15 Q. Is that a yes?

16 A. No. I just -- you explain to me. Yeah, I
17 listen.

18 Q. I mean, listening to it now, is that your
19 understanding of it now?

20 A. Yeah, I listen.

21 MR. KUBBY: Now, Sieu, that's confusing. The
22 question is whether you understand what the words mean or if
23 you're saying yes to what he's saying?

24 THE WITNESS: No. I -- to me, he's represent
25 us to take care us.

1 MR. DARBY: Q. Okay.

2 A. That's what I understand. Is that right? You
3 are the one take care of me, right?

4 Q. I'd like to think so. Obviously you don't feel
5 that way because you're suing us.

6 A. I always think you are, the union, take care of
7 me. That's why I call union all the time. Now, when you
8 asking me, I don't know if you're SP side or union's side.
9 Right now I am asking you face to face.

10 Q. I'm on the union's side.

11 A. You going to take care of me, right?

12 Q. Well, it's very difficult. We're all going to
13 take care of this lawsuit first.

14 We can discuss conflict of interest later, Mr.
15 Kubby.

16 MR. KUBBY: It goes to the deposition. I mean,
17 what she's saying has a great deal of merit. You are an
18 employee of the union. She is a member of the union. You
19 have an obligation to protect her. There is outside counsel
20 who are on this case and why you are associating in this
21 case, I don't understand.

22 MR. DARBY: Because I am defending the union in
23 a lawsuit brought by you and your client, Mr. Kubby, and the
24 allegations that the union has failed to help her and I am
25 here on behalf of the union.

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1 MR. KUBBY: I don't think as an attorney you're
2 entitled to pick and choose which of your clients you're
3 going to defend. I think the union's entitled to be
4 defended by outside counsel, not by in-house counsel.

5 MR. DARBY: You obviously don't have any
6 familiarity with this area because there are in-house
7 counsels for all the major unions and they defend their
8 unions in lawsuits brought against them by members for
9 breach of a fair duty of representation. It's our duty to
10 represent the union in that regard.

11 MR. KUBBY: Just because people go around
12 violating their conflict of interest --

13 MR. DARBY: Mr. Kubby, we're just confusing the
14 record about that now. Let's talk to the judge about that.
15 I don't want to talk about that now. It's a ridiculous
16 argument.

17 Q. I'm sorry, Mrs. Tu, we got a little diverted
18 there. The next line there, Number 1, Mr. Brackbill states:
19 "Follow their position and work with their full rights."
20 Now, isn't it true, Mrs. Tu, that's exactly what you wanted
21 to do, that you wanted to go to San Francisco and work?

22 A. Yeah. Brisbane, not San Francisco. Right.

23 Q. Well, when they were closing the Brisbane
24 office and moving positions to San Francisco, you were
25 telling me before that you had more seniority and you should

1 have been able to get one of those positions in San
2 Francisco, correct?

3 A. That time is September 4.

4 Q. Right.

5 A. The job is September the 18th you just give to
6 me.

7 Q. Right. Exactly.

8 A. So we don't know who transfer. We don't know.

9 Q. But what I'm saying to you is, based on this
10 appeal that Mr. Brackbill was filing --

11 A. Yeah.

12 Q. -- on your behalf, is it your understanding
13 from looking at that letter now that he was at least, in
14 anticipation of the closing, requesting that the employees
15 follow their position and work with their full rights?

16 A. Yeah.

17 Q. Is that your understanding of it when you look
18 at that now?

19 A. Yeah, yeah.

20 Q. Okay. This is already in, right? Number 4.

21 Yes. Okay. Now, again you just mentioned something to me,
22 Mrs. Tu. All of these documents that I've introduced, and
23 again I'll refer to them, Number 2 -- document Number 2,
24 Exhibit Number 3, and this last letter I showed you was all
25 filed prior to your job being abolished, correct?

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1 A. I don't understand because I have time -- you
2 just give me short time to read. I don't understand.

3 Q. Well, at least looking at the dates --

4 A. Yeah.

5 Q. -- since you were laid off in October of '85?

6 A. Yeah. During all this time -- you ask Jim --
7 and we did often go to see him and talk to the Bob. We
8 thought union is fully protect. And understand I am fully
9 protected if there is no job, they pay me. In fact, they
10 call rocking chair money. You sit at home, do nothing. But
11 according to union rule --

12 Q. Well, now that I am showing you those
13 documents, Mrs. Tu, isn't that exactly what the union was
14 doing by filing these things with the company?

15 A. When I called Bob, Bob always say, "I take care
16 of you. Don't worry."

17 Q. Well, isn't that what this September 4, 1985
18 letter is? He was taking care of you.

19 MR. KUBBY: Just a minute, Sieu.

20 Well, whether he was or not is a legal
21 conclusion. I object to the question as calling for a legal
22 conclusion.

23 THE WITNESS: Okay.

24 MR. DARBY: I'd like to mark this as Exhibit 5.

25 (Whereupon, Defendant's

1 Exhibit 5 was marked
2 for identification.)

3 MR. DARBY: Q. Mrs. Tu, I've handed you a
4 document which has been marked as Exhibit 5 dated October
5 2nd, 1985 and it was to yourself, Mrs. S. M. Tu. Do you
6 recall ever receiving a copy of this?

7 A. Yeah.

8 Q. Is this the notice in which they were telling
9 you that you would no longer be working for PFE?

10 A. Yeah. October the 2nd, 11:45 they give it to
11 me. They didn't have a warning and union didn't tell me
12 anything either.

13 Q. But all I am asking you is, this is the
14 document you received, correct?

15 A. Yeah.

16 Q. At 11:45?

17 A. At 11:45.

18 Q. After you received this document, Mrs. Tu, do
19 you recall having any conversations with Jim Balovich?

20 A. Yeah. I got the letter, I went downstairs. I
21 think told Jim that. In fact, I called Bob, too.

22 Q. Okay. Do you recall what your conversation was
23 with Jim Balovich or the substance of the conversation?

24 A. No, I don't remember. He knows I don't have a
25 job.

1 Q. Okay.

2 A. But I did call Bob. Rob never returned my
3 call.

4 Q. So you called Bob Brackbill after you had
5 received this letter?

6 A. Yes. He never call back.

7 Q. Do you recall him holding a meeting in his
8 office here in San Francisco to discuss this matter?

9 MR. KUBBY: Which matter?

10 MR. DARBY: Q. Your being laid off.

11 MR. KUBBY: The receipt of the letter?

12 MR. DARBY: Right.

13 THE WITNESS: I don't remember.

14 MR. DARBY: Q. Do you recall attending any
15 meetings in San Francisco?

16 MR. KUBBY: After October?

17 MR. DARBY: Q. After October 2nd, 1985?

18 A. I don't remember. I think we have a meeting --
19 whole bunch have a meeting before that, not after that.

20 Q. Okay. But you do recall at some time having a
21 meeting in Mr. Brackbill's office?

22 A. Oh, yeah. We have two, three, I think.

23 Q. Do you recall why the meetings were held in Mr.
24 Brackbill's office and not at Brisbane?

25 A. I don't remember. I think he always busy. I

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1 think they reach -- the time that day he was in the office,
2 he can't come lunch time. Some excuse. I don't remember.

3 Q. Was it possibly because the Brisbane office had
4 already closed and that was the only place to have the
5 meeting?

6 A. No. I don't remember.

7 Q. At the meetings that you had in Bob Brackbill's
8 office, what is your recollection of the substance of this
9 meeting? What was the discussions at that meeting or at
10 those meetings?

11 A. We all went there. You know, not just me. I
12 say them, "What they going to do with this? Do we get
13 severance pay? If they don't, what we going to get?
14 Protection pay? What our future is?"

