WEDNESDAY, APRIL 12, 1989 MORNING SESSION

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

COUNSEL PLEASE COME FORWARD AND STATE THEIR APPEARANCES.

MR. BOLIO: GOOD MORNING, YOUR HONOR.

WAYNE M. BOLIO FOR DEFENDANTS SOUTHERN PACIFIC TRANSPORTATION COMPANY, PACIFIC FRUIT EXPRESS; AND MAKING A SPECIAL APPEARANCE ON BEHALF OF THE ATCHINSON, TOPEKA, SANTA FE.

MR. DARBY: JAMES DARBY, YOUR HONOR, FROM ROCKVILLE, MARYLAND, REPRESENTING THE DEFENDANT UNION IN THIS MATTER.

MS. KING: KATHLEEN KING, YOUR HONOR, REPRESENTING THE DEFENDANT UNION.

MR. KUBBY: LEE KUBBY FOR THE PLAINTIFFS, YOUR HONOR.

THE COURT: ALL RIGHT.

SO THIS IS YOUR MOTION --

MR. KUBBY: YES, YOUR HONOR.

THE COURT: -- FOR RECONSIDERATION, COUNSEL.

IF WE LOOK AT IT, ESSENTIALLY IT'S A -- THERE'S TWO ASPECTS. ONE IS THE DECISION OF THE COURT VERSUS SOUTHERN PACIFIC, AND THE OTHER IS WITH REFERENCE TO THE UNION.

YOU MIGHT ADDRESS BOTH OF THOSE IN TERMS OF WHY I SHOULD BE RECONSIDERING THIS, AND WHAT IS THE GROUNDS FOR YOUR SEEKING THE COURT TO RECONSIDER ITS DECISION.

MR. KUBBY: OKAY. ON THE UNION CLAIM, YOUR HONOR, THE UNION HAS CITED... GALINDO VERSUS STOODY, WHICH IS A --

THE COURT: YES.

MR. KUBBY: -- NINTH CIRCUIT CASE.

AND IN THE GALINDO CASE AT PAGE 1510... THE PROPOSITION IS JUST CLEARLY AND SUCCINCTLY SET FORTH. IN PARAGRAPH 9 IT SAYS: IN SUM, A FAIR REPRESENTATION CLAIM BASED ON HOW A GRIEVANCE IS PRESENTED TO AN ARBITRATOR ACCRUES WHEN THE EMPLOYEE LEARNS OF THE ARBITRATOR'S DECISION.

SO THE WHOLE QUESTION OF THE STATUTE OF LIMITATIONS AGAINST THE UNION IS AN ACCRUAL QUESTION.

THE COURT: WELL, THE PURPOSE OF THAT OF COURSE IS TO IN EFFECT GIVE AN INCENTIVE TO HAVE THESE MATTERS HEARD BY ARBITRATION --

MR. KUBBY: YES.

THE COURT: -- RATHER THAN IN LITIGATION.

BUT THEN THE QUESTION THEN IS -- I TAKE IT YOUR POSITION -- WHETHER OR NOT MR. DARBY ADDRESSED THIS -- IS THAT MAYBE GALINDO DOESN'T APPLY, IN THAT THE ISSUES THAT YOU'RE SEEKING TO LITIGATE HERE COULD NOT HAVE BEEN HEARD BY THE ARBITRATOR ANYWAY.

MR. KUBBY: WELL, THE -- THE -- THIS ACTION IS AN ACTION REGARDING THE WRONGFUL TERMINATION OF MRS. TU.

THE -- THE CLAIM MADE BY THE UNION THROUGH THE ARBITRATION PROCEDURE WAS THAT MRS. TU, ALONG WITH OTHERS, WAS

WRONGFULLY TERMINATED, SO THAT THE PROCESS OF THAT ARBITRATION INVOLVED THE SAME ISSUES AS THIS MATTER.

NOW, THE PLAINTIFFS WHEN THEY FIRST FILED THEIR COMPLAINT IN THIS MATTER SPECIFICALLY LIMITED THEIR ACTION TO AN INDEPENDENT CONTRACT, NOT A -- A.... IT WAS BASED UPON A STATE COURT ACTION, AND WAS BASED UPON A PRIVATE CONTRACT BETWEEN THE EMPLOYER AND THE EMPLOYEE.

AND IT WAS NOT UNTIL THE CASE WAS REMOVED TO THIS COURT FROM THE STATE COURT, AND THAT THIS COURT RULED THAT IT NECESSARILY IMPLICATED THE COLLECTIVE BARGAINING UNIT, THAT THE COMPLAINT WAS AMENDED.

SO THE ACTION AS IT WAS INITIALLY FRAMED, THE UNION WOULD NOT HAVE BEEN INVOLVED IN AT ALL, BECAUSE IT WAS A PRIVATE CONTRACT ACTION.

BUT WHEN -- WHEN THE COURT RULED THAT THE COLLECTIVE BARGAINING AGREEMENT WAS NECESSARILY IMPLICATED, AND THE COMPLAINT WAS AMENDED, AND AT THE SAME TIME THE PLAINTIFF WAS FIRST NOTIFIED THAT AN ARBITRATION HAD IN FACT BEEN HELD, AND THAT THE ARBITRATOR HAD RULED AGAINST THE CLAIM OF THE UNION, THE UNION WAS BROUGHT IN UNDER SIPES ON THIS CLAIM.

SO THAT IT IS, I THINK, A QUESTION OF WHEN THE ACTION AGAINST THE UNION ACCRUED. AND ACCORDING TO THE AUTHORITIES I BELIEVE IN THIS CIRCUIT IT COULD NOT --

THE COURT: GALINDO --

MR. KUBBY: -- CONCLUDE UNTIL THE ARBITRATION WAS

COMPLETED.

THE COURT: BUT THE POINT IS THAT IF IT IS SOMETHING DIRECTED AT AN ISSUE THAT COULDN'T BE HEARD BY THE ARBITRATOR THAT THEN THE WHOLE PURPOSE OF GALINDO IS -- IS GONE.

BECAUSE GALINDO -- IT'S AN INCENTIVE FOR ARBITRATION, OR IF THERE'S NOTHING TO BE ARBITRATED.

BUT YOU'RE -- YOU'RE ARGUING THAT THE ARBITRATION DID IN FACT COVER THE ISSUES IN THIS SUIT.

MR. KUBBY: THE WRONGFUL TERMINATION OF MRS. TU, YES.

THE COURT: ALL RIGHT.

WHAT ABOUT THE ISSUE OF -- WHY IS IT ANY DIFFERENT NOW THAN THE ARGUMENTS YOU PRESENTED BEFORE ON THE MOTION WITH REFERENCE TO --

MR. KUBBY: WELL, WE DIDN'T FOCUS IN ON THAT.

AND WITH THE COURT'S RULING IT WAS MENTIONED, BUT I DON'T BELIEVE THE ATTENTION WAS DIRECTED TO THE STATUTE OF LIMITATIONS QUESTION. IT WASN'T UNTIL THE COURT RENDERED ITS DECISION THAT --

THE COURT: IT'S ALWAYS THERE.

MR. KUBBY: WELL, IT WAS THERE, AND IT WAS ARGUED; BUT IT WASN'T -- BUT IT WASN'T -- IT WASN'T SPECIFICALLY FOCUSED UPON. AND THIS IS AN OPPORTUNITY TO FOCUS ON THAT ISSUE.

AND IT'S MY BELIEF THAT WE'RE NOT HERE ON A COMMON LAW PLEADING ENDEAVOR, WE'RE SEARCHING FOR JUSTICE AND RIGHT.

THE COURT: THAT'S WHY WE SHOULD GET TO THE MERITS OF

EVERYTHING.

MR. KUBBY: YES, THAT'S RIGHT. WE SHOULD.

THE COURT: WE DID IT ONCE ON THE RAILROAD, WHY SHOULD WE DO IT AGAIN?

MR. KUBBY: WE DIDN'T GET TO THE MERITS. WE HAVE NEVER GOTTEN TO THE MERITS.

THE QUESTION ON SUMMARY --

THE COURT: I GRANTED SUMMARY JUDGMENT.

MR. KUBBY: WELL, BUT THE QUESTION ON THE SUMMARY JUDGMENT ISSUE WAS: WAS THERE ANY -- WAS THERE ANY DISPUTE, AND WAS THERE --

THE COURT: RIGHT.

MR. KUBBY: -- ANY QUESTION?

AND THERE WAS A QUESTION, AND THERE STILL IS A QUESTION THAT IS TO BE RESOLVED.

THE COURT: MY QUESTION IS: WHAT ARE YOU SAYING THAT WASN'T ALREADY COVERED BEFORE?

MR. KUBBY: I'M SAYING THAT THE -- THAT THE ISSUE OF THE STATUTE OF LIMITATIONS WAS NOT ADEQUATELY CONSIDERED.

THE COURT: WELL, I UNDERSTAND THAT WITH REFERENCE TO THE ISSUE OF THE UNION. WHAT I'M ASKING YOU NOW IS THE OTHER ONE, WITH REFERENCE TO THE EMPLOYER.

MR. KUBBY: OH, WITH REFERENCE TO THE EMPLOYER.

THE COURT: RIGHT.

MR. KUBBY: ON THE EMPLOYER THE -- THE ISSUE THAT'S

PRESENTED HERE IS THE QUESTION OF THE JUSTIFICATION OF ECONOMIC DECLINE AS BEING A BASIS FOR TERMINATING MRS. TU.

THE COURT: RIGHT.

MR. KUBBY: OKAY.

NOW, THE.... ALTHOUGH THE MATTER WAS MENTIONED IN THE PRIOR ARGUMENT, THE -- THE COURT DID NOT ADDRESS IN ITS DECISION THE QUESTION OF THE ESTOPPEL AGAINST THE EMPLOYER FROM RAISING THAT ISSUE BY REASON OF THE CONTRACTUAL PROVISION IN THE COLLECTIVE BARGAINING AGREEMENT.

AND THERE IS A SPECIFIC WAIVER BY THE EMPLOYER OF RAISING -- OR TERMINATING BY REASON OF ECONOMIC DECLINE.

AND THEN THE -- THEN THE COURT SAYS, THOUGH, THAT ALTHOUGH THE PLAINTIFF HAS SHOWN DISCRIMINATION, AND THE EMPLOYER HAS SHOWN ECONOMIC DECLINE, THAT THE EMPLOYEE HAS NOT SHOWN ANY REASON WHY SHE SHOULD NOT HAVE BEEN TERMINATED.

AND THE REASON WAS THAT SHE WAS CONTRACTUALLY PROTECTED AGAINST HAVING THAT KIND OF A CLAIM MADE AGAINST HER.

THE COURT: OKAY.

MR. KUBBY: AND THE COURT DOES NOT ADDRESS THAT IN ITS SUMMARY JUDGMENT FINDINGS, OR IN ITS DECISION, AS TO WHETHER OR NOT THE COMPANY IS CONTRACTUALLY PROHIBITED AND ESTOPPED FROM RAISING THAT DEFENSE.

THE COURT: OKAY. LET'S HEAR FROM OTHER COUNSEL.

MR. BOLIO, HAVE YOU GOT ANYTHING?

MR. BOLIO: OKAY. FIRST OFF, WITH REFERENCE TO THE

PROCEDURAL POSTURE THAT WE WERE IN HERE BEFORE, THE ISSUE IS REALLY WHETHER OR NOT THE PLAINTIFF HAS SET FORTH ANYTHING THAT'S NEW OR DIFFERENT FROM THE ISSUES THAT WAS RAISED IN THE UNDERLYING MOTION FOR SUMMARY JUDGMENT.

AND I BELIEVE THAT IN OUR OPPOSITION PAPERS, SPECIFICALLY AT PAGE 7, IT'S CLEAR THAT PLAINTIFF RAISED THIS VERY ISSUE REGARDING THE CONTRACTUAL LANGUAGE IN THE AGREEMENT ABOUT THE ABILITY TO LAY OFF THE PLAINTIFF.

NOW, THAT HAS ALREADY BEEN ARGUED TO THIS COURT, FULLY BRIEFED BY ALL PARTIES; AND THAT ARGUMENT WAS REJECTED. AND I DON'T THINK THAT A MOTION PURSUANT TO RULE 59 SHOULD BE UTILIZED TO -- TO REARGUE MATTERS THAT THE COURT HAS PREVIOUSLY DECIDED BY SUMMARY JUDGMENT.

THAT IS SOMETHING THAT THE APPELLATE COURT CAN RULE ON.

SECONDLY, THERE'S ALREADY BEEN AN ARBITRATION ON THIS PARTICULAR ISSUE, AND THE ARBITRATOR DECIDED THAT ISSUE ADVERSELY TO THE PLAINTIFF.

THE ONLY WAY THAT THAT -- TO ESCAPE THE FINAL AND BINDING EFFECT OF THAT ARBITRATION AWARD IS TO -- IS TO ALLEGE A BREACH OF THE DUTY OF FAIR REPRESENTATION AGAINST THE UNION; AND, THEREFORE, ALLOW PLAINTIFF TO REARGUE THAT CONTRACTUAL GRIEVANCE IN COURT.

ONCE THE COURT DECIDES THAT DUTY OF FAIR REPRESENTATION WAS NOT BREACHED, EITHER BECAUSE THE STATUTE OF

LIMITATIONS EXPIRED, OR ON THE MERITS, THEN THERE'S NO BASIS ON WHICH TO REARGUE A CONTRACTUAL CLAIM AGAINST THE RAILROAD IN THIS PARTICULAR CONTEXT.

THE ARGUMENT -- THE ANALYSIS IS THAT THE GRIEVANCE AWARD IS FINAL AND BINDING.

PLAINTIFF HAS NOT MOVED TO VACATE THAT ARBITRATION AWARD PURSUANT TO THE PROVISIONS OF THE RAILWAY LABOR ACT.

AND, FINALLY, JUST TO ADDRESS... IN A VERY LIMITED FASHION THE MERITS OF PLAINTIFF'S ARGUMENT, THE COLLECTIVE AGREEMENT LANGUAGE THAT PLAINTIFF RELIES UPON SAYS THAT: NO -- AN EMPLOYEE WITH A CERTAIN SENIORITY DATE EMPLOYED IN THE GENERAL OFFICE IN SAN FRANCISCO CANNOT BE LAID OFF.

AND THE FACT IS THAT PLAINTIFF WAS NOT EMPLOYED IN THE GENERAL OFFICE IN SAN FRANCISCO. THE PLAINTIFF WAS EMPLOYED WITH P.F.E. IN BRISBANE, CALIFORNIA.

THEREFORE, ON ITS FACE, THE COLLECTIVE AGREEMENT LANGUAGE PLAINTIFF SEEKS TO RELY UPON IS INAPPLICABLE. EVEN IN THE UNLIKELY EVENT THAT THE COURT WOULD LOOK AT THE MERITS OF THAT -- THAT EMPLOYMENT AGREEMENT.

AND, IN SHORT, WE WOULD JUST REITERATE THAT THESE POINTS HAVE ALL BEEN CONSIDERED BEFORE, HAVE BEEN SPECIFICALLY RAISED IN THE PLAINTIFF'S OPPOSITION TO THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, AND THERE'S NOTHING NEW OR DIFFERENT THAT'S SET FORTH IN THIS MOTION.

AND WE WOULD ARGUE SUMMARY JUDGMENT SHOULD STAND, AND

THE MOTION TO RECONSIDER SHOULD BE DENIED.

THE COURT: MR. DARBY.

MR. DARBY: YES, YOUR HONOR.

THE PLAINTIFF HAS NEVER RAISED TOLLING AS AN ARGUMENT, EVEN IN ITS PAPERS TO THIS COURT ON RECONSIDERATION.

THEY CONTINUE TO ASSERT THAT THE STATUTE OF LIMITATIONS DID NOT ACCRUE UNTIL JANUARY OF 1988. THAT WAS CLEARLY WRONG AS SET FORTH IN OUR PAPERS.

AND THE BASIS UPON WHICH YOU RELIED ON SUMMARY JUDGMENT WAS NOT MANIFEST ERROR ON IT IN THAT REGARD. HOWEVER, SINCE NOW THE TOLLING ISSUE HAS COME UP, AND WE DID RAISE IT IN OUR BRIEFS IN THE EVENT THAT IT DID --

THE COURT: WELL, WHY DOESN'T GALINDO APPLY?

MR. DARBY: GALINDO DOES NOT APPLY HERE, YOUR HONOR, BECAUSE THE POLICY BEHIND THAT CASE WAS IN FURTHERANCE OF THE NONJUDICIAL RESOLUTION OF LABOR DISPUTES.

IT CREATED DISTINCT EXCEPTIONS FOR THE TOLLING PRINCIPLE, AND THOSE EXCEPTION ARE APPLICABLE HERE. FIRST OF -- WELL, THE ONE EXCEPTION IS WHETHER THE PLAINTIFF IS ALLEGING THAT THE GRIEVANCE ARBITRATION MACHINERY HAS BROKEN DOWN TO THEIR DISADVANTAGE.

THAT IS WHAT THE CLAIM IS HERE IN THE COMPLAINT AGAINST THE UNION. IN FACT, THE PLAINTIFF BROUGHT SUIT AGAINST THE RAILROAD TWO YEARS AGO WITHOUT -- BEFORE THE UNION WAS EVEN PERMITTED TO FURTHER EXHAUST THOSE PROCEDURES. AS A RESULT,

CLEARLY THE NONJUDICIAL RESOLUTION OF LABOR DISPUTES WAS NOT FOSTERED BY THEM BRINGING SUIT AGAINST THE RAILROAD TWO YEARS AGO.

ADDITIONALLY, THE DUTY OF FAIR REPRESENTATION CLAIMS THAT THEY ARE RAISING HERE INVOLVE MATTERS WHICH DO NOT -- WHICH COULD NOT BE PRESENTED THROUGH THE ARBITRATION PROCEDURE.

FOR EXAMPLE, THE UNION'S REFUSAL TO CONSULT WITH THE PLAINTIFF, UNION'S REFUSAL TO FILE CERTAIN GRIEVANCES, AN ALLEGATION OF A CONFLICT OF INTEREST IN THE UNION'S ATTEMPT TO PURCHASE THE RAILROAD.

THESE ARE ALL ISSUES THAT ARE CLEARLY NOT THE TYPE OF ISSUES THAT AN ARBITRATOR COULD RESOLVE.

ADDITIONALLY, THE PLAINTIFF IS SEEKING RELIEF WHICH AN ARBITRATOR COULD NEVER PROVIDE TO THE PLAINTIFF. THAT IS ANOTHER EXCEPTION TO THE GALINDO PRINCIPLE. LOOKING FOR THINGS SUCH AS PUNITIVE DAMAGES, LOSS OF CONSORTIUM.

THE BOTTOM LINE, YOUR HONOR, IS THE POLICY IN GALINDO -- AND THE COURT WAS VERY NARROW WHEN THEY -- WHEN THEY DRAFTED THAT PRINCIPLE -- IS AN INTEREST TO FURTHER GOOD FAITH ATTEMPTS BY PLAINTIFFS TO FULLY EXHAUST THE PROCEDURES. AND THE PLAINTIFF DID NOT DO THAT HERE.

ONE OTHER MATTER, YOUR HONOR, JUST SO WE DON'T --

THE COURT: LET ME JUST UNDERSTAND THIS POINT ABOUT THE RELIEF.

YOU'RE SAYING THAT IF YOU START OUT IN THE ARBITRATION

PROCESS WITH NECESSARY LIMITS IN TERMS OF WHAT REMEDIES CAN BE GIVEN, AND THEN AFTER YOU GET THROUGH WITH ALL THAT, YOU START IN AND YOU FILE AN ACTION IN COURT, YOU'RE GOING TO HAVE DIFFERENT REMEDIES PERHAPS.

BUT I DON'T SEE WHY THAT MOVES GALINDO OUT OF THE PICTURE. IF ALL THESE ARE ARE DIFFERENT REMEDIES DEPENDING UPON THE FORUM.

MR. DARBY: THE ONLY FACTOR THERE, YOUR HONOR, IS THAT AGAIN IF THE INTEREST IS THE NONJUDICIAL RESOLUTION, EVEN IF THEY GOT THE TOTAL RELIEF THAT THEY WANTED IN ARBITRATION, THAT WOULD NOT PRECLUDE THEM FROM GOING INTO COURT TO SEEK THIS ADDITIONAL RELIEF.

SO AGAIN IT -- IT WORKS AGAINST THE POLICY OF HAVING THE WHOLE MATTER RESOLVED IN ARBITRATION.

THE COURT: OKAY.

MR. DARBY: THE OTHER THING NOT TO LOSE SIGHT OF, YOUR HONOR, IS WE DID SPEND ABOUT TWENTY PAGES IN OUR MOTION FOR SUMMARY JUDGMENT ON THE MERITS OF THIS DUTY OF FAIR REPRESENTATION CLAIM.

AND MR. KUBBY HAS -- I'M SORRY, THE PLAINTIFF HAS STILL NOT PRESENTED ANY EVIDENCE TO SHOW THAT THERE WAS A GENUINE ISSUE OF MATERIAL FACT THAT THE UNION BREACHED THE DUTY OF FAIR REPRESENTATION.

AND THAT'S ALL WE HAVE, YOUR HONOR.

THE COURT: MR. KUBBY, DO YOU WANT TO RESPOND TO THAT?

MR. KUBBY: YES, YOUR HONOR.

THE MATTERS THAT COUNSEL RAISES WERE NOT MATTERS FOR THE ARBITRATION WITH THE EMPLOYER, BUT ARE MATTERS GIVING RISE TO THE BREACH OF THE DUTY OF FAIR REPRESENTATION BY THE UNION. I MEAN, THE QUESTION OF FAILURE TO PRESENT, OR THE QUESTION OF TOTAL LACK OF PRESENTATION OF EVIDENCE. ALL OF THESE THINGS ARE COMPLAINTS AGAINST THE UNION, NOT AGAINST THE EMPLOYER.

AND THEY GO TO THE ISSUE OF WHETHER OR NOT THERE WAS FAIR REPRESENTATION OF THE CLAIM.

SO THAT WHEN THEY SAY THAT THESE ARE MATTERS THAT COULD NOT HAVE BEEN PRESENTED IN THE ARBITRATION, THAT'S NOT THE ISSUE. THE POINT IS THAT THE UNION IN FACT UNDERTOOK TO ARBITRATE THE QUESTION OF THE WRONGFUL TERMINATION OF MRS. TU. AND THEY CARRIED IT THROUGH TO A DECISION BY THE ARBITRATOR.

AND THE CLAIM AGAINST THE UNION DID NOT ARISE UNTIL THAT ARBITRATOR ANNOUNCED HIS DECISION. AND SO THE STATUTE COULD NOT HAVE RUN.

NOW, ON THE ISSUE OF WHETHER OR NOT THERE WAS GOOD CAUSE SHOWN, THERE WAS AT LEAST -- I THINK THAT THERE WAS. I THINK THAT THE PLAINTIFFS WERE ENTITLED TO SUMMARY JUDGMENT THEMSELVES. BUT AT A MINIMUM THERE WAS AN ISSUE RAISED AS TO WHETHER OR NOT THE UNION HAD FAIRLY REPRESENTED THE PLAINTIFF IN THAT ARBITRATION PROCEEDING.

THE COURT: WHAT WAS YOUR SHOWING THAT SUPPORTS THAT?

MR. KUBBY: THE ARBITRATOR'S DECISION, WHERE HE -- HE

SPECIFICALLY RECITES THAT NO EVIDENCE WAS PRESENTED BY THE UNION. THE ARBITRATOR'S DECISION AS TO WHAT THE BASIS OF THIS CLAIM WAS.

MR. DARBY'S -- OR MR. BRACKBILL'S DECLARATION THAT INQUIRY WAS MADE REGARDING WHAT THEY WERE DOING, AND THEY DIDN'T RESPOND TO IT. AND THEY WERE PROCEEDING WITH THIS WHOLE MATTER WITHOUT ANY CONSULTATION.

THERE'S A DECLARATION TO THAT EFFECT; THAT THEY FAILED TO CONSULT, THEY FAILED TO ADVISE, THEY FAILED TO PRESENT.

AND I THINK THAT THE -- THIS IS A FAR CRY FROM THE GALINDO SITUATION. THIS IS NOT A MERE SMALL MATTER THAT THE UNION DID. THERE WAS THIS -- THERE WAS.... THEY SAID THEY WERE -- THE PLAINTIFFS WERE ADVISED THAT THE UNION WAS PRESENTING THE CLAIMS UNDER THE COLLECTIVE BARGAINING AGREEMENT, AND THEY DID NOT.

I MEAN, THEY -- THEY DIDN'T PRESENT ANY EVIDENCE. HOW CAN AN ARBITRATOR MAKE A DECISION WHEN THEY DON'T HAVE ANY EVIDENCE TO BASE IT ON?

AND CLEARLY MRS. TU HAD A -- A CONTRACT CLAIM, BECAUSE OF HER CONTRACT RIGHTS, AND THEY DIDN'T PRESENT IT. THEY DIDN'T PRESENT ANY EVIDENCE WHATSOEVER.

AND SO I THINK THAT THERE IS AN ISSUE RAISED AS TO THEIR -- WHETHER OR NOT THEY'VE FULFILLED THEIR DUTY OF FAIR REPRESENTATION.

THE COURT: OKAY.

MR. DARBY: YOUR HONOR?

THE COURT: JUST BRIEFLY.

MR. DARBY: YES.

THE RECORD IS CLEAR BELOW, YOUR HONOR, THAT THE UNION MADE GOOD FAITH ATTEMPTS TO OBTAIN EVIDENCE.

THE BOTTOM LINE ON THAT IS THAT EVEN A FAILURE TO PRODUCE EVIDENCE UNDER THE NINTH CIRCUIT, EVEN IF IT IS TRUE, DOES NOT CONSTITUTE A BREACH OF THE DUTY OF FAIR REPRESENTATION.

THE OTHER MATTER I WOULD LIKE TO RAISE, YOUR HONOR, IS THAT THE COURT DID MAKE A FINDING BELOW THAT THE PLAINTIFF WAS AWARE OF WHAT PROCEDURES THE UNION WAS FOLLOWING IN ARBITRATION BACK IN 1986.

ADDITIONALLY, THE PLAINTIFF HAS A RIGHT UNDER THE RAILWAY LABOR ACT TO PURSUE HER OWN CLAIMS AGAINST THE RAILROAD, ASIDE FROM RELYING ON THE UNION TO PURSUE THOSE CLAIMS.

SO WE WOULD ARGUE THAT THE STATUTE OF LIMITATIONS SHOULD HAVE BEGUN TO RUN AT THAT POINT AT -- IN THE VERY LEAST.

THE COURT: DID YOU HAVE ANYTHING FURTHER, COUNSEL?

THE MATTER IS SUBMITTED THEN?

MR. BOLIO: SUBMITTED, YOUR HONOR.

MR. KUBBY: YES, YOUR HONOR.

THE COURT: ALL RIGHT.

THANK YOU.

(WHEREUPON THESE PROCEEDINGS WERE CONCLUDED.)

CERTIFICATE OF REPORTER

I, WE, THE UNDERSIGNED OFFICIAL REPORTERS OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 450 GOLDEN GATE AVENUE, SAN FRANCISCO, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, PAGES NUMBERED 1 THROUGH 16 INCLUSIVE, CONSTITUTES A TRUE, FULL AND CORRECT TRANSCRIPT OF MY, OUR, SHORTHAND NOTES TAKEN AS SUCH OFFICIAL REPORTER TO THE PROCEEDINGS HEREINBEFORE ENTITLED AND REDUCED TO TRANSCRIPTION TO THE BEST OF MY, OUR, ABILITY.

Carl R. Pline

CARL R. PLINE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SIEU MEI TU and JOSEPH TU,

Plaintiffs,

v.

SOUTHERN PACIFIC TRANSPORTATION COMPANY, et al.

Defendants.

C-87-1198 DLJ

ORDER

On April 12, 1989, this Court heard plaintiffs' motion for reconsideration of the order granting summary judgment to defendants. Lee Kubby appeared for plaintiffs. Wayne M. Bolio appeared for defendant Southern Pacific. James Darby and Kathleen King appeared for defendant Union. For the following reasons, the Court DENIES plaintiffs' motion for reconsideration as to defendant Southern Pacific, and GRANTS plaintiffs' motion for reconsideration as to defendant Union.

I.

RECONSIDERATION OF ORDER GRANTING SUMMARY JUDGMENT FOR DEFENDANT SOUTHERN PACIFIC

In its earlier Order, the Court granted summary judgment to defendant Southern Pacific on grounds that while plaintiffs had established a prima facie case of discrimination, Southern Pacific had rebutted this showing by evidence of a legitimate economic reason for the dismissal, and that the plaintiffs had not provided evidence which would meet their overall burden of showing intentional discrimination.

In their motion for reconsideration,[1] plaintiffs' principal argument is that Mrs. Tu had a contractural right to continued employment. On this basis, plaintiffs' contend that defendant's stated reason for Mrs. Tu's dismissal, economic hardship, is false. However, this same argument was raised in plaintiffs' opposition to summary judgment papers. This argument was considered and rejected by the Court in reaching its order granting summary judgment for defendant Southern Pacific.

The Ninth Circuit set out the standard of review for a motion for reconsideration of a summary judgment order in Backlund v. Barnhart, 778 F.2d 1386 (9th Cir. 1985). The court held that a motion for reconsideration of a summary judgment motion should be denied if it presents no arguments that have not already been raised in opposition to summary judgment. Id. at 1388.

Under the rule established in Backlund, this Court DENIES plaintiffs' motion as to defendant Southern Pacific because plaintiffs' motion fails to raise any new arguments, facts, or allegations, not previously raised in opposition to summary judgment.

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[1] Although plaintiffs cite a number of rules from the Federal Rules of Civil Procedure in support of their motion, a motion for reconsideration of summary judgment is appropriately brought under Rule 59(e).

II.

RECONSIDERATION OF THE ORDER GRANTING SUMMARY JUDGMENT FOR THE UNION DEFENDANT

In its Order granting summary judgment to defendant Union, the Court determined that the plaintiff had knowledge of the Union's alleged lack of fair representation in January 1986. Plaintiffs did not name the Union as a defendant until April 1988. The Court found plaintiffs' claim time-barred by the six month statute of limitations established by the Supreme Court in DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151, 172 (1983) for fair representation actions. On grounds that the statute of limitations had run on plaintiffs' claim, the Court granted summary judgment for defendant Union.

On January 20, 1986, plaintiffs' counsel sent a letter to the Union requesting action on Mrs. Tu's behalf. On January 28, 1986, in response, the Union sent a letter to Mrs. Tu, informing her that it would proceed with her claim through the grievance process. On November 30, 1987, the arbitration board denied the Union's claim on behalf of Mrs. Tu. On January 4, 1988, the Union notified Mrs. Tu of the arbitration decision. Plaintiffs then filed an amended complaint in April 1988, naming the Union as a defendant on the fair representation claim.

The Ninth Circuit in Galindo v. Stoody Co., 793 F.2d 1502, 1510 (9th Cir. 1986), held that "a fair representation claim based on how a grievance is presented to an arbitrator

accrues when the employee learns of the arbitrator's decision." The policy behind such a rule is the furtherance of nonjudicial resolutions.

Based on Galindo, this Court GRANTS plaintiffs' motion for reconsideration. Since the statute of limitations did not begin to run until Mrs. Tu was informed of the arbitrator's decision in January 1988, her amended complaint was timely filed in April 1988. Accordingly, this Court vacates its earlier order granting summary judgment to defendant Union. The Court's ruling is without prejudice to a renewal by defendant Union of its motion for summary judgment.

Plaintiffs are directed to file an amended complaint by June 2, 1989. the status conference set for May 10, 1989, is vacated.

IT IS SO ORDERED.

DATED: May 3, 1989.

D. Lowell Jensen
United States District Judge

2. DEFENDANT PACIFIC FRUIT EXPRESS COMPANY (PFE) is and at all times herein mentioned was a wholly owned subsidiary of SOUTHERN PACIFIC TRANSPORTATION COMPANY.

3. DEFENDANT BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS ("BRAC" or the "UNION") is and at all times mentioned herein was a union.

4. ATCHISON, TOPEKA, SANTA FE RAILROAD COMPANY (ATSF) is and at all times mentioned herein was a corporation authorized to do business in the State of California as a railroad.

5. SANTA FE SOUTHERN PACIFIC CORP. (SFSP) is and at all times mentioned herein is and at all times mentioned herein was a corporation authorized to do business in the State of California. Said defendant is sometimes referred to herein as "consolidated railroad".

