

STB

FD

32760

(Sub 22)

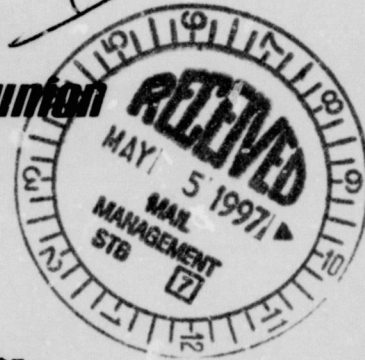
5-5-97

I

179604



united transportation union



179589
179604

Express Delivery

May 2, 1997

Vernon A. Williams
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001
(202) 565-1558

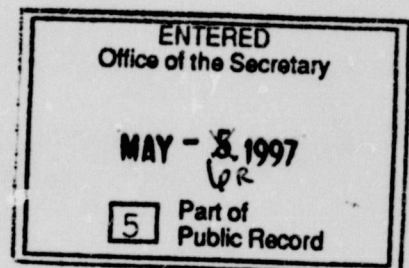
Re: Union Pacific Corp. - Control and
Merger - Southern Pacific Transportation Co.,
Finance Docket No. 32760 (Sub. No. 22)
(Arbitration Review)

Dear Mr. Williams:

Please find enclosed the original of my declaration for filing with the Petition for Review and Request for Stay being filed this date by United Transportation Union in the above-captioned matter under separate cover, which includes copies of my declaration.

Sincerely yours,

John P. Kurtz
General Chairperson



DECLARATION OF JOHN P. KURTZ

John P. Kurtz, pursuant to 28 U.S.C. § 1746, declares the following facts are true.

1. I am General Chairman of a United Transportation Union ("UTU") General Committee of Adjustment with jurisdiction concerning some of its agreements with the Denver and Rio Grande Western ("DRGW") involved in the Union Pacific ("UP") merger with Southern Pacific ("SP") and related carriers, including the DRGW.
2. The recent UP/SP merger arbitration decision by James Yost dated April 14, 1997 permits implementation of that part of UP's submission and proposed agreement for the Denver and Salt Lake City Hubs regarding the issue of health and welfare which states:

"Employees not previously covered by the UPED agreement shall have 60 days to join the Union Pacific [Hospital] Association in accordance with that agreement."
3. This provision was presented in the written UP submission in arbitration stating that the UTU-UP Eastern District collective bargaining agreement requires that employees coming under that agreement be covered under the UP Hospital Association. The UP relied on an arbitration award (NRAA First Division Award 24158) in making this proposal. This First Division award related to a grievance arbitration under the Railway Labor Act by a group of employees between the UP-MOP at one particular location. It was not an implementing agreement arbitration in that merger.
4. The specific issue of health and welfare coverage was not in the initial proposed agreement offered by the UP, and was never raised, at any time, during negotiations. No exchange ever took place among the DRGW General Chairmen involved and other UTU representatives, who were present at all merger meetings.

5. It should be noted that only three copies of the carrier's submission were available at the time of the arbitration hearing for the UTU counsel and officers who participated. The DRGW General Chairmen present were not able to review what was contained therein, and it was only briefly covered by the UP representative at the hearing. Copies of the UP submissions were later mailed to the UTU General Chairmen by UTU.

6. The UTU General Chairmen agreed to submit a unified proposal of one collective bargaining agreement as to the Salt Lake City Hub, that being the Eastern District Agreement. Generally, the issue of health and welfare has always been separate and apart from work rules and pay issues. It is handled separately at the national level with a Committee having the authority to act for all rail labor. The affected DRGW General Chairmen, who agreed to the approach of one collective bargaining agreement, believed that the employees would be protected by the provisions of *New York Dock* which requires negotiations on all such issues. The element of surprise used by UP here is not a tactic which should be upheld by the interest arbitration process.

7. Union representatives, employees and retirees have forwarded advice to me, as Chairman of the DRGW Employees' Hospital Association since 1976, stating that they did not wish to automatically go to the UP Hospital Association, and believe that a choice should have been discussed and offered the employees at the time of negotiations. In fact, the matter of choice was first raised by UP with other employee groups. UP Labor Relations officers Geneva Dourisseau and Doug Smith called me in December, 1996, and discussed the same issue regarding the carmen craft. Some carmen were being transferred to other locations and coming under different collective bargaining agreements, but were offered a choice of health plans.

