

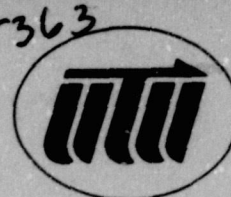
STB FD 32760 (Sub 34) 8-16-99 D 195363

CHARLES L. LITTLE
International President

BYRON A. BOYD, JR.
Assistant President

ROGER D. GRIFFETH
General Secretary and Treasurer

united
transportation
union



14600 DETROIT AVENUE
CLEVELAND, OHIO 44107-4250
PHONE: 216-226-9400
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LEGAL DEPARTMENT

CLINTON J. MILLER, III
General Counsel

• KEVIN C. BODAR
Associate General Counsel

• ROBERT L. MCCARTY
Associate General Counsel

• DANIEL R. ELLIOTT, III
Assistant General Counsel

August 13, 1999

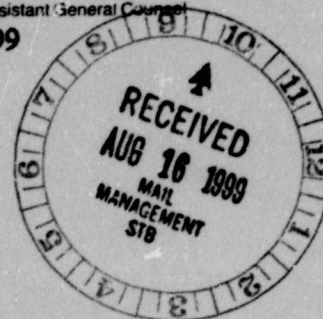
UPS NEXT DAY AIR

The Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of the Secretary

AUG 16 1999

Part of
Public Record



Re: Finance Docket No. 32760 (Sub-No. 34)

Dear Mr. Secretary:

Enclosed for filing in the above-referenced proceeding please find an original and ten (10) copies of the United Transportation Union's Reply in Opposition to Motion for Reconsideration. A conforming computer disk is also enclosed.

Finally, we also have enclosed an additional copy of this filing to be date-stamped and returned to the bearer of this letter.

Very truly yours,

Daniel R. Elliott, III
Assistant General Counsel

cc: C. J. Miller, III, General Counsel

ENTERED
Office of the Secretary

AUG 16 1999

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 32760 (Sub-No. 34)

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)

UNITED TRANSPORTATION UNION'S REPLY
IN OPPOSITION TO MOTION FOR RECONSIDERATION

Daniel R. Elliott
Assistant General Counsel
United Transportation Union
14600 Detroit Avenue
Cleveland, OH 44107-4250
Phone: (216) 228-9400

United Transportation Union (UTU) respectfully submits its Reply in Opposition to Petitioner E.E. Schoppa's Motion for Reconsideration of Motion for Extension of Time. As Petitioner clearly has not shown any "material error" in the Board's July 8, 1999 decision, as required under 49 C.F.R. §1115.3, the motion should be denied.

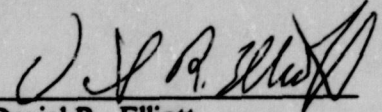
First, Petitioner claims the May 27, 1999 letter from his attorney, which asserted that trainmen knew of the modified award on May 4, 1999, did not pertain to him, and this somehow constitutes "material error". However, whether or not this letter specifically referred to him is not pertinent. This letter clearly establishes that a reasonable person would have learned of the modified award by May 4, 1999. Accordingly, Petitioner should have known of the modified award by this date like similarly situated trainmen.

Moreover, Petitioner claims "material error" because he never received a copy of the modified award from his Local Chairperson nor did he have access to the Internet at his home. However, even if Petitioner's statements are true, the modified award was still posted on the Internet and distributed to Local Chairpersons. As a result, the Board did not error in its statement that these events did occur.

Also, Petitioner claims the Board's decision contains material error because "it is just not fair to allow the UTU and the carrier to harshly enforce deadlines against trainmen while they themselves

have ignored mandatory deadlines for the New York Dock procedures." Besides the point that Petitioner's twenty day deadline position completely misinterprets Article I, Section II of *New York Dock*, this fairness argument by Petitioner does not involve "material error", but is simply an equitable appeal to the Board which does not fall within the "material error" criteria for appeal set forth in 49 C.F.R. §1115.3. Accordingly, this argument should be rejected.

Most of all, the Petitioner simply failed to comply with the 20 day deadline from the date of the modified award. This fact in itself is sufficient to reject the extension request without regard to these other red herrings raised by Petitioner. Based on this fact alone, Petitioners's Motion for Reconsideration should be denied.