6. The true names and capacities of Does One to Two Thousand, White Company, Black Corporation, are unknown to plaintiff. Plaintiff will amend this complaint to insert said true names and capacities upon ascertainment. Plaintiff is informed and believes, and upon such information and belief alleges that each of the said fictitiously named defendants is liable to plaintiff for the acts, events and occurrences alleged herein as a result of said defendant's relationship to defendant PACIFIC FRUIT EXPRESS COMPANY or

participation in said acts, events and occurrences.

7. Plaintiff is informed and believes, and upon such information and belief alleges that each of the defendants herein was, at all times mentioned herein, the agent, employee or representative of the remaining defendants and was acting within the course, scope and authority of said relationship.

8. Plaintiff Sieu Mei Tu (SMT) is a Chinese female born September 4, 1926.

9. On May 15,1962, SMT and defendant PACIFIC FRUIT EXPRESS COMPANY (PFE) entered into an oral employment agreement at San Francisco, California, pursuant to which SMT agreed to work for said defendant in the capacity of key punch operator and for which said defendant agreed to pay SMT compensation. Thereafter on or about December 21, 1978, said agreement was reduced to writing, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference as if fully set forth. Through a series of promotions during continuous employment by the said defendant SMT was elevated to the position of General Clerk. She was terminated from employment by defendants and each of them effective October 9, 1985, involuntarily and wrongfully without good just or legitimate cause or reason, without continuance of pay or benefits, in violation of said agreement.

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Attorney for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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 SECOND AMENDED COMPLAINT UNLAWFUL TERMINATION OF CONTRACT OF EMPLOYMENT, DISCRIMINATION, EMOTIONAL DISTRESS, LOSS OF CONSORTIUM, BREACH OF DUTY OF FAIR REPRESENTATION, CONSPIRACY, ETC.

PLAINTIFF SIEU MEI TU (SMT) alleges that:

FIRST CAUSE OF ACTION

1. SOUTHERN PACIFIC TRANSPORTATION COMPANY (SPTC) is and at all times herein mentioned was a corporation authorized to do businesses in the State of California, as a railroad.

10. Plaintiff has performed each and every condition and covenant required on her part to be performed pursuant to said employment agreement and, in particular, was continuously employed by defendant PFE from May 15, 1962 through October 9, 1985, occupying various positions within defendant PFE.

11. Pursuant to said employment agreement, defendant PFE promised that plaintiff would be treated as a permanent employee, that plaintiff's employment would continue indefinitely and if no job were available for her and or there was a decline in business, necessitating a reduction in force, she would continue to be paid her salary and benefits to age 65; that defendant PFE and its agents and employees would not act arbitrarily in dealing with plaintiff, and that plaintiff's employment would not be terminated except for good, just and legitimate cause or reason. Said promises were made expressly to plaintiff upon commencement of the employment relationship, were implied by the conduct and activities of defendant PFE and its agents and employees, and set forth in writing. In particular, said promises were implied in the content of defendant PFE's personnel policies and practices; by said defendant's contracts with plaintiff's bargaining agent (union); by the longevity and continued nature of plaintiff's employment relationship; by the actions of defendant PFE and its agents and employees in consistently rating plaintiff's

performance satisfactory, or better, issuing commendations to plaintiff for job performance, promoting plaintiff to her ultimate position within defendant PFE and in providing plaintiff with merit increases in compensation, all of which, together with the communications of defendant PFE's agents and employees in connection therewith, reflect defendant PFE's assurance of plaintiff's continued employment.

12. Plaintiff SMT is a beneficiary of contracts of employment entered into between defendant PFE and defendant BRAC. Copies of said contracts are attached hereto as Exhibits B, C, and D and incorporated herein by this reference as if set forth in full.

13. During the course of plaintiff SMT's employment by defendant PFE, plaintiff SMT's duties included responsibility to determine that all managerial employees reimbursed and charged expenses and office cash expenditures were properly documented as to having been incurred for authorized company business. In performing said duties plaintiff SMT incurred the ill feelings of the managerial staff who had avoided documenting said expenses.

14. Effective October 9, 1985, defendant PFE acting in wrongful concert with each and every of the remaining defendants breached said employment agreement and its express and implied promises by involuntarily and wrong-

fully terminating plaintiff's employment without good, just or legitimate cause or reason and without continuation of salary and benefits. Prior to said termination defendants and each of them deliberately and purposefully created intolerable working conditions for plaintiff, causing her to be humiliated before other fellow employees.

16. As a direct and foreseeable result of said wrongful termination, and conduct of the defendants and each of them, plaintiff has suffered damages in an amount not less than $30,000.00, the precise amount of which will be proven at the time of trial. Said damages include lost wages, salary, benefits and certain other incidental and consequential expenses and losses. Plaintiff claims damages of prejudgment interest pursuant to Civil Code Section 3287 and/or any other provision of law providing for prejudgment interest.

17. As a result of the aforesaid acts of defendants, plaintiff has become mentally upset, distressed and aggravated. Plaintiff claims general damages for such mental distress and aggravation in the sum of $2,000,000.00

18. Because the acts taken toward plaintiff were carried out by managerial employees acting in a deliberate, cold, callous and intentional manner in order to injure and damage plaintiff, plaintiff requests the assessment of punitive damages against defendants and each of them in the sum

of $5,000,000.00.

19. As a proximate cause of the conduct of the defendants and each of them as herein alleged, plaintiff SMT was hurt and injured in her health, strength, and activity, sustaining injury to her nervous system and person, all of which injuries have caused, and continue to cause plaintiff great mental, physical, and nervous pain and suffering. Plaintiff is informed and believes and thereon alleges that such injuries will result is some permanent disability to her. As a result of such injuries, plaintiff has suffered general damages in an amount according to proof.

20. As a further proximate cause of the conduct of the defendants and each of them, plaintiff has incurred and will continue to incur, medical and related expenses in an amount according to proof.

21. As a further proximate result of the conduct of the defendants and each of them, plaintiff's earning capacity has been greatly impaired, both in the past and present in an amount according to proof.

SECOND CAUSE OF ACTION

22. Plaintiff SMT realleges and incorporates herein by reference paragraphs 1-11 and 13-21 of her First Cause of Action and makes them a part of this Second Cause of

Action.

23. In consideration for the continuous employment of plaintiff, plaintiff provided certain benefits to defendants and each of them and suffered certain detriment beyond and in addition to the rendition of the personal services called for by said employment agreement in that when said defendant PFE moved its offices to a location more distant and involving a more arduous commute than the place of the original employment; plaintiff none the less suffered these more difficult conditions of employment and continued to provide her services for the good of her employer.

24. Implied as a term in said employment agreement, as a result of said consideration independent of the services to be performed by plaintiff, was defendant PFE's promise not to terminate plaintiff except for good or just cause.

THIRD CAUSE OF ACTION

25. Plaintiff SMT realleges and incorporates herein by reference paragraphs 22-24 supra and makes them a part of this Third Cause of Action.

26. As a result of the employment relationship which existed between plaintiff and defendant PFE, the express and implied promises made in connection therewith, and the

acts, conduct and communications which resulted in said implied promises, defendant PFE covenanted and promised to act in good faith toward and deal fairly with plaintiff and concerning all matters related to said employment so as to not deprive plaintiff of or injure her right to receive the benefits of said relationship.

27. Defendant PFE's termination of plaintiff's employment was wrongful, in bad faith and unfair, and therefore a violation of said defendant's legal duties, in that defendant not only terminated plaintiff in bad faith and unfairly but also humiliated and shamed her before her fellow workers and friends by demanding that she perform demeaning duties, moving PFE positions and fellow employees with less seniority or experience to other employment with defendant Southern Pacific Transportation Company, and not so moving plaintiff SMT leaving plaintiff uninformed of her expectations re employment, requiring her not to seek further employment or be considered as self-terminated, etc., as a retaliatory discharge, discharge in conscious or reckless disregard of known rights, pretextual discharge, and/or discharge for reasons other than dissatisfaction with plaintiff's services.

28. As a further direct and proximate result of the aforementioned wrongful conduct of defendants and each of them plaintiff has suffered anxiety, worry, mental, physical and emotional distress, and other incidental and consequential

damages and expenses in excess of $30,000, the total amount of which will be proven at the time of trial.

29. The conduct of defendants and each of them as described herein was oppressive, fraudulent and malicious, thereby entitling plaintiff to an award of punitive damages in an amount appropriate to punish and make an example of defendants and each of them.

FOURTH CAUSE OF ACTION

30. Plaintiff realleges and incorporates herein by reference paragraphs 22-29 supra and makes them a part of this Fourth Cause of Action.

31. Said termination was wrongful and in violation of the fundamental principles of public policy of the United States of America and the State of California as reflected in the constitution of each and as reflected in laws as set forth hereafter by way of illustration but not by way of limitation: 42 USC 1981, 1983, 1985; 49 USC 11705 et seq; California Government Code 12900 et seq.; California Public Utilities Code 453 (a), and the objectives underlying said policies (and laws) in that said termination was based on discrimination against plaintiff because of plaintiff's sex, age or race and/or in retaliation for plaintiff's refusal to permit any misuse of the funds of the defendant PFE, and /or continues to the present time against Plain-

tiff in retaliation for Plaintiff having exercised her rights or seeking to exercise her rights there under, all in violation or circumvention of each of said laws.

32. As a result of said employment relationship, defendants and each of them were obliged to refrain from discharging plaintiff, or any employee, for reasons which violate or circumvent said policies, laws, or the objectives which underlie each.

33. Pursuant to Government Code Section 12965 (b), plaintiff requests the award of attorneys fees against defendants, and each of them.

34. Pursuant to Government Code Section 12926 (c), plaintiff requests the imposition of liability to be imposed on each defendant be joint, several and cumulative.

35. Within the time provided by law, plaintiff made a complaint to the California Department of Fair Employment and Housing (DFEH). Plaintiff has now received her right to sue letter from the DFEH.

FIFTH CAUSE OF ACTION

36. Plaintiff SMT incorporates paragraphs 22-35 supra as if set forth in full.

37. Plaintiff is informed and believes and on that basis alleges that within two years of the filing of the complaint herein, the defendants, and each of them, jointly conspired, conceived and began to carry into effect in San Francisco, California a plan to merge defendant Southern Pacific Transportation Company with defendant Atchison Topeka and Santa Fe Railroad Company, cease operations of defendant PFE as to cold storage transportation, move plaintiff SMI's position to defendant SPTC, wrongfully terminate plaintiff from her employment, and avoid their contractual and moral responsibilities to plaintiff, sell and spin off the valuable assets of defendants Southern Pacific Transportation Company, and Pacific Fruit Express.

38. Pursuant to said proposed merger, Defendants and each of them made application to the Interstate Commerce Commission (ICC) for approval of said proposed merger. As a condition for consideration of said merger, the ICC imposed a condition of a independent voting trust to hold the stock of SPT. On October 10, 1986, the ICC denied the proposed merger, but continued jurisdiction over the voting trust. Defendant Union appeared in said ICC proceedings. By decision dated January 25, 1989, the ICC discontinued its proceedings, while allowing SPT employees (including Plaintiff herein) to pursue their remedies in a civil proceeding.

39. The defendants and each of them took the actions

above set forth in violation of 49 USC 11705, and the other laws and statutes set forth above, causing the harm to Plaintiffs set forth herein.

40. Attached hereto as Exhibit F is a true copy of the decision of the ICC, all of the factual matters set forth therein are incorporated herein by this reference as if set forth in full.

41. Plaintiff is informed and believes and on the basis of said information and belief alleges that the defendants and each of them did the acts and things herein alleged and continue to pursue said conspiracy to the present time pursuant to and in furtherance of said conspiracy.

SIXTH CAUSE OF ACTION

Plaintiff SMT alleges as follows:

42. Plaintiff SMT incorporates by reference paragraphs 1-41 supra as if set forth in full.

43. Plaintiff SMT is, and at all times herein mentioned was, a member in good standing of "BRAC".

44. Plaintiff is informed and on the basis of said information believes that Exhibits B, C, and D hereto were executed between defendants and each of them, on or about

the dates indicated.

45. The conduct of defendants and each of them herein alleged, breached said agreements.

46. On or about October 18, 1985. plaintiff SMT demanded of defendants and each of them, that all administrative remedies applicable to plaintiff SMT's complaints regarding the termination of her employment in violation of all the agreements applicable to the same, be instituted forthwith.

47. On or about November 7, 1985, defendants and each of them refused to engage in Administrative Determination of the claims of plaintiff Sieu Mei Tu under the Railway Retirement Act or at all, individually with plaintiff Sieu Mei Tu.

Defendant Union ostensibly undertook to represent the rights of Plaintiff pursuant to said agreements, and to engage in administrative determination of her rights pursuant to all claims she had.

48. Continuously thereafter until on or about January 4, 1988, defendants and each of them refused to consult with plaintiff Sieu Mei Tu or her attorneys, or to respond to inquiries regarding the status of her claims. On or about January 4, 1988, by letter and enclosure, a copy of which is attached hereto as Exhibit E, and incorporated herein by

this reference as if set forth in full, defendant "BRAC" advised plaintiff Sieu Mei Tu, that a hearing had been held under the Railway Retirement Act. Receipt of the said letter was the first knowledge plaintiff SMT received of said hearing, the evidence and lack thereof produced at said hearing, and the decision of the referee. On or about May 1, 1989, Plaintiff first learned of the proceedings on her behalf set out in Exhibit F.

49. Plaintiff is informed and believes and on the basis of said information alleges that "BRAC" was in negotiations with the other defendants herein and each of them for the purchase of defendant Southern Pacific Transportation Company, and seeking to become the bargaining agent for the consolidated railroad thus having a conflict of interest in their representation of plaintiff SMT.

50. Defendant "BRAC" failed to fairly represent the Plaintiff Sieu Mei Tu, to investigate her claims, present evidence concerning her claims, or otherwise processing her grievances against the remaining defendants and each of them.

51. Said conduct by defendant "BRAC" was done in bad faith, dishonestly, and with hostility, discrimination and/or arbitrariness; was without rational basis; reckless and extremely prejudicial to plaintiff SMT, and thereby prevented plaintiff SMT from exhausting her contract remedies

against the remaining defendants and each of them.

52. By reason of defendants and each of their breach of their duty of fair representation, plaintiff SMT, was required to and did employ independent counsel.

SEVENTH CAUSE OF ACTION

PLAINTIFF JOSEPH Z. TU (JZT) alleges:

53. Plaintiff JZT incorporates paragraphs 1-52 supra as set forth in full.

54. Plaintiff JZT and plaintiff SMT are and all times mentioned herein have been husband and wife.

55. As a result of the aforesaid acts of defendants and each of them, plaintiff JZT has suffered the loss of society, companionship and support from plaintiff SMT. Plaintiff JZT has been upset, aggravated and distressed by these losses, and claims damages for the same according to proof.

EIGHTH CAUSE OF ACTION

Plaintiffs SMT and JZT allege as follows:

56. Plaintiffs incorporate by reference all of the allegations of Paragraphs 22 to 55 supra as if set forth in full.

57. When defendants, and each of them, acted as aforesaid, it was foreseeable that their actions would cause serious emotional distress on plaintiffs. Notwithstanding their knowledge of same, or the fact that they should have known that such a result would probably occur, defendants, and each of them, continued in their course of discharging plaintiff SMT as stated above.

WHEREFORE plaintiffs pray for judgment against defendants, and each of them as follows:

1. For punitive damages according to proof;

2. For prejudgment interest, according to proof;

3. For reasonable attorney fees;

4. For lost wages, salary, benefits, loss of earning capacity, and incidental and consequential damages according to proof;

5. For hospital, medical expenses according to proof;

6. For damages for emotional distress, according to proof;

7. For damages for loss of consortium, according to proof;

8. For damages for discriminatory, retaliatory termination of employment, according to proof;

7. For such other relief as the court deems proper.

DATED: June 1, 1989

LEE J. KUBBY, INC.
A Professional Corporation

BY: _____
Attorneys for Plaintiff

VERIFICATION

I, SIEU MEI TU, declare:

I am one of the plaintiffs in the above entitled action; I have read the foregoing amended complaint and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

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

Executed on June 1, 1989 at Palo Alto, California.

Sieu Mei Tu

SIEU MEI TU, PLAINTIFF

Pacific Fruit Express Company

116 NEW MONTGOMERY STREET, SAN FRANCISCO, CALIFORNIA 94105
(415) 362-1212

R. G. CRANMER
VICE-PRESIDENT AND GENERAL MANAGER

December 18, 1978

TO WHOM IT MAY CONCERN:

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

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

R. G. Cranmer

Exhibit A

1-7-80

AGREEMENT

between the

PACIFIC FRUIT EXPRESS COMPANY

and certain of its employees
represented by

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

****

This agreement made this 7th day of January 1980 by and between Pacific Fruit Express Company (hereinafter referred to as PFE) and certain of its employees represented by the BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES (hereinafter called the Organization) to establish procedures and benefits to apply to closure of Roseville Shop/Stores and provide for certain other agreement changes, witnesseth;

IT IS AGREED THAT:

SECTION 1:

Effective on and after January 1, 1980, the Pacific Fruit Express Company will become a signatory party to the "TOPS Agreement" which was signed at San Francisco on September 16, 1971 and subject to the additional provisions hereinafter set forth, TOPS provisions will apply to PFE employees. Copy of Attachment "F" containing said "TOPS Agreement" is attached hereto as ADDENDUM NO. 1. Further, on and after January 1, 1980 "System" as used in the "TOPS Agreement" shall include Pacific Fruit Express Company.

SECTION 2:

Employee "protection provisions" of Attachment "F" (See

EXHIBIT B

Addendum No. 1) will apply to PFE subject to the following conditions:

(a) With respect to the application of Article II of Attachment "F", employees "fully protected" under the February 7, 1965 Mediation Agreement who are in active service and otherwise meet the qualifying criteria of Attachment "F" will have the same "protected rates" under Attachment "F" subject to terms and provisions thereof.

(b) For the purpose of this Agreement, the term "Active Service" is defined to include all employees working or holding an assignment or in the process of transferring from one assignment to another (whether or not the date this agreement is effective is a work day for particular employees involved). Also "Active Service" will include PFE employees "fully protected" under the February 7, 1965 Mediation Agreement who are currently being paid in lieu of filling an assignment.

(c) Employees holding "partial protection" (so-called "1/12 protection") under the February 7, 1965 Mediation Agreement on date hereof will continue under present terms and conditions to carry such protection until they have become protected under the criteria of the Attachment "F" Agreement.

(d) Employees holding "seasonal protection" (so-called "Seasonal Guarantee") under the February 7, 1965 Mediation Agreement on date hereof will continue under present terms and conditions to carry such "protection" or "guarantee" until they have become protected under the criteria of the Attachment "F" Agreement.

NOTE: Furloughed and/or extra employees will continue to be subject to the provisions of the January 17, 1978 Agreement with respect to accepting reasonably comparable employment offered by the

SPT Company. Employees who thus accept a position with the SPT Company will be retained on PFE roster until recalled, at which time, they will either return to PFE or forfeit seniority rights on PFE.

SECTION 3:

(a) In application of Section 12(d) of Article II of Attachment "F", the reduction in overall number of permanent positions during any calendar year below the number of permanent assignments (see Addendum No. 2) constituting the established base shall not exceed 6% except as otherwise permitted herein and/or in Attachnent "F".

(b) The established base for this property shall be the total number of regular permanent positions as of the effective date of this Agreement(see list of such positions attached as Addendum No. 2). In case of establishment of permanent positions in excess of the number required to be maintained hereunder, the reduction in number of excess positions will not require the use of attrition credits or be subject to the 6% limitation.

NOTE: The transfer of any position or positions from PFE to SPT Company will not be considered abolishments requiring PFE attrition credits or subject to the 6% limitation. This NOTE does not contemplate abolishment of such positions without attrition credits unless a position or positions are established in the company to which transferred. Article III, Section 2(c) of Attachment "F" will not apply to such transfers.

(c) The computation of Company's decline in business in excess of 5% shall be in the manner specified in Section 11, Article II of

Attachment "F" except that the factors used for computation will be gross operating revenue of PFE and total PFE mileage and the years for comparison will be 1978 and 1979 with the understanding that for January, February and March 1978 figures used would be those accrued in PFE on SPT lines.

SECTION 4:

(a) The ninety (90) days advance Notice for position abolishments and/or transfers, required in Article III of the Attachment "F" Agreement will be adjusted to fifty percent or forty-five (45) calendar days where transfer requires change in place of residence of employees to be transferred; if proposed transfers do not require change of place of residence, an advance Notice of twenty (20) calendar days will suffice.

NOTE: Notice served on September 27, 1979 will suffice as full and due notice for proposed transfers involved in closing of Roseville Shop/Stores on or after December 31, 1979. This transaction will be effected without use of attrition credits therefor. See ADDENDUM NO. 3 for procedure and detail of positions to be abolished and transferred in this transaction.

SECTION 5:

In the application hereof, the entire PFE Seniority Unit covers individual seniority districts and/or rosters as follows:

District	Location
1	San Francisco General Office
4	Mechanical Department - Purchases & Stores - Tucson and Los Angeles
5	Mechanical Department - Purchases & Stores - Roseville
9	Northwestern District - Car Service

District	Location
*10	Southwestern District - Car Service (Los Angeles)
11	Central District - Car Service (Roseville)
12	Western District - Car Service (Watsonville/Salinas)
13	Southern District - Car Service (Houston)

*NOTE: Joint Clerk-Carman Roster, El Paso, applies at that location and the April 2, 1973 Tripartite Agreement (Mediation Case #A-9270) shall continue in effect.

SECTION 6:

(a) With respect to Article VII of Attachment "F", the parties will meet by August 1, 1980 to review agreement application as to the working of extra employees and make provision that Guaranteed Extra Boards as needed will be progressively established.

(b) Meantime, use of extra and unassigned employees under practices in effect will continue but the following shall be added to Rule 6(b) as Note 2:

1. In the event an unassigned extra employee is available but is not qualified for all days of a relief assignment vacancy he may be used on a day or on those consecutive days for which he is considered qualified.

2. Unassigned extra employees will be advised of the various known vacancies available to them atthe time called and, except where a vacancy cannot be filled by another available qualified unassigned employee, will be allowed in seniority

turn to respond to the one of their choice. To the extent practicable, employees will also be notified of vacancies which arise after the time initially called and permitted to change choice to one of the latter vacancies or to a vacancy choice relinquished by a senior employee in application of this agreement. In instances where the extra unassigned employee is required to fill the vacancy designated by the Company rather than that chosen, such employee will receive the higher rate of pay of the positions involved.

(c) The following is added to Rule 6 as Paragraph (d):

When a vacancy exists on an assigned work day of an established position or a new position, it will be filled as follows, when the Company elects to fill the vacancy:

1. By senior qualified available unassigned extra employee on a straight-time basis in accordance with the provisions of this Rule 6.

2. In the absence of qualified unassigned extra employee on a straight time basis, by the senior qualified available employee on an overtime basis or where applicable under the provisions of Section (c) of this Rule 6; in the case of a vacancy on a relief assignment, by the incumbent of the position to be relieved on that date and then by the senior qualified available assigned employee on an overtime basis.

3. In the event the vacancy cannot be filled under Items 1 and 2, then the Company may instruct an employee, scheduled to work the same hours as the vacant position, to vacate his regular assignment and fill the vacancy. An employee so

removed will be paid the rate of his regular assignment, the rate of the assignment worked, or his protective rate whichever is higher. However, if it is found the Company could have filled the vacancy under Item 1 or 2, and failed and/or neglected to call employees referred to in Items 1 and 2, then the Company will pay the employee removed from his assignment eight hours' pay at the straight-time rate of his regular assignment, or eight hours straight-time pay at his protective rate if such rate is being paid for service on his regular assignment and, in addition, he will be allowed eight hours straight-time pay at the rate of the position worked. The preceding payment for so handling will be the only penalty under this rule.

4. In the event the vacancy cannot be filled under Items 1, 2 or 3, the junior qualified employee who has been called on an overtime basis may be required to fill the vacancy.

SECTION 8: Rule 35 is revised to read as follows effective January 1, 1980:-

ITEM 1:

There is hereby established a non-governmental plan for sickness allowance supplemental to the sickness benefit provisions of the Railroad Unemployment Insurance Act as now or hereafter amended. It is the purpose of this sick leave rule to supplement the sickness benefits payable under the Act and not to replace or duplicate them.

This rule shall become effective as of January 1, 1980. Sick leave days accruing to an employee but unused as of that date shall be credited to the employee and thereafter governed by this rule.

(a) An employee who is in active service in the calendar year on the day that the sickness occurs (an employee who was allowed sick pay for his last work day in December of the previous calendar year or an employee who performed sufficient service in preceding calendar year to qualify for vacation will be considered in Active Service January 1 of the following calendar year) and who has been in continuous service of the Company for the period of time specified, will be granted an allowance as set forth below for time absent on account of sickness or injury:

(1) Upon completion of one (1) year of service a total in the following year of five (5) working days.

(2) Upon completion of two (2) years of service a total in the following year of seven and one-half (7-1/2) working days.

(3) Upon completion of three (3) years of service a total in the following year of ten (10) working days.

NOTE: In the application of Paragraph (a) above, the rate of pay will be rate of the position to which assigned or protected rate being paid, whichever is higher, and for an extra employee shall be the rate of pay of position held on hold-down basis, or position he would have worked or protected rate being paid, whichever is higher.

(b) (1) Until an employee has completed three (3) years of continuous service, each consisting of twelve (12) calendar months, and does not lose his seniority, his sick leave allowance and eligibility therefor shall be calculated from the date of his entrance into service.

(c) Where employees are regularly required to work their

eight (8) hour assignments on their rest days and/or holidays, when they are absent due to sickness on such days, the designated holidays and assigned rest days will be considered as working days for the purpose of applying this rule; however, the absent employee will be allowed only straight time rate for the time lost on such days.

(d) After an employee has accumulated thirty (30) days of unused sick leave, thereafter, in each year of service, the employee shall have the option, which must be made in the month of February, of receiving payment in five (5) full day increments at the rate of 50% of the daily allowance for each day which he elects to option of the unused sick leave accumulated; or he may continue to accumulate the unused sick leave up to a maximum of sixty (60) working days. Upon accumulation of sixty (60) days sick leave, the employee shall thereafter be compensated for 50% of the unused sick leave credited to each subsequent eligibility year. Pay for unused sick time will be based upon the rate of the position occupied on the last day of the year or protected rate being paid, whichever is higher and will be paid in the next payroll period. (Pay for extra employees will be based on rate of position last occupied or protected rate being paid, whichever is higher.)

(e) An employee who is off account of sickness in any calendar year in excess of the specified allowance he is entitled to under Paragraph (a) of this rule, shall upon request, be given additional sick leave with pay to the extent of his unused sick leave in his sick leave reserve. Sick leave entitlement for the current year must be used up before any sick leave in the sick leave reserve can be used.

(f) Before the end of the last week in January of each year, each employee with unused sick leave will be notified of the number of

unused days which are being placed in his sick leave reserve, and the total number of accumulated days in such sick leave reserve.

(g) It will be optional with the Company to fill, partially fill, or not fill the position of an employee who is absent account his personal sickness and is receiving an allowance under this rule. If the Company elects to fill the position in its entirety, appropriate rules of the agreement will be followed. The use of other employees on duty and on other positions in the same office to perform the duties of the employee absent under this rule is permissible. Without prejudice to any rule in this Agreement, it is understood that an employee on a lower-rated position who is used for four (4) hours or less on a higher-rated position on a given day will be allowed the higher rate for actual time worked. If used for more than four (4) hours, he will be allowed the higher rate for his entire tour of duty.

(h) The employing officer must be satisfied that the sickness is bona fide. Satisfactory evidence as to sickness, preferably in the form of a certificate from a reputable physician, may be required in case of doubt.

(i) No allowance will be made under this rule for any day on which the employee is entitled to compensation under any other rule or agreement, except that:

> An employee reporting and working three (3) hours or less may elect to have the entire day as a sick day and paid for accordingly; otherwise the employee will be paid for the actual time worked. If employee is one qualified for a one-half day sick leave, he will be allowed to use it in lieu of an entire day.

(j) Any sick leave allowance to be paid by the Company under this rule shall be reduced in the amount by the maximum daily allowance

which the employee will be paid or could be paid, if proper claim were made by said employee under the Railroad Unemployment Insurance Act. In computing such supplemental allowance, only the assigned work days during which the employee is accorded sick leave allowance as provided in this rule will be considered.

(k) An employee falsely claiming sick time will be subject to disciplinary action.

(l) Employees who retire or die shall receive pay for 50% of the accumulated and unused sick leave at the rate of the position last occupied or protected rate being paid, whichever is higher. Pay on behalf of a deceased employee, shall be paid to such beneficiary as may have been designated, or in the absence of such designation, the surviving spouse, or children or his estate, in that order of preference.

ITEM 2:

(From Article IX - Sick Leave of the January 30, 1979 National Agreement.)

(a) Employees with ten (10) but less than twenty (20) years of service shall be entitled to one additional sick leave day per year. Employees with twenty (20) or more years of service shall be entitled to two (2) additional sick leave days per year.

(b) The sick leave days provided in Paragraph (a) of this Item may, at the option of the employee, be taken as sick leave and subject to the foregoing requirements governing sick leave or upon forty-eight (48) hours' advance notice from the employee to the proper Company official may be taken as leave days, not subject to the foregoing requirements governing sick leave. Such leave days may be taken only when consistent with the requirements of the Company's service.

NOTE: It is understood that although leave days are subject to the requirements of the service, this provision is not to be applied so as to prevent an employee from proper use of a leave day during a year, except where the request for leave is so late in a calendar year that service requirements prevent the employee's utilization of the leave day before the end of the year.

(c) In the event the additional sick leave days provided herein are taken as sick leave subject to the above requirements governing sick leave, such days so taken will be paid for in the manner provided in this rule. In the event they are taken as leave days, they will be paid for at the regular rate of the employee's position or the protected rate, whichever is higher.

(d) The sick leave days provided in Section (a) of this Item will be forfeited if not taken each calendar year. Such leave days will not be deducted from any employee's current year sick leave entitlement.

It will be optional with the Company to fill or not fill the position of any employee who is absent on a leave day. If the vacant position is filled, the rules of the agreement applicable thereto will apply. The Company will have the right to distribute work on a position vacated among other employees covered by this Agreement.

SECTION 9:

ENTRY RATES:

Employees entering service of Pacific Fruit Express Company on or about January 1, 1980, shall be paid for all service performed within the first twelve calendar months of service 85% and for the second

twelve calendar months of service 92% of the applicable rates of pay (including COLA) under the same terms and conditions as provided in Article VIII of the National Agreement of January 30, 1979.

NOTE: Upon completion of entry rate period, the full rate of pay of positions worked will be used for the purpose of computing applicable protected rate under the Agreement:

SECTION 10:

The following is agreed to effective January 1, 1980 in complete and final settlement of Section 6 Notice dated February 1, 1979:

ITEM 1: The following is added to Rule 1 of the Clerks' Agreement:

Positions or work within the scope of this Rule 1 belong to the employees covered thereby and nothing in this Agreement shall be construed to permit the removal of such positions or work from the application of these rules subject to the exceptions hereinafter set forth and except in the manner provided in Rule 47.

When and where machines are used for the purpose of performing work coming within the scope of this Agreement, not previously handled by machines, such work will continue to be covered by this Agreement. A change in the equipment used for the performance of any remaining work will not remove such work from the coverage of this Agreement.

An officer or employee not covered by this Rule 1 may perform work covered by this Agreement which is incident to his regular duties.

Clerical positions in departments excepted from all of the provisions of this Agreement and such specified positions listed in

either Rule 1(c), (d) and (e) are recognized as being within the craft or class covered by this Agreement.

ITEM 2.

List of positions specified in Clerks' Agreement in Rule 1(c) is revised as follows:

1. Secretary to President & General Manager
2. All positions Personnel Department
3. Employees assigned to road service where special training, experience and fitness are necessary.
4. District Agents.

ITEM 3.

