dollar fifty is, you know, I pay $30 for the 22 years.

Q. That's right. And a lot of that money is paying for me to come out here and handle this deposition.

A. The way you talk is on the company side, not my side. That's what upset me.

Q. I am defending the union because you're suing the union.

A. Because I suing union, you can't take care of me? I want to know.

Q. Mrs. Tu, I am so sorry. Why don't we move on. Do you recall at a union meeting around the time that you were furloughed, did you go up to Mr. Balovich with a friend of yours that was an attorney, did you bring an attorney friend to the meeting?

A. No, I didn't. I think my youngest son have a -- is attorney. So --

Q. Your youngest son is an attorney?

A. No, no, no.

Q. Friend of his?

A. Friend is attorney. Every time meeting, I don't understand it. Maybe he was not deliberate come to the meeting. He was drop by. My son was come drop by to see me. I said, "I have union meeting."

Q. So he went?

A. Yeah.

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Q. And this friend of your son, what is his name, by the way?

A. Russel. Russel.

Q. His last name, do you know?

A. No, I don't remember.

Q. Did Russel go up to Mr. Balovich and ask him about the circumstances surrounding the layoff?

A. No, I don't think so. He didn't talk to nobody.

Q. Did you introduce your son's friend to Mr. Balovich?

A. I don't think so. They thought he's my son, I think. But I told them he is not my son; is my friend.

Q. But you don't recall introducing him to Mr. Balovich or having him ask Mr. Balovich what's being done?

A. Maybe he ask some questions. I don't remember. I never made inspection.

MR. DARBY: I'm going to mark a document as Exhibit 9.

(Whereupon, Defendant's Exhibit 9 was marked for identification.)

MR. DARBY: Q. Mrs. Tu, I just handed you a document dated January 20th, 1986. It's a letter from Mr. Kubby, your attorney, to Mr. Balovich. Do you recall seeing

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a copy of this letter? I notice that you've been carbon copied at the bottom. Do you recall this letter?

A. Yeah.

Q. Did you have any conversations with Mr. Balovich around this time at all that you can recall?

A. No. After that, the '86, I haven't seen him, talked to him.

Q. Okay. I noticed here in the second paragraph that Mr. Kubby notified Mr. Balovich that if he did not hear from him within five days, that he was, in effect, going to sue the union. Is that -- did you read it? If you would take a look at the second paragraph.

A. Yeah.

Q. At this point, is it your understanding that Mr. Kubby was going to sue the union because he felt as though, again, the union was not protecting you?

A. Yeah. Because -- yeah.

Q. Okay. That they had not been returning your calls --

A. Uh-huh.

Q. -- is that correct? Again, Mrs. Tu, you hadn't received a response from the union and this was a follow-up letter; is that correct?

A. Yes.

MR. DARBY: I'd like to mark this as Exhibit

10.

(Whereupon, Defendant's Exhibit 10 was marked for identification.)

MR. DARBY: Q. This document marked Exhibit 10, Mrs. Tu, is a letter from Mr. Brackbill to Mr. Kubby and I see a notice you've been carbon copied with this letter. In the second paragraph he tells Mr. Kubby that BRAC is progressing a claim in accordance with the PFE/BRAC Agreement in behalf of Mrs. Tu and all other BRAC PFE clerical employees affected by PFE management decision to close the Brisbane PFE office. Do you recall seeing that letter?

A. Yeah.

MR. DARBY: Okay. I'd like to mark this as Exhibit 11.

(Whereupon, Defendant's Exhibit 11 was marked for identification.)

MR. DARBY: Q. In this letter, which is dated January 29th, 1986 -- Mrs. Tu, this is a letter from Gary Laakso from the Southern Pacific Transportation Company to Mr. Kubby. Do you recall seeing a copy of this letter at all?

A. Yes, I think so.

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Q. It says that your union, Brotherhood of Railway, Airline and Steamship Clerks has filed a claim and it is being processed through the exclusive procedures established by the Railway Labor Act. Now, based on these letters, Mrs. Tu, was it your understanding, at least at this point, that the union was filing a claim concerning your being laid off from employment with PFE?

A. I don't understand.

Q. Let me drop the question. Mrs. Tu, I'm looking at a copy of the complaint in this action which you filed against the organization. And on the last page of the complaint, and I am sure you have a copy of your own complaint, there is a verification in which you say that you've read the foregoing complaint and know the contents thereof and you signed it. So I am assuming you understand what is in that complaint based on that verification.

MR. KUBBY: That's a false assumption, but that's all right. It says what it says. She's read it, but -- she said she's read it.

MR. DARBY: And knows the contents thereof.

MR. KUBBY: For her own knowledge as to what she knows.

MR. DARBY: Q. Okay. In paragrapn 49 of the complaint it states on or about November 7th, 1985,

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defendants and each of them refused to engage in administrative determination of the claims of the plaintiff Sieu Mei Tu under the Railroad Retirement Act or at all with plaintiff Sieu Mei Tu. And what I'd like to know is, what is the significance of the date November 7th, 1985? What is it about that date which indicates that the defendants refused to engage in administrative determination?

MR. KUBBY: Do you have the document I produced?

MR. DARBY: Yes. I think I can solve it by -- if this doesn't solve it, you let me know. Why don't we mark this as Exhibit 12.

(Whereupon, Defendant's Exhibit 12 was marked for identification.)

MR. DARBY: Q. Mrs. Tu, I'm showing you a document, Exhibit Number 12. It's a letter dated November 7th, 1985. Now, in your complaint it states that on or about November 7th, 1985, defendants and each of them refused to engage in administrative determination. What --

MR. KUBBY: With plaintiff Sieu Mei Tu.

MR. DARBY: Q. With plaintiff Sieu Mei Tu. Is this letter the vehicle by which the company refused to handle your claim where the union refused to handle it?

MR. KUBBY: I'm going to object to the

question. It calls for a legal conclusion.

MR. DARBY: It's not a legal conclusion. It's an allegation of the complaint which Mrs. Tu has on or about November 7, 1985, defendants and each them refused to engage in the administrative determination of the claims of the plaintiff Sieu Mei Tu under the Railroad Retirement Act or at all with plaintiff Sieu Mei Tu. What occurred on November 7th, 1985 which led you to allege that the union and/or the company failed to handle a claim for you?

MR. KUBBY: The documents speak for themselves.

MR. DARBY: Q. Mrs. Tu, I am going to ask you the question. I'm not asking your attorney the question. This allegation of the complaint, is it based on this November 7th, 1985 letter?

A. May I ask your name, last name? I don't remember your last name.

Q. My name is Darby, D-a-r-b-y.

A. If I know all this legal, the big talk, I don't need a lawyer. So that's why I need him help me. So all this legal documents I don't understand. So you maybe like Kubby help me. I don't want to answer you wrong.

Q. If you need Mr. Kubby to assist you --

A. I only know simple English.

Q. Okay. And my question to you is, is that paragraph 49 based on this November 7th, 1985 letter? And

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you can ask Mr. Kubby for assistance on that.

MR. KUBBY: You should answer what you know or don't know.

THE WITNESS: I don't know.

MR. DARBY: Q. You don't know?

A. (Witness shakes head.)

Q. Okay. So you don't have any facts -- you don't have knowledge of any facts supporting this allegation at this time then?

MR. KUBBY: I object to the question which is calling for a legal conclusion on her part as to what supports an allegation. And she told her attorney the facts that she knows. Her attorney has drafted a complaint based upon what she has told him based upon his training and knowledge as a lawyer and that's what's represented in this document. For you to ask her that question is very unfair and is calling for her to make a legal conclusion.

MR. DARBY: Now, Mr. Kubby, I'm not calling for legal conclusion, I'm asking for facts.

MR. KUBBY: You're asking if that's the only fact she has. All of the facts are in the complaint.

MR. DARBY: It's a very narrow question, Mr. Kubby. There is a fact here which states on November 7th, 1985, the defendants refused to engage in administrative determination. That is a fact.

Q. And I'm asking what evidence do you have to support that fact?

A. I refuse to answer. I don't know.

Q. You don't know?

A. No.

Q. In paragraph 50 of this complaint, Mrs. Tu, and again the reason I'm going through this complaint, this is your complaint in which you have alleged your case against the union. And in order for us to defend this case, we have to know the facts which underlie these allegations and only you know that. Only you know the facts.

MR. KUBBY: That's not true. There are many witnesses who know the facts.

MR. DARBY: But this is Mrs. Tu's complaint and she's signed the verification. And I'm hoping to elicit from her facts supporting these allegations. And if she doesn't have them, she doesn't have them. But that's what I'm looking for.

Q. Paragraph 50 of the complaint, Mrs. Tu --

MR. KUBBY: That's a total misrepresentation of this situation whether she has them or not. She doesn't know. She's told you that what she knows is what happened. And she has produced for you the documents that she has which go to support entirely her claim. And it is not one single document, it is a whole series of documents. Take a

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look at the -- well, when we finally, in January of 1988, get the first information as to what evidence the union represented has nothing to do with her situation. There is not a thing in there about ignoring her seniority or not allowing her to bid for a job or protection of her job. We have to deal with what the union did or didn't do and that's a total picture. It's not a single document. This letter of November 7th demonstrates a refusal to deal with her individually. They say the union was representing her and they would not engage in administrative process with her.

MR. DARBY: Well, to the contrary, we can demonstrate that all the claims and grievances filed by the union were protecting all those rights you were referring to. And if you read the agreement, you'd be able to confirm that.

Q. Mrs. Tu, in paragraph 50 of the complaint it says continuously thereafter until on or about January 4th, 1988, defendants and each of them, and referring to the union, refused to consult with plaintiff Sieu Mei Tu or her attorneys or to respond to inquiries regarding the status of her claim.

Now, I've showed you a letter dated January 28th, 1986 from Mr. Brackbill to Mr. Kubby in which he notified -- Mr. Brackbill notified Mr. Kubby that the union was handling a claim on your behalf.

Now, in light of that, what facts do you have to support the allegation here that the union failed to respond to inquiries? Was this not a response to an inquiry made by Mr. Kubby?

MR. KUBBY: The document speaks for itself and it's not a response. I asked them what they were doing. They didn't tell me what they were doing.

MR. DARBY: Well, you're right. The letter does speak for itself, Mr. Kubby.

Q. Mrs. Tu, I'd like to pin down the attempts that both you or your attorney made to contact the union throughout this entire period, if I might, because the allegation of the complaint reads that the union refused to consult with you.

Now, you mentioned to me that you tried making phone calls to Mr. Brackbill and he didn't return the calls. How often between November of 1985 and the time that you received in January 4th of 1988 a copy of the arbitration decision -- did you personally make any attempts to contact Bob Brackbill throughout that period?

A. What year?

Q. This is from November of '85 up until January of 1988 or was all your contact through your attorney, Mr. Kubby?

A. Yeah. I called. I call. He never return it.

I told you several time he never return.

Q. Well, we talked about earlier your attempt to call. I'm talking about a period of time now up until January of 1988. You're saying you made --

A. I don't remember.

Q. You don't remember. How often did you call over that -- it's a long period of time.

A. Yeah, I don't remember.

Q. Okay. Was it more than once a week?

A. I don't remember. If I remember, I tell you. I don't remember.

Q. Okay. But you did make phone calls to Mr. Brackbill up until January of '88 or you just don't remember?

A. I don't remember. Yeah, I call, you know, but I don't remember how long, how many time.

Q. Are you aware of any instances, other than letters that Mr. Kubby sent to the union, that Mr. Kubby tried to contact the union and received no response?

A. I don't know. I totally trust Mr. Kubby take care of me.

Q. Well, you allege in the complaint that the union refused to consult with your attorney and I'm asking you now the facts that you have which support that allegation.

MR. KUBBY: Not the facts that she has, but the facts that she knows about or that she can recall at this time.

MR. DARBY: Q. Well, that's what I'm asking you for. Do you have -- I'm interested in whether or not you have any knowledge as to whether or not Mr. Kubby attempted to call the union and they didn't respond throughout this period?

A. I don't know. Kubby's take care of me. So I don't know. Whatever --

Q. Do you know whether or not -- again, you have alleged here that the union failed to consult with Mr. Kubby. On what occasions did the union fail to consult with Mr. Kubby?

A. That's Mr. Kubby's job, so it's not mine.

Q. Well, this is in your complaint, Mrs. Tu. So --

A. Yeah, I trust Mr. Kubby. So Mr. Kubby take care of me.

Q. Okay. But it's your understanding that Mr. Kubby attempted to contact the union or to have the union consult with him and they didn't return the calls?

A. I just tell you I totally trust Mr. Kubby take care of me. Whatever he do, I trust him. So whatever he say there, speak for me.

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Q. But he drafted this complaint based on facts you provided him.

A. All the things, the fact, the truth, I tell him. So whatever he told it.

Q. So you have -- in other words, you have no facts on which to state now whether or not the union failed to consult with Mr. Kubby or not?

MR. KUBBY: That's -- again, it's the question of what she knows and can recall at the present time. What facts she has depends upon presentation of evidence.

MR. DARBY: Q. Do you have any facts at this point which you can tell me now which demonstrates that the union failed to consult with Mr. Kubby?

A. I just told you I totally trust Mr. Kubby take care of me. So whatever Kubby do, I trust him.

Q. Okay.

A. I know you not eat lunch. We should have lunch.

Q. Yes. Let me go just a little bit --

MR. KUBBY: It's now 12:40 and she's --

MR. DARBY: What I'd like to do --

THE WITNESS: I need sugar.

MR. KUBBY: She needs some food.

THE WITNESS: Yes.

MR. DARBY: I don't have that much left. I'd

like to keep going, if we can. If not, we can take a break and come back.

MR. KUBBY: I think we ought to take a break.

MR. DARBY: Okay.

(Whereupon, the luncheon recess was taken at 12:42 p.m.)

AFTERNOON SESSION 1:30 p.m.

MR. DARBY: Back on the record.

Q. Good afternoon, Mrs. Tu.

A. Hello.

Q. Let me just clarify something with you, Mrs. Tu. Were you offered any job with the Southern Pacific over the past month or two?

A. No.

Q. After your interview --

A. No.

Q. -- they didn't offer you any job under any conditions?

A. The first time interview me, the lady tell me, he say, "You going to get 75 percent." Then he said, "Then every year you get some percentage." Then he said, "We do have lots of job in accounting department." And when he called -- first beginning when she called me she said, "Do you know how to type?"

Q. Who is "she" now? Somebody at Southern

Pacific?

A. I think first name R-e-s-n-e-y. The last name I don't remember. If I right, I think that's her first name. And she interviewed me. She said, "Do you know how to type?"

I said, "No, I don't know how to type."

She said, "What do you do?"

I said, "I was key punch."

Then he said, "I give you key punch."

I said, "I haven't key punch for a long time. I work accounting department."

Then she said, "We do have a job in accounting department."

I said, "How about my seniority?"

She said, "You like newcomer, 75 percent." Then he said --

MR. KUBBY: Sieu, let me interrupt you. This time I will interrupt you. The question was, did you get a job?

THE WITNESS: No.

MR. DARBY: Q. Did they offer you any position under any conditions? Did they say you can have this job if you take a cut in pay or if you start from ground one with seniority? Were you officially offered a job?

A. No, no, no, no.

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Q. We discussed Bob Brackbill on various occasions this morning and you complained that he didn't return your phone calls. And you also said that he didn't protect you because you're no longer working for the SP or the PFE. Is that a correct characterization of your testimony this morning?

MR. KUBBY: I don't think it's a fair question. I mean, she's testified to a lot of stuff. Why don't you get to the question you're trying to ask?

MR. DARBY: Q. Do you have any reason to believe that Bob Brackbill did not like you personally?

A. I can't speak for him, but to me, why he take care everybody except me? Can you understand that?

Q. Okay. When you say he took care of everybody except you, again, are you referring to the people that have been hired?

A. Yeah. All the people called back to work.

MR. KUBBY: And the ones transferred?

THE WITNESS: And the ones transferred. That's right.

MR. DARBY: Q. Other than that, do you have any other reason to believe that he didn't like you personally either because you were Chinese or because you were a woman or for any reason? Did he ever give you any reason to believe that?

A. I can't tell you because he didn't take care of me. That's what I believe. He's not interest in me, not interest on me.

Q. Mrs. Tu, I showed you some documents this morning which I represented to you as being grievances filed on your behalf and you read through them. Some of them you didn't understand. Most of them I don't believe you understood.

A. No.

Q. What I'd like to know, Mrs. Tu, is: Again, you're alleging the union didn't protect you. What grievance were you attempting to get the union to pursue for you that was different from these purported grievances that were filed on your behalf by the union? Do you understand my question?

A. No. Can you use simple words?

Q. Let me try again. I showed you documents which indicated that you were being represented by the union in the appeal process in filing grievances against the company. Your names were on some of those claims and you testified that you had seen some of them on occasion, but you didn't understand --

MR. KUBBY: Would you identify which exhibit that is?

MR. DARBY: Yes.

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Q. It would be starting with Exhibit 2, 3, 4, 6. I believe that's all we have in evidence, there are others.

MR. KUBBY: You're saying each of those is a separate grievance, is that what you're saying?

MR. DARBY: I am not saying that. What I'm trying to ask Mrs. Tu is --

Q. Each of those documents I've represented to you as being efforts on behalf of the union to try to get your job back and to try to protect you --

A. But they didn't --

Q. Well, we know ultimately that an arbitrator decided -- do we not? -- we know that an arbitrator decided against us and in favor of the company. In fact, that was an attachment to your complaint. Do you recall receiving an arbitration decision from Mr. Brackbill?

A. No, I don't remember.

Q. Okay. Let me show you. It's Exhibit E to your complaint. This was a letter that Mr. Brackbill dated January 4th, 1988 and then there is a document attached to that. Do you understand what this document is that I'm pointing to now?

A. I don't know.

Q. Okay. Well, the letter refers to an award by Referee Lieberman. Do you understand that the union took a case to arbitration to try to get your job back and the

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union lost?

A. But may I ask you why they take the other people because it's just me they don't want take it.

Q. No. What I'm telling you is the union filed claims and grievances on your behalf and everybody, all those that were laid off.

A. But I am asking you why the other call back, not me? Okay. You are the lawyer, you tell me.

Q. Mrs. Tu, maybe I better ask it in a different way. Do you understand that the union took a case to arbitration on your behalf?

A. Take care of everybody.

Q. Right. And lost the arbitration?

A. Not just for me.

Q. For everyone, also for the other claimants that were part of that arbitration?

A. They lay off seven people. So, I not speak for Jim, but why didn't take me? And Jim didn't go back to work. They ask the other five back to work.

Q. Okay. I understand what you're saying, Mrs. Tu, but I'm trying to isolate on do you have any understanding as to what that arbitration decision was when --

A. No, I don't know because why they take five? Only seven people, why they take five? Didn't take these

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two. What's wrong with me?

Q. Okay. That's a different issue, Mrs. Tu. I'm not referring to that now. I'm just asking you whether or not you have an understanding as to what took place in that arbitration case and what the case was about?

A. I not understand why they took --

Q. I know that's the point you're making.

A. I can't answer you because I don't know why they do that. Take five, don't take me.

Q. Do you know what the arbitration involved that the union pursued to arbitration?

A. Not too much. But, you know.

Q. Do you understand that the union filed grievances on your behalf to try to get your job back?

A. Not me, everybody.

Q. You and seven other people.

A. Yeah.

Q. And the union took it to arbitration and lost?

A. Yeah.

Q. Okay. Your attorney before referred to a letter that -- I'm sorry. I showed two letters to Mr. Kubby and yourself. One from the company telling you that a claim was being filed on your behalf; one from Mr. Brackbill to Mr. Kubby saying a claim was filed on your behalf. Your attorney suggested to me that those claims filed on your

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behalf were not -- those claims were not good enough because they didn't deal with your specific grievance. And what I'm trying to ascertain from you is, what made your grievance against the company different from the grievance that the union filed on behalf of Mr. Balovich and the other seven people? Was your situation any different from Mr. Balovich's, for example?

A. But it is true, they didn't call me back. Why they treated the other five special?

Q. It's true Mr. Balovich hasn't been called back either. If I was to tell you that Mr. Balovich was not called back and that Mr. Armstrong has not been called back, for example, what -- if that is true, that those two individuals have not been called back -- what makes your grievance against the company any different than Mr. Balovich or Mr. Armstrong's.

A. Oh, I don't know about them. They should talk to you, too. To me, why they treated the other one different than --

Q. So, in other words, you're saying your situation then -- if it was true that neither Mr. Balovich nor Mr. Armstrong have been hired, is your situation any different from theirs?

A. I don't know. I just talk for myself. I didn't think treated fairly because you didn't take care of

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me.

Q. Okay. But --

MR. KUBBY: Did they have a claim that they were told not to apply for different jobs by the company, that their jobs were specifically -- their job description wasn't transferred, but that it was a selection of a number? And if there was any effort on the part of the company to specifically exclude them from the transfer -- I mean, we don't know what their circumstances are.

MR. DARBY: Q. I guess what I'm trying to ascertain, Mrs. Tu, is: Do you have any reason to believe at this time that the claims filed by the union on your behalf that I've presented as documents today were not good enough for you or were you not satisfied with them in any way?

A. No matter what you asking me, I tell the truth. Why they take the five people? They didn't take me. That's what -- I want a simple answer. That's what I want to know. You have a favor to five, then they have a favor to me.

Q. When you were laid off, Mrs. Tu --

A. Yeah.

Q. -- Mr. Balovich was also laid off.

A. I don't worry about him. I worry about myself. Don't involve him.

Q. I know. But was your situation on October 3rd,

1985 --

A. 2nd.

Q. Well, the day after you were laid off, October 3rd, 1985, was your situation any different from Mr. Balovich's?

A. I don't know. I cried. Did you ask him he cried? I don't know.

Q. But he was also without a job.

A. I don't worry about anybody except me. I going to tell the truth.

Q. So you don't know whether or not his situation was any different?

A. I don't know. I take care myself. I figure out why they take five, they didn't take me.

Q. The reason I'm asking this is you're saying why did they treat the other people different and take them back and I am just -- you're not the only one that's in that situation, are you?

MR. KUBBY: May I ask, does Mr. Balovich have a job?

THE WITNESS: Yes. He have a job.

MR. DARBY: You can take his deposition, if you like.

THE WITNESS: How old is he? Let me ask you, how old he is?

MR. DARBY: Q. Mrs. Tu, I'm asking you the questions. Again, you weren't the only one left without a job after the closing of Brisbane; isn't that correct?

A. I'm not.

Q. You were not the only one who --

A. Several people, they abolish the job.

Q. You were not the only person that has not been called back?

A. I don't know. I just -- me, I'm not called back. But the other one have job. Jim have job. And Jim is young. Younger than my child. I the oldest one in that group.

Q. Mrs. Tu, you allege in your complaint that the union failed to consult with either you or your attorney throughout the progression of the grievances that the union filed.

A. No. Can you repeat that question?

Q. Okay. I will read it to you. It says, continuously thereafter, and that's referring back to November 7th, 1985, until on or about January 4th, 1988, the defendants refused to consult with the plaintiff Sieu Mei Tu or her attorneys. Okay?

A. Yes.

Q. In other words, what your attorney has alleged here is that the union failed to discuss this matter with

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you as they were pursuing this claim or grievance.

A. I tell you before lunch, I take all my things, Mr. Kubby take care of me.

Q. Let me ask you a question then. If you had an opportunity or Mr. Kubby had an opportunity to consult with the union, what evidence or what facts or what information would you have provided to the union to help win this case?

A. Win which case?

Q. The case that was going to arbitration.

A. This is your union job, it's not my job, you see.

Q. But you're alleging that the union failed to consult with you. Do you understand what that means?

A. But I say according the union, your book, your rule, I should fully protected. As long I working the railroad, I should complete fully protected. Everybody knows. Jim knows. Everybody knows.

MR. KUBBY: The arbitration decision, itself, states that the union presented no evidence concerning the reduction in income of PFE. They made no attempt to show that the railroad --

MR. DARBY: I think you're misrepresenting what the award says.

MR. KUBBY: That's the way I read it.

MR. DARBY: It does not say they didn't make an

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attempt. It says no evidence presented.

MR. KUBBY: And this is a woman who was working in the accounting department. You would think they would ask her what she knows about the business and the attempts of the company to preserve its business and increase its business.

MR. DARBY: Q. Mrs. Tu, in light of what Mr. Kubby has just stated and has testified, do you know if Mr. Brackbill talked with anybody from the PFE Brisbane office concerning what work was being transferred to San Francisco?

A. He never told me anything.

Q. But it's quite possible, isn't it, that Mr. Brackbill did speak with some people who were transferred up to the SP to find evidence whether or not work was transferred, isn't that possible? You don't have any evidence to dispute that, do you?

A. "Dispute that," what this mean?

Q. To controvert that or to negate that. Do you have any evidence that Mr. Brackbill did not consult with people working in San Francisco as to what work was being transferred?

A. I don't know. I only tell you the truth. I take care myself. Everything I know, I tell you the truth. But beside anybody, it's not my business.

Q. And just for the record, Mr. Brackbill would be

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consulting with people that were transferred to San Francisco to find out what work was being transferred, would he not, Mrs. Tu?

MR. KUBBY: That was not the issue. The issue was whether or not they had a right to furlough because of decline of business. And the concern was, was the decline in business purposefully perpetrated and what is the significance of that under the contract?

MR. DARBY: Q. Mrs. Tu, do you have any reason to believe or any facts upon which to allege that Mr. Brackbill did not make attempts to present any such evidence at the arbitration that Mr. Kubby just referred to?

A. I don't know. I can't speak for Mr. Brackbill.

MR. KUBBY: The question is, did he consult with her?

THE WITNESS: Yeah. Nobody talked to me.

MR. DARBY: Q. Okay. All right. That's been made clear. Had he consulted with you as to decline in business, for example --

A. No.

Q. If he had, "had," would you -- it's a hypothetical.

MR. KUBBY: Suppose.

MR. DARBY: Q. Suppose Mr. Brackbill called you up and said, "Mrs. Tu, we're taking this case to

arbitration and one of the arguments that the company's raising is that there is a decline in business." Would you have been in a position to give him any information as to what the carrier's decline in business was for the past ten years?

MR. KUBBY: What caused it?

THE WITNESS: What cause? I would tell him I have a right if they have job, transfer to SP.

MR. KUBBY: Sieu, the question was directed to when you were working in the accounting department, what did you learn about the company's efforts to preserve its business and its customers? Did the company -- was there anything going on in the company where the company purposefully was getting out of that business and was purposefully avoiding having any business?

THE WITNESS: Yeah. 1980 when the people separated, Mr. Cramer was in charge. He talk everybody. We give $9,000,000 to SP that time, '80. You can't be in the short year to loose all this money, right? To me, you know -- I don't know, you know. But '80 Cramer was in the lunchroom; announced that he so happy he give 9,000,000 to SP.

MR. DARBY: Q. Okay. But in terms of the amount of business that the PFE was doing between 1980 and 1985, if Bob Brackbill called you up and asked you for

information concerning whether or not the company had declined in business between those years, would you have been in the position to be able to confirm that or to attest to that fact?

A. Attest?

Q. Would you have been able to provide him any information that would have helped the union win the case?

A. If I can. But I don't know, you know, you using "if." I using "if." "If," you know --

Q. Okay. Your position was in the accounting department for the PFE, correct?

A. Yes.

Q. Did you have any access to any information concerning the amount of business that the PFE was engaged in in the amount of revenue that the company made?

A. I don't know. I can't tell you that. I don't know.

Q. Did you have any access to any information concerning revenue ton miles? Have you ever heard of that term, "revenue ton miles"?

A. No. Revenue, income, right? Mileage, right?

Q. Revenue ton miles refers to how much mileage the PFE trains ran. Did you have any access to any of that information?

A. Don't forget, I'm miscellaneous clerk. I'm

very small in the department.

Q. Mrs. Tu, in paragraph 52 of your lawsuit against the union you state that the union failed to represent the plaintiff, and I think we've already discussed your basis for saying that the union failed to represent you. You also state that they failed to investigate your claims. Other than what you might have already told me today already, do you have any other information or any other stories to tell me concerning how the union failed to investigate your claims?

A. Well, I didn't tell the story. Everything I tell you, the truth.

Q. Okay. I believe you.

A. That's all.

Q. All right. But you did attend union meetings where this whole closing of the Brisbane office was discussed, correct?

A. I don't remember. I told you that before. I don't remember.

Q. Do you recall when Bob Brackbill was at any of these meetings actually going up to him and explaining to him what your claim was based on?

A. Can you repeat that, sir?

Q. Do you recall ever going up to Bob Brackbill at any time at any of these meetings, if you were at any of

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these meetings, and speaking with him about what your claim was about?

A. Claim?

Q. What your grievance was about?

A. Yeah. I told you. I say, "Are you going to take care?" "I pay $30, you know," I say.

He say, "If you don't pay me, you out the door a long time ago."

Q. Did you tell him that because you felt you had more seniority than the people that got transferred, that you should --

A. Yeah. Said after they put the bulletin and I told him, four union man only Jim. First one is Roy Stew. When he started, SP and UP separated. Roy Stew take severance pay. After severance pay, he went back to SP, okay? Then he quit. The detail story, I don't know. Now, recently SP hire him back again.

Q. Okay. We've been through that, Mrs. Tu.

A. I didn't tell you the story that --

Q. Okay.

A. So then Ron Soldavini, he was clerk, union man, then become 1-A job. Now, after that, he become clerk so he can bump everybody's job. Then is Mike Gregory. Then he was clerk. He become 1-A job and he become clerk again. There is four union man. Jim didn't is clerk, but that is

three union man. Then all this job on the bulletin, why I didn't have a chance? Give me the chance, my right to exercise my seniority. So I ask him several time, hundred time. It's not just one time keep asking.

Q. Okay. So when you allege here that BRAC failed to investigate your claims, I'm asking you what attempts you made to have the union investigate your claims?

A. Invest my -- even the bulletin, the bulletin he said transferred there. I said, "Why they give me the chance to exercise my seniority?"

Q. You referred to other union people that were given opportunities to work. Who was the first individual you referred to who received -- I think you referred to New York Dock with the SP and the UP merger?

A. UP/SP merger. What do you mean "merger"?

Q. You just talked to me before about an individual who received some --

A. When PFE was in San Francisco, then the PFE owned by SP and UP, right?

Q. Right.

A. Later on --

Q. SP and UP split up?

A. PFE belonged to SP. See, that time company offer severance pay.

Q. And who did you refer to getting severance pay

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then?

A. I think Ron Stewart got severance pay. Quite few --

Q. Their jobs were going to be abolished?

A. I don't know.

Q. And then given an opportunity --

A. No. They say volunteer, if you want to. They didn't abolish job.

Q. And that was because of the New York Dock protection that applied?

A. I don't know. I understand I am fully protected.

Q. You referred to New York Dock earlier.

A. Oh, that's what I overheard, but I haven't read it, but I know. Union people always tell us. Bob, everybody, they already know we are fully protected.

Q. Were you ever told that there were exceptions to the protections at all at any of these meetings?

A. No, sir, nobody told me.

Q. Who was the other union person you referred to that was able to hold a job or get some benefits?

A. Get benefits?

Q. That you just referred to before.

A. No. Ron?

Q. Soldavini you mentioned.

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A. Yeah.

