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GUERRIERI, EDMOND & CLAYMAN, P.C.
1625 MASSACHUSETTS AVENUE, N.W.
SUITE 700
WASHINGTON, D.C. 20036-2243

JOSEPH GUERRIERI, JR.
JOHN A. EDMOND
ROBERT S. CLAYMAN
DEBRA L. WILLEN
JEFFREY A. BARTOS
ANNA L. FRANCIS
NICOLAS M. MANICONE
LESLIE DEAK *

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FACSIMILE: (202) 624-7420

May 4, 1999



*NOT ADMITTED IN D.C.

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Re: Union Pacific Corp., et al. -- Control and Merger --
Southern Pacific Rail Corp., et al.
Finance Docket No. 32760 (Sub-No. 33)

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding, please find an original and 25 copies of the UTU's Opposition to Petition for Review. Also enclosed is a 3.5" diskette containing the text of this document in WordPerfect 6.0/6.1 format.

I have included an additional copy to be date-stamped and returned with our messenger.

Thank you for your attention to this matter.

Sincerely,

Debra L. Willen

Debra L. Willen

Counsel for the United
Transportation Union

DLW:mmw

Enclosures

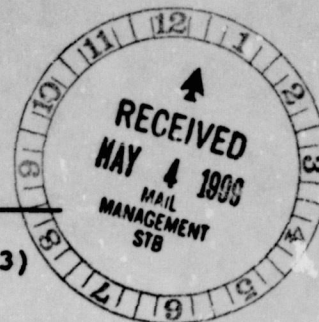
cc: Clinton J. Miller, III, Esq.

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (Sub-No. 33)



UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
-CONTROL AND MERGER-
SOUTHERN PACIFIC RAIL CORPORATION,
SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS
SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE
DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

(Arbitration Review)

**UTU'S OPPOSITION TO PETITION
TO REVIEW ARBITRATION DECISION**

The United Transportation Union ("UTU" or "Union") hereby opposes the petition filed by Lyn Swonger and James Spaulding for review of an Arbitration Award, dated March 25, 1999, issued by Neutral Referee William E. Fredenberger, Jr., ("Fredenberger Award"), regarding application of the New York Dock¹ provisions imposed by the Surface Transportation Board ("STB" or "Board") as a condition of its approval of the primary application in this docket. The petitioners seek to set aside an Implementing Agreement for Union Pacific Railroad Co.'s ("Union Pacific") Salina, Kansas Hub, that was negotiated by the Carrier and the UTU and adopted by Arbitrator Fredenberger.

^{1/} New York Dock Railway -- Control -- Brooklyn Eastern Dist., 360 I.C.C. 60, 84-90, aff'd sub nom., New York Dock Ry. v. United States, 609 F.2d 83 (2d Cir. 1979).

Petitioners are former Chicago, Rock Island & Pacific Railroad ("Rock Island") and St. Louis Southwestern Railway Co. ("SSW") trainmen who, on behalf of themselves and a small group of similarly-situated trainmen, seek extraordinary seniority rights with respect to the former Rock Island Tucumcari Line. In order to promote the narrow interests of a select group of trainmen, they urge the Board to set aside a fairly negotiated and arbitrated Implementing Agreement that accommodates both the Carrier's interest in efficient implementation and the Union's interest in a fair and equitable arrangement for seniority integration. Petitioners do not and cannot assert a recurring and significant issue of general interpretation warranting Board review. See Chicago & N.W. Transp. Co. -- Abandonment -- Near Dubuque and Oelwein, IA -- Chicago & North Western Transp. Co. -- Abandonment, 3 I.C.C.2d 729, 736 (1987) ("Lace Curtain"), aff'd sub nom., IBEW v. ICC, 862 F.2d 330 (D.C. Cir. 1988). For these reasons, the instant Petition for Review should be denied.

STATEMENT OF FACTS

As noted above, petitioners Lyn Swonger and James Spaulding are Union Pacific employees who were formerly employed on the Rock Island and SSW. In 1980, SSW purchased the Rock Island's Tucumcari Line. Pursuant to an agreement between the carriers and their unions, the Rock Island employees were considered to have severed their employment relationship with their former employer and were given a new seniority date on the SSW that represented the exact

date they were hired by the SSW. A copy of this March 4, 1980 Agreement is attached as Exhibit 1.

In subsequent litigation styled Volkman v. UTU, in the United District Court for the District of Kansas, judgment was awarded in favor of a group of former Rock Island employees hired in 1983, granting them certain prior rights for seniority purposes with respect to points on the Tucumcari Line, including Salina, Kansas. The court's Final Judgment, however, expressly provided that "those prior rights are subject to modification through future collective bargaining the same as are prior rights granted under existing labor contracts between the defendants SSW and UTU." Final Judgment dated July 21, 1993, at 8. (A copy of this Final Judgment is attached as Exhibit 2). Subsequently, the parties reached a settlement of outstanding issues. In approving the settlement agreement, the court noted in response to concerns raised by Mr. Swonger in open court that, "the wording of the settlement agreement was adequate to protect the seniority rights previously in effect[.]" Memorandum and Order dated Dec. 17, 1993, at 3. (A copy of this Memorandum and Order is attached as Exhibit 3).

In addition, the court entered a Memorandum and Order on June 23, 1997, granting eight off-line employees prior rights on the Tucumcari line, that likewise provided that, "these prior rights are subject to modification through future collective bargaining[.]" Memorandum and Order dated June 23, 1997, at 2. (A copy of this Memorandum and Order is attached as Exhibit 4.)

By decision served August 12, 1996, the STB approved the merger of the Union Pacific Corp., Union Pacific Railroad Co. and Missouri Pacific Railroad Co. and the Southern Pacific Rail Corp., Southern Pacific Transportation Co., SSW, SPCSL Corp. and the Denver & Rio Grande Western Railroad Co., subject to the New York Dock labor protective conditions. Union Pacific Corp., et al. -- Control and Merger -- Southern Pacific Rail Corp., et al., Finance Docket No. 32760, Decision No. 44 (served Aug. 12, 1996). Union Pacific had stated in its proposed Operating Plan that it intended to use the "hub" and "spoke" system in the implementation of the merger.

In negotiations under Article I, Section 4 of the New York Dock conditions for Implementing Agreements to cover Union Pacific's Salt Lake City and Denver Hubs, the UTU vigorously opposed the Carrier's attempt to eliminate existing seniority districts. As a result, the parties submitted their dispute to arbitration before Neutral Referee Yost. By an arbitration award dated April 14, 1997, Mr. Yost upheld Union Pacific's right to eliminate existing seniority districts in order to implement its Operating Plan, and that portion of the Yost Award was sustained by the STB. Union Pacific Corp., et al. -- Control and Merger -- Southern Pacific Rail Corp., et al., Finance Docket No. 32760 (Sub-No. 22), slip op. at 3-4 (served June 26, 1997).

Even before the Yost Award, the UTU recognized that where it is necessary to integrate seniority rosters, the simplest manner in which to accomplish a fair and equitable arrangement that protects

the interests of its members, as required by the UTU Constitution, is to dovetail employees into the integrated roster based upon each employee's date of hire on the property on which he was last employed. This is the manner in which seniority lists have been integrated for most of the Hubs, including the Little Rock, St. Louis and Kansas City Hubs.

In Article I, Section 4 negotiations for the Salina Hub, the UTU and Union Pacific tentatively agreed upon an Implementing Agreement that again provided that employees would be dovetailed into the roster based upon their date of hire on the property on which they were last employed. The UTU Associate General Chairperson representing former SSW employees refused to initial this agreement, however, because the employees from the former Rock Island objected to the seniority dates that would be used to form the integrated seniority roster. They insisted that their dates of hire with the Rock Island be used, instead of their dates of hire with the SSW.

Under the UTU Constitution, the tentative agreement could not be submitted for ratification absent approval of all General Chairpersons in the affected jurisdictions. Accordingly, Union Pacific invoked arbitration under Article I, Section 4. The matter was submitted to Neutral Referee Fredenberger. Petitioners participated through counsel in both the filing of a written submission and oral argument.

On March 25, 1999, Referee Fredenberger issued his decision adopting the tentative agreement that Union Pacific and the UTU had

negotiated as the Implementing Agreement for the Salina Hub. That Agreement provides for the creation of a master seniority roster through dovetailing, for the creation of three seniority zones within the roster, and for the maintenance or creation of prior rights in each zone. Fredenberger Award at 4-5. Moreover, the Arbitrator authorized the Carrier to close its terminal in Pratt, Kansas and transfer the affected employees to Harrington, Kansas. Id. at 8.

ARGUMENT

THE FREDENBERGER AWARD PROVIDES A FAIR AND EQUITABLE ARRANGEMENT FOR THE OPERATION OF THE SALINA HUB.

The Fredenberger Award is subject to a very limited standard of review that gives an arbitrator's decision on the merits "extreme deference[.]" Lace Curtain, 3 I.C.C.2d at 735-36. Review is limited to "recurring or otherwise significant issues of general importance regarding the interpretation of [STB] labor protective conditions." Id. at 736. The Board will not review an arbitrator's decision on factual issues. Id. Moreover, the Board typically defers to an arbitrator's determination regarding the integration of seniority districts "in the absence of egregious error." Norfolk & Western Ry., New York, Chicago & St. Louis R.R. -- Merger, Etc., Finance Docket No. 21510 (Sub-No. 5), slip op. at 5 (served Dec. 18, 1998).

In the instant case, petitioners Swonger and Spaulding present two issues for review: (1) whether the Arbitrator had the right to modify the seniority of these trainmen in the manner that he did;

and (2) whether the Arbitrator erred in his rulings relating to the closing of the Pratt, Kansas home terminal. Pet. for Review at 4, 6. Neither of these issues warrants review under the Lace Curtain standard.

1. Integration of Seniority Districts

Petitioners' chief objection to the Implementing Agreement negotiated by the parties and upheld by the Arbitrator is that the date of hire used for seniority integration is their date of hire with SSW rather than their date of hire with the Rock Island. Pet. for Review at 7. For nearly two decades, the former Rock Island employees have used their 1980 seniority date with SSW. To permit them to resurrect their original Rock Island seniority date now would be exceedingly unfair to the other employees involved in this and prior mergers. In effect, petitioners seek the "carryover seniority" that specifically was denied to them in the Volkman v. UTU litigation. See Volkman v. UTU, 962 F. Supp. 1364, 1366 (D. Kan. 1997) ("The court has previously considered and rejected a request for full carryover seniority ... [and] rejects it now.").

The UTU endeavored to protect the seniority rights of all of its members on each of the merging carriers. Inevitably, there will be some disgruntled employees who are dissatisfied with the result. The issue, however, is whether the parties have selected a fair and equitable arrangement, that has a logical rationale. Arbitrator Fredenberger found, as a factual matter, that the method agreed to by the UTU and Union Pacific was in fact "a fair and equitable method of blending the rights of [the former SSW or Rock

Island trainmen] with those of other Carrier affected employees." Fredenberger Award at 7. Petitioners have asserted no basis upon which this Board may disturb that factual finding.

Moreover, petitioners' contentions regarding the Arbitrator's authority to modify contractual seniority systems miss the mark. Despite this Union's efforts in the past to prevent post-merger modifications to contractual seniority provisions, the Board and the courts have upheld arbitral findings that "a consolidation of seniority rosters was necessary to effectuate the merger of the rail lines." UTU v. STB, 108 F.3d 1425, 1431 (D.C. Cir. 1997). Indeed, Arbitrator Fredenberger relied upon Neutral Referee Yost's prior finding that seniority modifications were necessary to effectuate Union Pacific's hub and spoke Operating Plan with respect to the Salt Lake City and Denver Hubs. Fredenberg Award at 6. It bears emphasis that the Yost Award was upheld in pertinent part by this Board in Union Pacific Corp., et al. -- Control and Merger -- Southern Pacific Rail Corp. et al., Finance Docket No. 32760 (Sub-No. 22), slip op. at 3-4 (served June 26, 1997).