Daniel R. Elliott
Assistant General Counsel
United Transportation Union
14600 Detroit Avenue
Cleveland, OH 44107-4250
Phone: (216) 228-9400

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing Opposition of United Transportation Union's Reply in Opposition to Motion for Reconsideration of Motion For Extension of Time. have been served via UPS Next Day Air, this 13th day of August, 1999, upon the following:

Brenda Council, Esquire
Kutak Rock
1650 Farnam Street
Omaha, NE 68102
Phone: (402) 346-6000

JoAnne Ray, Esquire
Woodard, Hall & Primm, P.C.
7100 Chase Tower
600 Travis
Houston, TX 77002
Phone: (713) 221-3800


Daniel R. Elliot

STB FD 32760 (Sub 34) 6-23-99 D 194849

194849

WOODARD, HALL & PRIMM, P.C.

ENTERED
Office of the Secretary

JUN 23 1999

**Part of
Public Record**

A PROFESSIONAL CORPORATION
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Board Certified:
Labor and Employment Law
Civil Trial Law
Texas Board of Legal Specialization

JoAnne Ray
Direct Line: (713) 221-3827
E-mail: jray@whplaw.com

June 22, 1999

VIA FEDERAL EXPRESS

Mr. Vernon Williams
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423-0001

FD 32760 - SUB 34

Re: Appeal of Arbitration Award and Clarification by Roy J. Carvatta Regarding Merger Implementing Agreement (Houston Hub) between Union Pacific Railroad Company, Southern Pacific Railroad Company and the United Transportation Union

Dear Mr. Williams:

Enclosed please find Motion for Extension of Time to Appeal Arbitration Award.

Very truly yours.

JoAnne Ray

JAR\elc

Enclosure:

cc. w/encls: Mr. L.A. Lambert - Via Federal Express and Facsimile (402) 271-2463
General Director, Labor Relations,
Union Pacific Railroad
1416 Dodge Street, Room 332
Omaha, Nebraska 68179-0332

June 22, 1999

Page 2

Mr. A. Terry Olin - Via Facsimile and Federal Express

General Director - Employee Relations Planning

Union Pacific Railroad Company

1416 Dodge Street, Room 332

Omaha, Nebraska 68179-0332

Mr. Tommy Wilson - Via Facsimile and Federal Express

Union Pacific Railroad Company

142N, 24125 Aldine Westfield Road

Spring, Texas 77372

Mr. Clinton J. Miller, III - Via Facsimile No. (216) 228-0937 and Federal Express

General Counsel

United Transportation Union

14600 Detroit Avenue

Cleveland, Ohio 44107-4250

**MOTION FOR EXTENSION OF TIME
TO APPEAL ARBITRATION AWARD**

Petitioner E. E. Schoppa, a trainman in Zone 5 of the Union Pacific Railroad Corporation Houston Hub, files this Motion pursuant to 49 C.F.R. §1115.8 to extend the time to file an appeal to review an arbitration decision sought by Petitioner's union in connection with *New York Dock* issues and in support thereof shows:

1. Petitioner is a trainman who has been employed with the Union Pacific Railroad Company or its predecessors for 29 years, and who was employed by the Union Pacific Railroad Company at the time of its merger with the Southern Pacific Railroad Company. The merger of those two railroads was approved by the Surface Transportation Board in Finance Docket (FD) No. 32760. Following approval of the merger, Petitioner's Union, the United Transportation Union ("the Union") and the merging railroads signed a document entitled Merger Implementing Agreement (Houston Hub) between the Union Pacific Railroad Company, Southern Pacific Railroad Company, and United Transportation Union ("the Merger Implementing Agreement"). Rosters based on the Merger Implementing Agreement were circulated in early 1998, were put into effect, and trainmen relied on them. Then, four months after these rosters had gone into effect, the Union sought an arbitration award in order to revise the rosters already implemented under the Merger Implementing Agreement. Arbitrator Roy J. Carvatta, who was appointed by the National Mediation Board, thereafter issued an award pertaining to such Merger Implementing Agreement on November 17, 1998. On January 19, 1999, Union Pacific Railroad and the Union requested a clarification of the earlier award, and Arbitrator Carvatta issued that clarification by letter dated February 1, 1999

(the November 17, 1998, award and the February 1, 1999, clarification of same are referred to in this motion collectively as "the Carvatta award").