Q. And what was Soldavini's circumstances?

A. He was clerk.

Q. Right. Just like you?

A. He was union man, then he promoted 1-A job.

Q. He was promoted after he left the union; is that correct?

A. I don't know. This is detail I don't know. 1-A. Now, 1985 he go back clerk. Go back and be a clerk.

Q. So he is no longer holding an exempt position?

A. So this why he cannot bump.

Q. Well, he was never laid off.

A. He was never laid off because this time PFE offered them money to leave.

Q. Management people, you're talking about exempt people?

A. I don't know.

MR. KUBBY: The question is when that clerk position was created, were you given the opportunity to bid for that position?

THE WITNESS: No, I didn't have a chance to.

MR. DARBY: Q. And that was because that's a different seniority roster. Are you aware of that?

A. No. We are in same seniority list.

Q. The San Francisco list --

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A. Brisbane.

Q. I'm sorry. When Soldavini bumped back to a clerk position --

A. He was in the Brisbane.

Q. And when did that occur?

A. '85. Brisbane.

Q. Before --

A. Before he transferred to SP.

Q. Okay. So when he bumped back to that position in '85, you were still working there, correct?

A. Yeah, yeah. I still working '85.

MR. KUBBY: But was not given the opportunity to bid for a job that was being transferred to SP.

MR. DARBY: Oh, that's -- we've already established that. You're talking about the job that was transferred from Brisbane to San Francisco?

MR. KUBBY: I'm talking about the creation of jobs in Brisbane and her right to bid for that job.

MR. DARBY: I understand that.

Q. Okay. Soldavini and I suppose -- what is it? -- nine, eight other people transferred to San Francisco back in September of '85?

A. Yeah. I have seniority over two people.

Q. Okay. We've gone through that. We've already discussed that. Okay. Mrs. Tu, in paragraph 52 you state

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that the union failed to represent the plaintiff and the union failed to present evidence concerning your claim. What evidence are you referring to?

A. Oh, I talk to -- I let Mr. Kubby take care of me.

Q. Well, Mrs. Tu, this is, again, an allegation in the complaint that you have signed. It's a verification, and if you want to consult with Mr. Kubby, that's fine. But I'd like an answer to that question.

MR. KUBBY: Her answer is that she's told you that the complaint was drafted by her attorney. She told the attorney what she knew, the attorney knew what other evidence there was and the complaint was drafted as she believed.

MR. DARBY: Mr. Kubby, you made it an issue by alleging it in the complaint. And I need to know the facts underlying that information and you cannot rely on any attorney-client privilege once you've opened up the issue in the complaint.

Q. I'm asking you, Mrs. Tu, do you have any evidence or do you have any facts to support your allegation that the union failed to present evidence on your behalf?

MR. KUBBY: So your question is directed to her own knowledge?

MR. DARBY: Right.

THE WITNESS: The five transferred. Me not transferred.

MR. DARBY: Q. And that's what the union should have presented?

A. Why they take the other one, don't take care of me?

Q. Now, which five are you referring to, Mrs. Tu?

A. The --

Q. Is this the September transfer up to San Francisco, the establishment of new positions?

A. That's the one. And now the people call back.

Q. Okay. The people were called back after the arbitration, correct?

A. I don't know that, but I just tell the fact that when they transferred the job to SP, why they didn't give me exercise to use my seniority? And now they call people back. They didn't -- why didn't they call me? Yeah. That's what my -- yeah.

Q. Okay. You also state that the union failed to process your grievance. And when you state that, are you again referring to the union's failure -- well, I won't --

A. Not failure. They just ignore me. You know, they just don't pay attention to me.

Q. So, the failure to process your grievance is based on your saying the union just ignored you?

A. That's the truth.

Q. Notwithstanding, I've demonstrated to you that the union did file some items on some grievances on your behalf, correct?

A. Not to me.

MR. KUBBY: Can you show her that the union filed a claim that she was told she could not bid for a job that was being transferred to SP even though she had the seniority to bid for that job? Is that included in the grievance file by the union?

MR. DARBY: Q. Earlier I showed you some documents, Mrs. Tu, concerning grievances filed on August 15th, 1985 by the union, which is Document Number 2, followed up by an August 28th letter, which is Exhibit Number 3, an appeal filed by Mr. Brackbill on September 4th, 1985, which is Exhibit Number 4. On all three of these there is references to three provisions in the protective agreement which states that employees should either be able to follow their positions and work with their full rights. Do you understand what "full rights" means?

A. Yeah.

Q. With seniority?

A. Yeah.

Q. Or be compensated at last assigned PFE rate or protected rate whichever is higher until retirement age.

A. I didn't get all this.

Q. Which means you can sit home and collect pay for not working.

A. He didn't give it to me. Yeah.

Q. You asked for the references and I am giving the references.

MR. KUBBY: The references I am asking for is reference to the fact under the contract she was entitled to bid for positions and that she was not allowed by the company to bid for positions which were being transferred.

MR. DARBY: That was -- well, Mr. Kubby, I'm not going to argue with you. I will tell you, though, the reason why that is not alleged in the grievance is because there is no merit to that under the agreement. When they transfer a position, the incumbent gets the job. That's what the agreement says.

MR. KUBBY: The question is -- you're not listening to me -- the question is that job descriptions were posted as being unfilled. Under the terms of the agreement, all employees are allowed to bid for that position and Mrs. Tu had seniority so that if she bid for that position, she was entitled to take it. And the company did not allow her to bid for the position. Is that in the grievance?

MR. DARBY: Unfortunately, under the agreement

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and under the protective agreement the employer's entitled to establish new positions and to transfer from one to the other. And when they do so, the protective agreement provides that the incumbent gets the position.

MR. KUBBY: But if there is no incumbent and the position is posted, are you telling me that all employees did not have a right to bid for a vacant position?

MR. DARBY: If there is a new position being established and they are transferring an individual, as far as the company was concerned, they were taking one person and transferring him to a new position.

MR. KUBBY: Well, before that. Before that occurred.

MR. DARBY: This is not the time to argue.

MR. KUBBY: We need to get the question straightened out so she knows what you're talking about. The point is that the union did not process her particular grievance. She was not allowed to bid for an open position that was known to be going to be transferred to SP.

MR. DARBY: Q. Okay. So, is that what you're asserting to, Mrs. Tu, when you say they failed to process a grievance?

MR. KUBBY: Is there anything in the grievance file about their treating Mrs. Tu differently because she

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was Chinese or because she was 59 or because she was a female? Is there anything in the grievance file there about that?

MR. DARBY: Mr. Kubby, I will respond to that. But, again, this is not the time to be arguing about this.

Q. I am asking Mrs. Tu the questions and what I'd like to know is the answer to the question which we've already found out through the testimony of your attorney that you felt the union failed to process your grievance by failing to include in there that you were not permitted to use seniority to bid on a vacant position.

Do you know of any other ways in which the union failed to process a grievance for you?

A. This time call everybody back except me, you know.

Q. And at that point, since they didn't call you back to work, are you saying the union should have filed a grievance on your behalf?

A. I don't know your procedure, but you are the one who should take care me.

Q. But if there is no procedure for filing a grievance under those circumstances, are you still saying that you're entitled to have a grievance filed on your behalf?

A. Saying your words, if your union doesn't have a

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procedure, you should never have a union. You've got to have a rule.

Q. Mr. Kubby also testified for you that the union failed to file grievances because you were being discriminated against because you were Chinese, a female --

And what else did you testify? Age?

MR. KUBBY: 59 years old.

MR. DARBY: Age. Okay.

Q. Did you ever go to the union and ask them or give them any reason to file a claim because you felt you were being discriminated against because you were Chinese?

MR. KUBBY: Just a minute. The question is -- I mean, you're asking her things that you have evidence before you about it. You got my letter to the SP which was sent to Mr. -- to the union steward asking for the union's help regarding the prejudice that was being exhibited against her. Did the union do anything about it? It did not.

MR. DARBY: Mr. Kubby, why don't you stop testifying?

MR. KUBBY: I am not testifying, I'm objecting to your question.

MR. DARBY: Objection is noted and I am going to ask the witness to answer.

Q. Mrs. Tu, did you ever personally contact either

Mr. Balovich or Mr. Brackbill and complain that you were being discriminated against because you were Chinese?

A. I did tell the Bob, you know, when I said, "You know my age, you know, 59, you know." That time they hadn't abolished my job. I say, "They put this bulletin, the job I wanted exercise seniority." I says, "You know I like work few years for make up my retirement, you know."

Q. So you did mention to him your age. Did you mention to him you felt you were being discriminated against because you were Chinese?

A. I think '84, '83 -- Jim, you remember they sent me to the Bayshore without any reason? They abolish me. I say, you know, you think maybe -- I told the Jim, "Maybe I'm Chinese, maybe I'm a woman." Whatever they did that to me is not fair. I did tell they, but that's '83. They transfer back, forwards. I was upset.

Q. How about this layoff in 1985? In fact, did you tell either Jim Balovich or Bob Brackbill that you felt you were being discriminated against because you were Chinese?

MR. KUBBY: Personally?

MR. DARBY: Q. Personally?

A. Personally, I feel --

Q. I'm not asking you that. It's a very simple question. Did you tell Jim Balovich or Bob Brackbill that

you felt they did it because you were Chinese?

A. Yeah, I feel that way.

Q. Mrs. Tu, I know you feel that way. Did you tell Jim Balovich that?

A. I --

Q. Yes or no?

A. No. I just tell you I feel that.

Q. So, you didn't tell Jim Balovich that?

A. I didn't tell Jim Balovich that.

Q. Did you tell Bob Brackbill that?

MR. KUBBY: Did you? I'm sorry, I didn't hear your answer. Are you saying that you did tell him or you didn't tell him?

THE WITNESS: I did tell Jim 1983 because my age.

MR. DARBY: Q. I know that and I thank you for that information. I'm talking about 1985.

A. I don't know.

Q. Okay. Did you mention to Bob Brackbill or Jim Balovich that you felt you were being laid off because you were a woman?

A. The whole thing is the truth because I'm Chinese, I'm 59.

Q. But I'm asking you a very simple question. I'm asking did you tell him that? I am not saying it's untrue.

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I'm just saying did you tell him that? It's a very simple question, Mrs. Tu.

Mr. Kubby, will you ask her to respond to my question? And you know it's a very simple question.

A. I don't know.

Q. You don't know?

A. I don't know.

Q. Are you denying that you said it to him or you just can't recall?

MR. KUBBY: She said she can't recall.

THE WITNESS: I don't know. I don't deny. I don't know.

MR. DARBY: Q. Okay. Mrs. Tu, you understand, now, you're under oath?

A. Sure.

Q. And again, I'm not suggesting you're trying to withhold anything from me, but I just want to make sure. This is very important to us and I just want to know whether or not you told Jim Balovich --

A. Everything I say is very important. It's also important to me. I tell you the whole truth. I been discriminate because -- I think the whole truth in the picture you will see because they don't pick. First, I'm 59. I am the oldest one on the list. Then I am the only Chinese and I'm the only woman. And they call everybody

back to work. All American, only me. Then you going to tell me, if you want off the record, tell me why they did that to me? You're family, where they come from?

Q. Mrs. Tu, we're not here to discuss my ethnicity. I'm Irish. Let me ask you questions. Is it your understanding, Mrs. Tu, that the union has an obligation under the collective bargaining agreement --

A. To take care of me.

Q. Well, no. Listen. Let me finish. To ensure that the PFE did not discriminate against you because of your being Chinese or because you were old or because you were a woman?

A. No. Wait a minute. Stop there. You are represent PFE or you represent union?

Q. Now, I'm asking -- you're saying that the union should have done something for you because you were being discriminated against because you were either Chinese, because of your age or because you were a woman and I am just asking you, did you have an understanding that the union had an obligation to do that?

MR. KUBBY: That's calling for a conclusion. The contract says the company cannot discriminate because of age, national origin, or sex.

MR. DARBY: Q. And you don't know whether or not you specifically raised that with either Mr. Balovich or

Mr. Brackbill?

MR. KUBBY: I certainly did.

THE WITNESS: I don't remember.

MR. DARBY: Q. Is there any other facts you can give me, Mrs. Tu, which support your claim against the union that it failed to process your grievance other than what we've already talked about?

A. Why I didn't get protect from you?

Q. You've mentioned that about a hundred times, Mrs. Tu, I'm talking about anything else other than that?

MR. KUBBY: Whatever you can recall right now.

THE WITNESS: Why didn't I have a right to exercise my seniority?

MR. DARBY: Q. We've talked about that.

No. I remember, you know, you get upset with me. So I don't remember.

Q. Let me tell you something, Mrs. Tu. I'm an attorney working for the union, okay? I don't represent members. I don't get involved in the representation of the members. The union turns to me after it's been sued to try to help it, okay? You've constantly made references to the fact that I'm the union and why I should know this and I should know that. I just want you to know that I'm here in my capacity as an attorney for the union and what Mr. Brackbill did or didn't do and what Mr. Balovich did or

didn't do I have to know the answer to, but I am not responsible for it, okay? I just want to make that clear to you. Several times you made accusations suggesting that I should --

A. No.

Q. I just want to get that straight, okay?

A. But you are the lawyer. I'm not lawyer, okay? But you have human heart, you -- we all have a good heart. Do you think my case is fair? I'm the woman, 59 and I work a company 23 years and a half and I do a good job. I never take advantage. And do you think --

Q. Mrs. Tu, I'm not here to answer these questions from you. I understand. You've made it very clear, Mrs. Tu, and if we can, let me ask the questions and you answer them. We wouldn't be here unless this suit had been filed and I have to learn about it and I have to ask you questions to learn about it.

A. To me, the whole thing is not fair.

Q. I understand and you've made that very clear. You've made that very clear. Mrs. Tu, in paragraph 53 of the complaint it's alleged that the union engaged in conduct -- and it's referring back to the things we've already discussed. In bad faith, dishonesty -- let's take them one at a time. Bad faith and dishonesty. Other than what you've already testified to, can you give me any facts

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or tell me any stories as to how the union's conduct was in bad faith or dishonest?

MR. KUBBY: Is there an allegation in there about conflict of interest in the buying of the railroad?

MR. DARBY: Mr. Kubby, you've had numerous opportunities to testify at the deposition and this is my deposition and I'm -- we'll discuss that. Believe me, I'm not going to let that go unresolved.

MR. KUBBY: Other than what she alleges in the complaint.

MR. DARBY: Q. Other than what you've already spoken about --

MR. KUBBY: And alleged in the complaint.

MR. DARBY: Right.

Q. Do you have any evidence that there was any hostility between the union and yourself?

A. I think I totally trust Kubby. Whatever I know, I told Kubby. So Kubby take care of me.

Q. Okay. Mrs. Tu, in that same paragraph 53, you say that the union's conduct prevented you from exhausting your contract remedies against the remaining defendants and each of them. What are you referring to there?

A. I tell you, I'm totally trust the Kubby because all these are law words. I don't understand.

Q. But, Mrs. Tu, let me show you something at the

back of this complaint.

A. I signed it.

Q. You signed it and you said that --

MR. KUBBY: Are you intimidating her? Further, she's explained to you --

THE WITNESS: Wait a minute. If I know all this law, I tell you, I don't need you and Mr. Kubby. I would go all the way to Supreme Court by myself. I tell you that, you know.

MR. DARBY: Q. Okay. Mrs. Tu, let me ask you this, and you can consult with Mr. Kubby, if you like. But this is an allegation in the complaint and it's at issue and I'm entitled to know what facts are supporting the claim that the union failed to -- or the union prevented you from exhausting your contract remedies.

A. They don't take care of me. They don't protect me.

MR. KUBBY: May I suggest that the correct process to do that is in written interrogatories?

MR. DARBY: So you can again answer for your client? Let me add, Mr. Kubby, you're flirting by making yourself declarant to be a witness on this case and to have yourself taken off this case as an attorney. I hope you realize this, too. It might have helped if you had gone over this complaint with your client before today.

Q. Mrs. Tu, again, it's a yes or no answer. Do you have any facts here today which support your allegation that the union prevented you from exhausting your contract remedies?

MR. KUBBY: Is your question to mean other than what she's alleged in the complaint and what she's testified?

MR. DARBY: Other than what she's testified to today.

MR. KUBBY: And what's in the complaint?

MR. DARBY: Yes.

THE WITNESS: What you want me say?

MR. DARBY: Q. Yes or no.

A. I think I still don't get -- can you repeat again because I tell you all this law words I don't -- I trust Kubby because Kubby knows my English. So then he use the law words. If I tell you wrong, then you put in the record say I'm wrong. So I don't want to answer, I tell you.

Q. Okay. That's fine. Do you not know --

A. I know everything in there because I told Kubby.

Q. You obviously don't know everything in here because I'm asking you a question about what's in here and what facts do you have to support the allegation that the

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union prevented you from exhausting your contract remedies?

A. Yes.

Q. What facts? I am asking you what facts --

A. Facts I discuss with Kubby. Let Kubby answer. I don't want to use wrong words. But now you make me circle. Use words -- I don't think it's very nice for you to do that to me.

Q. This is not Mr. Kubby's complaint. This is your complaint.

A. I trust Kubby. Right now I can't trust you. You make me circle. Make me say yes or no.

MR. KUBBY: You can also say you don't know. You have three possibilities. Either yes or no or, if not, that you don't know.

THE WITNESS: I don't know.

MR. DARBY: Q. You don't know. Okay. Mrs. Tu, in paragraph 51 of the complaint -- do you want to take a break or are you okay?

A. I'm sorry.

Q. I just want you to know that I don't want any animosity between us. I want you to understand --

MR. KUBBY: What exists between you is going to exist between you. Let's not spend a lot of time on that.

MR. DARBY: We don't have to, but I see she's getting disturbed.

MR. KUBBY: Let's just get to a question.

THE WITNESS: By you.

MR. DARBY: Q. I understand that. Well, that's good. That means I'm doing my job.

In paragraph 51 of the complaint, Mrs. Tu, you state that you are informed and believe that the union had a conflict of interest in representing you because of a pending merger between the Southern Pacific Transportation Company and some other railroads. Are you familiar with that allegation in your complaint?

A. Yes, I think.

Q. Okay. Let me read it to you, okay? Do you have a copy of your complaint?

MR. KUBBY: No.

MR. DARBY: Q. Plaintiff is informed and believes and on the basis of said information alleges that the union -- it says "BRAC" -- the BRAC was in negotiations with the other defendants herein and each of them for the purchase of defendants Southern Pacific Transportation Company and seeking to become a bargaining agent for the consolidated railroad, thus having a conflict of interest in the representation of plaintiff Sieu Mei Tu. Do you understand what that allegation is referring to?

A. Yes.

Q. Okay. What is that paragraph referring to? I

have to know what that means in order to defend this lawsuit. If you want to consult with Mr. Kubby, that's fine.

A. Yes. I concern, Mr. Kubby, what -- you know.

MR. KUBBY: He's talking about the newspaper articles that the --

THE WITNESS: They pay severance pay, right?

MR. KUBBY: No, no, no. This is the articles that were about the union seeking to buy the SP.

THE WITNESS: Oh, yes buy out.

MR. KUBBY: To buy the whole railroad and also the report that they were seeking to become the bargaining agent for the consolidated railroads.

THE WITNESS: That's right.

MR. DARBY: Q. Okay. What newspaper articles are you referring to, Mrs. Tu?

A. Chronicle. I think.

Q. Are these newspaper articles that were presented as part of your document request supplied to the railroad?

MR. KUBBY: I don't recall. It was after her deposition, I think.

MR. DARBY: It was after what time period? First of all, it seems like we're talking about two different allegations. There is one that the union was

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attempting to purchase the Southern Pacific Transportation Company and as a result we had some -- the union had some conflict of interest.

Q. Do you recall what dates these newspaper articles were?

A. It was in the newspaper, union clerk is going to buy the SP.

Q. The Brotherhood of Railway, Airline and Steamship Clerks was going to buy --

A. Yeah, yeah, yeah.

Q. And is it your contention that since the union was seeking to buy the railroad, that the union was not in a position to properly represent you?

A. They not interest on me, take care of me.

Q. Well, why would the purchase -- the union's alleged interest in buying the railroad, why would that lead the union to not represent you properly?

MR. KUBBY: If you know.

THE WITNESS: I don't know.

MR. DARBY: Q. Do you have any reason to believe that if the union was planning on purchasing the Southern Pacific Transportation Company that it wouldn't have an interest in representing you?

A. I don't know. Your union is big. So I can't read everybody's mind.

Q. Are you aware of what -- I know you read the newspaper articles concerning the union's purchase or attempt to purchase the railroad. Do you ever know what came of that?

A. I don't remember.

Q. And you don't know during what period the union was attempting --

A. No, I don't remember.

Q. Are these newspaper articles that you still have copies of?

A. No. I don't remember. No, I don't keep all of it, you know.

Q. So this was something you read in the paper and passed it?

A. Pass it.

Q. This was just something that you read in the newspaper?

A. Yeah, newspaper. Somewhere SP work there told me, you know.

Q. Now, according to Mr. Kubby's testimony at your deposition, you also apparently are alleging that the union was seeking to become the bargaining agent of the consolidated railroad. What consolidated railroad are you referring to?

MR. KUBBY: I'm going to object to the form of

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the question.

MR. DARBY: Q. In paragraph 51 of the complaint you say that BRAC was in negotiation and seeking to become the bargaining agent for the consolidated railroad. What consolidated railroad are you referring to?

A. I don't remember.

Q. Do you have any facts or stories you can tell me now which support your allegation that the union would have a conflict of interest in representing you because they were seeking to become bargaining agents for the consolidated railroad?

A. I don't have a story, I just tell you the truth. Why didn't call me back to work? They call everybody except me. Not everybody. Jim, you know. Me, you know.

Q. And Mr. Armstrong?

A. I don't know. I have not talked to him.

Q. Well, let me just get something straight, Mrs. Tu. You said "everybody" about 25 times. You really can't say everybody because you already testified you don't know about some people.

A. I don't know somebody that's the -- yeah.

Q. Mrs. Tu, we've talked about a lot of different things today and I hope you've had your chance to explain to me what your case is about against the union. What I'd like

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to ask you now is: Is there anything else which is part of your story that you've told me here today?

A. Not story, fact.

Q. Facts, but I say story because -- just to make it easier to understand. I could use evidence and whatnot, but is there anything else that you're alleging against the union other than what you've told us here today in this deposition?

A. Oh, the reason I say why union didn't protect me.

Q. Okay. We've gone through that and you've cited --

A. Yeah. I want to know why they didn't protect me.

Q. Well, we'll find out whether or not they did or not. That's what the purpose of this lawsuit is. Mrs. Tu, the purpose today, as I told you several times, is to make sure that I understand everything about your complaint against the union.

A. Yeah, but I want to know --

Q. But --

A. You want to know the fact. You told me you want to know the fact.

Q. Right.

A. Is that true, I paid the union due; you should

take care of me?

Q. I'm not here to answer questions and, again, I'm not your representative, Mrs. Tu.

A. You represent who?

Q. I'm an attorney working for the union trying to defend their action and trying to learn what your action's about. I'm not here to try to answer questions for you as to why you feel the union didn't represent you. I'm here to ask you questions about facts supporting your lawsuit.

Now, you've talked about many facts today and I want to make sure that there aren't any facts that you haven't testified to here today that are relevant to this case.

MR. KUBBY: I'm going to object to that question. The question is absurd because all that she can testify to is what she knows and what facts there are to support her complaint is not necessarily within her knowledge. And there are other means of discovery for arriving at that conclusion.

MR. DARBY: I understand, Mr. Kubby. Maybe it would have been better to have you today given to me all the facts to your knowledge as to what supports your case against the union.

THE WITNESS: I tell you all the things is the truth. Yeah.

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MR. DARBY: I would like to take five or ten minutes and then I think I'm done, but I'd just like to review my notes.

(Recess taken.)

MR. KUBBY: Do you have any more questions?

MR. DARBY: Yes. I just have one or two.

Q. Mrs. Tu, are you aware that under the union's rules that an employee can file a grievance themselves with the company?

A. No, I didn't know that.

Q. Okay. You spoke earlier about Jim Balovich being your local chairman and then Bob Brackbill was his boss. Did you ever make any attempt to complain to Bob Brackbill's boss that he wasn't returning your calls?

A. What? You say that again.

Q. Do you know if Bob Brackbill has a boss?

A. No, I didn't. I know he always in Chicago. I don't know who is the boss.

Q. But you never made any attempt to go over Bob Brackbill's head at any time?

A. I don't know who he is.

Q. Did you ever make an attempt to find out who Bob Brackbill's boss was?

A. No, no, no. I simply like to take care of me whoever is the union man.

MR. DARBY: I have no further questions.

MR. KUBBY: I'd like to discuss with you the depositions. I'd like to take Mr. Balovich's deposition and Mr. Brackbill's deposition.

MR. DARBY: Well, notice them up and we'll --

MR. KUBBY: Just pick a date.

MR. DARBY: I can't give you any dates now because it's no sense giving you my dates until I can clear it with Mr. Brackbill and with Jim.

MR. KUBBY: So I'll just notice it and then --

MR. DARBY: Notice it and then we'll deal with it.

MR. KUBBY: Okay.

--o0o--

(Whereupon, the deposition was adjourned at 2:45 p.m.)

--o0o--

I declare under penalty of perjury that the foregoing is true and correct. Subscribed at _____, California, this _____ day of _____, 198___.

_____

Signature of the witness

combs & greenley
(415) 626-2855
1390 MARKET STREET, SUITE 220
SAN FRANCISCO, CA 94102

State of California)
) ss
County of San Francisco)

I, TERESA LOPEZ, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth and nothing but the truth in the within-entitled cause;

That said deposition was taken in shorthand by me, a certified shorthand reporter and a disinterested person, at the time and place therein stated and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor any way interested in the event of this cause and that I am not related to any of the parties thereto.

In witness whereof, I have hereunto set my hand and affixed my seal of office this 21st day of September, 1988.

OFFICIAL SEAL
TERESA LOPEZ
NOTARY PUBLIC-CALIFORNIA
CITY & COUNTY OF
SAN FRANCISCO
MY COMM. EXP. FEB. 12, 1991

Teresa Lopez
Notary Public
State of California,
County of San Francisco

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

2 500

Brisbane, March 27, 1985

SENIORITY DISTRICT 1
CLERKS' ASSIGNMENT AND VACANCY NOTICE NO. 17

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	*	$8.94
150	CLERK	DISBURSEMENT	*	$8.84

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

= INCLUDES $1.14 COLA ON TOP OF ESTABLISHED RATE OF PAY.

D. M. AUTREY

MR. R. E. BRACKILL
MR. J. M. BALOVICH
MR. T. D. WALSH

3504

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:

Position No.	Position	Location	Incumbent	Seniority Date
138	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	8/15/62
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 11 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

cc: Mr. R. B. Brackbill
General Chairman/BRAC

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

Mr. T. D. Walsh

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

Exh. E
S M Tu
S1.187

Ex 1
Tu Dep't
9-19-84

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:

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

D.M. AUTREY

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

4

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

J.M. Balovich Lodge No. 504

Street Address 100 Valley Drive Brisbane Ca. 94005 August 15, 1985

Mr. J. P. Segurson
Asst. to Vice Pres. & Gen. Mgr.
Pacific Fruit Express Company
Perishable Freight Division
Southern Pacific Transportation Co.
100 Valley Drive
Brisbane, California 94005

J. P. S

Dear Sir:

Claim is, by this letter, presented in behalf of every employee who holds seniority on current PFE Seniority District 1 Roster (copy attached) account carrier is wrongfully transferring their work to other companies, seniority rosters and/or exempt persons in violation of the applicable agreement and carrier has, also, in violation of the agreement laid off and is taking steps to further lay off claimants through misapplication of the agreement's Decline In Business provisions and contrary to their intent and purpose. Therefore, I hereby file claims for each such claimant that he or she, at the employee's option, shall:

1) Follow their position and work with their full rights, or

2) be compensated at last assigned PFE rate or protected rate whichever is higher until normal R.R.B. retirement age, or

3) be given, if they so elect, lump sum severance of 360 days' pay at last assigned rate or protected rate, whichever is the higher of the two.

FACTS:

1. Carrier has taken several steps to discontinue this perishable freight division (i.e. PFE) in the near future and has given, is giving, and is preparing to give away the work of claimants to other unentitled to it and without handling and/or benefits as provided in the agreement including the Agreement of January 7, 1980.

11. Carrier has before used and has again commenced to use and misapply the Decline in Business clause to effect longterm layoffs and/or terminations of claimants herein refusing them the 1, 2, 3 benefits above and/or the lump sum 360 days separation allowances to which they are entitled under the agreement's terms.

E-2 9-8-22 TV dept

Affiliated with American Federation of Labor - Congress of Industrial Organization and Canadian Labour Congress

CONTENTION:

Our PFE/BRAC Agreement, the February 7, 1965 Agreement and the TOPS Agreement are thus being violated by carrier, as well as various memorandums and understandings regulating their application. These violations must stop and the provided benefits including the option of taking 360 days severance pay as applicable must be granted upon request in all cases.

If your understanding of the facts is not as stated above, please advise in writing wherein you contend to differ. Also, please honor this claim as required by agreement but if it is your intent to deny same, promptly docket for conference before doing so, advising when meeting will be held to discuss this continuing violation.