2. The Closure of the Pratt Terminal

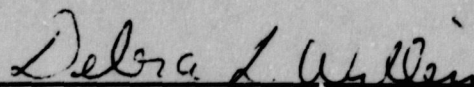
Petitioners argued at arbitration that no public transportation benefit arising from the closure of the Pratt Terminal and its relocation to Harrington could be shown to offset the damage caused by employees having to relocate to towns with inadequate housing and public facilities. Neutral Referee Fredenberger rejected those arguments and expressly found that "it does not appear that the new points at which the employees would

have to report for work are beyond a reasonable driving distance from their present locations." Fredenberger Award at 8. He further found that the relocation of the terminal was "part and parcel of the hub and spoke operation to be implemented at Salina" and therefore a public benefit was demonstrated. *Id.* at 8. Petitioners have not demonstrated the "egregious error" required for Board review of such factual findings. Norfolk & Western Ry., New York, Chicago & St. Louis R.R. -- Merger, Etc., Finance Docket No. 21510 (Sub-No. 5), slip op. at 5.

CONCLUSION

For all the foregoing reasons, the UTU respectfully requests that the Board deny the Petition for Review of the Fredenberger Award.

Respectfully submitted,


Joseph Guerrieri, Jr.
Debra L. Willen
GUERRIERI, EDMOND & CLAYMAN, P.C.
1625 Massachusetts Avenue, N.W.
Suite 700
Washington, DC 20036
(202) 624-7400

Counsel for the UTU

Date: May 4, 1999

CERTIFICATE OF SERVICE

I hereby certify that copies of UTU's Opposition To Petition for Review were served this 4th day of May, 1999, by first-class mail, postage prepaid, upon the following:

John Raaz
Assistant Vice President
Union Pacific Railroad Company
1416 Dodge Street
Omaha, NE 68179

M.B. Futhey, Jr.
Vice President, UTU
7610 Stout Road
Germantown, TN 38138

R.E. Karstetter
General Chairman, UTU
1721 Elfindale Drive, #309
Springfield, MO 65807

P.C. Thompson
Vice President, UTU
10805 West 48th Street
Shawnee Mission, KS 66203

A. Martin, III
General Chairman, UTU
2933 S.W. Woodside Drive, #F
Topeka, KS 66614-4181

Don L. Hollis
Assoc. General Chairman, UTU
13247 C R 4122
Lindale, TX 75771

James Spaulding
515 North Main Street
Pratt, KS 67124

Lyn Swonger
1204 East Maple
Pratt, KS 67124

Brenda Council
Attorney at Law
1650 Farnam
Omaha, NE 68102

Bruce H. Stoltze
Brick, Gentry, Bowers,
Schwartz, Stoltze, Schuling
& Levis, P.C.
550 39th Street
Des Moines, IA 50312

L. Lee A. Wilken

EXHIBIT 1

3/4/80

**LABOR PROTECTIVE AGREEMENT
between
RAILROADS PARTIES HERETO
INVOLVED IN MIDWEST RAIL
RESTRUCTURING
and
EMPLOYEES OF SUCH RAILROADS
REPRESENTED BY THE RAIL
LABOR ORGANIZATIONS
operating through the
RAILWAY LABOR EXECUTIVES' ASSOCIATION**

The scope and purpose of this agreement are to provide, pursuant to the Milwaukee Railroad Restructuring Act (45 U.S.C. Sec. 901 et seq.) and the Interstate Commerce Act (49 U.S.C. Sec. 10101 et seq.), a fair, equitable and complete arrangement for protection of Milwaukee and Rock Island employees taken into the employ of interim service operators and purchasing carriers signatory hereto and to enable the interim service operator or purchasing carrier to be operated in the most efficient manner, as set forth herein, immediately upon authorization for such operation.

Article I. General Provisions

1. Definitions -- Whenever used in this agreement, unless its context requires otherwise:

(a) "Purchasing carrier" means a signatory party to this agreement who is either the interim service operator (pursuant to Commission or Court Order) or the eventual purchaser of a line of railroad of the Rock Island or the Milwaukee, or who is a remaining operating carrier under an existing joint trackage agreement with the Rock Island or Milwaukee.

(b) "Rock Island" means the Chicago, Rock Island and Pacific Railroad Company.

(c) "Milwaukee" means the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

(d) "Bankrupt carrier employee" means any person with an employment relationship (i.e., in active service or on furlough) with the Rock Island, or with the Milwaukee as of the date of this agreement.

(e) "Transaction" means restructuring of the Rock Island and/or the Milwaukee by sales or transfers of railroad lines to a purchasing carrier, or interim operator.

2. Labor Protection Obligations --

(a) The provisions of this agreement shall constitute the complete labor protection obligation of a purchasing carrier to the bankrupt carrier employees who are taken into its employ because of a transaction. A purchasing carrier will have no labor protection obligation to any other bankrupt carrier employees.

(b) The labor protection obligation, if any, for employees of the Rock Island who are not taken into the employ of a purchasing carrier because of a transaction, and for moving expenses of those employees of the Rock Island who are taken into the employ of a purchasing carrier because of a transaction, will not be the responsibility of the purchasing carrier.

3. Notice and Negotiation -- A purchasing carrier will notify interested employee representatives, including those on the Rock Island or Milwaukee, of each transaction as soon as it has been authorized to become an interim service operator or finalizes arrangements to be a

purchaser. Thereafter, except as specifically provided in Article II the purchasing carrier shall be relieved of any requirement to notify its employees or to reach implementing agreements concerning that transaction.

Article II. Hiring and Work Rules

1. Eligibility for Hiring -- All employees of the Rock Island or Milwaukee who held seniority on the effective date of this agreement in a craft represented by one of the labor organizations signatory hereto shall be eligible for participation in the hiring procedures described in this Article.

2. Determination of Need for Additional Employees -- A purchasing carrier shall determine its necessary additional manpower requirements by craft due to its taking over those Rock Island and Milwaukee Lines. Each of the determinations shall be discussed with representatives of the crafts on purchasing carrier and on the Rock Island or Milwaukee with detailed explanation to them of the basis for each determination prior to serving notice under paragraph 4 hereof, but there shall be no delay in hiring employees or in commencement of operations. If a purchasing carrier has employees on furlough they will not be subject to recall as a result of the additional manpower requirements resulting from a transaction, until after bankrupt carrier employees on appropriate seniority rosters have exhausted their opportunity to be hired hereunder.

3. Preferential Hiring -- As a carrier determines its need for additional employees under this Article, it shall allow eligible employees in seniority order on the Rock Island or Milwaukee the first right of hire respectively, dependent on whose trackage is involved, and consistent with the purpose of Section 8 of the Milwaukee Railroad Restructuring Act. Each carrier, whether acquiring lines or operating

lines on an interim basis, shall independently make such determination of its needs for additional employees irrespective of any determination of this nature made by other carriers. In carrying out the purposes of this section, the purchasing carriers shall first utilize existing seniority rosters applicable to the appropriate craft and seniority district for the lines and territories involved in fulfilling employment needs in connection therewith.

4. Notification of Hiring -- When a carrier determines that it needs additional employees under this Article, such carrier shall notify the labor organizations representing employees of the Rock Island or Milwaukee of its specific needs and advise them exactly where and how eligible employees of the craft needed from the Rock Island or Milwaukee should apply for such vacancies. Eligible employees of the Rock Island or Milwaukee interested in such vacancies shall have the responsibility of applying to the carrier for vacancies in the manner described by the carrier. An employee shall have 7 days to apply after receipt of notice from the carrier or the organization or 20 days after the labor organization has received notice from the carrier, whichever occurs first, subject to paragraph 9 hereof. To the extent that the carrier has determined a need for additional employees under this Article, applicants will be required to meet those physical and rules standards which the carrier applies to its own employees on reexamination. The applicant's seniority in the appropriate craft and seniority district on the bankrupt carrier will prevail if the number of qualified applicants exceeds the carrier's determined need for additional employees. Bankrupt carrier employees who are in service with a bankrupt carrier at the time of interim operation or purchase and who are hired on the commencement of

operations by a purchasing carrier pursuant to this agreement will be presumed qualified physically and purchasing carrier will have the burden of proof if it wishes to challenge such qualifications.

Those employees who are subject to examination on purchasing carrier's operating book of rules may be required to pass a re-examination on those rules.

5. Duration of Preferential Hiring -- The procedures established in this Article shall continue in full force and effect for not less than one year from the effective date from the commencement of operations or as otherwise provided for by law, but in no event beyond April 1, 1984.

6. Employee Election -- An eligible employee of the Rock Island or Milwaukee afforded the first right of hire pursuant to this Article by more than one carrier signatory hereto shall have the option to elect on which carrier the employee will exercise such right. Should a transaction involving another purchasing carrier occur subsequent to the employee's initial election which the employee finds is preferable, the employee will have one opportunity to be hired by another purchasing carrier.

7. Termination of Seniority -- When final agreement has been reached pursuant to Paragraph 9 of this Article dealing with seniority, those Rock Island and Milwaukee employees who are hired by a purchasing carrier will be considered as having severed their employment relationship with their former employer.

8. Application of Work Rules --

(a) A purchasing carrier shall not take over or assume any of the contracts, schedules or agreements in effect between the Rock

Island or Milwaukee and its employees concerning rates of pay, rules, working conditions or fringe benefits, and shall not be bound by the terms and provisions thereof.

(b) An employee of the Rock Island or Milwaukee hired by a purchasing carrier shall come under the coverage of all contracts, schedules and agreements in effect between such carrier and its employees concerning rates of pay, rules, working conditions and fringe benefits, and shall be bound by the terms and provisions thereof in the same manner and to the same extent as other employees of the purchasing carrier working in the same craft.

(c) The purchasing carrier shall have the option:

(1) to commingle, under the purchasing carrier's work rules, work in connection with lines acquired from the Rock Island and/or the Milwaukee with work in its existing seniority districts, including expansion of those seniority districts to encompass the acquired lines; and where there are agreed-upon switching limits for yards at a common point, switching limits of the purchasing carrier will be extended to include the switching limits of the acquired property; or

(2) to operate the acquired property as a separate seniority district or districts under the purchasing carrier's work rules.

9. Implementing Agreement —

(a) In accordance with the option selected under paragraph 8 of this Article, agreements will be reached on each purchasing carrier concerning the manner in which seniority will be allocated in filling additional job assignments, between the purchasing carrier's employees and the bankrupt carrier employees hired by the purchasing carrier. In the absence of an agreement, in order to avoid delay in operations, the purchasing carrier may, on a temporary basis, hire qualified and available bankrupt carrier employees to the extent needed where additional jobs are established at the outset. Such employees will be placed at the bottom of the current list of active employees, and they will remain in such status until an agreement is reached respecting seniority in accordance with the provisions of this paragraph. Where no additional jobs are established, the purchasing carrier's present employees' jobs may be expanded to include work on or in connection with the acquired property. If, as a result of the agreement on allocation of seniority, bankrupt carrier employees used on such a temporary basis do not secure jobs with the purchasing carrier, their employment with the purchasing carrier will be terminated without any preservation of rights or benefits with the purchasing carrier.

(b) If an agreement is not reached within ten (10) days from the date of the notification given under Article I, paragraph 3 hereof, either party to the dispute may utilize the following procedures for determining the allocation of seniority referred to above:

(1) Within five (5) days after notice in writing from one party to another that it desires to arbitrate the dispute, the parties shall select a neutral referee and in the event they are unable to agree upon the selection of said referee, then the National Mediation Board shall immediately appoint a referee.

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

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

(4) The salary and expenses of the referee shall be borne in accordance with the Railway Labor Act.

Notwithstanding any of the foregoing provisions of this section, the purchasing carrier may proceed with the transaction, provided that all hired bankrupt carrier employees shall be provided with all of the rights and benefits of this agreement.

(c) An employee hired by a purchasing carrier in one craft but who also has seniority in another craft with Rock Island or Milwaukee, such as a yardmaster who also has seniority as a yardman, will be given seniority in both crafts on the purchasing carrier. This issue will be handled in the negotiations under paragraph (a) hereof.

(d) The issue of seniority date and service date where an employee transferred from one roster or craft to another on the bankrupt carrier will be handled in the negotiations under paragraph (a) hereof.

(c) Special projects -- Protection, seniority and contracting (pursuant to existing agreements) in special rehabilitation projects will be subject to negotiations between individual purchasing carriers and interested employee representatives.