List of positions specified in Clerks Agreement Rule 1(d) is revised as follows:

LIST OF POSITIONS UNDER JURISDICTION OF
CONTROLLER - ACCOUNTING DEPARTMENT
SAN FRANCISCO

Chief Clerk - Disbursements

Chief Clerk - Revenue

Chief Clerk - Miscellaneous

Chief Clerk - Revenues & Equipment Service

Special Accountant (2)

General Bookkeeper

****

CHIEF MECHANICAL OFFICER
MECHANICAL DEPARTMENT - SAN FRANCISCO

Chief Clerk - General

Mechanical Shops

Chief Clerk-Shop/Stores Office

Tucson

****

ASSISTANT GENERAL MANAGER,
SAN FRANCISCO
CAR SERVICE DEPARTMENT

General Agent, Houston ✓

Car Distributor

Agent-Hearne

Agent-Houston-(Englewood)

General Agent, Yuma ✓

Car Distributor - Los Angeles

General Foreman - El Paso

Superintendent - Roseville

Car Distributor

Agent

Superintendent, Salinas

Chief Clerk

Agent-Watsonville

****

PURCHASING AGENT - PURCHASING DEPT.
SAN FRANCISCO

System Stockbook Supervisor - San Francisco

Buyer - San Francisco

General Foreman of Stores

Tucson

****

PERISHABLE CHARGES & CLAIMS,
SAN FRANCISCO

Chief Clerk

****

MANAGER - DATA PROCESSING
SAN FRANCISCO

Chief Clerk - Computer Operations

****

SUPERINTENDENT - TRANSPORTATION
SAN FRANCISCO

General Car Distributor

Car Distributor

Chief Clerk

NOTE: If agreement is not reached between the General Chairman and the Manager of Personnel on exception of an additional position or positions under Rule 1(d) of the Agreement, the proposed change will be referred to the Company's President & General Manager and the Brotherhood's International President for consideration and agreement.

ITEM 4:

Position of General Bookkeeper (Controller's Office), San Francisco and Position of Chief Clerk, (Perishable Charges and Claims, San Francisco) will be reclassified from present Rule 1(d) coverage to positions subject to all rules except Promotion, Assignment and Displacement (PAD).

ITEM 5:

Position of Chief Clerk 1(d) Tucson Shop/Stores will be reclassified to being a fully covered position in Rule 1(b) effective March 1, 1980.

ITEM 6:

The reclassification of positions pursuant to this Section will not result in rates of pay of positions being reduced.

ITEM 7:

Reclassification of positions referred to in Paragraphs 4 and 5 will occur at time vacated by incumbent holding position as of December 31, 1979, except that in the case of such positions scheduled to be converted to PAD position, present incumbent may be succeeded by

another excepted employee provided the position on which there is a remaining vacancy is so converted at that time. Rates of pay of positions to be converted to PAD will be agreed upon by May 31, 1980 on a comparability basis.

ITEM 8:

Employees promoted to official or excepted positions on or after January 1, 1980 will be required to maintain membership in the organization party to this Agreement in order to retain seniority under the Clerks' Agreement. In the event such an employee fails to maintain membership as required, the General Chairman shall notify the Manager of Personnel and if within 30 days thereafter (from date of letter) the employee has not paid the dues owed, his or her seniority under the Clerks' Agreement will be forfeited.

ITEM 9:

No notice may be served by the organization on the PFE proposing conversion of so-called non-union positions to contract coverage until on or after July 1, 1982.

SECTION 11:

Except as provided herein, provisions of current controlling Agreements between the parties and interpretations thereof apply.

SECTION 12:

This Agreement is entered into for the purposes above stated and application of its provisions shall constitute full and final disposition of the September 27, 1979 Notice of the Section 6 Notice of April 1, 1978 as to "Stabilization Agreement", of the Section 6

Notice on Rule 1 dated February 1, 1979 and of all Section 6 Notices now pending between the Organization (BRAC) and this Company.

Signed at San Francisco, this 7th day of January, 1980.

FOR THE BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES:

J. H. Grochopf
General Chairman

R. B. Brackbill
Senior Vice General Chairman

G. W. Hansen
Vice General Chairman

W. D. Martin
Local Chairman

D. B. Padilla
Local Chairman

FOR THE PACIFIC FRUIT EXPRESS COMPANY:

T. D. Walsh
Manager Personnel

H. Goldman
Assistant General Manager

APPROVED:

C. L. Coleman
International Vice President, BRAC

MEMORANDUM AGREEMENT

This will confirm understanding reached in conferences on January 7, 1980, dealing with the adoption of the revised Scope Rule effective January 1, 1980.

1. It was understood and agreed that in any instance where the new Scope Rule (or this Memorandum Agreement) is in conflict with the provisions of the TOPS Agreement (Attachment "F") the specific provisions of the TOPS Agreement will apply.

2. With respect to the present performance of work by outside parties which is covered by the revised Scope Rule but not related to TOPS, the company and the Organization agree that any dispute arising at any location where such work is at present being performed by outside parties, the dispute will be processed under the provisions of the current Agreement effective June 1, 1965, with the understanding that the Scope Rule as revised and effective January 1, 1980 will not be applicable nor will it be introduced by either party during the processing of such dispute. This will not be construed as license to remove work from the coverage of the Agreement on and after January 1, 1980, except in accordance with the provisions of Rule 47.

3. When the Company proposes substantial reorganization and/or realignment which contemplates the contracting out of work belonging under the Agreement, or the assignment of any such work to employees not covered by the Agreement, the Company will give the General Chairman sixty (60) days advance notice in writing of the precise changes being proposed. If agreement is not reached between the General Chairman and the Manager of Personnel, the following procedure may be invoked:

(a) The proposal will be referred to the Company's President and General Manager and the Brotherhood's International President for consideration and agreement. If agreement is not reached thereon within sixty (60) days, then:

(b) The issue may be processed by either party to final and binding arbitration, under Section 7 of the Railway Labor Act, as amended. Should either party decline to participate in the arbitration process, then the other party's position in that particular case shall be considered as being sustained.

The terms and conditions of this Memorandum Agreement for the resolution of disputes involving performance of certain work by outside parties will apply also to disputes involving performance of work of the same nature by officers and employees not covered by the Clerks' Agreement.

Signed at San Francisco, California, this 7th day of January, 1980.

FOR THE BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES:

J. H. Bockop
General Chairman

R B Brockbill
Senior Vice General Chairman

G W Hansen
Vice General Chairman

W. D. Martin
Local Chairman

J. B. Padilla
Local Chairman

FOR THE PACIFIC FRUIT EXPRESS COMPANY

T D Walsh
Manager Personnel

H Feldhun
Assistant General Manager

APPROVED:

C. S. Coleman
International Vice President, BRAC

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ADDENDUM NO. 1

PER 46 - TOPS

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

* * * * * * * * * * * * * * * * * *

This agreement made this 14th 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.

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 not 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 this agreement is effective is a work day for particular employes involved).

NOTE 1: An employe 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 emplcye involved would be accepted, and the displacement period for such employe

shall be extended to either the close of the fifth (5th) calendar day followi 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 assigne permanent position. An employe who has moved from a Guaranteed Extra Board position to a seasonal or temporary position to which he is assigne 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 Article 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 Chairme. 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 an 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 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 of 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.

(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.

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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 benefits 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) months' 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.

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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 addition 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 caused 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 immediately 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 appoint a 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.

ARTICLE V

MAINTENANCE OF FRINGE BENEFITS

Employes transferred from one carrier to another under this agreement shall have full credit, in respect to vacations, hospital payments, health and welfare, grcup life insurance, sick leave, etc., for combined service on both carriers as long as they maintain employment relationship.

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 1. Nothing in this agreement shall be interpreted so as to provide for duplicate payments to any employe for any period of time; neither shall any employe be entitled to the benefits of protection under the terms of tnis agreement and concurrently entitled to like or similar benefits under the terms of any other agreement or agreements, or orders of constituted authority; when there are different payment provisions applicable to the same period of time, the provision providing for the higher payment shall be applied.

NOTE 1: In those cases where individual employes are eligible for or receiving protection of rate or earnings under agreements now in effect relating to stabilization of employment, transfer of work, or consolidation of seniority rosters based on occurrences prior to effective date of this Agreement, such protection will be continued on basis provided therein to stated period of expiration, if any, following which applicable provisions of this agreement will govern.

NOTE 2: Applicable protected rates under the April 20, 1966 and April 8, 1967 agreements are not reduced by reason of an employe being on a lower-rated position as of the effective date of this agreement.

Section 2. (a) - Where any of the provisions of this agreement are in conflict with the provisions of any existing rules, agreements, interpretations or practices in effect on any of the Carriers, parties hereto, the provisions of this agreement shall govern.

(b). In the utilization of electronic computer system identified as "TOPS," exclusive operation of the necessary equipment at on-line locations, in other than exempt offices, will be by employes covered by the scope of applicable agreements with the Brotherhood of Railway, Airline and Steamship Clerks. This will also apply in connection with operation of similar equipment or facsimile devices with transmission capability for exchange of data on an intra- or inter-carrier basis, including carriers or others not party to this agreement, either in conjunction with or separate from the electronic computer system identified as "TOPS," for the purpose of performing production work of the character now performed by employes covered by this agreement.

(c). Item (b) above does not apply to operation of equipment at locations involved for research, instruction, control, tests and repair or maintenance purposes, but other individuals operating the equipment for these purposes will not do production work. This does not disturb present practices under which certain testing and adjusting on certain of this equipment is now assigned to be performed by employes covered by this agreement.

Section 3. The Carriers and the Organization signatory hereto will exchange such data and information as are necessary and appropriate to effectuate the purposes of this agreement. This will include listing of all temporary or seasonal positions. This will also include notification to the Organization of new employes within 15 days of date of employment, showing name, Social Security number, location employed

and position to which assigned; also, similar notification as soon as practicable of employes promoted or leaving the service for any cause.

ARTICLE VII

EXTRA BOARDS

Section 1(a) Extra boards consisting of assigned extra board positions will have headquarters at the following locations:

EXTRA BOARDS - PACIFIC LINES

(Not including San Francisco General Offices)

Portland	Oxnard	Los Angeles General Office
Eugene	Gerber	Los Angeles
Roseburg	Sacramento	Long Beach
Medford	Sacramento Gen. Store	City of Industry
Albany	Redding	Anaheim
Salem	Roseville	Colton
Coos Bay	Reno-Sparks	Indio
Klamath Falls	Carlin	El Centro
Dunsmuir	Ogden	Yuma
San Jose	Stockton	Phoenix
Watsonville Jct.	Tracy	Tucson
San Luis Obispo	Martinez	Douglas
Fresno	Oakland	El Paso
Bakersfield	Warm Springs	Tucumcari
Mojave	San Francisco	Lordsburg
	Bayshore	

EXTRA BOARDS - NWP

Eureka Willits
Santa Rosa

EXTRA BOARDS - SD&AE

San Diego

EXTRA BOARDS - T&L

(Not including Seniority District No. 1)

Avondale	Dallas	Corpus Christi
Lake Charles	Ennis	Eagle Lake
Lafayette	Lufkin	San Antonio
Schriever	Hearne	Alpine
Beaumont	Houston	El Paso
		Victoria
		Edinburg

EXTRA BOARDS - SSW

(Not including Tyler or St. Louis General Offices and offices at Pine Bluff other than station and yard)

East St. Louis	Pine Bluff	Tyler	Camden
Jonesboro	Shreveport	Waco	
Memphis	Texarkana	Dallas	

(b) Each carrier party hereto is authorized to determine the appropriate size of the extra boards, subject to the following conditions:

1. The number of extra board positions at each of the locations set forth in (a) of this section shall be not less than fifteen percent (15%) of the number of permanent positions, including permanent assigned relief positions to be served from such locations; if the number of positions on Guaranteed Extra Boards at any location drops below fifteen percent (15%) and there is an insufficient number of qualified unassigned employes eligible for recall to vacancies on the extra board, as provided herein, carrier will arrange to hire an appropriate number of additional employes.

2. In the event a carrier, party hereto, establishes a greater number of extra board positions than that referred to in Item 1 above, such additional positions may be reduced at any time provided, however, that no individual shall be furloughed less than 30 calendar days from the date recalled from furlough for assignment to the extra board unless displaced in the normal exercise of seniority under the current agreement as a result of another employe returning from leave of absence in excess of thirty (30) days.

(c). New Guaranteed Extra Board positions will be advertised on the same basis as bulletin rules in effect, except that hours of service will be omitted, and rate of pay will be rate applicable to service performed, but not less than guaranteed rate, as the case may be.

(d). Incumbents of assigned extra board positions may be used on any seniority roster in the area served by the extra board and shall hold themselves available for call at their designated calling places during each of the three two-hour periods daily which shall be specified by carrier at the location of each extra board. Specified times will not thereafter be changed except after thirty (30) days' advance notice to General Chairman, Division Chairman and all employes on the Guaranteed Extra Board. There shall be an interval of six hours between each of the two-hour periods established. Guaranteed Extra Board employes will not suffer any loss of guarantee for failure to be available for call outside the specified hours. Employes will be called for work in manner mutually agreed upon. Where telephone has been used for calling in the past, this method of calling may be continued. If contact is not made, telephone operator to verify whether telephone working or out of order, and if telephone is reported to be in working order, another employe will, whenever practicable, be requested to make call in order to verify that no contact can be made by telephone, with appropriate notation, certified by employe or employes making call, to be recorded in log book.

(e). Assigned extra board employes shall be guaranteed payment for forty (40) hours per week, except that this guarantee shall

be reduced by eight (8) hours in any week for any day on which an employe does not work by reason of his failure to respond, during calling hours established pursuant to paragraph (d) hereof, to a call for work on that day, provided that at least eight (8) hours elapse between completion of the employe's last tour of duty (or his return to headquarters if his last tour of duty was away from his headquarters) and time for which called, and except where such service would be in violation of the Hours of Service Act. In computing this guarantee, time worked will be paid for at the rate of the position or positions on which worked (but not less than the guaranteed rate) and when time paid for in any week commencing with Monday is less than the guaranteed hours an additional amount of time will be paid at the guaranteed rate so that total time paid for will equal forty (40) hours, exclusive of penalty payments under train order rule, deadhead, travel and waiting time. Existing guaranteed minimum rates in effect on Guaranteed Extra Boards on the separate properties here involved will be continued, subject to adjustment to include subsequent wage changes.

(f). Time paid for as guarantee time may be used for training purposes. When training is away from operation being trained for no production work will be performed. If training results in accomplishment of production work in addition to what would normally be performed by regular employe, rate of position being trained for shall be paid to trainee; however, this provision does not contemplate extra employes will be required to perform production work to avoid necessity of

establishing regular positions. Training may be given to Guaranteed Extra Board employes who would otherwise stand for call for service and in such cases the employe will be compensated for training at rate of pay applicable to position he would have worked (but not less than the guaranteed rate); "hold downs" may not be broken for this purpose.

(g). When an employe on a Guaranteed Extra Board position is required to travel from his headquarters point to another point outside the environs of the city or town in which his headquarters point is located, the carrier will either provide transportation without charge or reimburse the employe for such transportation cost. ("Transportation means travel by rail, bus, or other means specified by the carrier, or by private automobile if the employe elects to use same, and "transportation cost" means the established passenger fare or the established automobile mileage allowance where automobile is used.)

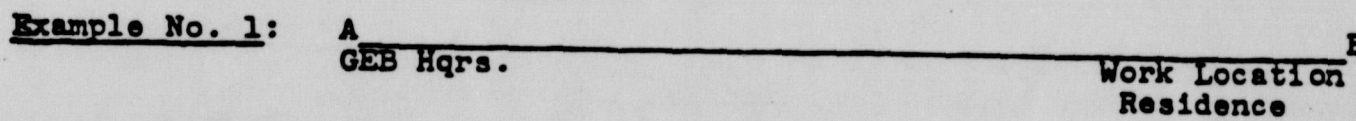
Such an employe shall be compensated in addition to time worked for the time spent in traveling to and from headquarters to outside work location, including time in excess of one (1) hour necessary waiting for the employe's shift to start and time in excess of one (1) hour after completion of shift waiting for transportation to return to headquarters or to employe's next work location. Such compensation shall be at the rate of the position worked.

When such an employe is unable to return to his headquarters on the same day that he is required to leave his headquarters, he shall be reimbursed for lodging and meals by allowance of $10.00 per day while away from headquarters. The "same day" is defined as the twenty-four

(24) hour period calculated from the time the employe is required to leave his headquarters; however, in application of this paragraph an employe will not be deprived of allowance referred to account return to headquarters in less than 24 hours from the time required to leave his headquarters in the event such employe remains at the outside point for a period of eight hours or more following conclusion of service in order to obtain rest before returning to headquarters when travel and waiting time for one-way trip would amount to three hours or more.

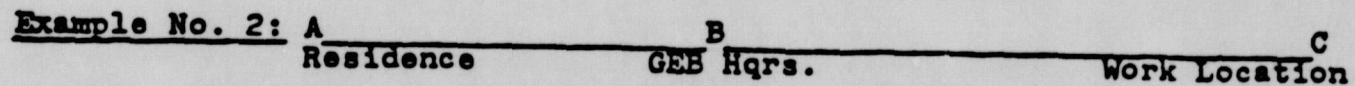
Guaranteed Extra Board employes who reside at points other than headquarters point of the guaranteed extra board will, when used to perform extra service at outside points served by the extra board, be given the same allowance of travel time and automobile allowance (if automobile allowance is normally made to such individuals) as extra employes who travel from headquarters to such outside points, in accordance with the following examples:

Example No. 1:



Travel time and mileage payable A to B and return as set forth above.

Example No. 2:



Travel time and mileage payable B to C and return as set forth above.

Example No. 3: A (GEB Hqrs.) — B (Work Location) — C (Residence)

Travel time and mileage payable A to B and return as set forth above.

Example No. 4: A (GEB Hqrs.) — B (Residence) — C (Work Locati)

Travel time and mileage payable A to C and return as set forth above.

Example No. 5: A (GEB Hqrs.-Work Location) — B (Residence)

No allowance.

The allowance referred to in third paragraph of (g) will not be allowed the extra employes who either reside at the outside work location or within such distance thereof that the employe would be able to return to his residence or headquarters on the same day that he is required to leave his headquarters or residence.

If after a period of six (6) months the organization requests an upward adjustment in the $10.00 allowance, it shall present to the carrier receipts of expenditures made by employes affected for the purpose of joint review of the adequacy of said allowance. If the parties are unable to agree on an adjustment, the question will be submitted to arbitration pursuant to Article X of this agreement.

(h). Guaranteed Extra Board employes working away from headquarters on "hold-down" extending over rest days of position involved will be permitted to return to headquarters for such rest days and again returned to position after rest days, in connection with which travel time and mileage provisions of Section (g) will apply.

ARTICLE VIII

TRAINING

Section 1 - As result of institution of TOPS or other types of new equipment or combining work of clerks and telegraphers, methods or procedures of handling will be changed for certain positions to the extent that it will be necessary or desirable to afford training on or off the job, both in advance of and after the time such changes are placed into effect. Employes assigned to the positions affected or exercising seniority to become assigned to the positions affected shall be given opportunity to train on the job for the position for a reasonable time without reduction in compensation. Where training is to be given outside working hours, employes at locations involved will be given opportunity in seniority order to train and will be compensated at the pro rata Guaranteed Extra Board rate for time attending training class.

Section 2 - An employe whose position is abolished or is in direct chain of displacements as result of abolishment of a position and exercises seniority on a position the duties of which include work the employe has not had experience in performing or has not previously received training to perform, but for which position the employe has sufficient fitness and ability to qualify in a reasonable time, will be given training for the position for a reasonable time. Such training may be on or off the job and may be done in such manner as Carrier may deem appropriate. In the event training is given at other than the location of the job on which the employe exercises seniority, the employe will be compensated for travel and expenses on

the same basis as provided for extra employes in Article VII, Section 1(g).

NOTE: An employe who holds a regular assignment to a position at the time a ninety-day notice of intent to abolish the position is issued, may bid for another position during the life of the notice and if assigned will be given training under this section. In the event this is done, an employe subsequently assigned to the position under notice will not be entitled to training under this section.

Section 3 - If an employe who has not previously worked a higher-rated position or received training for this work, is successful applicant for the higher-rated position, the applicant will be afforded training on the same basis as provided in Section 2.

NOTE: Employes eligible for training under Sections 2 and 3 will be given training without loss of time following acceptance of displacement or application.

ARTICLE IX

ALTERNATING POSITIONS

When any position is filled by an employe on one of the carriers, parties hereto, on an alternating basis with employes of another carrier, party hereto, or employes of another carrier not a party hereto, the discontinuance of such position by reason of alternating the position to employes of another railroad is not limited by this agreement.

ARTICLE X

DISPUTE - METHOD OF HANDLING

In the event any dispute or controversy shall arise betweer any of the carriers, parties to this agreement, and an employe, or hi authorized representative, as to the interpretation or application of this agreement (except controversies defined in Article IV, Section 8 which cannot be settled by the parties after being handled in the usu manner up to and including appeal to the designated officer of the involved carrier, such dispute may be submitted by either party to a Public Law Board at any time within nine (9) months after the date of the decision of the designated officer of the involved carrier.

ARTICLE XI

EFFECTIVE DATE-TERMINATION-CHANGE

This agreement is effective October 1, 1971, and supersedes and cancels, in whole or in part, any agreement or agreements in effe between any Carrier, party hereto, and the Organization, party hereto, to the extent in conflict therewith.

The provisions of this agreement shall remain in effect until September 30, 1974, and thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amende No party to this agreement shall serve, prior to April 1, 1974, any notice or proposal to change the provisions of this agreement, or which relates to the subject matter therein contained (except as provided for in Article VII of this agreement), and nothing in this agreement shall be changed as result of any pending notices or counterproposal in connection therewith. Any notice or proposal of the character hereinabove referred to served on or after April 1, 1974, shall not be placed into effect before October 1, 1974. Notice or proposals referred to herein to change the provisions of this agreement may be served either jointly or separately by any of the Carriers or General Committees, parties to this agreement.

This agreement is subordinate to Federal, State or Municipa legislation.

Signed at San Francisco, California, this 16th day of September, 1971.

FOR THE EMPLOYES:

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES, INCLUDING TRANSPORTATION-COMMUNICATION DIVISION-BRAC

General Chairman, BRAC
Southern Pacific Transportation Company (Pacific Lines), NWP and SD&AE

Vice General Chairman, BRAC
Southern Pacific Transportation Company (Pacific Lines)

Vice General Chairman, BRAC
Southern Pacific Transportation Company (Pacific Lines)

General Chairman, TC-BRAC
Southern Pacific Transportation Company (Pacific Lines, including Former Pacific Electric Railway Company), NWP and SD&AE

General Chairman, BRAC
Southern Pacific Transportation Company (T&L Lines)

FOR SOUTHERN PACIFIC TRANSPORTATION COMPANY (Pacific Lines, including Fo Pacific Electric Railway Company), NORTHWESTERN PACIFIC RAILROAD COMPAN SAN DIEGO & ARIZONA EASTERN RAILWAY

Manager of Labor Relations

FOR SOUTHERN PACIFIC TRANSPORTATION COMPANY (Texas and Louisiana Lines)

Manager of Labor Relations

FOR ST. LOUIS SOUTHWESTERN RAILWAY COMPANY:

Manager of Personnel

John R. Jenkins
Vice General Chairman, BRAC
Southern Pacific Transportation
Company (T&L Lines)

A. J. Swoboda
Division Chairman
Southern Pacific Transportation
Company (T&L Lines)

D. G. McCann
General Chairman, TC-BRAC
Southern Pacific Transportation
Company (T&L Lines)

R B Pinckard
General Chairman, BRAC
St. Louis Southwestern Railway
Company

G. B. Robb
Vice General Chairman, BRAC
St. Louis Southwestern Railway
Company

P R Duffy aff't
General Chairman TC-BRAC
St.Louis Southwestern Railway
Company

APPROVED:

A. R. Landry
President, TC-BRAC

C. L. Coleman
International Vice President, BRAC

100.

APPENDIX "A" TO AGREEME
OF SEPTEMBER 16, 1971

The following "seniority units" shall apply in application of Section 12, Article II and Section 1(a), Article IV of the agreement of September 16, 1971:

SOUTHERN PACIFIC TRANSPORTATION COMPANY (PACIFIC LINES):

Master Seniority Roster Region No. 1
Master Seniority Roster Region No. 2
Master Seniority Roster Region No. 3
Master Seniority Roster Region No. 4
Master Seniority Roster Region No. 5
Master Seniority Roster Region No. 6
San Francisco General Offices

NORTHWESTERN PACIFIC RAILROAD COMPANY

SAN DIEGO AND ARIZONA EASTERN RAILWAY COMPANY

SOUTHERN PACIFIC TRANSPORTATION COMPANY (T&L LINES):

Seniority District No. 1
Seniority District No. 2
Seniority District No. 3
Seniority District No. 4

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY:

Station and Yard North of Texarkana
Station and Yard Texarkana and South
All other offices and Departments

SOUTHERN PACIFIC TRANSPORTATION COMPANY
(PACIFIC LINES)
(TEXAS AND LOUISIANA LINES)
NORTHWESTERN PACIFIC RAILROAD COMPANY
SAN DIEGO AND ARIZONA EASTERN RAILWAY CO.

San Francisco, California
September 16, 1971

Mr. T. J. Diehl, General Chairman
Brotherhood of Railway and Airline Clerks
Room 645 - Phelan Building
San Francisco, California 94102

Mr. R. B. Brackbill, General Chairman
TC Division - BRAC
973 Market Street - Room 500
San Francisco, California 94103

Mr. J. V. Gates, General Chairman
Brotherhood of Railway and Airline Clerks
Room 640, 201 Main Street
Houston, Texas 77002

Mr. D. G. McCann, General Chairman
TC Division - BRAC
Room 637 - 201 Main Street
Houston, Texas 77002

Gentlemen:

In application of Article II, Section 12 and Article III of Agreement of September 16, 1971, the following is agreed to for the calendar year 1971:

Except as provided below, pending abolishment and/or transfer of work notices may be placed in effect based on use of attrition or overbase credits accrued under existing applicable agreements. Notices served after October 1, 1971, will be subject to all applicable provisions of the agreement of September 16, 1971.

Pending abolishment and/or transfer of work notices served prior to May 28, 1971, will be considered as commencing "the following 120 calendar-day period" referred to in Article III, Section 3(a), of the Agreement of September 16, 1971, as of effective date of the latter agreement.

CONCUR:

T. J. Diehl

General Chairman, BRAC
Southern Pacific Transportation
Company (Pacific Lines), NWP
and SD&AE

Yours truly,

L. W. Sloan

Manager of Labor Relations
Southern Pacific Transportation
Company (Pacific Lines), NWP
and SD&AE

R. B. Buckhall
General Chairman TC-BRAC
Southern Pacific Transportation
Company (Pacific Lines), NWP
and SD&AE

J. D. Davidson
Manager of Labor Relations
Southern Pacific Transportation
Company (T&L Lines)

O. V. Gates D.D.M.
General Chairman, BRAC
Southern Pacific Transportation
Company (T&L Lines)

D. B. McCann
General Chairman, TC-BRAC
Southern Pacific Transportation
Company (T&L Lines)

SOUTHERN PACIFIC TRANSPORTATION COMPANY
(PACIFIC LINES)
NORTHWESTERN PACIFIC RAILROAD COMPANY
SAN DIEGO & ARIZONA EASTERN RAILWAY COMPANY

San Francisco, California

September 16, 1971

Mr. T. J. Diehl, General Chairman
Brotherhood of Railway and Airline Clerks
Room 645 - Phelan Building
San Francisco, California 94102

Mr. R. B. Brackbill, General Chairman
TC Division - BRAC
973 Market Street - Room 500
San Francisco, California 94103

Gentlemen:

This confirms our agreement that, to the extent applicable, the following provisions of the Agreement of April 20, 1966 shall be retained:

Section 1(d) and (e) of Article VII

Appendages "B", "B-1", "B-2" and "C" to the Agreement of April 20, 1966.

Yours truly,

L W Sloan

Manager of Labor Relations

CONCUR:

F B Diehl

General Chairman, BRAC

R B Brackbill

General Chairman, TC-BRAC

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Southern Pacific
Transportation Company

One Market Street • San Francisco, California 94105

LABOR RELATIONS DEPARTMENT

L. W. SLOAN
MANAGER OF LABOR RELATIONS
L. M. FOX
FIRST ASSISTANT MANAGER
OF LABOR RELATIONS

L. D. BUSH
W. E. CATLIN
W. T. JENSEN
P. E. LARSON
J. S. LAWSON
R. L. MAYNEW
J. R. MICHENER
J. G. TRAVIS
P. G. VAUGHAN
E. A. WOOD
ASSISTANT MANAGERS OF
LABOR RELATIONS

September 16, 1971

Mr. T. J. Diehl, General Chairman
Brotherhood of Railway and Airline Clerks
Room 645 - Phelan Building
San Francisco, California 94102

Mr. R. B. Brackbill, General Chairman
TC Division - BRAC
System Division No. 53
973 Market Street - Room 500
San Francisco, California 94103

Gentlemen:

This confirms our agreement that new Guaranteed Extra Boards provided for in the Agreement of September 16, 1971, and new positions to be added to the Guaranteed Extra Boards as result of combining Clerks' and Telegraphers' Agreements, will be progressively established. During period such extra boards and positions are being progressively established, Guaranteed Extra Board positions may be augmented by use of existing unassigned telegraphers under practices now in effect.

Any employes required to change location of residence as result of being placed on assignments to initially establish the Guaranteed Extra Boards, will be reimbursed for moving expenses and loss on sale of home on basis provided for in Sections 10 and 11 of Washington Agreement.