Yours very truly,

J m Balovich
Local Chairman - BRAC

cc: Mr. D. M. Autrey
Mr. L. O. Batson

PPSE NO. 00001
04/03/85

PACIFIC FRUIT EXPRESS COMPANY

FORM 491 CLERKS SENIORITY ROSTER JANUARY 1,1985

* DISTRICT 1					
1	CLARK E. E.	568-30-5605	MGR CUSTOMER RELATIONS	BRISBANE	05/03/4
2	BATSON L. O.	564-20-0563	DGM/FLEET MANAGEMENT	BRISBANE	05/13/4
3	JENKINS J. A.	552-32-2191	EARLY RETIREMENT	BRISBANE	01/15/4
4	SHEA T. E	565-26-9102	DISABILITY RETIREMENT	BRISBANE	04/15/4
5	WALSH T. D.	546-40-7936	MGR.INDUSTRIAL RELATIONS	BRISBANE	12/15/4
6	VACCAREZZA R. R.	550-30-6290	DISABILITY RETIREMENT	BRISBANE	03/09/4
7	HOLMES W. O.	487-22-3405	EARLY RETIREMENT	BRISBANE	07/15/4
8	GRIGGS J. W.	567-22-5609	EARLY RETIREMENT	BRISBANE	09/05/4
5	CHAPMAN R. A.	572-38-5016	FURLOUGHED	BAKERSFLD	03/11/4
10	FERNANDEZ J. J.	555-32-0544	CHIEF CLERK	BRISBANE	04/11/4
11	HUNTINGTON R. H.	553-32-3367	GEN CAR DISTRIBUTOR	BRISBANE	05/15/5
12	SUMNER G. L.	549-42-1127	ASST. CHIEF CLERK	BRISBANE	03/13/5
13	HART A. M.	551-36-2800	DISABILITY RETIREMENT	BRISBANE	03/24/5
14	LANG JR. A. D.	561-38-3850	ASST. CHIEF CLERK	BRISBANE	09/23/5
15	SHORB G. E.	207-22-0351	SPECIAL INVESTIGATOR	BRISBANE	10/21/5
16	PETRUCCI R. J.	567-40-3698	ASST.MGR.CUST.DISTRB TN	BRISBANE	11/17/5
17	BAUMANN J. H.	561-40-1421	MISC. CLERK	BRISBANE	04/30/5
18	AUTREY D. M.	523-32-4488	CONTROLLER	BRISBANE	10/26/5
19	NEWELL P. F.	726-14-9451	AAR CLK	BRISBANE	09/06/5
20	CARROLL C. C.	465-50-4055	CHIEF CLERK/DISBURSEMENTS	BRISBANE	07/22/5
21	SOLDAVINI R. C.	562-48-1034	CHIEF CLERK	BRISBANE	05/08/5

PACIFIC FRUIT EXPRESS COMPANY

FORM 401 CLERKS SENIORITY ROSTER JANUARY 1,1985

4 DISTRICT 1

22	KOTRONAKIS K.	557-62-5282	HEAD CONTROL CLERK	BRISBANE	04/05/6
23	TU S. M.	569-54-5736	GENERAL CLERK	BRISBANE	05/13/6
24	ARMSTRONG K. E.	442-40-7709	CLERK	BRISBANE	12/17/6
25	HAUFF S. A.	572-48-6252	JR. CLAIMS CLERK	BRISBANE	07/01/6
26	FENG K. H.	568-74-3513	AUDIT BILL CLERK	BRISBANE	10/14/6
27	KIM J. J.	567-80-6526	SPECIAL ACCOUNTANT	BRISBANE	11/11/6
28	BOUTOURLIN B. M.	556-42-1965	SECRETARY	BRISBANE	12/16/6
29	SMITH C. T.	541-58-3137	SPECIAL ACCOUNTANT	BRISBANE	03/25/6
30	JONES M. I	545-50-7219	SECRETARY	BRISBANE	03/25/6
31	ROYER J. J.	437-64-0605	MISCELLANEOUS CLERK	BRISBANE	04/03/6
32	GREGORY M. A.	553-90-6498	MISCELLANEOUS CLERK	BRISBANE	05/13/6
33	TALAMANTE R.	565-76-2164	RATE ANALYST	BRISBANE	08/07/6
34	LORENTZ J.	553-60-7516	JR. CLAIMS INVESTIGATOR	BRISBANE	10/13/6
35	ZANZI P. A.	556-80-3858	CONTRACT COORDINATOR	BRISBANE	02/18/7
36	FEND R. C.	566-80-0092	ASST. CONTROLLER	BRISBANE	03/25/7
37	BALOVICH J. M.	557-50-4062	RATE SERVICE CLERK	BRISBANE	08/13/7
38	FLORES J. E.	553-50-9448	CLERK	BRISBANE	07/05/7
39	BRUMMETT J. A.	566-76-9509	CAR DISTRIBUTOR	BRISBANE	10/28/7
40	ARRIAGA J. L.	572-11-2477	FURLOUGHED	BRISBANE	01/16/8
41	MAXWELL R. L.	546-42-7673	CAR DISTRIBUTOR	BRISBANE	12/16/8
42	MCELROY R. E.	568-54-2791	FURLOUGHED	BRISBANE	01/20/8

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

J.M. Balovich Lodge No. 504

Street Address 100 Valley Drive Brisbane Ca. 94005 August 28, 1985

Mr. J. P. Segurson, Asst. to VP&GM
Pacific Fruit Express Company -
Freight Division of
Southern Pacific Transportation Co.
100 Valley Drive
Brisbane, CA 940[illegible]

Dear Sir:

In answer to your letter of August 27, 1985 where you denied my claim of August 15 in behalf of our Seniority District 1 Roster claimants, I now advise you that your August 27 decision is rejected by this letter.

Also, I want to stress, I totally disagree with your contention that claim "is unspecific, misaddressed, anticipatory and unsupported." To be sufficiently specific as to claimants, an attached list is recognized as good enough. About being misaddressed, it was sent to you, the designated officer, and holding an SPT (PFE Division) business card and how can you say "anticipatory" since the PFE Agreement violation shutting out all employees is in its final stages at this time causing the undersigned among others to be wrongfully furloughed, or removed from roster, without protective pay or benefits.

As further breach of Agreement, no notice has been given BRAC or the employees although on August 16, the PFE had the San Francisco Chronicle publish this brief by way of information to the "business sector:"

Friday, August 16, 1985

Chronicle

Pacific Fruit Moving Offices to S.F.

... Pacific Fruit Express, the perishable produce subsidiary of San Francisco-based Southern Pacific, yesterday said it will vacate its headquarters in Brisbane and move to SP offices in San Francisco, perhaps by October 1. The move is a cost-cutting measure, said Tom Ellen, vice president of Pacific Fruit Express. Pacific Fruit Express employs between 180 people and 300 people, depending on the time of year. The company's refrigerated cars are largely used to ship potatoes from California to Eastern markets.

Ex 3
9-8-85
Tr Div

Mr. Segurson, you objected to my using the roster for my claim but the company's one-sided, unilateral closing of PFE is an act against the whole Roster to wipe out the dates and seniority of all. Finally, I will by copy of this letter refer your unacceptable August 27 decision to the General Chairman for his appeal and handling to a successful conclusion.

Sincerely,

J m Balourd
LC 504

cc: Mr. R. B. Brackbill
Mr. T. D. Walsh

Representing Employees of
Southern Pacific Transportation Company
Pacific Fruit Express Company
Northwestern Pacific Railroad
Pacific Motor Trucking Company
Los Angeles Union Passenger Terminal
Harbor Belt Line Railroad
San Diego and Arizona Eastern
Railway Company
[illegible] 178

SYSTEM BOARD OF ADJUSTMENT No. 94

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
AFL-CIO
SUITE 1000 PHELAN BLDG · PHONE (415) 989-9956
760 MARKET STREET, SAN FRANCISCO, CALIFORNIA 94102

R. B. BRACKBILL, General Chairman
C. L. FROST, General Secy-Treasurer
S. R. STEEVES, Vice General Chairman
G. H. ADAMS, Chairman Board Trustees
D. D. DEHART, Member Board Trustees
W. D. MARTIN, Member Board Trustees

1 Refer to File No. PFE-2482-GO

September 4, 1985

Mr. T. D. Walsh, Manager
Industrial Relations
Pacific Fruit Express
100 Valley Drive
Brisbane, California 94005

T.D.W.
SEP 12 1985

Dear Sir:

We hereby appeal from the decision of Mr. J. P. Se gurson, Assistant to Vice President and General Manager, Brisbane, California, claim in behalf of every employe who holds seniority on current PFE Seniority District 1 Roster account Carrier is wrongfully transferring their work to other companies, seniority rosters and/or exempt persons in violation of the Agreement and Carrier has also in violation of the Agreement laid off and is taking steps to further lay off Claimants through misapplication of the Agreement's Decline in Business provisions, to:

(1) Follow their position and work with their full rights, or

(2) be compensated at last assigned PFE rate or protected rate whichever is higher until normal R.R.B. retirement age, or

(3) be given, if they so elect, lump sum severance of 360 days' pay at last assigned rate or protected rate, whichever is the higher of the two.

The facts and Organization's contentions are as contained in Local Chairman J. M. Balovich's letter dated August 15, 1985 to Mr. J. P. Se gurson, copy attached. Kindly consider said letter embodied herein as part of this appeal.

Claim was denied by letter dated August 27, 1985 from Mr. Se gurson. His reasons for declination are not acceptable to the Organization and it is our contention that the February 7, 1965 and TOPS Agreement were violated.

Please acknowledge receipt and advise when we may discuss this claim in conference with you.

Yours very truly,

R. B. Brackbill

ET 4
9-8-82
TW Ag.

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 worksnift 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. F. Segurson, Asst to VP & GM

Attachment

Ex 5

9-8-88

Exhibit 17

S M Tu

5/11/87

Representing Employees of
Pacific Transportation Company
Pacific Fruit Express Company
Northwestern Pacific Railroad
Pacific Motor Trucking Company
Los Angeles Union Passenger Terminal
Harbor Belt Line Railroad
San Diego and Arizona Eastern
Railway Company
170

SYSTEM BOARD OF ADJUSTMENT No. 94
BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
AFL-CIO
SUITE 1000 PHELAN BLDG. • PHONE (415) 989-9956
760 MARKET STREET, SAN FRANCISCO, CALIFORNIA 94102

S. S. BRACEWELL, General Chairman
C. L. FROST, General Vice-Chairman
S. E. STEVEL, Assistant Vice-Chairman
S. J. DEVINE, Vice-Chairman
G. M. ADAMS, Chairman Board of Trustees
D. D. DEHART, Member Board of Trustees
W. D. MARTIN, Member Board of Trustees

Refer to
File No. PFE-2482(GO)

October 11, 1985

Mr. T. D. Walsh
Manager Industrial Relations
Pacific Fruit Express Company
100 Valley Drive
Brisbane, CA 94005

T.D.W.
OCT 11 1985

Dear Mr. Walsh:

With reference to your letter of September 20, 1985, File Per-46 (TOPS, etc.), relative to employees we represent at PFE headquarters, Brisbane, California, for consideration due them per Local Chairman J. M. Balovich's claim letter of August 15, 1985 embodied herein by reference.

Have taken note of your position that the C-1 and D employees transferred to SPT have been provided for under the agreement and I should hope so, but this PFE-SPT transfer covered only 12 claimants and you indicate the B's another five (5) are retired, plus the A's numbereing eight (8) are resigned or in one case dead. These numbers 12, 5 and 8 total only 25 out of a Seniority District 1 roster of forty-two (42), leaving seventeen (17) that are being denied their options under TOPS and our implementing agreement of January 7, 1980.

This handling is not nearly what the contract requires so please be advised in accordance with Rule 23, that your decision in this case is not accepted and the matter shall be progressed further to a just conclusion.

Yours very truly,

R. B. Bracewell

cc: Mr. J. M. Balovich
Local Chairman Lodge 504

T.D.W.
OCT 11 1985

Ex 6

9-8-88
Tw Ltr

Brisbane, October 2, 1985

PACIFIC FRUIT EXPRESS COMPANY
BRISBANE, CALIFORNIA

SENIORITY DISTRICT 1
CLERKS' ABOLISHMENT NOTICE NO. 32

ALL CONCERNED:

The following positions are abolished at close of shift October 9, 1985:

Position No.	Position	Location	Incumbent	Seniority
136	Misc. Clerk	Brisbane	Armstrong, K.E.	12-17-63
133	Misc. Clerk	Brisbane	Lorentz, J.	10-13-69
156	Misc. Clerk	Brisbane	Royer, J.J.	4- 3-69
141	Misc. Clerk	Brisbane	Tu, S.M.	5-15-62

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, Items 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.

J. F. Segurson
Asst. to Vice President & General Manager

cc - Mr. R. B. Brackbill (2)
General Chairman/BRAC

Mr. J. M. Balovich
Local Chairman Lodge 504

Mr. T. D. Walsh

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

J. M. Balovich Lodge No. 504

Street Address 91 Park Plaza #10, Daly City, CA 94015 October 25, 19 85

Mr. J. P. Segurson, Claims Official
Perishable 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, CA (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:

Name of Claimant	Position Held	Seniority Date	Date Severed
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 named 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

Affiliated with American Federation of Labor - Congress of Industrial Organizations and Canadian Labour Congress

EX 7 9-8-86 TM

risbane Offices with the General Offices in San Francisco. Claimants were barred from following their work, a basic agreement right recognized by all.

2. Secondly, and more seriously, both the February 7, 1965 National Agreement, and the January 7, 1980 TOPS Agreement directly provide in the clearest 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,

3

513

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

929 WEST REMINGTON DRIVE
SUITE ONE HUNDRED
SUNNYVALE, CALIFORNIA 94087
(408) 736-4963

2300 EL CAMINO REAL
ONE HUNDRED TEN
PALO ALTO, CALIFORNIA 94306
(415) 941-9563

PLEASE RESPOND TO
Palo Alto

October 18, 1985

CERTIFIED - RETURN RECEIPT REQUESTED

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.

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In adition, 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

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

E. A. BRACKBILL, General Chairman
C. L. FROST, General Secretary-Treasurer
E. R. STEVER, Vice General Chairman
W. B. MARTIN, Chairman Board Trustees
B. B. DEHART, Member Board Trustees
L. B. BAKER, Member Board Trustees

SYSTEM BOARD OF ADJUSTMENT No. 94

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
AFL-CIO
SUITE 1000 PHELAN BLDG. • PHONE (415) 989-0084
760 MARKET STREET, SAN FRANCISCO, CALIFORNIA 94102

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

E-10
9/8/88
T-Dept

Southern Pacific Transportation Company

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

THORMUND A. MILLER
VICE PRESIDENT AND GENERAL COUNSEL

JOHN J. CORRIGAN
GENERAL SOLICITOR

JOHN MacDONALD SMITH
RICHARD B. KOFF
SENIOR GENERAL ATTORNEYS

ROBERT E. BOGASON
DOUGLAS E. STEPHENSON
LOUIS P. WARCHOT
WILLIAM E. SAUL
STUART E. VAUGHN
ANN FINGARETTE HASSE
DAVID W. LONG
CAROL A. HARRIS
CRAIG J. WHITNEY
GENERAL ATTORNEYS

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

LAWRENCE P. RIFF
CLAUDE F. KOLM
ATTORNEYS

WRITER'S DIRECT DIAL NUMBER
(415) 541-1785

RECEIVED
JAN 29 1986
Transportation Systems & Services

January 29, 1986

Mr. Lee J. Kubby
525 West Remington Drive
Suite One Hundred
Sunnyvale, CA 94087

Dear Mr. Kubby:

Re: Mrs. Sieu-Mei Tu

I have received your letter of January 17, 1986. As stated in my previous letter to you of November 7, 1985, Mrs. Tu was furloughed due to a decline in business at Pacific Fruit Express Company ("PFE").

Her union, Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees has filed a claim and it is being processed through the exclusive procedures established by the Railway Labor Act ("RLA").

I hope that you review the RLA to avoid the possibility that PFE could claim any action filed is frivolous and clearly barred by the RLA.

Again, PFE rejects your characterization of its action and PFE expects full vindication in the RLA process.

Sincerely,

Gary A. Laakso

Ex 11
9/8/88
TV Agt

Exhibit C

Southern Pacific Transportation Company

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

JOHN A. CRIMMINS
GENERAL SOLICITOR

JOHN MACDONALD SMITH
RICHARD B. HOPP
SENIOR GENERAL ATTORNEYS

ROBERT A. BUCKNUM
DOUGLAS E. STEPHENSON
MICHAEL A. SMITH
LELAND P. MARCHETTI
GREG CUNNINGHAM
WILLIAM E. BALL
STANLEY E. VALERIUS
ANN MARGARETTE HARRIS
DAVID R. LOPEZ
CAROL A. HARRIS
GERARD J. WHITNEY
GENERAL ATTORNEYS

HAROLD S. LEVITT
GARY A. LAAKSO
JONATHAN H. FIL
GEORGE H. GUSTIS
STEPHEN A. GEORGEVITS
ASSISTANT GENERAL ATTORNEYS

LAWRENCE P. HOPP
CLAUDIA F. HELM
ATTORNEYS

WRITER'S DIRECT DIAL NUMBER

(415) 541-1785

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

ET 12
9-8-88
Tu dept

LEE J. KUBBY
ATTORNEY AT LAW

525 WEST REMINGTON DRIVE
SUITE ONE HUNDRED
SUNNYVALE, CALIFORNIA 94087
(408) 736-4963

2390 EL CAMINO REAL
ONE HUNDRED TEN
PALO ALTO, CALIFORNIA 94306
(415) 941-5583

PLEASE RESPOND TO
Palo Alto

January 20, 1986

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

E-9
9/8/88

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

525 WEST REMINGTON DRIVE
SUITE ONE HUNDRED
SUNNYVALE, CALIFORNIA 94087
(408) 736-4963

2300 EL CAMINO REAL
ONE HUNDRED TEN
PALO ALTO, CALIFORNIA 94306
(415) 941-5563

PLEASE RESPOND TO
Palo Alto

October 18, 1985

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
S M Tu
5/11/87

EX 8
Tu 9/8/87
Tu Dep

LEE J. KUBBY, INC.
A PROFESSIONAL CORPORATION
BOX 60485
Sunnyvale, CA 94085

(415) 691-9331

Attorney for Injured Parties

RECEIVED
JUL 28 1992

INTERSTATE COMMERCE COMMISSION

SIEU MEI TU AND JOSEPH Z. TU INJURED PARTIES VS SOUTHERN PACIFIC TRANSPORTATION COMPANY; ATCHISON, TOPEKA, SANTA FE RAILROAD COMPANY; PACIFIC FRUIT EXPRESS COMPANY; T. ELLEN; E.E.CLARK; d. 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	INTERSTATE COMMERCE COMMISSION FINANCE DOCKET NO. 30400 (SUB-NO. 21) SANTA FE SOUTHERN PACIFIC CORPORATION CONTROL SOUTHERN PACIFIC TRANSPORTATION COMPANY INITIAL EVIDENCE AND ARGUMENT

VOLUME II

RECEIVED
OFFICE OF THE
SECRETARY
AUG 11 1 05 PM '92
LEGAL UNIT

LEE J. KUBBY, INC.
A PROFESSIONAL CORPORATION
BOX 60485
Sunnyvale, CA 94085

(415) 691-9331

Attorney for Injured Parties

INTERSTATE COMMERCE COMMISSION

SIEU MEI TU AND JOSEPH Z. TU INJURED PARTIES VS SOUTHERN PACIFIC TRANSPORTATION COMPANY; ATCHISON, TOPEKA, SANTA FE RAILROAD COMPANY; PACIFIC FRUIT EXPRESS COMPANY; T. ELLEN; E.E.CLARK; d. 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	INTERSTATE COMMERCE COMMISSION FINANCE DOCKET NO. 30400 (SUB-NO. 21) SANTA FE SOUTHERN PACIFIC CORPORATION CONTROL SOUTHERN PACIFIC TRANSPORTATION COMPANY INITIAL EVIDENCE AND ARGUMENT

VOLUME II

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DECLARATION OF SERVICE BY MAIL

I, Lee J. Kubby, say and declare:

I am a citizen of the United States, over eighteen years of age, and not a party to the within action. My business address is BOX 60267, Palo Alto, California 94306. I am an attorney at law licensed by the State of California.

That on April _____, 1990

I served one (1) copy of the attached:

Excerpts of Record Volumes I and II

via United States First Class Mail on the following parties of record:

PATRICK W. JORDAN
WAYNE M. BOLIO
McLAUGHLIN AND IRVIN
ROBERT S. BOGASON
SOUTHERN PACIFIC TRANSPORTATION COMPANY
One Market Plaza, Room 837
San Francisco, CA 94105
Telephone: 415-541-1786

JOHN H. ERNSTER
One Santa Fe Plaza
5200 E. Sheila Street
Los Angeles, CA 90040
TELEPHONE: 213 267-5605

James M. Darby
Kathleen S. King, Esq.
Henning, Walsh & King
100 Bush Street, Suite 440
San Francisco, CA 94104
TELEPHONE (415) 981-4400

and by then sealing said envelope and depositing same into the United States mail, postage fully prepaid.

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

Executed on April _____, 1990. at Palo Alto, California.

_____
LEE J. KUBBY

ROBERT S. BOGASON
SOUTHERN PACIFIC TRANSPORTATION COMPANY
Southern Pacific Bldg., Room 837
One Market Plaza
San Francisco, CA 94105
Telephone: (415) 541-1786

PATRICK W. JORDAN
KEVIN P. BLOCK
McLAUGHLIN AND IRVIN
111 Pine Street, Suite 1200
San Francisco, CA 94111
Telephone: (415) 433-6330

Attorneys for Defendants Southern Pacific Transportation Co. and Pacific Fruit Express Co.

McLAUGHLIN AND IRVIN
LOS ANGELES - SAN FRANCISCO - NEWPORT BEACH

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 DECLARATION OF RICHARD FEND IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT Date: February 2, 1989 Time: 10:00 a.m. Place: Courtroom No. 3

I, Richard Fend, declare:

1. I have worked for Southern Pacific Transportation Company ("Southern Pacific") since November 1985, and am currently the Manager of Revenue Services. From March 1970 to October 1985, I was employed by Pacific Fruit Express Company ("PFE"). I first worked for PFE in various clerk positions, then rose up the ranks, eventually becoming Assistant Controller. I was Assistant Controller in October 1985, when

COPY

many of the functions of PFE were effectively absorbed by Southern Pacific.

2. From February to August 1985, I oversaw the revenue accounting functions in PFE's accounting department. In August 1985, my duties expanded to encompass the disbursement accounting functions. From August to October 1985, I was responsible for the entire accounting department at PFE, including the many clerks who worked there.

3. During 1985, I learned that PFE was to be "merged" into Southern Pacific. I also learned that certain jobs at PFE would be transferred to Southern Pacific, while others would be abolished. The number of positions which could be eliminated was determined by a decline-in-business formula set forth in one of the Union agreements. I was responsible for deciding which positions in the accounting department would be transferred to Southern Pacific.

4. I made that decision, in conjunction with other management personnel from Southern Pacific and PFE, based upon an assessment of the re-aligned business needs of the Company. Positions were abolished when it was determined that the relevant job functions would no longer need to be performed at the fully "merged" PFE. Positions were transferred when it was determined that existing Southern Pacific accounting employees could not absorb the relevant job functions. The decision was based on the job duties performed in a particular position, and was not based upon the identity of the employee holding that position. The employee's race, sex and age were not considered at all in deciding whether a position would be transferred or

McLAUGHLIN AND IRVIN
LOS ANGELES · SAN FRANCISCO · NEWPORT BEACH

eliminated. Specifically, those factors were not considered in the decision to abolish Sieu Mei Tu's job. Her position was abolished for the same reasons as the positions of many other accounting clerks; it was not abolished because of her race, sex or age.

5. PFE "merged" into Southern Pacific on or about October 1, 1985. As of that date, there were approximately 16 clerks on the Seniority District 1 roster at PFE. Attached to this declaration as Exhibit A is an accurate list of the clerks on the seniority roster as of October 1985, showing their race, sex and age, and their status as of the PFE "merger." Eight of the clerks were furloughed; eight of them were transferred to Southern Pacific.

6. I compiled Exhibit A, and all of the exhibits attached to this declaration, based on personal knowledge and Company records. I personally know or would recognize all of the clerks listed on the exhibits. I obtained their ages from Company personnel files, which are kept in the ordinary course of business.

7. Attached to this declaration as Exhibit B is an accurate list of clerks on the Seniority District 1 roster, categorized by age. The list shows the status of all clerks in the protected age group as of October 1, 1985. Of 15 clerks age 40 and over, six of them were furloughed while nine of them transferred to Southern Pacific.

8. Attached as Exhibit C is an accurate list of female clerks on the PFE Seniority District 1 roster as of

McLAUGHLIN AND IRVIN
LOS ANGELES - SAN FRANCISCO - NEWPORT BEACH

October 1985. Of seven female clerks, three of them were furloughed and four of them transferred to Southern Pacific.

9. Attached as Exhibit D is an accurate list of clerks on the seniority roster of Chinese ancestry. There were only two such clerks on October 1, 1985. One of them, Sieu Mei Tu, was furloughed; the other, Kou-Lim Feng, was transferred to Southern Pacific. Ms. Feng was transferred because, at the time, she was performing revenue auditing functions which were deemed necessary at Southern Pacific. Ms. Tu was not transferred because, at the time, she was performing miscellaneous or general clerk functions almost all of which ceased to exist after October 1, 1985.

10. There are two categories of employees on the railroad: "agreement" or union employees and "exempt" or non-union employees. All clerks are agreement employees. At the time PFE was "merged" into Southern Pacific, a number of exempt employees were offered buyouts or early retirement incentive packages. No buyouts were offered to agreement employees. Sieu Mei Tu, therefore, was not offered a buyout and was not eligible to receive one. Her race, sex and age had nothing to do with the fact that she was not offered early retirement. Only exempt employees received buyout offers.

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McLAUGHLIN AND IRVIN
LOS ANGELES - SAN FRANCISCO - NEWPORT BEACH

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

Executed January 5, 1989 in San Francisco, California.

Richard Fend

Richard Fend

McLAUGHLIN AND IRVIN
LOS ANGELES - SAN FRANCISCO - NEWPORT BEACH

PACIFIC FRUIT EXPRESS COMPANY

Seniority District 1

October 1, 1985

Name	Date of Birth	Sex	Race	Status[1/]
Sumner, G.L.	1-10-32	F	White	T
Lang, A.D.	2-17-31	M	White	F
Shorb, G.E.	10-26-28	M	White	T
Bauman, J.H.	11-7-30	M	White	T
Newell, P.F.	9-25-35	M	White	T
Soldavini, R.C.	7-6-37	M	White	T
Kotronakis, K.	10-31-34	F	White	T
Tu, S.M.	9-4-26	F	Asian	F
Armstrong, K.E.	6-9-40	M	White	F
Hauff, S.A.	6-28-37	F	White	T
Feng, K.H.	2-13-41	F	Asian	T
Boutourlin, B.M.	6-17-23	F	White	F
Royer, J.J.	11-1-44	M	White	F
Gregory, M.A.	4-8-38	M	White	T
Lorentz, J.	9-6-44	F	White	F
Balovich, J.M.	2-5-54	M	White	F

1/ T = transferred
F = furloughed

McLAUGHLIN AND IRVIN
LOS ANGELES - SAN FRANCISCO - NEWPORT BEACH

PACIFIC FRUIT EXPRESS COMPANY

SENIORITY DISTRICT 1

October 1, 1985

Status of Clerks Age 40 and Over

Transferred	Furloughed
G.L. Sumner	A.D. Lang
G.E. Shorb	S.M. Tu
J.H. Baumann	K.E. Armstrong
P.F. Newell	B.M. Boutourlin
R.C. Soldavini	J.J. Royer
K. Kotronakis	J. Lorentz
S.A. Hauff	
K.H. Feng	
M.A. Gregory	
TOTAL = 9	TOTAL = 6

McLAUGHLIN AND IRVIN
LOS ANGELES · SAN FRANCISCO · NEWPORT BEACH

PACIFIC FRUIT EXPRESS COMPANY

SENIORITY DISTRICT 1

October 1, 1985

Status of Female Clerks

Transferred	Furloughed
G.L. Sumner	S.M. Tu
K. Kotronakis	B.M. Boutourlin
S.A. Hauff	J. Lorentz
K.L. Feng	
TOTAL = 4	TOTAL = 3

McLAUGHLIN AND IRVIN
LOS ANGELES · SAN FRANCISCO · NEWPORT BEACH

PACIFIC FRUIT EXPRESS COMPANY

SENIORITY DISTRICT 1

October 1, 1985

Status of Clerks of Chinese Ancestry

Transferred	Furloughed
K.L. Feng	S.M. Tu
TOTAL = 1	TOTAL = 1

McLAUGHLIN AND IRVIN
LOS ANGELES · SAN FRANCISCO · NEWPORT BEACH

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Counsel for Union Defendants

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SIEU MEI TU and JOSEPH Z. TU, Plaintiffs, v. 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.	No. C87-1198-DLJ Date: Feb. 2, 1989 Time: 10:00 a.m. Place: Courtroom 3

DECLARATION OF JAMES M. DARBY

1. I, James M. Darby, am attorney of record in this case along with Kathleen S. King from the firm of Henning, Walsh & King.

2. Attached hereto as Exhibit A for the Court's reference is a true and accurate copy of excerpts from the

deposition of the plaintiff Sieu Mei Tu taken by defendant Southern Pacific Railroad on May 11, 1987, and relied upon by the Union in support of its summary judgment papers filed simultaneously herewith.

3. Attached hereto as Exhibit B for the Court's reference is a true and accurate copy of excerpts from the deposition of the plaintiff Sieu Mei Tu taken by the union on September 8, 1988, at which I was present. Such excerpts are also relied upon by the union in support of its summary judgment papers filed simultaneously herewith.

DECLARATION PURSUANT TO 28 U.S.C. SECTION 1746

I hereby declare under penalty of perjury that the foregoing is true and correct, except as to those matters that I have stated upon information and belief and, as to those matters, I believe them to be true.

January 3, 1989
Rockville, Maryland

JAMES M. DARBY

503

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

SIEU MEI TU and JOSEPH Z. TU,

Plaintiffs,

vs.

SOUTHERN PACIFIC TRANSPORTATION COMPANY, et al.,

Defendants.

No. C 87 1198 DLJ

RECEIVED
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McLAUGHLIN AND IRVIN
SAN FRANCISCO

DEPOSITION OF

SIEU MEI TU

Monday, May 11, 1987

Reported by:
Peggy Tsujimoto, C.S.R.
Certificate No. 5229

Exhibit A

HARRY A. CANNON, INC.
Certified Reporters and Notaries
635 SACRAMENTO STREET
SUITE 500
SAN FRANCISCO, CALIFORNIA

A. San Leandro.

Q. You went to work at -- when did you go to PFE?

A. 1962, May 15th.

Q. What did you do? Did you work outside the family home from the time of your arrival in the states until going to work at PFE?

A. Yes.

Q. You arrived in 1956?

A. Yes.

Q. Where was your first home in the states?

A. In Oakland. First we move, stay with my sister-in-law, and then we move to the Oakland 51st.

Q. What jobs did you have in Oakland before coming to PFE?

A. I work. First I come this country, I do some housework. Then I went to night school learn English. Then I went to the Berkeley mechanic school daytime. I go to learn adding machine in daytime in the school, and I do the housework at night. After that, I learn the key punch. The first job I find is Equitable Life Insurance Company.

Q. Where was that?

A. In San Francisco.

Q. What year?

going to be closed?

A. October the 2nd.

Q. Prior to October 2nd, 1985, had you feared that Brisbane was going to be closed?

A. I fear last four years.

Q. What caused you to fear for the four years before September of 1985 that Brisbane --

MR. KUBBY: She referred to October.

MR. BOGASON: Strike that.

Q. Are you saying that for about four years before it closed, you were worried that it was going to close?

A. No. You just asked me before the rumor gossip. Last four years.

Q. So for four years before it actually closed, there was a lot of gossip?

A. Yes.

Q. Did Mr. Carroll give you this in 1985?

A. I think so, but I am not sure.

Q. There is a description entitled, quote, miscellaneous clerk, S. M. Tu, $99.99.

A. $99.99.

Q. Have you read that before?

A. I got paid for that money. I got to know that.

A. Union man.

MR. KUBBY: I am sorry, Mr. Bogason. I am sorry to interrupt. I wanted to make it clear that it is my recollection that documents I gave to you were not stamped, is that correct?

MR. BOGASON: I really don't know. I assume this came from your files, but it might have come from mine.

MR. KUBBY: The question is, why are they together? That is the issue.

MR. BOGASON: Just for convenience. Why do I have them together?

MR. KUBBY: Stapled together here.

MR. BOGASON: Just convenient, ease of handling. They seemed to relate to each other.

MR. KUBBY: It is not that they were presented to you as one document?

MR. BOGASON: Oh, no, of course not.

Q. Have you ever seen Mr. Balovich's letter to Mr. Segurson before? Have you ever seen a copy of this letter of October 25, 1985?

A. I don't remember.

Q. Please turn to the second page of this exhibit.

A. Yes.

Q. Your name is mentioned there?

A. Yes.

Q. Is this a claim that was filed by the union?

A. That is what union did.

Q. Did Mr. Balovich send you a copy of this claim letter after he filed it with Mr. Segurson?

A. I think so.

Q. So you may have seen this claim letter of Mr. Balovich's before?

A. Before?

Q. Before today.

A. Oh, yes.

Q. Can you take a second and read Mr. Balovich's letter while we take about a three-minute break? What I want to do is just go through it. Take your time and just read what is in this letter. Okay?

A. Can I talk to Mr. Kubby?

Q. Sure. We are going to take a three-minute break.

MR. KUBBY: Before you leave, can you give us some indication of what you want to know from her about it so we can concentrate on that?

MR. BOGASON: I would just like to have her

back to work, PFE or the Brotherhood of Railroad Clerks?