15 Q. Did you, yourself, recall asking any questions?

16 A. Yes. I asking him what my future is, but he
17 never --

18 Q. And what was the response given to you by
19 the -- who gave you a response and what was the response?

20 A. No. I talked to Brackbill. He never say
21 anything, yes or no, he never say anything.

22 Q. But at those meetings there were more than just
23 yourself at these meetings, correct?

24 A. Yes.

25 Q. What did Bob Brackbill tell the individuals at

1 that meeting that the union was doing?

2 A. I don't know. He just say he have hard time
3 dealing with Tom Ellen. That's what he always say.

4 Q. Did he tell the members that he was taking care
5 of the situation?

6 A. He always said that he take care. We pay union
7 due. So he said he will take care.

8 Q. Did he tell the members that he was filing any
9 grievances against the company?

10 A. I think so. But I don't remember, you know.
11 He talk very fast sometimes, you know.

12 Q. I have trouble understanding him myself
13 sometimes. Believe me, he does talk fast. But do you
14 recall anything else that was discussed at those meetings?

15 A. No, I don't remember.

16 MR. DARBY: I'd like to have this marked as
17 Exhibit Number 6.

18 (Whereupon, Defendant's
19 Exhibit 6 was marked
20 for identification.)

21 MR. DARBY: Q. I just handed you a document
22 marked as Exhibit 6, Mrs. Tu, dated October 11th, 1985.
23 That was after you received this. Yes, this is October 7th,
24 1985, your notice. This is dated after that time. It's a
25 letter to Mr. Walsh from Mr. Brackbill. Could you take a

18 1 second or two to read through that letter, please?

2 A. Uh-huh.

3 Q. Do you understand what that letter --

4 A. No, I don't.

5 Q. You don't understand that letter?

6 A. No.

7 Q. Could you turn to the second page?

8 A. Yeah.

9 Q. Is this the bulletin that went up which
10 abolished your job?

11 A. Yeah.

12 Q. Is that your name on the list there?

13 A. Yeah. Last one.

14 MR. KUBBY: Can you tell me why it's attached
15 to this letter?

16 MR. DARBY: No. It was part of this letter,
17 though. He would, when filing appeals, attach the bulletins
18 that it pertained to.

19 MR. KUBBY: There is no enclosure indicated.
20 There is no reference to it.

21 MR. DARBY: Well, that's the document.

22 MR. KUBBY: If that's the way we'll take this
23 deposition, fine then.

24 MR. DARBY: I'd like to have this marked as
25 Exhibit 7.

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1 (Whereupon, Defendant's
2 Exhibit 7 was marked
3 for identification.)

4 MR. DARBY: Q. Mrs. Tu, I'm going to hand you
5 a document which is marked as Exhibit 7. And this was
6 produced by your attorney when the Southern Pacific Railroad
7 requested documents. And I believe it was your testimony in
8 your prior deposition that you had seen this before. Is
9 this -- do you recognize this document, Mrs. Tu? And this
10 is a document dated October 25th, 1985.

11 MR. KUBBY: I'm going to object to the
12 question. It's intimidating.

13 I want to instruct you, Sieu, that even though
14 he said that you previously testified that you saw the
15 document, what we're looking for here is not what your
16 previous testimony was, but what you know now. And you
17 should answer the question based upon your present
18 knowledge, not based upon what he tells you you previously
19 testified.

20 MR. DARBY: That's correct. That's correct,
21 Mr. Kubby. The deposition testimony will speak for itself.
22 I am sorry.

23 THE WITNESS: I don't remember.

24 MR. DARBY: Q. Do you remember ever seeing
25 this document?

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1 A. I don't remember.

2 Q. Okay. Your name is on this front page, is it
3 not, Mrs. Tu?

4 A. Yeah.

5 Q. Okay. Do you see the second paragraph of that
6 letter, Mrs. Tu? It begins with "however."

7 A. Uh-huh.

8 Q. Okay. Read along there and you get to a point
9 where it says, "The other eight employees," do you see that?

10 A. Uh-huh.

11 Q. I'm going to read it to you. "The other eight
12 employees affected were thus illegally and unjustly shut out
13 from their right to follow their jobs, then taken from
14 Seniority District 1 Roster to the General Offices SPT
15 Roster, namely:" and they list the names of those
16 individuals.

17 MR. KUBBY: Could you explain to her what that
18 means?

19 THE WITNESS: Yeah. What that means?

20 MR. DARBY: Q. Is it your understanding from
21 reading that --

22 A. No. You explain that to me. I don't
23 understand.

24 Q. Okay. I don't have to explain to you -- I am
25 asking you if you understand that because if you don't

300

1 understand that, you can tell me that.

2 A. I don't understand.

3 Q. That's fine. Look at the names of these
4 individuals, Mrs. Tu. Is it your understanding that these
5 are the names of all the individuals that also lost their
6 jobs when you did?

7 A. Yeah.

8 Q. Okay. Mr. Balovich's name is on here as well,
9 is it not?

10 A. Yeah.

11 Q. So you knew that Mr. Balovich also lost his job
12 as a result of this layoff?

13 A. Yeah. I think so.

14 Q. Well, did you know if you hadn't looked at
15 this -- if I hadn't asked you, did you know that Mr.
16 Balovich was also laid off when you were?

17 A. Yeah.

18 Q. And that he wasn't able to work up in San
19 Francisco, did you know that?

20 A. But all these, they all call back to work
21 except me.

22 Q. Well, I'm not asking you that. I'm just asking
23 you whether you knew that these people were laid off --

24 A. Yes, we laid off same time. Now I am telling
25 you all these people called back to work except me.

1 Q. Are you telling me Mr. Balovich was called back
2 to work?

3 A. No. They never call him.

4 Q. They didn't call him then?

5 A. Well, if they call him, he said he -- I don't
6 know.

7 Q. You don't know?

8 MR. KUBBY: Is Mr. Balovich not working at SP?

9 THE WITNESS: No.

10 MR. DARBY: No, Mr. Balovich is not working at
11 SP.

12 MR. KUBBY: He just told you that?

13 THE WITNESS: Yes, he just told me. I thought
14 he work there.

15 MR. DARBY: Q. He told you that before things
16 started today, is that --

17 A. No. I just -- I just ask him where he work.
18 He told me he work in Vallejo.

19 MR. KUBBY: Today?

20 THE WITNESS: Today, yeah. I haven't talked to
21 Jim for --

22 MR. DARBY: Q. Okay. How well did you know
23 Jim Balovich, Mrs. Tu?

24 A. We work together.

25 Q. Were you friends? Could you call him a friend

30

1 or just a casual acquaintance?

2 A. I don't understand what you mean. You know, we
3 just work together.

4 Q. Okay. Did he ever do anything to you which
5 made you feel like he didn't like you for any reason?

6 A. No, no, no.

7 Q. So you were just casual acquaintances?

8 A. Yeah.

9 Q. Do you have any reason to believe that he
10 treated you any differently from anybody else?

11 A. I don't know. No.

12 Q. So you don't have any facts or any knowledge as
13 to Mr. Balovich treating other members differently from you,
14 do you, at this time?

15 A. Wait a minute. I like to -- now you question
16 me all these things, but you are union man, you should take
17 care of me because I always come to the union. But when I
18 tell you something, you stop me.

19 MR. DARBY: Mr. Kubby, please ask her to be
20 responsive to the question.

21 THE WITNESS: I ask you. Sometimes you confuse
22 me.

23 MR. DARBY: Q. Okay. I'm trying to ask you
24 questions, Mrs. Tu. You have to understand something as
25 well. You have sued the union. And as a result, I'm trying

300

1 to find out why you're suing the union and I have to do that
2 by asking you questions. And I have an obligation in
3 defending the union to ask questions like this. If you're
4 upset about it --

5 A. I'm not upset. You got to listen to me. Why I
6 sued the union because I have reason to. I'm not just up to
7 the air.