Article III. Monthly Compensation Guarantee

1. Coverage -- A purchasing carrier will provide a monthly compensation guarantee, as hereafter provided, only to bankrupt carrier employees hired by the purchasing carrier pursuant to this agreement and to its own employees who are (1) working in the same seniority district in the zone or working district of the acquired property and (2) are in active service on the date that interim operation is begun or purchase completed, whichever first occurs.

2. Duration -- Each employee described in paragraph 1 of this Article shall be entitled to receive a monthly compensation guarantee payment for a total of not more than 36 months from the date employee makes a claim for it, except that:

(a) the period of entitlement to a guarantee payment shall not exceed the employee's total months of service prior to date interim operation is begun or purchase completed, whichever first occurs, with the bankrupt or the purchasing carrier, as the case may be; and

(b) payments of this type received from a bankrupt carrier, or any interim service operator, or a purchasing carrier or under supplementary unemployment insurance (such as Section 10 of Milwaukee Railroad Restructuring Act) all count toward the limit on the total number of months as set forth above; and

(c) no compensation shall be provided under this section after April 1, 1984, unless it is necessary in order to provide an employee with at least eight (8) months of the payments, but after such date, that employee shall receive the eight-month minimum only if that employee is not employed continuously after that date.

3. Guarantee -- the monthly compensation guarantee shall be an amount equal to:

(a) 80 percent of an employee's average monthly straight-time compensation (including all general wage increases negotiated nationally for railroad employees) earned from the Milwaukee (or purchasing carrier) during the period beginning June 1, 1977 and ending October 31, 1979, or from the Rock Island (or purchasing carrier) during the period June 1, 1977 and ending on May 31, 1979.

(b) In the case of an employee who served as an agent or a representative of a class or craft of employees on either a full- or part-time basis during the period set forth in subsection (a) above, 80 percent of the average monthly straight-time compensation (including all general wage increases negotiated nationally for railroad employees) of the employees actively employed in his class or craft involved immediately above and below him on the same seniority roster or 80 percent of his own average monthly straight-time compensation as computed in subsection (a) above, whichever is greater. This subsection (b) shall also be applicable to railroad officials, supervisory or fully exempt personnel who return to their respective crafts.

4. Payments and Offsets —

(a) Each employee described in paragraph 1 of this Article shall be eligible to receive a monthly compensation guarantee payment for any month in which such employee's monthly compensation guarantee exceeds such employee's actual compensation for that month with an offset for any losses due to absences from service or account of injury, sickness, disability, or discipline for cause in accordance with existing agreements. In computing such offset the guarantee will be reduced proportionately on the basis of working days in the month. Claims for guarantee shall be paid within 30 days after date claim is filed; except in the case of the initial claim it will be paid within 90 days of filing.

(b) Notwithstanding other provisions of this agreement, the carrier may reduce the "monthly compensation guarantee" for each day lost under emergency conditions such as flood, snowstorm, tornado, cyclone, 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 cannot be performed. The reduction in monthly compensation guarantee will be reduced proportionately on basis of working days in the month.

(c) The sum of (A) the amount of any benefits payable to such employee for such month under the Railroad Unemployment Insurance Act or under any state unemployment insurance program, and (B) the

amount of any earnings of such employee for such month from employment or self-employment which is first engaged in after the employee is adversely affected, may be used as an offset.

(d) The monthly compensation guarantee payment shall cease prior to the expiration of the period as set forth in paragraph 2 of this Article in the event of the employee's resignation, death, retirement, dismissal for justifiable cause under existing agreements, failure to exercise seniority on an available position less than 125 railroad route miles from his or her residence, and for failure without good cause to accept a reasonably comparable position which does not require a change of residence, for which he is physically and mentally qualified, if his return does not infringe upon employment rights of other employees under a working agreement. "A change of residence" as used herein means a transfer to a work location which is located either (A) outside a radius of 30 miles of the employee's former work location and further from his residence than was his former work location or (B) is located more than 30 normal highway route miles from his residence and also further from his residence than was his former work location.

(e) If, for any reason, an interim service operator is denied Commission approval or court authorization for final sale or transfer of a line of a bankrupt carrier, or ceases to be an interim operator, or if a successor carrier agrees, or is ordered to, perform the functions formerly performed by the Rock

Island or Milwaukee under an existing joint trackage agreement, the employment of bankrupt carrier employees who may be employed to fill the positions necessary for the operation of such service on such line may be terminated simultaneously with the cessation of that service, without preservation of rights or benefits with that purchasing carrier.

5. Initiation -- The monthly compensation guarantee payment will be the responsibility of an interim service operator from the date of the start-up of interim operations until its proposed acquisition is allowed, denied or withdrawn, or until the employee's eligibility terminates, whichever occurs first. The successful purchaser will have responsibility for monthly compensation guarantees once the proposed transaction is consummated, until the employee's eligibility terminates.

6. Elections -- Nothing in this agreement shall be construed as depriving any employee of the purchasing carrier whose employment relationship began prior to the effective date of this agreement of any rights or benefits or eliminating any obligations which such employee may have under any existing job security or other protective conditions or arrangements; provided, however, that if a protected employee otherwise is eligible for protection under both this agreement and some other job security or other protective conditions or arrangements, he shall elect between protection under this agreement and, for so long as he continues to be protected under the arrangement which he so elects, he shall not be entitled to any protection or benefit (regardless of whether or not such benefit is duplicative) under the arrangement which he does not so elect; and,

provided further, that after expiration of the period for which such employee is entitled to protection under the arrangement which he so elects, he may then be entitled to protection under the other arrangement for the remainder, if any, of his protective period under that arrangement.

7. Seasonal Work -- In computing the monthly compensation guarantee for employees who, during the period beginning June 1, 1978 and ending on May 31, 1979, did not hold a job on a year-round basis due to seasonal requirements, their monthly compensation guarantee will be computed using the actual number of months assigned to work in such period. Such guarantee as thus computed will apply to the same number of months each year after commencing work with a purchasing carrier.

Article IV. Miscellaneous

1. Effect of Severance Payment -- This agreement shall not apply to any bankrupt carrier employee who has elected to receive a severance payment under any other protective conditions or agreement.

2. Health and Welfare Coverage -- The purchasing carrier will pay a premium under the national health and welfare, dental and supplemental sickness plans, for the first month of employment of bankrupt carrier employees accepting employment pursuant to this agreement with the purchasing carrier.

3. Milwaukee or Rock Island employees accepting employment with a purchasing carrier pursuant to this agreement will be given credit for service with the former employer in computing vacation qualification, entry rates and sick leave.

4. This agreement shall be construed as a separate agreement by and on behalf and each of the carriers signatory hereto and its employees represented by each of the organizations signatory hereto.

Signed at Washington, D.C., this 1st day of MARCH, 1980.

FOR THE CARRIERS:

Director, Northeast 186
Comm. Unit of Service Railway
Development, and other on Northeast 27

G. E. Egger

E. M. Hamilton
C.M. ST. P. & P. R. R. Co.

J. L. Averary
The Union City Station of B.

J. L. Averary
Provision & Equipment

C. March
ILLINOIS CENTRAL GULF RR

E. C. Zerk
Truck, Peoria & Western

H. F. Beunen
San Mgr. Eastern

W. R. Denton
VP
Southern Pacific Trans Co

FOR THE EMPLOYEES:

AMERICAN TRAIN DISPATCHERS
ASSOCIATION:

B. C. Willard

AMERICAN RAILWAY SUPERVISORS
ASSOCIATION:

Frank L. L. L.

BROTHERHOOD OF LOCOMOTIVE
ENGINEERS:

BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYEES:

Orin S. S.

(LABOR PROTECTIVE AGREEMENT-MIDWEST RAIL RESTRUCTURING)

[Signature]
SWIFT AIRCRAFT RAILROAD CO.

[Signature]
MISSOURI PACIFIC RAILROAD

[Signature]
SLEIPER RAILROAD

[Signature]
MISSOURI PACIFIC RAILROAD
C. J. [Signature]
[Signature] - [Signature]

[Signature]
S.A.V.R. - [Signature]
C.M.T.C.

BROTHERHOOD OF RAILROAD SIGNALMEN:

[Signature]

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

[Signature]

BROTHERHOOD RAILWAY CARRIERS OF
THE UNITED STATES AND CANADA:

[Signature]

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS:

[Signature]

INTERNATIONAL BROTHERHOOD OF
BOILERMAKERS, IRON SHIP BUILDERS,
BLACKSMITHS, FORGERS AND HELPERS:

[Signature]

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS:

[Signature]

(LABOR PROTECTIVE AGREEMENT-MIDWEST RAIL RESTRUCTURING)

INTERNATIONAL BROTHERHOOD OF
FIREFMEN AND OILERS:

John J. MacFarlane JR

RAILROAD YARDMASTERS OF AMERICA:

J. C. Thayer

RAILWAY EMPLOYE'S DEPARTMENT,
AFL-CIO:

James E. Galt JR

SHEET METAL WORKERS'
INTERNATIONAL ASSOCIATION:

Richard E. Martin

UNITED TRANSPORTATION UNION:

Paul A. Martin

EXHIBIT 2

RECEIVED UTU

JUL 22 1993

LEGAL DEPARTMENT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JERRY W. VOLKMAN, et al,

Plaintiffs,

v.

UNITED TRANSPORTATION UNION,
et al,

Defendants.

Case No. 83-6025-T

entered 7/21/93

efu

FINAL JUDGMENT

NOW, on this 9th day of July, 1993, this matter comes before the Court for the entry of judgment. Plaintiffs appear by and through one of their attorneys of record, Lee H. Woodard; defendants St. Louis Southwestern Railroad Company ("SSW"), Southern Pacific Transportation Company ("SPT") and Southern Pacific Company ("SPC") appear by and through one of its attorney of record, Robert S. Bogason; and defendant United Transportation Union ("UTU") appears by and through its attorneys of record, Pamela Walker and Norton Newborn.

After reviewing its Opinion and Order of September 14, 1989, its Memorandum and Order filed July 24, 1991, its Memorandum and Decision filed December 27, 1991, its Order

filed May 5, 1992, its Memorandum and Order filed September 9, 1992, and the evidence and arguments presented by the parties during the hearing of April 22, 1993, the Court finds that this matter involves multiple claims and parties and that final judgment should be entered as to all claims involving all parties, except as stated below. The Court further finds that such final judgment should be entered as there is no just reason for delay in entering the judgment. Accordingly, the Court expressly directs the entry of final judgment as follows.

Based upon the findings of fact and conclusions of law in the Court's earlier Memorandums, Opinions and Orders, and after considering the evidence presented during the hearing of April 22, 1993, as well as the arguments and briefs of the parties, the Court finds that a joint and several judgment should be entered against defendants SSW and UTU, and in favor of the identified class members, in the amounts indicated:

A. Judgment in the amount of \$ 3,494,992.52 for back wage damages for those class members shown on Exhibit "A" hereto. This amount will be distributed to each of those class members in accordance with the schedules contained in Exhibit A.

B. Judgment in the amount of \$ 195,825.22 for pool caboose allowance damages through December 31, 1991, for those class members shown on Exhibit "B" hereto, who have been identified by the Court as being pre-1983 Hires. This amount will be distributed to those class members in accordance with the schedules contained in Exhibit B.

C. Judgment in the amount of \$ 1,823,790.05 for prejudgment interest at the rate of ten percent (10%) per annum on the money judgments entered in Paragraphs A and B above, to be distributed to those class members shown in Exhibits A and B in accordance with the schedules contained in those Exhibits.

The Court further finds that prejudgment interest shall continue to accrue on back wage damages and on pool caboose damages until the date of this judgment.

The Court further finds that the defendants SSW and UTU, and each of them, shall be jointly and severally liable for the payment of the above described back wage damages, pool caboose damages and the accrued prejudgment interest thereon.

The Court further finds that the issue of whether the plaintiffs who are listed in Exhibits A and B should be

awarded judgment for attorneys fees shall be reserved for later decision. If the Court subsequently finds that such attorneys fees should be awarded, the same can then be determined upon hearing.

The plaintiffs listed on Exhibits A and B shall also have a joint and several judgment against defendants SSW and UTU for the reimbursable costs and expenses incurred in prosecuting this action.