A. That is between the company with the union. I don't know.

Q. If the union wants you to go back to work and the company refuses, are you going to go back to work?

A. Repeat again. I think now the company have more power than union.

Q. That is right. The union did complain about you not having a job in Mr. Balovich's letter, right?

A. Yes.

Q. The union accused Mr. Segurson and PFE of violating the agreement in that letter, right?

A. Yes.

Q. Even though the union complained in that letter, you are still not working, right?

A. Yes.

Q. So even though the union complained, the company thumbed its nose at the union, right?

MR. KUBBY: Do you have the newspaper article about the union's negotiations to become the representative for the combined railroad and the absence of activity by the union to protect the

rights of its members because it was seeking to become the representative for the combined railroad? I believe that was in the documents that I produced there. You can show that to her. The company is very powerful.

THE WITNESS: You are laughing now.

MR. BOGASON: Yes, I am laughing.

MR. KUBBY: Can you tell me, Mr. Bogason, has the union done anything to get Sieu back her job? They won't answer my letters, so I have to depend on somebody like you to answer the question.

MR. BOGASON: Q. Are you dissatisfied with the efforts of the union for you in this matter?

A. No.

Q. You were a member of the union, correct?

A. Yes.

Q. You paid your dues, correct?

A. Yes.

Q. If you didn't pay your dues, you knew you would lose your job?

A. That is what union told me, too.

Q. Since you have been furloughed, have you continued to pay your dues?

A. Yes. I pay very little.

Q. Did you pay your dues last month?

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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SIEU MEI TU and JOSEPH Z. TU, Plaintiffs, vs. 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.	No. C87-1198-DLJ

DEPOSITION OF

SIEU MEI TU

September 8, 1988

ORIGINAL

REPORTED BY: TERESA LOPEZ, CSR# 7627

Exhibit B

A. Yeah.

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

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

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

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

Q. Doing what type of things?

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

Q. Okay. So, they did not --

A. No.

Q. -- take you as an employee?

A. No.

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

A. No.

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

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

Q. Right.

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

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

Q. Okay. And you went for the interview?

A. I did.

Q. And you were not hired?

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

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

THE WITNESS: No.

MR. DARBY: Q. You were not hired?

A. No.

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

A. Yes.

MR. BLOCK: What year was that, please?

THE WITNESS: 1988. This year. April.

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

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

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

1985 prior to your being let go from the company.

A. Yes, I think I remember September they have a bulletin put on. They have a job -- created lots new job. And in fact when the union man, the Greg, he was 1-A job, then he become clerk. They create one job for him; clerk. Another bulletin they have people transfer to SP. So I did went to the Jim. I think all the people were -- because I have enough seniority, so I should exercise all the job in the bulletin.

Q. Let me ask you something, Mrs. Tu. Are you referring to the company's creating new positions in San Francisco and transferring certain people up there?

A. No. Listen. You let me finish.

Q. Okay.

A. So now you disturb me. I don't remember.

Q. I'm sorry. Go ahead.

A. So they have a job in there in the bulletin. I looked at bulletin. So I went to downstairs. I said, "Some job I have a seniority to pick that job." But the management say, "No, this job is go with the people." So I don't have a chance. Nobody, not just me, nobody have a chance to pick that job or the job in the bulletin. So we did went to see Bob. Bob, I think, I did see -- went to Bob. In fact, I told Bob I was a little upset. I said, "You know I have enough according to union rule. You follow

A. Yeah. I don't remember. You know, I don't remember.

Q. Okay. But you may have received this document?

A. I don't know. I don't know. I just told you I don't remember.

Q. Okay. That's fine. That's fine. Do you recall in any discussions you had with either Mr. Balovich or Mr. Brackbill --

A. For what?

Q. Let me make it an easier question. Do you remember anybody from the union telling you that they had filed this document with the company in order to fight to keep your job?

A. Bob always come to the meeting, always told us that I'm going to work on it, take care of you.

Q. I'm working on taking care of you?

A. Yeah, yeah.

Q. Attached to this document, Mrs. Tu, is a seniority roster.

A. Yeah.

Q. Can you show me where your name is on that roster?

A. Number 23.

Q. Now, do you have any recollection as to what this document constitutes or what this document was?

A. Seniority list.

Q. Right. But the letter --

A. The letter --

Q. If you want to review the letter -- you may not remember -- that's fine. But I'm just asking if you recall what this letter, which was sent from Mr. Balovich to Mr. Segurson, do you have any recollection as to what this letter was?

A. No, I don't remember.

Q. Did you understand this letter --

A. No. Not, you know, the union that --

Q. I'm not finish with my question.

A. I'm sorry.

Q. Did you understand that the union was filing a grievance on your behalf against the company?

A. After 1980, Jim -- every time we talked to Bob, he say, "I'm going to file a grievance with you, to take care of you." That's all. He always say that. We thought whatever letter he give to us, you know.

Q. That was a grievance he was filing against the company?

A. Yeah.

Q. Okay.

MR. KUBBY: Sieu, again I'm going to ask you the question that he just asked. You assumed something. He

A. Personnel department.

Q. Have you ever seen this document before?

A. I don't remember.

Q. Is it possible you may have received a copy of this at one time?

A. I don't remember.

Q. You don't remember. Is there anything familiar with this letter?

A. I don't remember.

Q. Let me read to you something, Mrs. Tu, if I may, off of this letter. "We hereby appeal from the decision of Mr. J. P. Segurson, Assistant to Vice President and General Manager, Brisbane, California, claim in behalf of every employee who holds seniority on current PFE Seniority District 1 Roster account Carrier is wrongfully transferring their work to other companies." Okay. How about we stop there? In reading that now, can you understand or do you understand by what he's saying there that he is appealing to the company on your behalf?

A. Who is?

Q. Mr. Brackbill.

A. Yeah, yeah.

Q. Is that your understanding from what I just read from "We hereby appeal" and then up to "other companies"?

A. He's help us.

Q. Right. Is that your understanding --

A. Yeah.

Q. -- from what I just read to you?

A. Yeah.

Q. Okay. And I'll continue. "Seniority rosters and/or exempt persons in violation of the Agreement and Carrier has also in violation of the Agreement laid off and is taking steps to further lay off Claimants through misapplication of the Agreement's Decline in Business provisions, to:" Let's just stop there. From what I just read, is it your understanding that Mr. Brackbill was again attempting to file an appeal on your behalf?

A. Yeah.

Q. Is that a yes?

A. No. I just -- you explain to me. Yeah, I listen.

Q. I mean, listening to it now, is that your understanding of it now?

A. Yeah, I listen.

MR. KUBBY: Now, Sieu, that's confusing. The question is whether you understand what the words mean or if you're saying yes to what he's saying?

THE WITNESS: No. I -- to me, he's represent us to take care us.

have been able to get one of those positions in San Francisco, correct?

A. That time is September 4.

Q. Right.

A. The job is September the 18th you just give to me.

Q. Right. Exactly.

A. So we don't know who transfer. We don't know.

Q. But what I'm saying to you is, based on this appeal that Mr. Brackbill was filing --

A. Yeah.

Q. -- on your behalf, is it your understanding from looking at that letter now that he was at least, in anticipation of the closing, requesting that the employees follow their position and work with their full rights?

A. Yeah.

Q. Is that your understanding of it when you look at that now?

A. Yeah, yeah.

Q. Okay. This is already in, right? Number 4. Yes. Okay. Now, again you just mentioned something to me, Mrs. Tu. All of these documents that I've introduced, and again I'll refer to them, Number 2 -- document Number 2, Exhibit Number 3, and this last letter I showed you was all filed prior to your job being abolished, correct?

A. I don't understand because I have time -- you just give me short time to read. I don't understand.

Q. Well, at least looking at the dates --

A. Yeah.

Q. -- since you were laid off in October of '85?

A. Yeah. During all this time -- you ask Jim -- and we did often go to see him and talk to the Bob. We thought union is fully protect. And understand I am fully protected if there is no job, they pay me. In fact, they call rocking chair money. You sit at home, do nothing. But according to union rule --

Q. Well, now that I am showing you those documents, Mrs. Tu, isn't that exactly what the union was doing by filing these things with the company?

A. When I called Bob, Bob always say, "I take care of you. Don't worry."

Q. Well, isn't that what this September 4, 1985 letter is? He was taking care of you.

MR. KUBBY: Just a minute, Sieu.

Well, whether he was or not is a legal conclusion. I object to the question as calling for a legal conclusion.

THE WITNESS: Okay.

MR. DARBY: I'd like to mark this as Exhibit 5.

(Whereupon, Defendant's

Q. Okay.

A. But I did call Bob. Bob never returned my call.

Q. So you called Bob Brackbill after you had received this letter?

A. Yes. He never call back.

Q. Do you recall him holding a meeting in his office here in San Francisco to discuss this matter?

MR. KUBBY: Which matter?

MR. DARBY: Q. Your being laid off.

MR. KUBBY: The receipt of the letter?

MR. DARBY: Right.

THE WITNESS: I don't remember.

MR. DARBY: Q. Do you recall attending any meetings in San Francisco?

MR. KUBBY: After October?

MR. DARBY: Q. After October 2nd, 1985?

A. I don't remember. I think we have a meeting -- whole bunch have a meeting before that, not after that.

Q. Okay. But you do recall at some time having a meeting in Mr. Brackbill's office?

A. Oh, yeah. We have two, three, I think.

Q. Do you recall why the meetings were held in Mr. Brackbill's office and not at Brisbane?

A. I don't remember. I think he always busy. I

think they reach -- the time that day he was in the office, he can't come lunch time. Some excuse. I don't remember.

Q. Was it possibly because the Brisbane office had already closed and that was the only place to have the meeting?

A. No. I don't remember.

Q. At the meetings that you had in Bob Brackbill's office, what is your recollection of the substance of this meeting? What was the discussions at that meeting or at those meetings?

A. We all went there. You know, not just me. I say them, "What they going to do with this? Do we get severance pay? If they don't, what we going to get? Protection pay? What our future is?"

Q. Did you, yourself, recall asking any questions?

A. Yes. I asking him what my future is, but he never --

Q. And what was the response given to you by the -- who gave you a response and what was the response?

A. No. I talked to Brackbill. He never say anything, yes or no, he never say anything.

Q. But at those meetings there were more than just yourself at these meetings, correct?

A. Yes.

Q. What did Bob Brackbill tell the individuals at

that meeting that the union was doing?

A. I don't know. He just say he have hard time dealing with Tom Ellen. That's what he always say.

Q. Did he tell the members that he was taking care of the situation?

A. He always said that he take care. We pay union due. So he said he will take care.

Q. Did he tell the members that he was filing any grievances against the company?

A. I think so. But I don't remember, you know. He talk very fast sometimes, you know.

Q. I have trouble understanding him myself sometimes. Believe me, he does talk fast. But do you recall anything else that was discussed at those meetings?

A. No, I don't remember.

MR. DARBY: I'd like to have this marked as Exhibit Number 6.

(Whereupon, Defendant's Exhibit 6 was marked for identification.)

MR. DARBY: Q. I just handed you a document marked as Exhibit 6, Mrs. Tu, dated October 11th, 1985. That was after you received this. Yes, this is October 7th, 1985, your notice. This is dated after that time. It's a letter to Mr. Walsh from Mr. Brackbill. Could you take a

Q. Are you telling me Mr. Balovich was called back to work?

A. No. They never call him.

Q. They didn't call him then?

A. Well, if they call him, he said he -- I don't know.

Q. You don't know?

MR. KUBBY: Is Mr. Balovich not working at SP?

THE WITNESS: No.

MR. DARBY: No, Mr. Balovich is not working at SP.

MR. KUBBY: He just told you that?

THE WITNESS: Yes, he just told me. I thought he work there.

MR. DARBY: Q. He told you that before things started today, is that --

A. No. I just -- I just ask him where he work. He told me he work in Vallejo.

MR. KUBBY: Today?

THE WITNESS: Today, yeah. I haven't talked to Jim for --

MR. DARBY: Q. Okay. How well did you know Jim Balovich, Mrs. Tu?

A. We work together.

Q. Were you friends? Could you call him a friend

or just a casual acquaintance?

A. I don't understand what you mean. You know, we just work together.

Q. Okay. Did he ever do anything to you which made you feel like he didn't like you for any reason?

A. No, no, no.

Q. So you were just casual acquaintances?

A. Yeah.

Q. Do you have any reason to believe that he treated you any differently from anybody else?

A. I don't know. No.

Q. So you don't have any facts or any knowledge as to Mr. Balovich treating other members differently from you, do you, at this time?

A. Wait a minute. I like to -- now you question me all these things, but you are union man, you should take care of me because I always come to the union. But when I tell you something, you stop me.

MR. DARBY: Mr. Kubby, please ask her to be responsive to the question.

THE WITNESS: I ask you. Sometimes you confuse me.

MR. DARBY: Q. Okay. I'm trying to ask you questions, Mrs. Tu. You have to understand something as well. You have sued the union. And as a result, I'm trying

October 18th, 1985, the date of this letter, what was your complaint about the union's representation at that point, if you were dissatisfied with the union's representation?

A. Because I don't get answer from Bob. That's what I worried because I don't want to keep to go. I don't have a chance. So I just call Bob and Bob never call me. At this time, Jim is not office. I don't have a union representative, right? So I called him.

I have a few questions I want to ask that I tell you. You listen to me now.

Q. Yes.

A. Okay. First of all, I have more seniority than two people in here, okay? They're Feng and Shirley Hauff.

MR. DARBY: Mrs. Tu is referring to the Special Preferential Bulletin Number 23.

THE WITNESS: 23. I ask him why I didn't have a chance to bump that two job. I have enough seniority. That's first one, okay? The second one -- you got to forgive me slow because --

MR. DARBY: Q. Take your time.

A. -- my English.

Q. You're doing very well.

A. If you don't understand me, tell me. Mike G-r-e-g-o-r-y.

MR. KUBBY: She's now referring to Special

Preferential Bulletin Number 22.

THE WITNESS: Mike Gregory, he was a 1-A job. Why suddenly he demoted be a clerk? They created new job for him. I also have more seniority than he, right?

MR. DARBY: Q. Okay.

A. So I just -- then Ron Soldavini, he's a union man. He is a 1-A job. Then --

Q. Well, he wasn't a union man at that time, was he?

A. He wasn't union man. At time he was union man.

Q. He was working. Didn't he have a management -- an exempt position, is that what they refer to?

A. 1-A. We call 1-A job. Suddenly they demoted him as clerk job. So he got a job.

Q. Okay.

A. So I want Bob to explain to me why all this suddenly they create all these jobs for them. They didn't give me any chance to exercise my seniority. I work there twenty-two and a half years. That's what I want to know. And then for my understanding, union, I'm fully protect by the New York Agreement. You know, if they don't have a job, they shall pay me one year and a half.

Q. Separation pay.

A. Severance pay. Year and a half pay working there. Right? So there -- also, before that '84, the

company give four people that not reach 60, they are not reach the 60, they pay them. Company paid them until they are 62 or 60 retirement pension. But I ask Bob that, too, why I don't qualify? If I'm union man, if it qualify for him, should qualify for me. Why I different?

Q. Okay. All right.

A. Now, you going to tell me why? I still don't understand why they do that to me.

Q. Okay. Do you understand --

MR. KUBBY: She's not through.

THE WITNESS: You listen. That's all the true facts. Now they call everybody back to work. They say I'm a furlough by bulletin board. I ask him, Mr. Bob, Bob, I call him Bob, okay? Give me the bulletin, you know, I say in the bulletin if you're furlough, you have the bulletin in the PFE roster or SP roster. I never got an answer from him. So when the two lady or three lady or two lady, I don't remember.

MR. DARBY: Q. This is back in 1984 you're talking about?

A. '84. So the company paid them and fully insurance paid. But that time I was 58 half and I said if they can treat them -- I did ask Bob why they are treated different than me, why I don't qualify, you know.

Q. Okay. This was back in 1984?

A. '84. So then when they lay me off on the list, all these people lay off, I'm the only -- now this Barbara, when they abolish her job, he's 62 so he can collect the retirement pension. I'm the oldest one in the list. I'm the oldest one on the list.

Q. Okay. All right. Thank you, Mrs. Tu. I understand what you're saying. I understand what you're saying. So by October 19th, 1985 --

MR. KUBBY: She has not completed her answer.

MR. DARBY: Mr. Kubby, I am trying to get a response to my question.

THE WITNESS: I tell you the whole. All this time I ask union to take care of me. When Jim left, in fact I call Jim. He lived Los Angeles. I didn't know. He give me the phone, his house phone. I call him because I send union money to him.

MR. DARBY: Q. This was after you were furloughed?

A. Furloughed.

Q. Jim Balovich gave you his phone number?

A. House phone. Few time later on I called. He moved. I didn't know that. So now I call Bob. But all this time I called union and I called Bob so many time but, you know, he never return my call until 80 -- oh, '84, '85. They call Dennis Wong. He work PFE, okay? He work PFE. I

match with you.

A. The thing with me --

Q. Mrs. Tu, I'm sorry. I have to ask you questions, okay? And you have to respond to the questions. And you were responding to my question --

A. Yeah.

Q. -- but you started to go into different circumstances and I just want to understand each one.

A. I not -- maybe my English not good enough.

Q. Your English is fine. It's just you're throwing too much into one --

A. Not too much. One by one I told you. I complain to union what I did, what I feel what the union should do for me. And I constantly quoted union man. You try to twist me, I don't contact union. I do.

I'm so worried about my job, do you know, because my pension is reduced 20 percent and because I'm missing two years. And now lost maybe have chance to get severance pay.

And I did call Bob after '85 or '86. He never called me. I said, "Bob, do you know that people transferred from PFE to SP, they got severance pay." So what I should do?

Q. Okay. Mrs. Tu, I'm going to ask you some questions, okay? And you understand the court reporter has

transferred or severance pay or any of the things concerning her layoff in 1985.

MR. DARBY: Q. You wanted to ask him questions concerning all this and he didn't return your calls?

A. No. Never.

MR. KUBBY: And after he did not return her calls --

MR. DARBY: Mr. Kubby, you're not testifying.

MR. KUBBY: She went through long explinations because the union didn't do a goddamned thing for her.

MR. DARBY: You can save your --

MR. KUBBY: The union did not do its job, that's what her complaint was.

MR. DARBY: Q. How did the union not do its job?

A. Didn't protect me.

Q. How did it not protect you?

A. All these people transfer and I have enough seniority.

Q. Let me ask you something, Mrs. Tu. Did you understand back then that the company had a right to transfer certain positions and the person that follows that position is the one that holds that job, not the one with more seniority. Did you understand that?

A. I don't understand all this union rule.

According me, I understand union rule, everybody have their rights exercising seniority.

Q. So you felt as though you should have had one of those jobs because you had more seniority?

A. Right.

Q. Now, this is your complaint against the company. Now, with respect to the union --

A. No. I complain to union, too. Why they no protect me? They know the rules.

Q. Mrs. Tu. I've already introduced into evidence copies of grievances and appeals that the union filed on your behalf. Did you know that they were filing these on your behalf?

A. Yeah. I don't know too much these union -- all these things take great education. I don't think anyone to understand.

MR. KUBBY: Your statements are totally incorrect. The union did not file grievances based upon her complaints.

MR. DARBY: Q. Mrs. Tu, you complained to the union about your being laid off. Now you're telling me the union didn't protect you.

A. No.

Q. Okay.

A. I don't think so. I don't know why.

Q. So, are you telling me what the union did file on your behalf wasn't good enough or how do you know that what the union filed on your behalf wasn't an attempt to protect --

A. You -- okay. You listen to me five minutes now. They call everybody back to work except Jim, okay? I didn't know that, today only. They called everybody. They interviewed me twice. And they interviewed me. They even -- Barbara get the retirement pension -- they even call her back. When they interviewed me, they say, "I'm going to treat like new employee, 75 percent cut."

Q. When was this, Mrs. Tu?

A. April.

Q. Okay. I'm still talking about 1985. We'll get to that, okay? I have to find out why you're bringing a breach of duty of fair representation suit against the union and what you believed the union was not doing on your behalf. And October of 1985 is important to this case. So I have to know in October of 1985, how did you feel the union was not representing you? I'm not -- now, I'm not asking you to tell me what the company did, I'm asking you what did the union do or not do by October 1985?

A. Now, you don't get excited. I tell you why all this here. My cut pay, okay? They transfer one place to another and another place and I keep complain all this time.

MR. KUBBY: Fine.

(Whereupon, Defendant's Exhibit 8-A was marked for identification.)

MR. DARBY: Q. Here's 8 and this was an attachment to this letter from Mr. Kubby to Mr. Balovich. And by October of '85 you had already been laid off by the company, you were no longer working at that point in time. And I'm sure this is a very important time to you because you had lost your job, you were dissatisfied with the union, and you mentioned to me one reason at least you were dissatisfied with the union is because they didn't return -- Mr. Brackbill didn't return your phone calls; is that correct?

A. Yeah. But don't protect me. Union don't protect me.

Q. We'll get to the protection. I'm just talking about the phone calls. They didn't return your phone calls. Do you recall how many times you called Mr. Brackbill concerning this layoff?

A. Every day. I think after 2nd, I almost call every day to Brackbill. And his secretary call. Sometimes he's in the office. "May I call back?" I said, "He haven't return my call." And then I call. The secretary said, "He just went to lunch."

Q. So he didn't return your calls. You say the union didn't protect you?

A. Yeah.

Q. The union did file grievances on your behalf. Are you aware of that, Mrs. Tu?

MR. KUBBY: When did they do that?

MR. DARBY: Q. Throughout August and October of 1985 were you aware that the union was filing grievances on your behalf?

A. Yeah. The August, then September. Don't know which date they created some job transfer.

Q. Right. We talked about that. And then in October --

A. No. Excuse me one second. Why don't give me the right to exercise my rights to bump that job? I don't understand.

Q. Okay. The reason for that, Mrs. Tu, is in the agreement.

A. Whose agreement?

Q. In the union agreement, in the agreement with the company.

A. Wait a minute. They go to us, they ask us agree that -- well, you union represent me, right? So when you do something, do you think you should consider you going to consult me?

A. He discharge on the '82 or the '81, I don't remember.

Q. 1982?

A. '82. I don't know the reason he discharge. I don't remember. Maybe Jim knows. I don't know. Okay. So then '85, '86 when I signed unemployment, the man in the SP told me, he said, "They call people back to work, PFE."

Q. Okay.

A. So I said, "No, nobody called back to work."

He said, "Yeah, Dennis Wong."

Then I said -- because he's Chinese, so I know him --

Q. I see.

A. I said, "Yeah, maybe I go to see him." But he work night shift. I never see him. So then I called Bob.

Q. So you called Bob in 1986?

A. '86. I don't remember when. I think '86. So I called Bob and I told Bob -- leave the message, why call Dennis Wong call back work? He have less seniority than I did. Why they didn't call me? So if call back, according to union rule, I should follow the list, right? Is that right?

Q. I understand that.

A. No. I don't want understand me. That's the rule. Call the people.

don't know his name -- "he got to call you back."

So I said -- he ask me what time I be back -- I said, "I be home afternoon."

So he said, "You wait. I make sure he will call you."

So I got home. I wait, I wait. He didn't call me. That man was very nice. Second day --

Q. Who was that man?

A. I don't know his name.

Q. How do you know he was a union man?

A. He was Oakland west.

Q. Was it a Mr. Cota?

A. I don't know. He's a man. I don't know his name. Second day he called me. He said, "Bob call you?"

I said, "No."

He said, "Tell you what, you waiting on the phone, sitting there, I tell him call you right away."

So I wait. But I sit there and wait, but he didn't call me right away. He did call me. And I said, "Bob, do you know Dennis Wong go back? Why you didn't give me my chance? How about my case, you know?"

"Oh," he says, "Sieu, I'm very busy. I take care, I work on it." That's all. So, in my mind --

Q. Did he tell you he was taking your case to arbitration?

A. No. He didn't say that. He said, "I'm taking care of you and work hard on your case." But that's all. So then I already figured out he's not interested to take care me at all. You know, he never ask me what I'm doing. How are you doing? Never ask. Okay. But he's a busy man, I understand. Then this time they call everybody back to work.

Q. Now, who are the people they called back to work if you look on this list?

A. Okay. They call -- according to me, now, I don't know the truth because I was not there.

Q. Well, how do you know? What information are you relying on to reach this conclusion?

A. Now, I won't tell you because if I --

MR. KUBBY: You have to.

MR. DARBY: Q. You have to tell me.

A. I have to tell you because the people work there. The friend working the PFE tell me. I think the -- what is his name? -- anyway, I tell you. I promise I tell you, but I don't know.

Q. Do you have a friend working there that told you this information, is that it?

A. Yeah. They see the --

Q. People that they've hired back?

A. I know who tell me that.

Barbara called me. She said, "Sieu, I got a job." She said, "You should call Bob."

Q. Okay. So --

A. She said, "You should call. Bob told me they have lots of job."

But I said, deeply inside, "I don't know why Bob didn't take care of me, give me call." And do you know why? I don't know.

Q. Well, let me ask you something. You did get an interview, did you not?

A. Yeah. Two time.

Q. Okay. Do you know whether or not Mr. Brackbill was responsible for getting you those interviews?

A. I don't know.

Q. Okay.

A. They told me -- okay. Another thing, the people go back to work, they get one hundred percent their salary. When they interviewed me, they said I were like newcomer, I get 75 percent and then each month get a raise. But why I'm looking different than the other people?

Q. So what you're telling me now is Mr. Brackbill treated you differently from other employees because he was able to get Mrs. Anderson a job and not you a job?

A. Not Anderson.

Q. I'm sorry, who was the --

demonstrate that Bob Brackbill treated other members differently than you?

MR. KUBBY: That's been asked and answered. There was a whole series of things that she's gone through.

MR. DARBY: I don't think it's clear. She told me how the company treated her, but she hasn't told me how Mr. Brackbill --

MR. KUBBY: He didn't protect her. She told you over and over again.

MR. DARBY: I understand that, but you're not understanding my question.

Q. Do you have any reason to believe he treated you any differently from other people? And you gave me one instance, Barbara Boutourlin. I am asking for any other instances.

MR. KUBBY: She gave you the whole list of people.

MR. DARBY: Q. What evidence or facts do you have, Mrs. Tu, that Mr. Brackbill had any involvement in getting these people a job back, other than Barbara Boutourlin?

A. How they go to the SP? How they --

Q. It's quite possible the company just hired them back without Mr. Brackbill's involvement at all.

A. Pick on the street?

THE WITNESS: But no, I don't think he take care of me. He did not protect me.

MR. DARBY: Q. So, but you don't have any facts or any knowledge that Mr. Brackbill did anything to get any of these eight people back to work?

A. I don't know.

Q. Okay. Mr. Armstrong, is he working for the SP now?

A. I don't know. He have the job. I heard that they offer him job. He didn't want it. I don't know.

Q. Who told you that they offered him a job?

A. I don't know.

Q. So you don't know whether or not they offered him a job, do you?

A. I don't know. You can find out. You know.

Q. Okay. But you don't know whether they have offered him a job?

A. No.

Q. Mr. Balovich, have they offered him a job?

A. Jim know.

MR. KUBBY: You don't know?

THE WITNESS: I don't know. He already told me --

MR. DARBY: Q. We have already discussed Mrs. Boutourlin.

A. She went back to work.

Q. Mr. Flores or Ms. Flores --

A. She was quit before '84, I think. Long time ago she was quit.

Q. Well, she was laid off in 1985.

A. Oh, I don't know. I don't remember.

Q. Well, she was laid off with you in 1985.

A. Who?

Q. Flores.

A. No. She -- she -- I don't remember. I don't think she lay off same time as me. No. Huh-uh. I don't remember. On list only five. She lay off --

Q. Let me show you this document again, Exhibit 7. And it says date severed October '85 J. E. Flores. Does that refresh your recollection at all?

A. I think. Here, where is the layoff list that you give to me? I think only six people lay off in the list. Only six people lay off. My list is me and Lorentz, Armstrong, Janet. Then later on is Barbara. I don't know you on my list or not. I don't remember. Flores was lay off before that.

Q. Now, is Ms. Flores working for the company now?

A. No.

Q. Okay.

A. I don't know.

Q. How about A. D. Lang, do you know whether they have hired --

A. He went to work now. She went. He went to work.

Q. Went back to work for SP?

A. Yeah. SP.

Q. He's working for SP now?

MR. KUBBY: Is that a man or a woman?

THE WITNESS: Man.

MR. DARBY: Q. Do you have any knowledge that Mr. Brackbill did anything to get a job for Mr. Lang?

A. I don't know.

Q. Ms. Lorentz?

A. She go back to work. In fact, she get the promoted.

Q. All right. She was hired by the SP?

A. Yes.

Q. Do you have any facts which indicate that Mr. Brackbill did anything to get her a job?

A. I don't -- to me, to me we all lay off. If the other one go to SP, I should have chance. You should take care of me.

Q. But you don't know any facts upon which to base the allegation that Mr. Brackbill helped Ms. Lorentz to get a job?

A. No.

Q. How about Royer?

A. I don't --

Q. Has he been hired?

A. That I know. The department he went, they offer him job. He say he have a good job.

Q. Is he working for the SP?

A. No. He have a job. He have a permanent job.

Q. Somewhere else?

A. Yes.

Q. Did they offer him a job?

A. Yes, they did.

Q. How do you know they offered him a job?

A. Someone in the department told me that.

Q. Who told you that?

A. I don't remember the name. I went to SP, they interviewed.

Q. And the person there told you Mr. Royer was hired by SP?

A. They offered him job. He said he have a permanent job outside.

Q. Do you have any reason to believe that Mr. Brackbill had anything to do with Mr. Royer getting a job offer?

A. I don't know.

Q. So again, let me go back to the original question. I'm trying to find out what evidence you have that Mr. Brackbill treated you differently from other members. And the only evidence that you presented to me so far is that he apparently made a phone call to Mrs. Boutourlin and after he made a phone call, she got a job. Do you have any other evidence in this regard?

A. Yeah, because all this phone call or all this message I leave there, why he have courtesy give me a call?

Q. Well, how is that different from how he treated other members?

A. I don't know these. I just talked to Jim few minutes ago. I said, "Did you talk to Brackbill?"

He said, "Every six months."

So at least he have contact with Brackbill. I have no one to call me.

Q. Mr. Balovich is a former local chairman and a lot of calls quite possibly had to do with this case.

A. I am a former membership, don't forget.

Q. I understand. But do you have any other evidence that he treated you differently than he treated other members?

A. He did to me. He treated other people to me.

Q. Mrs. Tu, you've already told --

A. I don't know. But to me, if all these people

rather than as an officer of the union because the union has plenty to do --

MR. DARBY: As an officer of the union, the union has no say over who the SP hires or fires.

MR. KUBBY: They certainly do. There is a contract. That's a misrepresentation of this situation.

MR. DARBY: The union has no --

MR. KUBBY: Well, then they ought to file a grievance. That's the whole point because there is a contract that says what the company can do and what it can't do and the union has responsibilities under that contract. And if the company's not doing what it's supposed to do, the union's supposed to see that it's done and they haven't done that.

MR. DARBY: If there is substance in the agreement that the union can rely on to force the company to hire Mrs. Tu back, then that's what the union can do.

Q. What I'm asking you is, Mrs. Tu, is it your understanding that Mr. Brackbill has some kind of input as to who the SP hires or fires?

A. That part I don't know. I keep tell you I am protect by union. When you see the list, they say Sieu Mei Tu not there. So why not something wrong? Take care me. Do something. Call me. He said, "Tu, I'm going to take care of you." Because I pay dollar fifty a month. Even

question. It calls for a legal conclusion.