Clerical employees transferred to other locations under the same scenario were offered the same choice, as the attached UP-TCU Agreement dated December 18, 1996 shows. In addition, the carrier negotiated one agreement for the Denver Hub with the BLE in the same scenario as the UTU, that being the Eastern District Agreement. The BLE-represented employees were offered a choice of plans within that agreement (UP draft letter to that effect attached). Clearly, the UP was cognizant of the requirements of Article I, Section 2 of *New York Dock* in negotiations with other unions, and the same obligation should apply here.

8. The DRGW Hospital Association is financially stable, with assets at an all-time high. It is well known in this industry that active employees support and subsidize retirees on hospital association carriers. However, a withdrawal of complete groups jeopardizes this stability to the detriment of the other employees, and specifically the retirees. Currently, the premiums on the DRGW are nearly \$300 lower for a retired couple with no annual drug limitations than exist with UP. I have been personally lobbied by retired veteran employee groups representing the nearly 2,500 retirees in DRGW plan. At this time, they would be faced with drastic plan changes for elderly people on fixed incomes, some of who have been retired for over twenty years, who are not drawing significant retirement incomes. Some have stated that they do not know how they will be able to pay the increased costs. Based upon retirement age data, I believe that this is a true statement.

9. The purpose of Article I, Section 2 of *New York Dock* and the protection provisions is clearly to allow a protective period of time to elapse before a person is placed in a worse position with regard to pay and other benefits, especially health and welfare fringe benefits. The parties may agree to other terms by negotiations. The issue is negotiable, and at

a minimum, the employees should be offered a choice of plans in which to belong for the period of *New York Dock*, just as other employees have been offered in other employee negotiations with UP.

I declare under penalty of perjury that the foregoing facts are true and correct. Executed on May 2, 1997.



JOHN P. KURTZ

MEMORANDUM OF AGREEMENT
BY AND BETWEEN
SOUTHERN PACIFIC TRANSPORTATION COMPANY
UNION PACIFIC RAILROAD

AND THEIR EMPLOYEES REPRESENTED BY

ALIED SERVICES DIVISION/TCU
TRANSPORTATION COMMUNICATIONS UNION

WHEREAS, the Carriers have served various notices on the Organization in accordance with Finance Docket No. 32760; and

WHEREAS, the affected employees are entitled to all rights and benefits as contained in the New York Dock protective conditions; and

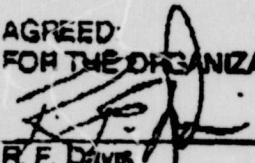
WHEREAS, the affected employees employed by the Southern Pacific Transportation Company who may be required to move to the geographic location of the Denver and Rio Grande Western Railroad or the Union Pacific Railroad are covered by Travelers GA-23000, while the employees on the Denver and Rio Grande Western Railroad and the Union Pacific Railroad belong to a hospital association;

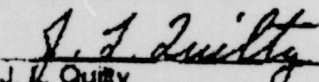
It is therefore agreed that SPTCo employees who have transferred or are transferring to the D&RGW or the UPRR will be granted an option to (1) retain coverage under GA-23000, or (2) elect to become covered by the hospital association, it being understood, however, that once an employee elects coverage of the hospital association, he/she may not elect at a later date to return to GA-23000.


It is further agreed that the employees will be provided an election form and must advise the designated Carrier Officer of their intent to retain GA-23000 or become members of the hospital association in writing within thirty (30) days. Failure to complete and submit the form to the designated Carrier Officer will be construed to be an election for coverage that the employee previously had at the location from which transferred.

This Agreement is signed this 18th day of December, 1996.

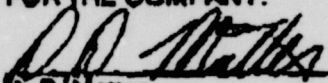
AGREED
FOR THE ORGANIZATION:



R. F. Davis
President, ASD/TCU


J. L. Quilty
General Chairman, TCU


M. L. Scroggins
General Chairman, SB #51

FOR THE COMPANY:


D. D. Menter
Sr. Director Labor Relations/ Non-Ops


R. L. Carro
Manager Labor Relations

Gentlemen:

This refers to the handling of health and welfare benefits for employees involved in the UP/SP merger.

In order to ensure appropriate health and welfare coverage for affected employees, it is agreed that employees transferring from one collective bargaining agreement to another (i.e., DRGW employees) may elect one of the following options which must be exercised within thirty (30) days from the notice of merger implementation:

(A) Elect to retain present coverage.

OR

(B) Elect to accept the health and welfare coverage applicable to the territory to which transferred.

An employee failing to make an election shall be considered as having retained option (A). A health and welfare benefits election form, attached as Exhibit "A", will be furnished to employees who transfer so they can make an election.

Yours truly,

W.S. Hinckley
General Director Labor Relations

AGREED:

General Chairman UPED

General Chairman MPUL

General Chairman DRGW