8 Q. I know. I'm going to be getting to that, Mrs.
9 Tu.

10 A. But all this hour you asking me the hour and
11 the frame of the time.

12 Q. I'm not asking you the hour, I am asking you a
13 very simple question. Mrs. Tu, do you have any reason to
14 believe or any facts which suggest that Mr. Balovich treated
15 you differently from any other member?

16 A. No, no.

17 Q. Thank you. Mrs. Tu, it's my understanding,
18 correct me if I'm wrong, that you retained Mr. Kubby shortly
19 after you lost your job with the PFE. Do you recall that?

20 A. It is my business or your business?

21 MR. KUBBY: I have an objection to the
22 question. Can't lead to any discoverable material.

23 MR. DARBY: Mr. Kubby, I'm entitled to ask --

24 Q. Let me ask you this. Did you retain Mr. Kubby
25 prior to your layoff or was it shortly after your layoff?

1 A. I think that's my business. Do you think so?

2 MR. DARBY: Mr. Kubby, it is my business and it
3 is discoverable evidence.

4 Q. Do you recall --

5 MR. KUBBY: I'm going to object to the
6 question. It's not material to any issue in the case and I
7 instruct her not to answer. Can't lead to any discoverable
8 material.

9 MR. DARBY: I'd like to mark this as Exhibit 8.

10 (Whereupon, Defendant's
11 Exhibit 8 was marked
12 for identification.)

13 MR. DARBY: Q. Would you like to take a break?

14 A. I would like some hot water.

15 (Recess taken.)

16 MR. DARBY: Back on the record.

17 Q. Mrs. Tu, I'm showing you a document which we've
18 marked as Exhibit Number 8. Do you recall seeing a copy of
19 this letter? It's a letter dated October 18th, 1985 from
20 Mr. Kubby to Mr. Balovich. Do you recall seeing a copy of
21 this?

22 A. I think so. Yeah.

23 Q. Okay. At this time, Mrs. Tu, and if you can
24 keep your mind on this date, October 18th, 1985, this was
25 shortly after your being laid off, correct?

301

1 A. Uh-huh.

2 Q. At this point in time, did you have any
3 complaints about how the union was handling your case?

4 A. Yeah, because I tried to call the Bob; he never
5 answer. And I figure out that he don't listen to me. So I
6 turn to ask Mr. Kubby to take care of me.

7 Q. Okay. So the complaint you had with the union
8 representation at that point was that they were not
9 returning your phone calls?

10 A. You told me I -- you said you let me talk when
11 you -- so --

12 Q. Right.

13 A. You give me the list. I got to see the list.
14 You put it back there.

15 Q. Oh, that?

16 A. Yeah. Okay.

17 Q. Okay. Well, again, is this the list you're
18 talking about?

19 A. Yes.

20 Q. Now, let me ask you the question and then you
21 can respond to it, okay?

22 MR. KUBBY: I believe there is a question
23 pending.

24 MR. DARBY: Q. I hope it's the same question.
25 If it's not the same question, let me know, Mrs. Tu. By

300

1 October 18th, 1985, the date of this letter, what was your
2 complaint about the union's representation at that point, if
3 you were dissatisfied with the union's representation?

4 A. Because I don't get answer from Bob. That's
5 what I worried because I don't want to keep to go. I don't
6 have a chance. So I just call Bob and Bob never call me.
7 At this time, Jim is not office. I don't have a union
8 representative, right? So I called him.

9 I have a few questions I want to ask that I
10 tell you. You listen to me now.

11 Q. Yes.

12 A. Okay. First of all, I have more seniority than
13 two people in here, okay? They're Feng and Shirley Hauff.

14 MR. DARBY: Mrs. Tu is referring to the Special
15 Preferential Bulletin Number 23.

16 THE WITNESS: 23. I ask him why I didn't have
17 a chance to bump that two job. I have enough seniority.
18 That's first one, okay? The second one -- you got to
19 forgive me slow because --

20 MR. DARBY: Q. Take your time.

21 A. -- my English.

22 Q. You're doing very well.

23 A. If you don't understand me, tell me. Mike
24 G-r-e-g-o-r-y.

25 MR. KUBBY: She's now referring to Special

300

1 Preferential Bulletin Number 22.

2 THE WITNESS: Mike Gregory, he was a 1-A job.
3 Why suddenly he demoted be a clerk? They created new job
4 for him. I also have more seniority than he, right?

5 MR. DARBY: Q. Okay.

6 A. So I just -- then Ron Soldavini, he's a union
7 man. He is a 1-A job. Then --

8 Q. Well, he wasn't a union man at that time, was
9 he?

10 A. He wasn't union man. At time he was union man.

11 Q. He was working. Didn't he have a management --
12 an exempt position, is that what they refer to?

13 A. 1-A. We call 1-A job. Suddenly they demoted
14 him as clerk job. So he got a job.

15 Q. Okay.

16 A. So I want Bob to explain to me why all this
17 suddenly they create all these jobs for them. They didn't
18 give me any chance to exercise my seniority. I work there
19 twenty-two and a half years. That's what I want to know.
20 And then for my understanding, union, I'm fully protect by
21 the New York Agreement. You know, if they don't have a job,
22 they shall pay me one year and a half.

23 Q. Separation pay.

24 A. Severance pay. Year and a half pay working
25 there. Right? So there -- also, before that '84, the

1 company give four people that not reach 60, they are not
2 reach the 60, they pay them. Company paid them until they
3 are 62 or 60 retirement pension. But I ask Bob that, too,
4 why I don't qualify? If I'm union man, if it qualify for
5 him, should qualify for me. Why I different?

6 Q. Okay. All right.

7 A. Now, you going to tell me why? I still don't
8 understand why they do that to me.

9 Q. Okay. Do you understand --

10 MR. KUBBY: She's not through.

11 THE WITNESS: You listen. That's all the true
12 facts. Now they call everybody back to work. They say I'm
13 a furlough by bulletin board. I ask him, Mr. Bob, Bob, I
14 call him Bob, okay? Give me the bulletin, you know, I say
15 in the bulletin if you're furlough, you have the bulletin in
16 the PFE roster or SP roster. I never got an answer from
17 him. So when the two lady or three lady or two lady, I
18 don't remember.

19 MR. DARBY: Q. This is back in 1984 you're
20 talking about?

21 A. '84. So the company paid them and fully
22 insurance paid. But that time I was 58 half and I said if
23 they can treat them -- I did ask Bob why they are treated
24 different than me, why I don't qualify, you know.

25 Q. Okay. This was back in 1984?

1 1 A. '84. So then when they lay me off on the list,
2 all these people lay off, I'm the only -- now this Barbara,
3 when they abolish her job, he's 62 so he can collect the
4 retirement pension. I'm the oldest one in the list. I'm
5 the oldest one on the list.

6 Q. Okay. All right. Thank you, Mrs. Tu. I
7 understand what you're saying. I understand what you're
8 saying. So by October 19th, 1985 --

9 MR. KUBBY: She has not completed her answer.

10 MR. DARBY: Mr. Kubby, I am trying to get a
11 response to my question.

12 THE WITNESS: I tell you the whole. All this
13 time I ask union to take care of me. When Jim left, in fact
14 I call Jim. He lived Los Angeles. I didn't know. He give
15 me the phone, his house phone. I call him because I send
16 union money to him.

17 MR. DARBY: Q. This was after you were
18 furloughed?

19 A. Furloughed.

20 Q. Jim Balovich gave you his phone number?

21 A. House phone. Few time later on I called. He
22 moved. I didn't know that. So now I call Bob. But all
23 this time I called union and I called Bob so many time but,
24 you know, he never return my call until 80 -- oh, '84, '85.
25 They call Dennis Wong. He work PFE, okay? He work PFE. I

1 never work with him. I don't know why they discharge him.

2 So when I went to collect my unemployment money
3 in the west Oakland and I talked -- you know, I go to sign
4 up. They say, "You work PFE?"