MR. DARBY: It's not a legal conclusion. It's an allegation of the complaint which Mrs. Tu has on or about November 7, 1985, defendants and each them refused to engage in the administrative determination of the claims of the plaintiff Sieu Mei Tu under the Railroad Retirement Act or at all with plaintiff Sieu Mei Tu. What occurred on November 7th, 1985 which led you to allege that the union and/or the company failed to handle a claim for you?

MR. KUBBY: The documents speak for themselves.

MR. DARBY: Q. Mrs. Tu, I am going to ask you the question. I'm not asking your attorney the question. This allegation of the complaint, is it based on this November 7th, 1985 letter?

A. May I ask your name, last name? I don't remember your last name.

Q. My name is Darby, D-a-r-b-y.

A. If I know all this legal, the big talk, I don't need a lawyer. So that's why I need him help me. So all this legal documents I don't understand. So you maybe like Kubby help me. I don't want to answer you wrong.

Q. If you need Mr. Kubby to assist you --

A. I only know simple English.

Q. Okay. And my question to you is, is that paragraph 49 based on this November 7th, 1985 letter? And

you can ask Mr. Kubby for assistance on that.

MR. KUBBY: You should answer what you know or don't know.

THE WITNESS: I don't know.

MR. DARBY: Q. You don't know?

A. (Witness shakes head.)

Q. Okay. So you don't have any facts -- you don't have knowledge of any facts supporting this allegation at this time then?

MR. KUBBY: I object to the question which is calling for a legal conclusion on her part as to what supports an allegation. And she told her attorney the facts that she knows. Her attorney has drafted a complaint based upon what she has told him based upon his training and knowledge as a lawyer and that's what's represented in this document. For you to ask her that question is very unfair and is calling for her to make a legal conclusion.

MR. DARBY: Now, Mr. Kubby, I'm not calling for legal conclusion, I'm asking for facts.

MR. KUBBY: You're asking if that's the only fact she has. All of the facts are in the complaint.

MR. DARBY: It's a very narrow question, Mr. Kubby. There is a fact here which states on November 7th, 1985, the defendants refused to engage in administrative determination. That is a fact.

Now, in light of that, what facts do you have to support the allegation here that the union failed to respond to inquiries? Was this not a response to an inquiry made by Mr. Kubby?

MR. KUBBY: The document speaks for itself and it's not a response. I asked them what they were doing. They didn't tell me what they were doing.

MR. DARBY: Well, you're right. The letter does speak for itself, Mr. Kubby.

Q. Mrs. Tu, I'd like to pin down the attempts that both you or your attorney made to contact the union throughout this entire period, if I might, because the allegation of the complaint reads that the union refused to consult with you.

Now, you mentioned to me that you tried making phone calls to Mr. Brackbill and he didn't return the calls. How often between November of 1985 and the time that you received in January 4th of 1988 a copy of the arbitration decision -- did you personally make any attempts to contact Bob Brackbill throughout that period?

A. What year?

Q. This is from November of '85 up until January of 1988 or was all your contact through your attorney, Mr. Kubby?

A. Yeah. I called. I call. He never return it.

I told you several time he never return.

Q. Well, we talked about earlier your attempt to call. I'm talking about a period of time now up until January of 1988. You're saying you made --

A. I don't remember.

Q. You don't remember. How often did you call over that -- it's a long period of time.

A. Yeah, I don't remember.

Q. Okay. Was it more than once a week?

A. I don't remember. If I remember, I tell you. I don't remember.

Q. Okay. But you did make phone calls to Mr. Brackbill up until January of '88 or you just don't remember?

A. I don't remember. Yeah, I call, you know, but I don't remember how long, how many time.

Q. Are you aware of any instances, other than letters that Mr. Kubby sent to the union, that Mr. Kubby tried to contact the union and received no response?

A. I don't know. I totally trust Mr. Kubby take care of me.

Q. Well, you allege in the complaint that the union refused to consult with your attorney and I'm asking you now the facts that you have which support that allegation.

MR. KUBBY: Not the facts that she has, but the facts that she knows about or that she can recall at this time.

MR. DARBY: Q. Well, that's what I'm asking you for. Do you have -- I'm interested in whether or not you have any knowledge as to whether or not Mr. Kubby attempted to call the union and they didn't respond throughout this period?

A. I don't know. Kubby's take care of me. So I don't know. Whatever --

Q. Do you know whether or not -- again, you have alleged here that the union failed to consult with Mr. Kubby. On what occasions did the union fail to consult with Mr. Kubby?

A. That's Mr. Kubby's job, so it's not mine.

Q. Well, this is in your complaint, Mrs. Tu. So --

A. Yeah, I trust Mr. Kubby. So Mr. Kubby take care of me.

Q. Okay. But it's your understanding that Mr. Kubby attempted to contact the union or to have the union consult with him and they didn't return the calls?

A. I just tell you I totally trust Mr. Kubby take care of me. Whatever he do, I trust him. So whatever he say there, speak for me.

Q. But he drafted this complaint based on facts you provided him.

A. All the things, the fact, the truth, I tell him. So whatever he told it.

Q. So you have -- in other words, you have no facts on which to state now whether or not the union failed to consult with Mr. Kubby or not?

MR. KUBBY: That's -- again, it's the question of what she knows and can recall at the present time. What facts she has depends upon presentation of evidence.

MR. DARBY: Q. Do you have any facts at this point which you can tell me now which demonstrates that the union failed to consult with Mr. Kubby?

A. I just told you I totally trust Mr. Kubby take care of me. So whatever Kubby do, I trust him.

Q. Okay.

A. I know you not eat lunch. We should have lunch.

Q. Yes. Let me go just a little bit --

MR. KUBBY: It's now 12:40 and she's --

MR. DARBY: What I'd like to do --

THE WITNESS: I need sugar.

MR. KUBBY: She needs some food.

THE WITNESS: Yes.

MR. DARBY: I don't have that much left. I'd

like to keep going, if we can. If not, we can take a break and come back.

MR. KUBBY: I think we ought to take a break.

MR. DARBY: Okay.

(Whereupon, the luncheon recess was taken at 12:42 p.m.)

AFTERNOON SESSION 1:30 p.m.

MR. DARBY: Back on the record.

Q. Good afternoon, Mrs. Tu.

A. Hello.

Q. Let me just clarify something with you, Mrs. Tu. Were you offered any job with the Southern Pacific over the past month or two?

A. No.

Q. After your interview --

A. No.

Q. -- they didn't offer you any job under any conditions?

A. The first time interview me, the lady tell me, he say, "You going to get 75 percent." Then he said, "Then every year you get some percentage." Then he said, "We do have lots of job in accounting department." And when he called -- first beginning when she called me she said, "Do you know how to type?"

Q. Who is "she" now? Somebody at Southern

Pacific?

A. I think first name R-e-s-n-e-y. The last name I don't remember. If I right, I think that's her first name. And she interviewed me. She said, "Do you know how to type?"

I said, "No, I don't know how to type."

She said, "What do you do?"

I said, "I was key punch."

Then he said, "I give you key punch."

I said, "I haven't key punch for a long time. I work accounting department."

Then she said, "We do have a job in accounting department."

I said, "How about my seniority?"

She said, "You like newcomer, 75 percent." Then he said --

MR. KUBBY: Sieu, let me interrupt you. This time I will interrupt you. The question was, did you get a job?

THE WITNESS: No.

MR. DARBY: Q. Did they offer you any position under any conditions? Did they say you can have this job if you take a cut in pay or if you start from ground one with seniority? Were you officially offered a job?

A. No, no, no, no.

Q. We discussed Bob Brackbill on various occasions this morning and you complained that he didn't return your phone calls. And you also said that he didn't protect you because you're no longer working for the SP or the PFE. Is that a correct characterization of your testimony this morning?

MR. KUBBY: I don't think it's a fair question. I mean, she's testified to a lot of stuff. Why don't you get to the question you're trying to ask?

MR. DARBY: Q. Do you have any reason to believe that Bob Brackbill did not like you personally?

A. I can't speak for him, but to me, why he take care everybody except me? Can you understand that?

Q. Okay. When you say he took care of everybody except you, again, are you referring to the people that have been hired?

A. Yeah. All the people called back to work.

MR. KUBBY: And the ones transferred?

THE WITNESS: And the ones transferred. That's right.

MR. DARBY: Q. Other than that, do you have any other reason to believe that he didn't like you personally either because you were Chinese or because you were a woman or for any reason? Did he ever give you any reason to believe that?

A. I can't tell you because he didn't take care of me. That's what I believe. He's not interest in me, not interest on me.

Q. Mrs. Tu, I showed you some documents this morning which I represented to you as being grievances filed on your behalf and you read through them. Some of them you didn't understand. Most of them I don't believe you understood.

A. No.

Q. What I'd like to know, Mrs. Tu, is: Again, you're alleging the union didn't protect you. What grievance were you attempting to get the union to pursue for you that was different from these purported grievances that were filed on your behalf by the union? Do you understand my question?

A. No. Can you use simple words?

Q. Let me try again. I showed you documents which indicated that you were being represented by the union in the appeal process in filing grievances against the company. Your names were on some of those claims and you testified that you had seen some of them on occasion, but you didn't understand --

MR. KUBBY: Would you identify which exhibit that is?

MR. DARBY: Yes.

behalf were not -- those claims were not good enough because they didn't deal with your specific grievance. And what I'm trying to ascertain from you is, what made your grievance against the company different from the grievance that the union filed on behalf of Mr. Balovich and the other seven people? Was your situation any different from Mr. Balovich's, for example?

A. But it is true, they didn't call me back. Why they treated the other five special?

Q. It's true Mr. Balovich hasn't been called back either. If I was to tell you that Mr. Balovich was not called back and that Mr. Armstrong has not been called back, for example, what -- if that is true, that those two individuals have not been called back -- what makes your grievance against the company any different than Mr. Balovich or Mr. Armstrong's.

A. Oh, I don't know about them. They should talk to you, too. To me, why they treated the other one different than --

Q. So, in other words, you're saying your situation then -- if it was true that neither Mr. Balovich nor Mr. Armstrong have been hired, is your situation any different from theirs?

A. I don't know. I just talk for myself. I didn't think treated fairly because you didn't take care of

you as they were pursuing this claim or grievance.

A. I tell you before lunch, I take all my things, Mr. Kubby take care of me.

Q. Let me ask you a question then. If you had an opportunity or Mr. Kubby had an opportunity to consult with the union, what evidence or what facts or what information would you have provided to the union to help win this case?

A. Win which case?

Q. The case that was going to arbitration.

A. This is your union job, it's not my job, you see.

Q. But you're alleging that the union failed to consult with you. Do you understand what that means?

A. But I say according the union, your book, your rule, I should fully protected. As long I working the railroad, I should complete fully protected. Everybody knows. Jim knows. Everybody knows.

MR. KUBBY: The arbitration decision, itself, states that the union presented no evidence concerning the reduction in income of PFE. They made no attempt to show that the railroad --

MR. DARBY: I think you're misrepresenting what the award says.

MR. KUBBY: That's the way I read it.

MR. DARBY: It does not say they didn't make an

attempt. It says no evidence presented.

MR. KUBBY: And this is a woman who was working in the accounting department. You would think they would ask her what she knows about the business and the attempts of the company to preserve its business and increase its business.

MR. DARBY: Q. Mrs. Tu, in light of what Mr. Kubby has just stated and has testified, do you know if Mr. Brackbill talked with anybody from the PFE Brisbane office concerning what work was being transferred to San Francisco?

A. He never told me anything.

Q. But it's quite possible, isn't it, that Mr. Brackbill did speak with some people who were transferred up to the SP to find evidence whether or not work was transferred, isn't that possible? You don't have any evidence to dispute that, do you?

A. "Dispute that," what this mean?

Q. To controvert that or to negate that. Do you have any evidence that Mr. Brackbill did not consult with people working in San Francisco as to what work was being transferred?

A. I don't know. I only tell you the truth. I take care myself. Everything I know, I tell you the truth. But beside anybody, it's not my business.

Q. And just for the record, Mr. Brackbill would be

consulting with people that were transferred to San Francisco to find out what work was being transferred, would he not, Mrs. Tu?

MR. KUBBY: That was not the issue. The issue was whether or not they had a right to furlough because of decline of business. And the concern was, was the decline in business purposefully perpetrated and what is the significance of that under the contract?

MR. DARBY: Q. Mrs. Tu, do you have any reason to believe or any facts upon which to allege that Mr. Brackbill did not make attempts to present any such evidence at the arbitration that Mr. Kubby just referred to?

A. I don't know. I can't speak for Mr. Brackbill.

MR. KUBBY: The question is, did he consult with her?

THE WITNESS: Yeah. Nobody talked to me.

MR. DARBY: Q. Okay. All right. That's been made clear. Had he consulted with you as to decline in business, for example --

A. No.

Q. If he had, "had," would you -- it's a hypothetical.

MR. KUBBY: Suppose.

MR. DARBY: Q. Suppose Mr. Brackbill called you up and said, "Mrs. Tu, we're taking this case to

arbitration and one of the arguments that the company's raising is that there is a decline in business." Would you have been in a position to give him any information as to what the carrier's decline in business was for the past ten years?

MR. KUBBY: What caused it?

THE WITNESS: What cause? I would tell him I have a right if they have job, transfer to SP.

MR. KUBBY: Sieu, the question was directed to when you were working in the accounting department, what did you learn about the company's efforts to preserve its business and its customers? Did the company -- was there anything going on in the company where the company purposefully was getting out of that business and was purposefully avoiding having any business?

THE WITNESS: Yeah. 1980 when the people separated, Mr. Cramer was in charge. He talk everybody. We give $9,000,000 to SP that time, '80. You can't be in the short year to loose all this money, right? To me, you know -- I don't know, you know. But '80 Cramer was in the lunchroom; announced that he so happy he give 9,000,000 to SP.

MR. DARBY: Q. Okay. But in terms of the amount of business that the PFE was doing between 1980 and 1985, if Bob Brackbill called you up and asked you for

THE WITNESS: The five transferred. Me not transferred.

MR. DARBY: Q. And that's what the union should have presented?

A. Why they take the other one, don't take care of me?

Q. Now, which five are you referring to, Mrs. Tu?

A. The --

Q. Is this the September transfer up to San Francisco, the establishment of new positions?

A. That's the one. And now the people call back.

Q. Okay. The people were called back after the arbitration, correct?

A. I don't know that, but I just tell the fact that when they transferred the job to SP, why they didn't give me exercise to use my seniority? And now they call people back. They didn't -- why didn't they call me? Yeah. That's what my -- yeah.

Q. Okay. You also state that the union failed to process your grievance. And when you state that, are you again referring to the union's failure -- well, I won't --

A. Not failure. They just ignore me. You know, they just don't pay attention to me.

Q. So, the failure to process your grievance is based on your saying the union just ignored you?

A. That's the truth.

Q. Notwithstanding, I've demonstrated to you that the union did file some items on some grievances on your behalf, correct?

A. Not to me.

MR. KUBBY: Can you show her that the union filed a claim that she was told she could not bid for a job that was being transferred to SP even though she had the seniority to bid for that job? Is that included in the grievance file by the union?

MR. DARBY: Q. Earlier I showed you some documents, Mrs. Tu, concerning grievances filed on August 15th, 1985 by the union, which is Document Number 2, followed up by an August 28th letter, which is Exhibit Number 3, an appeal filed by Mr. Brackbill on September 4th, 1985, which is Exhibit Number 4. On all three of these there is references to three provisions in the protective agreement which states that employees should either be able to follow their positions and work with their full rights. Do you understand what "full rights" means?

A. Yeah.

Q. With seniority?

A. Yeah.

Q. Or be compensated at last assigned PFE rate or protected rate whichever is higher until retirement age.

A. I didn't get all this.

Q. Which means you can sit home and collect pay for not working.

A. He didn't give it to me. Yeah.

Q. You asked for the references and I am giving the references.

MR. KUBBY: The references I am asking for is reference to the fact under the contract she was entitled to bid for positions and that she was not allowed by the company to bid for positions which were being transferred.

MR. DARBY: That was -- well, Mr. Kubby, I'm not going to argue with you. I will tell you, though, the reason why that is not alleged in the grievance is because there is no merit to that under the agreement. When they transfer a position, the incumbent gets the job. That's what the agreement says.

MR. KUBBY: The question is -- you're not listening to me -- the question is that job descriptions were posted as being unfilled. Under the terms of the agreement, all employees are allowed to bid for that position and Mrs. Tu had seniority so that if she bid for that position, she was entitled to take it. And the company did not allow her to bid for the position. Is that in the grievance?

MR. DARBY: Unfortunately, under the agreement

and under the protective agreement the employer's entitled to establish new positions and to transfer from one to the other. And when they do so, the protective agreement provides that the incumbent gets the position.

MR. KUBBY: But if there is no incumbent and the position is posted, are you telling me that all employees did not have a right to bid for a vacant position?

MR. DARBY: If there is a new position being established and they are transferring an individual, as far as the company was concerned, they were taking one person and transferring him to a new position.

MR. KUBBY: Well, before that. Before that occurred.

MR. DARBY: This is not the time to argue.

MR. KUBBY: We need to get the question straightened out so she knows what you're talking about.

The point is that the union did not process her particular grievance. She was not allowed to bid for an open position that was known to be going to be transferred to SP.

MR. DARBY: Q. Okay. So, is that what you're asserting to, Mrs. Tu, when you say they failed to process a grievance?

MR. KUBBY: Is there anything in the grievance file about their treating Mrs. Tu differently because she

was Chinese or because she was 59 or because she was a female? Is there anything in the grievance file there about that?

MR. DARBY: Mr. Kubby, I will respond to that. But, again, this is not the time to be arguing about this.

Q. I am asking Mrs. Tu the questions and what I'd like to know is the answer to the question which we've already found out through the testimony of your attorney that you felt the union failed to process your grievance by failing to include in there that you were not permitted to use seniority to bid on a vacant position.

Do you know of any other ways in which the union failed to process a grievance for you?

A. This time call everybody back except me, you know.

Q. And at that point, since they didn't call you back to work, are you saying the union should have filed a grievance on your behalf?

A. I don't know your procedure, but you are the one who should take care me.

Q. But if there is no procedure for filing a grievance under those circumstances, are you still saying that you're entitled to have a grievance filed on your behalf?

A. Saying your words, if your union doesn't have a

to ask you now is: Is there anything else which is part of your story that you've told me here today?

A. Not story, fact.

Q. Facts, but I say story because -- just to make it easier to understand. I could use evidence and whatnot, but is there anything else that you're alleging against the union other than what you've told us here today in this deposition?

A. Oh, the reason I say why union didn't protect me.

Q. Okay. We've gone through that and you've cited --

A. Yeah. I want to know why they didn't protect me.

Q. Well, we'll find out whether or not they did or not. That's what the purpose of this lawsuit is. Mrs. Tu, the purpose today, as I told you several times, is to make sure that I understand everything about your complaint against the union.

A. Yeah, but I want to know --

Q. But --

A. You want to know the fact. You told me you want to know the fact.

Q. Right.

A. Is that true, I paid the union due; you should

Southern Pacific
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(415) 541-1000

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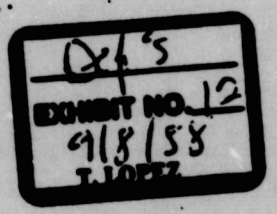
November 7, 1985

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



Dear Mr. Kubby:

Re: Mrs. Siew-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

located at 760 Market Street, Suite 1000, San Francisco, California. System Board No. 94 has jurisdiction over clerical employes employed by the Southern Pacific Transportation Company ("SP") and the Pacific Fruit Express Company ("PFE"). Although PFE is a wholly owned subsidiary of the SP engaged in the transport of perishable goods by railcar, separate collective bargaining agreements are negotiated by the union on behalf of PFE employes.

2. I have read the entire First Amended Complaint filed by the plaintiff, Sieu Mei Tu, against our Organization. I am thoroughly familiar with all of the facts and circumstances surrounding this case.

3. The plaintiff, as a clerical employe working for PFE, was covered by various labor agreements, copies of which are attached to the plaintiff's First Amended Complaint. The most significant of those agreements is an agreement referred to as the "TOPS" Agreement, which was originally entered into between our Organization and the SP in 1971, and subsequently adopted by PFE with minor revisions in 1980,. (First Amended Complaint Exhibit B; pertinent provisions also attached hereto as Exhibit A.) I was actively involved in the negotiations of both the original TOPS Agreement as well as the 1980 Amendment bringing PFE under the coverage of TOPS. The purpose of the TOPS Agreement is to permit the carrier to make certain "changes in position or employment" to facilitate the carrier's efforts to keep up with changing

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Counsel for Union Defendants

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SIEU MEI TU and JOSEPH Z. TU, Plaintiffs, v. 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.	No. C87-1198-DLJ Date: Feb. 2, 1989 Time: 10:00 a.m. Place:Courtroom 3

DECLARATION OF R. B. BRACKBILL

1. I am General Chairman of System Board of Adjustment No. 94. I have held this position for 8-1/2 years. Previous to that, I was Vice General Chairman for 4 years and Assistant to General Chairman for 4 years. My offices are

economic conditions in the rail industry, in exchange for certain protective benefits for employes adversely affected by such changes. (Ex. A, pp. 1-2.)

4. Specifically, the TOPS Agreement, among other things, permits the carrier to permanently abolish positions or transfer positions and/or work to other locations, including locations on other carriers party to the agreement. In return, TOPS provides that, in the event of a permanent abolishment, affected employes be permitted to exercise their seniority rights on their seniority district without a loss in compensation, or, if doing so would require a move in excess of 75 miles, have the option to accept lump sum separation allowance. If, on the other hand, the carrier transfers an employe's position and/or work to another location, TOPS provides that the individual whose position is abolished as a result of such transfer may either follow his position or work or exercise his seniority rights on his seniority district. If doing so would require the employe to move his residence, the employe is entitled to a moving allowance or has the option to accept a lump sum separation allowance. (Ex. A, Art. III, Sec. 2(b), Art. IV, Secs. 1-4.)

5. TOPS also provides that the carrier can unilaterally reduce the number of positions and employes as a result of a decline of business as specifically defined in Article III, Section 11 of TOPS When such reduction of forces take place, the carrier is not required to provide

TOPS protection (Ex. A, Art. I, Sec. 2, Item 5; Art. III, Secs. 10-11.)

6. During the ten year period prior to 1985, PFE continually informed the union that the perishable transport business was in the process of being taken over by the trucking business. Indeed, based on company estimates, perishable rail freight car loadings, which at one time equalled 65,000-70,000 in the Salinas Valley per season, was down to 5,000 in 1985. The same reduction in perishable shipments was experienced in the San Joaquin and Imperial Valleys of California, as the truckers captured the perishable business by utilizing direct "field to supermarket transport" which was a faster and cheaper service. Accordingly, PFE, pursuant to the TOPS Agreement, began to abolish and transfer positions and/or work to the SP's San Francisco office in an attempt to cut costs through centralization of clerical functions that eliminated duplicate administrative procedures. Attached hereto as Exhibit B are copies of various bulletins indicating PFE's transfer of positions and work to San Francisco, in which the TOPS Agreement applied so as to permit the incumbents to follow their work to San Francisco.

7. Where possible throughout this period, PFE attempted to rely on the decline in business provision to the TOPS Agreement. For example, in 1983 PFE abolished numerous clerical positions and expressed its desire to abolish the

entire Brisbane office by application of the decline in business formula. I challenged PFE's method of calculating the decline in business, an issue that was ultimately resolved in the Union's favor through arbitration. As a result, numerous PFE employes who had been adversely affected by PFE's misapplication of the decline in business formula were made whole and the jobs of all the remaining PFE employes, including the plaintiff, were protected. Attached hereto as Exhibit C is a copy of the 1983 arbitration decision discussed above.

8. In March, 1985, pursuant to the application of the decline in business formula, the plaintiff's position of General Clerk was abolished along with three other clerical employes. The notice to the plaintiff explained that under such circumstances TOPS protection was unavailable. The plaintiff was able to exercise her seniority and bid on another job on her seniority roster and, thus, was able to continue her employment at the Brisbane office rather than be furloughed without compensation. A copy of the bulletin abolishing the plaintiff's position and the bulletin advertising and assigning her new position is attached hereto as Exhibit D.

9. In March, 1984, PFE unilaterally changed the rate of pay on the position that the plaintiff was working. As a result of the Union's intervention, the correct rate of pay was reinstated. A copy of the pertinent correspondence is

attached hereto as Exhibit E.

10. In 1985, rumors began to circulate at the Brisbane office and in the local press that PFE planned to close its entire Brisbane office effective October 1, 1985. In anticipation of this move, I discussed the matter with Local Chairman Balovich and advised him to file a claim with the carrier in advance of the closure on behalf of all Brisbane clericals, including the plaintiff, alleging that employes should be permitted to either follow their work with their full rights or be given the option to receive a lump sum separation allowance. A copy of the claim filed by Balovich was posted on the union bulletin board and is attached hereto as Exhibit F.

11. Thereafter, on August 27, 1985, Balovich's claim was denied by PFE as being anticipatory. A copy of the denial letter is attached hereto as Exhibit G. By letter dated August 28, 1985, Balovich rejected PFE's denial and forwarded the claim to my office for handling on appeal. A copy of the August 28, 1985, letter was posted on the company bulletin board and is attached as Exhibit H. Accordingly, by letters dated September 4 and 11, 1985, I filed an appeal with T. D. Walsh, PFE Manager of Industrial Relations. Copies of the September 4 appeal and my September 11 letter are attached hereto as Exhibit I.

12. By mid-September, 1985, the Brisbane clerical workforce was down to approximately seventeen employes. This

number was reduced to eight when, by bulletins dated September 12 and 18, 1985, PFE announced it was transferring the position and work of nine Brisbane clericals to San Francisco where nine new positions were being established to perform such work. Pursuant to TOPS, the nine incumbents were entitled to first preference to those positions. Copies of the bulletins are attached hereto as Exhibit J.

13. I had two appeal conferences with PFE officials on September 16 and September 19, 1985, in which I adamantly demanded PFE to disclose and explain its intentions for the Brisbane office, as well as stressed my position that the Brisbane employes were fully protected under the TOPS Agreement. These meetings resulted in further denials by PFE on September 16 and September 20, 1985, attached hereto as Exhibit K. Again, PFE contended that no Brisbane clerks were being adversely affected.

14. On October 2, 1985, PFE notified the plaintiff and three others that their jobs were abolished. Four other positions were also subsequently abolished, including the position of Local Chairman Balovich. PFE took the position that TOPS protection was not available for these eight employes. A copy of the abolishment notice and letter to the plaintiff informing her thereof is attached hereto as Exhibit L.

15. By letter dated October 11, 1985, I notified T. D. Walsh that his September 20 denial was unacceptable in that

there were still numerous employes being adversely affected by PFE's actions. A copy of my October 11 letter is attached hereto as Exhibit M.

16. I had further discussions with Jim Balovich after the October job abolishments. I instructed him to file another claim in light of the abolishments, asserting that the eight employes, including the plaintiff, were entitled to TOPS protection. A copy of the claim filed on the eight Brisbane employes' behalf is attached hereto as Exhibit N.

17. On November 5, 1985, PFE official L. O. Battson responded to Balovich's claim denying the contention that the eight employes holding the eight abolished positions were entitled to TOPS protection. A copy of Battson's reply is attached hereto as Exhibit O. Thereafter, on December 16, 1985, I filed an appeal of the Battson decision to C. E. Lamb, SP Industrial Relations Manager, a copy of which is attached hereto as Exhibit P. I agreed with Lamb that all of the claims and appeals dealing with the closing of the Brisbane office be consolidated for handling and conference.

18. Prior to the October 2 closing of the Brisbane office, I had two meetings with the Brisbane employes at lunchtime at the PFE cafeteria. At the meetings, I explained to the employes everything I knew about PFE's intention at the time and explained what action the Union was taking in an attempt to protect their jobs. After the Brisbane office closed, I had one or two meetings with the Brisbane clericals

at my office in San Francisco. Again, I explained to all of the employes that the Union was filing claims on their behalf to protect their jobs. I also informed them that PFE would attempt to rely on the decline in business provision and that, if we could not resolve the dispute, we would have to take the case to arbitration, and it would be a time consuming process.

19. Sometime after the closing of the Brisbane office, I recall receiving from Jim Balovich a letter he had received from Lee J. Kubby, an attorney representing the plaintiff in this action. Therein, Kubby asked the Union "to provide [the plaintiff] legal representation and support." At that time, the union had already filed claims on behalf of the plaintiff and the other laid off Brisbane employes in an effort to secure for them TOPS protection. The letter from Kubby did not request a response, nor did I feel one was necessary in light of the plaintiff's attendance at the union's meetings where the employes were informed that the union was filing claims on the employes' behalf. A copy of the letter is attached hereto as Exhibit Q.

20. In January, 1986, I received a letter from an SP official that had been sent from Lee J. Kubby to Jim Balovich at Brisbane; since that building was closed, the letter was forwarded to the SP in San Francisco. The letter requested Balovich to "take action" to protect the plaintiff's interest. Mr. Kubby threatened to sue the Union if action

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was not taken in five days. Although Kubby accused the Union of failing to respond to his earlier letter of October 18, 1985, the October letter made no request for a response, but merely asked the Union to take action to protect the plaintiff's interest, which we had already undertaken via the claim process. A copy of Kubby's January 20 letter is attached hereto as Exhibit R.

21. Nonetheless, by letter dated January 28, 1986, I notified Mr. Kubby that the Union was handling a claim on behalf of Mrs. Tu as well as all other Brisbane employes affected by PFE's decision to close the Brisbane office. I asked him to direct any further correspondence regarding the plaintiff's case to myself at my San Francisco office. A copy of this letter is attached hereto as Exhibit S. I did not receive any other written correspondence from Kubby until the First Amended Complaint in the instant case was served on me in June, 1988.

22. Unable to resolve this dispute through the claim process, pursuant to the collective bargaining agreement I requested that the matter be resolved through arbitration. In preparation of the arbitration, I reviewed various financial records and data and interviewed various individuals in an attempt to rebut PFE's decline in business defense. Additionally, I instructed my local chairman at San Francisco, Bill Luque, to examine financial documents maintained by the SP in San Francisco. Additionally, in

order to determine the disposition of Brisbane PFE work transferred to the SP General Office, I interviewed employes that were transferred to San Francisco in order to ascertain whether work previously performed by laid off Brisbane employes was currently being performed by SP clerks.

23. The arbitration was held before Referee Lieberman on August 6, 1986, at which time a total of seven cases were orally presented. Arbitrations under the Railway Labor Act, unlike private arbitration outside the railroad industry, do not provide for a de novo hearing. Rather, under the Railway Labor Act, arbitration is comprised of an oral presentation based solely on the evidence presented "on the property" during the claims process. On November 30, 1987, Lieberman issued his decision, attached hereto as Exhibit T. Lieberman concluded that the carrier was able to successfully demonstrate a decline in business in 1985 on a month-to-month basis ranging from 32.5% to 85.18%. (Decision at pp. 4-5.) Lieberman also concluded that the Union could not demonstrate that the work performed by the claimants was actually transferred to the SP. In this regard, the arbitrator noted that there were no additional positions established in San Francisco to which the claimants could have transferred beyond the nine already established in September, 1985, which the incumbents of such work were permitted to follow. Finally, the arbitrator concluded (Decision at p. 7) that, where a parent company merely takes back work from a

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subsidiary, arbitral precedent establishes that protective benefits do not apply.