Yours truly,

L W Sloan

CONCUR:

T J Diehl
General Chairman, BRAC

R B Brackbill

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ADDENDUM NO. 2
(PFE Positions)

POSITION NO.	TITLE	LOCATION	BASIC DAILY RATE OF PAY
A-2	Head Divn. Clerk	Houston	$68.93
A-26	Steno Timekeeper Ck	Houston	67.95
L-1	Agent Clerk	Edinburg	67.76
A-47	Clerk Repairman	Englewood	69.08
A-51	Clerk Repairman	Englewood	58.25
A-46	Clerk Repairman	Englewood	69.08
A-48	Clerk Repairman	Englewood	69.08
G-13	Clerk Repairman	Hearne	69.08
G-18	Clerk Repairman	Hearne	69.08
G-14	Clerk Repairman	Hearne	69.08
Rel.-A	Clerk Repairman	Hearne	69.08
J-20	Clerk Repairman	New Orleans	69.08
J-17	Agent Clerk	New Orleans	67.76
I-10	Agent	San Antonio	70.42
6	Head Clerk	Los Angeles	72.18
92	Diversion Agent	Los Angeles	75.77
67	Secretary Clerk	Los Angeles	64.93
A-25	Yard Clerk	Roseville	64.68
A-24	Chief Yard Clerk	Roseville	66.94
A-50	Clerk Timekeeper	Roseville	67.99
A-23	Chief Yard Clerk	Roseville	66.94
A-22	Asst. Agent	Roseville	67.92
Rel-1	Chief Yard Clerk	Roseville	66.94
A-38	Steno Clerk	Roseville	65.06
Rel.-3	Yard Clerk	Roseville	64.68
A-42	Divn. Clk Asst Car Dst	Roseville	67.76
B-162	Service Worker	Roseville	60.14
B-134	Lead Workman	Roseville	60.94
B-82	Shift Foreman	Roseville	68.30
B-161	Service Worker	Roseville	60.14
Rel.-A	Shift Foreman	Roseville	68.30
Rel.-B	Service Worker	Roseville	60.14
B-109	Repairman	Roseville	66.69
B-83	Shift Foreman	Roseville	68.30
B-81	Shift Foreman	Roseville	69.40

ADDENDUM NO. 2
(PFE Positions) (Cont'd)

POSITION NO.	TITLE	LOCATION	BASIC DAILY RATE OF PAY
D-5	Head Repairman	Modesto	$69.08
F-62	Yard Clerk	Fresno	64.68
Rel.-A	Yard Clerk	Fresno	64.68
Rel.-B	Shift Foreman	Fresno	67.56
F-63	Shift Foreman	Fresno	67.56
F-61	Agent Clerk	Fresno	68.61
F-154	Service Worker	Fresno	60.14
F-60	Chief Clerk	Fresno	68.32
F-153	Service Worker	Fresno	60.14
F-64	Shift Foreman	Fresno	67.56
J-28	Diversion Clk Timekpr	Bakersfield	66.58
J-230	Service Worker	Bakersfield	60.14
J-32	Clerk Inspector	Bakersfield	64.68
Rel-A	Clerk Inspector	Bakersfield	64.68
J-8	Chief Clerk	Bakersfield	68.32
K-1	Agent Clerk	Brooklyn	68.61
L-5	Shift Foreman	Eugene	67.56
L-4	Shift Foreman	Eugene	67.56
L-1	Agent	Eugene	70.06
M-14	Clerk Inspector	Klamath Falls	67.56
M-4	Clerk Inspector	Klamath Falls	67.56
M-2	Agent Clerk	Klamath Falls	68.61
C-2	Agent	Salinas	70.06
S-3	Steno Diversion Clerk	Salinas	66.44
B-14	Agent Clerk	Oakland	68.61
B-17	Yard Clerk	Oakland	64.68
G-25	Yard Clerk	Bayshore	64.68
G-28	Agent	Bayshore	70.06
H-19	Yard Clerk	Watsonville Jct	64.68
H-16	Rel. Yard Clerk	Watsonville Jct.	64.68
H-10	Yard Clerk	Watsonville Jct.	64.68
H-7	Yard Clerk	Watsonville Jct.	64.68

POSITION NO.	TITLE	LOCATION	BASIC DAILY RATE OF PAY
F-16	Asst. Chief Clerk	S.F. Pres.&GM	68.03
F-21	File Clerk	S.F. Pres.&GM	63.43
C-2	Secretary	S.F. Pres.&GM	68.28
C-5	Timekeeper Clerk	S.F. Pres.&GM	70.71
S-3	Clerk Typist	S.F. Pres.&GM	67.24
S-48	Secretary	S.F. Pres.&GM	68.28
F-23	File Clerk	S.F. Pres.&GM	63.43
C-50	Asst. Chief Clk	S.F. AGM	73.95
A-41	Asst. Chief Clk	S.F. Ch.Mech.Off.	73.95
A-27	AAR Clk Instr.	S.F. Ch.Mech.Off.	67.56
A-26	Sr AAR Clerk	S.F. Ch.Mech.Off.	70.57
P-1	Steno Clerk	S.F. Purch.	67.24
T-15	Freight Accnt.	S.F. MPCC	76.05
T-1	Sr. Claim Clerk	S.F. MPCC	70.13
R-11	Head Audit Clerk	S. F. Controller	71.04
R-50	Audit Clerk	S. F. Controller	66.61
R-91	Misc. Clerk	S. F. Controller	65.46
D-5	General Clerk	S. F. Controller	67.95
RE-1	Audit Bill Clerk	S. F. Controller	67.14
R-88	Spec. Accountant	S. F. Controller	73.62
DE-11	M&S Acct. Clerk	S. F. Controller	65.46
D-9	Spec. Accountant	S. F. Controller	73.62
RE-2	Audit Bill Clerk	S. F. Controller	67.14
R-87	General Clerk	S. F. Controller	67.95
D-7	Head Control Clerk	S. F. Controller	70.32
E-3	Head Clerk	S. F. Controller	69.83
RE-3	Audit Bill Clk	S. F. Controller	67.14
F-18	File Clerk	S. F. Controller	67.56
R-15	Audit Clerk	S. F. Controller	66.61
A-1	General Clerk	S. F. Controller	67.95
RE-4	Equip Bill Clk	S. F. Controller	67.14
D-8	Control Clerk	S. F. Controller	67.56
R-107	Spec. Accountant	S. F. Controller	73.62
D-21	Bills Payable Clk	S. F. Controller	65.95

ADDENDUM NO. 2
(PFE Positions) (Cont'd)

POSITION NO.	TITLE	LOCATION	BASIC DAILY RATE OF PA
DE-12	Key Entry Oper.	S. F. D/P	64.38
DP-8	Librarian Control Clerk	S. F. D/P	66.61
DE-3	Sr Key Entry Oper	S. F. D/P	66.83
DE-4	Sr Key Entry Oper	S. F. D/P	66.83
DP-4	Head Clerk	S. F. D/P	69.83
DE-6	Key Entry Oper	S. F. D/P	64.38
DE-7	Key Entry Oper	S. F. D/P	53.24
S-11	Programmer	S. F. D/P	78.09
DE-9	Ken Entry Oper.	S. F. D/P	64.38
C-6	Yard Clerk	Colton	64.68
C-5	Yard Clerk	Colton	64.68
Rel.-A	Yard Clerk	Colton	64.68
C-8	Agent Clerk	Colton	68.61
N-8	Agent	El Centro	69.34
A-4	Agent Clerk	Guadalupe	68.61
A-3	Diversion Clk	Guadalupe	66.44
Rel.-A	Clerk Inspector	Los Angeles	64.68
F-24	Clerk Inspector	Los Angeles	64.68
F-1	Agent	Los Angeles	70.06
F-30	Asst. Agent	Los Angeles	66.27
U-4	Yard Clerk	Oxnard	64.68
U-1	Agent Clerk	Oxnard	68.61
Rel.-3	Service Worker	El Paso	58.82
Rel-2	Service Worker	El Paso	58.82
111	Truck Driver	El Paso	61.50
85	Asst. Agent	El Paso	67.92
65	Electrical Repairman	El Paso	69.08
Rel.-A	Chief Yard Clerk	El Paso	66.94
120	Service Worker	El Paso	58.82
10	Chief Yard Clerk	El Paso	66.94
311	Truck Driver	El Paso	61.50

ADDENDUM NO. 2
(PFE Positions) (Cont'd)

POSITION NO.	TITLE	LOCATION	BASIC DAILY RATE OF PA
53	Shift Foreman	El Paso	67.56
320	Service Worker	El Paso	58.82
211	Truck Driver	El Paso	61.50
Rel.ER-1	Elect. Repairman	El Paso	69.08
55	Head Elec.Rprmn.	El Paso	71.49
51	Shift Foreman	El Paso	67.56
Rel.-1	Service Worker	El Paso	58.82
220	Service Worker	El Paso	58.82
Rel.-B	Chief Yd. Clerk	El Paso	66.94
9	Chief Yard Clerk	El Paso	66.94
M-1	Agent Clerk	Tucson	68.61
M-5	Yard Clerk	Tucson	64.68
Rel-A	Yard Clerk	Tucson	64.68
M-3	Yard Clerk	Tucson	64.68
J-2	Chief Clerk	Phoenix	68.32
70	Head Elec.Rprmn.	Yuma	71.49
6	Yard Clerk	Yuma	64.68
1	Service Worker	Yuma	58.82
12	Agent Clerk	Yuma	68.81
9	Yard Clerk	Yuma	64.68
Rel.-A	Yard Clerk	Yuma	64.68
10	Asst. Section Stockman	Roseville	64.04
45	Lift Truck Oper.	Roseville	63.04
37	Section Stockman	Roseville	68.32
173	Truck Driver/ Swp.Oper.	Roseville	62.38
47	Lift Truck Oper.	Roseville	63.04
5	Store Dely.Fmn.	Roseville	68.09
84	Watchman	Roseville	62.51
74	Clerk	Roseville	64.47
43	Carrier Operator	Roseville	63.30
87	Watchman	Roseville	62.51
149	Clerk	Roseville	64.47
91	Janitor	Roseville	58.10
56	Truck Driver	Roseville	62.38
17	Steno Clerk	Roseville	63.72
67	Chore Boy Oper.	Roseville	60.33

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ADDENDUM NO. 2
(PFE Positions) (Cont'd)

POSITION NO.	TITLE	LOCATION	BASIC DAILY RATE OF PAY
8	Section Stockman	Roseville	$68.32
155	Port.Crane Oper.	Roseville	63.77
16	Clerk, Clerk Yard Checker	Roseville	64.82
51	Truck Driver	Roseville	62.38
81	Watchman	Roseville	62.51
68	Chore Boy Oper. (Lab)	Roseville	60.33
162	Material Clerk	Roseville	63.95
9	Section Stockman	Roseville	68.32
40	Clerk	Roseville	63.98
T-137	Lift Truck Oper.	Tucson	63.04
T-57	Janitor	Tucson	58.10
T-12	Clerk	Tucson	64.82
X-11	Truck Driver	Tucson	62.38
T-26	Asst. Section Stockman	Tucson	64.04
T-2	Watchman	Tucson	51.74
T-21	Equip. Dispatcher	Tucson	64.35
X-1	Chore Boy Oper.	Tucson	60.33
T-35	Steno Clerk	Tucson	66.58
T-98	Port. Crane Oper.	Tucson	63.77
T-10	Asst. Section Stockman	Tucson	64.04
X-2	Store Helper	Tucson	60.95
T-100	Janitor	Tucson	58.10
X-3	Laborer	Tucson	58.11
T-111	Chore Boy Oper.	Tucson	58.11
T-94	Material Clerk	Tucson	63.95
X-4	Lift Truck Oper.	Tucson	63.04
X-5	Lift Truck Oper.	Tucson	63.04
T-140	Lift Truck Oper.	Tucson	63.04
T-70	Clerk	Tucson	64.47
T-8	Sect. Stockman	Tucson	68.32

ADDENDUM NO. 2
(PFE Positions) (Cont'd)

POSITION NO.	TITLE	LOCATION	BASIC DAILY RATE OF PA
T-92	Asst. Chief Clerk	Tucson	75.50
T-132	Lift Truck Oper.	Tucson	60.33
T-5	Asst. Section Stockman	Tucson	64.04
T-3	Watchman	Tucson	61.42
T-48	Janitor	Tucson	58.10
T-4	Section Stockman	Tucson	68.32
T-30	Clerk	Tucson	64.23
T-97	Material Clerk	Tucson	63.95
T-15	Section Stockman	Tucson	68.32
T-71	Steno Clerk	Tucson	63.72
X-6	Laborer	Tucson	58.11
X-7	Lift Truck Oper.	Tucson	63.04
T-136	Lift Truck Oper.	Tucson	63.04
T-101	Trk. Driver Sweeper Oper.	Tucson	62.38
X-8	Lift Truck Oper.	Tucson	63.04
T-69	Clerk	Tucson	64.47
T-134	Lift Truck Oper.	Tucson	63.04
X-9	Laborer	Tucson	58.11
T-18	Watchman	Tucson	61.42
T-41	Clerk	Tucson	64.47
T-14	Store Dely. Fmn.	Tucson	68.09
T-114	Chore Boy Oper.	Tucson	60.33
T-113	Chore Boy Oper.	Tucson	60.33
X-10	Laborer	Tucson	48.93
6	General Clerk	Los Angeles Tylr. Yd.	65.18

ADDENDUM NO. 3

1. Effective on or after January 1, 1980 and upon the usual 5 working days advance notice the following positions will be abolished at Roseville Shop/Stores:

Position No.	Title
5	Store Delivery Foreman-Equipment Dispatcher
8	Section Stockman
9	Section Stockman
37	Section Stockman
10	Assistant Section Stockman
16	Clerk-Clerk Yard Checker
17	Steno Clerk
40	Clerk
74	Clerk
149	Clerk
162	Materials Clerk
43	Carrier Operator-Lift Truck Operator
45	Lift Truck Operator
47	Lift Truck Operator
51	Truck Driver
56	Truck Driver
173	Truck Sweeper Operator
67	Chore Boy Operator
68	Chore Boy Operator-Laborer
81	Watchman
84	Watchman
87	Watchman
91	Janitor
155	Portable Crane Operator

2. Coincident with the preceding abolishments the following positions will be established at locations as shown:

Location	Position	Daily Rate
Roseville	1 General Clerk	$71.02 (incl. COLA)
Watsonville/ Salinas	1 General Clerk	71.02 (incl. COLA)
Tucson Shop/ Stores	2 Store Helpers	66.79 (incl. COLA)
	1 Choreboy Operator	66.17 (incl. COLA)

3. Bulletining and assignment of positions established under the foregoing Item 2 will be handled in the manner provided in Section 2(b) of Article III of Attachment "F".

4. Following the position abolishments listed in Item 1 above, the position's incumbent or an eligible employee in directly related chain of displacement who opts for separation allowance must exercise such option within ten (10) working days from the date notified of job abolishment or displacement as the case may be.

Gen 188-204

SDAGE-MofW 188-54

Case No. A-7128

MEDIATION AGREEMENT

This agreement made this 7th day of February, 1965, by and between the participating carriers listed in Exhibits A, B and C, attached hereto and hereby made a part hereof, and represented by the National Railway Labor Conference and the Eastern, Western and Southeastern Carriers' Conference Committees and the employees shown thereon and represented by the Railway Labor Organizations signatory hereto, through the Employes' National Conference Committee, Five Cooperating Railway Labor Organizations, witnesseth:

IT IS AGREED:

ARTICLE I - PROTECTED EMPLOYEES

Section 1 -

All employees, other than seasonal employees, who were in active service as of October 1, 1964, or who after October 1, 1964, and prior to the date of this Agreement have been restored to active service, and who had two years or more of employment relationship as of October 1, 1964, and had fifteen or more days of compensated service during 1964, will be retained in service subject to compensation as hereinafter provided unless or until retired, discharged for cause, or otherwise removed by natural attrition. Any such employees who are on furlough as of the date of this Agreement will be returned to active service before March 1, 1965, in accordance with the normal procedures provided for in existing agreements, and will thereafter be retained in compensated service as set out above, provided that no back pay will be due to such employees by reason of this Agreement. For the purpose of this Agreement, the term "active service" is defined to include all employees working, or holding an assignment, or in the process of transferring from one assignment to another (whether or not October 1, 1964 was a work day), all extra employees on extra lists pursuant to agreements or practice who are working or are available for calls for service and are expected to respond when called, and where extra boards are not maintained, furloughed employees who respond to extra work when called, and have averaged at least 7 days work for each month furloughed during the year 1964.

Section 2 -

Seasonal employees, who had compensated service during each of the years 1962, 1963 and 1964, will be offered employment in future years at least equivalent to what they performed in 1964, unless or until retired, discharged for cause, or otherwise removed by natural attrition.

EXHIBIT C

Section 3 -

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 1963 and 1964, a reduction in forces in the crafts represented by each of the organizations signatory hereto may be made at any time during the said 30-day period below the number of employees entitled to preservation of employment under this Agreement 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. Advance notice of any such force reduction shall be given as required by the current Schedule Agreements of the organizations signatory hereto. Upon restoration of a carrier's business following any such force reduction, employees entitled to preservation of employment must be recalled in accordance with the same formula within 15 calendar days.

Section 4 -

Notwithstanding other provisions of this Agreement, a carrier shall have the right to make force reductions under emergency conditions such as flood, snowstorm, hurricane, earthquake, fire or strike, provided that operations are suspended in whole or in part and provided further that because of such emergencies the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions no longer exists or cannot be performed. Sixteen hours advance notice will be given to the employees affected before such reductions are made. When forces have been so reduced and thereafter operations are restored employees entitled to preservation of employment must be recalled upon the termination of the emergency. 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 Section 3 of this Article I.

Section 5 -

Subject to and without limiting the provisions of this agreement with respect to furloughs of employees, reductions in forces, employee absences from service or with respect to cessation or suspension of an employee's status as a protected employee, the carrier agrees to maintain work forces of protected employees represented by each organization signatory hereto in such manner that force reductions of protected employees below the established base as defined herein shall not exceed six per cent (6%) per annum. The established base shall mean the total number of protected employees in each craft represented by the organizations signatory hereto who qualify as protected employees under Section 1 of this Article I.

ARTICLE II - USE AND ASSIGNMENT OF EMPLOYEES AND LOSS OF PROTECTION

Section 1 -

An employee shall cease to be a protected employee in case of his resignation, death, retirement, dismissal for cause in accordance with existing agreements, or failure to retain or obtain a position available to him in the exercise of his seniority rights in accordance with existing rules or agreements, or failure to accept employment as provided in this Article. A protected furloughed employee who fails to respond to extra work when called shall cease to be a protected employee. If an employee dismissed for cause is reinstated to service, he will be restored to the status of a protected employee as of the date of his reinstatement.

Section 2 -

An employee shall cease to be a protected employee in the event of his failure to accept employment in his craft offered to him by the carrier in any seniority district or on any seniority roster throughout the carrier's railroad system as provided in implementing agreements made pursuant to Article III hereof, provided, however, that nothing in this Article shall be understood as modifying the provisions of Article V hereof.

Section 3 -

When a protected employee is entitled to compensation under this Agreement, he may be used in accordance with existing seniority rules for vacation relief, holiday vacancies, or sick relief, or for any other temporary assignments which do not require the crossing of craft lines. Traveling expenses will be paid in instances where they are allowed under existing rules. Where existing agreements do not provide for traveling expenses, in those instances, the representatives of the organization and the carrier will negotiate in an endeavor to reach an agreement for this purpose.

ARTICLE III - IMPLEMENTING AGREEMENTS

Section 1 -

The organizations recognize the right of the carriers to make technological, operational and organizational changes, and in consideration of the protective benefits provided by this Agreement the carrier shall have the right to transfer work and/or transfer employees throughout the system which do not require the crossing of craft lines. The organizations signatory hereto shall enter into such implementing agreements with the carrier as may be necessary to provide for the transfer and use of employees and the allocation or rearrangement of forces made necessary by the contemplated change. One of the purposes of such implementing agreements shall be to provide a force adequate to meet the carrier's requirements.

Section 2 -

Except as provided in Section 3 hereof, the carrier shall give at least 60 days' (90 days in cases that will require a change of an employee's residence) written notice to the organization involved of any intended change or changes referred to in Section 1 of this Article whenever such intended change or changes are of such a nature as to require an implementing agreement as provided in said Section 1. Such notice shall contain a full and adequate statment of the proposed change or changes, including an estimate of the number of employees that will be affected by the intended change or changes. Any change covered by such notice which is not made within a reasonable time following the service of the notice, when all of the relevant circumstances are considered, shall not be made by the carrier except after again complying with the requirements of this Section 2.

Section 3 -

The carrier shall give at least 30 days' notice where it proposes to transfer no more than 5 employees across senicrity lines within the same craft and the transfer of such employees will not require a change in the place of residence of such employee or employees, such notice otherwise to comply with Section 2 hereof.

Section 4 -

In the event the representatives of the carrier and organizations fail to make an implementing agreement within 60 days after notice is given to the general chairman or general chairmen representing the employees to be affected by the contemplated change, or within 30 days after notice where a 30-day notice is required pursuant to Section 3 hereof, the matter may be referred by either party to the Disputes Committee as hereinafter provided. The issues submitted for determination shall not include any question as to the right of the carrier to make the change but shall be confined to the manner of implementing the contemplated change with respect to the transfer and use of employees, and the allocation or rearrangement of forces made necessary by the contemplated change.

Section 5 -

The provisions of implementing agreements negotiated as hereinabove provided for with respect to the transfer and use of employees and allocation or reassignment of forces shall enable the carrier to transfer such protected employees and rearrange forces, and such movements, allocations and rearrangements of forces shall not constitute an infringement of rights of unprotected employees who may be affected thereby.

ARTICLE IV - COMPENSATION DUE PROTECTED EMPLOYEES

Section 1 -

Subject to the provisions of Section 3 of this Article IV, protected employees entitled to preservation of employment who hold regularly assigned positions on October 1, 1964, shall not be placed in a worse position with respect to compensation than the normal rate of compensation for said regularly assigned position on October 1, 1964; provided, however, that in addition thereto such compensation shall be adjusted to include subsequent general wage increases.

Section 2 -

Subject to the provisions of Section 3 of this Article IV, all other employees entitled to preservation of employment shall not be placed in a worse position with respect to compensation than that earned during a base period comprised of the last twelve months in which they performed compensated service immediately preceding the date of this Agreement. For purposes of determining whether, or to what extent, such an employee has been placed in a worse position with respect to his compensation, his total compensation and total time paid for during the base period will be separately divided by twelve. If his compensation in his current employment is less in any month (commencing with the first month following the date of this agreement) than his average base period compensation (adjusted to include subsequent general wage increases), he shall be paid the difference less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average time paid for during the base period, but he shall be compensated in addition thereto at the rate of the position filled for any time worked in excess of the time paid for during the base period; provided, however, that in determining compensation in his current employment the employee shall be treated as occupying the position producing the highest rate of pay and compensation to which his seniority entitles him under the working agreement and which does not require a change in residence.

Section 3 -

Any protected employee who in the normal exercise of his seniority bids in a job or is bumped as a result of such an employee exercising his seniority in the normal way by reason of a voluntary action, will not be entitled to have his compensation preserved as provided in Sections 1 and 2 hereof, but will be compensated at the rate of pay and conditions of the job he bids in; provided, however, if he is required to make a move or bid in a position under the terms of an implementing agreement made pursuant to Article III hereof, he will continue to be paid in accordance with Sections 1 and 2 of this Article IV.

Section 4 -

If a protected employee fails to exercise his seniority rights to secure another available position, 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.

Section 5 -

A protected employee 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 employee be entitled to the benefits of this Article IV during any period when furloughed because of reduction in force resulting from seasonal requirements (including lay-offs during Miners' Holiday and the Christmas Season) or because of reductions in forces pursuant to Article I, Sections 3 or 4, provided, however, that employees furloughed due to seasonal requirements shall not be furloughed in any 12-month period for a greater period than they were furloughed during the 12 months preceding the date of this agreement.

Section 6 -

The carrier and the organizations signatory hereto will exchange such data and information as are necessary and appropriate to effectuate the purposes of this Agreement.

ARTICLE V - MOVING EXPENSES AND SEPARATION ALLOWANCES

In the case of any transfers or rearrangement of forces for which an implementing agreement has been made, any protected employee who has 15 or more years of employment relationship with the carrier and who is requested by the carrier pursuant to said implementing agreement to transfer to a new point of employment requiring him to move his residence shall be given an election, which must be exercised within seven calendar days from the date of request, to make such transfer or to resign and accept a lump sum separation allowance in accordance with the following provisions:

If the employee 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 10 and 11 of the Washington Agreement notwithstanding anything to the contrary contained in said provisions and in addition to such benefits shall receive a transfer allowance of four hundred dollars ($400) and five working days instead of the "two working days" provided by Section 10(a) of said Agreement.

If the employee elects to resign in lieu of making the requested transfer as aforesaid he shall do so as of the date the transfer would have been made and shall be given (in lieu of all other benefits and protections to which he may have been entitled under the Protective Agreement and Washington Agreement) a lump sum separation allowance which shall be computed in accordance with the schedule set forth in Section 9 of the Washington Agreement; provided, however, that force reductions permitted to be made under this Agreement shall be in addition to the number of employees who resign to accept the separation allowance herein provided.

Those protected employees who do not have 15 years or more of employment relationship with the carrier and who are required to change their place of residence shall be entitled to the benefits contained in Sections 10 and 11 of the Washington Agreement notwithstanding anything to the contrary contained in such provisions and in addition to such benefits shall receive a transfer allowance of four hundred dollars ($400) and 5 working days instead of "two working days" provided in Section 10(a) of said Agreement.

ARTICLE VI - APPLICATION TO MERGERS, CONSOLIDATIONS AND OTHER AGREEMENTS

Section 1 -

Any merger agreement now in effect applicable to merger of two or more carriers, or any job protection or employment security agreement which by its terms is of general system-wide and continuing application, or which is not of general system-wide application but which by its terms would apply in the future, may be preserved by the employee representatives so notifying the carrier within sixty days from the date of this agreement, and in that event this agreement shall not apply on that carrier to employees represented by such representatives.

Section 2 -

In the event of merger or consolidation of two or more carriers, parties to this Agreement on which this agreement is applicable, or parts thereof, into a single system subsequent to the date of this agreement, the merged, surviving or consolidated carrier will constitute a single system for purposes of this agreement, and the provisions hereof shall apply accordingly, and the protections and benefits granted to employees under this agreement shall continue in effect.

Section 3 -

Without in any way modifying or diminishing the protection, benefits or other provisions of this agreement, it is understood that in the event of a coordination between two or more carriers as the term "coordination" is defined in the Washington Job Protection Agreement, said Washington Agreement will be applicable to such coordination, except that Section 13 of the Washington Job Protection Agreement is abrogated and the disputes provisions and procedures of this agreement are substituted therefor.

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Section 4 -

Where prior to the date of this agreement the Washington Job Protection Agreement (or other agreements of similar type whether applying inter-carrier or intra-carrier) has been applied to a transaction, coordination allowances and displacement allowances (or their equivalents or counterparts, if other descriptive terms are applicable on a particular railroad) shall be unaffected by this agreement either as to amount or duration, and allowances payable under the said Washington Agreement or similar agreements shall not be considered compensation for purposes of determining the compensation due a protected employee under this agreement.

ARTICLE VII - DISPUTES COMMITTEE

Section 1 -

Any dispute involving the interpretation or application of any of the terms of this agreement and not settled on the carrier may be referred by either party to the dispute for decision to a committee consisting of two members of the Carriers' Conference Committees signatory to this agreement, two members of the Employees' National Conference Committee signatory to this agreement, and a referee to be selected as hereinafter provided. The referee selected shall preside at the meetings of the committee and act as chairman of the committee. A majority vote of the partisan members of the committee shall be necessary to decide a dispute, provided that if such partisan members are unable to reach a decision, the dispute shall be decided by the referee. Decisions so arrived at shall be final and binding upon the parties to the dispute.

Section 2 -

The parties to this agreement will select a panel of three potential referees for the purpose of disposing of disputes pursuant to the provisions of this section. If the parties are unable to agree upon the selection of the panel of potential referees within 30 days of the date of the signing of this agreement, the National Mediation Board shall be requested to name such referee or referees as are necessary to fill the panel within 5 days after the receipt of such request. Each panel member selected shall serve as a member of such panel for a period of one year, if available. Successors to the members of the panel shall be appointed in the same manner as the original appointees.

Section 3 - L

Disputes shall be submitted to the committee by notice in writing to the Chairman of the National Railway Labor Conference and to the Chairman of the Employes' National Conference Committee, signatories to this agreement, who shall within 10 days of receipt of such notice, designate the members of their respective committees who shall serve on the committee and arrange for a meeting of the committee to consider such disputes as soon as a panel referee is available to serve, and in no event more than 10 days thereafter. Decision shall be made at the close of the meeting if possible (such meeting not to continue for more than 5 days) but in any event within 5 days of the date such meeting is closed, provided that the partisan members of the committee may by mutual agreement extend the duration of the meeting and the period for decision. The notice provided for in this Section 3 shall state specifically the questions to be submitted to the committee for decision, and the committee shall confine itself strictly to decisions as to the questions so specifically submitted to it.

Section 4 -

Should any representative of a party to a dispute on any occasion fail or refuse to meet or act as provided in Section 3, then the dispute shall be regarded as decided in favor of the party whose representatives are not guilty of such failure or refusal and settled accordingly but without establishing a precedent for any other cases; provided that a partisan member of the committee may, in the absence of his partisan colleague, vote on behalf of both.

Section 5 -

The parties to the dispute will assume the compensation, travel expense and other expense of their respective partisan committee members. Unless other arrangements are made, the office, stenographic and other expenses of the committee, including compensation and expenses of the referee, shall be shared equally by the parties to the dispute.

ARTICLE VIII - EFFECT OF THIS AGREEMENT

This Agreement is in settlement of the disputes growing out of notices served on the carriers listed in Exhibits A, B and C on or about May 31, 1963 relating to Stabilization of Employment, and out of proposals served by the individual railroads on organization representatives of the employees involved on or about June 17, 1963 relating to Technological, Organizational and Other Changes and Employee Protection. This Agreement shall be construed as a separate Agreement by and on behalf of each of said carriers and its employees represented by each of the organizations signatory hereto. The provisions of this Agreement shall remain in effect until July 1, 1967, and thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

No party to this agreement shall serve, prior to January 1, 1967, any notice or proposal on a national, regional or local basis for the purpose of changing the provisions of this Agreement, or which relates to the subject matter contained in the proposals of the parties referred to in this Article, and that portion of pending notices relating to such subject matters, whether local, regional or national in character, are withdrawn. Any notice or proposal of the character referred to in this paragraph served on or after January 1, 1967 shall not be placed into effect before July 1, 1967.

ARTICLE IX - COURT APPROVAL

This Agreement is subject to approval of the courts with respect to carriers in the hands of receivers or trustees.

SIGNED AT WASHINGTON, D. C., THIS 7th DAY OF FEBRUARY, 1965.

For the participating carriers listed in Exhibit A:

Chairman

J. B. Fee

Guy W. Knight

Employes' National Conference Committee, Five Cooperating Railway Labor Organizations:

J. E. Leighty
Chairman

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

Grand President

For the participating carriers listed in Exhibit B:

Chairman

A D Hanson

J M Van Pattten

Brotherhood of Maintenance of Way Employes

H C Crotty
President

The Order of Railroad Telegraphers

J. E. Leighty
President

Brotherhood of Railroad Signalmen

President

For the participating carriers listed in Exhibit C:

W. S. Mugill
Chairman

For the participating carriers listed in Exhibit C - continued -

Employes' National Conference Committee, Five Cooperating Railway Labor Organizations - continued -

F. K. Day, Jr.

Hotel & Restaurant Employes and Bartenders International Union

W. J. Schaff

R. L. W. Smith
International Vice President

Approved:

Chairman, National Railway Labor Conference

WITNESS:

Member,
National Mediation Board

Mediator,
National Mediation Board

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NATIONAL RAILWAY LABOR CONFERENCE

Room 474, Union Station
917 WEST ADAMS STREET
CHICAGO, ILLINOIS 60606
Telephone: 726-6900

J. E. WOLFE, Chairman
W. D. QUARLES, JR., Vice Chairman

W. S. MACGILL, Chairman,
Southeastern Carriers' Conference Committee
A. W. GRAM, Chairman,
Eastern Carriers' Conference Committee
F. A. SOBERTSON, Chairman,
Western Carriers' Conference Committee

C. L. HOPKINS, JR.
A. E. WOLFE,
General Attorneys

E. E. GREEN,
Director of Research
A. P. GRIFFIN,
Administrative Secretary

January 13, 1967

Mr. G. E. Leighty, Chairman,
Employes' National Conference Committee,
Four Cooperating Railway Labor Organizations,
3860 Lindell Boulevard,
St. Louis, Missouri 63108.

Dear Mr. Leighty:

Referring to the Agreement of this date disposing of the Section 6 notices served by the Four Cooperating Railway Labor Organizations upon the Carriers represented by the National Railway Labor Conference and the three regional Carriers' Conference Committees on or about May 10, 1966, and the counter proposals served by said carriers upon representatives of such organizations on or about June 6, 1966 and June 10, 1966:

It was understood that Article IV of the above-referred-to organizations' May 10, 1966 notices -- "TRAVEL TIME AND EXPENSES FOR EMPLOYEES REQUIRED TO WORK AWAY FROM THEIR HOME STATION" -- will be left outstanding subject to later disposition under the following procedures:

The parties will resume direct negotiations on this Article on or about June 1, 1967, for a period which should not exceed ten (10) days. If the issue is not disposed of in direct negotiations, the parties, or either party, may invoke mediation, which the Mediation Board will begin immediately after such invocation. If the issue is not disposed of in mediation, the parties agree to submit it to binding arbitration under the arbitration provisions of the Railway Labor Act. The question submitted to arbitration would include all of the issues raised by Article IV of the notices upon which a definite non-contingent agreement had not been reached in direct negotiations or in mediation. If there is no such agreement on any of such issues, the question to be submitted to arbitration would be the issues raised by Article IV as set forth in the May 10, 1966 notices.

Will you please confirm this understanding by affixing your signature in the space provided therefor at the lower left-hand corner of this communication.

Yours very truly,

J. E. Wolfe

APPROVED:

G. E. Leighty

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A G R E E M E N T

BETWEEN

PACIFIC FRUIT EXPRESS COMPANY

AND

All that Class of Clerks and Other Office,

Station and Stores Employees

REPRESENTED BY

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

Effective June 1, 1965

(Reprinted Including Revisions)

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EXHIBIT D

I N D E X

A P P E N D I X

RULE 1

SCOPE RULE AND EMPLOYEES AFFECTED

(a) These rules shall govern the hours of service and working conditions of all employees of the craft of clerical, office, station and storehouse employees as such craft is defined in the following sections of this rule.

(b) For the purpose of this agreement the craft of clerical, office, station and storehouse employees shall fully apply to the following groups:

1. Clerks. Employees who regularly devote not less than four (4) hours per day to the compiling, writing and/or calculating incident to keeping records and accounts, transcribing and writing letters, bills, reports, statements, correspondence, and similar work, and to the operation of typewriters, adding and calculating machines, bookkeeping, accounting, timekeeping and statistical machines, dictaphones, keypunch, teletype and other office mechanical equipment and devices in connection with such duties and work. This definition will also include Station, Storehouse, Ice Plant and Icing Platform Shift Foremen, Icehouse and Warehouse Checkers, Yard Checkers, Clerk-Timekeepers and Programmers.