5 I say, "Yeah."

6 Then they ask me, he said, "You get severance
7 pay?"

8 I said, "No."

9 Then the man in there, the union man, I don't
10 remember his name, he say, "Sieu, something wrong. You
11 should fully protected by union. Union should do
12 something."

13 Q. Okay. Mrs. Tu, I'm having trouble
14 understanding you now. So now it's my turn to stop you.

15 A. Okay. Stop me. I start over again.

16 Q. Let's take one thing at a time, okay? Let's
17 isolate ourselves.

18 A. Don't isolate. I finish. See, you don't
19 understand me.

20 Q. Mrs. Tu, I don't understand you and I am going
21 to try to break it up to make it easier.

22 A. I don't want to. I want to tell all my story.

23 Q. I am going to give you the opportunity to do
24 it, Mrs. Tu, but I'm just going to break it up to make it
25 easier. You just referred to several different instances in

400

1 which you feel --

2 A. Not instance, that's the truth.

3 Q. When I say instance, I mean circumstances or
4 occurrences. You just referred to several different
5 situations --

6 A. No, no.

7 Q. -- or facts and I want to break them up.

8 MR. KUBBY: In response to the question what
9 her complaints were against the union, she is telling you
10 what her complaints were against the union.

11 MR. DARBY: And I can't understand, Mr. Kubby,
12 because she is going from one circumstance to another and
13 you know she's doing it. And I am just asking her to break
14 it up.

15 MR. KUBBY: She is telling you at the time she
16 was terminated she was constantly contacting the union and
17 she got no response and what her questions were of the union
18 from which she got no response.

19 MR. DARBY: Q. Is that what your complaint was
20 against the union by October 1985? When you retained Mr.
21 Kubby, were you upset that the union was not returning your
22 calls?

23 A. I'm not upset. I said if they don't take care
24 of me, I got to look for someone to take care of me.

25 Q. Didn't you tell me Mr. Brackbill told you at

404

1 those meetings that he was taking care of you?

2 A. Because they delay, delay. I don't understand
3 if. I just want to know why people transfer. Why I don't
4 transfer? Why does other people have a chance? I don't
5 have a chance. Maybe I'm Chinese. Maybe I'm oldest one on
6 the list. They don't want me so I want to know the fact.

7 Q. So you wanted the union to explain all this to
8 you, is that it?

9 A. Not explain. Take care of me.

10 Q. And you're saying the union didn't take care of
11 you?

12 A. No. I paid \$30. That's what Bob told me. You
13 don't pay, you're out the door a long time ago. That's what
14 he told me.

15 Q. You do understand you have an obligation to pay
16 union dues?

2 17 A. I still do. I still want you to take care of
18 me.

19 Q. Well, if you don't pay the union dues while
20 you're working, you can be discharged for not paying the
21 union dues. Do you understand that?

22 A. I don't understand. What do you mean? Right
23 now I'm discharged. What do you think of me now? What do
24 you think of my position now?

25 Q. Mrs. Tu, I don't want to get into a fighting

1 match with you.

2 A. The thing with me --

3 Q. Mrs. Tu, I'm sorry. I have to ask you
4 questions, okay? And you have to respond to the questions.
5 And you were responding to my question --

6 A. Yeah.

7 Q. -- but you started to go into different
8 circumstances and I just want to understand each one.

9 A. I not -- maybe my English not good enough.

10 Q. Your English is fine. It's just you're
11 throwing too much into one --

12 A. Not too much. One by one I told you. I
13 complain to union what I did, what I feel what the union
14 should do for me. And I constantly quoted union man. You
15 try to twist me, I don't contact union. I do.

16 I'm so worried about my job, do you know,
17 because my pension is reduced 20 percent and because I'm
18 missing two years. And now lost maybe have chance to get
19 severance pay.

20 And I did call Bob after '85 or '86. He never
21 called me. I said, "Bob, do you know that people
22 transferred from PFE to SP, they got severance pay." So
23 what I should do?

24 Q. Okay. Mrs. Tu, I'm going to ask you some
25 questions, okay? And you understand the court reporter has

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1 to take this all down. I'm trying to understand the lawsuit
2 you're bringing against the union.

3 -
A. I'm not --

4 Q. Mrs. Tu, don't interrupt me, please. Let me
5 just say this.

6 MR. KUBBY: You have interrupted her
7 constantly.

8 MR. DARBY: I have not, Mr. Kubby. I just sat
9 there for about ten minutes listening to Mrs. Tu.

10 Q. And I haven't interrupted you, you know that.

11 A. You ask me two hours, I didn't interrupt you,
12 too.

13 Q. I have to ask you these questions now.

14 A. I am here to tell you the fact, my true story.

15 Q. Mrs. Tu, please, let's just relax. I have to
16 find out what your complaint is against the union.

17 - Now, I asked you by October 18th, 1985, how
18 were you dissatisfied with the union? What facts do you
19 have? What facts by October 18th, 1985 led you to believe
20 that the union was not protecting you?

21 Now, you've mentioned that on numerous
22 occasions you tried to call Mr. Brackbill --

23 A. Yes.

24 Q. -- and he didn't return your calls?

25 A. No.

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1 Q. Now, you called him regarding this problem
2 regarding your furlough -- is that what you said? -- and he
3 never returned your call?

4 A. And why the people who got the pay and not
5 reach the age.

6 Q. Okay. That was back in 1984?

7 MR. KUBBY: No, no. That was then when she was
8 terminated.

9 THE WITNESS: After I told him that, the whole
10 thing. I told him everything.

11 MR. DARBY: Q. When did you tell -- you told
12 him what? You said to me that he wouldn't return your
13 calls.

14 A. Step by step. That's what I want tell him.

15 Q. Told --

16 A. Told --

17 Q. -- Bob Brackbill?

18 A. Yes.

19 Q. Did you tell him this? Did you speak with Mr.
20 Brackbill on this?

21 A. No. He never call me back.

22 Q. So, he never called you back with respect to
23 your being furloughed in 1985?

24 A. No.

25 MR. KUBBY: For not getting protected or

400

1 transferred or severance pay or any of the things concerning
2 her layoff in 1985.

3 - MR. DARBY: Q. You wanted to ask him questions
4 concerning all this and he didn't return your calls?

5 A. No. Never.

6 MR. KUBBY: And after he did not return her
7 calls --

8 MR. DARBY: Mr. Kubby, you're not testifying.

9 MR. KUBBY: She went through long explanations
10 because the union didn't do a goddamned thing for her.

11 MR. DARBY: You can save your --

12 MR. KUBBY: The union did not do its job,
13 that's what her complaint was.

14 MR. DARBY: Q. How did the union not do its
15 job?

16 A. Didn't protect me.

17 Q. How did it not protect you?

18 A. All these people transfer and I have enough
19 seniority.

20 Q. Let me ask you something, Mrs. Tu. Did you
21 understand back then that the company had a right to
22 transfer certain positions and the person that follows that
23 position is the one that holds that job, not the one with
24 more seniority. Did you understand that?

25 A. I don't understand all this union rule.

400

1 According me, I understand union rule, everybody have their
2 rights exercising seniority.

3 Q. So you felt as though you should have had one
4 of those jobs because you had more seniority?

5 A. Right.

6 Q. Now, this is your complaint against the
7 company. Now, with respect to the union --

8 A. No. I complain to union, too. Why they no
9 protect me? They know the rules.

10 Q. Mrs. Tu, I've already introduced into evidence
11 copies of grievances and appeals that the union filed on
12 your behalf. Did you know that they were filing these on
13 your behalf?

14 A. Yeah. I don't know too much these union -- all
15 these things take great education. I don't think anyone to
16 understand.

17 MR. KUBBY: Your statements are totally
18 incorrect. The union did not file grievances based upon her
19 complaints.

20 MR. DARBY: Q. Mrs. Tu, you complained to the
21 union about your being laid off. Now you're telling me the
22 union didn't protect you.