24. As per my request at the hearing, the arbitrator "recommend strongly" that the SP give priority consideration for future openings at the SP in San Francisco to laid off Brisbane employes, although he could not "mandate" such action. (Decision at p. 7.)

25. Thereafter, by letter dated January 4, 1988, attached hereto as Exhibit U, I notified all of the claimants, including the plaintiff, of the arbitration decision. I informed them of the arbitrator's recommendation and asked them to contact me if they were interested in being rehired. Although I received several requests in writing, neither the plaintiff nor her attorney contacted me in writing concerning employment. I do recall speaking to the plaintiff once on the phone at which time I told her I would give her name to the SP for consideration. After obtaining all of the names of those interested, I presented the names and addresses, including the plaintiff's, to the SP for consideration and kept abreast of all future openings. Since there was no contractual requirement, as acknowledged by the arbitrator, <u>requiring</u> the SP to hire the Brisbane employes, and since the Union has no input in the SP's decision to hire new employes, I played no role in the hiring of any PFE Brisbane employes.

26. Shortly after sending out a copy of the

arbitrator's decision, I received a phone message from my secretary that Mr. Kubby called requesting I provide him with the name of the attorneys who handled the arbitration. This was the first I had heard from Mr. Kubby since receipt of his letter to Balovich dated January 20, 1986. Upon returning his call, I agreed to send him a copy of the union's presentation to the arbitrator, which I did the following day. A copy of the phone message received from Mr. Kubby, as well as a copy of the cover letter accompanying the materials provided to Kubby on January 13, 1988, is attached hereto as Exhibit V.

27. As demonstrated herein, the union filed claims on behalf of the plaintiff and all laid off PFE Brisbane employes seeking TOPS protection for such employes. Meetings were held with the employes, including the plaintiff, informing them of this. The union progressed the claims all the way to arbitration, and did the best it could in securing protection for the laid off employes, including the plaintiff. In this regard, the plaintiff was treated no differently than the other claimants on whose behalf the union progressed the identical claim. Moreover, the union had previously handled claims in an effort to secure the jobs of the Brisbane clerks, including the plaintiff.

DECLARATION PURSUANT TO 28 U.S.C. SECTION 1746

I hereby declare under penalty of perjury that the foregoing is true and correct, except as to those matters that I have stated upon information and belief and, as to those matters, I believe them to be true.

January 4, 1989
San Francisco, California

R. B. BRACKBILL

ATTACHMENT "F"

A G R E E M E N T

BETWEEN

SOUTHERN PACIFIC TRANSPORTATION COMPANY

(Pacific Lines)

(Texas & Louisiana Lines)

(Former Pacific Electric Railway Company)

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

NORTHWESTERN PACIFIC RAILROAD COMPANY

SAN DIEGO & ARIZONA EASTERN RAILWAY COMPANY

and certain of their employes

REPRESENTED BY

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

TRANSPORTATION - COMMUNICATION DIVISION - BRAC

Exhibit A

TOPS

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This agreement made this 16th day of September, 1971, by and between the SOUTHERN PACIFIC TRANSPORTATION COMPANY: (PACIFIC LINES), (TEXAS AND LOUISIANA LINES) and (FORMER PACIFIC ELECTRIC RAILWAY COMPANY); ST. LOUIS SOUTHWESTERN RAILWAY COMPANY; NORTHWESTERN PACIFIC RAILROAD COMPANY and SAN DIEGO & ARIZONA EASTERN RAILWAY COMPANY (hereinafter sometimes referred to collectively as the Carriers or separately as the Carrier) and certain of the employes of such Carriers represented by the BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES, and the TRANSPORTATION-COMMUNICATION DIVISION-BRAC (herein sometimes referred to collectively as the Organizations or separately as the Organization), witnesseth:

IT IS AGREED:

The fundamental scope and purpose of this agreement is to provide orderly procedures for accomplishment of changes in positions or employment under conditions set forth in ARTICLE I, and prescribed allowances and conditions to employes within coverage of existing agreements between the several parties hereto, in the manner and to the extent hereinafter provided, who are adversely affected as the result of the conditions of change hereinafter set forth in said Article I.

The Organization recognizes the right of the Carriers to make changes which the Carriers deem necessary throughout the system, subject to the terms and conditions of this agreement. "System" as used herein, shall include Southern Pacific Transportation Company (Pacific Lines), Southern Pacific Transportation Company (Texas and Louisiana Lines), Southern Pacific Transportation Company (former Pacific Electric Railway Company), St. Louis Southwestern Railway Company, San Diego and Arizona Eastern Railway Company and Northwestern Pacific Railroad Company.

ARTICLE I

APPLICABILITY

SECTION 1 - The provisions of this Agreement shall be applied to employes within coverage of existing agreements who are affected as the result of changes in positions or employment brought about by any of the following:

(a) Joint action by two or more of the carriers, parties to this agreement, whereby they unify, consolidate, merge or pool, in whole or in part, their separate railroad facilities or any of the operations or services previously performed by them through such separate facilities.

(b) Joint action by one or more of the carriers, parties to this agreement, and one or more carriers not parties to this agreement subject to the provisions of Part I of the Interstate Commerce Act whereby they unify, consolidate, merge or pool. in whole or in part, their separate railroad facilities or any of the operations or services previously performed by them through such

separate facilities. This provision does not eliminate the requirements of Sections 4 and 5 of the Washington Agreement where applicable but benefits shall be on basis of this agreement when more favorable than Washington Agreement.

(c) Change in methods of work accomplishment (including substitution of mechanical or electronics methods for manual methods) whether such change may involve only one or more than one of the carriers, parties to this agreement.

(d) Change in organizational structure in the operations (including physical relocations of work functions which may also include change in methods) whether such change may involve only one or more than one of the carriers, parties to this agreement.

(e) Abandonment of all or any portion of a line or lines of railroad of any carrier, party to this agreement, pursuant to Part I of the Interstate Commerce Act.

(f) Consolidation of two or more departments or bureaus, all of which are within coverage of the same seniority roster.

(g) Consolidation of two or more departments or bureaus, all of which are within coverage of the same seniority district.

(h) Institution, in whole or in part, of the Total Operations Processing System.

(i) Any other change not specifically covered by paragraphs (a) to (h), above, and not specifically excluded by Section 2 of this Article.

(j) Nothing in this Section shall be construed as a waiver by the Organization of any legal right to oppose any proposed change which may require the approval of governmental authority.

SECTION 2 - The provisions of this agreement governing limitation on reduction in the number of positions shall not be applicable because of changes in positions or employment brought about by any of the following:

1. - Temporary Positions.

The abolishment, elimination or discontinuance of a position or positions established subsequent to the effective date of this agreement for a temporary period not exceeding one year for the purpose of performing required services in connection with non-recurring special projects such as, but not limited to, railroad, industrial or governmental (including political sub-divisions thereof) projects when abolishment, elimination or discontinuance of said position or positions is within thirty (30) calendar days after the completion of the said project. In respect to positions within purview of this item established under preceding agreements and in effect as of the effective date of this agreement, the one year period shall be computed from date the position was established.

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2. - Emergency Reductions.

The abolishment, elimination or discontinuance of a position or positions under the emergency provisions of Article VI of the agreement of August 21, 1954, as amended, provided said position or positions are re-established and filled at the termination of the emergency or within fifteen (15) consecutive calendar days thereafter. In the event the carrier is required to make force reductions because of the aforesaid emergency conditions, it is agreed that any decline in gross operating revenue and net revenue ton miles resulting therefrom shall not be included in any computation of a decline in the carrier's business pursuant to the provisions of Article II, Section 11.

3. - Seasonal Positions.

The abolishment, elimination or discontinuance of a position which has been in existence one hundred eighty (180) consecutive calendar days or less; provided the said position is not itself a replacement or re-establishment of a permanent position abolished, eliminated or discontinued less than one hundred twenty (120) consecutive calendar days immediately prior to the establishment of the said position.

4. - Alternation of work as provided in Article IX.

5. - Decline in a carrier's business, as provided in Article II, Section 11.

NOTE: When seasonal or temporary positions are advertised, such positions shall be identified as "seasonal" or "temporary" ("S" or "T") on advertisement notices.

ARTICLE II

PROTECTED EMPLOYES

SECTION 1 (a) - All employes in active service and regularly assigned to a permanent position as defined in Section 12 (b) of this Article or to the Guaranteed Extra Board as of the effective date of this agreement, or is initially assigned to a Guaranteed Extra Board pursuant to the provisions of this agreement, and who have one year or more of employment relationship as of the effective date of this agreement, will be retained in service subject to compensation as hereinafter provided unless or until retired, discharged for cause, or otherwise removed by natural attrition (as defined in Section 12 (c) of this Article, but including termination of employment under Union Shop Agreement). For the purpose of this Agreement, the term "active service" is defined to include all employes working, or holding an assignment, or in the process of transferring from one assignment to another (whether or not the date of this agreement is effective is a work day for particular employes involved).

NOTE 1: An employee in active service and assigned to a seasonal or temporary position and who, as of the effective date of this agreement, has 12 months continuous assignment on positions covered by this agreement shall also qualify as a protected employe.

NOTE 2: Employes in active service on effective date of this agreement who do not meet criteria in Section 1 (a) above shall also qualify as protected employes upon completion of 12 months continuous assignment on positions covered by this agreement.

(b) Employes who meet all criteria of this section except for being in active service as of the effective date of this agreement by reason of being on authorized leave of absence, personal illness, personal injury, promotion to official, exempt or excepted positions, absence in military service, occupancy of an elective office or serving as a full time official or full time employe of the organization, shall, upon return to active service (pursuant to applicable selective service legislation in the case of absence in military service) on a permanent position, or on the Guaranteed Extra Board, assume the status of a protected employe. The same provisions shall apply to employes of the Phoenix Union Depot or any other similar facility who return to a carrier account unable to displace at Phoenix Union Depot or other similar facility.

SECTION 2 - Employes who do not qualify as protected employes pursuant to Section 1 (a), but who have or acquire two years or more of employe relationship, shall become protected employes upon completion subsequent to the effective date of this agreement of 12 months continuous assignment on positions covered by this agreement.

SECTION 3 (a) - An employe shall not be entitled to the protection afforded by this agreement during any period of time he is not in the active service of the carrier nor during any period of time he fails to obtain or retain a position, including a position on the Guaranteed Extra Board, for which he can qualify, available to him in the normal exercise of his seniority rights in accordance with existing rules or agreements. If a protected employe dismissed for cause is reinstated to service he will be restored to the status of a protected employe as of the date of his reinstatement.

(b) - In application of Section 3 (a) of this Article to a protected employe who fails to acquire a position available to him during allowable displacement period under applicable agreement provisions, Carrier shall, if written request is received from the employe within seven (7) calendar days after end of displacement period, furnish the employe involved, by certified mail, with copy to the General Chairman and Division or District Chairman, a list of the positions held by junior assigned employes on which displacement application by employe involved would be accepted, and the displacement period for such employe shall be extended to either the close of the fifth (5th) calendar day following date of receipt of Carrier's notice or the return by the Post Office of undelivered notice sent to the last address given. Carrier shall furnish list of available positions within seven (7) calendar days from date request is received and unless such list is furnished within the seven-day period, the employe involved will be considered in compliance with requirements of Section 3 (a) until first opportunity to obtain a position. Failure of the employe to make timely request for list of available positions or to acquire a position during the extended period for displacement shall result in cessation of protected status until he obtains a position, at which time he will be restored to a protected status.

SECTION 4 - Any employe who is involved in a transfer of work as referred to in Article IV, Section 1 (a) and who is unable to retain or obtain a position for which he can qualify, on his seniority roster, district or region, shall cease to be a protected employe by becoming a furloughed employe on his own seniority region as the result of his failure to either -

(1) accept employment offered to him in any seniority district or on any seniority roster on which he would be permitted under provisions of this agreement to transfer his accumulated seniority as a result of transfer of work, or

(2) accept lump sum separation allowance for which eligible under Section 1 (a), Article IV of this Agreement.

However, such employe accepting voluntary furlough will be restored to a protected status when he thereafter obtains a position.

SECTION 5 - When a protected employe is unable to retain or obtain a position as provided in this Agreement and is entitled to compensation under this Agreement, he may be placed on the appropriate Guaranteed Extra Board on his seniority roster, district or region and used in accordance with Article VII of this Agreement, except that existing arrangements with respect to placement and use of "surplus employes," in the San Francisco General Offices and on Texas and Louisiana Lines shall be continued, and arrangements applicable to surplus employes in the San Francisco General Offices will be applied to the Tyler and St. Louis General Offices and to the offices at Pine Bluff other than station and yard. In placing protected employes on appropriate Guaranteed Extra Board, to extent availability of work permits, senior employes will be given preference for placement on extra boards nearest their homes.

SECTION 6 (a) - Subject to the provisions of Section 8 of this Article II, protected employes entitled to preservation of employment who hold regularly assigned permanent positions on effective date of this agreement, shall not be placed in a worse position with respect to compensation than the normal rate of compensation for said regularly assigned permanent position on such date, provided, however, that in addition thereto such compensation shall be adjusted to include subsequent wage changes. An employe who has moved from a permanent position to a seasonal or temporary position to which he is assigned on the effective date of this agreement shall be protected at the rate of last assigned permanent position. An employe who has moved from a Guaranteed Extra Board position to a seasonal or temporary position to which he is assigned on the effective date of this agreement shall be protected on basis of assignment to the Guaranteed Extra Board, as referred to in Section 7 of this Article.

(b) - An employe regularly assigned as relief employe will have as his protected compensation for a five-day week assignment the same total compensation as the sum of the rates of the five (5) day week assignment on which protected status is based; however, that in addition thereto such compensation shall be adjusted to include subsequent wage changes. In event of absence a portion of week, deduction in guarantee (if applicable) shall be on pro rata basis.

(c) - Other protected employes as referred to in paragraph (b) of Artcle II, Section 1, shall not be placed in a worse position than the normal rate of compensation of the regular assigned permanent position to which assigned upon return to service under the applicable Agreement or compensation provided under Section 7 of this Article if return to service is to a position on the Guaranteed Extra Board; however, in addition thereto, such compensation shall be adjusted to include subsequent wage changes.

(d) - An employe who acquires protected status under Article II, Section 2, and is regularly assigned to a permanent position on the date protected status is acquired, shall not be placed in a worse position than the normal rate of compensation of such regular assigned permanent position; however, in addition thereto, such compensation shall be adjusted to include subsequent wage changes. An employe who acquires protected status under Article II, Section 2, and is assigned to a Guaranteed Extra Board on the date protected status is acquired shall not be placed in a worse position with respect to compensation than that provided under Section 7 of this Article.

SECTION 7 - Subject to the provisions of Section 8 of this Article II, a Guaranteed Extra Board employe entitled to preservation of employment will have as his protected compensation for a 40-hour week the average of daily or hourly rates (equated to 40 hours) received by such employe during a base period comprised of the last twelve (12) months in which he was compensated immediately preceding date protected status is acquired under this agreement, provided, however, that in addition thereto such compensation shall be adjusted to include subsequent wage changes. In event of absence a portion of week, deduction in guarantee (if applicable) shall be on pro rata basis.

SECTION 8 - Any protected employe who in the normal exercise of his seniority bids in a job or exercises his seniority in the normal way by reason of a voluntary action (not the result of abolishment of a permanent position), will not be entitled to have his compensation preserved as provided in Sections 6 and 7 hereof, but will, except as provided in second sentence of this Section 8, be compensated at the rate of pay and conditions of the job he bids in, or displaces on; provided, however, ~~if he is required to make a move or bid in~~ a position as result of transfer of positions and/or work under provisions of Article III, Section 2, he will continue to be paid in accordance with Sections ~~6 and 7 of this Article II, subject to Section 9 of this Article~~. If the employe is receiving a differential guarantee payment (the amount of payment representing difference in rate referred to in Section 6 and rate of position held, or difference in compensation referred to in Section 7 and rate of position held) at the time he bids or exercises seniority to a lower-rated position, the amount of the differential guarantee payment in effect immediately prior to move referred to herein will apply, subject thereafter to other applicable provisions of this Agreement.

NOTE: Change in composition of a relief position as result of abolishment of permanent position or positions in the relief schedule will constitute "abolishment of a permanent position" for protection of rate purposes under this Section.

SECTION 9 - If a protected employe fails to exercise his seniority right to secure another available position for which he can qualify, which does not require a change in residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position he elects to retain, he shall thereafter be treated for the purposes of this Article as occupying the position which he elects to decline. The same provisions will also apply to the employe who is required to change his residence in order to obtain another position in the event he fails to secure at the location to which he moves the highest rated position for which he can qualify.

NOTE: In the event an employe considers he is displacing on the highest-rated position for which he can qualify, he may so state in his application for displacement, and he will be considered on the highest-rated position available upon acceptance of such displacement on basis tendered.

SECTION 10 - A protected employe shall not be entitled to the benefits of this Article during any period in which he fails to work due to disability, discipline, leave of absence, military service, or other absence from the carrier's service, or during any period in which he occupies a position not subject to the working agreement; nor shall a protected employe be entitled to the benefits of this Article II during any period when furloughed because of reduction in force under the conditions set forth in Article I, Section 2, Items 2 and 5.

SECTION 11 - In the event of a decline in a carrier's business in excess of 5% in the average percentage of both gross operating revenue and net revenue ton miles in any 30-day period compared with the average of the same period for the years 1968 and 1969, a reduction in permanent positions and employes may be made at any time during the said 30-day period beyond the operation of attrition as referred to in Section 12 of this Article to the extent of one percent for each one percent the said decline exceeds 5%. The average percentage of decline shall be the total of the percent of decline in gross operating revenue and percent of decline in net revenue ton miles divided by 2. Five (5) working days' advance notice of any such force reduction shall be given. Upon restoration of a carrier's business following any such force reduction, an appropriate number of positions will be re-established and employes entitled to preservation of employment must be recalled in accordance with the same formula within 15 calendar days. The provisions of this Section will not apply to Pacific Lines employes in the San Francisco General Offices with seniority date of March 16, 1963 or earlier; or to St. Louis Southwestern employes subject to surplus arrangement under Section 5 of this Article with seniority date of March 16, 1963 or earlier; or to Texas and Louisiana Lines employes with seniority date of July 17, 1963, or earlier.

SECTION 12 (a) - The number of permanent positions as of effective date of this agreement shall be the established bases from which future force reductions shall be computed separately on each Carrier involved. For purposes indicated in third sentence of paragraph (d) and in paragraph (e) of this section, the "established bases" shall be apportioned to separate seniority units listed in Appendix "A" to this agreement based on number of permanent

positions in each of such units as of effective date of this agreement. Abolishment of permanent positions which would have the effect of reducing the number of permanent positions below the bases herein established shall be restricted in accordance with the provisions set forth in this section.

(b) - Each Carrier shall furnish their respective General Chairmen list of all permanent positions as of the effective date of this agreement. The term "permanent position," as used in this agreement, means any position subject to the rates of pay rules of the respective collective agreements, but does not include Guaranteed Extra Board positions and positions in effect under the conditions set forth in Article I, Section 2, Items 1 and 3.

NOTE: Respective General Chairmen will also be furnished list of temporary and seasonal positions.

(c) - One attrition credit shall be allowed for each employe who vacates a permanent assignment by reason of retirement, resignation, dismissal for cause (not including termination of employment under Union Shop Agreement), death, or promotion. In the event an attrition credit has accrued by reason of an employe's promotion or retirement on disability prior to age 65 and such employe subsequently returns to a permanent position, the attrition credit so accrued shall be cancelled. One attrition credit shall also be allowed for each employe now assigned to a permanent position who voluntarily assumes status other than assigned to a permanent position and within 180 days thereafter leaves the seniority roster, without then vacating a permanent position, by reason of retirement, resignation, dismissal for cause (not including termination of employment under the Union Shop Agreement), or death.

(d) - The reduction in the overall number of permanent positions during any calendar year below the number of permanent positions constituting the bases established pursuant to paragraph (a) of this section shall not exceed the number of attrition credits as referred to in paragraph (c) of this section accrued in such calendar year or 4% of the said number of permanent positions, whichever is the lesser. Calculations shall be separate for Pacific Lines (including former Pacific Electric Railway Company), Texas and Louisiana Lines and St. Louis Southwestern Railway Company. In separately applying this 4% on Pacific Lines, and Texas and Louisiana Lines and St. Louis Southwestern Railway Company, reductions may be made in any seniority unit listed in Appendix "A" hereto, but such 4% system reduction shall not be applied so that such reduction in any one seniority unit in any one calendar year exceeds 8% of the portion of the base applicable to such unit. The base number of permanent positions upon which the 4% and 8% limitations apply will be reduced at the end of each calendar year to the extent overall reduction pursuant to first sentence of this paragraph has been made in such numbers of permanent positions in that calendar year, and the adjusted base thus established will govern reductions below the base in the following calendar year. On Northwestern Pacific and on San Diego and Arizona Eastern the percentages shown will not apply but reductions in number of base positions on Northwestern Pacific will be limited to 3 positions and on the San Diego and Arizona Eastern will be limited to 1 position in each calendar year.

(e) - In the case of establishment of permanent positions in excess of the number required to be maintained in application of paragraphs (a) and (d) of

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this Section, the reduction in number of excess positions will not require use of attrition credits or be subject to the 4% limitation; however, neither will the establishment of such excess positions on one seniority unit be used as a basis for additional reduction of positions on other such seniority units.

ARTICLE III

NOTICE

SECTION 1 (a) - When a permanent position is to be abolished the carrier upon whose pay rolls the position is established shall notify the appropriate General Chairman in writing not less than ninety (90) consecutive calendar days prior to the abolishment of the position. During the ninety (90) day period, upon written request of the appropriate General Chairman, he or his representative may meet with a designated representative of the carrier for the purpose of discussing the facts and circumstances involved in the proposed position change with the view to avoiding grievances and minimizing adverse effects upon employes involved. Information regarding distribution of remaining work, if any, of the position to be abolished will be furnished to the organization upon request. The provisions of this paragraph are not applicable where a position is abolished under the conditions set forth in Section 2 of Article I.

(b) - The carrier shall give written notification to the employe occupying a position to be abolished not less than five (5) working days in advance of the abolishment. The term "working days" shall mean calendar days during which the position to be abolished is scheduled to work. The provisions of this paragraph are not applicable where a position is abolished under the conditions set forth in Section 2, Item 2, of Article I.

(c) - Changes in the schedule or a regular relief day assignment shall not be considered an abolishment of a position and shall not be subject to the notice provisions of this section.

SECTION 2 (a) - When a carrier party hereto desires to transfer positions and/or work between seniority rosters, districts and/or regions on its own lines, or when a carrier party hereto desires to transfer positions and/or work to another carrier party hereto, 90 days' advance notice will be given appropriate General Chairman or General Chairmen. Such notice shall contain the following detailed information:

(1) Titles, rates of pay and names of the assigned incumbents of positions to be transferred or abolished;

(2) Titles, rates of pay and names of the assigned incumbents of positions from which work is to be transferred;

(3) Description in detail of work to be transferred from positions in sub-paragraphs 1 and 2 above, and of work remaining on positions in sub-paragraph 2, above, including identification of positions involved, and;

(4) Titles, rates of pay and duties of positions to be established, if any.

(b) - Bulletining and assignment of new positions established to handle work transferred will be bulletined and assigned to those making application based on the following order of preference:

1. To employes whose permanent positions are to be abolished as result of transfer of work.

2. To employes who are displaced in chain of displacements resulting from abolishment of permanent positions involved in transfer of work.

3. To other employes on Seniority Roster from which work was transferred.

4. To employes on Seniority Roster to which work was transferred.

Employes who become assigned to new positions pursuant to this section will relinquish seniority on roster, district and/or region from which transferred and establish on roster, district and/or region to which transferred the earliest applicable seniority date relinquished at time of transfer.

NOTE: In applying above criteria, where Clerks Master Roster Regions are involved, the following will govern:

Bulletining and Assignment Preference:

1. To employes whose permanent positions are to be abolished as result of transfer of work.

2. To employes who are displaced in chain of displacements resulting from abolishment of permanent positions involved in transfer of work.

3. To other employes on Seniority Roster from which work was transferred.

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(Intra-Master-Seniority-Roster-Region Transfer)

4. (a) To employes on Seniority Roster to which work was transferred.

(b) To other employes on the Master Seniority Roster Region involved.

- - - - - - - - - - - - - - - -

(Inter-Master-Seniority-Roster-Region Transfer)

4. To other employes on Master Seniority Roster Region from which work was transferred.

- - - - - - - - - - - - - - - -

5. To employes on Seniority Roster to which work was transferred.

6. To other employes on Master Seniority Roster Region to which work was transferred.

(c) This Section covers only transfer of positions and/or work as referred to in this agreement and shall not be applied so as to result in consolidation or elimination of rosters.

SECTION 3 (a) - All position notices shall automatically expire and become null and void 150 calendar days after date of notices; however, within the following 120 calendar-day period position may be abolished on basis of not less than 30 calendar days advance notice, but this supplemental notice shall automatically expire and become null and void 45 calendar days after date of notice.

(b) The limitations of this section shall not apply in event action is delayed by regulatory agency.

ARTICLE IV

SEPARATION ALLOWANCES, MOVING EXPENSES AND PROTECTION FROM LOSS WITH RESPECT TO HOMES

SECTION 1 (a) - In the case of abolishment of permanent positions as result of transfer of work between seniority units listed in Appendix "A" hereto, or between carriers, parties to this agreement, a protected employe whose permanent position is abolished or is in directly related chain of displacements will have one of the following options, which must be exercised within five (5) calendar days from date employe is affected by changes referred to above:

1. Follow his position or work.

2. Exercise seniority displacement rights in accordance with current rules agreement.

3. An employe who has five (5) or more years of employment relationship with one (1), or an aggregate of five (5) or more years with two (2) or more of the carriers, parties hereto, and who would be required to move his residence in order to follow his position or work to point of transfer may resign from carrier's service and accept a lump sum separation allowance on basis set forth in Section 3 of this article.

(b) - In the case of abolishment of permanent positions under conditions other than as specified in Article I, Section 2, Items 2, 4 or 5, or Article IV, Section 1 (a), a protected employe whose permanent position is abolished or is in directly related chain of displacements, who has ten (10) or more years of employment relationship with one (1), or an aggregate of ten (10) or more years with two (2) or more of the carriers, parties hereto, and who would be required to move his residence in excess of 75 miles in order to obtain the nearest available position on his seniority roster, district or region, may elect to resign from carrier's service and accept a lump sum separation allowance on basis set forth in Section 3 of this article.

SECTION 2 - If the protected employe referred to in Section 1 (a) of this Article elects to transfer to the new point of employment requiring a change of residence, such transfer and change of residence shall be subject to the benefits contained in Sections 4 through 8 of this Article IV.

SECTION 3 - If the protected employe referred to in Section 1 (a) or (b) of this Article elects to resign, he shall be given (in lieu of all other beneifts and protections to which he may have been entitled under this agreement) a lump sum separation allowance which shall be computed in accordance with the following schedule:

Length of Service	Separation Allowance
1 year and less than 2 years	90 days' pay
2 years and less than 3 years	180 days' pay
3 years and less than 5 years	270 days' pay
5 years and over	360 days' pay

In the case of an employe with less than one (1) year's service, five (5) days' pay at the rate of the position last occupied for each month in which he performed compensated service will be paid as the lump sum separation allowance.

For the purpose of this agreement, the length of service of the employe shall be determined from the date he last acquired an employe status which resulted in a continuous employe relationship with one or more of the carriers, parties to this agreement, and he shall be given credit for one (1) month's service for each month in which he performed any service (in any capacity whatsoever) and twelve (12) such months shall be credited for one (1) year's service for the purpose of applying the schedule of payments provided in this agreement, such computation to also include as service the time during which the employe was absent in military service as referred to in Article II, Section 1 (b) hereof. The employment status of an employe shall not be interrupted by furlough in instances where the employe returns to the service of any of the carriers, parties to this agreement, when called. In determining length of service of an employe acting as an officer or other official representative, including a full-time staff employe, of the organization, he will be given credit for performing service while so engaged on leave of absence from the service of the carrier granting the leave of absence; provided the employe, while on such leave of absence, is performing compensated service for the organization.

SECTION 4 - An employe who is continued in service and who is required to change his place of residence as result of abolishment of a permanent position shall be reimbursed for all expenses of moving his household goods and other personal effects and for the traveling expenses of himself and members of his family, including living expenses for himself and his family and his own actual wage loss during the time reasonably necessary for such transfer and for a reasonable time thereafter (not to exceed ten (10) working days) used in securing a place of residence in his new location. No claim (for such expenses shall be allowed unless they are incurred within three (3) years (1095 consecutive days) from the date the employe was first affected by the abolishment of the permanent position involved, and any claim hereunder must be submitted within ninety (90) consecutive calendar days after such expenses are incurred. Movement of household goods and other personal effects shall not be undertaken prior to the time the carrier involved shall have had the opportunity to review the manner in which the employe intends to accomplish such movement, and in no event shall the carrier assume any liability for such movement prior to the time the carrier has approved the method or means of accomplishing the movement. The carrier will assume the expense of necessary crating, pickup, delivery and uncrating and the responsibility for loss and damage in transit where such loss and damage are not the direct result of any action by the employe or a member of his family, it being understood that the carrier reserves the right to insure against loss and damage in transit in any manner deemed appropriate by the carrier. Charges for warehousing of any household goods or personal effects while such household goods and personal effects are in transit or otherwise will be borne by the carrier for a period not exceeding thirty (30) consecutive days, or thirty (30) days in the aggregate, provided such warehousing is necessary in the circumstances.

In addition to such benefits, the employe shall receive a transfer allowance of five hundred dollars ($500). Arrangements will be made for advance of this sum upon request of the employe after arrangements have been completed for movement of household goods and personal effects pursuant to this section.

SECTION 5 - An employe required to change his place of residence as result of abolishment of a permanent position will be furnished free transportation for himself and family on the lines of any carrier or carriers, parties to this agreement, insofar as such transportation is available, in order to effect transfer to his new work location. When rail transportation is not available and employe does not travel in his own auto, the cost of other transportation will be borne by carrier. Advance arrangements shall be made by the employe with his employing officer before other transportation is used. In the event the employe elects to drive his own personal automobile or automobiles when making such transfer from his former residence to his new residence, he will be paid the actual mileage between such points at the prescribed rate currently in effect allowable to employes of the carrier by whom employed at his new work location for use of his personal automobile. The term "prescribed rate" will mean the highest established mileage rate applicable (i.e., 11 cents as of the effective date of this agreement) at the time the trip is made. In determining the mileage to be compensated for, the most direct and practicable highway route will be used as the basis.

SECTION 6 (a) - If an employe owns his own home in the locality from which he is required to move as result of abolishment of a permanent position, he shall at his option be reimbursed by the carrier for any loss suffered in the sale of his home for less than a figure based on its fair value plus 9% of such fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the date of the event which resulted in the requirement to move in order that the fair value will be unaffected thereby. The carrier shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employe to any other party.

In determining whether loss is suffered and amount of loss, if any, in connection with the sale of the employe's home for less than fair value plus 9%, the company will take into account charges assessed the employe for realty commission, title insurance fee, reconveyance fee, recording and escrow fees, internal revenue stamps, prepayment penalty on existing mortgage, and appropriate pro rata of (1) taxes, (2) insurance, and (3) interest during period involved when employe is actively endeavoring to sell his home for fair market value (or other listing concurred in by the carrier), contingent in each case upon the employe having paid the charge or fee involved.

When seller assumes fee or discount cost of acquiring new loan, this will be paid by the carrier if approved in advance.