2. Neither the Union nor the Union Pacific Railroad took any steps that Petitioner is aware of to advise him or any other Zone 5 trainmen of the Carvatta award, and Petitioner had no notice that the rosters would be revised under the Carvatta award until June 4, 1999. During that week a trainman from Zone 3 began meeting with Zone 5 trainmen to tell them that the Union was about to make major changes to the seniority Zone 5 trainmen had been operating under ever since the Merger Implementing Agreement rosters were circulated in early 1998. However, no new seniority rosters have yet been published and the Houston Hub continues to operate under the seniority rosters implemented in early 1998 based on Merger Implementing Agreement.

3.. Petitioner wishes to appeal the Carvatta award. The Union has previously taken the position that a Houston Hub trainman has 20 days to appeal the award from the date that he receives it. In Petitioner's case, this 20-day period would expire on June 23, 1999. Therefore, pursuant to 49 C.F.R. §1115.8, Petitioner seeks a 30-day extension of the time, within which, according to the Union, he must file an appeal from the Carvatta award. Petitioner seeks this additional 30 days to file his appeal because Petitioner and other trainmen on June 8, 1999, filed a request for Arbitrator Carvatta to clarify the Carvatta award. Arbitrator Carvatta on June 19, 1999, acknowledged the June 8 request in writing and noted that the request has been sent to other members of the arbitration panel.

4. Therefore, to allow time for Arbitrator Carvatta to respond to the documents filed with him on June 8, 1999, while at the same time complying with the 20-day deadline that the Union claims applies to this trainman, Petitioner, on behalf of himself and all other similarly situated Houston Hub

(the November 17, 1998, award and the February 1, 1999, clarification of same are referred to in this motion collectively as "the Carvatta award").

2. Neither the Union nor the Union Pacific Railroad took any steps that Petitioner is aware of to advise him or any other Zone 5 trainmen of the Carvatta award, and Petitioner had no notice that the rosters would be revised under the Carvatta award until June 4, 1999. During that week a trainman from Zone 3 began meeting with Zone 5 trainmen to tell them that the Union was about to make major changes to the seniority Zone 5 trainmen had been operating under ever since the Merger Implementing Agreement rosters were circulated in early 1998. However, no new seniority rosters have yet been published and the Houston Hub continues to operate under the seniority rosters implemented in early 1998 based on Merger Implementing Agreement.

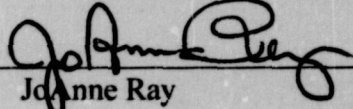
3.. Petitioner wishes to appeal the Carvatta award. The Union has previously taken the position that a Houston Hub trainman has 20 days to appeal the award from the date that he receives it. In Petitioner's case, this 20-day period would expire on June 23, 1999. Therefore, pursuant to 49 C.F.R. §1115.8, Petitioner seeks a 30-day extension of the time, within which, according to the Union, he must file an appeal from the Carvatta award. Petitioner seeks this additional 30 days to file his appeal because Petitioner and other trainmen on June 8, 1999, filed a request for Arbitrator Carvatta to clarify the Carvatta award. Arbitrator Carvatta on June 19, 1999, acknowledged the June 8 request in writing and noted that the request has been sent to other members of the arbitration panel.

4. Therefore, to allow time for Arbitrator Carvatta to respond to the documents filed with him on June 8, 1999, while at the same time compiling with the 20-day deadline that the Union claims applies to this trainman, Petitioner, on behalf of himself and all other similarly situated Houston Hub

trainmen, respectfully requests a 30-day extension of time for filing an appeal to the Surface Transportation Board.

Respectfully submitted,

WOODARD, HALL, & PRIMM, P.C.