In addition, the Court finds as follows:

(1) In its Opinion and Order of September 14, 1989, and in its Memorandum and Order filed July 24, 1991, the Court ruled that the 1983 Hires should be granted injunctive relief conferring them with prior rights at one of defendant SSW's terminals on the Tucumcari Line;

(2) That on March 4, 1992, the Court entered a Preliminary Injunction for the purpose of preserving the prior rights of the 1983 Hires;

(3) Upon the entry of the Court's Preliminary Injunction, Defendants SSW and UTU implemented the ordered injunctive relief by granting prior rights to the 1983 Hires in accordance with the Court's order.

(4) That unless 1983 Hires still employed by defendant St. Louis Southwestern Railroad Company are allowed to exercise prior rights previously ordered by the Court, they may not be able to protect and hold permanent jobs with defendant SSW at the Tucumcari Line terminals where they are granted prior rights;

(5) That under the circumstances, and except as otherwise provided, the preliminary injunctive relief previously ordered by the Court on March 4, 1992, should be made permanent;

(6) That those former Rock Island employees having prior rights at the SSW's terminal in Eldon should be specified.

(7) That during the trial of this case, defendant SSW attempted to implement a voluntary severance program which provided for substantial payments to class members and other employees in exchange for their resignation from the SSW, provided that they released and forfeited all rights and claims against defendant SSW, including the claims asserted in this action.

Accordingly, the Court finds that judgment shall be entered for injunctive relief and pursuant to such judgment, defendants SSW and UTU shall comply and act in accordance with, and continue to comply and act in accordance with, each of the following paragraphs:

1. Defendants SSW and UTU shall grant and confer prior rights upon the below named class members, previously referred to by the Court as 1983 Hires, at the SSW terminal of their first SSW employment as set forth below. Those 1983 Hires shall exercise brakemen's and conductor's seniority and be given priority in the same manner as the former Rock Island employees who were granted prior rights prior to 1983 at the SSW Pratt and Dalhart terminals. The prior rights of the named 1983 Hires shall follow the last pre-1983 Hire prior rights man at each location, and their relative standing among themselves shall be based upon their Rock Island seniority dates. Their relative standing among themselves and the order of their prior rights is as follows:

PRATT

<u>Worker</u>	<u>Rock Island Seniority Date</u>
L. B. Bettles	03/11/66
J. D. Spaulding	05/23/69
D. G. Woolley	08/15/69
B. A. Beeton	04/20/70
N. D. Benhardt	06/13/70
W. E. Donahue	03/10/73
G. D. Kickhaefer	04/03/79
R. D. Ludden	04/06/79
E. C. Nuss	04/21/79
D. B. Hill	05/10/79
R. D. Parker	05/12/79

DALHART

L. E. Scott	12/20/68
R. A. Corona	08/29/69
D. N. Mascareno	11/16/72
M. R. Lynn	02/04/78
U. Ruiz	05/22/78
G. R. Vernon	03/25/79
S. L. Gonzolas	04/18/79
J. A. Schlesoner	04/24/79

2. Defendants SSW and UTU shall continue to recognize the existing prior rights of the former Rock Island employees who are pre-1983 Hires. These shall include but not be limited to prior rights at the SSW's Eldon terminal for the following former Rock Island employees:

C. D. Crane	06/15/63
R. D. Miller	07/03/63
D. W. Frank	04/27/65

3. The defendant SSW shall pay pool caboose allowances to the class members shown on Exhibits A and B in accordance with existing labor contracts.

4. The prior rights granted to the 1983 Hires shall be considered to have the same status as if provided for by an implementing agreement negotiated under the March 4 Agreement. Thus, those prior rights are subject to modification through future collective bargaining the same as are prior rights granted under existing labor contracts between the defendants SSW and UTU.

5. Any disputes regarding plaintiffs prior rights and seniority shall be handled by the SSW and UTU through the grievance and arbitration procedures mandated by the Railway Labor Act and/or the Interstate Commerce Act.

6. Defendant SSW and SPT are further enjoined from requiring, demanding, recommending or suggesting that any former Rock Island brakeman who has been awarded relief in this action, or who has claimed to be entitled to relief in this action, regardless of whether such relief has been awarded, must forfeit, release, discharge or waive his rights

and claims to recover injunctive relief and monetary damages in this action or in a later appeal as a condition of receiving severance pay from defendant Railroads or any of them.

Finally the Court finds that all claims which the plaintiff class, or any member of the plaintiff class, was entitled to assert and recover upon in this action, are merged into the Courts judgments and that those judgments shall bar any such future claims.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that a joint and several judgment is entered in favor of those members of the of the plaintiff class who are shown in Exhibits A and B hereto, and against defendants SSW and UTU, in the total amount of \$ 5,514,607.79 for back wage damages, pool caboose allowance damages and prejudgment interest, all to be distributed as previously described herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the injunctive relief previously ordered herein shall continue to be implemented.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that additional prejudgment interest shall accrue to the date of this judgment on the pool caboose damages shown on Exhibit B,

and defendants SSW and UTU shall be jointly and severally liable for such additional accrued interest.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a joint and several judgment is entered in favor of the plaintiffs who are shown on Exhibits A and B hereto, and against defendants SSW and UTU, for all reimbursable costs and expenses incurred in prosecuting this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against defendant SPT to the extent that defendant SSW is unable to pay and satisfy any of the money judgments entered against the SSW, or any part of those judgments, in which case plaintiffs may recover from defendant SPT the remaining amounts for which defendant SSW is liable but cannot pay or satisfy.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the issue of whether these plaintiffs shown in Exhibits A and B should be granted judgment for their attorney fees is reserved for decision; and if the Court finds such judgment should be granted, then, the Court shall determine plaintiffs attorneys fees and grant judgment for the same upon a later hearing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of defendants SSW, SPT and UTU,

and against all class members who are not shown on Exhibits A and B hereto.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that except as to those claims on which judgment has been entered in favor of those class members shown on Exhibits A and B hereto, judgment is entered in favor of defendants SSW, SPT and UTU on the claims of the plaintiff class.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of defendant SPC and against all members of the plaintiff class.

IT IS FINALLY ORDERED, ADJUDGED AND DECREED that this judgment shall operate as a final judgment under Rule 54 of the Federal Rules of Civil Procedure, and that there is no just reason for delaying the entry of this judgment. Accordingly, the Court expressly directs the entry of judgment as set forth above.

UNITED STATES DISTRICT COURT JUDGE

APPROVED BY:

WOODARD, BLAYLOCK, HERNANDEZ,
PILGREEN & ROTH

By: Lee H. Woodard, #05936
Attorneys for Plaintiffs

APPROVED AS TO FORM ONLY, NOT SUBSTANCE:
SOUTHERN PACIFIC TRANSPORTATION CO.

By: Robert S. Bogason
Robert S. Bogason
Attorney for Defendant SSW
(APPROVED AS TO FORM ONLY)

APPROVED AS TO FORM ONLY, NOT SUBSTANCE:
UNITED TRANSPORTATION UNION

By: Pamela D. Walker
Pamela D. Walker
Norton N. Newborn
Attorneys for Defendant UTU
(APPROVED AS TO FORM ONLY)

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

FILED
U.S. DISTRICT COURT
DISTRICT OF KANSAS
DEC 15 2 41 PM '93

JERRY W. VOLKMAN, et al.,
Plaintiffs,

v.

UNITED TRANSPORTATION UNION, et al.,
Defendants.

RALPH L. DELOACH
CLERK
BY *R. DeLoach*
AT WICHITA, KS.

CIVIL ACTION
NO. 83-6025-FGT

ENTERED ON THE DOCKET
DATE: 12-17-93

MEMORANDUM AND ORDER

This matter is before the court on the plaintiff's motion for approval of settlement, Dec. 488. This class action breach of contract/breach of duty of fair representation suit has proceeded through trial and lengthy post-trial proceedings. Final judgment has been entered in favor of certain members of the plaintiff class and against the defendants. Notices of appeal have been filed by all parties.

Rule 23 of the Federal Rules of Civil Procedure provides, "A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs." The court finds that proper notice by mail was provided to all class members.

The notice detailed the prior proceedings, the relief ordered by this court, and the pending appeals before the Tenth Circuit Court of Appeals. The notice adequately described the terms of the

settlement. The notice advised the class members of the date and location of the hearing, of their rights to appear and speak for or against the proposed settlement, and their rights if the court approves the settlement.

The parties have submitted the proposed settlement to the court. The terms of the proposed settlement are generally as follows. The seniority relief ordered by the court in its preliminary injunction and final judgment shall continue in effect. The defendants shall pay the sum of \$3,000,000 to be distributed to the class members previously awarded monetary relief. The \$3,000,000 proceeds shall first be applied to the payment of costs and expenses in the amount of \$178,000 and to attorney fees in the amount of \$700,000. The remaining \$2,122,000 will be distributed on a pro rata basis to those class members who were granted monetary relief by the court.

The court held a hearing on December 3, 1993. The court heard the statements of counsel for all the parties regarding the terms of the settlement proposal and their competing views on the likelihood of success in the pending appeals before the Tenth Circuit. Counsel for the plaintiffs disclosed the results of a class vote on the settlement. The 1983 hires voted to approve the settlement by a margin of 3 to 1. The 1982 hires voted to approve the settlement by a margin of 2 to 1. The class members who have been awarded no relief by the court (and are to receive no relief in the settlement) voted against the settlement. The court invited comments from affected class members and spectators.

Seven persons spoke at the hearing (six class members and one spouse of a class member). Class member Lynn Swonger stated that he had few objections to the settlement; his primary concern was the protection of seniority rights previously granted. This matter was discussed in open court by counsel, the court, and Mr. Swonger. It was decided that the wording of the settlement agreement was adequate to protect the seniority rights previously in effect pursuant to agreement of the parties and/or previously granted in the court's judgment.

The objections to the proposed settlement voiced by other class members fall into two general categories: (1) objections by former Eldon, Missouri employees as to their failure to be rehired by the railroads; and (2) objections by employees who desire to have their seniority rights at the location of their choice. The court has considered and rejected these objections at numerous other times during the lengthy course of this litigation. The objections do not present the court with any reason to find the proposed settlement to be unfair.

The court finds that the amount being offered in compromise of this litigation is reasonable.... The \$3 million settlement figure represents a discount from the approximately \$5.5 million judgment, yet still represents a substantial sum of money. The seniority relief contained in the settlement proposal is identical to that ordered by the court. The court has considered and rejected other forms of seniority relief during the course of this action. The court reiterates its view that no plaintiff is entitled to a job at

the location of his choice. The seniority provisions are reasonable and equitable.

The settlement of this matter will eliminate the uncertainty inherent in the appeal from this court's judgment. The Tenth Circuit's decision in Aguinaga v. United Food and Commercial Workers International Union, 993 F.2d 1480 (10th Cir. 1993) casts significant doubt on the court's ability to assess attorney fees against the defendants. Plaintiffs' counsel shall receive a fee from the settlement proceeds.

This matter has been tried, injunctive and monetary relief have been ordered, and appeals have been taken. The likelihood of success on appeal for those class members who received no relief is low. This court does not believe that the appeal to the Tenth Circuit would result in additional relief -- monetary or seniority -- being awarded to the class. While the parties do disagree on the likelihood of reversal, a significant jurisdictional issue is involved in the pending appeals. Counsel for the plaintiff class recommend the proposed settlement and have agreed to a significant reduction in attorney fees in order to facilitate settlement. No undue benefit is conferred on the named plaintiffs at the expense of the unnamed class members. In fact, the named plaintiffs will not all receive relief under the settlement. Class counsel have adequately represented the interests of the class members throughout the entire course of proceedings, including settlement negotiations. The court shall approve the proposed settlement in its entirety.

IT IS BY THE COURT THEREFORE ORDERED that plaintiffs' motion for approval of settlement (Doc. 488) is hereby granted.

Counsel for the plaintiffs shall submit the appropriate journal entry within thirty (30) days from the date of this order.

At Wichita, Kansas, this 15th day of December, 1993.

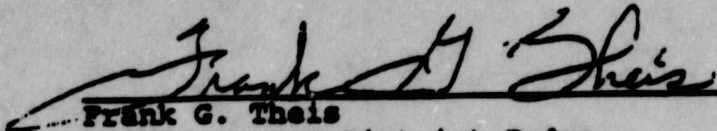

Frank G. Theis
United States District Judge

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JUN 20 3 08 PM '97

JERRY W. VOLKMAN, et al,

Plaintiffs,

-vs-

UNITED TRANSPORTATION
UNION, et al,

Defendants.