23 A. No.

24 Q. Okay.

25 A. I don't think so. I don't know why.

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1 Q. So, are you telling me what the union did file
2 on your behalf wasn't good enough or how do you know that
3 what the union filed on your behalf wasn't an attempt to
4 protect --

5 A. You -- okay. You listen to me five minutes
6 now. They call everybody back to work except Jim, okay? I
7 didn't know that, today only. They called everybody. They
8 interviewed me twice. And they interviewed me. They
9 even -- Barbara get the retirement pension -- they even call
10 her back. When they interviewed me, they say, "I'm going to
11 treat like new employee, 75 percent cut."

12 Q. When was this, Mrs. Tu?

13 A. April.

14 Q. Okay. I'm still talking about 1985. We'll get
15 to that, okay? I have to find out why you're bringing a
16 breach of duty of fair representation suit against the union
17 and what you believed the union was not doing on your
18 behalf. And October of 1985 is important to this case. So
19 I have to know in October of 1985, how did you feel the
20 union was not representing you? I'm not -- now, I'm not
21 asking you to tell me what the company did, I'm asking you
22 what did the union do or not do by October 1985?

23 A. Now, you don't get excited. I tell you why all
24 this here. My cut pay, okay? They transfer one place to
25 another and another place and I keep complain all this time.

4

1 Finally, October 2nd, union didn't tell me I don't have a
2 job, they just give me that. 11:45 they give me letter.

3 Q. Do you know if the union had any notice before
4 that?

5 A. I don't know.

6 Q. Okay.

7 A. So I think union should know and tell me and
8 the company should tell me. Decency for the -- decent, you
9 know, let me know day before. They didn't tell me.

10 Q. And at these meetings in San Francisco, did Bob
11 Brackbill explain any of this to you, do you recall?

12 A. I don't remember.

13 Q. Is it possible that he explained all of this to
14 the members?

15 MR. KUBBY: To her particular situation?

16 THE WITNESS: I don't remember, you know, when
17 the Bob, who went meeting. Not just me, lots of people in
18 there. Lots of people ask questions. They worried. Okay?

19 MR. DARBY: Q. And you raised these questions
20 with Mr. Brackbill at these meetings?

21 A. I didn't raise them because everybody problem,
22 not just me.

23 Q. So, in other words, your problem was the same
24 as all these people being laid off?

25 MR. KUBBY: That's a misinterpretation of her

4

1 testimony. What she's testified to is that the most recent
2 meetings prior to her discharge all concerned the closing of
3 the Brisbane office in an attempt to find out what was going
4 to happen, not regarding her continuing grievances or what
5 had happened to her.

6 MR. DARBY: Q. Let me ask you something, Mrs.
7 Tu. How did your particular grievance differ from the rest
8 of the individuals laid off in Brisbane?

9 MR. KUBBY: You used a singular and there is a
10 plural in there. She has multiple grievances.

11 MR. DARBY: Q. How does your claim against the
12 railroad or against PFE differ, for example, than Mr.
13 Balovich's claim?

14 A. I don't know anybody's situation. To me, union
15 didn't take care of me and I ask to protect. And PFE didn't
16 treat me right and I don't know the reason. I don't know
17 why. And I -- my records show I'm good worker, good
18 attendance. I never make trouble. If I didn't go to union,
19 maybe I don't care. I did go to union. I go to Jim. Jim
20 know I so worried everyday because I worry my insurance, my
21 pension. I want result. You never give me result. But you
22 are the union lawyer, when somebody come to ask you, like
23 me, say I am call union, nobody give me answer, what do you
24 want me to do? You tell me the truth.

25 Q. So is your complaint that the union would not

400

1 give you an answer to your problems?

2 A. Protect me.

3 Q. And again, I need to have facts to support
4 this, Mrs. Tu.

5 A. Fact I tell you because why -- just a reason is
6 fact they call everybody back work and Jim --

7 Q. We'll get to that. I'm going to get to that,
8 Mrs. Tu. I'm talking about October of 1985.

9 A. You know, you go too far away. Can you tell me
10 1985 what lunch you have?

11 Q. No, I wouldn't remember that.

12 A. See.

13 Q. I don't eat lunch.

14 A. What breakfast you have?

15 Q. I showed you this letter from Mr. Kubby to Mr.
16 Balovich. It's dated October 18th, 1985 and I am trying to
17 ascertain as of that date what complaints you have against
18 the union.

19 MR. KUBBY: There is an attachment to that,
20 which you're not showing.

21 MR. DARBY: I believe it's -- do you want me to
22 put it in?

23 MR. KUBBY: Sure.

24 MR. DARBY: Why don't we make this 8-A? Can we
25 do that? 8 and 8-A.

4

1 MR. KUBBY: Fine.

2 (Whereupon, Defendant's
3 Exhibit 8-A was marked
4 for identification.)

5 MR. DARBY: Q. Here's 8 and this was an
6 attachment to this letter from Mr. Kubby to Mr. Balovich.
7 And by October of '85 you had already been laid off by the
8 company, you were no longer working at that point in time.
9 And I'm sure this is a very important time to you because
10 you had lost your job, you were dissatisfied with the union,
11 and you mentioned to me one reason at least you were
12 dissatisfied with the union is because they didn't return --
13 Mr. Brackbill didn't return your phone calls; is that
14 correct?

15 A. Yeah. But don't protect me. Union don't
16 protect me.

17 Q. We'll get to the protection. I'm just talking
18 about the phone calls. They didn't return your phone calls.
19 Do you recall how many times you called Mr. Brackbill
20 concerning this layoff?

21 A. Every day. I think after 2nd, I almost call
22 every day to Brackbill. And his secretary call. Sometimes
23 he's in the office. "May I call back?" I said, "He haven't
24 return my call." And then I call. The secretary said, "He
25 just went to lunch."

1 Q. So he didn't return your calls. You say the
2 union didn't protect you?

3 A. Yeah.

4 Q. The union did file grievances on your behalf.
5 Are you aware of that, Mrs. Tu?

6 MR. KUBBY: When did they do that?

7 MR. DARBY: Q. Throughout August and October
8 of 1985 were you aware that the union was filing grievances
9 on your behalf?

10 A. Yeah. The August, then September. Don't know
11 which date they created some job transfer.

12 Q. Right. We talked about that. And then in
13 October --

14 A. No. Excuse me one second. Why don't give me
15 the right to exercise my rights to bump that job? I don't
16 understand.

17 Q. Okay. The reason for that, Mrs. Tu, is in the
18 agreement.

19 A. Whose agreement?

20 Q. In the union agreement, in the agreement with
21 the company.

22 A. Wait a minute. They go to us, they ask us
23 agree that -- well, you union represent me, right? So when
24 you do something, do you think you should consider you going
25 to consult me?

4

1 Q. I'm asking you the questions, Mrs. Tu. All I'm
2 telling you is that were you aware during October 1985 --

3 A. '85?

4 Q. Right. After you were laid off, that the union
5 was filing grievances on your behalf?

6 MR. KUBBY: That they were going to or that
7 they had?

8 MR. DARBY: Q. That they had or were in the
9 process of filing grievances on your behalf?

5
10 MR. KUBBY: Now, I want you to listen to the
11 question and read this letter because this requested that
12 they do that and they were going to advise you what they
13 were going to do and they never responded to the letter.

14 MR. DARBY: Q. In October of 1985, did you
15 know that the union was filing grievances on your behalf --

16 A. When?

17 Q. -- with the company complaining about your loss
18 of your job?

19 A. Before or after?

20 Q. After October 2nd, 1985.

21 A. That's what we wanted them let me know.

22 Q. You had Mr. Kubby or Mr. Kubby wrote the letter
23 so as for you to be informed what the union was doing for
24 you.