2. Office employees other than clerks, employees engaged in assorting, checking or filing tickets, waybills, claims, pay and time checks, car movements, per diem or other checks, freight claims, dray tickets, requisitions, tickets or waybills against reports; employees operating office or station equipment devices and appliances or machines for perforating and addressing envelopes, numbering claims or other papers, and work of a like nature; gathering or distributing mail or other similar work not requiring clerical ability; or performing a variety of duties not regularly devoting four hours or more per day to clerical work; telephone switchboard operators, office boys, messengers, or other employees doing similar work.

NOTE: - Clerical work occurring within a spread of eight or nine hours shall not be assigned to more than one position not classified as a clerk for the purpose of keeping time devoted to such work by any one employee below four hours per day.

3. Ice Plant engineers, firemen, oilers, head repairmen and repairmen.

4. Other employees employed in and around offices, stations, storehouses, ice plants and platforms, including store helpers, store deliverymen, truck drivers, tractor -, portable crane-, and lift truck operators and all other employees

performing analogous service coming under the jurisdiction of the Store Department. (See Appendix "D" Page 80.)

(c) This agreement will not apply to:

1. Employees occupying positions at points not located on the line of The Southern Pacific Transportation Company, including Texas and Louisiana Lines.

2. Employees assigned to road service where special training, experience and fitness are necessary.

3. District Agents.

4. Assistant Plant Managers.

5. Materials Managers and Assistant Materials Managers.

6. Secretary to President and General Manager.

7. All positions Personnel Department.

(d) The following positions are subject only to the application of Rules 1, 2, 3, 4, 5, 9(e), 12(c), 37, 40, 42, 43, 44, 45 and Union Shop Agreement notwithstanding and provisions to the contrary in Section 2 thereof. The incumbents of these positions may be removed from their positions without investigation under Rule 38; if so removed they may exercise displacement rights under the agreement. In filling positions listed in this Rule 1(d) employees holding seniority on the roster or district i which the position is located will be given first consideration and if in thejudgment of the head of the department none of the applicants from such roster or district is qualified, selection will be made from qualified employees anywhere within the Company:

LIST OF POSITIONS:

CONTROLLER-ACCOUNTING DEPARTMENT
SAN FRANCISCO

Chief Clerk - Disbursements

Chief Clerk - Miscellaneous

Chief Clerk - Revenues & Equipment Service

Special Accountant

General Bookkeeper

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****

CHIEF MECHANICAL OFFICER
MECHANICAL DEPARTMENT

Chief Clerk - General

Mechanical Light Repairs

Chief Clerk - Outside Light Repair Points

****

ASSISTANT GENERAL MANAGER
SAN FRANCISCO - CAR SERVICE DEPT

Car Service Offices, Houston

Car Distributor

Agent - Hearne

Agent - Houston - (Englewood)

Car Service Offices, Los Angeles

Car Distributor - Los Angeles

General Foreman - El Paso

Car Service - Roseville

Car Distributor

Agent

Car Service Offices, Salinas

Chief Clerk

Agent - Watsonville

****

PURCHASING DEPARTMENT
SAN FRANCISCO

Materials Manager - Tucson

General Foreman of Stores

****

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MANAGER - DATA PROCESSING
SAN FRANCISCO

Chief Clerk - Computer Operations

****

SUPERINTENDENT - TRANSPORTATION
SAN FRANCISCO

General Car Distributor

Car Distributor

Chief Clerk

****

(e) The following listed positions, although subject to all the rules of the agreement, are recognized as especially important and sensitive to Company's operation and provisions of Rule 9(j) are waived in the filing of these positions either by assignment or displacement. The Company shall be sole judge of qualifications of applicants for these positions and may remove employees from these positions at its discretion and such action shall not be subject to appeal or any adjustment procedure under Rule 38.

CAR SERVICE DEPARTMENT
ASSISTANT GENERAL MANAGER

Agent - Nogales (Seasonal)

Agent - Los Angeles (SP)

Agent - Clerk - Coachella (Seasonal)

Agent - El Centro

Agent - Clerk - Medford (Seasonal)

Agent - Clerk - Lodi (Seasonal)

Agent - Clerk - Delano (Seasonal)

Agent - Clerk - Fresno

Agent - San Francisco (Bayshore)

****

MANAGER - DATA PROCESSING
SAN FRANCISCO

Librarian Control Clerk

CHIEF MECHANICAL OFFICER
MECHANICAL DEPARTMENT

Secretary

Assistant Chief Clerk

****

(f) Positions listed in (d) and (e) of this rule will be filled by promotion of qualified employees with three or more years of seniority.

(g) No article will be placed in any other agreement conceding the right of representation of positions excepted from this agreement except in accordance with the Railway Labor Act. Exception of additional positions covered by this agreement will be subject to agreement between the parties hereto.

(SEE APPENDIX "L", PAGE 136.)

(h) Positions or work within the scope of this Rule 1 belong to the employees covered thereby and nothing in this Agreement shall be construed to permit the removal of such positions or work from the application of these rules subject to the exceptions hereinafter set forth and except in the manner provided in Rule 47.

When and where machines are used for the purpose of performing work coming within the scope of this Agreement, not previously handled by machines, such work will continue to be covered by this Agreement. A change in the equipment used for the performance of any remaining work will not remove such work from the coverage of this Agreement.

An officer or employee not covered by this Rule 1 may perform work covered by this Agreement which is incident to his regular duties.

Clerical positions in departments excepted from all of the provisions of this Agreement and such specified positions listed in either Rule 1(c), (d) and (e) are recognized as being within the craft covered by this Agreement.

RULE 2

SENIORITY DATE

(a) Seniority begins at the time an employee's pay starts in the seniority district where service is first performed subject to Rule 36 of this Agreement, except that when official positions are filled by other than employees covered by this agreement, no seniority rights shall be established by such employment.

(b) Where two or more employees enter upon their duties at the same hour on the same day, the employing officer shall at the time designate respective rank of such employee and notify the Local Chairman of his designation.

(c) Where a new employee is hired on a seniority district and before completion of sixty (60) days is transferred due to reduction in force or account shortage of help, to other seniority districts, he may after completing sixty (60) days continuous employment relationship from date of first employment, choose in writing to his superior within ninety (90) days from date of first employment, to establish seniority on one of the districts seniority t date from the time of first service on the district chosen. An employee failing to make such election shall be accorded seniority in the district where last working as of date first employed in that district.

(d) An employee voluntarily leaving the service or who has absented himself, except in case of illness, or other physical inability, without proper leave of absence, which must be in writing if in excess of thirty (30) days, shall forfeit his accumulated seniority and likewise his employee relationship; if he reenters the service he shall be considered as a new employee, unless restoration of seniority previously held is agreed to between the Company and the Organization.

RULE 3

EQUAL OPPORTUNITY

The provisions of this Agreement shall be applied without regard to race, color, creed, sex, or national origin.

RULE 4

SENIORITY DISTRICTS

(a) Seniority districts will be defined by agreement between Management and the General Chairman and, unless otherwise agreed to, seniority districts will be as follows:

District	Location
1	San Francisco General Office
4	Mechanical Department - Purchases & Stores - Tucson and Los Angeles
5	Mechanical Department - Purchases & Stores - Roseville
9	Northwestern District - Car Service
*10	Southwestern District - Car Service (Los Angeles)

District	Location
11	Central District - Car Service (Roseville)
12	Western District - Car Service (Watsonville/Salinas)
13	Southern District - Car Service (Houston)

*NOTE: Joint Clerk-Carman Roster, El Paso, applies at that location and the April 2, 1973 Tripartite Agreement (Mediation Case #A-9270) shall continue in effect.

RULE 5

SENIORITY ROSTERS

Seniority rosters will be prepared for each seniority district in line with Rule 4, and will show name, position or status, location and seniority date of employees on each seniority roster. Seniority rosters will be brought up to date as of January 1 each year and posted at places accessible to all employees affected as soon as possible after January 1.

Seniority rosters will, prior to posting, be officially approved by the General Chairman and Management. The present rosters as of the date of this Agreement will be the approved rosters and the seniority dates shown thereon shall be considered permanently established.

Thereafter rosters will be issued annually as of January 1 and posted in February in place accessible to employees affected. Roster will be open to protest from employees who have entered the service since issuance of preceding roster for a period of sixty (60) days from date of posting, and upon presentation of proof of error by such employee or his representative, correction will be made by agreement between the General Chairman and Management, and seniority dates established by such agreement will not be subject to further portest.

Typographical or clerical errors to which attention is directed will be corrected. The duly accredited representative of the employees shall be furnished not to exceed four (4) copies of the rosters and the General Chairman will be furnished four (4) copies of each roster. Employees or their representative, upon request, shall be furnished information as to additions or corrections of rosters between issues.

RULE 6

FILLING NEW POSITIONS AND VACANCIES

(a) Positions or vacancies of thirty (30) days or less duration may be filled without bulletining. Positions or vacancies over thirty days duration will be handled under provisions of Rule 7 of this agreement.

(b) New positions or vacancies of thirty (30) calendar days or less duration shall be filled, whenever possible, by the senior qualified unassigned employee who is available and who has not performed eight (8) hours work on a calendar day; an unassigned employee will not be considered as being available to perform further work on vacancies after having performed five (5) days or forty (40) hours of work at the straight time rate in a work week beginning with Monday, except when such unassigned employee secures an assigned position under the provisions of Rule 7 or returns to the extra list from a position to which he was assigned, in which event he shall be compensated as provided for in Rule 31, Sections (d) and (e). (Also see Appendix "P", page 142.)

NOTE 1:

(1) An unassigned employee placed on a vacancy or a new position having rest days of Saturday and Sunday will remain thereon until relieved by regular employee or displaced by a senior unassigned employee.

(2) An unassigned employee placed on a vacancy or new position having rest days other than Saturday and Sunday shall, after having performed five (5) days or forty (40) hours of straight time work in a work week beginning with Monday, be released from the position only if by remaining thereon he would work in excess of five (5) days at straight time rate in his work week. An employee so released shall be privileged to return to the vacancy from which released at the beginning of the new work week if the vacancy is then filled by a junior unassigned employee, or he may displace any junior unassigned employee, or place himsel available for subsequent vacancies. If no regular employee is available and an unassigned employee is used after having performed five (5) days or forty (40) hours of straight time work on vacancies in his work week beginning with Monday, he shall be compensated therefor at the overtime rate.

NOTE 2:

(1) In the event an unassigned extra employee is available but is not qualified for all days of a relief assignment vacancy he may be used on a day or on those consecutive days for which he is considered qualified.

NOTE 2: (2) Unassigned extra employees will be advised of the various known vacancies available to them at the time called and, except where a vacancy cannot be filled by another available qualified unassigned employee, will be allowed in seniority turn to respond to the one of their choice. To the extent practicable, employees will also be notified of vacancies which arise after the time initially called and permitted to change choice to one of the latter vacancies or to a vacancy choice relinquished by a senior employee in application of this agreement. In instances where the extra unassigned employee is required to fill the vacancy designated by the Company rather than that chosen, such employee will receive the higher rate of pay of the positions involved.

(c) If a qualified unassigned or a qualified Guaranteed Extra Board employee is not available, position will be filled by the senior assigned employee who makes written application therefor and is qualified for such vacancy, and when assigned shall take all of the conditions of the position; if a qualified unassigned or a qualified Guaranteed Extra Board employee thereafter become available he may not displace the regular employee filling the temporary vacancy unless he is senior to such regular employee.

NOTE: 1. A vacancy under preceding paragraph of this rule will not be considered a vacancy available to an assigned employee unless it is known in advance that the vacancy will exist for more than two (2) days, or has existed for more than two (2) days.

2. In the event a vacancy of known duration of more than two (2) days is filled by a regular assigned employee and a senior qualified regular assigned employee desires to displace the junior regular assigned employee working the position, he may, upon giving at least four (4) hours' notice, do so providing such displacement notice is made within seventy-two (72) hours from the starting time of the position after vacancy is first filled and the employee making the displacement shall be required to fill the vacancy at the beginning of the next tour of duty on the vacancy.

3. Under the provisions of this Rule an assigned employee shall not be permitted to work a temporary vacancy, or return from a temporary vacancy to his regular assigned position, or work another temporary vacancy on the same calendar day.

(d) When a vacancy exists on an assigned work day of an established position or a new position, it will be filled as follows, when the Company elects to fill the vacancy:

1. By a senior qualified available unassigned extra employee on a straight-time basis in accordance with the provisions of this Rule 6.

2. In the absence of qualified unassigned extra employee on a straight time basis, by the senior qualified available employee on an overtime basis or where applicable under the provisions of Section (c) of this Rule 6; in the case of a vacancy on a relief assignment, by the incumbent of the position to be relieved on that date and then by the senior qualified available assigned employee on an overtime basis.

3. In the event the vacancy cannot be filled under Item 1 and 2, then the Company may instruct an employee, scheduled to work the same hours as the vacant position, to vacate his regular assignment and fill the vacancy. An employee so removed will be paid the rate of his regular assignment, the rate of the assignment worked, or his protective rate whichever is higher. However, if it is found the Company could have filled the vacancy under Item 1 or 2, and failed and/or neglected to call employees referred to in Item 1 and 2, then the Company will pay the employee removed from his assignment eight hours' pay at the straight-time rate of his regular assignment, or eight hours straight-time pay at his protective rate if such rate is being paid for service on his regular assignment and, in addition, he will be allowed eight hours straight-time pay at the rate of the position worked. The preceding payment for so handling will be the only penalty under this rule.

4. In the event the vacancy cannot be filled under Item 1, 2 or 3, the junior qualified employee who has been called on an overtime basis may be required to fill the vacancy.

(See Appendix "O" Page 141 and Appendix "G" Article IV of National Agreement of August 21, 1954, Page 96.)

RULE 7

ADVERTISING AND ASSIGNING POSITIONS

(a) All new positions or vacancies, (except as provided in Rule 6) shall be promptly advertised for seniority choice by vacancy notices posted on bulletin boards or in places accessible to all employees affected in the seniority district. Vacancy notices shall be issued at least once in every seven (7) day period when there are vacancies to be advertised.

1. New positions or vacancies in existing positions will be advertise on first weekly vacancy notice issued after they occur.

2. New positions or vacancies of doubtful duration which will be

continued beyond 30 calendar days will likewise be advertised on first vacancy notice after it is known or becomes apparent the duration of position will exceed 30 days.

3. Vacancy notices issued in accordance with (b) of this rule will show as nearly as possible the duration of the position or vacancy, and if at the expiration of the time indicated in the bulletin it is necessary to continue the position for a longer period on a temporary basis or convert it to a permanent position, it will be rebulletined. Any temporary position in existence for one hundred and eighty (180) consecutive calendar days (including rest days and holidays) will be rebulletined as permanent in accordance with this rule.

(b) As soon as possible after being issued, vacancy and assignment notices will be promptly posted in places accessible to all employees affected and positions advertised will be open for application for a period of seven (7) calendar days from employees in the seniority district where such new positions and vacancies occur. A copy of notices issued will be furnished to all Local Chairmen in the respective seniority district and for Texas & Louisiana Lines authorized representatives at Houston. The General Chairman shall receive copies of all notices for all districts. Shorter time limits for applications and assignments may be established by agreement between Management and the General Chairman.

NOTE: By special Agreement dated June 25, 1965, the time limits for application and assignment were changed to two (2) days for Seniority District No. 1, San Francisco, exclusive of Saturdays, Sundays and Holidays.

(c) Notices will show:

Locations
Titles and Numbers of Positions
Rates of Pay
Rest Days and Hours of Service
Approximate Duration of Vacancy and
Vacated by
Meal Period (when assigned)

(d) Applications for such positions will be filed with the officer designated on the vacancy notice before noon Standard Time within six (6) calendar days exclusive of the date of the notice. The notice shall set forth the closing time and date for accepting applications. Applications shall not be withdrawn subsequent to closing time of Vacancy Notice.

Where closing date of advertisement notice falls on a day on which the office designated to receive applications is not open, the closing time specified in the notice for receipt of

application will be extended to the same hour on the next succeeding work day of that office.

(e) In making assignments, preference will be given to applications received from employees in the scope of the roster where vacancy exists.

(f) Employees may apply for any or all positions bulletined, including positions of the same, greater or lesser remuneration than position held. Employees applying for more than one vacancy or new position bulletined at the same time will indicate preference.

(g) Qualified furloughed employees may bid and will be given consideration for any new position or vacancy that may occur for which application is made to the designated officer.

(h) Assignments will be made and notices issued as soon as possible after closing time and date of receiving applications. Successful applicant will be placed on position within fourteen (14) calendar days exclusive of closing date of vacancy notice unless placement within said time is prevented by his sickness,vacation, leave of absence, or other similar contingency.

NOTE: 1. After closing time of the vacancy notice the senior qualified applicant will be considered as assigned to the position pending issuance of assignment notice and may, if practicable, be placed on the position prior to actual issuance of notice; he will also be subject to displacement right under the provisions of the rules of this agreement.

2. An employee applying for and assigned to an advertised position will be required to accept the assignment and will not be permitted to make application for the vacancy of his former position advertised as a result of such assignment.

(i) Notices covering assignments will show name and seniority date of the successful applicant assigned to each advertised position and location, title and number of position, rest days, hours of service, meal period (when assigned), and rate of his former position, and this notice will be an advertisement of the vacancy created on the former position of said employee, and shall so state, for which application may be made in accordance with Section (d) of this rule.

(j) When the application of the senior applicant for a position is declined, the employee affected and/or the Local Chairman will, upon request, be advised the specific resons therefor in writing and have ten (10) days from receipt of such advise to avail himself of provisions of Rule 38(f) if desired.

(k) Bulletined positions may be filled temporarily pending an assignment, and in event no applications are received, may be

permanently filled by assignment bulletin issued in accordance with Section (h) of this rule.

RULE 8

FAILURE TO QUALIFY

(a) An employee who is assigned to a bulletined position or displaces another employee and fails within a reasonable time to demonstrate his fitness and ability, shall vacate the position on which disqualified and may displace either the junior assigned employee, if there is one in the bureau (if no bureau, the office) or station in which the position on which employee fails to qualify is located, or displace the junior assigned employee in the seniority district; provided that a clerk may displace the junior assigned clerk, if there is one, before being required to displace the junior assigned employee.

(b) An employee who displaces the junior assigned clerk in accordance with Section (a) and fails to qualify on that position may then displace the junior assigned employee on the roster.

(c) An employee holding a regular position, disqualified on a temporary position for which he has made application shall return to his regular assignment.

(d) The privileges under this rule must be exercised within five (5) calendar days from date of actual disqualification.

RULE 9

EXERCISE OF SENIORITY

(a) Seniority rights may be exercised only in case of vacancies new positions, reduction in force or as otherwise provided in these Rules.

(b) Except when changes in rates are the result of general adjustments, the changing of a rate of a position shall constitute a new position unless mutually agreed otherwise.

(c) When the established starting time of a regular position is changed more than one hour and less than three (3) hours for more than five (5) consecutive days (exclusive of rest days), the assigned employee affected may, upon the expiration of such fifth day but within ten (10) days from the date such starting time was changed, upon thirty-six (36) hours' advance notice, exercise his seniority rights to any position held by a junior employee. Other employees affected may exercise their seniority in the same manner.

When the established starting time of a temporary position is changed as provided in the preceding paragraph, the assigned

employee affected may, upon the expiration of such fifth day but within ten (10) days from the date such starting time was changed, upon thirty-six (36) hours' advance notice, exercise his seniority rights in accordance with the provisions of Section (e) of this rule. Other employees affected may exercise their seniority in the same manner.

NOTE 1: The established starting time shall be understood to mean the starting time of the position at the time the employee secured the position by assignment or displacement.

NOTE 2: When the established starting time of a regular position is changed more than one (1) hour and less than three (3) hours for more than five (5) consecutive work days, the employee affected may signify intention to effect a displacement immediately thereafter, but will be required to remain on the position until the expiration of the fifth consecutive work day.

NOTE 3: An employee returning from leave of absence, or from the occupancy of a temporary position, who finds the hours of his regular assignment changed under the provisions of this rule, and time limitations set forth therein have expired, may, if he so desires, exercise a displacement right, providing he does not return to his regular assigned position.

(d) When the established starting time of a permanent or bulletined temporary position is changed three (3) hours or more or a change is made in either or both days of rest, it will be considered abolished and bulletined as a new position.

(e) Employees (1) transferred in accordance with Rule 12(c) to position not coming under other agreements, (2) employees promoted to excepted or official positions, who are released through the abolition of their position, disqualification or otherwise, (3) employees returning to their former seniority district in accordance with Rule 11(b), or (4) employees returning from temporary positions, leaves of absence (see Rule 37) or vacations may resume duty on former position or elect not to do so and within five (5) days after their return, exercise seniority rights to displace any junior employee who has been assigned to or displaced upon a position advertised on bulletins issued during their absence.

Other employees so displaced from their former positions may exercise their seniority in the same manner except that employees thus displaced, who during the absence of the employees returning had been assigned to a permanent position, may exercise displacement rights against any employee their junior holding a position on a roster on which they hold seniority.

NOTE: - Rule 9(e), as it applies to employees returning

from temporary assignments, is interpreted to mean:

1. Employees who hold a permanent assignment and become assigned by bulletin to a temporary position, and while serving on said temporary position, bid in another temporary position, and so on indefinitely, at the conclusion of the last temporary position either by reason of its being abolished or by being displaced therefrom, the incumbent may return to his original permanent position, if it still exists, or in lieu thereof he may, if qualified, displace any junior employee who has bid in a position during the time he was assigned to a temporary position. If the employee's permanent position does not still exist, as a result of its having been abolished or being displaced therefrom, he would have a right of displacement under Rule 9 commonly known as a "wide open displacement."

2. An employee who holds a permanent assignment and becomes assigned by bulletin to a temporary position, and at the conclusion of such temporary assignment insted of returning to his original permanent position elects to make a displacement on a position either permanent or temporary, bulletined during the period of his occupancy of the temporary position, relinquishes his right to return to his former permanent position. If the employee elects, under the conditions set forth above, to displace on a temporary position, any further displacement right will accrue only from the date of his displacement on the last temporary position.

As an example: "A" who holds a permanent assignment makes application for and is assigned to a temporary position by Bulletin dated October 1, 1939. At the conclusion of the temporary position, November 15, 1939, "A", instead of returning to his original permanent position, elects to displace "B", who was assigned to a temporary position on October 15, 1939. This second temporary position is abolished as of November 30, 1939. "A" is only permited to displace on a position bulletined during the period November 30, 19:

If "A" is unable to make a displacement under these conditions, his status then becomes that of an extra unassigned employee.

3. An employee who does not hold a regular assignment who is assigned to a temporary position and who later bids in another temporary assignment, and still another, and so on, at the conclusion of any temporary assignment will be privileged to displace on other temporary assignments or displace on a permanent position bulletined during the time he has held a temporary position.

(Notes 1, 2 and 3 hereof supersede and cancel Letter Agreement of December 13, 1939.)

(f) In accordance with the rules of this Agreement all employees at all points located within a Seniority District will be privileged to exercise seniority at any point within such Seniority District.

(g) An employee having a displacement right will displace both the permanently assigned and temporarily assigned employee of a position, providing he is senior to the permanently assigned employee, unless he declares his intention in writing to displace only the temporary employee. Otherwise, it will be construed he has displaced the temporarily and permanently assigned employees.

(h) An employee whose position is abolished or who is displaced must exercise seniority right over junior employees within five (5) days in seniority districts comprising one point or office or ten (10) days in other districts, except that if leave of absence is granted by department head with the concurrence of Local Chairman, the exercise of seniority may be deferred until the expiration of the leave of absence, or within five (5) or ten (10) days thereafter, as the case may be. Other employees affected must exercise their seniority in the same manner.

An employee will not be permitted to work as an unassigned employee during the displacement period unless he relinquishes any right to further displacement under this rule. Employees who do not exercise seniority within the time limit prescribed in this rule and who are not granted leave of absence will be considered furloughed employees subject to return to service in accordance with Rule 13.

(i) When a permanent position is abolished or discontinued, and reinstated or bulletined within ninety (90) days, the last regular assigned incumbent, if still in the service and applying therefor in accordance with Rule 7, with advice that he is the "last regular assigned incumbent," will be returned to the position without regard to seniority. Last regular assigned incumbents of other positions affected may also return to former positions in the same manner where their former positions are vacated by other employees in the exercise of this option.

(j) The exercise of seniority in accordance with this rule shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority will prevail.

NOTE: - The word "sufficient" is intended to establish more clearly the rights of the senior employee to a new position or vacancy or to displace a junior employee where two or more employees have adequate fitness and ability. Senior employee will be assigned to position unless it is obvious that he cannot qualify.

(k) Employees will be given full cooperation of department heads and others in their efforts to qualify.

(SEE APPENDIX "N" PAGE 139)

RULE 10

PROMOTION AND APPLICATION FOR POSITIONS IN OTHER SENIORITY DISTRICTS

(a) Positions, including excepted positions, will be filled by promotion of qualified employees from the ranks. In filling excepted positions, preference shall be given to employees in the seniority district in which the vacancy or new position occurs.

(b) Employees will be given preference over non-employees for positions in other seniority districts not filled from the seniority roster on such other district.

(c) In order to be eligible for consideration under Section (b) of this rule, employees must have their application on file with the President and General Manager, with copy to the General Chairman, prior to the time it is necessary to fill the position, and must be available for service at the point at the time it is necessary to fill such position. Applications for positions in other seniority districts filed in accordance with this section must be renewed in January of each year.

(d) Employees filing applications for positions in other seniority districts in accordance with this rule will be considered on basis of qualifications of which the head of the department having jurisdiction over the position shall be the judge, subject to appeal as provided elsewhere in these rules.

(e) Employees who make application under this rule for positions in other seniority districts shall indicate the points at which they desire to work. In the event they do not accept a position at a given point when notified of vacancy they will not again be offered work at such point unless a new request is filed under the provision of (c).

RULE 11

RETENTION OF SENIORITY

(a) Effective June 1, 1965, all employees in a district shall retain and accumulate seniority on the roster of that district. If employees working in a district are displaced, and unable, in the exercise of seniority, to retain a position at the point at which discplaced, they shall retain seniority on the roster as unassigned employees subject to applicable provisions of this Agreement.

(b) Employees accepting regular positions in another seniority district or a succession of other seniority districts will retain seniority in home district and in the last district to which transferre subject to the provisions of Rule 12 below. Employees accepting temporary or seasonal positions in another seniority district will

retain and exercise seniority in home seniority district in accordance with Rule 9(e).

RULE 12

TRANSFERRING

(a) Employees transferred with their positions from one seniority district to another shall retain their positions. Their seniority will be transferred to the new seniority district.

(b) When the limits of a seniority district are extended or reduced, the employees affected shall have the choice of carrying their seniority upon either the extended or reduced district. Such choice shall be exercised within thirty (30)days from the effective date.

(c) Employees transferred to positions in the Company not coming under any other agreement, or employees promoted to excepted or official positions, shall retain and continue to accumulate seniority on the seniority rosters of the districts from which transferred.

Employees appointed to official positions who do not have seniority on the district and supervise employees coming under the scope of this Agreement will establish seniority date on the district in which headquartered as of date of appointment. However, this shall not apply to employees promoted from other crafts who retain seniority under other Agreements.

NOTE: See Sec. 10, Item 8, Agreement of January 7, 1980.

(d) On account of ill-health of themselves or dependent members of their families, employees may transfer from one seniority district to another, with the approval of the employing officers and the local Chairman involved, retaining three-fourths (3/4ths) of their seniority. Such transfer will not be made until employees furnish certificate in duplicate from a reputable physician, preferably a Company physician, showing necessity for such change, one copy of which will be given to the accredited representative of the employee.

(e) Two (2) employees of different seniority districts may exchange positions with the approval of the heads of their respective departments and concurrence of the General Chairman, and where transfer is made the employees will each take the seniority date of the junior employee making the change.

(f) Applications for positions from employees on other seniority districts having sufficient fitness and ability will be given preference, as provided in Rule 10, in the order of their seniority over applications of non-employees. Such employees will establish seniority in second district at time compensated service is

first performed and retain seniority under provision of (g) below.

(g) Except as otherwise provided in these rules, employees transferred from one seniority district to another subsequent to June 1, 1965, and still employed on the district to which transferred, shall:

1. Retain seniority date, subject to the provisions of Item 2, in the district from which transferred and establish a new seniority date in the district to which transferred effective as of the date of such transfer, except that employees now holding positions on district to which transferred and who have heretofore declared their desire to retain seniority on district from which transferred, shall be given a date on district to which transferred as date of most recent transfer. If a second or subsequent transfer is made to another seniority district, any seniority the employee may have acquired in the district to which previously transferred will be forfeited.

2. (a) If the employee, by reason of reduction in force is unable in the exercise of seniority to hold an assigned position on the district to which transferred, he may return to the district fr which transferred and shall not forfeit his seniority date on the district to which transferred for a period of two (2) years, unless he declines to return to such district upon being notified when force is increased or vacancy occurs.

(b) An employee who by reason of reduction in force is unable in the exercise of seniority to hold an assigned position in the district to which transferred and who fails to return to former seniority district to obtain leave of absence therefrom in conformity with Rule 9, will assume status of furloughed employee from the district in which last employed subject to recall under the provisions of Rule 13.

3. In the event an employee, in the judgement of the employing officer of the district to which transferred, fails at any time within sixty (60) days to demonstrate fitness and ability, or the employee elects to return to the district from which transferred upon giving (30) days' advance notice in writing to employing officers in both districts with copies to Local Chairman concerned, he will in either case forfeit any seniority he may have accumulated in the district to which transferred.

4. In accordance with Rule 9(e), an employee returning to the district from which transferred will be privileged to displace a junior employee who has been assigned to or who has displaced on a position advertised during his absence.

RULE 13

REDUCTION IN FORCE

(a) Advance notice in writing of not less than five (5) working days will be posted on bulletin boards or places accessible to employees affected of proposed reduction in regular and bulletined positions. When forces are reduced, seniority rights shall govern.

(b) Not more than sixteen (16) hours' advance notice will be required of reduction in force under emergency conditions of flood, snow storm, hurricane, earthquake, fire or strike, provided the Company's operations are suspended in whole or in part and provided further that because of such emergency the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force redutions no longer exists or cannot be performed. (See Appendix "I," Page 126 for Article VII - Force Reduction Rule of National Agreement of February 25, 1971)

(c) When forces are increased, employees shall be returned to service in order of their seniority rights. Employees desiring to avail themselves of this rule must file their address with the proper official at time of reduction, and advise promptly of any change.

(d) An employee failing to return to service on a regular or bulletined position, for which he has requisite seniority and is qualified within fifteen (15) days after being notified (by certified mail or telegram sent to last address furnished by employee) or give satisfactory reason in writing for not doing so will be considered resigned and will be so notified in writing, but he shall not be entitled to an investigation under Rule 38 in connection with such termination of employee relationship. If the employee's reason for not returning to service is deemed to be unsatisfactory by the Company, the Company will promptly so advise the employee by U.S. Certified Mail, after which the date on which the employee has to return to service will be either the fifth (5th) calendar day following date of receipt of the Company's notice rejecting his reason or the fifteenth (15) day after receipt of the Company's original recall letter, whichever is later; should receipt of the Company's rejection of reason letter be avoided or refused, the date for return to service shall in any such case be the fifteenth (15th) day after receipt of original recall letter. In the event the Company fails to so notify the employee to the contrary, the reason advanced for not returning to service shall be considered satisfactory.

(e) Employees who comply with provisions of last sentence of paragraph (c) above and who elect not to perform service on short-term or irregular vacancies shall retain their seniority up to three (3) years during which time they may be returned to service in

accordance with paragraph (d) of this rule. Employees whose seniority and qualifications have entitled them to have performed service but who have not done so shall forfeit all seniority rights after a period of three (3) years (1095 or 1096 calendar days as the case may be).

(f) Individuals previously employed by the Company on positions subject to this agreement, whose employment was terminated other than by any of the following:

(1) retirement
(2) discharge for cause, including resignation accepted either after being cited for investigation or when such citation was imminent.
(3) resignation to accept lump sum separation allowance,

shall upon proper written application be granted preference of employment on any such positions over all persons not previously so employed.

The provisions of this section will be confined to individual who at the time of application for reemployment had been in active service within the last ten (10) years, and subject to the condition that they can pass such physical, mental or other examinations require

(g) 1. Persons recalled under provisions of paragraph (d) above who have performed no service for a period of six (6) months or more will be required to submit to a physical examination.