Case No. 83-6025-FGT

RALPH L. DELOACH
CLERK
BY [Signature] DEPUTY
AT WICHITA, KS.

RECEIVED

JUL 3 1997

LEGAL

ENTERED ON THE DOCKET
DATE: 6/23/97

MEMORANDUM AND ORDER

NOW on this 20 day of JUNE, 1997, this matter is before the Court for the entry of an Order relating to the specific rulings of this Court for the seniority placement of the "off-line" Plaintiffs in this action. The "off-line" Plaintiffs appear by and through one of their attorneys of record, Bruce H. Stoltze; the Defendants, St. Louis Southwestern Railroad Company ("SSW"), Southern Pacific Transportation Company ("SPT") and Southern Pacific Company ("SP") appear by and through its attorney of record, Mark L. Bennett, Jr.; and the Defendant Union Transportation Union ("UTU") appears by and through its attorney of record, Norton N. Newborn.

After reviewing its Opinion and Order of September 14, 1989, its Memorandum and Order filed July 24, 1991, the Opinion of the United States Court of Appeals for the Tenth Circuit dated January 10, 1996, this Court's Memorandum and Order of March 19, 1997 and this Court's Memorandum and Order of May 16, 1997, the Court finds that this Court has previously ruled that the off-line Plaintiffs should be granted injunctive relief conferring them with prior rights at one of

the Defendant SSW's terminals on the Tucumcari line and that these former Rock Island employees' conductor and brakeman prior rights at SSW's terminals should be specifically set forth.

Accordingly, the Court finds that injunctive relief pending final judgment shall be and is hereby entered and that the Defendants SSW, SPT, SP and UTU shall comply and act in accordance with each of the following paragraphs:

1. The Defendants UTU and SSW (including any entity operating the SSW now or in the future) shall grant and confer prior rights upon the off-line Plaintiffs, at the SSW terminal of their first SSW employment as set forth in Exhibit "A" attached hereto. These off-line Plaintiffs shall exercise brakeman's and conductor's seniority and be given priority and relative standing rights in the same manner as the former Rock Island employees who were previously granted prior rights at the SSW Pratt and Dalhart terminals. The prior rights of these "off-line" Plaintiffs and their relative standing among themselves and the other former Rock Island employees and the other SSW employees shall be based upon their Rock Island brakeman seniority dates. The relative standing among themselves and the other SSW employees and the order of their prior rights is as is specified in the attached Exhibit "A".

2. The prior rights granted to the off-line Plaintiffs shall be considered to have the same status as if provided for by an implementing agreement negotiated under the March 4, 1980 Agreement. Thus, these prior rights are subject to modification through future collective bargaining the same as are prior rights granted under existing labor contracts between the Defendants SSW and UTU.

3. Any disputes regarding Plaintiffs prior rights and seniority shall be handled by the SSW and UTU through the grievance and arbitration procedures mandated by the Railway Labor Act and/or the Interstate Commerce Act/Surface Transportation Act.

4. The Defendants UTU and SSW shall immediately implement the prior rights and seniority specified herein. The seniority roster shall be updated to reflect the seniority as specified in the attached Exhibit "A". Such seniority changes shall be made to the attached seniority roster of January 1, 1996 and on any other appropriate seniority rosters, including but not limited to, any separate prior rights seniority rosters at the terminals of Dalhart and Pratt. Furthermore, this Order providing for these seniority rights shall be incorporated into the final judgment hereinafter entered by the Court.

/s/ FRANK G. THEIS *Theis*
Frank G. Theis
United States District Court Judge

APPROVED BY:

Bruce H. Stoltz
By: _____
Bruce H. Stoltz (PK0005742)
One of the Attorneys for Off-Line Plaintiffs

APPROVED AS TO FORM ONLY, NOT SUBSTANCE:

Norton N. Newborn
By: _____
Norton N. Newborn
Attorney for Defendant United Transportation Union

APPROVED AS TO FORM ONLY, NOT SUBSTANCE:

By: 

Mark L. Bennett, Jr.,
Attorney for Defendants St Louis Southwestern Railroad Company (SSW);
South Pacific Transportation Company (SPT) and Southern Pacific company (SP)

SSW TRAINMAN SENIORITY ROSTER - JANUARY 1, 1996
As Amended Per Court Order

NAME	CODE	CONDUCTOR SENIORITY DATE	BRAKEMEN SENIORITY DATE	YARDMEN SENIORITY DATE	PRIOR RIGHTS	FORMER RI CONDUCTOR	SENIORITY BRAKEMEN	DATES YARDMEN
662 Leatherman, T.E.		03/24/80	03/24/80	03/24/80 P		03/16/74	02/17/88	
663 Naylor, L. E.			03/24/80	03/24/80 KC				03/20/88
664 Brown, R. T.			03/24/80	03/24/80 KC				04/02/88
665 Montgomery Sr., R. L.		03/23/82	03/24/80	03/24/80 KC				08/02/88
666 Sigman, R. G.			03/24/80	03/24/80 KC				04/13/87
667 Brull, J. J.	F		03/24/80	03/24/80 KC				05/10/87
668 Harvey, G. D.	A		03/24/80	03/24/80 KC				05/22/87
669 Crane, S. E.		07/04/83	03/24/80	03/24/80 KC				05/25/87
670 Ross, T. R.		07/04/83	03/24/80	03/24/80 KC				02/08/88
671 Etter, W. F.			03/24/80	03/24/80 KC				02/23/88
672 Hader, R. W.	F		03/24/80	03/24/80 KC				08/21/88
673 Fry, R. D.		07/04/83	03/24/80	03/24/80 KC				08/22/88
674 Peary, R. J.		07/04/83	03/24/80	03/24/80 KC				10/07/88
675 Belshe, J. T.		07/04/83	03/24/80	03/24/80 KC				02/28/70
676 Randolph, C. G.		03/24/80	03/24/80	03/24/80 P			04/08/73	
677 Clements, H. E.		03/24/80	03/24/80	03/24/80 D			05/12/73	
678 Holland, R. D.		03/24/80	03/24/80	03/24/80 P			03/10/74	
679 Keel, B. L.		03/24/80	03/24/80	03/24/80 D			03/24/80	
680 Goodwin, K. M.	F	03/24/80	03/24/80	03/24/80 D		03/24/80	03/24/80	
681 Kannon, C. N.		03/24/80	03/24/80	03/24/80 D		03/24/80	03/24/80	
682 Hart, J. A.		03/24/80	03/24/80	03/24/80 D			03/24/80	
683 Livermore, K. R.		03/24/80	03/24/80	03/24/80 D			03/24/80	

The following former RI-Herington, Eldon and Off-line men hired and prior righted at Dalhart and Pratt are junior to the preceding prior rights conductor/brakemen at their respective prior rights terminal. At other than their prior rights terminal, they rank with other former RI conductors and brakemen relative to their dates on the former RI rosters.

684 Ward, L. D.	03/24/80	03/24/80	03/24/80 P	03/28/82	08/20/88
685 Gardiner, L. D.	03/24/80	03/24/80	03/24/80 P	03/02/82	05/21/87
686 Ewing, J.	03/24/80	03/24/80	03/24/80 P	10/07/83	08/01/87
687 Sly, J. N.	03/24/80	03/24/80	03/24/80 P	10/08/83	08/07/87
688 Hubbard, E. W.	03/24/80	03/24/80	03/24/80 P	10/20/85	08/13/87
689 Plank, A. V.	03/24/80	03/24/80	03/24/80 P	12/21/85	08/30/88
690 Ross, J. H.	03/24/80	03/24/80	03/24/80 P	12/23/85	01/28/89
691 Becker, D. D.	03/24/80	03/24/80	03/24/80 P	11/11/88	01/31/89
692 Hay, J. A.	03/24/80	03/24/80	03/24/80 P	11/12/88	01/31/89
693 Rigg, H. A.	03/24/80	03/24/80	03/24/80 D	11/13/88	04/01/89
694 Utech, J. C.	03/24/80	03/24/80	03/24/80 P	11/14/88	04/14/89
695 Lacey, J. E.	03/24/80	03/24/80	03/24/80 P	11/16/88	08/22/89

SSW TRAINMAN SENIORITY ROSTER - JANUARY 1, 1996
As Amended Per Court Order

NAME	CODE	CONDUCTOR SENIORITY DATE	BRAKEMEN SENIORITY DATE	YARDMEN SENIORITY DATE	PRIOR RIGHTS	FORMER RI CONDUCTOR	SENIORITY BRAKEMEN	DATES YARDMEN
696 Obermayer, Jr., M. C.		03/24/80	03/24/80	03/24/80 P		11/18/88	08/27/89	
697 Edward, J. F.		03/24/80	03/24/80	03/24/80 D		08/07/84	07/05/89	
698 Humble, R. L.		03/24/80	03/24/80	03/24/80 D		08/30/88	08/12/80	
699 Wade, L. W.		03/24/80	03/24/80	03/24/80 D		08/08/88	05/27/83	
700 Schlosser, J. M.		03/24/80	03/24/80	03/24/80 D		08/08/88	05/28/83	
701 Chalker, H. D.		03/24/80	03/24/80	03/24/80 D		08/12/88	08/20/84	
702 Kelso, J. T.		03/24/80	03/24/80	03/24/80 D		08/14/88	12/18/84	
703 Solomon, G. E.		03/24/80	03/24/80	03/24/80 D		08/15/88	03/18/85	
704 Cohen, P. D.		03/24/80	03/24/80	03/24/80 D		08/18/88	03/18/85	
705 Hader, R. E.		03/24/80	03/24/80	03/24/80 D		08/30/87	05/08/85	
706 Brunow, P. D.		03/24/80	03/24/80	03/24/80 D		03/24/71	08/08/85	
707 Volkman, J. W.		03/24/80	03/24/80	03/24/80 D		08/18/88	08/10/85	
708 Callaway, F. A.		03/24/80	03/24/80	03/24/80 D		03/24/71	07/02/85	
709 Garfield, R. L.		03/24/80	03/24/80	03/24/80 D		04/22/70	03/17/88	
710 Schneider, G. A.		03/24/80	03/24/80	03/24/80 D		04/22/70	03/18/88	
711 Bottles, R. A.		03/24/80	03/24/80	03/24/80 D		04/22/70	03/18/88	
712 Becker, S. L.		03/24/80	03/24/80	03/24/80 D		04/22/70	04/15/88	
713 Kelso, J. L.		03/24/80	03/24/80	03/24/80 D		04/22/70	05/28/88	
714 Brown, K. W.		03/24/80	03/24/80	03/24/80 P		04/24/87	08/05/88	
715 Moore, R. L.		03/24/80	03/24/80	03/24/80 P		04/25/87	08/08/88	
716 Cooper, J. C.	F	03/24/80	03/24/80	03/24/80 D		07/07/88	08/21/88	
717 Murray, P. H.		03/24/80	03/24/80	03/24/80 D		08/07/73	08/28/88	
718 Bottles, L. B.	V	11/05/82	11/05/82	11/05/82 P		04/22/70	03/11/88	
719 Scott, L. E.	V	12/31/82	12/31/82	12/31/82 D		08/08/72	12/20/88	
720 Spaulding, J. D.	V	03/01/83	03/01/83	03/01/83 P		08/07/73	05/23/88	
721 Woolley, D. G.	V	03/01/83	03/01/83	03/01/83 P		08/05/72	08/15/88	
722 Corona, R. A.	V	03/01/83	03/01/83	03/01/83 D			08/28/88	
723 Beeton, B. A.		03/15/83	03/15/83	03/15/83 P		04/20/74	04/20/74	
724 BenHardt, N. D.	X-V	03/16/83	03/16/83	03/16/83 P		08/13/74	08/13/70	
725 Mascareno, D. N.	V	07/03/83	07/03/83	07/03/83 D			11/18/72	
726 Donahue, W. E.	X-V	07/03/83	07/03/83	07/03/83 P			03/10/73	
727 Lynn, M. R.	V	07/03/83	07/03/83	07/03/83 D			02/04/78	
728 Molloy, L. D.		07/03/83	07/03/83	07/03/83 P		08/08/88	04/08/78	
729 Ruiz, Jr., U.	V	07/03/83	07/03/83	07/03/83 D			05/22/78	
730 Vernon, Jr., G. R.	V	07/03/83	07/03/83	07/03/83 D		05/23/79	03/25/79	
731 Kickhafer, G. D.	X-V	07/03/83	07/03/83	07/03/83 P			04/03/79	
732 Ludden, R. D.	V	07/03/83	07/03/83	07/03/83 P			04/08/79	
733 Gonzales, S. L.	V	07/03/83	07/03/83	07/03/83 D			04/08/79	