25 A. Because I don't know your union's language.

4

1 I'm not a lawyer. I'm just a foreigner. So every time I go
2 to Bob's office he use the big words like you use now
3 because you're a lawyer. So now I have Kubby take care of
4 me. I don't know these -- I only know simple English. If I
5 say the wrong thing, that's what you said. I don't want to
6 say that. I just want to tell the whole truth. That's why
7 I went to Kubby, take care of me.

8 Q. To get an answer from the union?

9 A. Yeah.

10 Q. Okay. Mrs. Tu, how often -- can you tell me
11 how many times you've seen Bob Brackbill before? Just a
12 very simple question. I know you already testified that he
13 never returned your calls, I don't need to know that. I
14 need to know how many times approximately you met Mr.
15 Brackbill?

16 MR. KUBBY: Face to face?

17 MR. DARBY: Q. Face to face.

18 A. I don't remember. But I tell you --

19 Q. It's a very simple question. You don't
20 remember? More than five times?

21 A. You say simple question. Now you say five
22 times, two times.

23 Q. I'm entitled to, Mrs. Tu.

24 A. I'm entitled to tell you October the 2nd I lay
25 off. Sit on the phone, call Bob every day; every minute

430

1 every day.

2 Q. Every minute every day? Mrs. Tu, that's 60
3 times an hour.

4 A. I exaggerate, but I was so worried.

5 Q. Once a day?

6 A. Once, two times, three times call his office.

7 Q. And as a result of him not responding to you --

8 A. No. Never.

9 Q. -- where you had Mr. Kubby send this letter?

10 A. Yes.

11 Q. And you may have seen him a couple of times
12 face to face?

13 A. Where? After?

14 Q. After October.

15 A. After layoff?

16 Q. Right.

17 A. No. He never see me.

18 Q. Before the layoff, you saw him at some of these
19 meetings, correct?

20 A. Yeah. I don't remember how many times.

21 Q. If you saw him on the street today, would you
22 recognize him?

23 A. Oh, sure, recognize. Now, if he got fat like
24 me, I don't recognize.

25 Q. You look wonderful, Mrs. Tu. You look

400

1 wonderful.

2 A. How you know? You never seen me. You don't
3 tell the truth. You never know me.

4 Q. The reason why I said that is I know how old
5 you are and for your age, you look wonderful.

6 A. The whole thing, we got to tell the truth
7 everything. But you tell me I look good, never see me
8 before. How you know I look good?

9 Q. I am looking at you now.

10 A. After the layoff, I look awful. Ask my kids.
11 I look awful. I look distress.

12 Q. Mrs. Tu, I am going to ask you the questions.
13 So you saw Mr. Brackbill a couple of times face to face at
14 these meetings?

15 A. I don't know. Couple times. Two times, three
16 times, I can't tell you exact. I just don't remember.

17 Q. Other than him not returning your phone calls,
18 do you have any reason to believe that Mr. Brackbill treated
19 you any differently from any other member as to how he
20 represented them?

21 A. I do tell you the reason.

22 Q. Okay.

23 A. This time he call people back, okay? Dennis
24 Wong.

25 Q. Dennis Wong?

4.0

1 A. He discharge on the '82 or the '81, I don't
2 remember.

3 Q. 1982?

4 A. '82. I don't know the reason he discharge. I
5 don't remember. Maybe Jim knows. I don't know. Okay. So
6 then '85, '86 when I signed unemployment, the man in the SP
7 told me, he said, "They call people back to work, PFE."

8 Q. Okay.

9 A. So I said, "No, nobody called back to work."
10 He said, "Yeah, Dennis Wong."

11 Then I said -- because he's Chinese, so I know
12 him --

13 Q. I see.

14 A. I said, "Yeah, maybe I go to see him." But he
15 work night shift. I never see him. So then I called Bob.

16 Q. So you called Bob in 1986?

17 A. '86. I don't remember when. I think '86. So
18 I called Bob and I told Bob -- leave the message, why call
19 Dennis Wong call back work? He have less seniority than I
20 did. Why they didn't call me? So if call back, according
21 to union rule, I should follow the list, right? Is that
22 right?

23 Q. I understand that.

24 A. No. I don't want understand me. That's the
25 rule. Call the people.

40A

1 Q. Mrs. Tu, I don't know what the rule is, all I'm
2 asking you is --

3 A. That's terrible. You are the represent union.

4 Q. I am not a union officer. I am a union
5 attorney, Mrs. Tu. We're not here to interpret the
6 agreement, Mrs. Tu. You were doing very well and I'm very
7 interested in this circumstance. You called Mr.
8 Brackbill --

9 A. According to union rule they should call first
10 on the list who have seniority, call back. So I called
11 them. I leave the message to Bob call me back. He never
12 call me back. Okay? Then --

13 Q. Well, how did he treat -- the question was, how
14 did Mr. Brackbill treat Mr. Wong differently than he treated
15 you? I'm trying to find out how Mr. Brackbill treated you
16 different.

17 A. I haven't finished the whole story. I let you
18 finish. You let me finish. So then I call Bob. He never
19 call me back.

20 So then every week I got to sign up. So one
21 week I went to sign up. The SP union man said, he said,
22 "The thing is Sieu, that union must take care of you."

23 I said, "No, they didn't do anything." I said,
24 "Bob never call me."

25 Then he said, "Tell you what, I call Bob" -- I

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1 don't know his name -- "he got to call you back."

2 So I said -- he ask me what time I be back -- I
3 said, "I be home afternoon."

4 So he said, "You wait. I make sure he will
5 call you."

6 So I got home. I wait, I wait. He didn't call
7 me. That man was very nice. Second day --

8 Q. Who was that man?

9 A. I don't know his name.

10 Q. How do you know he was a union man?

11 A. He was Oakland west.

12 Q. Was it a Mr. Cota?

13 A. I don't know. He's a man. I don't know his
14 name. Second day he called me. He said, "Bob call you?"

15 I said, "No."

16 He said, "Tell you what, you waiting on the
17 phone, sitting there, I tell him call you right away."

18 So I wait. But I sit there and wait, but he
19 didn't call me right away. He did call me. And I said,
20 "Bob, do you know Dennis Wong go back? Why you didn't give
21 me my chance? How about my case, you know?"

22 "Oh," he says, "Sieu, I'm very busy. I take
23 care, I work on it." That's all. So, in my mind --

24 Q. Did he tell you he was taking your case to
25 arbitration?

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1 A. No. He didn't say that. He said, "I'm taking
2 care of you and work hard on your case." But that's all.
3 So then I already figured out he's not interested to take
4 care me at all. You know, he never ask me what I'm doing.
5 How are you doing? Never ask. Okay. But he's a busy man,
6 I understand. Then this time they call everybody back to
7 work.

8 Q. Now, who are the people they called back to
9 work if you look on this list?

10 A. Okay. They call -- according to me, now, I
11 don't know the truth because I was not there.

12 Q. Well, how do you know? What information are
13 you relying on to reach this conclusion?

14 A. Now, I won't tell you because if I --

15 MR. KUBBY: You have to.

16 MR. DARBY: Q. You have to tell me.

17 A. I have to tell you because the people work
18 there. The friend working the PFE tell me. I think the --
19 what is his name? -- anyway, I tell you. I promise I tell
20 you, but I don't know.

21 Q. Do you have a friend working there that told
22 you this information, is that it?

23 A. Yeah. They see the --

24 Q. People that they've hired back?

25 A. I know who tell me that.

42

1 Q. Who told you that?

2 A. I think Barbara.

3 Q. Barbara who?

4 A. B-o-u-t-o-u-r-l-i-n. Armstrong job, they offer
5 her. They interviewed him, but he refused because he have
6 job. He have a good job. Okay. And Jim, he didn't have a
7 job. They didn't call him. Barbara, they just went back to
8 work. He was 65.