2. In the event that within thirty (30) days the findings or conclusion of the Company's examining physician are challenged by another reputable physician (selected and paid for by the employee), the employee's case may, if conditions warrant, be referred back to the examining physician for recheck. If the report of such recheck indicates the employee is physically qualified to be returned to service safely, he will be returned to service. If the report of recheck is to the contrary it may, within fifteen (15) days, be challenged by the employee or Local Chairman and written request made for special handling wherein the Company physician and employee's physician will confer, and if these two physicians do not agree on the physical conditio of the employee, they shall select a third or neutral reputable physician to examine him, which selection shall be made within ten (10) days of request for special handling.

The decision of the majority of the three (3) examining physician on the physical fitness of the employee to perform unrestricted service shall be final and binding as

disposition of the case. This does not, however, preclude a reexamination at a subsequent time should the physical condition of the employee change.

3. The Company and the employee will each pay for the fee and personal expense, if any, of the respective physician selected by them, and will each pay half the fee and personal expense, if any, of the jointly selected neutral physician, as well as half of all additional expenses incurred in connection with the examination.

(h) A regularly assigned employee or an available unassigned employee who is ordered by an officer of the Company to report for physical examination and found to be in a satisfactory physical condition that would have enabled him to continue in service without interruption shall be compensated as follows to the extent of actual time lost while taking such physical examination, plus reimbursement for actual necessary expenses while away from assigned headquarters:

REGULARLY ASSIGNED EMPLOYEES

Basic rate of position held at time ordered to take physical examination.

AVAILABLE UNASSIGNED EMPLOYEES

Basic rate applying to position he would have worked.

In instances where therapeutic services or procedures are necessary before the employee is released by the physician for return to service, or he is found to be incapable of continuing in his present occupation, compensation and expenses specified above will not apply.

RULE 14

CONSOLIDATIONS

When two or more offices or departments are consolidated, employees affected shall have prior rights to corresponding positions in the consolidated office or departments, after which these rules will govern.

RULE 15

RATING POSITIONS

(a) Positions (not employees) shall be rated, and the transfer of rates from one position to another shall not be permitted.

(b) The wages for new positions shall be in conformity with the wages for positions of similar kind in the seniority district where created.

RULE 16

RELIEF ASSIGNMENTS

(a) Relief positions and schedules consistent with requirements of the service will be established by Management, subject to provisions of (b) and (d) of this rule.

(b) Before being established, written schedule of proposed relief positions shall be given to Local Chairman.

(c) Relief employees will be paid at the rate of position relieved.

(d) In event of dispute with respect to such assignments, the Local Chairman may submit the matter to the General Chairman for further handling.

RULE 17

BASIS OF PAY

(a) Except as otherwise agreed to, the present basis of pay (monthly, daily or hourly) will continue in effect. The conversi of monthly, daily or hourly rates to a different basis shall not operate to establish a rate of pay either more or less favorable than is now in effect. All new positions will be paid on a daily or hourly basis as appropriate to the classification.

(b) Nothing herein shall be construed to permit the reduction of days for regularly assigned monthly or daily rated employe below five (5) per week, excepting that this number may be reduced in a week in which holidays occur within the five (5) days constituting the work week by the number of such holidays; such reduction may be made only when a specified holiday is observed on an assigned work day of an individual employee.

NOTE: - The foregoing paragraph shall also apply to regular hourly-rated employees in the Stores Department.

(c) Effective as of September 1, 1949, all types of hourly or daily rates, whether time, piece or a combination of both which lead to employees' normal earnings (exclusive of the general increase of seven cents per hour effective October 1, 1948), shall be increased by 20% in order to provide 48 hours pay for 40 hours work. All daily and hourly differentials, arbitraries, and special allowances shall likewise be increased by 20%; monthly and weekly compensation of this character on the basis of six work days per week shall remain

unchanged when the work week is reduced to five days and additional proportionate amounts shall be paid to employes relieving on rest day or days of such positions.

After the new rates have been adjusted in accordance with the foregoing, then the increase of seven cents per hour provided in Article I of the agreement of March 19, 1949, shall be added to all rates in the manner provided for in that Article, using the hours then comprehended in the rate.

RULE 18

PRESERVATION OF RATES

Except as provided in Rules 34 and 35, employes assigned to higher rated positions shall receive the higher rate while occupying such positions. Employes temporarily assigned to lower rated positions shall not have their rates reduced.

NOTE: - A "temporary assignment" contemplates the fulfillment of the duties and responsibilities of the positions during the time occupied, whether the regular occupant of the position is absent or the temporary assignee does the work irrespective of the presence of the regular employe. Assisting a higher rated employe due to a temporary increase in the volume of work does not constitute a temporary assignment.

RULE 19

ESTABLISHED POSITIONS

Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work, for the purpose of reducing the rate of pay or evading the application of these Rules.

RULE 20

When an employee is required to travel from his headquarters point to another point outside the environs of the city or town where he normally performs service, the Carrier will either provide transportation without charge or reimburse the employe for such transportation costs. ("Transportation" means travel by rail, bus, or other means specified by the Carrier, or by private automobile if the employe elects to use same, and "transportation cost" means the established passenger fare or the established automobile mileage allowance where automobile is used).

Such an employe shall be compensated in addition to time worked, for the time spent in traveling to and from headquarters to outside work location, including time in excess of one (1) hour necessary waiting for the employe's shift to start and time in excess of one (1) hour after completion of shift waiting for transportation

to return to headquarters or to employe's next work location. Such compensation shall be at the rate of the position worked.

When such an employe is unable to return to his headquarters on the same day that he is required to leave his headquarters, he shall be reimbursed for lodging and meals by an allowance of $8.50 per day while away from headquarters. (See Appendix "N" Page 139.)

RULE 21

ATTENDING COURT - JURY DUTY

(a) Employes attending court or appearing as witnesses at the request of the Management, will be reimbursed for any time lost from regular employment, furnished transportation and allowed necessary traveling expenses.

(b) When a regularly assigned employee is summoned for jury duty and is required to lose time from his assignment as a result thereof, he shall be paid for actual time lost with a maximum of a basic day's pay at the straight time rate of his position for each day lost less the amount allowed him for jury service for each such day, excepting allowances paid by the court for meals, lodging or transportation, subject to the following qualification requirements and limitations:

(1) An employee must exercise any right to secure exemption from the summons and/or jury service under federal, state or municipal statute and will be excused from duty when necessary without loss of pay to apply for for the exemption.

(2) An employee must furnish the carrier with a statement from the court of jury allowances paid and the days on which jury duty was performed.

(3) The number of days for which jury duty pay shall be paid is limited to a maximum of 60 days in any calendar year.

(4) No jury duty pay will be allowed for any day as to which the employee is entitled to vacation or holiday pay.

(5) When an employee is excused from railroad service account of jury duty, the carrier shall have the option of determining whether or not the employee's regular position shall be blanked, notwithstanding the provisions of any other rules.

RULE 22

TEMPORARY ASSIGNMENTS AWAY FROM HOME

egular employes temporarily assigned to special service at han their home station, will be allowed necessary expenses way from headquarters.

RULE 23

SHORTAGE IN PAY CHECKS, CLAIMS,
TIME LIMITS ON CLAIMS AND GRIEVANCES

(a) Employees who are short in their payroll voucher an equal to one day's pay or more, will be given a voucher three days on request.

(b) When time is claimed in writing and such claim is wed, the employee making the claim shall be notified in the reason for non-allowance.

(c) All claims or grievances arising on or after January 1, hall be handled as follows:

1. All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.

2. If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision. ailing to comply with this provision, the matter shall be onsidered closed, but this shall not be considered as a precedent or waiver of the contentions of the employees as to other similar claims or grievances. It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the 60-day period for either a decision or appeal, up to and including the highest officer of the Carrier designated for the purpose.

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(h) This rule shall not apply to request for leniency.

RULE 24

DAY'S WORK

Eight consecutive hours' work, exclusive of the meal period, shall constitute a day's work, except as otherwise provided in Rule 28.

RULE 24-1/2

ESTABLISHMENT OF SHORTER WORK WEEK

NOTE: - The expressions "position" and "work" used in this Rule refer to services, duties, or operations necessary to be performed the specified number of days per week, and is not to the work week of individual employees.

(a) General

The Carriers will establish effective September 1, 1949, for all employees, subject to the exceptions contained in Article II of the Chicago Agreement of March 19, 1949, a work week of 40 hours, consisting of five days of eight hours each, with two consecutive days off in each seven; the work weeks may be staggered in accordance with the Carrier's operational requirements; so far as practicable the days off shall be Saturday and Sunday. The foregoing work week rule is subject to the provisions of the Chicago Agreement of March 19, 1949.

(b) Five-Day Positions

On positions the duties of which can reasonably be met in five days, the days off will be Saturday and Sunday.

(c) Six-Day Positions

Where the nature of the work is such that employees will be needed six days each week, the rest days will be either Saturday and Sunday or Sunday and Monday.

(d) Seven-Day Positions

On positions which have been filled seven days per week any two consecutive days may be the rest days with the presumption in favor of Saturday and Sunday.

(e) Regular Relief Assignments

All possible regular relief assignments with five days of work and two consecutive rest days will be established to do the work necessary on rest days of assignments in six or seven day service or combinations thereof, or to perform relief work on certain days and such types of other work on other days as may be assigned under this agreement. Where no guarantee rule now exists such relief assignments will not be required to have five days of work per week.

Relief positions will be established under provisions of Rule 16.

Assignments for regular relief positions may on different days include different starting times, duties and work locations for employees in the same seniority district, provided they take the starting time, duties and work locations of the employee or employees whom they are relieving. Employees occupying relief positions under this paragraph will be paid at the rate of the position relieved.

(f) Deviation from Monday-Friday Week

If in positions or work extended over a period of five days per week, an operational problem arises which the Carrier contends cannot be met under the provisions of paragraph (b) of the Rule, and requires that some of such employees work Tuesday to Saturday instead of Monday to Friday, and the Organization contends the contrary, and if the parties hereto fail to agree thereon, then if the Carrier nevertheless puts such assignments into effect, the dispute may be processed as a grievance or claim under the rules agreements.

(g) Nonconsecutive Rest Days

The typical work week is to be one with two consecutive days off, and it is the Company's obligation to grant this. Therefore, when an operating problem is met which may affect the consecutiveness of the rest days of positions or assignments covered by paragraphs (c), (d) and (e), the following procedure shall be used:

1. All possible regular relief positions shall be established pursuant to paragraph (e) of this Rule.

2. Possible use of rest days other than Saturday and Sunday, by agreement or in accordance with other provisions of this agreement.

3. Efforts will be made by the parties to agree on the accumulation of rest time and the granting of longer consecutive rest periods.

4. Other suitable or practicable plans which may be suggested by either of the parties shall be considered and efforts made to come to an agreement thereon.

5. If the foregoing does not solve the problem, then some of the relief or extra men may be given non-consecutive rest days.

6. If after all the foregoing has been done there still remains service which can only be performed by requiring employees to work in excess of five days per week, the number or regular assignments necessary to avoid this may be made with two non-consecutive days off.

7. The least desirable solution of the problem would be to work some regular employees on the sixth or seventh days at overtime rates and thus withhold work from additional relief men.

8. If the parties hereto are in disagreement over the necessity of splitting the rest days on any such assignments, the Company may nevertheless put the assignments into effect subject to the right of employees to process the dispute as a grievance or claim under the rules agreements, and in such proceedings the burden will be on the Company to prove that its operational requirements would be impaired if it did not split the rest days in question and that this could be avoided only by working certain employees in excess of five days per week.

(h) Rest Days of Extra or Furloughed Employees

To the extent extra or furloughed men may be utilized under this agreement, their days off need not be consecutive; however, if they take the assignment of a regular employee they will have as their days off the regular dayss off of that assignment.

The adoption of this paragraph shall be without prejudice to the determination of the question of whether or not a guarantee exists.

(i) Beginning of Work Week

The term "work week" for regularly assigned employees shall mean a week beginning on the first day on which the assignment is bulletined to work, and for unassigned employees shall mean a period of seven days starting with Monday.

(j) Except to the extent that the coverage of existing guarantees was extended to certain employees covered by Article II, Section 1(e) of the March 19, 1949 Agreement, the adoption of the "shorter work week" rule in Article II, Section 1 of that agreement did not create a guarantee of any number of hours or days of work.

RULE 25

MEAL PERIOD

(a) The meal period shall not be less than thirty (30) minutes nor more than one (1) hour; however, no meal period will be assigned employees between 8:00 P.M. and 7:00 A.M.; such employees shall be assigned eight (8) consecutive hours and accorded twenty (20) minutes, as provided in Section (g).

(b) When a meal period is allowed, it shall be regularly assigned between the ending of the third (3rd) hour and the beginning of the seventh (7th) hour after starting work, unless otherwise agreed to by the proper officer of the Company and the Local Chairman.

The meal period so assigned may be changed within the time limits provided, upon thirty-six (36) hours' written notice to employees affected.

(c) Except in emergency, an employee shall not be required to work more than two (2) hours overtime continuous with and after completing eight (8) hours' service without being permitted twenty (20) minutes for meal period. Time taken for such meal period shall not break the continuity of service. If the employee is not accorded such meal period he shall be allowed twenty (20) minutes additional compensation at the rate of time and one-half.

(d) An employee who is required to work more than two (2) hours continuous with his regular eight (8) hour assignment may be granted twenty (20) minutes for meal period immediately prior or subsequent to the ending of his regular tour of duty, in which event he shall be compensated on a continuous time basis.

(e) 1. An employee required to work any part of the regularly assigned meal period shall be paid for such time actually worked at the rate of time and one-half and shall be allowed the remainder of the meal period without pay; if the employee so elects, the remaining portion of his meal period may be extended equivalent to the time of his meal period worked, in which event the remaining portion of the assigned meal period and the extended time shall not be paid for.

2. In the event an employee is called to work after having taken a portion of the regularly assigned meal period, time and one-half will be paid from time work is commenced until close of regularly assigned meal period.

3. When as a result of having been required to work a part of the assigned meal period and that portion of the assigned meal period not worked is reduced to less than twenty (20) minutes, sufficient additional time without deduction in pay, shall be allowed to afford a total of twenty (20) consecutive minutes in which to eat commencing not later than the beginning of the seventh hour after regular starting time.

(f) An employee required to work the entire assigned meal period shall be paid for the regular meal period at the rate of time and one-half and in addition shall be allowed twenty (20) minutes, without deduction in pay, in which to eat.

(g) For regular operations requiring continuous hours, eight (8) consecutive hours without meal period may be assigned as constituting a day's work, in which case not to exceed twenty (20) minutes in which to eat shall be allowed when the nature of the work permits, at any time within the time limits provided for in Section (b), without deduction in pay.

RULE 26

STARTING TIME

(a) Regular assignments shall have a fixed starting time, and the regular starting time shall not be changed, without at least thirty-six hours' notice to the employees affected.

(b) Where three consecutive shifts are worked covering the twenty-four hour period, no shift will have a starting time after 12:01 A.M. and before 5:00 A.M.

RULE 27

DULY ACCREDITED REPRESENTATIVE

Where the term "duly accredited representative" appears in this agreement, it shall be understood to mean the regularly constituted committee and/or the officers of the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees of which such committee or officers is a part.

RULE 28

SERVICE TRACK AND INTRANSIT STATIONS

(a) Regular Forces.

1. The maximum number of regular assignments consistent with the requirements of the service will be established. The starting time and meal period of regularly assigned ice plant and platform and other icing employees may be changed as conditions require to meet fluctuations in perishable traffic during the months of June to November, inclusive.

2. However, when starting time is changed not less than sixteen (16) hours' advance notice will be posted on regular bulletin boards with copy to individual employee affected and Local Chairman.

When change in starting time is made and sixteen (16) hours' notice is not given employee, he will be compensated at overtime rate for work performed on first day of change or if, as a result of Company failure to give notice as provided herein, he misses working any shift to which his seniority would entitle him during the twenty-four (24) hour period following last release from duty, he will be paid for wage loss incurred.

(b) Irregular - Seasonal Supplemental Forces

1. Employees will be assigned in accordance with seniority to work additional seasonal positions established to supplement regular forces.

2. These seasonal supplemental positions will consist of five (5) consecutive days with two (2) consecutive rest days in each seven-day period beginning with the first work day of the position. Rest days of such positions will remain unchanged for the duration of the position nor will these positions be abolished and new ones created for the purpose of assigning different rest days or otherwise evading the application of this rule.

3. Employees assigned to positions established under (b) of this rule may be used in accordance with operational requirements and seniority preference on any one of three shifts scheduled to work as follows:

First Shifts - Starting between 5:00 A.M. to 1:00 P.M.

Second Shifts - Starting between 1:00 P.M. to 9:00 P.M.

Third Shifts - Starting between 9:00 P.M. to 11:59 P.M.

4. After an employee has been scheduled to work prescribed hours on a particular shift, the Company shall give employee not less than eight (8) hours' advance notice or notify before end of tour of duty that he will be required to work different hours on the same or another shift.

5. Employees will not be permitted to work two shifts in a calendar day except on overtime basis in accordance with other rules of the agreement.

6. In the event employee is required to change hours of shifts and does not have eight (8) hours off duty between shifts, he shall be compensated at overtime rate of pay for the portion of second shift that falls within eight-hour period from time released from previous tour of duty.

(c) Regularly assigned hourly-rated employees required to report for work at regular starting time, and prevented from performing service by conditions beyond control of the Company, will be paid for actual time held, with a minimum of four (4) hours. If worked any portion of the day under such conditions, a minimum of eight (8) hours shall apply. All time under this rule shall be at pro rata.

(d) All circumstances and conditions not specified in this rule will be controlled by other rules of the agreement.

RULE 29

RELINQUISHMENT OF ASSIGNMENTS

(a) An employee will be permitted, upon written request, to relinquish his regular assignment and assume the status of an unassigned employee, provided the request is concurred in by the Management and the General Chairman. This with the understanding

that such employee will not be permitted to apply for position created by such relinquishment when advertised.

(b) An employee, when he has a Company Doctor's certificate certifying that he must relinquish his position because of ill health, may relinquish the position and return to his former position, if occupied by a junior employee, or displace a junior employee who has been assigned to or displaced on a position advertised during the time he held his last position. If such employee is unable to or elects not to return to former position or displace a junior employee, he may relinquish his position and assume the status of an unassigned employee with the understanding that he will not be permitted to apply for position created by such relinquishment when advertised. Right referred to herein to relinquish position must be concurred in by the Management and General Chairman.

(c) When the duties of any position are so changed that the occupant cannot satisfactorily perform them, he shall, upon agreement between the Management and the General Chairman, be permitted to exercise his seniority rights to a position held by a junior employee.

RULE 30

GUARANTEED EXTRA BOARDS

Extra boards regulated by the local supervisors and Local Chairman may be maintained for service worker and/or laborer employees at each point. Lists will be posted on the bulletin board showing name and standing of employees assigned to extra boards. Available furloughed employees will be recalled in seniority order for additional positions on the extra board.

RULE 31

OVERTIME

(a) Except as otherwise provided in these Rules, time worked in excess of eight hours, exclusive of the meal period on any day will be considered overtime and paid on the actual minute basis at rate of time and one-half.

(b) Employees will not be required to suspend work during assigned hours to absorb overtime.

NOTE: - Under the provisions of this rule, an employee may not be requested to suspend work and pay during his tour of duty to absorb overtime previously earned or in anticipation of overtime to be earned by him. It is not intended that an employee cross craft lines to assist another employee. It is the intention, however, that an employee may be used to assist another employee during his tour of duty in the same office or location where he works and in the same seniority district without penalty. An employee assisting another employee on a position paying a higher rate will receive the higher rate for time worked while assisting such employee, except that existing rules which provide for

payment of the highest rate for entire tour of duty will continue in effect. An employee assisting another employee on a position paying the same or lower rate will not have his rate reduced.

(From Article VI of February 25, 1971 National Agreement) Also see Appendix "I", J. P. Hiltz' letter February 25, 1971 about application of Article VI.

(c) No overtime hours will be worked except by direction of proper authority, except in case of emergency where advance authority is not obtainable.

(d) Work in excess of 40 straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate except where such work is performed by an employee due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph captioned "Non-consecutive Rest Days."

(e) Employees worked more than five days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, except where such work is performed by an employee due to moving from one assignment to another or to or from an extra list, or where days off are being accumulated under paragraph (g)3 of Rule 24-1/2.

(f) There shall be no overtime on overtime; neither shall overtime hours paid for, other than hours not in excess of eight paid for at overtime rates on holidays or for changing shifts, be utilized in computing the 40 hours per week, nor shall time paid for in the nature of arbitraries or special allowances such as attending court, deadheading, travel time, etc., be utilized for this purpose, except when such payments apply during assigned working hours in lieu of pay for such hours, or where such time is now included under these rules in computations leading to overtime.

(g) Work on Unassigned Days.

Where work is required by the Company to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee.

(SEE PAGE 142 APPENDIX "P")

RULE 32

NOTIFIED OR CALLED

(a) An employee notified or called to perform work not continuous with the regular work period shall be allowed a minimum of two (2) hours at overtime rate for two (2) hours work or less, and if held on duty in excess of two (2) hours, the overtime rate shall be allowed on the minute basis. Each call to duty after being released shall be a separate call.

(b) An employee who has completed his regular tour of duty and has been released, and who is required to return for further service within less than one (1) hour following such release, may be compensated as if on continuous duty.

(c) An employee required to report for duty before his assigned starting time and who continues to work through his regular shift shall be paid one (1) hour at the overtime rate for one (1) hour's work or less, and at the overtime rate thereafter on the minute basis for the time required to work in advance of his regular starting time.

(d) Except as otherwise provided in Rule 33, employees notified or called to perform work on rest days and specified holidays shall be paid for such work a minimum of five (5) hours and twenty (20) minutes at rate of time and one-half for five (5) hours and twenty (20) minutes work or less and if worked in excess of five (5) hours and twenty (20) minutes, time and one-half will be allowed on the minute basis.

In the application of the foregoing, for the first call on a rest day or holiday the employee will be paid a minimum of five hours and twenty minutes pay at the time and one-half rate and for each subsequent call on the same calendar day, the employee will be allowed a minimum of two hours pay at the time and one-half rate for two hours work or less, with the time and one-half rate to be paid on a minute basis for time worked in excess of the two hours. Each call to duty following release shall be considered a separate call.

RULE 33

WORK ON SUNDAYS - REST DAYS - HOLIDAYS

(a) Previously existing provisions that punitive rates will be paid for Sunday as such are eliminated. The elimination of such provisions does not contemplate the reinstatement of work on Sunday which can be dispensed with. On the other hand, a rigid adherence to the precise pattern that may be in effect immediately prior to September 1, 1949, with regard to the amount of Sunday work that may be necessary is not required. Changes in amount or nature of traffic or business and seasonal fluctuations must be taken into account. This is not to be taken to mean, however, that types of work which have not been needed on Sundays will hereafter be assigned on Sunday. The intent is to recognize that the number of people on necessary Sunday work may change.

(b) Service rendered by an employee on his assigned rest day, or days, shall be paid for under the provisions of Rule 32(d).

(c) Work performed on the following legal holidays - namely: New Year's Day, Washington's Birthday, Good Friday, Fourth of July, Labor Day, Veterans' Day, Thanksgiving Day, Christmas Eve (the day before Christmas is observed) and Christmas (provided when any of the above holidays falls on Sunday, the day observed by

the State, Nation or by proclation shall be considered the holiday), shall be paid at the rate of time and one-half.

NOTE: - 1. See Page 71, Appendix "B" for National Holiday Agreement Synthesis.

NOTE: - 2. In an office or facility where there are a number of positions that have the same title and only a portion of such force will be required to work on a specified holiday, preference for such work will be on the following basis for employees at that location who desire to work on the holiday:

First: In seniority order to regularly assigned employees of such title on the shift involved.

Second: In seniority order to regularly assigned employees of such title on other shift.

Third: In seniority order to qualified regularly assigned employees whose positions are not assigned to work that date.

The foregoing preferences do not apply to employees observing their rest days.

Fourth: In seniority order to other qualified regularly assigned employees.

Fifth: In seniority order to available qualified unassigned employees.

Shifts are designated as positions regularly assigned to start 5:00 A. to 1:00P.M., 1:01 P.M. to 9:00 P.M. and 9:01 P.M. to 12:00 Midnight.

RULE 34

VACATIONS

(a) Employees defined in Rule 1, Section (b), who on January 1st have been continuously employed on such positions for a period of one year and less than two years, will be granted a vacation of five working days with pay per annum, and those continuously employed on such positions two years and over, ten working days per annum. Vacations of more than ten (10) paid days per annum will be allowed when due under terms of National Vacation Agreements.

(b) Employees entitled to vacations who relieve other employees entitled to vacations, or employees on excepted positions on vacation, will be paid during the period of vacation relief at the rate of their own position or position relieved, whichever is the greater.

(c) The number of vacation days for which an employee is eligible under any vacation rule shall be reduced by one-sixth. If the qualifying period is expressed in days, the days shall be reduced by one-sixth; for example, 160 qualifying days' requirement in the year 1949 for a vacation in 1950 shall be reduced to 151 days; thereafter, such qualifying period shall be 133 days, or less as provided in National Vacation Agreements currently in effect at time vacations are earned or taken. Qualifying years accumulated prior to the year 1949 for extended vacation shall not be changed.

NOTE: An employee who is scheduled for and is granted a vacation immediately following rest days of his position shall not be required but shall be permitted, if available, to work overtime vacancies on Rest Days preceding his vacation provided a qualified Guaranteed Extra Board employee or unassigned is not available to work at straight time. He shall not be considered available to work on his rest days occurring during his vacation or the rest days immediately following the expiration of his vacation.

(d) Employees shall be granted a vacation with pay, or payment in lieu thereof, in accordance with this rule and/or Vacation Agreement signed at Chicago, Illinois, December 17, 1941, as amended.

NOTE: In application of the provisions of Article of the Vacation Agreement of December 17, 1941, as amended, reading:

> "While the intention of this agreement is that the vacation period will be continuous, the vacation may, at the request of an employee, be given in installments if the management consents thereto."

second installment choices will not be considered for assignment to remaining available time until after all initial installment and continuous vacation periods have been scheduled. Similarly, third and any subsequent installment choices, applicable only to employees eligible for more than 10 days vacation, will be considered after preceding installments have been scheduled. It is to be understood that the provisions of Article 11 of the Vacation Agreement of December 17, 1941 are applicable in connection herewith."

(See Appendix "A" for National Vacation Agreement Synthesis - Page 60.)

RULE 35

SICK LEAVE

ITEM 1:

There is hereby established a non-governmental plan for sickness allowance supplemental to the sickness benefit provisions of the Railroad Unemployment Insurance Act as now or hereafter amended. It is the purpose of this sick leave rule to supplement the sickness benefits payable under the Act and not to replace or duplicate them.

This rule shall become effective as of January 1, 1980. Sick leave days accruing to an employee but unused as of that date shall be credited to the employee and thereafter governed by this rule.

(a) An employee who is in active service in the calendar year on the day that the sickness occurs (an employee who was allowed sick pay for his last work day in December of the previous calendar year or an employee who performed sufficient service in preceding calendar year to qualify for vacation will be considered in Active Service January 1 of the following calendar year) and who has been in continuous service of the Company for the period of time specified, will be granted an allowance as set forth below for time absent on account of sickness or injury:

(1) Upon completion of one (1) year of service a total in the following year of five (5) working days.

(2) Upon completion of two (2) years of service a total in the following year of seven and one-half (7-11/2) working days.

(3) Upon completion of three (3) years of service a total in the following year of 10 (10) working days.

NOTE: In the application of Paragraph (a) above, the rate of pay will be rate of the position to which assigned or protected rate being paid, whichever is higher, and for an extra employee shall be the rate of pay of position held on hold-down basis, or position he would have worked or protected rate being paid, whichever is higher.

(b) (1) Until an employee has completed three (3) years of continuous service, each sonsisting of twelve (12) calendar months, and does not lose his seniority, his sick leave allowance and eligibility therefor shall be calculated from the date of his entrance into service.

(c) Where employees are regularly required to work their eight (8) hour assignments on their rest days and/or holidays, when they are absent due to sickness on such days, the designated holidays and assigned rest days will be considered as working days for the purpose of applying this rule;however, the absent employee will be allowed only straight time rate for the time lost on such days.

(d) After an employee has accumulated thrity (30) days of unused sick leave, thereafter, in each year of service, the employee shall have the option, which must be made in the month of February, of receiving payment in five (5) full day increments at the rate of 50% of the daily allowance for each day which he elects to option of the unused sick leave accumulated; or he may continue to accumulate the unused sick leave up to a maximum of sixty (60) working days. Upon accumulation of sixty (60) days sick leave, the employee shall thereafter be compensated for 50% of the unused sick leave credited to each subsequent eligibility year. Pay for unused sick time will be based upon the rate of the position occuped on the last day of the

year or protected rate being paid, whichever is higher and will be paid in the next payroll period. (Pay for extra employees will be based on rate of position last occupied or protected rate being paid, whichever is higher.)

(e) An employee who is off account of sickness in any calendar year in excess of the specified allowance he is entitled to under Paragraph (a) of this rule, shall upon request, be given additional sick leave with pay to the extent of his unused sick leave in his sick leave reserve. Sick leave entitlement for the current year must be used up before any sick leave in the sick leave reserve can be used.

(f) Before the end of the last week in January of each year, each employee with unused sick leave will be notified of the number of unused days which are being placed in his sick leave reserve, and the total number of accumulated days in such sick leave reserve.

(g) It will be optional with the Company to fill, partially fill, or not fill the position of an employee who is absent account his personal sickness and is receiving an allowance under this rule. If the Company elects to fill the position in its entirety, appropriate rules of the agreement will be followed. The use of other employees on duty and on other positions in the same office to perform the duties of the employee absent under this rule is permissible. Without prejudi to any rule in this Agreement, it is understood that an employee on a lower-rated position who is used for four (4) hours or less on a higher rated position on a given day will be allowed the higher rate for actua time worked. If used for more than four (4) hours, he will be allowed the higher rate for his entire tour of duty.

(h) The employing officer must be satisfied that the sickness is bona fide. Satisfactory evidence as to sickness, preferably in the form of a certificate from a reputable physician, may be required in case of doubt.

(i) No allowance will be made under this rule for any day on which the employee is entitled to compensation under any other rule or agreement, except that:

> An employee reporting and working three (3) hours or less may elect to have the entire day as a sick day and paid for accordingly; otherwise the employee will be paid for the actual time worked. If employee is one qualified for a one-half day sick leave, he will be allowed to use it in lieu of an entire day.

(j) Any sick leave allowance to be paid by the Company under this rule shall be reduced in the amount by the maximum daily allowance which the employee will be paid or could be paid, if proper claim were made by said employee under the Railroad Unemployment Insurance Act. In computing such supplemental allowance, only the assigned work days

during which the employee is accorded sick leave allowance as provided in this rule will be considered.

(k) An employee falsely claiming sick time will be subject to disciplinary action.

(l) Employees who retire or die shall receive pay for 50% of the accumulated and unused sick leave at the rate of the position last occupied or protected rate being paid, whichever is higher. Pay on behalf of a deceased employee, shall be paid to such beneficiary as may have been designated, or in the absence of such designation, the surviving spouse, or children or his estate, in that order of preferenc

ITEM 2:

(From Article IX - Sick Leave of the January 30, 1979 National Agreement.)

(a) Employees with ten (10) but less than twenty (20) years of service shall be entitled to one additional sick leave day per year. Employees with twenty (20) or more years of service shall be entitled to two (2) additional sick leave days per year.

(b) The sick leave days provided in Paragraph (a) of this Item may, at the option of the employee, be taken as sick leave and subject to the foregoing requirements governing sick leave or upon forty-eight (48) hours' advance notice from the employee to the proper Company official may be taken as leave days, not subject to the foregoing requirements governing sick leave. Such leave days may be taken only when consistent with the requirements of the Company's service.

NOTE: It is understood that although leave days are subject to the requirements of the service, this provision is not to be applied so as to prevent an employee from proper use of a leave day during a year, except where the request for leave is so late in a calendar year that service requirements prevent the employee's utilization of the leave day before the end of the year.

(c) In the event the additional sick leave days provided herein are taken as sick leave subject to the above requirements governing sick leave, such days so taken will be paid for in the manner provided in this rule. In the event they are taken as leave days, they will be paid for at the regular rate of the employee's position or the protected rate, whichever is higher.

(d) The sick leave days provided in Section (a) of this Item will be forfeited if not taken each calendar year. Such leave days will not be deducted from any employee's current year sick leave entitlement.

It will be optional with the Company to fill or not fill the position of any employee who is absent on a leave day. If the vacant position is filled, the rules of the agreement applicable thereto will

apply. The Company will have the right to distribute work on a position vacated among other employees covered by this Agreement.