STB FD

32760

(Sub33)

4-28-99

B

~~19453~~ / 94253

194 255

KUTAK ROCK
THE OMAHA BUILDING
1650 FARNAM STREET
OMAHA, NEBRASKA 68102-2180
402-346-6000
FACSIMILE 402-346-1148
<http://www.kutakrock.com>



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PITTSBURGH
WASHINGTON

BRENDA J. COUNCIL
brenda.council@kutakrock.com

April 27, 1999

VIA FEDEX

Secretary
Surface Transportation Board
Attention: Joseph Levin
1925 K Street, N.W.
Washington, D.C. 20423-0001

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Office of the Secretary
APR 28 1999
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Public Record

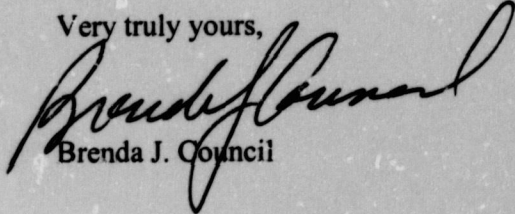
B

Re: Finance Docket No. 32760 - Sub No. 33
In the Matter of: Union Pacific Corporation, Union Pacific Railroad Company
and Missouri Pacific Railroad Company - Control and Merger - Southern Pacific
Rail Corporation, Southern Pacific Transportation Company, St. Louis
Southwestern Railroad Company, SPCSL Corp. and The Denver and Rio Grande
Railroad Company

Dear Mr. Levin:

Enclosed please find the original and 11 copies of Union Pacific Railroad Company's
Opposition To Petitioners' Motion For Stay, along with the original and 11 copies of the
Declaration of John M. Raaz for filing in the above-referenced matter. Also enclosed are three
(3) copies of the Motion for Stay on 3.5 inch floppies in WordPerfect 5.1 format.

If you should have any questions or require further documentation, please do not hesitate
to call me.

Very truly yours,

Brenda J. Council

lat

Enclosures

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Office of the Secretary

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (Sub-No. 33)



UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY

-CONTROL AND MERGER-

SOUTHERN PACIFIC RAIL CORPORATION,
SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS
SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE
DENVER AND RIO GRANDL WESTERN RAILROAD COMPANY

(Arbitration Review)

UNION PACIFIC RAILROAD COMPANY'S
OPPOSITION TO PETITIONERS' MOTION FOR STAY

Brenda J. Council
Kutak Rock
The Omaha Building
1650 Farnam Street
Omaha, Nebraska 68102
(402) 346-6000

Attorney for Union Pacific Railroad
Company

**UNION PACIFIC RAILROAD COMPANY'S
OPPOSITION TO PETITIONERS' REQUEST FOR STAY**

Union Pacific Railroad Company ("Union Pacific") hereby opposes the Motion for Stay of implementation of an arbitration decision filed by Lyn Swonger and James Spaulding, on behalf of themselves and all others similarly situated ("Petitioners"), on April 20, 1999. The Petitioners' request for stay is wholly lacking in merit and, therefore, should be denied.

**I.
INTRODUCTION**

This matter involves the implementation of the coordination of operations and workforces of Union Pacific and its affiliates, and Southern Pacific Transportation Company ("Southern Pacific") and its affiliates, including the St. Louis Southwestern Railway ("SSW"), at the Salina, Kansas, hub in connection with the merger of those two railroads, which was approved by the Surface Transportation Board ("Board"). Union Pacific Corp. - Control and Merger - Southern Pacific Transportation Co., STB Finance Docket No. 32760 No. 44 (served August 12, 1996). The coordination is being implemented pursuant to the New York Dock implementing agreement imposed by Arbitrator William E. Fredenberger, Jr., in his decision issued on March 25, 1999 ("Fredenberger Award").

The agreement imposed by Arbitrator Fredenberger is the agreement that Union Pacific and the United Transportation Union ("UTU") tentatively agreed upon following negotiations conducted under Article I, Section 4 of New York Dock. With respect to seniority integration, the parties had agreed that dovetailing employees into the new roster using the date of hire on the property where the employee was last hired, would provide for a fair and equitable arrangement of forces. However, the UTU Associate General Chairman representing the former SSW

employees refused to initial the tentative agreement because of objections to the seniority integration methodology voiced by former Rock Island employees. After being advised that the tentative agreement could not be submitted for ratification without the approval of all of the affected General Chairmen, Union Pacific invoked arbitration under Article I, Section 4 of New York Dock.

Article VI.A. of the implementing agreement imposed by the Fredenberger Award required Union Pacific to give at least thirty (30) days' written notice to the UTU of its intent to implement the agreement. Accordingly, Union Pacific served the UTU with written notice on March 29, 1999, of its intent to implement the agreement on May 1, 1999. The Petitioners have moved to stay implementation of the Fredenberger Award pending resolution of their petition for review, which was filed on April 13, 1999. The Petitioners' request for a stay should be denied because they have failed to present a "substantial case on the merits" with some likelihood of success in their petition for review. See Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977).

II. ARGUMENT

Stays are extraordinary remedies, which are rarely granted. Consolidated Rail Corp. -- Abandonment, 1995 ICC LEXIS 264, *26 (served Oct. 5, 1995); Schneider Transport, Inc. -- Petition for Exemption, 1995 ICC LEXIS 141, *15 (served June 14, 1995). In order to obtain a stay, the burden is on the movant to establish:

(1) that there is a strong likelihood that the movant will prevail on the merits; (2) that the movant will suffer irreparable harm in the absence of a stay; (3) that other interested parties will not be substantially harmed; and (4) that the public interest supports the granting of the stay.

CSX Corp. – Control – Chessie Sys., Inc., 1996 ICC LEXIS 1, *5-6 (served Jan. 4, 1996) (citing Holiday Tours, 559 F. 2d 841) (citations omitted).¹ Petitioners have failed to meet their burden of establishing that a stay of the implementation of the Salina hub is appropriate under the recognized equitable criteria

A. THERE IS NO LIKELIHOOD THAT PETITIONERS WILL SUCCEED ON THE MERITS OF THEIR PETITION FOR REVIEW

“It is now firmly established that . . . arbitrators acting pursuant to authority delegated to them under New York Dock may override provisions of collective bargaining agreements when an override is necessary for the realization of the public benefits of approved transactions.” Union Pacific Corp. -- Control & Merger -- Southern Pacific Transp. Co., STB Finance Docket No. 32760 (Sub - No. 22) (served June 26, 1997), slip op. at 4, citing, Dispatchers, 499 U.S. 117; Railway Labor Executives’ Ass’n v. United States, 987 F.2d 806 (D.C. Cir. 1993); American Train Dispatchers Association v. I.C.C., 26 F.3d 1157 (D.C. Cir. 1994); United Transportation Union v. Surface Transportation Board, 108 F.3d 1425 (D.C. Cir. 1997). Seniority provisions “have consistently been modified in the past” in consolidations, and almost all consolidations require scope and seniority changes in order to effectuate the purpose of the transaction.” CSXT Corp. – Control – Chessie System Inc., & Seaboard C.L. Industries, Inc., Finance Docket No. 28905 (Sub-No. 27) (served Dec. 7, 1995), slip op. at 15, aff’d sub nom., UTU v. STB, infra. Consequently, seniority provisions have not been held to be “rights, privileges, or benefits” protected by Article I, Section 2 of New York Dock. Id.

The Petitioners are contending that Arbitrator Fredenberger did not have the authority to modify their seniority because the modification was not “necessary” to carry out the transaction.

¹ See also Conrail, 1995 ICC LEXIS 264 at *11; Schneider Transport, 1995 ICC LEXIS 141 at *4; New England

. . .

The question of whether a change is necessary to effect a public benefit of the transaction is one of fact. Under the Board's Lace Curtain standard of review, such findings by an arbitrator are not subject to review unless an egregious error has been committed. See CSX Corp., slip op.; UTU v. STB, 108 F.3d 1425. The Petitioners bear a heavy burden in attempting to establish that Arbitrator Fredenberger's approval of the parties' agreed-upon method of seniority integration was egregious error. Union Pacific submits that the Petitioners cannot meet this burden.

The Petitioners claim that there was no basis in the record for the arbitrator's determination with respect to the necessity of modifying the pre-merger seniority provisions to implement the hub operations at Salina. This claim completely ignores the fact that Union Pacific's Operating Plan, which was approved as part of the merger, was a part of the arbitration record. The Operating Plan specifically proposed the creation of "hub and spoke" operations at numerous locations, including Salina, and the placement of all employees in each new consolidated hub under a single collective bargaining agreement. Arbitrator Fredenberger found that "successful implementation of the 'hub and spoke' operations at Salina is an obvious public transportation benefit and that considerations of efficiency of that operation warrant the modification and elimination of existing seniority rights as set forth in the proposed implementing agreement." Fredenberger Award at 5.

Arbitrator Fredenberger also based his necessity determination on his review of prior arbitration awards involving the implementation of hub operations at other locations on Union Pacific. Specifically, Arbitrator Fredenberger relied on the awards issued by Arbitrator James E. Yost in UTU and Union Pacific Railroad Company, April 14, 1997, which involved the creation of the Denver and Salt Lake City hubs. Arbitrator Yost found that the seniority modifications in the implementing agreements were "necessary to effect the STB's approved consolidation and

Central R.R. - Acquisition & Operating Exemption, 1994 ICC LEXIS 280, *1-4 (served Dec. 22, 1994).

yield enhanced efficiency in operations benefiting the general public and the employees of the merged operations." As Arbitrator Fredenberger duly noted, the Board sustained Arbitrator Yost's finding of necessity with respect to the seniority modifications when it declined to review same. Union Pacific/Southern Pacific, slip op. at 4.

It is well established that Article I, Section 4 does not require any particular seniority integration methodology, and grants the parties through negotiation and, if necessary, the arbitrator the discretion to fashion the appropriate methodology for a particular case. See ATDA v. I.C.C., 26 F. 3d at 1163; Norfolk & Western Ry. New York, Chicago & St. Louis R.R. - Merger, Etc., Finance Docket No. 21510 (Sub-No. 3), slip op. at 5 (served Dec. 18, 1998). There is nothing inherently unfair about the methodology adopted here. In fact, the Petitioners agree that the date of hire, dovetail seniority integration methodology negotiated by the parties and adopted by the arbitrator is a fair method of consolidating the forces at Salina. Petition for Review at 12. What the Petitioners contest is the fact that the date of hire used for former Rock Island employees is their SSW hire date rather than their earlier date of hire on the Rock Island. As will be addressed more fully in Union Pacific's reply to the petition for review, the Petitioners are attempting to secure through this proceeding the type of seniority rights which were expressly denied them in the referenced court proceeding, i.e., "carry over" seniority. See Volkman v. UTU, et al., 73 F.3d 1047 (10th Cir. 1996), decision following remand, 962 F. Supp. 1364, (D. Kan. 1997). Instead, the Petitioners were granted prior rights at certain points. As Arbitrator Fredenberger aptly noted, the court's decision specifically provided that those prior rights were subject to modification through future collective bargaining. Award at 7; Volkman. Since Arbitrator Fredenberger adopted the seniority modifications that had been negotiated by

the parties, he acted consistent with the court order and well within his authority in determining that it was necessary to eliminate those prior rights.

B. THE PETITIONERS HAVE NOT DEMONSTRATED THAT THEY WILL BE IRREPARABLY HARMED

Contrary to the bare assertion in the motion for stay, implementation of the Salina hub will not result in irreparable harm to the Petitioners. Railroad mergers inevitably "result in . . . extensive transfers, involving expense to transferred employees." United States v. Lowden, 308 U. S. 225, 233 (1939). See also Norfolk & Western R. Co. v. Train Dispatchers, 499 U. S. 117, 132-33 (1991). Relocations are a necessary element of a railroad merger like the Union Pacific/Southern Pacific. Any adverse impact on Petitioners from the movement of the terminal from Pratt, Kansas, to Herington, Kansas, is economic in nature. Loss that is compensable in economic terms does not constitute irreparable harm:

The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable injury.