9 Q. Did they hire him?

10 A. They hire him just recent, just last summer.
11 This one, she quit. She didn't go back to work.

12 Q. Did they hire her or not?

13 A. No, no. She wasn't furloughed before me when I
14 was there already.

15 Q. So let me just say something. They didn't take
16 everybody back on that list?

17 A. No take --

18 Q. Some of them --

19 A. Not --

20 Q. Some of those people they took back?

21 A. Eight. They took six. Just me and Jim --

22 Q. You just said Flores --

23 A. Flores, he quit. I think he quit. She quit.

24 Okay. Then Gus went back to work just two months ago.

25 Okay. Janet went back work this year, '88. I don't know

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1 the date. Okay. This man, they offer him job, too. He
2 said he have job.

3 MR. KUBBY: That's Mr. Royer.

4 MR. DARBY: Q. Now, where did you get this
5 information from, Mrs. Tu?

6 A. Where I get this?

7 Q. Yes.

8 A. Barbara tell me.

9 Q. Barbara. Now --

10 A. Okay. I haven't finished yet. But the Bob
11 call Barbara, the secretary. He said -- now, he said, we
12 have -- that's why Barbara told me.

13 Q. Barbara told you that Bob Brackbill called her?

14 A. Yes. And said, "SP have lots of job opening."
15 Bob did call Barbara interview, but they didn't call her go
16 back to work right way. Like the other one that time I
17 interviewed, she is interviewed. So we talk to each other.

18 I said, "Company haven't call me back."

19 But she said, "They didn't call me back."

20 But then she said, "Bob Brackbill called me. He said they
21 have lots of job open. Why didn't they call you back?" So
22 he said, "I'm going to take care of you."

23 Q. Told --

24 A. Told Barbara, told the secretary. He said,
25 "I'm going to call SP take care of you." So after two weeks

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1 Barbara called me. She said, "Sieu, I got a job." She
2 said, "You should call Bob."

3 Q. Okay. So --

4 A. She said, "You should call. Bob told me they
5 have lots of job."

6 But I said, deeply inside, "I don't know why
7 Bob didn't take care of me, give me call." And do you know
8 why? I don't know.

9 Q. Well, let me ask you something. You did get an
10 interview, did you not?

11 A. Yeah. Two time.

12 Q. Okay. Do you know whether or not Mr. Brackbill
13 was responsible for getting you those interviews?

14 A. I don't know.

15 Q. Okay.

16 A. They told me -- okay. Another thing, the
17 people go back to work, they get one hundred percent their
18 salary. When they interviewed me, they said I were like
19 newcomer, I get 75 percent and then each month get a raise.
20 But why I'm looking different than the other people?

21 Q. So what you're telling me now is Mr. Brackbill
22 treated you differently from other employees because he was
23 able to get Mrs. Anderson a job and not you a job?

24 A. Not Anderson.

25 Q. I'm sorry, who was the --

40.

1 A. All the people on the list. Janet, Barbara --

2 Q. Mrs. Tu, you were just telling me that someone
3 at the office told you that Barbara -- is that Barbara
4 Boutourlin? -- Bob Brackbill was able to get her a job.
5 That's what Barbara Boutourlin told you?

6 A. Yeah. Just say, "Bob get me a job." Told me.
7 She did tell Barbara she had interviewed. Nobody call me
8 back. So why Bob call her? Never call me.

9 Q. All right. Well, so you were told by Barbara
10 Boutourlin that Bob Brackbill called her?

11 A. Yeah.

12 Q. After she called him?

13 A. No. She, I think -- I don't know the
14 relationship. They call her, she said. Bob did call
15 Barbara. He said, "Why SP didn't hire you?" Barbara say,
16 "Because they never offer me. I've been waiting."

17 Q. When did this phone call take place?

18 A. That's between them. I don't know the time. I
19 even can't remember.

20 Q. When did Barbara tell you this?

21 A. Oh, two weeks ago.

22 Q. Do you know if Bob Brackbill was calling her up
23 for any other reason as well or on some other matter?

24 A. That I don't know.

25 MR. KUBBY: There is a problem here today. I

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1 think the record should reflect, Mrs. Tu, when she gets
2 excited and when she's making statements, gets the pronoun
3 he and her mixed up. So when she's referring to him or her,
4 you have to look to who the person is that she's talking
5 about because it comes out differently.

6 MR. DARBY: Okay. That's fine.

7 Q. Mrs. Tu, then you're telling me that two weeks
8 ago you had a conversation with Barbara Boutourlin?

9 A. Yeah.

10 Q. And she told you that Bob Brackbill had called
11 her and said, "How come you haven't been hired yet?"

12 A. Yeah.

13 Q. And after that time, then she was hired?

14 A. Yeah, yeah.

15 Q. Did she tell you that Mr. Brackbill had
16 anything to do with that?

17 A. Yeah. She said that -- Barbara told me that
18 Bob, he said, "I'm going to call SP."

19 Q. Okay.

20 A. So after that, she said, "I hired next few
21 days."

22 Q. But it's possible, you don't know, but it's
23 possible that Bob Brackbill had called the SP to get you an
24 interview; is that possible? You don't have any facts
25 which --

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1 A. No. I don't know. I don't because they
2 interviewed me twice. Nobody called me back to work.

3 Q. Okay. Well, if I was to tell you that Bob
4 Brackbill did contact the SP and sought to have them
5 interview you for a job, do you have any facts --

6 A. Is he tell you that?

7 Q. I'm asking you that question.

8 A. I don't know.

9 Q. You don't know. Okay. So you've told me about
10 the union not responding -- or Mr. Brackbill not responding
11 to your phone calls. Let me just get something straight.
12 Mr. Balovich, when you went to him, would he get back to
13 you?

14 A. Yeah.

15 Q. With a problem?

16 A. Yeah.

17 Q. So you didn't have a problem with Mr. Balovich
18 getting back to you?

19 A. No.

20 Q. It was Mr. Brackbill not returning your calls?

21 A. Yes.

22 Q. Then I asked if you had any reason to believe
23 that Mr. Brackbill treated you differently from any other
24 people and you've told me the story about Barbara
25 Boutourlin. Is there any other facts that you have that

1 demonstrate that Bob Brackbill treated other members
2 differently than you?

3 MR. KUBBY: That's been asked and answered.
4 There was a whole series of things that she's gone through.

5 MR. DARBY: I don't think it's clear. She told
6 me how the company treated her, but she hasn't told me how
7 Mr. Brackbill --

8 MR. KUBBY: He didn't protect her. She told
9 you over and over again.

10 MR. DARBY: I understand that, but you're not
11 understanding my question.

12 Q. Do you have any reason to believe he treated
13 you any differently from other people? And you gave me one
14 instance, Barbara Boutourlin. I am asking for any other
15 instances.

16 MR. KUBBY: She gave you the whole list of
17 people.

18 MR. DARBY: Q. What evidence or facts do you
19 have, Mrs. Tu, that Mr. Brackbill had any involvement in
20 getting these people a job back, other than Barbara
21 Boutourlin?

22 A. How they go to the SP? How they --

23 Q. It's quite possible the company just hired them
24 back without Mr. Brackbill's involvement at all.

25 A. Pick on the street?

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1 Q. No. That the company called these people up
2 and took them back. I'm trying to find out what Mr.
3 Brackbill's involvement was.

4 MR. KUBBY: Well, the fact that he didn't do
5 anything about it is significant, even if they did pick them
6 up on the street.

7 MR. DARBY: And the question I am asking is do
8 we have any evidence that Mr. Brackbill treated Mrs. Tu any
9 differently? And, Mr. Kubby, you're testifying by saying he
10 didn't do anything for her. That's not responsive to my
11 question. Number one, you shouldn't be responding, Mrs. Tu
12 should be responding. Number two --

13 Q. What did Mr. Brackbill do differently for other
14 persons than he did for you?

15 MR. KUBBY: Then I object to the form of the
16 question. The question is, do you know what Mr. Brackbill
17 did for them?