RULE 36

VALIDATING RECORDS

Applicants for employment entering the service shall be accepted or rejected within sixty (60) days after the applicant begins work. When applicant is not notified to the contrary within the time stated, it will be understood that the applicant becomes an accepted employee, but this rule shall not operate to prevent the removal from service of such applicant, if subsequent to the expiratic of sixty (60) days, it is found that information given by him in his application is false, provided, however, this exception shall not be applicable to an employee who has been in service for a period of three (3) years or more.

Original letters of recommendation and other papers filed by the applicant shall be returned within sixty (60) days, provided copies of the same have also been filed.

(See Appendix "F" Page 85, for Union Shop Agreement.)

RULE 37

LEAVE OF ABSENCE

(a) When they can be spared, employees will be granted leave of absence without loss of seniority for a period not to exceed ninety (90) days except in case of illness, physical disability of the employee, committee work, service with Railroad Bureaus, Interstat Commerce Commission, or holding public office or positions. Retention of seniority during longer leave of absence may be arranged for by agreement between supervising officer and Local Chairman. Leave of absence in excess of thirty (30) calendar days must be in writing. (See Rule 39.)

NOTE:

" An employee who has been five (5) years in the Company's service will be granted leave of absence for one (1) year without loss of seniority provided the requirements of the service will permit and provided further that he does not accept position on another railroad company."

(b) Any employee who fails to report for duty at the expiration of leave of absence without reasonable excuse, presented in due course before expiration of leave of absence or within reasonable time limit thereafter, will lose his seniority.

(c) Acceptance of other employment while on leave of absence, other than as provided in Section (a) of this rule, without approval of Local Chairman and supervising officer, will terminate an employee's service and seniority.

(d) Employees desiring to return from formal written leave of absence before expiration thereof will give fifty-six (56) hours' advance notice before resuming duty on own position or making displacement.

This shall not apply to employees returning from short absences from duty due to minor illness, personal business, etc. In such cases, when time off has not been specified, employee will notify his immediate superior of his intention to resume duty on his position not later than end of his regular shift on preceding work day.

(e) Status of employee on return from leave of absence is defined in Rule 9.

"NOTE:

In the event of a death in the immediate family (father, mother, wife, husband brother, sister, son or daughter, including mother-in-law, father-in-law, step parents and step children), an employee shall be entitled to a maximum of three (3) days off with pay at the rate of position last assigned, employees being paid compensation under the February 7, 1965 Stabilization Agreement will be compensated on basis of their protected rate being paid. The compensable day or days must fall within the employee's regular scheduled work week."

RULE 38

INVESTIGATIONS - ADJUSTMENT PROCEDURE

(a) An employee who has been in service more than sixty (60) days or whose employment application has been formally approved shall not be disciplined or dismissed without investigation, at which investigation he may be represented by the duly accredited representative or another employee of his choice coming within the scope of this agreement.

He may, however, be held out of service pending such investigation. The investigation shall be held within fifteen (15) days of the date when charged with the offense or held from service. A decision will be rendered to the employee within fifteen (15) days after the completion of investigation.

(b) Investigations shall be held whenever possible at home point of employees involved. They will also be held at such time as not to cause employees to lose rest or time whenever possible to do so. Also, where qualified available stenographer is on hand at locatio

at which a Rule 38 hearing is held, such stenographer will be given first preference to stenographic work involved in taking the transcript.

(c) Not less than five (5) days prior to the investigation the employee shall be given written notice of the precise charge against him and given reasonable opportunity to secure the presence of necessary witness. Copy of such notice to the employee will be sent to the Local Chairman. In cases of unsatisfactory service or incompetency all charges to be investigated will be stated. In establishing a current charge at a disciplinary investigation. Company will not use record of any previous infractions.

(d) Two copies of the transcript of the evidence taken at the investigation or on the appeal, together with one copy of the decision rendered the employee, shall be furnished to the representativ of the employee within fifteen (15) days after the completion of the investigation.

(e) An employee disciplined or dismissed and desiring to protest such action shall present such protest (which may include written rebuttal of evidence in transcript) in writing, personally or through his representative, to the officer who assessed the discipline within fifteen (15) days from the date of the decision or date transcript is forwarded, whichever is later.

The officer receiving notice of such protest will render decision within fifteen (15) days, or if the notice includes request for conference, render decision within fifteen (15) days from date of conference, such times subject to extension by mutual agreement. The employee or his representative may within fifteen (15) days from the date of the decision of the officer, appeal in writing to the next higher officer up to and including the highest officer designated by the Company to hear such appeals, or his representative, copy of notice of appeal to be furnished the officer whose decision is appealed

Officer receiving notice of appeal will render decision within fifteen (15) days, or if the notice includes request for conference, render decision within fifteen (15) days from date of conference, such times subject to extension by mutual agreement. The decision of the general officer to whom final appeal is made, shall be final and binding, unless within forty-five (45) days after written notice of such decision, such officer is notified in writing that his decision is not accepted.

(f) An employee who considers himself unjustly treated shall have the same right of investigation and appeal if written request is made to his supervisor within fifteen (15) days of the cause of complaint or date of supervisor's decision on matters brought to his attention in writing.

(g) No employee will be dismissed on account of previous unsatisfactory record after having been in the service sixty (60) days, unless it should later develop that employee gave false information on application for employment, in which event employees will not be dismissed without investigation if requested.

(h) If an employee is suspended, the suspension shall date from the time he was taken out of service.

(i) If the final decision decrees that charges against the employee were not sustained, the record shall be cleared of such charges; if suspended or dismissed, the employee shall be reinstated and paid for wages lost as a result of such suspension or dismissal.

Article IX of the National Agreement of February 25, 1971 further provides:

> "It is recognized that where an employee is dismissed or suspended from service for cause and subsequently it is found that such discipline was unwarranted and the employee is restored to service with pay for time lost, it is proper that any earnings in other employment will be used to offset the loss of earnings. This understanding is not intended to change existing rules or practices which now provide for deduction of other earnings in discipline cases."

NOTE: - The foregoing time limitation provisions supersede time limitation provisions of Article V, Agreement of August 21, 1954 (See Rule 23) with respect to appeals and decisions referred to in Rule 38.

RULE 39

COMMITTEES

Committee of employees will be granted necessary leave of absence without undue delay or loss of seniority for the investigation, consideration and adjustment of grievances.

RULE 40

SERVICE LETTER

Employees leaving the service who have been employed ninety days or more will, upon request, be given a letter stating time and character of service and cause of leaving.

RULE 41

POSTING NOTICES

At points or in departments where employees covered by

this schedule are employed, suitable provisions will be made for posting appropriate notices of interest to employees.

RULE 42

TRANSFER - TRANSPORTATION

(a) Employees transferred by direction of Management or exercising seniority to positions which necessitate a change in residence will be furnished passes for themselves and dependent members of their families and receive free transportation of household goods consistent with State and Federal Laws.

1. Free transportation of household effects under this rule need not be allowed more than once in the 12-month period.

2. Free transportation of household effects will be limited to railroad (Southern Pacific) along whose lines the employee is employed.

(b) Employees covered by this agreement and those dependent on them for support will be given the same consideration for passes as is granted to other employees in the service.

(c) General and Local Committees representing employees covered by this agreement will be granted the same consideration for passes as is granted General and Local Committees representing other employees in the service.

RULE 43

MACHINES FURNISHED

Typewriters and other office equipment devices shall be furnished by the Company at offices where the Management requires their use.

The Company recognizes its responsibilities in furnishing vehicles for use in transaction of Company business; therefore, the ownership of such vehicles shall not be a qualifying requirement of employees in connection with their seniority rights for positions covered by this agreement.

RULE 44

BOND PREMIUMS

Employees shall not be required to pay premiums on bonds required by the Company in handling its business.

RULE 45

WOMEN EMPLOYEES

The pay of women, for the same class of work, shall be the same as that of men, and their working conditions must be healthful and fitted to their needs.

Laws enacted for the government of employment of women must be observed.

RULE 46

HEALTH AND WELFARE

(a) The health and safety of employees will be protected while on duty.

(b) Good drinking water will be furnished, artificially cooled when climatic conditions require, drinking fountains will be provided where practicable.

(c) Offices, locker rooms and wash rooms will be adequately lighted and heated consistent with the source of light and heat available.

(d) When situations arise where employees consider that facilities are necessary for protection of their clothing, washroom facilities are inadequate, or in the interest of health and safety, and the matter is brought to the attention of the proper officer of the Company by the Local Chairman, the Company will conduct a survey, in which the Local Chairman will be afforded an opportunity to participate, to determine the need and/or practicality of making requested change.

(See Appendix "H" Page 102, for February 7, 1965 Mediation Agreement)

RULE 47

DATE EFFECTIVE AND CHANGES

This agreement will be effective as of June 1, 1965 and shall continue in effect until it is changed as provided herein or under the provisions of the Railway Labor Act.

Should either of the parties to this agreement desire to revise these Rules, thirty days' written advance notice, containing the proposed changes, shall be given, and conference shall be held immediately on the expiration of said notice unless another date is mutually agreed upon.

RULE 48

LEGISLATION

It is understood that this agreement is superseded by and subordinate to federal, state or municipal legislation.

FOR THE PACIFIC FRUIT EXPRESS COMPANY:

T. D. WALSH
Manager Personnel

FOR THE EMPLOYEES:
Brotherhood of Railway, Airline, and Steamship Clerks, Freight Handlers, Express and Station Employees:

JAMES E. WEAVER
General Chairman

WITNESS:
JAMES HOLAREN
Mediator

WITNESS:
FRANCIS A. O'NEILL, JR.
Member - National Mediation Board

APPROVED:
C. L. DENNIS
Grand President

This is a reprint of the Agreement of June 1, 1965, and contains certain revisions as noted herein.

FOR THE PACIFIC FRUIT EXPRESS COMPANY:

/s/ T. D. WALSH
Manager Personnel

FOR THE EMPLOYEES:

/s/ T. J. DIEHL
General Chairman, BRAC

/s/ J. H. GROSKOPF
Sr. Vice General Chairman, BRAC

/s/ R. L. McARTHUR
Member Negotiating Committee

San Francisco, California, June 1, 1973

A P P E N D I C E S

SYNTHESES OF AGREEMENTS

INTERPRETATION AGREEMENTS

MEMORANDUM AGREEMENTS

LETTERS OF UNDERSTANDING

LETTER AGREEMENTS

ILLUSTRATIVE EXAMPLE

(The inclusion of the agreements, decisions, rulings and interpretations hereinafter reproduced is not to be construed as excluding, cancelling or superseding the original of those documents.)

APPENDIX "A"

SYNTHESIS

of

NONOPERATING (BRAC)
NATIONAL VACATION AGREEMENT

(Effective January 1, 1973)

Prepared Jointly by the

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

and the

National Railway Labor Conference
(Revised '72)

- - - - - -

NONOPERATING (BRAC)
NATIONAL VACATION AGREEMENT

The following represents a synthesis in one document, for the convenience of the parties, of the current provisions of the December 17, 1941, National Vacation Agreement and amendments thereto provided in the National Agreements of August 21, 1954, August 19, 1960, November 20, 1964, December 15, 1966, January 13, 1967 December 28, 1967, June 24, 1968 and February 25, 1971, with appropriat source identification.

This is intended as a guide and is not to be construed as constituting a separate agreement between the parties. If any dispute arises as to the proper interpretation or application of any provision, the terms of the appropriate vacation agreement shall govern.

1.(a) Effective with the calendar year 1973, an annual vacation of five (5) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than one hundred twenty (120) days during the preceding calendar year.

(b) Effective with the calendar year 1973, an annual 103
vacation of ten (10) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than one hundred ten (110) days during the precedin calendar year and who has two (2) or more years of continuous service and who, during such period of continuous service renders compensated

service on not less than one hundred ten (110) days (133 days in the years 1950-1959 inclusive, 151 days in 1949 and 160 days in each of such years prior to 1949) in each of two (2) of such years, not necessarily consecutive.

(c) Effective with the calendar year 1979, an annual vacation of fifteen (15) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than one hundred (100) days during the preceding calendar year and who has nine (9) or more years of continuous service and who, during such period of continuous service renders compensated service on not less than one hundred (100) days (133 days in the years 1950-1959, inclusive, 151 days in 1949 and 160 days in each of such years prior to 1949) in each of nine (9) of such years, not necessarily consecutive.

(d) Effective with the cal3ndar year 1979, an annual vacation of twenty (20) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than one hundred (100) days during the preceding calendar year and who has eighteen (18) or more years of continuous service renders compensated service on not less than one hundred(100) days (133 days in the years 1950-1959, inclusive, 151 days in 1949 and 160 days in each of such years prior to 1949) in each of eighteen (18) of such years, not necessarily consecutive.

(Par. (c) and (d) from January 30, 1979 Agreement)

(e) Effective with the calendar year 1973, an annual vacation of twenty-five (25) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than one hundred (100) days during the preceding calendar year and who has twenty-five (25) or more years of continuous service and who, during such period of continuous service renders compensated service on not less than one hundred (100) days (133 days in the years 1950-1959 inclusive, 151 days in 1949 and 160 days in each of such years prior to 1949) in each of twenty-five (25) of such years, not necessarily consecutive.

(f) Paragraphs (a), (b), (c), (d) and (e) hereof shall be construed to grant to weekly and monthly rated employees, whose rates contemplate more than five days of service each week, vacations of one, two, three, four or five work weeks.

(g) Service rendered under agreements between a carrier and one or more of the Non-Operating Organizations parties to the General Agreement of August 21, 1954, or to the General Agreement of August 19, 1960, shall be counted in computing days of compensated service and years of continuous service for vacation qualifying purpos under this Agreement.

(h) Calendar days in each current qualifying year on which an employee renders no service because of his own sickness or because

of his own injury shall be included in computing days of compensated service and years of continuous service for vacation qualifying purposes on the basis of a maximum of ten (10) such days for an employee with less than three (3) years of service; a maximum of twenty (20) such days for an employee with three (3) but less than fifteen (15) years of service; and a maximum of thirty (30) such days for an employee with fifteen (15) or more years of service with the employing carrier.

(i) In instances where employees who have become members of the Armed Forces of the United States return to the service of the employee carrier in accordance with the Military Selective Service Act of 1967, as amended, the time spent by such employees in the Armed Forces subsequent to their employment by the employing carrier will be credited as qualifying service in determining the length of vacations for which they may qualify upon their return to the service of the employing carrier.

(j) In instances where an employee who has become a member of the Armed Forces of the United States returns to the service of the employing carrier in accordance with the Military Selective Service Act of 1967, as amended, and in the calendar year preceding his return to railroad service had rendered compensated service on fewer days than are required to qualify for a vacation in the calendar year of his return to railroad service, but could qualify for a vacation in the year of his return to railroad service if he had combined for qualifying purposes days on which he was in railroad service in such preceding calendar year with days in such year on which he was in the Armed Forces, he will be granted, in the calendar year of his return to railroad service, a vacation of such length as he could so qualify for under paragraphs (a), (b), (c), (d) or (e) and (i) hereof.

(k) In instances where an employee who has become a member of the Armed Forces of the United States returns to the service of the employing carrier in accordance with the Military Selective Service Act of 1967, as amended, and in the calendar year of his return to railroad service renders compensated service on fewer days than are required to qualify for a vacation in the following calendar year, but could qualify for a vacation in such following calendar year if he had combined for qualifying purposes days on which he was in railroad service in the year of his return with days in such year on which he was in the Armed Forces, he will be granted, in such following calendar year, a vacation of such length as he could so qualify for under paragraphs (a), (b), (c), (d) or (e) and (i) hereof.

(l) An employee who is laid off and has no seniority date and no rights to accumulate seniority, who renders compensated service on not less than one hundred twenty (120) days in a calendar year and who returns to service in the following year for the same carrier will be granted the vacation in the year of his return. In the event

such an employee does not return to service in the following year for the same carrier he will be compensated in lieu of the vacation he has qualified for provided he files written request therefor to his employing officer, a copy of such request to be furnished to his local or general chairman.

(From Article III - Vacations - Section 1 of 2-25-71 Agreement)

2. Insofar as applicable to the employees covered by this agreement, Article 2 of the Vacation Agreement of December 17, 1941, as amended, is hereby cancelled.

(From Article II - Vacations - Section 2 of 12-28-67 and 6-24-68 Agreements)

3. The terms of this agreement shall not be construed to deprive any employee of such additional vacation days as he may be entitled to receive under any existing rule, understanding or custom, which additional vacation days shall be accorded under and in accordanc with the terms of such existing rule, understanding or custom.

(From Section 3 of 12-17-41 Agreement)

An employee's vacation period will not be extended by reason of any of the nine recognized holidays (New Year's Day, Washington's Birthday, Good Friday, Memorial Day, Fourth of July, Labor Day, Veterans Day, Thanksgiving Day and Christmas) or any day which by agreement has been substituted or is observed in place of any of the nine holidays enumerated above, or any holiday which by local agreement has been substituted therefor, falling within his vacation period.

(Article III - Vacations - Section 3 of 2-25-71 Agreement)

4. (a) Vacations may be taken from January 1st to December 31st and due regard consistent with requirements of service shall be given to the desires and preferences of the employees in seniority order when fixing the dates for their vacations.

The local committee of each organization signatory hereto and the representatives of the Carrier will cooperate in assigning vacation dates.

(b) The Management may upon reasonable notice of thirty (30) days or more, if possible, but in no event less than fifteen (15) days) require all or any number of employees in any plant, operation, or facility, who are entitled to vacations to take vacations at the same time.

The local committee of each organization affected signatory hereto and the proper representative of the carrier will cooperate in

the assignment of remaining forces.

(From Sections 4-(a) and 4-(b) of 12-17-41 Agreement.)

5. Each employee who is entitled to vacation shall take same at the time assigned, and, while it is intended that the vacation date designated will be adhered to so far as practicable, the management shall have the right to defer same provided the employee so affected is given as much advance notice as possible; not less than ten (10) days' notice shall be given except when emergency conditions prevent. If it becomes necessary to advance the designated date, at least thirty (30) days' notice will be given affected employee.

If a carrier finds that it cannot release an employee for a vacation during the calendar year because of the requirements of the service, then such employee shall be paid in lieu of the vacation the allowance hereinafter provided.

(From Section 5 of 12-17-41 Agreement.)

Such employee shall be paid the time and one-half rate for work performed during his vacation period in addition to his regular vacation pay.

NOTE: - This provision does not supersede provisions of the individual collective agreements that require payment of double time under specified conditions.

(From Article I-Vacations-Section 4 of 8-21-54 Agreement.)

6. The carriers will provide vacation relief workers but the vacation system shall not be used as a device to make unnecessary jobs for other workers. Where a vacation relief worker is not needed in a given instance and if failure to provide a vacation relief worker does not burden those employees remaining on the job, or burden the employee after his return from vacation, the carrier shall not be required to provide such relief worker.

(From Section 6 of 12-17-41 Agreement.)

7. Allowances for each day for which an employee is entitled to a vacation with pay will be calculated on the following basis:

(a) An employee having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for each assignment.

(b) An employee paid a daily rate to cover all services rendered, including overtime, shall have no deduction made from his

established daily rate on account of vacation allowances made pursuant to this agreement.

(c) An employee paid a weekly or monthly rate shall have no deduction made from his compensation on account of vacation allowances made pursuant to this agreement.

(d) An employee working on a piece-work or tonnage basis will be paid on the basis of the average earnings per day for the last two semi-monthly periods preceding the vacation, during which two periods such employee worked on as many as sixteen (16) different days.

(e) An employee not covered by paragraphs (a), (b), (c), or (d) of this section will be paid on the basis of the average daily straight time compensation earned in the last pay period preceding the vacation during which he performed service.

(From Section 7 of the 12-17-41 Agreement.)

8. The vacation provided for in this Agreement shall be considered to have been earned when the employee has qualified under Article 1 hereof. If an employee's employment status is terminated for any reason whatsoever, including but not limited to retirement, resignation, discharge, non-compliance with a union-shop agreement or failure to return after furlough he shall at the time of such termination be granted full vacation pay earned up to the time he leaves the service including pay for vacation earned in the preceding year or years and not yet granted, and the vacation for the succeeding year if the employee has qualified therefor under Article 1. If an employee thus entitled to vacation or vacation pay, shall die the vacation pay earned and not received shall be paid to such beneficiary as may have been designated, or in the absence of such designation, the surviving spouse or children or his estate, in that order of preference.

(From Article IV-Vacations-Section 2 of 8-19-60 Agreement.)

9. Vacations shall not be accumulated or carried over from one vacation year to another.

(From Section 9 of 12-17-41 Agreement.)

10. (a) An employee designated to fill an assignment of another employee on vacation will be paid the rate of such assignment or the rate of his own assignment, whichever is the greater; provided that if the assignment is filled by a regularly assigned vacation relief employee, such employee shall receive the rate of the relief position. If an employee receiving graded rates, based upon length of service and experience is designated to fill an assignment of

another employee in the same occupational classification receiving such graded rates who is on vacation, the rate of the relieving employee will be paid.

(b) Where work of vacationing employees is distributed among two or more employees, such employees will be paid their own respective rates. However, not more than the equivalent of twenty-five per cent of the work load of a given vacationing employee can be distributed among fellow employees without the hiring of a relief worker unless a larger distribution of the work load is agreed to by the proper local union committee or official.

(c) No employee shall be paid less than his own normal compensation for the hours of his own assignment because of vacations to other employees.

(From Section 10 of 12-17-41 Agreement.)

11. While the intention of this agreement is that the vacation period will be continuous, the vacation may, at the request of an employee, be given in installments if the management consents thereto.

(From Section 11 of 12-17-41 Agreement.)

12.(a) Except as otherwise provided in this agreement a carrier shall not be required to assume greater expense because of granting a vacation than would be incurred if an employee were not granted a vacation and was paid in lieu therefor under the provision hereof. However, if a relief worker necessarily is put to substantial extra expense over and above that which the regular employee on vacatic would incur if he had remained on the job, the relief worker shall be compensated in accordance with existing regular relief rules.

(b) As employees exercising their vacation privileges will be compensated under this agreement during their absence on vacation, retaining their other rights as if they had remained at work, such absences from duty will not constitute "vacancies" in their positions under any agreement. When the position of a vacationing employee is to be filled and regular employee is not utilized, effort will be made to observe the principle of seniority.

(c) A person other than a regularly assigned relief employee temporarily hired solely for vacation relief purposes will not establish seniority rights unless so used more than 60 days in a calendar year. If a person so hired under the terms hereof acquires seniority rights, such rights will date from the day of original entry into service unless otherwise provided in existing agreements.

(From Section 12 of 12-17-41 Agreement.)

13. The parties hereto having in mind conditions which exist or may arise on individual carriers in making provisions for vacations with pay agree that the duly authorized representatives of the employees, who are parties to one agreement, and the proper officer of the carrier may make changes in the working rules or enter into additional written understandings to implement the purposes of this agreement, provided that such changes or understandings shall not be inconsistent with this agreement.

(From Section 13 of 12-17-41 Agreement.)

14. Any dispute or controversy arising out of the interpretation or application of any of the provisions of this agreement shall be referred for decision to a committee, the carrier members of which shall be the Carriers' Conference Committees signatory hereto, or their successors; and the employee members of which shall be the Chief Executives of the Fourteen Organizations, or their representatives, or their successors. Interpretations or applications agreed upon by the carrier members and employee members of such committee shall be final and binding upon the parties to such dispute or controversy.

This section is not intended by the parties as a waiver of any of their rights provided in the Railway Labor Act as amended, in the event committee provided in this section fails to dispose of any dispute or controversy.

(From Section 14 of 12-17-41 Agreement.)

15. Except as otherwise provided herein this agreement shall be effective as of January 1, 1973, and shall be incorporated in existing agreements as a supplement thereto and shall be in full force and effect for a period of one (1) year from January 1, 1973, and continue in effect thereafter, subject to not less than seven (7) months' notice in writing (which notice may be served in 1973 or in any subsequent year) by any carrier or organization party hereto, of desire to change this agreement as of the end of the year in which the notice is served. Such notice shall specify the changes desired and the recipient of such notice shall then have a period of thirty (30) days from the date of the receipt of such notice within which to serve notice specifying changes which it or they desire to make. Thereupon such proposals of the respective parties shall thereafter be negotiated and progressed concurrently to a conclusion.

(From Article III-Vacation-Section 2 of 2-25-71 Agreement)

Except to the extent that articles of the Vacation Agreement of December 17, 1941, are changed by this Agreement, the said agreement and the interpretations thereof and of the Supplemental Agreement of February 23, 1945, as made by the parties, dated June 10, 1942,

July 20, 1942 and July 18, 1945 and by Referee Morse in his award of November 12,1942, shall remain in full force and effect.

In Sections 1 and 2 of this Agreement certain words and phrases which appear in the Vacation Agreement of December 17, 1941, and in the Supplemental Agreement of February 23, 1945, are used. The said interpretations which defined such words and phrases referred to above as they appear in said Agreements shall apply in construing them as they appear in Sections 1 and 2 hereof.

(From Article I-Vacations-Section 6 of 8-21-54 Agreement.)

APPENDIX "D"

AGREEMENT TO DEFINE THE JURISDICTION OF THE BROTHERHOOD OF RAILWAY CARMEN OF AMERICA AND THE BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES IN CONNECTION WITH CERTAIN HOURLY PAID EMPLOYEES IN THE CAR AND STORES DEPARTMENT

On June 19, 1934, Pacific Fruit Express Company entered into an agreement with the Brotherhood of Railway Carmen of America representing the hourly paid laborers of the Car and Stores Departments, and another agreement with the Brotherhood of Railway Carmen of America representing the hourly paid employees of the Stores Department. These agreements were revised as of January 8, 1937, but with change of jurisdiction.

On July 1, 1937, the Brotherhood of Railway and Steamship Clerks presented to Pacific Fruit Express Company evidence that the Brotherhood has secured from among Pacific Fruit Express Company employees a majority of the craft coming under the jurisdiction of that Brotherhood. Upon receipt of this evidence representation agreement was entered into between Pacific Fruit Express Company and the Brotherhood of Railway and Steamship Clerks, and as Stores Department employees have been recognized by railroads nationally as coming under the jurisdiction of the Brotherhood of Railway and Steamship Clerks, these employees are included in the agreements negotiated with the Brotherhood of Railway and Steamship Clerks, effective January 1, 1938 and September 15, 1939.

The Brotherhood of Railway and Steamship Clerks claimed jurisdiction over these employees and the General Chairman of the Brotherhood of Railway Carmen of America was notified by letter, dated September 22, 1939, from the Vice President and General Manager of Pacific Fruit Express Company that effective November 1, 1939, the agreements entered into June 19, 1934, and revised January 8, 1937, were cancelled insofar as they pertained to Stores Department employee

On December 5, 1939, conference was had between the General Chairman of the Brotherhood of Railway Carmen of America and the Gener Chairman of the Brotherhood of Railway and Steamship Clerks, representing Pacific Fruit Express Company employees in these crafts, and the management, at which meeting it was agreed that the following employees covered by agreements with the Brotherhood of Railway Carmen of America prior to November 1, 1939, would be relinquished to the jurisdiction of the Brotherhood of Railway and Steamship Clerks:

Laborers loading and unloading or storing material, cleaning store houses and store yards, but not laborers used in cleaning car sh yards of cleaning around material delivered to car shop yards.

Store Helpers

Store Deliverymen

Truck Drivers, Tractor, Portable Crane and Lift Truck Operators coming under jurisdiction of Stores Department.

Laborers used in cleaning car shop yards, including the cleaning around material delivered to islands or material piles within car shop yards, and laborers sorting scrap, shall remain under the jurisdiction of the Brotherhood of Railway Carmen of America.

It is further agreed that the laborers mentioned above as being allocated to the jurisdiction of the Brotherhood of Railway Carmen of America will be carried on roster of car shop laborers, and the laborers allocated to the jurisdiction of the Brotherhood of Railway and Steamship Clerks will be carried on roster of the Brotherhood of Railway and Steamship Clerks with other hourly rated employees of the Stores Department as provided in rules of current agreement with the Brotherhood of Railway and Steamship Clerks.

It is further agreed that employees will be assigned to work on their own rosters as much as possible but, in order to afford the greatest stability of employment, these employees will be used for available work on either roster under the jurisdiction of the Brotherhood of Railway Carmen of America or the Brotherhood of Railway and Steamship Clerks in preference to non-employees. However, furloughed employees on either roster will be given preference for work assigned to that roster. Furloughed employees from either roster will be given preference over non-employees for available work on eithe roster.

When employees from one roster are used on work assigned to employees on another roster, such employees will not establish seniorit on roster to which they are temporarily assigned.

Employees referred to above as coming under the jurisdiction of the Brotherhood of Railway Carmen of America shall be covered by agreement between the Pacific Fruit Express Company and the Brotherhood of Railway Carmen of America governing the wages and working conditions of hourly paid laborers of the Car and Stores Departments dated June 19, 1934, revised January 8, 1937.

Employees referred to above as coming under the jurisdiction of the Brotherhood of Railway and Steamship Clerks shall be covered by agreement between the Pacific Fruit Express Company and the Brotherhood of Railway and Steamship Clerks dated January 1, 1938,

revised September 15, 1939.

This agreement supersedes and cancels any other agreements which are not in conformity herewith.

FOR PACIFIC FRUIT EXPRESS COMPANY:

Signed H. GIDDINGS,
Vice President & General Manager

FOR EMPLOYEES:

Signed J. W. PATTERSON,
General Chairman, B. of R. C. of A.

Signed G. DeYOUNG,
General Chairman, B. of R. & S. C.

San Francisco, California, December 5, 1939

APPENDIX "F"

A G R E E M E N T

This Agreement made this 16th day of March, 1953, by and between the Pacific Fruit Express Company, and the employees thereof represented by the Railway Labor Organizations signatory hereto, through the Employees' National Conference Committee, Seventeen Cooperating Railway Labor Organizations, witnesseth:

IT IS AGREED:

Section 1. In accordance with and subject to the terms and conditions hereinafter set forth, all employees of the carriers now or hereafter subject to the rules and working conditions agreements between the parties hereto, except as hereinafter provided shall, as a condition of their continued employment subject to such agreements, become members of the organization party to this agreement representing their craft or class within sixty calendar days of the date they first perform compensated service as such employees after the effective date of this agreement and thereafter shall maintain membership in such organization; except that such membership shall not be required of any individual until he has performed compensated service on thirty days within a period of twelve consecutive calendar months. Nothing in this agreement shall alter, enlarge or otherwise change the coverage of the present or future roles and working conditions agreements.

Section 2. This agreement shall not apply to employees while occupying positions which are excepted from the bulletining and displacement rules of the individual agreements, but this provision shall not include employees who are subordinate to and report to other employees who are covered by this agreement. However, such excepted employees are free to be members of the organization at their option.

Section 3. (a) Employees who retain seniority under the Rules and Working Conditions Agreements governing their class or craft and who are regularly assigned or transferred to full time employment not covered by such agreements, or who, for a period of thirty days or more, are (1) furloughed on account of force reduction, or (2) on leave of absence, or (3) absent on account of sickness or disability, will not be required to maintain membership as provided in Section 1 of this agreement so long as they remain in such other employment, or furloughed or absent as herein provided, but they may do so at their option. Should such employees return to any service covered by the said Rules and Working Conditions Agreements and continue therein thirty calendar days or more, irrespective of the number of days actually worked during that period, they shall, as a condition of their continued employment subject to such agreements, be required to become and remain members of the organization representing their class or craft within thirty-five calendar days from date of their return to such service.

(b) The seniority status and rights of employees furloughed to serve in the Armed Forces or granted leaves of absence to engage in studies under an educational aid program sponsored by the federal government or a state government for the benefit of ex-service men shall not be terminated by reason of any of the provisions of this agreement but such employees shall, upon resumption of employment, be considered as new employees for the pruposes of applying this agreement.

(c) Employees who retain seniority under the rules and working conditions agreements governing their class or craft and who, for reasons other than those specified in sub-sections (a) and (b) of this section, are not in service covered by such agreements, or leave such service, will not be required to maintain membership as provided in Section 1 of this agreement so long as they are not in service covered by such agreements, but they may do so at their option. Should such employees return to any service covered by the said rules and working conditions agreements they shall, as a condition of their continued employment, be required, from the date of return to such service, to become and remain members in the organization representing their class or craft.