Where maintenance is required to maintain fair market value of home, cost will be assumed by the carrier, provided advance arrangements are made by employe with his employing officer.

Advances by the carrier (including interest-free advances arranged with employing officer) are on basis employe is actively endeavoring to sell home at fair market value (or other listing concurred in by the carrier), and carrier may assume home at fair market value plus 9% if paying costs referred to in this section.

(b) An employe covered by Section 6 (a) may, if he so elects prior to receiving any benefits under Section 6 (a), accept the provisions hereinafter set forth in this Section 6 (b) in lieu of and in full settlement of any claim arising under Section 6 (a) of this agreement:

(1) If the employe owns his home in the locality from which he is required to move and disposes of said home in order to relocate in the locality to which he has been transferred, he shall be reimbursed by the carrier at 9% of the fair market value of the home in question; and, in addtion thereto 10% of his equity of the fair market value of the home in question subject to a maximum equity of $20,000 in said home. Such payment will be reimbursement for expenses incurred and loss sustained in selling the property. In each case the fair market value of the home in question and the employe's equity therein shall be determined as of a date sufficiently prior to the employe's actual transfer so as to be unaffected thereby.

(2) An employe electing not to sell his home may upon request to carrier be paid 9% of the fair market value of his home, promptly after determination of fair market value.

(3) The employe electing to accept the provisions set forth in Section 6 (b) (1) or (2) must, within three years from the date of the event which resulted in the requirement to move, so notify the carrier and pursuant thereto execute all releases necessary as full settlement of any claim against the carrier under the provisions of Section 6 (a) of this agreement.

(c) - If the employe is buying home under contract of sale arrangement, the carrier shall protect him against loss to the extent of the fair value of any equity he may have in the home and in addition shall as of date of transfer relieve him from any further obligations under his contract.

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

(e) - If an employe owns and occupies a mobile home as his residence, it will be treated as a home under applicable provisions of this article, unless the carrier and employe involved mutually agree to move such mobile home.

SECTION 7 - Changes in place of residence not cause by an employe being required to change the point of his employment as a result of abolishment of a permanent position are not comprehended by this article. Neither does this article comprehend more than one change of residence caused by a single change in the employe's point of employment. No claim for loss under this article shall be paid if not presented within three (3) years (1095 consecutive days) after the date of the event which resulted in the requirement to move.

SECTION 8 - Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of lease, the employe's equity, or any other question in connection with these matters, it shall be decided through joint conference between the representatives of the involved organization and the carrier by whom the employe was employed immeditely prior to the transfer, and in the event they are unable to agree, the dispute may be referred by either party to a board of competent real estate appraisers, selected in the following manner: One to be selected by the organization and the carrier, respectively, and if they cannot agree, then these two shall endeavor, by agreement within ten (10) days after their appointment, to select a third appraiser, or to select some person authorized to name a third appraiser, and in the event of failure to agree, then the Society of Residential Appraisers or a comparable organization shall be requested to appointa third appraiser. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them; except that such expenses incurred by the organization shall be paid by the employe involved. The salary of the appraiser selected by the carrier shall be paid by the carrier. The salary of the appraiser selected by the organization shall be paid by the employe. When advance payment of appraisal board expenses is required, appropriate advances shall be made by parties responsible.

500 RBO. Y 20
500-260.1.10

Pacific Fruit Express Company

December 6, 1982

J.D. WALSH
Manager Industrial
Relations

(415) 541-1052
PER 14-3(B)

Mr. R. B. Brackbill
General Chairman (3)
Brotherhood Railway Clerks
760 Market Street, Suite 1000
San Francisco, CA 94102

PFE NOTICE NO. 6
P/L NOTICE NO. 429

Dear Mr. Brackbill:

Pursuant to 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, this letter will serve as not less than twenty (20) days' advance notice of the Company's intention to abolish the following position in its Brisbane Data Processing Office (PFE), and to transfer the DP work of such position as detailed from Pacific Fruit Express Company (in Seniority District No. 1) to Southern Pacific Transportation Company (Pacific Lines) at San Francisco, California, in San Francisco General Offices Seniority District effective January 17, 1983.

A. Position No.	Title	Daily Rate of Pay*	Incumbent
DP-4	Head Clerk (Computer)	$85.95	S. M. Littlejohn

*Subject to Cost-of-Living Adjustment.

WORK TO REMAIN ON ABOVE POSITION:

None. Position to be abolished at PFE.

WORK TO BE TRANSFERRED TO SPT:

On and after effective date PFE is going to rely on SPT for Waybill output from TOPS, for Interchange records and other related tapes. We will also be getting from them Interline account settlement reports and freight abstracts and in addition, beginning March 1, 1983, entire computer processing of PFE payroll, factor reconciliation and distribution of labor costs to respective accounts will be performed for PFE by the SPT facility.

Lblevins
levins

RBB ✓
CLF ✓
SRS ✓
JEH 12/8/82
GHA

-1-

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SYSTEM BOARD OF ADJUSTMENT #94

Exhibit B

Coincident with this transfer of work from PFE to SPT Company, the following position will be established on the San Francisco General Offices Seniority District (SPT Data Processing) at San Francisco, California.

B. POSITION TO BE ESTABLISHED AT SPT - SAN FRANCISCO

Position No.	Title	Daily Rate of Pay
	Console Operator	$87.56

*Subject to Cost-of-Living Adjustment.

The work to be transferred to SPT as the job content of Position DP-4 will consist of the functions and duties of Head Clerk (Computer) set forth in (A) above.

Cordially yours,

Manager Industrial Relations
Pacific Fruit Express Company

Assistant General Manager -
Labor Relations
Southern Pacific Transportation Co.

62

500-260.4.01

Pacific Fruit Express Company

116 New Montgomery Street, San Francisco, California 94105

T. D. WALSH
MANAGER PERSONNEL

February 5, 1980

IN REPLY PLEASE REFER TO
NO. PER 14-3(B)

Mr. J. H. Groskopf, General Chairman (3)
Brotherhood of Railway Clerks
Suite 1000, Phelan Building
760 Market Street
San Francisco, CA 94102

RECEIVED
FEB 6 1979
SYSTEM BOARD OF ADJUSTMENT #94

PFE NOTICE NO. 2
P/L NOTICE NO. 1064

Dear Mr. Groskopf:

Pursuant to 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, this letter will serve as not less than twenty (20) days advance notice of the Company's intention to abolish the following position in its San Francisco Purchases & Stores Department (PFE), and to transfer the clerical work of such position as detailed from Pacific Fruit Express Company (on Seniority District No. 1) to Southern Pacific Transportation Company (Pacific Lines) at San Francisco, California, on San Francisco General Offices Seniority District effective March 1, 1980:

Pos. No.	Title	Daily Rate of Pay*	Incumbent
P-1	Steno-Clerk	$69.00	Anne M. Hart

* Subject to Cost-of-Living Adjustment.

WORK TO REMAIN ON ABOVE POSITION:

None. Position to be abolished.

WORK TO BE TRANSFERRED TO SPT:

Perform secretarial duties for department head and assistants, plus other clerical duties and do general typing including typing of purchase orders, bids and miscellaneous office correspondence including that covering purchases of materials equipment and supplies. Do other duties as assigned.

Coincidental with this transfer of work from PFE to SPT, the following position will be established on the San Francisco General Offices Seniority District (Purchases and Materials Department) at San Francisco:

633

cc Goldsmith (6) 2/6/80
Davie 2/6/80

POSITION TO BE ESTABLISHED ON SPT-SAN FRANCISCO
PURCHASES & MATERIALS DEPARTMENT

Pos. No.	Title	Daily Rate of Pay*
244	Steno-Clerk	$66.67

* Subject to Cost-of-Living Adjustment.

The work to be transferred to SPT as the job content of Position P-1 will consist of functions and duties of Steno-Clerk as set forth above.

Cordially yours,

J. D. Walsh
Manager Personnel
Pacific Fruit Express Company

J. M. Toffi
Asst. Vice President
Labor Relations
Southern Pacific Transportation Co.

633

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:

Position No.	Position	Location	Incumbent	Seniority Date
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	8/13/62
150	Clerk	Brisbane	K. E. Armstrong	12/17/62

These job abolishments are being effected under the conditions set forth in TCPS Article I, Section 2, Item 5, as provided for in Article II, Section 11 thereof, and Section 3(C) of our January 7, 1980 agreement. As ready reference TCPS 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

cc: Mr. R. B. Brackbill
General Chairman/BRAC

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

Mr. T. D. Walsh

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

Defs
EXHIBIT NO. 1
9/6/88
T. LOPEZ

Exhibit E
S. M. Tu
5/1/87

Exhibit D

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 Mayautrey

2 611

Brisbane, March 27, 1985

SENIORITY DISTRICT 1
CLERKS' ASSIGNMENT AND VACANCY NOTICE NO. 17

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	*	$9.99
150	CLERK	DISBURSEMENT	*	$8.84

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

= INCLUDES $1.14 COLA ON TOP OF ESTABLISHED RATE OF PAY.

D. M. Autrey
D. M. AUTREY

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

3 612

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:

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

D.M. AUTREY

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

4

6

Lodge # 504

BoB,

THE COMPANY HAS GIVEN THE CORRECT RATE ON THE JOB, WHICH WE DISCUSSED. I ASKED EVERY BODY WHO HAD ENOUGH SENIORITY IF THEY WANTED THE JOB BULLINTENO, AND THEY SAID NO. I HAVE A LETTER I PREPARED FOR THE COMPANY TO SIGN, WHICH THE OFFICE MANAGER DID, AND I BELIEVE THIS ISSUE IS NOW SETTLED, A COPY OF THE LETTER IS ENCLOSED

Jim Balovich

RECEIVED
APR 2 1984
SYSTEM BOARD OF ADJUSTMENT 996

Exhibit E

MARCH 29 1984

P.F.E WAS IN VIOLATION OF RULE #19 WHEN THEY BULLITENED JOB #141 AT A LOWER RATE OF PAY THAN WAS PREVIOUSLY ESTABLISHED, AND AGREES BY SIGNATURE TO CORREC THE RATE, AND PAY THE PRESENT INCUMBANT SIEU-MEI TU THE CORRECT RATE RETROACTIVELY FROM THE DAY SHE STARTED SAID JOB, UNTIL THE RATE IS RECTIFIED, AND WILL ENDEAVOR IN THE FUTURE TO ABIDE by SAID RULE.

SIGNATORY FOR P.F.E.

E. E. Clark

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APR 2 1984
SYSTEM BOARD OF ADJUSTMENT #94

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

J.M. Balovich Lodge No. 504

Street Address 100 Valley Drive Brisbane Ca. 94005 August 15, 1985

Mr. J. P. Segurson
Asst. to Vice Pres. & Gen. Mgr.
Pacific Fruit Express Company
Perishable Freight Division
Southern Pacific Transportation Co.
100 Valley Drive
Brisbane, California 94005

J. P. S.

Dear Sir:

Claim is, by this letter, presented in behalf of every employee who holds seniority on current PFE Seniority District 1 Roster (copy attached) account carrier is wrongfully transferring their work to other companies, seniority rosters and/or exempt persons in violation of the applicable agreement and carrier has, also, in violation of the agreement laid off and is taking steps to further lay off claimants through misapplication of the agreement's Decline In Business provisions and contrary to their intent and purpose. Therefore, I hereby file claims for each such claimant that he or she, at the employee's option, shall:

1) Follow their position and work with their full rights, or

2) be compensated at last assigned PFE rate or protected rate whichever is higher until normal R.R.B. retirement age, or

3) be given, if they so elect, lump sum severance of 360 days' pay at last assigned rate or protected rate, whichever is the higher of the two.

FACTS:

1. Carrier has taken several steps to discontinue this perishable freight division (i.e. PFE) in the near future and has given, is giving, and is preparing to give away the work of claimants to other unentitled to it and without handling and/or benefits as provided in the agreement including the Agreement of January 7, 1980.

11. Carrier has before used and has again commenced to use and misapply the Decline in Business clause to effect longterm layoffs and/or terminations of claimants herein refusing them the 1, 2, 3 benefits above and/or the lump sum 360 days separation allowances to which they are entitled under the agreement's terms.

Exhibit F

DJ's
EXHIBIT NO. 2
4/18/88

CONTENTION:

Our PFE/BRAC Agreement, the February 7, 1965 Agreement and the TOPS Agreement are thus being violated by carrier, as well as various memorandums and understandings regulating their application. These violations must stop and the provided benefits including the option of taking 360 days severance pay as applicable must be granted upon request in all cases.

If your understanding of the facts is not as stated above, please advise in writing wherein you contend to differ. Also, please honor this claim as required by agreement but if it is your intent to deny same, promptly docket for conference before doing so, advising when meeting will be held to discuss this continuing violation.

Yours very truly,

J M Balonick
Local Chairman - BRAC

cc: Mr. D. M. Autrey
Mr. L. O. Batson

PACIFIC FRUIT EXPRESS COMPANY

FORM 401 CLERKS SENIORITY ROSTER JANUARY 1,1985

# DISTRICT 1					
22	KOTRONAKIS K.	557-62-5262	HEAD CONTROL CLERK	BRISBANE	04/05/61
23	TU S. M.	569-54-5738	GENERAL CLERK	BRISBANE	05/13/62
24	ARMSTRONG K. E.	442-40-7709	CLERK	BRISBANE	12/17/63
25	HAUFF S. A.	572-48-6252	JR. CLAIMS CLERK	BRISBANE	07/01/68
26	FENG K. H.	568-74-3513	AUDIT BILL CLERK	BRISBANE	10/14/68
27	KIM J. J.	567-80-6526	SPECIAL ACCOUNTANT	BRISBANE	11/11/68
28	BOUTOURLIN B. M.	556-42-1965	SECRETARY	BRISBANE	12/16/68
29	SHIH C. T.	541-58-3137	SPECIAL ACCOUNTANT	BRISBANE	03/25/69
30	JONES M. I	545-50-7219	SECRETARY	BRISBANE	03/25/69
31	ROVER J. J.	437-64-0606	MISCELLANEOUS CLERK	BRISBANE	04/03/69
32	GREGORY M. A.	553-90-6498	MISCELLANEOUS CLERK	BRISBANE	05/19/69
33	TALAMANTE R.	565-76-2164	RATE ANALYST	BRISBANE	03/07/69
34	LORENTZ J.	553-60-7516	JR. CLAIMS INVESTIGATOR	BRISBANE	10/13/69
35	ZANZI P. A.	556-80-3858	CONTRACT COORDINATOR	BRISBANE	02/18/70
36	FEND R. W.	566-80-0092	ASST. CONTROLLER	BRISBANE	03/25/70
37	BALOVICH J. M.	557-50-4062	RATE SERVICE CLERK	BRISBANE	09/13/71
38	FLORES J. E.	553-50-9448	CLERK	BRISBANE	07/05/72
39	BRUNKETT J. A.	566-76-9509	CAR DISTRIBUTOR	BRISBANE	10/28/74
40	ARRIAGA J. L.	572-11-2477	FURLOUGHED	BRISBANE	01/16/81
41	MAXWELL R. L.	546-42-7673	CAR DISTRIBUTOR	BRISBANE	12/18/81
42	MCELROY R. E.	568-94-2791	FURLOUGHED	BRISBANE	01/20/84

FREE NO. 00001
04/03/85

PACIFIC FRUIT EXPRESS COMPANY

FORM 401 CLERKS SENIORITY ROSTER JANUARY 1,1985

* DISTRICT 1					
1	CLARK E. E.	568-30-5605	MGR CUSTOMER RELATIONS	BRISBANE	05/03/4
2	BATSON L. O.	564-20-0563	DGM/FLEET MANAGEMENT	BRISBANE	05/13/4
3	JENKINS J. A.	552-32-2191	EARLY RETIREMENT	BRISBANE	01/15/4
4	SHEA T. E	565-26-9102	DISABILITY RETIREMENT	BRISBANE	04/15/4
5	WALSH T. D.	546-40-7936	MGR.INDUSTRIAL RELATIONS	BRISBANE	12/15/4
6	VACCAREZZA R. R.	550-30-6290	DISABILITY RETIREMENT	BRISBANE	03/09/4
7	HOLMES W. O.	487-22-3405	EARLY RETIREMENT	BRISBANE	07/15/4
8	GRIGGS J. W.	567-22-5609	EARLY RETIREMENT	BRISBANE	09/05/4
5	CHAPMAN R. A.	572-38-5016	FURLOUGHED	BAKERSFLD	03/11/4
10	FERNANDEZ J. J.	555-32-0544	CHIEF CLERK	BRISBANE	04/11/4
11	HUNTINGTON R. H.	553-32-3367	GEN CAR DISTRIBUTOR	BRISBANE	05/15/5
12	SUMNER G. L.	549-42-1127	ASST. CHIEF CLERK	BRISBANE	03/13/5
13	HART A. M.	551-36-2800	DISABILITY RETIREMENT	BRISBANE	03/24/5
14	LANG JR. A. D.	521-38-3893	ASST. CHIEF CLERK	BRISBANE	09/23/5
15	SHORB G. E.	207-22-0351	SPECIAL INVESTIGATOR	BRISBANE	10/21/5
16	PETRUCCI R. J.	567-40-3698	ASST.MGR.CUST.DISTRB TN	BRISBANE	11/17/5
17	BAUMANN J. H.	561-40-1421	MISC. CLERK	BRISBANE	04/20/5
18	AUTREY D. M.	523-32-4488	CONTROLLER	BRISBANE	10/26/5
19	NEWELL P. F.	726-14-9451	AAR CLK	BRISBANE	09/06/57
20	CARROLL C. C.	465-50-4056	CHIEF CLERK/DISBURSEMENTS	BRISBANE	07/22/5
21	SOLDAVINI R. C.	562-48-1034	CHIEF CLERK	BRISBANE	09/08/5

August 27,1985

J.M.Balovich
Lodge No.504
BRAC
100 Valley Drive
Brisbane, California

RECEIVED
AUG 28 1985
SYSTEM BOARD OF ADJUSTMENT 394

Lodge 504

Dear Mr. Balovich,

Refers to your letter claim of August 15,1985 presented in behalf of every employee who holds seniority on current PFE Seniority District 1 Roster and our conference regarding this claim on the same date.

This claim is improperly before me as it is addressed to two separate companies,PFE and SPT. PFE is not, and has never been, a Division of SPT Company. However, without prejudice to our defense on the basis of improper presentation,I will accept this claim for consideration.

You have not stated a specific basis for claim. Such non-specificity constitutes a procedural defect and cannot be answered in a specific manner. Your claim contends transferrance of work and misapplication of the "Decline in Business" clause in violation of the agreement, neither of which you prove and thus it is hereby declined as no transfer or misapplication has taken place. This is evidenced by lack of any such proof or specifics in your claim which very clearly is merely an anticipatory claim based on your expectations of future events. The latter anticipatory aspect precludes this claim and your universal type presentation of this claim on behalf of all on the roster is a wrongful presentation since it includes Officers, exempt personnel, retired and otherwise inactive employees. This does not comply at all with the Union's obligation to specify and name claimants and it in no way fulfills the agreement requirement that claims have to be filed within 60 days after the occurence(s) from which they stem.

In conference, when I requested a specific instance of transfer of work, you could only think of Group Life Insurance work which you contend is"now done by SPT". I have investigated this allegation and have determined that Group Life insurance handling is still done here by Head Contol Clerk,Position No. 147. The data processing portion of this work was "Tops"ed to SPT under the provisions of the PFE/BRAC agreement, and therefore there was no violation of the agreement.

In conference when I requested that you provide specific instances of misapplication of the "Decline in Business" provisions, you could not cite any instance and indeed you have not filed one specific claim in this regard since this matter was taken before the Board(Public Law Board 3013). That Board ruled that PFE had misapplied the clause by using an inflation factor but had otherwise applied the agreement properly.

Exhibit G-
630

You alluded to a contention that PFE has manufactured a decline in business and that a decline in business is not a "decline in business" under the agreement if PFE's actions or inactions caused or contributed to the decline in business. While your interpretation is beyond the written agreement, it is also absurd as "business" is an interaction between a firm, customers, and what can be described as "the environment" consisting of all external and internal factors. To contend that a decline in business should only be related to customer and environment action (which cannot be measured independently) would imply that PFE remain static in all aspects of business which would have undoubtedly immobilized operations entirely.

As was discussed,PFE has aggressively sought new and continuing business resorting to innovative contract offerings, rate structures, advertising and transportation modes that tended to maintain our revenues even in light of substantial reductions in car loadings as a result of competition from Trucks. In addition we have sought agreement with your General Chairman for a revised labor contract that would allow us to compete on an equal basis in the refrigerated transportaion business. Obviously, the necessity to continue to abide by our agreement has placed us in a position that has definitely caused "decline in business" as we have pointed out to Mr.Brackbill on numerous occasions,backed up with full facts and figures. The actions of PFE cannot be interpreted as actions that would "manufacture" decline in business. Your claim in regard to "Decline in Business" clause application is hereby declined.

This entire claim herein discussed is improperly before me and is dismissed and denied for the reasons stated above.

Very truly yours,

James P. Segurson
Asst to VP&GM

cc:T.D.Walsh
R.B.Brackbill
L.O.Batson
D.M.Autrey

Mr. Segurson, you objected to my using the roster for my claim but the company's one-sided, unilateral closing of PFE is an act against the whole Roster to wipe out the dates and seniority of all. Finally, I will by copy of this letter refer your unacceptable August 27 decision to the General Chairman for his appeal and handling to a successful conclusion.

Sincerely,

J M Balourd
LC 504

cc: Mr. R. B. Brackbill
Mr. T. D. Walsh

Processing Employees of
Pacific Transportation Company
Pacific Fruit Express Company
Northwestern Pacific Railroad
Pacific Motor Trucking Company
Los Angeles Union Passenger Terminal
Harbor Belt Line Railroad
San Diego and Arizona Eastern
Railway Company
SP SSW SDA

SYSTEM BOARD OF ADJUSTMENT No. 94
BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
AFL-CIO
SUITE 1000 PHELAN BLDG. · PHONE (415) 989-9956
760 MARKET STREET, SAN FRANCISCO, CALIFORNIA 94102

R. D. BRACKBILL, General Chairman
C. L. FROST, General Secy-Treasurer
S. R. STEVES, Vice General Chairman
G. H. ADAMS, Chairman Board Trustee
R. D. DEHART, Member Board Trustee
W. D. MARTIN, Member Board Trustee

1 Refer to File No. PFE-2482-GO

September 4, 1985

Mr. T. D. Walsh, Manager
Industrial Relations
Pacific Fruit Express
100 Valley Drive
Brisbane, California 94005

T.D.W.
SEP 12 1985

Dear Sir:

We hereby appeal from the decision of Mr. J. P. Se gurson, Assistant to Vice President and General Manager, Brisbane, California, claim in behalf of every employe who holds seniority on current PFE Seniority District 1 Roster account Carrier is wrongfully transferring their work to other companies' seniority rosters and/or exempt persons in violation of the Agreement and Carrier has also in violation of the Agreement laid off and is taking steps to further lay off Claimants through misapplication of the Agreement's Decline in Business provisions, to:

(1) Follow their position and work with their full rights, or

(2) be compensated at last assigned PFE rate or protected rate whichever is higher until normal R.R.B. retirement age, or

(3) be given, if they so elect, lump sum severance of 360 days' pay at last assigned rate or protected rate, whichever is the higher of the two.

The facts and Organization's contentions are as contained in Local Chairman J. M. Balovich's letter dated August 15, 1985 to Mr. J. P. Se gurson, copy attached. Kindly consider said letter embodied herein as part of this appeal.

Claim was denied by letter dated August 27, 1985 from Mr. Se gurson. His reasons for declination are not acceptable to the Organization and it is our contention that the February 7, 1965 and TOPS Agreement were violated.

Please acknowledge receipt and advise when we may discuss this claim in conference with you.

Yours very truly,

R. D. Brackbill

Def's
EXHIBIT NO. 4
9/18/88
T. LOPEZ

Exhibit I
634

Representing Employees of
Southern Pacific Transportation Company
Pacific Fruit Express Company
Northwestern Pacific Railroad
Pacific Motor Trucking Company
Los Angeles Union Passenger Terminal
Harbor Belt Line Railroad
San Diego and Arizona Eastern
Railway Company
170

SYSTEM BOARD OF ADJUSTMENT No. 94

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
AFL-CIO

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

R. B. BRACKBILL, General Chairman
C. L. FROST, General Secy-Treasurer
S. R. STEEVES, Vice General Chairman
G. M. ADAMS, Chairman Board Trustees
D. D. DEHART, Member Board Trustees
W. D. MARTIN, Member Board Trustees

Refer to File No. PFE-2482-GO

September 11, 1985

9/14/85

Mr. T. U. Walsh, Manager
Industrial Relations
Pacific Fruit Express
100 Valley Drive
Brisbane, California 94005

Dear Sir:

Referring to my letter of appeal to you dated September 4, file PFE-2482-GO, the attached document was inadvertently not forwarded with my letter, which is the Seniority Roster specifying named Claimants.

Yours very truly,

R. B. Brackbill

Attachment

cc: J. M. Balovich, LC

4 665

ATTACHMENT 2

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).

Position Number	Held By	Title	Department
166	G. E. Shorb	Special Investigator	Loading Svc.&
158	M. A. Gregory	Junior Claim Investigator	Freight Clai

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).

Position Number	Title	Hours & Rest Days	Rate
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.

Exhibit J
630

INSTRUCTIONS:

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

Manager Loading Services&Freight Claims

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

ATTACHMENT 3

SOUTHERN PACIFIC TRANSPORTATION COMPANY (WESTERN LINES)
and
PACIFIC FRUIT EXPRESS COMPANY

SOUTHERN PACIFIC TRANSPORTATION COMPANY (WESTERN LINES)
SPECIAL PREFERENTIAL BULLETIN NO. 4

PACIFIC FRUIT EXPRESS COMPANY
SPECIAL PREFERENTIAL BULLETIN NO. 23

TO ALL EMPLOYEES ON SENIORITY DISTRICT NO. 1 ROSTER, PACIFIC FRUIT EXPRESS COMPANY, BRISBANE, CALIFORNIA, AND EMPLOYEES ON SOUTHERN PACIFIC TRANSPORTATION COMPANY GENERAL OFFICES ROSTER, SAN FRANCISCO, CALIFORNIA, IN THE ORDER OF PREFERENCE SHOWN IN "C" BELOW:

(A) Pursuant to the provisions of Section 2(b), Article III 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, California, will be abolished close of shift September 30, 1985, and work of such positions will be transferred to the Accounting Department at the Southern Pacific Transportation Company at San Francisco, California:

POS. NO.	TITLE	DAILY RATE OF PAY	INCUMBENT
150	CLERK	98.84	SHIRLEY A. HAUFF
147	HEAD CONTROL CLERK	105.68	KATHY KOTRONAKIS
101	ASSISTANT CHIEF CLERK	109.92	GERI L. SUMNER
149	MISCELLANEOUS CLERK	99.99	JOHN H. BAUMANN
140	EQUIPMENT AUDIT CLERK	101.94	K. H. FENG
122	CLERK	94.70	R. C. SOLDAVINI
125	AAR CLERK	102.45	PATRICK F. NEWELL

RATES OF PAY INCLUDE COST-OF-LIVING ADJUSTMENT

(B) Effective October 1, 1985, the following seven permanent positions will be established on the San Francisco General Office Seniority Roster:

POS. NO.	TITLE	LOCATION	HOURS REST DAYS MEAL PERIOD	DAILY RATE	DURATION
		Manager, Accounts Payable			
		Addressee: Mr. C. M. Brasher, Room 508			
P-19	Voucher Clerk	Accounts Payable	7:15AM-3:50PM Sat & Sun 12:25PM-1:00PM	102.26	Permanent
		Manager, Payroll Accounting			
		Addressee: Mr. W. R. Hurtt, 475 Brannan Street, San Francisco			
TK-226	Timekeeper	Payroll	7:30AM-4:00PM Sat & Sun 12:20PM-12:50PM	105.55	Permanent
		Manager, Property Accounting			
		Addressee: Mr. S. Jackovich, Room 508			
J-18	Joint Facility Clerk	Contract and Joint Facility	7:30AM-4:05PM Sat & Sun 12:25PM-1:00PM	104.40	Permanent
		Manager, Revenue Accounting			
		Addressee: Mr. R. A. Finkes, 475 Brannan Street, San Francisco			
H-75	Sr. Tracing and Checking Clerk	Tracing	7:30AM-4:00PM Sat & Sun 12:30PM-1:00PM	99.87	Permanent
H-76	Sr. Tracing and Checking Clerk	Tracing	7:30AM-4:00PM Sat & Sun 12:30PM-1:00PM	99.87	Permanent
H-77	Sr. Tracing and Checking Clerk	Tracing	7:30AM-4:00PM Sat & Sun 12:30PM-1:00PM	99.87	Permanent
H-78	Sr. Tracing and Checking Clerk	Tracing	7:30AM-4:00PM Sat & Sun 12:30PM-1:00PM	99.87	Permanent

RATES OF PAY INCLUDE COST-OF-LIVING ADJUSTMENT

(C) PREFERENCE OF ASSIGNMENT WILL BE MADE ON THE FOLLOWING BASIS:

1. To employees who are incumbents of the positions 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 Southern Pacific Transportation Company, San Francisco General Offices Master Roster.

INSTRUCTIONS

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

ONLY ONE APPLICATION IS TO BE MADE COVERING POSITIONS ADVERTISED IN THIS BULLETIN.

WHEN MORE THAN ONE POSITION IS APPLIED FOR, BID SHALL BE JOINTLY ADDRESSED TO EACH DEPARTMENT INVOLVED AND SHALL INDICATE ORDER OF CHOICE FOR ALL POSITIONS FOR WHICH APPLICATION IS MADE.

COPIES OF APPLICATION SHALL BE ADDRESSED AND MAILED TO ADDRESSEE SHOWN UNDER DEPARTMENT CONCERNED. A COPY OF APPLICATION MUST ALSO BE SENT TO:

Mr. J. P. Segurson
Pacific Fruit Express Company
700 Valley Drive
Brisbane, California 94005

Time for filing applications for above positions closes at 5:00 PM, September 25, 1985.

J. P. Segurson
Asst. to Vice President & General Manager
Pacific Fruit Express Company

L. C. Chapman
Manager of Personnel Services
Southern Pacific Transportation Company

cc - Mr. R. B. Brackbill, General Chairman
Mr. J. M. Balovich, Local Chairman
Mr. W. L. Luque, Local Chairman (Lodge 890)
Mr. T. D. Walsh

SOUTHERN PACIFIC TRANSPORTATION COMPANY

SPECIAL PREFERENTIAL ASSIGNMENT NOTICE NO. 4(SPT)

SPECIAL PREFERENTIAL ASSIGNMENT NOTICE NO. 23(PFE)

ASSIGNMENTS EFFECTIVE October 1, 1985

To all clerical employees on Seniority District 1 Roster (PFE) and the San Francisco General Office Master Seniority Roster.