18 MR. DARBY: That's what I'm trying to get to.

19 Q. Mrs. Tu, do you know if Mr. Brackbill did
20 anything for these eight people to get them jobs with the
21 SP, other than Mrs. Boutourlin?

22 A. No. Except I'm the oldest --

23 MR. KUBBY: The question is, Sieu, what you
24 know, yourself, as to what Mr. Brackbill did for these other
25 people.

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1 THE WITNESS: But no, I don't think he take
2 care of me. He did not protect me.

3 MR. DARBY: Q. So, but you don't have any
4 facts or any knowledge that Mr. Brackbill did anything to
5 get any of these eight people back to work?

6 A. I don't know.

7 Q. Okay. Mr. Armstrong, is he working for the SP
8 now?

9 A. I don't know. He have the job. I heard that
10 they offer him job. He didn't want it. I don't know.

11 Q. Who told you that they offered him a job?

12 A. I don't know.

13 Q. So you don't know whether or not they offered
14 him a job, do you?

15 A. I don't know. You can find out. You know.

16 Q. Okay. But you don't know whether they have
17 offered him a job?

18 A. No.

19 Q. Mr. Balovich, have they offered him a job?

20 A. Jim know.

21 MR. KUBBY: You don't know?

22 THE WITNESS: I don't know. He already told
23 me --

24 MR. DARBY: Q. We have already discussed Mrs.
25 Boutourlin.

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1 A. She went back to work.

2 Q. Mr. Flores or Ms. Flores --

3 A. She was quit before '84, I think. Long time
4 ago she was quit.

5 Q. Well, she was laid off in 1985.

6 A. Oh, I don't know. I don't remember.

7 Q. Well, she was laid off with you in 1985.

8 A. Who?

9 Q. Flores.

10 A. No. She -- she -- I don't remember. I don't
11 think she lay off same time as me. No. Huh-uh. I don't
12 remember. On list only five. She lay off --

13 Q. Let me show you this document again, Exhibit 7.
14 And it says date severed October '85 J. E. Flores. Does
15 that refresh your recollection at all?

16 A. I think. Here, where is the layoff list that
17 you give to me? I think only six people lay off in the
18 list. Only six people lay off. My list is me and Lorentz,
19 Armstrong, Janet. Then later on is Barbara. I don't know
20 you on my list or not. I don't remember. Flores was lay
21 off before that.

22 Q. Now, is Ms. Flores working for the company now?

23 A. No.

24 Q. Okay.

25 A. I don't know.

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1 Q. How about A. D. Lang, do you know whether they
2 have hired --

3 A. He went to work now. She went. He went to
4 work.

5 Q. Went back to work for SP?

6 A. Yeah. SP.

7 Q. He's working for SP now?

8 MR. KUBBY: Is that a man or a woman?

9 THE WITNESS: Man.

10 MR. DARBY: Q. Do you have any knowledge that
11 Mr. Brackbill did anything to get a job for Mr. Lang?

12 A. I don't know.

13 Q. Ms. Lorentz?

14 A. She go back to work. In fact, she get the
15 promoted.

16 Q. All right. She was hired by the SP?

17 A. Yes.

18 Q. Do you have any facts which indicate that Mr.
19 Brackbill did anything to get her a job?

20 A. I don't -- to me, to me we all lay off. If the
21 other one go to SP, I should have chance. You should take
22 care of me.

23 Q. But you don't know any facts upon which to base
24 the allegation that Mr. Brackbill helped Ms. Lorentz to get
25 a job?

400

1 A. No.

2 Q. How about Royer?

3 A. I don't --

4 Q. Has he been hired?

5 A. That I know. The department he went, they
6 offer him job. He say he have a good job.

7 Q. Is he working for the SP?

8 A. No. He have a job. He have a permanent job.

9 Q. Somewhere else?

10 A. Yes.

11 Q. Did they offer him a job?

12 A. Yes, they did.

13 Q. How do you know they offered him a job?

14 A. Someone in the department told me that.

15 Q. Who told you that?

16 A. I don't remember the name. I went to SP, they
17 interviewed.

18 Q. And the person there told you Mr. Royer was
19 hired by SP?

20 A. They offered him job. He said he have a
21 permanent job outside.

22 Q. Do you have any reason to believe that Mr.
23 Brackbill had anything to do with Mr. Royer getting a job
24 offer?

25 A. I don't know.

400

1 Q. So again, let me go back to the original
2 question. I'm trying to find out what evidence you have
3 that Mr. Brackbill treated you differently from other
4 members. And the only evidence that you presented to me so
5 far is that he apparently made a phone call to Mrs.
6 Boutourlin and after he made a phone call, she got a job.
7 Do you have any other evidence in this regard?

8 A. Yeah, because all this phone call or all this
9 message I leave there, why he have courtesy give me a call?

10 Q. Well, how is that different from how he treated
11 other members?

12 A. I don't know these. I just talked to Jim few
13 minutes ago. I said, "Did you talk to Brackbill?"

14 He said, "Every six months."

15 So at least he have contact with Brackbill. I
16 have no one to call me.

17 Q. Mr. Balovich is a former local chairman and a
18 lot of calls quite possibly had to do with this case.

19 A. I am a former membership, don't forget.

20 Q. I understand. But do you have any other
21 evidence that he treated you differently than he treated
22 other members?

23 A. He did to me. He treated other people to me.

24 Q. Mrs. Tu, you've already told --

25 A. I don't know. But to me, if all these people

1 go back, got to go through the union, right?

2 Q. What makes you think that, Mrs. Tu?

3 A. Okay. After they go back. That's a simple
4 one. Okay. It's just off the record I tell you. If they
5 go back, they go to SP, they got to pay union due, okay? So
6 Brackbill see the list all members PFE. That why I, Mrs.
7 Sieu Mei Tu, not in the SP record.

8 Q. But you don't have -- is what you're trying to
9 tell me, it's your understanding that for these people to
10 get back, they would have had to go through the union?

11 A. Not through the union. Now you misunderstand
12 me. If I invite you have dinner, okay, so you're all my
13 friend here, okay? Then you say, Mr. Kubby's your friend,
14 too. Then you saw the list, five people, why Mr. Kubby's
15 not invite? In your mind, you get a question that --

16 Q. I see. But do you think Mr. Brackbill has any
17 control over who the SP hires?

18 A. No, he all the ways in here. You told me Mr.
19 Brackbill is fight for us, take care of us. Now suddenly
20 he's saw the list all these people. It's not too much, six,
21 seven. Then he saw the list. Why I don't have a Sieu Mei
22 Tu and Jim?

23 Q. But Mr. Brackbill --

24 MR. KUBBY: I want to clarify that your
25 questions are directed to Mr. Brackbill as an individual

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1 rather than as an officer of the union because the union has
2 plenty to do --

3 MR. DARBY: As an officer of the union, the
4 union has no say over who the SP hires or fires.

5 MR. KUBBY: They certainly do. There is a
6 contract. That's a misrepresentation of this situation.

7 MR. DARBY: The union has no --

8 MR. KUBBY: Well, then they ought to file a
9 grievance. That's the whole point because there is a
10 contract that says what the company can do and what it can't
11 do and the union has responsibilities under that contract.
12 And if the company's not doing what it's supposed to do, the
13 union's supposed to see that it's done and they haven't done
14 that.

15 MR. DARBY: If there is substance in the
16 agreement that the union can rely on to force the company to
17 hire Mrs. Tu back, then that's what the union can do.

18 Q. What I'm asking you is, Mrs. Tu, is it your
19 understanding that Mr. Brackbill has some kind of input as
20 to who the SP hires or fires?

21 A. That part I don't know. I keep tell you I am
22 protect by union. When you see the list, they say Sieu Mei
23 Tu not there. So why not something wrong? Take care me.
24 Do something. Call me. He said, "Tu, I'm going to take
25 care of you." Because I pay dollar fifty a month. Even