Virginia Petroleum Jobbers Ass'n. v. FPC, 259 F.2d 921,925 (D.C. Cir. 1958) (emphasis added); Conrail at *21 (quoting Virginia Petroleum). Moreover, injury that is compensated by labor protective benefits is not irreparable. See CSX Corp. at *11; New England Central R.R. - Acquisition & Operation Exemption, 1994 ICC LEXIS 274, **9-10 (Dec. 30, 1994)

The implementing agreement imposed by the Fredenberger Award provides for the payment of relocation benefits to any employee who either volunteers or is forced to relocate to Herington. Raaz Decl., ¶ 10. It is to be noted that 28 employees volunteered to relocate from Pratt to Herington as early as November, 1998, and that no employees have been forced to

relocate to Herington. Id. Thus, the Petitioners cannot maintain that they will be irreparably harmed by the implementation of the Fredenberger Award.

C. UNION PACIFIC WILL SUFFER IRREPARABLE
HARM IF A STAY IS ISSUED

The Petitioners also bear the burden of showing that Union Pacific will not be harmed if a stay is issued. They have failed to do so here. To the contrary, Union Pacific will unquestionably be harmed by the issuance of a stay. Union Pacific is losing the cost savings the Board recognized in approving the merger every day that the coordination of the Salina hub operations is delayed. Those cost savings can never be recovered. Cf. Union Pacific Corp. – Request for Informal Op. – Voting Trust Agreement, 1995 ICC LEXIS 1, * (served Jan. 6. 1995) (stay would harm respondent by “delay[ing] the potential realization of the economic benefits stemming from” the proposed transaction); New England Central, 1994 ICC LEXIS 280 at * (same); Wheeling Acquisition Corp. – Acquisition & Op. Exemption, 1990 ICC LEXIS 153 at *7-8 (stay would harm carrier by unnecessarily delaying commencement of transaction).

In addition to the fact that Union Pacific will not realize the cost savings associated with the coordination, it has incurred considerable expense in preparation for the coordination. Union Pacific is paying the lodging costs for engineers who relinquished their leases in Pratt in anticipation of relocation to Herington. Raaz Decl., ¶ 6. Computer programming changes are in progress, the training for many of the employees involved in this coordination has been completed, and train schedules are being adjusted to coincide with the May 1, implementation. There can be no doubt that Union Pacific and other affected employees will suffer substantial harm if a stay is granted.

D. THE PUBLIC INTEREST IS NOT SERVED BY A STAY

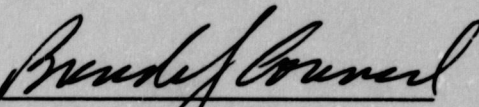
The Petitioners have failed to demonstrate that the public interest will be served by the grant of their request for a stay. Arbitrator Fredenberger found that "successful implementation of the 'hub and spoke' operations at Salina is an obvious public transportation benefit and that considerations of efficiency warrant the modification and elimination of existing seniority rights." Fredenberger Award at 5. Increased efficiencies result in reduced rates and improved service for the public. See CSX Corp., *infra* at *12. The issuance of a stay would only delay the public transportation benefits that the coordination will produce. Accordingly, the public interest would not be served, but would be injured, by the requested stay. See Conrail, *infra* at *25-26 (denying petition for stay where delaying proposed transaction, which would preserve rail service, was not in the public interest); Wheeling, *infra* at * 8 (public interest would not be served by stay where carriers and employees had made "costly decisions" in preparation for start-up of transaction, and shippers would be harmed by delay).

III.
CONCLUSION

For the foregoing reasons, the Petitioners' motion for a stay of implementation of the Fredenberger Award should be denied.

Respectfully submitted,

Dated: April 26, 1999

By 
Brenda J. Council
Kutak Rock
The Omaha Building
1650 Farnam Street
Omaha, Nebraska 68102
(402) 346-6000

CERTIFICATE OF SERVICE

I hereby certify that copies of Union Pacific's Opposition to Petitioners' Motion For Stay were served this 26th day of April by first-class mail, postage prepaid, upon the following:

M. B. Futhey, Jr.
Vice President, UTU
7610 Stout Road
Germantown, TN 38138

R. E. Karstetter
General Chairman, UTU
1721 Elfindale Drive, #309
Springfield, MO 65807

P. C. Thompson
Vice President, UTU
10805 West 48th Street
Shawnee Mission, KS 66203

A. Martin, III
General Chairman, UTU
2933 S.W. Woodside Drive, #F
Topeka, KS 66614-4181

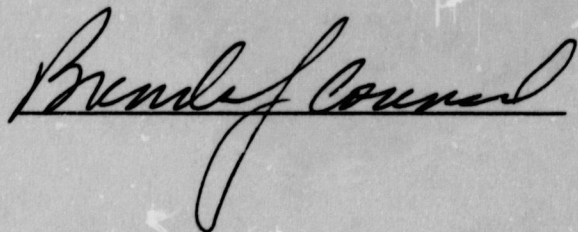
Joseph Guerrieri, Jr.
Debra L. Willen
Guerrieri, Edmond & Clayman, P.C.
1625 Massachusetts Avenue, N.W.
Suite 700
Washington, DC 20036

Don L. Hollis
Assoc. General Chairman, UTU
13247 C R 4122
Lindale, TX 75771

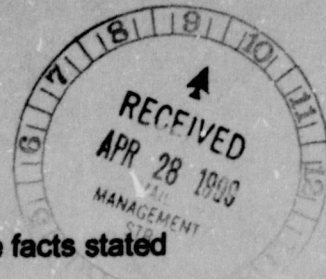
James Spaulding
515 North Main Street
Pratt, KS 67124

Lyn Swonger
1204 East Maple
Pratt, KS 67124

Bruce H. Stoltze
Brick, Gentry, Bowers,
Schwartz, Stoltze, Schuling
& Levis, P.C.
550 39th Street
Des Moines, IA 50312



DECLARATION OF JOHN M. RAAZ



I, John M. Raaz, pursuant to 28 U.S.C. Section 1746, declare that the facts stated herein are known to me to be true, based on my personal knowledge or on information received in the ordinary course of the discharge of my employment responsibilities.

1. My name is John M. Raaz. I am Assistant Vice President Labor Relations – Northern Region for the Union Pacific Railroad Company. My address is Room 330, 1416 Dodge Street, Omaha, NE 68179. In my capacity, I have overall responsibility for the Labor Relations' function for the Union Pacific Railroad's Northern Region train and engine service employees. This includes the geographic area impacted by the Salina Hub Agreement.

2. On April 22, 1999 I became aware that Attorney Bruce H. Stoltze on behalf of certain employees involved in the Salina Hub transaction had requested a stay of the implementation of the Salina Hub pending review of the arbitration decision in Union Pacific Railroad Company and United Transportation Union regarding the expanded Salina Hub. The facts leading up to the request for stay are described below.

3. Subsequent to extensive negotiations on the Salina Hub, I was advised that the Organization had agreed on terms and conditions and that the Agreement would be initialed by all three General Chairman and sent out for ratification.

4. On November 2, 1998, with concurrence of the UTU General Chairmen and UTU Vice Presidents involved in the Salina Hub negotiation, notice of intent to implement the Salina Hub on January 16, 1999 was served. In conjunction with that notice, the seniority selection workshop necessary to construct a consolidated seniority roster for the Salina Hub was scheduled for the week of November 16, 1998. The seniority workshop

was conducted, and in line with the terms of the proposed Salina Hub Implementing Agreement, the local chairmen contacted all of the affected employees and solicited their election as to whether or not they wish to place themselves within the Salina Hub. This workshop was completed on November 20, 1998. To conduct this workshop, approximately thirteen local chairmen were brought to Omaha, travel and lodging expenses were provided and the data necessary to complete the roster was gathered.

5. On December 2, 1998 the involved UTU General Chairmen and UTU Vice Presidents and Carrier representatives met at UTU headquarters in Cleveland, Ohio. Also present at the meeting were UTU President C. L. Little, UTU Assistant President B. A. Boyd, Jr. and UTU General Counsel C. J. Miller III. The outcome of that meeting only confirmed that the parties had reached a negotiated settlement for the Salina Hub.

6. Subsequently, on December 28, General Chairman Don L. Hollis, representing the former SSW Trainman, indicated that he was unwilling to sign the agreement as had previously been promised. As a result, an arbitration session was held on February 23, 1999 in Dallas, Texas. Appearing at that arbitration session were representatives not only of the United Transportation Union and the Carrier, but Attorney Stoltze on behalf of the employees named in his request for stay.

7. The seniority of the former RI Employees and the SSW Employees were primary issues raised at the Arbitration as well as the Carrier's right to relocate employees to Herington. On March 25, 1999 Mr. Fredenberger disposed of those arguments and imposed the negotiated Implementing Agreement. Specifically, he found:

"Attached hereto and made apart hereof is the proposed Implementing Agreement negotiated by the parties which will constitute the arbitrated implementing arrangement in this case the purpose of which is to

resolve all outstanding issues and disputes raised by the parties in this proceeding."

8. Upon receipt of that arbitration decision, the employees were advised on March 29, 1999 in accordance with the terms of the arbitrated Implementing Agreement of the Carrier's intention to implement the Salina Hub on May 1, 1999.

9. Since the original proposed implementing date in January 1999, through and including the new implementing date of May 1, 1999, the Carrier has instituted the required training, payroll and train designation changes necessary for that implementation to go forward on May 1, 1999.

10. During the course of the seniority workshops, which were held in November, twenty-eight conductors made application and bid from Pratt to Herington. Ten others bid from Pratt to Wichita and nine remained at Pratt. No employees were force-assigned to fill vacancies at Herington during the course of the seniority canvassing.

The workshop was conducted in this manner consistent with Side Letter No. 13 of the Salina Hub Agreement which states in part:

"Because SSW system seniority extends through the Kansas City, Salina and Dalhart Hubs, the Carrier agreed to make certain commitments regarding operations in the Salina Hub in order that Pratt trainmen may make a more informed decision regarding roster slotting for the Kansas City and Salina Hubs. Specifically, Carrier committed as follows:

- "1. In the event employees at Pratt desire to relocate to Herington in proportion to the number or pool turns and extra board positions being moved to Herington, such requests will be given first consideration. Should this not be the case, to the extent possible, existing manpower at Herington will be used to staff the Herington-Pratt pool operations. If Pratt trainmen are needed to fulfill the need at Herington, the minimum necessary will be relocated to Herington, and those volunteering to relocate will be paid relocation under Article*

VII.B. of this Agreement. If insufficient trainmen volunteer, some trainmen may be forced to Herington in reverse seniority. Under these circumstances, Article VIII.B. benefits would still apply. The parties shall meet and reach agreement on the number and method of force assignments to Herington."

Again, no trainmen were forced to Herington.

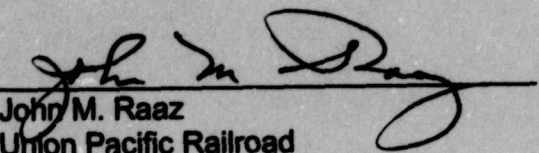
11. At the same time these events were happening with the UTU, the Carrier and BLE were also in negotiations. On October 16, 1998 the BLE advised the Union Pacific that the proposed Salina Hub Agreement had ratified by more than 85 per cent. A notice to implement on January 16, 1999 was served and subsequently held in abeyance due to the ongoing dispute with the UTU.

During the ensuing time period, several engineers have complained that they had let leases at Pratt lapse, planning to return to their homes in the Herington area in January. Arrangements were made by the Carrier (at Carrier's expense) to provide lodging for these engineers during the time period from January 16, 1999 to the now scheduled May 1, 1999 implementation for the BLE.

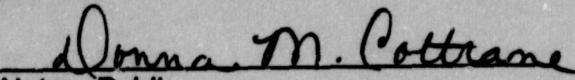
12. Over the last several months individuals who have made application for, and plan to relocate to, Herington have made inquiries regarding the relocation benefits provided for in the Agreement. As the Agreement had not yet been implemented, we have been unable to provide those benefits but will do so immediately upon the May 1 implementation of the agreement.