Assignment	Position	Hours of Assignment	Rate	Seniority Date
		ACCOUNTING DEPARTMENT		
		MANAGER, ACCOUNTS PAYABLE		
S. A. Hauff	P-19 Voucher Clerk	7:15AM-3:50PM	*$102.26	07-01-
		MANAGER PAYROLL ACCOUNTING		
K. Kotronakis	TK-226 Timekeeper	7:30AM-4:00PM	105.55	04-05-
		MANAGER PROPERTY ACCOUNTING		
G. L. Sumner	J-18 Joint Facility Clk.	7:20AM-4:00PM	104.40	03-13-
		MANAGER REVENUE ACCOUNTING		
J. H. Baumann	H-75 Sr. Tracing& Checking Clerk	7:30AM-4:00PM	99.87	04-20-
K. H. Feng	H-76 Sr. Tracing& Checking Clerk	7:30AM-4:00PM	99.87	10-14-6
R. C. Soldavini	H-77 Sr. Tracing& Checking Clerk	7:30AM-4:00PM	99.87	09-08-
P. F. Newell	H-78 Sr. Tracing& Checking Clerk	7:30AM-4:00PM	99.87	09-06-

*ALL RATES OF PAY INCLUDE $1.04 COST OF LIVING ADJUSTMENT:

"O"

L. C. Chapman

L. C. CHAPMAN, MANAGER PERSONNEL SERVICES

SOUTHERN PACIFIC TRANSPORTATION COMPANY

SOUTHERN PACIFIC TRANSPORTATION COMPANY
SPECIAL PREFERENTIAL ASSIGNMENT NOTICE NO. 3 (SPT)
SPECIAL PREFERENTIAL ASSIGNMENT NOTICE NO. 22 (PFE)

ASSIGNMENT EFFECTIVE October 1, 1985

To all clerical employees on Seniority District 1 Roster (PFE)
and the San Francisco General Office Master Seniority Roster

Assignment	Position	Hours of Assignment	Rate	Seniori Date
	LOADING SERVICES & FREIGHT CLAIMS			
	MANAGER, LOADING SERVICES & FREIGHT CLAIMS			
G. E. Shorb	058 Spec. Investigator	8:00AM-4:00AM Rest Days - Sat. & Sun.	*$108.55	10-21
M. A. Gregory	059 Spec. Investigator	8:00AM-4:00AM Rest Days - Sat. & Sun.	*$108.55	05-19

* ABOVE RATES OF PAY INCLUDE $1.04 COST-OF-LIVING ADJUSTMENT

E. J. Carey

E. J. Carey, Manager, Loading Services
& Freight Claims

September 16, 1985

T. D. Walsh
Manager Industrial

(415) 541-1052

T.D.W.
SEP 16 1985

PER-46 (TOPS)

(Brisbane BRAC
Repr. Employees)

Mr. R. H. Brackbill
General Chairman
Brotherhood Railway Clerks
760 Market Street, Suite 1000
San Francisco, CA 94102

Dear Sir:

Referring again to your September 4, 1985 appeal of case in PFE-2482-GO which was duly declined by Asst. to Vice President and General Manager, J. P. Segurson, under date of August 27, 1985:

Your getting so upset concerning this case at today's meeting has prompted me to write you this interim letter. Please accept my assurance that no diminution or trickdecreasing of the more complex claim you appealed was intended by my short September 13 acknowledgment's mentioning only the "misapplication of the Agreement's Decline in Business provisions." That phrase in the brief acknowledgment was followed by "etc," a Latinism meaning "and others" which in effect abbreviates all of the other items appealed by you in PFE-2482-GO.

However, maybe it was well you took issue with the point, as it gave me the useful opportunity to express to you and emphasize again the procedural defects on BRAC's side. In turn, you emoted earnestly that you deem the Segurson exceptions empty of meaning, a position you did not and cannot maintain in the absence of proof which BRAC has not advanced. Can you develop your argument on this facet with the most substantial proof that you may have for our next meeting herein on September 19, 1985 (10 A.M.). Meantime, please endeavor to narrow-down and distinctly specify who your actual claimants are in this case. The present slate of claimants is excessive!

In the latter respect, you are on very weak grounds arguing that you have properly filed for all names on the Seniority District 1 Roster. It is manifest from the attached that some (marked A) are resigned and no longer in employment relationship at all, others (B) are retired on disability or otherwise, others still (C) are holding exempt or excepted positions at present and so cannot be deemed working in your craft currently for claim purposes. The claim's contention that the Brisbane facility is being closed and the whole roster terminated is not true on either count.

Br. Brackbill, you well know, Brisbane has only been the main place for this

Exhibit K

Seniority District 1 Roster three years during which time some members were working in San Francisco and others at Bayshore temporarily. Prior to that time, the main group in the roster worked at 116 New Montgomery Street, San Francisco, 85 Second Street, San Francisco, 111 Pine Street, San Francisco, and so on at other San Francisco addresses. Further, notwithstanding your expressions to the contrary, this office has no plan to cancel or eliminate the roster of District 1, although the main location and/or decline of activity thereof may be subject to change as they have in the past.

Accordingly, shall appreciate enhanced efforts by BRAC to define its real contentions herein, to tidy up its position and restrain its runaway rhetoric when you meet with my representatives and me about PFE-2482-GO on September 19, 1985. If you do such homework well and efficiently, am sure we can make progress and perhaps achieve conclusive handling thereof without significant delay or disappointing results. See you on the 19th.

Yours sincerely,

ZDW 9/16/85

T.D.W.
SEP 16 '85

PACIFIC FRUIT EXPRESS COMPANY

FORM 401 CLERKS SENIORITY ROSTER JANUARY 1,1985

DISTRICT 1

C.	1 CLARK E. E.	568-30-5605	MGR CUSTOMER RELATIONS	BRISBANE	05/03/4
C.	2 BATSON L. O.	564-20-0563	DSM/FLEET MANAGEMENT	BRISBANE	05/13/4
B	3 JENKINS J. A.	552-32-2191	EARLY RETIREMENT	BRISBANE	01/15/4
B.	4 SHEA T. E	565-26-9102	DISABILITY RETIREMENT	BRISBANE	04/15/4
C.	5 WALSH T. D.	546-40-7936	MGR.INDUSTRIAL RELATIONS	BRISBANE	12/15/4
B.	6 VACCAREZZA R. R.	550-30-6290	DISABILITY RETIREMENT	BRISBANE	03/09/4
B.	7 HOLMES W. O.	487-22-3405	EARLY RETIREMENT	BRISBANE	07/15/4
	8 GRIGGS J. W.	567-22-5603	EARLY RETIREMENT	BRISBANE	09/03/4
(A)	9 CHAPMAN R. A.	572-38-5016	FURLOUGHED	BAKERSFLD	03/11/4
C-1/10	FERNANDEZ J. J.	559-32-0544	CHIEF CLERK	BRISBANE	01/11/4
C-1/11	HUNTINGTON R. H.	553-32-3367	GEN CAR DISTRIBUTOR	BRISBANE	05/15/5
	12 SUMNER G. L.	549-42-1127	ASST. CHIEF CLERK	BRISBANE	03/13/5
B.	13 HART A. M.	551-36-2600	DISABILITY RETIREMENT	BRISBANE	03/24/5
	14 LANG JR A. J.	521-38-3850	ASST. CHIEF CLERK	BRISBANE	09/26/5
	15 SHORB G. E.	207-22-0351	SPECIAL INVESTIGATOR	BRISBANE	10/21/5
A.	16 PETRUCCI R. J.	567-40-3698	ASST.MGR.CUST.DISTRB TN.	BRISBANE	11/17/5
	17 BAUMANN J. H.	561-40-1421	MISC CLERK	BRISBANE	04/30/5
A.	18 AUTREY D. M.	528-32-4488	CONTROLLER	BRISBANE	10/28/5
	19 NEWELL P. F.	726-14-9481	AAR CLK	BRISBANE	09/06/5
C-1/20	CARROLL C. C.	465-50-4056	CHIEF CLERK/DISBURSEMENTS	BRISBANE	07/22/5
	21 SOLDAVINI R. C.	562-46-1034	CHIEF CLERK	BRISBANE	09/08/5

PACIFIC FRUIT EXPRESS COMPANY

FORM 401 CLERKS SENIORITY ROSTER JANUARY 1,1983

DISTRICT 1

	22	KOTRONAKIS M.	557-62-5262	HEAD CONTROL CLERK	BRISBANE 04/05/81
	23	TU S. M.	559-54-5736	GENERAL CLERK	BRISBANE 05/18/81
	24	ARMSTRONG K. E.	442-40-7709	CLERK	BRISBANE 12/17/81
	25	KAUFF S. A.	572-48-8252	JR. CLAIMS CLERK	BRISBANE 07/01/82
	26	FENG K. H.	568-74-3513	AUDIT BILL CLERK	BRISBANE 10/12/82
C-1	27	KIM J. J	567-80-6526	SPECIAL ACCOUNTANT	BRISBANE 11/11/82
	28	BOUTOURLIN B. M	555-47-1965	SECRETARY	BRISBANE 12/16/82
9.	29	SMITH C. T.	541-58-3137	SPECIAL ACCOUNTANT	BRISBANE 03/28/83
9.	30	JONES M. I	545-60-7219	SECRETARY	BRISBANE 03/28/83
	31	ROVER J. J.	437-64-0606	MISCELLANEOUS CLERK	BRISBANE 04/03/83
	32	GREGORY M. A	553-90-6493	MISCELLANEOUS CLERK	BRISBANE 05/18/83
9.	33	TALAMANTE R.	565-76-2164	RATE ANALYST	BRISBANE 08/07/73
	34	LORENTZ J.	553-60-7916	JR. CLAIMS INVESTIGATOR	BRISBANE 10/13/73
C-1	35	ZANZI P. A.	565-80-3855	CONTRACT COORDINATOR	BRISBANE 02/19/76
C-1	36	FENG R. C.	566-80-0092	ASST CONTROLLER	BRISBANE 03/25/76
	37	BALOVICH J. M.	557-50-4062	RATE SERVICE CLERK	BRISBANE 08/13/71
	38	FLORES J. E.	559-50-5448	CLERK	BRISBANE 07/05/72
C.	39	BRUMMETT J. A.	566-76-9509	CAR DISTRIBUTOR	BRISBANE 10/23/74
	40	ARRIAGA J. L.	572-11-2477	FURLOUGHED	BRISBANE 01/19/81
	41	MAXWELL R. L.	546-42-7673	CAR DISTRIBUTOR	BRISBANE 12/18/81
9.	42	KELROY R. E.	563-54-2791	FURLOUGHED	BRISBANE 01/20/82

September 20, 1985

T. D. Walsh
Manager Industrial

(415) 541-1052

PER-46 TOPS

(Brisbane BRAC represented employees.)

T.D.W.
SEP 20 1985

Mr. R. H. Brackbill
General Chairman (3)
Brotherhood Railway Clerks
760 Market Street, Suite 1000
San Francisco, CA 94102

Dear Mr. Brackbill:

In further reference to your September 4, 1985 appeal in Case PFE-2482-GO of decision duly rendered by Assistant Vice President and General Manager J. P. Segurson on date of August 27, 1985 wherein he declined the J. M. Balovich's claim for Seniority District 1:

I wish to assure you this company lives up to its agreements and the statements to the contrary by you and your representative at yesterday's meeting are selfserving assertions empty of probative sugstance. Was somewhat disappointed such statements would be voiced at all but more so that BRAC did not present input of any "pith or moment" to support the weighty claim appealed in your PFE 2482-GO case.

The company on the other hand respectfully but firmly directed your attention to the following facts re claimants' status as reflected A, B, C in the Seniority District 1 Roster that was attached to the September 16, 1985 letter herein:

1. All of these claimants marked A are long since resigned from PFE or otherwise out of service (See Attachment 1 next under.)

2. Claimants marked B thereon are retired on disability or otherwise and are thus out of active service.

3. C personnel represent incumbents of exempt and/or excepted positions, not proper claimants, and all now hold jobs. Also, I have marked as C-1, all of the C's currently in course of transfer to SPT and leaving PFE for jobs over there at the end of this month.

4. Preferential Bulletins for transfer to SPT are on the Board for those marked D, they being the prior incumbents, who have already filed bid slips to follow their jobs in all cases. Beginning in October the D's will have been transferred under terms of the Agreement. (See Preferential Bulletins attached.)

"H" 8.1

5. Except for Balovich, Flores and Arriaga, who are at present Business Decline layoffs, all marked E are undisturbed on their currently assigned longterm positions. They are being paid correctly therein and they have not been in any way adversely affected insofar as has been determined by you and BRAC.

Therefore, Mr. Brackbill, all your herein claimants have clearly been accounted for in A through E, and none of them have been shown by you to be aggrieved, nor do they have a claim in the sense of "a valid demand for something they are not getting to which they are entitled under the Agreement rules." They have no such valid demand at all, hence no claim and no grievance exist. Contrary to your criticism of PFE handling, the limited layoffs in effect were correctly handled when the Decline in Business clause, the twenty (20) day notice called for in TOPS 4(a) and under provisions of the January 7, 1980 Agreement was properly given covering the pending PFE/SPT transfers and the positions being transferred therein were duly advertised by the Preferential Bulletin attached in accordance with TOPS and the terms of the PFE/BRAC Agreement which are controlling. Your rather brash broadside charging numerous rule infractions must then be summarily dismissed since you have not pointed, nor can you point to a specific provision, that have been contravened.

Regarding BRAC's repeated statements: "PFE is being discontinued" and "this is all part of the merger," I have advice from my PFE management that was confirmed to me again only yesterday, "PFE as a corporate entity is slated to continue for the foreseeable future." As tothis merger reference, there is no pending "merger" at all of PFE and essentially you and your side are indulging in a digressive tactic pointing to the merger planned between two other companies, the SP and Santa Fe railroads. You all should be more mature then to draw an outside merger as a "red herring" across the progress of this case. Realism requires we examine same within the confines of the confronting claim and circumstances. This we have done and you have failed to make a case.

In view of all of the foregoing, the decision of Assistant Vice President and General Manager Segurson herein seems to have been judicious and there is no basis upon which it can be disturbed by me. Accordingly your appeal in Case PFE 2482-GO is hereby respectfully dismissed and declined for reasons stated and set forth above.

Yours cordially,

T.D. Walsh

TDW/bb

T.D.W.
SEP 20 1985
633

ATTACHMENT 1

PAGE NO. 00001
2/03/88

PACIFIC FRUIT EXPRESS COMPANY

FORM 401 CLERKS SENIORITY ROSTER JANUARY 1,1987

* DISTRICT 1

C.	1 CLARK E. E.	566-30-8605	MGR CUSTOMER RELATIONS	BRISBANE	05/03/43
C.	2 BATSON L. O.	564-20-0583	DGM/FLEET MANAGEMENT	BRISBANE	05/13/44
	3 JENKINS J. A.	552-32-2191	EARLY RETIREMENT	BRISBANE	01/15/45
B.	4 SHEA T. E	565-26-9102	DISABILITY RETIREMENT	BRISBANE	02/15/46
C.	5 WALSH T. D.	546-40-7936	MGR INDUSTRIAL RELATIONS	BRISBANE	12/15/47
3.	6 VACCAREZZA R. R	550-30-6250	DISABILITY RETIREMENT	BRISBANE	03/09/48
3.	7 HOLMES W. O.	487-22-3405	EARLY RETIREMENT	BRISBANE	07/15/48
3.	8 GRIGGS J. W.	567-22-5803	EARLY RETIREMENT	BRISBANE	09/09/48
)	9 CHAPMAN R. A.	572-38-5016	FURLOUGHED	BAKERSFLD	03/11/49
2/1.	10 FERNANDEZ J. J.	559-32-0544	CHIEF CLERK	BRISBANE	02/11/49
2/1.	11 HUNTINGTON R. H.	553-32-3367	GEN CAR DISTRIBUTOR	BRISBANE	05/15/50
)	12 SUMNER G. L.	549-42-1127	ASST. CHIEF CLERK	BRISBANE	03/13/51
3.	13 HART A. M.	551-36-2600	DISABILITY RETIREMENT	BRISBANE	03/14/52
E.	14 LANG JR A. C.	561-32-3330	ASST. CHIEF CLERK	BRISBANE	09/29/52
)	15 SHORB G. E.	207-22-0351	SPECIAL INVESTIGATOR	BRISBANE	10/21/53
1.	16 PETRUCCI R. J.	567-40-3693	ASST.MGR.CUST.DISTRB TR.	BRISBANE	11/17/53
)	17 BAUMANN J. M.	561-40-1421	MISC CLERK	BRISBANE	04/30/54
2.	18 AUTREY D. M.	529-32-4483	CONTROLLER	BRISBANE	10/18/56
)	19 NEWELL P. F.	726-14-9491	AAR CLK	BRISBANE	09/06/57
2/20	CARROLL C. C.	465-50-4058	CHIEF CLERK/DISBURSEMENTS	BRISBANE	07/22/58
1	21 SILDAVINI R. C.	562-46-1034	CHIEF CLERK	BRISBANE	09/08/59

PACIFIC FRUIT EXPRESS COMPANY

FORM 401 CLERKS SENIORITY ROSTER JANUARY 1,1985

DISTRICT 1

22	KOTRONAKIS M.	557-62-5262	HEAD CONTROL CLERK	BRISBANE	02/05/81
23	TU S. M.	559-54-5736	GENERAL CLERK	BRISBANE	05/18/82
24	ARMSTRONG K. E.	442-40-7709	CLERK	BRISBANE	12/17/83
25	KAUFF S. A.	572-48-6252	JR. CLAIMS CLERK	BRISBANE	07/01/85
26	FENG K. H.	568-74-3513	AUDIT BILL CLERK	BRISBANE	10/12/83
27	KIM J. J.	567-80-6526	SPECIAL ACCOUNTANT	BRISBANE	11/11/83
28	BOUTOURLIN B. M.	556-47-1965	SECRETARY	BRISBANE	12/19/83
29	SMITH C. T.	541-58-3137	SPECIAL ACCOUNTANT	BRISBANE	03/28/84
30	JONES M. I.	528-80-7219	SECRETARY	BRISBANE	03/28/84
31	ROVER J. J.	497-64-0606	MISCELLANEOUS CLERK	BRISBANE	04/03/84
32	GREGORY M. A.	553-90-6458	MISCELLANEOUS CLERK	BRISBANE	05/18/85
33	TALAMANTE R.	565-76-2164	RATE ANALYST	BRISBANE	08/07/69
34	LORENTZ J.	553-60-7516	JR. CLAIMS INVESTIGATOR	BRISBANE	10/13/43
35	ZANZI F. A.	565-60-3858	CONTRACT COORDINATOR	BRISBANE	02/19/70
36	FENG R. C.	566-60-0092	ASST CONTROLLER	BRISBANE	08/28/70
37	BALOVICH J. A.	557-90-4061	RATE SERVICE CLERK	BRISBANE	09/13/71
38	FLORES J. E.	553-50-5448	CLERK	BRISBANE	07/05/72
39	BRUMMETT J. A.	566-76-5509	CAR DISTRIBUTOR	BRISBANE	10/23/74
40	ARRIAGA J. L.	572-11-2477	FURLOUGHED	BRISBANE	01/16/81
41	MAXWELL R. L.	526-40-7673	CAR DISTRIBUTOR	BRISBANE	12/19/81
42	MCELROY R. E.	566-54-2791	FURLOUGHED	BRISBANE	01/30/82

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. F. Segurson, Asst to VP & GM

Attachment

Exhibit L

67

Brisbane, October 2, 1985

PACIFIC FRUIT EXPRESS COMPANY
BRISBANE, CALIFORNIA

SENIORITY DISTRICT 1
CLERKS' ABOLISHMENT NOTICE NO. 32

ALL CONCERNED:

The following positions are abolished at close of shift October 9, 1985:

Position No.	Position	Location	Incumbent	Seniority
136	Misc. Clerk	Brisbane	Armstrong, K.E.	12-17-63
133	Misc. Clerk	Brisbane	Lorentz, J.	10-13-69
156	Misc. Clerk	Brisbane	Royer, J.J.	4- 3-69
141	Misc. Clerk	Brisbane	Tu, S.M.	5-15-62

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, Items 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.

J. P. Segurson
Asst. to Vice President & General Manager

cc - Mr. R. B. Brackbill (2)
General Chairman/BRAC

Mr. J. M. Balovich
Local Chairman Lodge 504

Mr. T. D. Walsh

672

Representing Employees of
Pacific Transportation Company
Fruit Express Company
Western Pacific Railroad
Pacific Motor Trucking Company
Los Angeles Union Passenger Terminal
Stockton Belt Line Railroad
San Diego and Arizona Eastern
Railway Company

SYSTEM BOARD OF ADJUSTMENT No. 94

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
AFL-CIO

SUITE 1000 PHELAN BLDG. • PHONE (415) 989-9886
760 MARKET STREET, SAN FRANCISCO, CALIFORNIA 94102

B. B. BEACHAM, General Chairman
C. L. BROST, General Vice-Chairman
S. E. STEVEL, Assistant Vice-Chairman
E. J. DEVINE, Vice-General Chairman
G. M. ADAMS, Chairman Board of Trustees
D. D. DEMAST, Member Board of Trustees
W. D. MARTIN, Member Board of Trustees

Refer to
File No. PFE-2482(GO)

October 11, 1985

Mr. T. D. Walsh
Manager Industrial Relations
Pacific Fruit Express Company
100 Valley Drive
Brisbane, CA 94005

T.D.W.
OCT 11 1985

Dear Mr. Walsh:

With reference to your letter of September 20, 1985, File Per-46 (TOPS, etc.), relative to employees we represent at PFE headquarters, Brisbane, California, for consideration due them per Local Chairman J. M. Balovich's claim letter of August 15, 1985 embodied herein by reference.

Have taken note of your position that the C-1 and D employees transferred to SPT have been provided for under the agreement and I should hope so, but this PFE-SPT transfer covered only 12 claimants and you indicate the B's another five (5) are retired, plus the A's numbereing eight (8) are resigned or in one case dead. These numbers 12, 5 and 8 total only 25 out of a Seniority District 1 roster of forty-two (42), leaving seventeen (17) that are being denied their options under TOPS and our implementing agreement of January 7, 1980.

This handling is not nearly what the contract requires so please be advised in accordance with Rule 23, that your decision in this case is not accepted and the matter shall be progressed further to a just conclusion.

Yours very truly,

R. B. Beacham

cc: Mr. J. M. Balovich
Local Chairman Lodge 504

T.D.W.
OCT 11 1985

UP'S
EXHIBIT NO. 6
9/10/85
T. LOPEZ

Exhibit M
6

Brisbane, October 2, 1985

PACIFIC FRUIT EXPRESS COMPANY
BRISBANE, CALIFORNIA

SENIORITY DISTRICT 1
CLERKS' ABOLISHMENT NOTICE NO. 32

ALL CONCERNED:

The following positions are abolished at close of shift October 9, 1985:

Position No.	Position	Location	Incumbent	Seniority
136	Misc. Clerk	Brisbane	Armstrong, K.E.	12-17-63
133	Misc. Clerk	Brisbane	Lorentz, J.	10-13-69
156	Misc. Clerk	Brisbane	Royer, J.J.	4- 3-69
141	Misc. Clerk	Brisbane	Tu, S.M.	5-15-62

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, Items 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.

J. P. Segurson
Asst. to Vice President & General Manager

cc - Mr. R. B. Brackbill (2)
General Chairman/BRAC

Mr. J. M. Balovich
Local Chairman Lodge 504

Mr. T. D. Walsh

67

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

J. M. Balovich Lodge No. 504

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

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

D/S
EXHIBIT NO. 9
9/8/85
T. LOPEZ

Dear Sir:

On October 1, 1985, and following, Mr. Thomas D. Ellen discontinued and abolished our PFE operations at the headquarters facility here in Brisbane, CA (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 the transfer. The other eight employees affected were thus illegally and improperly shut out from their right to follow their jobs, then taken from Seniority District 1 Roster to the General Offices (SPT) Roster, namely:

Name of Claimant	Position Held	Seniority Date	Date Severed
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. E. M. Boutcurlin	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. Reyes	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 listed 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

-2-

Brisbane Offices with its General Offices in San Francisco. Claimants were barred from following their work, a basic agreement right recognized by all.

2. Secondly, and more seriously, both the February 7, 1965 National Agreement, and the January 7, 1980 TOPS Agreement directly provide in the clearest 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,

J. M. [illegible]

3

673

P-6-21
November 5, 1985

Mr. J. M. Balovich, Local Chairman
BRAC Lodge 504
81 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 ungenuine, 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,

R O Black

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

Exhibit O
sm Tu
5/1/87

677

1 Refer to
File No PFE-2489-GO

December 16, 1985

Mr. C. E. Lamb, Manager
Industrial Relations
Pacific Fruit Express Company
One Market Plaza, Room 304
San Francisco, California 94105

Dear Sir:

We hereby appeal from the decision of Mr. L. O. Batson regarding claim in behalf of the eight (8) clerks named below who were employed at the Brisbane General Office prior to their improper release from service:

K. E. Armstrong 160 Manor Ave SF 94112
J. M. Balovich P.O. Box 1893, Fontana CA 92334
MS B. M. Boutourlin 7615 Geary #301 SF 94121
MS J. E. Flores 1490 39th Ave. SF 94122
A. D. Lang 345 Miller Ave SSF 94080
MS J. Lorentz 1065 Juanita Dr W C 94595
J. J. Royer 1390 Market St. #726 SF 94102
MS S. M. Tu 1697 Hickory Ave. San Leandro 94579

The facts and Organization's contentions are as contained in Local Chairman J. M. Balovich's letter dated October 25, 1985 to the former designated officer, J. P. Segurson, copy attached. Kindly consider said letter embodied herein as part of this appeal.

Claim was denied by letter dated November 5, 1985 from Mr. L. O. Batson. His reasons for declination are not acceptable to the Organization and it is our contention that Rules 9, 14, and 19, among others, of the current Clerk's Agreement were violated.

Please reference enclosed letter of February 6, 1980 by W. R. Denton wherein he references the January 7, 1980 Agreement between B.R.A.C. and PFE making PFE a party to the TOPS Agreement, specifically the language "We are now in a position to use the new B.R.A.C. Agreement...to bring such work under our jurisdiction".

Continued on Page 2....

Exhibit "P"

PFE-2489-GO

Carrier fails to comply with the January 7, 1980 Agreement and the intent of the February 6, 1980 letter in connection with claim herewith submitted.

Please acknowledge receipt and advise when we may discuss this claim in conference with you.

Very truly yours,

R. B. Brickhill

Attachments

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

525 WEST REMINGTON DRIVE
SUITE ONE HUNDRED
SUNNYVALE, CALIFORNIA 94087
(408) 736-6963

2300 EL CAMINO REAL
ONE HUNDRED TEN
PALO ALTO, CALIFORNIA 94306
(415) 941-6963

PLEASE RESPOND TO
Palo Alto

October 18, 1985

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

Def's
EXHIBIT NO. 8
9/8/88
T. LOPEZ

Exhibit I
S M Tu
5/11/87

Exhibit Q

E. U

LEE J. KUBBY
ATTORNEY AT LAW

525 WEST REMINGTON DRIVE
SUITE ONE HUNDRED
SUNNYVALE, CALIFORNIA 94087
(408) 736-4063

2300 EL CAMINO REAL
ONE HUNDRED TEN
PALO ALTO, CALIFORNIA 94306
(415) 941-5563

PLEASE RESPOND TO:
Palo Alto

January 20, 1986

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

D4'J
EXHIBIT NO. 9
9/8/88
I. LOPEZ

EXHIBIT A

Exhibit R 681

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

R. B. BRACKILL, General Chairman
C. L. FROST, General Secy-Treasurer
L. R. STEVER, Vice General Chairman
W. B. MARTIN, Chairman Board Trustee
R. D. DEHART, Member Board Trustee
L. D. BAKER, Member Board Trustee

SYSTEM BOARD OF ADJUSTMENT No. 94
BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
AFL-CIO
SUITE 1000 PHELAN BLDG. • PHONE (415) 989-0696
760 MARKET STREET, SAN FRANCISCO, CALIFORNIA 94102

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 nandling 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. Brackill

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

IXI'S
EXHIBIT NO. 15
9/8/88
T. LOPEZ

Exhibit S

In the Matter of the Arbitration Between

PACIFIC FRUIT EXPRESS COMPANY

and

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

OPINION AND AWARD
(Transfer of work-
separation allowance)

The hearing in the above matter, upon due notice, was held in Stamford, Connecticut on August 6, 1987, before I.M. Lieberman, serving as Chairman of the Board of Arbitration, in accordance with the agreement between Pacific Fruit Express and Brotherhood of Railway, Airline and Steamship Clerks dated July 15, 1987. The parties waived the tripartite provisions of the Agreement in favor of a single arbitrator.

The case for Pacific Fruit Express, hereinafter referred to as the Carrier, was presented by K. R. Peifer, Assistant Vice President, Labor Relations. The case for the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, herein after referred to as the Organization, was presented by R.B. Brackbill, General Chairman.

At the hearing the parties were offered full opportunity to offer evidence and argument. Both parties submitted documents with the substance of evidence in the case together with oral arguments to supplement that documentation:

Exhibit T
683

THE ISSUE

From the entire record the issue may be posed as follows:

> "Did the Carrier violate the Agreement by failing to grant Claimants the right to follow work from the Pacific Fruit Express Company to the Southern Pacific Transportation Company or, in lieu thereof, grant Claimants separation allowances as provided for in the January 7, 1980 Agreement?"

DISCUSSION

The Carrier herein during this period was a wholly owned subsidiary of the Southern Pacific Transportation Company. On August 15, 1985 following an article which appeared in the press the Organization filed a claim on behalf of all the employees (42) on the Pacific Fruit Express Seniority District I Roster alleging that Carrier was wrongly transferring their work to other companies in violation of the Agreements and also was taking steps to lay off all the Claimants through misapplication of the Agreement's decline in business provisions.

In the Claim the Organization insisted that the employees follow their position and/or work with their full rights and be compensated at their last assigned rate or protected rate, which ever is higher, until normal retirement age, or be given, if the employee so elects, a lump sum severance of 360 days pay at their last assigned or protected rate, which ever is the higher. The organization alleged that Carrier was taking steps to

discontinue the Perishable Freight Division of its activities, namely the Carrier herein, and was giving away the work of Claimants.

Carrier insisted that the Claim in question herein was premature and anticipatory. Further, Carrier alleged that its actions were in total concord with the provisions of the applicable Agreements of 1971 and the Special Agreement of January 7, 1980. By letter dated September 9, 1985, Carrier gave notice under those Agreements (20 days notice required) of its intent to abolish a number of positions in its Brisbane Headquarters and to transfer the clerical work of those positions to Southern Pacific Transportation Company. Nine employees were offered the opportunity to transfer with their positions. The remaining positions were abolished. Nine positions were created at the Southern Pacific Transportation Company in its San Francisco General office. All employees who were not offered the opportunity to follow their work when the Brisbane office was subsequently closed, were furloughed, thus triggering the claims herein.

Carrier relies in part on the decline in business of this Carrier. Specifically, Carrier notes that the business decline

was caused by the competition of the trucking industry to the particular speciality of this Carrier. In that context it is noted that the 1971 Agreement between the parties provided for a formula to determine decline in business which set forth that a decline in business in excess of 5% of the average percentage of both gross operating revenue and net ton miles in any 30 day period, compared with the average of the same period for the years 1968 and 1969 would permit a reduction in permanent positions and employees.

It is noted that that formula was amended in the course of the January 7th 1980 Agreement between the parties (specifically Pacific Fruit Express) which specified that the percentages would be compared to 1978 and 1979 and that the old formula would be no longer applicable. In accordance with the new formula, Carrier submitted information concerning its activities during 1985 as compared to the averages of 1978 and 1979. Those figures on a month by month basis indicated declines ranging from January of 1985 where there was a 32.5% decline to December of 1985, where there was an 85.18% decline. It is evident from an analysis of the figures that there was a precipitous decline in Carrier's revenue and ton-miles during the year 1985. In fact the figures show that the least percentage of decline during the 12 month