(d) Employees who retain seniority under the rules and working conditions agreements of their class or craft, who are members of an organization signatory hereto representing that class or craft and who in accordance with the rules and working conditions agreement of that class or craft temporarily perform work in another class or service shall not be required to be members of another organization party hereto whose agreement covers the other class of service until the date the employees hold regularly assigned positions within the scope of the agreement covering such other class of service.

Sec. 4. Nothing in this agreement shall require an employee to become or to remain a member of the organization if such membership is not available to such employee upon the same terms and conditions as are generally applicable to any other member, or if the membership of such employee is denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership. For purposes of this agreement, dues, fees, and assessments, shall be deemed to be "uniformly required" if they are required of all employees in the same status at the same time in the same organizational unit.

Sec. 5. (a) Each employee covered by the provisions of this agreement shall be considered by the carrier to have met the requirements of the agreement unless and until such carrier is advised to the contrary in writing by the organization. The organization will notify the carrier in writing by Certified Mail, Return Receipt Requested, or by personal delivery evidenced by receipt, of any employee who it is

alleged has failed to comply with the terms of this agreement and who the organization therefore claims is not entitled to continue in employment subject to the Rules and Working Conditions Agreement. The form of notice to be used shall be agreed upon by the railroad and the organizations involved and the form shall make provision for specifying the reasons for the allegation of non-compliance. Upon receipt of such notice, the carrier will, within ten days of such receipt, so notify the employee concerned in writing by Certified Mail, Return Receipt Requested, or by personal delivery evidenced by receipt. Copy of such notice to the employee shall be given the organization. An employee so notified who disputes the fact that he has failed to comply with the terms of this agreement, shall within a period of ten calendar days from the date of receipt of such notice, request the carrier in writing by Certified Mail, Return Receipt Requested, or by personal delivery evidenced by receipt, to accord him a hearing. Upon receipt of such request the carrier shall set a date for hearing which shall be held within ten calendar days of the date of receipt of request therefor.

Notice of the date set for hearing shall be promptly given the employee in writing with copy to the organization, by Certified Mail, Return Receipt Requested, or by personal delivery evidenced by receipt. A representative of the organization shall attend and participate in the hearing. The receipt by the carrier of a request for a hearing shall operate to stay action on the termination of employment until the hearing is held and the decision of the carrier is rendered.

In the event the employee concerned does not request a hearing as provided herein, the carrier shall proceed to terminate his seniorit and employment under the Rules and Working Conditions Agreement not later than thirty calendar days from receipt of the above described notice from the organization, unless the carrier and the organization agree otherwise in writing.

(b) The carrier shall determine on the basis of the evidence produced at the hearing whether or not the employee has complied with the terms of this agreement and shall render a decision within twenty calendar days from the date that the hearing is closed, and the employee and the organization shall be promptly advised thereof in writing by Certified Mail, Return Receipt Requested.

If the decision is that the employee has not complied with the terms of this agreement, his seniority and employment under the Rules and Working Conditions Agreement shall be terminated within twenty calendar days of the date of said decision except as hereinafte provided or unless the carrier and the organization agree otherwise in writing.

If the decision is not satisfactory to the employee or to the

organization it may be appealed in writing, by Certified Mail, Return Receipt Requested, directly to the highest officer of the carrier designated to handle appeals under this agreement. Such appeals must be received by such officer within ten calendar days of the date of the decision appealed from and shall operate to stay action on the termination of seniority and employment, until the decision on appeal is rendered. The carrier shall promptly notify the other party in writing of any such appeal, by Certified Mail, Return Receipt Requested. The decision on such appeal shall be rendered within twenty calendar days of the date the notice of appeal is received, and the employee and the organization shall be promptly advised thereof in writing by Certified Mail, Return Receipt Requested.

If the decision on such appeal is that the employee has not complied with the terms of this agreement, his seniority and employment under the Rules and Working Conditions Agreement shall be terminated within twenty calendar days of the date of said decision unless selection of a neutral is requested as provided below, or unless the carrier and the organization agree otherwise in writing. The decision on appeal shall be final and binding unless within ten calendar days from the date of the decision the organization or the employee involved requests the selection of a neutral person to decide the dispute as provided in Section 5(c) below. Any request for selection of a neutral person as provided in Section 5(c) below shall operate to stay action on the termination of seniority and employment until not more than ten calendar days from the date decision is rendered by the neutral person.

(c) If within ten calendar days after the date of a decision on appeal by the highest officer of the carrier designated to handle appeals under this agreement the organization or the employee involved requests such highest officer in writing by Certified Mail, Return Receipt Requested, that a neutral be appointed to decide the dispute, a neutral person to act as sole arbitrator to decide the dispute shall be selected by the highest officer of the carrier designated to handle appeals under this agreement or his designated representative, the Chief Executive of the organization or his designated representative, and the employee involved or his representative. If they are unable to agree upon the selection of a neutral person any one of them may request the Chairman of the National Mediation Board in writing to appoint such neutral. The carrier, the organization and the employee involved shall have the right to appear and present evidence at a hearing before such neutral arbitrator. Any decision by such neutral arbitrator shall be made within thirty calendar days from the date of receipt of the request for his appointment and shall be final and binding upon the parties. The carrier, the employee, and the organization shall be promptly advised thereof in writing by Certified Mail, Return Receipt Requested. If the position of the employee is sustained, the fees, salary and expenses of the neutral arbitrator shall be borne in equal shares by the carrier and the organization;

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if the employee's position is not sustained, such fees, salary and expenses shall be borne in equal shares by the carrier, the organization and the employee.

(d) The time periods specified in this section may be extended in individual cases by written agreement between the carrier and the organization.

(e) Provisions of investigation and discipline rules contained in the Rules and Working Conditions Agreement between the carrier and the organization will not apply to cases arising under this agreement.

(f) The General Chairman of the organization shall notify the carrier in writing of the title(s) and address(es) of its representatives who are authorized to serve and receive the notices described in this agreement. The carrier shall notify the General Chairman of the organization in writing of the title(s) and address(es of its representatives who are authorized to receive and serve the notices described in this agreement.

(g) In computing the time periods specified in this agreement, the date on which a notice is received or decision rendered shall not be counted.

Sec. 6. Other provisions of this agreement to the contrary notwithstanding, the carrier shall not be required to terminate the employment of an employee until such time as a qualified replacement is available. The carrier may not, however, retain such employee in service under the provisions of this section for a period in excess of sixty calendar days from the date of the last decision rendered under the provisions of Section 5, or ninety calendar days from date of receipt of notice from the organization in cases where the employee does not request a hearing. The employee whose employment is extended under the provisions of this section shall not, during such extension, retain or acquire any seniority rights. This position will be adverti: as vacant under the bulletining rules of the respective agreements but the employee may remain on the position he held at the time of the last decision, or at the date of receipt of notice where no hearing is requested pending the assignment of the successful applicant, unless displaced or unless the position is abolished. The above periods may be extended by agreement between the carrier and the organization involved.

Sec. 7. An employee whose seniority and employment under the Rules and Working Conditions Agreement is terminated pursuant to the provisions of this agreement or whose employment is extended under Section 6 shall have no time or money claims by reason thereof.

If the final determination under Section 5 of this agreement

is that an employee's seniority and employment in a craft or class shall be terminated, no liability against the carrier in favor of the organization or other employees based upon an alleged violation, misapplication or non-compliance with any part of this agreement shall arise or accrue during the period up to the expiration of the 60 or 90 day periods specified in Section 6, or while such determination may be stayed by a court, or while a discharged employee may be restored to service pursuant to judicial determination. During such periods, no provision of any other agreement between the parties hereto shall be used as the basis for a grievance or time or money claim by or on behalf of any employee against the carrier predicated upon any action taken by the carrier in applying or complying with this agreement or upon an alleged violation, misapplication or non-compliance with any provision of this agreement. If the final determination under Section 5 of this agreement is that a employee's employment and seniority shall not be terminated, his continuance in service shall give rise to no liability against the carrier in favor of the organization or other employees based upon an alleged violation, misapplication or non-compliance with any part of this agreement.

Sec. 8. In the event that seniority and employment under the Rules and Working Conditions Agreement is terminated by the carrier under the provisions of this agreement, and such termination of seniority and employment is subsequently determined to be improper, unlawful, or unenforceable, the organization shall indemnify and save harmless the carrier against any and all liability arising as the result of such improper, unlawful, or unenforceable termination of seniority and employment; Provided, however, that this section shall not apply to any case in which the carrier involved is the plaintiff or the moving party in the moving party in the action in which the aforesaid determination is made or in which case such carrier acts in collusion with any employee; Provided further, that the aforementioned liability shall not extend to the expense to the carrier in defending suits by employees whose seniority and employment are terminated by the carrier under the provisions of this agreement.

Sec. 9. An employee whose employment is terminated as a result of non-compliance with the provisions of this agreement shall be regarded as having terminated his employee relationship for vacation purposes.

Sec. 10. (a) The carrier party to this agreement shall periodically deduct from the wages of employees subject to this agreement periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership in such organization, and shall pay the amount so deducted to such officer of the organization as the organization shall designate: Provided, however, that the requirements of this subsection (a) shall not be effective with respect to any individual employee until he shall have furnished the carrier with a written assignment to the organization of such membership dues,

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initiation fees and assessments, which assignment shall be revocable in writing after the expiration of one year or upon the termination of this agreement whichever occurs sooner.

(b) The provisions of subsection (a) of this section shall not become effective unless and until the carrier and the organization shall, as a result of further negotiations pursuant to the recommendations of Emergency Board No. 98, agree upon the terms and conditions under which such provisions shall be applied; such agreement to include, but not be restricted to, the means of making said deductions, the amounts to be deducted, the form procurement and filing of authorization certificates, the frequency of deductions, the priority of said deductions with other deductions now or hereafter authorized, the payment and distributions of amounts withheld and any other matters pertinent thereto.

Sec. 11. This agreement shall become effective on April 1, 1953, and is in full and final settlement of notices served upon the carrier by the organizations, signatory hereto, on or about February 5, 1951. It shall be construed as a separate agreement by and on behalf of the carrier party hereto and those employees represented by each organization as heretofore stated. This agreement shall remain in effect until modified or changed in accordance with the provisions of the Railway Labor Act, as amended.

Signed at San Francisco, California, this 16th day of March, 1953.

MEMORANDUM AGREEMENT

It is agreed that in the application of the Union Shop agreement signed this date at San Francisco, California, that any employee in service on the date of this agreement who is not a member of the union representing his craft or class and will make affidavit he was a member of a bona fide and recognized religious group, on the date of this agreement, having scruples against joining a union, will, if he would otherwise be required to join a union under the Union Shop Agreement, be deemed to have met the requirements of the Union Shop Agreement if he agrees to and does pay initiation fees, periodic dues and assessments to the organization representing his craft or class signatory hereto.

Signed at San Francisco, California, this 16th day of March, 1953.

FOR: PACIFIC FRUIT EXPRESS COMPANY
K. V. PLUMMER
Vice President & General Manager

EMPLOYES' NATIONAL CONFERENCE
COMMITTEE, SEVENTEEN COOPERATING
RAILWAY LABOR ORGANIZATIONS:
G. E. LEIGHTY
Chairman - C.M.G.
RAILWAY EMPLOYES' DEPARTMENT
A.F. of L.
MICHAEL FOX
President - C.M.G.
BROTHERHOOD RAILWAY CARMEN
OF AMERICA:
IRVIN BARNEY
General President - C.M.G.
HAROLD J. LININGER
General Chairman
BROTHERHOOD OF RAILWAY AND
STEAMSHIP CLERKS, FREIGHT HANDLERS,
EXPRESS AND STATION EMPLOYES:
GEO. M. HARRISON
Grand President - G.G.
GEO. GIBBONS
General Chairman

APPENDIX "G"

A G R E E M E N T

This agreement made this 21st day of August, 1954, by and between the participating carriers listed in Exhibits A, B and C, attached hereto and made a part hereof and represented by the Eastern, Western and Southeastern Carriers' Conference Committees and the employees of such carriers shown thereon and represented by the Railway Labor Organizations signatory hereto, through the Employes' National Conference Committee, Fifteen Cooperating Railway Labor Organization.

WITNESSETH:

WHEREAS, on or about May 22, 1953 certain proposals were served on the carriers parties hereto by the organizations parties on behlaf of employees represented by such organizations; and,

WHEREAS, within thirty days following May 22, 1953 certain proposals on behalf of certain of the carriers parties hereto were served on certain of the employees of said carriers represented by the organizations parties hereto; and,

WHEREAS, a hearing was conducted by a Presidential Emergency Board (No. 106) and said Board on May 15, 1954 filed its report together with its findings and recommendations with the President of the United States:

NOW THEREFORE IT IS AGREED:

EMPLOYEES' PROPOSALS

ARTICLE I

Vacations

Section 1. Article 1 of the Vacation Agreement of December 17, 19 is hereby amended to read as follows:

(See Synthesis)

ARTICLE II

Holidays

(See Synthesis)

ARTICLE III

Health and Welfare Benefits

The "Health and Welfare Proposal" will be disposed of in conformit

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ARTICLE III

Health and Welfare Benefits

The "Health and Welfare Proposal" will be disposed of in conformity with the terms of the Memorandum dated at Chicago, Illinois, August 21, 1954.

CARRIER'S PROPOSALS

ARTICLE IV

Carriers' Proposal No. 6

Eliminate existing rules, regulations interpretations or practices, however established, which restrict the right of a Carrier to require furloughed employees to perform extra and relief work.

This proposal is disposed of by adoption of the following:

1. The Carrier shall have the right to use furloughed employees to perform extra work, and relief work on regular positions during absence of regular occupants, provided such employees have signified in the manner provided in paragraph 2 hereof their desire to be so used. This provision is not intended to supersede rules or practices which permit employees to place themselves on vacancies on preferred positions in their seniority districts, it being understood, under these circumstances, that the furloughed employee will be used, if the vacancy is filled, on the last position that is to be filled. This does not supersede rules that require the filling of temporary vacancies. It is also understood that management retains the right to use the regular employee, under pertinent rules of the agreement, rather than call a furloughed employee.

2. Furloughed employees desiring to be considered available to perform such extra and relief work will notify the proper officer of the Carrier in writing, with copy to the local chairman, that they will be available and desire to be used for such work. A furloughed employee may withdraw his written notice of willingness to perform such work at any time before being called for such service by giving written notice to that effect to the proper Carrier officer, with copy to the local chairman. If such employee should again desire to be considered available for such service notice to that effect - as outlined hereinabove - must again be given in writing. Furloughed employees who would not at all times be available for such service will not be considered available for extra and relief work under the provisions of this rule. Furloughed employees so used will not be

subject to rules of the applicable collective agreement which require advance notice before reduction of force.

3. Furloughed employees who have indicated their desire to participate in such extra and relief work will be called in seniority order for this service. Where extra lists are maintained under the rules of the applicable agreement such employees will be placed on the extra list in seniority order and used in accordance with the rules of the agreement.

NOTE 1: - In the application of this rule to employees who are represented by the organizations affiliated with the Railway Employees Department , A. F. of L., it shall not apply to extra work.

NOTE 2: - Employees who are on approved leave of absence will not be considered furloughed employees for purposes of this agreement.

NOTE 3: - Furloughed employees shall in no manner be considered to have waived their rights to a regular assignment when opportunity therefor arises.

This rule shall become effective November 1, 1954, except on such Carriers as may elect to preserve existing rules or practices and so notify the authorized employee representative or representative on or before October 1, 1954.

ARTICLE V

Carriers' Proposal No. 7

Establish a rule or amend existing rules so as to provide time limits for presenting and progressing claims or grievances.

This proposal is disposed of by adoption of the following:

(Intentionally omitted, see text as contain in Rule 23.)

ARTICLE VI

Carriers' Proposal No. 11

Establish a rule or amend existing rules to provide that in the event of a strike or emergency affecting the operations or business of the Carrier, no advance notice shall be necessary to abolish positions or make for reductions.

This proposal is disposed of by adoption of the following:

(Amended by Article VII of the National Agreement of February 25, 1971.)

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ARTICLE VII

Carriers' Proposal No. 23

Establish a rule or amend existing rules so as to permit the Carriers to require mechanics who are on duty, at points or on shifts where mechanics of all crafts are not on duty, to perform the work contained in the classification of work rules of a craft or class that does not at the time have a mechanic on duty.

This proposal is disposed of by adoption of the following:

At points where there is not sufficient work to justify employing a mechanic of each craft the mechanic or mechanics employed at such points will, so far as they are capable of doing so, perform the work of any craft that it may be necessary to have performed.

This rule shall become effective November 1, 1954, except on such Carriers as may elect to preserve existing rules or practices and so notify the authorized employee representative or representativ on or before October 1, 1954.

ARTICLE VIII

Carriers' Proposal No. 24

Establish a rule or amend existing rules to recognize the Carriers' rights to assign clerical duties to telegraph service employees and to assign communication duties to clerical employees.

This proposal is disposed of with the understanding that present rules and practices are undisturbed.

ARTICLE IX

This agreement is subject to approval of the Courts with respect to Carriers in the hands of Receivers or Trustees.

ARTICLE X

(Not applicable to P.F.E. employees represented by BRAC.)

ARTICLE XI

Effect of this Agreement

This agreement is in settlement of the dispute growing out of notices served on the carriers listed in Exhibits A, B and C on

or about May 22, 1953 and the notices served by certain of the carriers on certain of the employees represented by the organizations listed in Exhibits A, B and C as hereinbefore referred to, and shall be construed as a separate agreement by and on behalf of each of said carriers and its said employees; and, except as provided in Article I - Vacations, shall remain in effect until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

MEMORANDUM

The Health and Welfare proposal of the organizations parties hereto served upon the carriers on or about May 22, 1953, upon which recommendations were made by Emergency Board No. 106 in its report dated May 15, 1954, will be disposed of in conformity with the following principles:

1. (a) The Committees will meet with representatives of the insurance companies for the purpose of agreeing upon all of the details to the making of a complete agreement and master contract. This includes an understanding with the insurance companies which will bind them to provide uniform benefits at uniform cost on all of the carriers parties to this agreement.

(b) The Committees will jointly designate the insurance companies parties to the understanding reached under sub-section (a).

(c) The individual carriers will select one or more insurance companies from those referred to in sub-section (a) and (b) hereof for the purpose of making effective the contract referred to in sub-section (a).

2. - There will be uniform benefits and uniform contributions.

3. - All employees subject to this agreement after having been employed a sufficient length of time to become eligible to participate in the Health and Welfare benefits, herein referred to, will be required by payroll deduction to contribute the amount stipulated in Paragraph 4 hereof.

4. - Each participating employee will contribute $3.40 a month and the carrier will match this contribution.

5. - Contributions collected from the employees and paid by the carrier will be remitted, to the insurance company or companies selected, in the manner provided in the master contract.

6. - The Committees representing the parties will work out all details as mya be necessary to provide a complete agreement.

7. A committee representing the railroad companies and a committee representing the organizations parties hereto will meet with representatives of the insurance companies after the end of each actuarial year for the purpose of making financial adjustments of dividend accruals os as to assure the continuation of uniform benefits and uniform contributions.

8. These principles do not apply on properties where hospital associations are in existence. On these properties the carrier will assume 50% of the hospital dues required to be paid by the employees who are represented by the organizations parties hereto not to exceed $3.40 per month per employee, subject to future review of prevailing conditions by representatives of the parties.

9. As a matter entirely disassociated from any agreement that might be reached, the committees agree to discuss the comment of the emergency Board appearing at Pages 44 and 45 of its report which reads:

"The above recommendations are not meant to suggest that arrangements would be inappropriate whereby in conjunction with the benefits proposed employees might purchase at their own expense similar types of benefits for their dependents and the Board feels that such arrangements would be desirable and appropriate."

10. The committees referred to in Paragraph 6 shall be named by the parties immediately upon the execution of this memorandum.

The committees referred to in this memorandum will meet within ten days from the date of this agreement and proceed with the duties se forth herein.

NOTE: - "Insurance companies" referred to hereinabove may include Blue Cross, Blue Shield.

SIGNED AT CHICAGO, ILLINOIS, THIS 21ST DAY OF AUGUST, 1954.

For the participating carriers
listed in Exhibit A:

(s) J. W. ORAM
Chairman

Employees' National Conference Committee,
Fifteen Cooperating Railway Labor Organization

(s) G. E. LEIGHTY
Chairman

(Balance of signatures not reproduced.)

APPENDIX "H"

Case No. A-7128

MEDIATION AGREEMENT

This agreement made this 7th day of February, 1965, by and between the participating carriers listed in Exhibits A, B and C attached hereto and hereby made a part hereof, and represented by the National Railway Labor Conference and the Eastern, Western and Southeastern Carriers' Conference Committees and the employees shown thereon and represented by the Railway Labor Organizations signatory hereto, through the Employes' National Conference Committee. Five Cooperating Railway Labor Organizations, witnesseth:

IT IS AGREED:

ARTICLE I

Protected Employees

Section 1 -

All employees, other than seasonal employees, who were in active service as of October 1, 1964, or who after October 1, 1964, and prior to the date of this Agreement have been restored to active servic and who had two years or more of employment relationship as of October 1, 1964, and had fifteen or more days of compensated service during 1964, will be retained in service subject to compensation as hereinafter provided unless or until retired, discharged for cause, or otherwise removed by natural attrition. Any such employees who are on furlough as of the date of this Agreement will be returned to active service before March 1, 1965, in accordance with the normal procedures provided for in existing agreements, and will thereafter be retained in compensated service as set out above, provided that no back pay will be due to such employees by reason of this Agreement. For the purpose of this Agreement, the term "active service" is defined to include all employees working, or holding an assignment, or in the process of transferring from one assignment to another (whether or not October 1, 1964 was a work day), all extra employees on extra lists pursuant to agreements or practice who are working or are available for calls for service and are expected to respond when called, and where extra boards are not maintained, furloughed employees who respond to extra work when called, and have averaged at least 7 days work for each month furloughed during the year 1964.

Section 2 -

Seasonal employees, who had compensated service during each

of the years 1962, 1963 and 1964, will be offered employment in future years at least equivalent to what they performed in 1964, unless or until retired, discharged for cause, or otherwise removed by natural attrition.

Section 3 -

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 1963 and 1964 a reduction in forces in the crafts represented by each of the organizations signatory hereto may be made at any time during the said 30-day period below the number of employees entitled to preservation of employment under this Agreement 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. Advance notice of any such force reduction shall be given as required by the current Schedule Agreements of the organizations signatory hereto. Upon restoration of a carrier's business following any such force reduction, employees entitled to preservation of employment must be recalled in accordance with the same formula within 15 calendar days.

Section 4 -

Notwithstanding other provisions of this Agreement, a carrier shall have the right to make force reductions under emergency conditions such as flood, snowstorm, hurricane, earthquake, fire or strike, provided that operations are suspended in whole or in part and provided further that because of such emergencies the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions no longer exists or cannot be performed. Sixteen hours advance notice will be given to the employees affected before such reductions are made. When forces have been so reduced and thereafter operations are restored employees entitled to preservation of employment must be recalled upon the termination of the emergency. 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 Section 3 of this Article I.

Section 5 -

Subject to and without limiting the provisions of this

agreement with respect to furloughs of employees, reduction in forces, employee absences from service or with respect to cessation or suspension of an employee's status as a protected employee, the carrier agrees to maintain work forces of protected employees represented by each organization signatory hereto in such manner that force reductions of protected employees below the established base as defined herein shall not exceed six per cent (6%) per annum. The established base shall mean the total number of protected employees in each craft represented by the organizations signatory hereto who qualify as protected employees under Section 1 of this Article I.

ARTICLE II

Use and Assignment of Employees and Loss of Protection

Section 1 -

An employee shall cease to be a protected employee in case of his resignation, death, retirement, dismissal for cause in accordance with existing agreements, or failure to retain or obtain a position available to him in the exercise of his seniority rights in accordance with existing rules or agreements, or failure to accept employment as provided in this Article. A protected furloughed employee who fails to respond to extra work when called shall cease to be a protected employee. If an employee dismissed for cause is reinstated to service, he will be restored to the status of a protected employee as of the date of his reinstatement.

Section 2 -

An employee shall cease to be a protected employee in the event of his failure to accept employment in his craft offered to him by the carrier in any seniority district or on any seniority roster throughout the carrier's railroad system as provided in implementing agreements made pursuant to Article III hereof, provided, however, that nothing in this Article shall be understood as modifying the provisions of Article V hereof.

Section 3 -

When a protected employee is entitled to compensation under this Agreement, he may be used in accordance with existing seniority rules for vacation relief, holiday vacancies, or sick relief, or for any other temporary assignments which do not require the crossing of craft lines. Traveling expenses will be paid in instances where they are allowed under existing rules. Where existing agreements do not provide for traveling expenses, in those instances, the representative of the organization and the carrier will negotiate in an endeavor to reach an agreement for this purpose.

ARTICLE III

Implementing Agreements

Section 1 -

The organizations recognize the right of the carriers to make technological, operational and organizational changes, and in consideration of the protective benefits provided by this Agreement the carrier shall have the right to transfer work and/or transfer employees throughout the system which do not require the crossing of craft lines. The organizations signatory hereto shall enter into such implementing agreements with the carrier as may be necessary to provide for the transfer and use of employees and the allocation or rearrangement of forces made necessary by the contemplated change. One of the purposes of such implementing agreements shall be to provide a force adequate to meet the carrier's requirements.

Section 2 -

Except as provided in Section 3 hereof, the carrier shall give at least 60 days' (90 days in cases that will require a change of an employee's residence) written notice to the organization involved of any intended change or changes referred to in Section 1 of this Article whenever such intended change or changes are of such a nature as to require an implementing agreement as provided in said Section 1. Such notice shall contain a full and adequate statement of the proposed change or changes, including an estimate of the number of employees that will be affected by the intended change or changes. Any change covered by such notice which is not made within a reasonable time following the service of the notice, when all of the relevant circumstances are considered, shall not be made by the carrier except after again complying with the requirements of this Section 2.

Section 3 -

The carrier shall give at least 30 days' notice where it propose to transfer no more than 5 employees across seniority lines within the same craft and the transfer of such employees will not require a change in the place of residence of such employee or employees, such notice otherwise to comply with Section 2 hereof.

Section 4 -

In the event the representatives of the carrier and organization fail to make an implementing agreement within 60 days after notice is given to the general chairman or general chairmen representing the employees to be affected by the contemplated change, or within 30 days after notice where a 30-day notice is required pursuant to Section 3 hereof, the matter may be referred by either party to the Disputed Committee as herein after provided. The issues submitted for

determination shall not include any question as to the right of the carrier to make the change but shall be confined to the manner of implementing the contemplated change with respect to the transfer and use of employees, and the allocation or rearrangement of forces made necessary by the contemplated change.

Section 5 -

The provisions of implementing agreements negotiated as hereinabove provided for with respect to the transfer and use of employees and allocation or reassignment of forces shall enable the carrier to transfer such protected employees and rearrange forces, and such movements, allocations and rearrangements of forces shall not constitute an infringement of rights of unprotected employees who may be affected thereby.

ARTICLE IV

Compensation Due Protected Employees

Section 1 -

Subject to the provisions of Section 3 of this Article IV, protected employees entitled to preservation of employment who hold regularly assigned positions on October 1, 1964, shall not be placed in a worse position with respect to compensation than the normal rate of compensation for said regularly assigned position on October 1, 1964 provided, however, that in addition thereto such compensation shall be adjusted to include subsequent general wage increases.

Section 2 -

Subject to the provisions of Section 3 of this Article IV, all other employees entitled to preservation of employment shall not be placed in a worse position with respect to compensation than that earned during a base period comprised of the last twelve months in which they performed compensated service immediately preceding the date of this Agreement. For purposes of determining whether, or to what extent, such an employee has been placed in a worse position with respect to his compensation, his total compensation and total time paid for during the base period will be separately divided by twelve. If his compensation in his current employment is less in any month (commencing with the first month following the date of this agreement) than his average base period compensation (adjusted to include subsequent general wage increases), he shall be paid the difference less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average time paid for during the base period, but he shall be compensated in addition thereto at the rate of the position filled for any time worked in excess of the time paid for during the base period; provided, however, that in determining compensation in his current employment the employee shall be treated as occupying the position producing the highest rate of pay and compensation to which his seniority entitles him under the working agreement and which does not require a change in residence.

Section 3 -

Any protected employee who in the normal exercise of seniority bids in a job or is bumped as a result of such an employee exercising his seniority in the normal way by reason of a voluntary action, will not be entitled to have his compensation preserved as provided in Sections 1 and 2 hereof, but will be compensated at the rate of pay and conditions of the job he bids in; provided, however, if he is required to make a move or bid in a position under the terms of an implementing agreement made pursuant to Article III hereof, he will continue to be paid in accordance with Sections 1 and 2 of this Article IV.

Section 4 -

If a protected employee fails to exercise his seniority rights to secure another available position, 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.

Section 5 -

A protected employee 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 employee be entitled to the benefits of this Article IV during any period when furloughed because of reduction in force resulting from seasonal requirements (including layoffs during Miners' Holiday and the Christmas Season) or because of reductions in forces pursuant to Article I, Sections 3 or 4, provided, however, that employees furloughed due to seasonal requirements shall not be furlough in any 12-month period for a greater period than they were furloughed during the 12 months preceding the date of this agreement.

Section 6 -

The carrier and the organizations signatory hereto will exchang such data and information as are necessary and appropriate to effectuat the purposes of this Agreement,

ARTICLE V

Moving Expenses and Separation Allowances

In the case of any transfers or rearrangement of forces for

which an implementing agreement has been made, any protected employee who has 15 or more years of employment relationship with the carrier and who is requested by the carrier pursuant to said implementing agreement to transfer to a new point of employment requiring him to move his residence shall be given an election, which must be exercised within seven calendar days from the date of request, to make such transfer or to resign and accept a lump sum separation allowance in accordance with the following provisions:

If the employee 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 Section 10 and 11 of the Washington Agreement notwithstanding anything to the contrary contained in said provisions and in addition to such benefits shall receive a transfer allowance of four hundred dollars ($400) and five working days instead of the "two working days" provided by Section 10(a) of said agreement.

If the employee elects to resign in lieu of making the requested transfer as aforesaid he shall do so as of the date the transfer would have been made and shall be given (in lieu of all other benefits and protections to which he may have been entitled under the Protective Agreement and Washington Agreement) a lump sum separation allowance which shall be computed in accordance with the schedule set forth in Section 9 of the Washington Agreement; provided, however, that force reductions permitted to be made under this Agreement shall be in addition to the number of employees who resign to accept the separation allowance herein provided.

Those protected employees who do not have 15 years or more of employment relationship with the carrier and who are required to change their place of residence shall be entitled to the benefits contained in Sections 10 and 11 of the Washington Agreement notwithstanding anything to the contrary contained in such provisions and in addition to such benefits shall receive a transfer allowance of four hundred dollars ($400) and 5 working days instead of "two working days" provided in Section 10(a) of said Agreement.

ARTICLE VI

Applications to Mergers, Consolidations and other Agreements.

Section 1 -

Any merger agreement now in effect applicable to merger of two or more carriers, or any job protection or employment security agreement which by its terms is of general system-wide and continuing application, or which is not of general system-wide application but which by its terms would apply in the future, may be preserved by the employee representatives so notifying the carrier within sixty days from the date of this agreement, and in that event this agreement shall not apply on that carrier to employees represented by such representatives.

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R B BRACKBILL, General Chairman
G H. ADAMS, General Secy-Treasurer
S R STEEVES, Vice General Chairman
W D. MARTIN, Chairman Board Trustee
D.V. WARD, Member Board Trustees
E D. 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) 989-9956
760 MARKET STREET, SAN FRANCISCO, CALIFORNIA 94102

Refer to
File No. 1
PFE-2489-GO

January 4, 1988

Mr. K. E. Armstrong
Mr. J. M. Balovich
Ms. B. M. Boutourlin
Ms. J. E. Flores
Mr. A. D. Lang
Ms. J. Lorentz
Mr. J. J. Royer
Ms. S. M. Tu

Dear PFE G.O. Claimants:

Referee Lieberman's award addressed the crux of the issue in this claim that resulted in the denial when he referenced the decline in business and the non-establishment of jobs at SPTCO when work was transferred.

The one bright side of the award is that the referee made an unusual observation in stating that the claimants should be given at least first right to employment if available at the SPTCO. The undersigned has made ongoing attempts to secure employment for those named in this claim and all furloughed PFE employes. That effort continues, and you will be advised if those efforts are successful.

Brothers Balovich and Armstrong have expressed their desire for employment with SPTCO. I would appreciate hearing from others.

Sincerely and fraternally,

R. B. Brackbill

Attachment

Exhibit E

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:

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