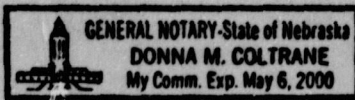
13. It is my opinion that, should the Union Pacific Railroad be again delayed in implementing the Salina Hub Agreement on May 1, 1999, irreparable harm will be done to the Railroad. Computer programming changes are already in progress, employees have already established residences at the new work location, training has already been

completed for many of the employees involved in this transaction and train schedules are being adjusted to coincide with the May 1 implementation. Additionally, the resulting delay of implementation will continue the current inefficiencies which existed prior to the merger of the Southern Pacific and the Union Pacific Railroad.


John M. Raaz
Union Pacific Railroad
Room 330
1416 Dodge Street
Omaha, NE 68179

Sworn to before me on this 26th day of April 1999.


Notary Public



STB FD 32760 (Sub 33) 4-26-99 B 194229

GUERRIERI, EDMOND & CLAYMAN, P.C.

1625 MASSACHUSETTS AVENUE, N.W.

SUITE 700

WASHINGTON, D.C. 20036-2243

(202) 624-7400

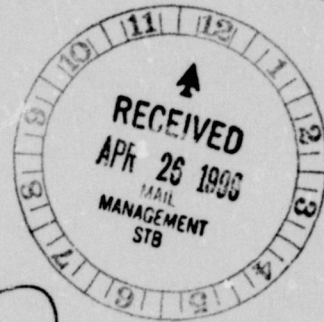
FACSIMILE: (202) 624-7420



April 26, 1999

JOSEPH GUERRIERI, JR.
JOHN A. EDMOND
ROBERT S. CLAYMAN
DEBRA L. WILLEN
JEFFREY A. BARTOS
ANNA L. FRANCIS
NICOLAS M. MANICONE
LESLIE DEAK *

*NOT ADMITTED IN D.C.



VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Re: Union Pacific Corp., et al. -- Control and Merger --
Southern Pacific Rail Corp., et al.
Finance Docket No. 32760 (Sub-No. 33)

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding, please find an original and 25 copies of the UTU's Opposition to Petitioners' Motion for Stay. Also enclosed is a 3.5" diskette containing the text of this document in WordPerfect 6.0/6.1 format.

I have included an additional copy to be date-stamped and returned with our messenger.

Thank you for your attention to this matter.

Sincerely,

Debra L. Willen

Counsel for the United
Transportation Union

ENTERED
Office of the Secretary
APR 26 1999
Part of
Public Record

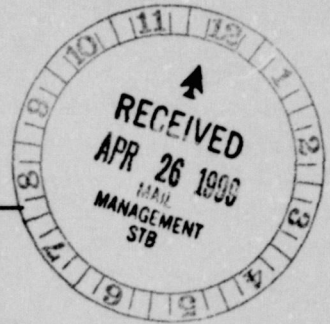
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Enclosures

cc: Clinton J. Miller, III, Esq.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (Sub-No. 33)



UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
-CONTROL AND MERGER-
SOUTHERN PACIFIC RAIL CORPORATION,
SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS
SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE
DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

(Arbitration Review)

**UTU'S OPPOSITION TO
PETITIONERS' MOTION FOR STAY**

The United Transportation Union ("UTU") hereby opposes the Petitioners' Motion For A Stay of Neutral Referee William E. Fredenberger, Jr.'s Decision dated March 25, 1999 ("Fredenberger Award"). It is highly unlikely that Petitioners will prevail upon the merits of their petition to set aside the Fredenberger Award, and the balance of equities in this particular case weighs heavily against the grant of a stay under the standards set forth in Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977).

FACTUAL BACKGROUND

Petitioners Lyn Swonger and James Spaulding are Union Pacific employees who were formerly employed on the Rock Island & Pacific Railroad ("Rock Island") and the St. Louis-Scuthwestern Railway

("SSW"). In 1980, SSW purchased the Rock Island's Tucumcari Line. Pursuant to an agreement between the carriers and their unions, the Rock Island employees were considered to have severed their employment relationship with their former employer and were given a new seniority date on the SSW that represented the exact date they were hired by the SSW. In addition, these employees were given point seniority on the Tucumcari Line with prior rights at such points, including Salina, Kansas.

In August 1996, the Surface Transportation Board ("STB" or "the Board") approved the merger of the Union Pacific Corp., Union Pacific Railroad Co. and Missouri Pacific Railroad Co. (collectively "UP") and the Southern Pacific Rail Corp., Southern Pacific Transportation Co., SSW, SPCSL Corp. and the Denver & Rio Grande Western Railroad Co. (collectively "SP"), subject to the New York Dock labor protective conditions. Union Pacific Corp., et al. -- Control and Merger -- Southern Pacific Rail Corp., et al., Finance Docket No. 32760, Decision No. 44 (served Aug. 12, 1996).

UP had stated in its proposed Operating Plan that it intended to use the "hub" and "spoke" system in implementation of the merger. The instant dispute involves the establishment of a hub in Salina, Kansas, encompassing the former Rock Island Tucumcari Line. In negotiations under Article I, Section 4 of the New York Dock conditions, the UTU and UP tentatively agreed upon an Implementing Agreement for the Salina Hub. In order to accomplish a fair and equitable arrangement for the integration of seniority rosters, the parties agreed that employees would be dovetailed into the roster

based upon their date of hire on the property at which they were last employed.

The UTU Associate General Chairperson representing former SSW employees refused to initial this agreement, however, because the employees from the former Rock Island objected to the seniority dates that would be used to form the new seniority roster for the Hub. Under the UTU Constitution, the tentative agreement could not be submitted for ratification absent approval of all General Chairpersons in the affected jurisdictions. Accordingly, UP invoked arbitration under Article I, Section 4. The matter was submitted to Neutral Referee Fredenberger. Petitioners participated through counsel in both the filing of a written submission and oral argument.

On March 25, 1999, Referee Fredenberger issued his decision adopting the tentative agreement that UP and the UTU had negotiated as the Implementing Agreement for the Salina Hub. That agreement provides for the creation of a master seniority roster through dovetailing, for the creation of three seniority zones within the roster, and for the maintenance or creation of prior rights in each zone. Fredenberger Award at 4. Moreover, the Arbitrator authorized the Carrier to close its terminal in Platt, Kansas and transfer the affected employees to Harrington, Kansas. Id. at 8.

Petitioners have petitioned for review of the Fredenberger Award. They challenge the Arbitrator's ruling regarding the closing of the Platt terminal and object to the dovetailing of seniority based upon an employee's hire date on the SSW, instead of

his original hire date with the Rock Island. In addition, Petitioners have moved to stay the implementation of the Fredenberger Award pending resolution of their Petition for Review.

ARGUMENT

PETITIONERS ARE NOT ENTITLED TO A STAY OF THE FREDENBERGER AWARD.

The ICC and the STB consistently have applied the standards set forth in Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958) and Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d at 843, for determining the appropriateness of an administrative stay. Under those standards, a movant must demonstrate that:

(1) [he] has a strong likelihood of prevailing on the merits; (2) [he] will be irreparably harmed in the absence of a stay; (3) other interested parties will not be substantially harmed by the stay; and (4) the public interest supports the granting of the stay.

See, e.g., CSX Corp., et al., Norfolk Southern Corp., et al. -- Control and Operating Leases/Agreement -- Conrail, et al., STB Finance Docket 33388, Decision No. 91, slip op. at 1 (served Aug. 19, 1998). The Petitioners cannot meet this burden and demonstrate that extraordinary relief is warranted pending a final decision on the merits of their Petition for Review.

1. Petitioners Are Not Likely To Prevail On The Merits.

The Fredenberger Award is subject to a very limited standard of review that gives an arbitrator's decision on the merits "extreme deference[.]" Chicago & North Western Transp. Co. -- Abandonment, 3 I.C.C. 2d 729, 735-36 (1987) ("Lace Curtain"),

aff'd, IBEW v. ICC, 862 F.2d 330 (D.C. Cir. 1988). Review is limited to "recurring or otherwise significant issues of general importance regarding the interpretation of ... labor protective provisions." Id. at 736. The Board will not review an arbitrator's decision on factual issues. Id.

In the instant case, petitioners challenge Referee Fredenberger's factual determinations. They dispute that the proposed Implementing Agreement represents "a fair and equitable method of blending the rights of [the former Rock Island trainmen] with those of other Carrier affected employees." Fredenberger Award at 7. In addition, they seek to set aside the Arbitrator's finding that the transfer of employees from Platt to Harrington will not require them to report for work beyond a reasonable driving distance from their present locations. It is unlikely that Petitioners will prevail on either of these challenges.

Typically, the Board defers to an arbitrator's determination regarding the manner of integrating seniority. See, e.g., Norfolk & Western Ry., New York, Chicago & St. Louis R.R. -- Merger, Etc., Finance Docket No. 21510 (Sub-No. 3), slip op. at 5 (served Dec. 18, 1998). Moreover, Mr. Fredenberger relied upon the prior Award of Referee Yost regarding similar issues arising out of the creation of the Salt Lake City and Denver Hubs, an award that was upheld in substantial part by this Board. See Union Pacific Corp., et al. -- Control and Merger -- Southern Pacific Rail Corp, et al., Finance Docket 32760 (Sub-No. 22) slip op. (June 26, 1997).

2. The Balance Of Equities Does Not Warrant A Stay.

Petitioners assert that certain employees will have to relocate or will be required to travel "a substantial distance" if the Fredenberger Award is not stayed. Pet'rs.' Mot. at 2. It is clear beyond doubt, however, that any such inconvenience will be adequately remedied by monetary compensation under the New York Dock protective conditions. See, e.g., Canadian Pac. Ltd., et al. -- Purchase and Trackage Rights -- Delaware & Hudson Ry., Finance Docket 31700 (Sub-No. 13), slip op. (served Nov. 6, 1998).

On the other hand, if a stay were granted, the Carrier and all the other affected employees would be harmed. The Petitioners are a small minority who seek to improve their own position at the expense of other employees; they do not represent the best interests of all of the UTU's membership on each of the merged lines. Instead, they seek to thwart implementation of a fair and rational integration of pre-existing seniority rosters.

3. A Stay Would Not Further The Public Interest.

Petitioners have not explained, nor can they, how issuance of a stay would further the public interest. Indeed, there is no public policy reason why the Carrier should not be permitted to implement a transaction found by this Board to be in the public interest, consistent with the Implementing Agreement negotiated by the Carrier and the Union and prescribed by Referee Fredenberger.

CONCLUSION

For all the foregoing reasons, the UTU respectfully requests that the Board deny Petitioners' Motion for Stay.

Respectfully submitted,



Joseph Guerrieri, Jr.

Debra L. Willen

GUERRIERI, EDMOND & CLAYMAN, P.C.

1625 Massachusetts Avenue, N.W.

Suite 700

Washington, DC 20036

(202) 624-7400

Counsel for the UTU

Date: April 26, 1999

CERTIFICATE OF SERVICE

I hereby certify that copies of UTU's Opposition To
Petitioners' Motion For Stay were served this 26th day of April by
first-class mail, postage prepaid, upon the following:

John Raaz
Assistant Vice President
Union Pacific Railroad Company
1416 Dodge Street
Omaha, NE 68179

M.B. Futhey, Jr.
Vice President, UTU
7610 Stout Road
Germantown, TN 38138

R.E. Karstetter
General Chairman, UTU
1721 Elfindale Drive, #309
Springfield, MO 65807

P.C. Thompson
Vice President, UTU
10805 West 48th Street
Shawnee Mission, KS 66203

A. Martin, III
General Chairman, UTU
2933 S.W. Woodside Drive, #F
Topeka, KS 66614-4181

Don L. Hollis
Assoc. General Chairman, UTU
13247 C R 4122
Lindale, TX 75771

James Spaulding
515 North Main Street
Pratt, KS 67124

Lyn Swonger
1204 East Maple
Pratt, KS 67124

Brenda Council
Attorney at Law
1650 Farnam
Omaha, NE 68102

Bruce H. Stoltze
Brick, Gentry, Bowers,
Schwartz, Stoltze, Schuling
& Levis, P.C.
550 39th Street
Des Moines, IA 50312

Debra L. Walker