BY: 

Joanne Ray

Texas State Bar No. 16604600

(also admitted to practice in the Southern
District of Texas and before the Fifth
Circuit Court of Appeals)

7100 Chase Tower - 600 Travis

Houston, Texas 77002

Phone: (713) 221-3827

FAX : (713) 224-3271

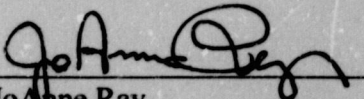
ATTORNEYS FOR PETITIONER E. E. SCHOPPA

CERTIFICATE OF SERVICE

I certify that on June 22, 1999, I served a copy of this motion on all parties to the Carvatta award, by faxing and/or Federal Expressing this motion to the persons named below:

Mr. Clinton J. Miller, III, General Counsel
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107-4250

Mr. A. Terry Olin
General Director-Employee Relations Planning
Union Pacific Railroad Company
1416 Dodge Street, Room 332
Omaha, Nebraska 68179-0332


JoAnne Ray

STB FD 32760 (Sub 34) 7-2-99 D 194920

194 920
CHARLES L. LITTLE
International President

BYRON A. BOYD, JR.
Assistant President

ROGER D. CHIFFETH
General Secretary and Treasurer

JUL 02 1999

Part of
Public Record

**united
transportation
union**

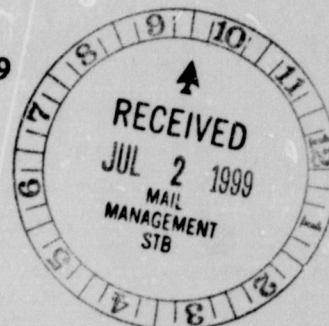


14600 DETROIT AVENUE
CLEVELAND, OHIO 44107-4250
PHONE: 216-228-9400
FAX: 216-228-5755

July 1, 1999

FAX and FEDERAL EXPRESS (priority)

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street N W
Washington, D.C. 20423-0001
(202) 565-1650
FAX (202) 565-9003



Re: Motion for Extension of Time To Appeal of Arbitration Award and Clarification by Roy J. Carvatta Regarding Merger Implementing Agreement (Houston Hub) between Union Pacific Railroad Company, Southern Pacific Railroad Company and the United Transportation Union, Finance Docket No. 32760 (Sub-No. 34)

Dear Mr. Williams:

Enclosed please find the Opposition of the United Transportation Union to Motion for Extension of Time to Appeal Arbitration Award filed on behalf E. E. Schoppa. An original and eleven (11) copies thereof are being sent with the Federal Express delivery of this letter.

Very truly yours,

Clinton J. Miller, III
General Counsel

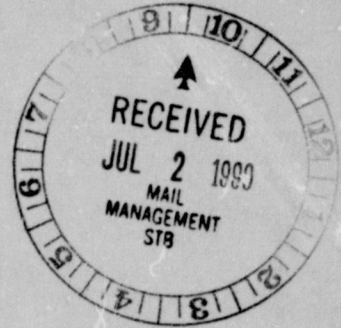
Enclosure

cc: Brenda Council, Esquire (FAX and Fed. Ex.)
Kutak Rock
1650 Farnam Street
Omaha, NE 68102
(402) 346-6000; FAX (402) 346-1148

JoAnne Ray, Esquire (FAX and Fed. Ex.)
Woodard, Hall & Primm, P.C.
7100 Chase Tower
600 Travis
Houston, TX 77002
(713) 221-3800; FAX (713) 224-5271

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (SUB-NO. 34)



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

(Arbitration Review)

**OPPOSITION OF UNITED TRANSPORTATION
UNION TO MOTION FOR EXTENSION OF
TIME TO APPEAL IMPLEMENTING AGREEMENT
ARBITRATION AWARD AND CLARIFICATION**

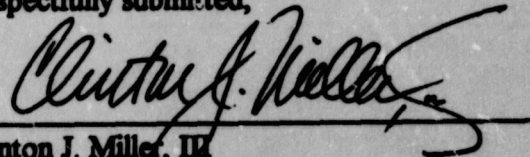
The following is the opposition of the United Transportation Union ("UTU") to the Motion for Extension of Time to Appeal Arbitration Award submitted herein on behalf of E. E. Schoppa on or about June 23, 1999.

To begin with, the counsel for Mr. Schoppa herself admitted that her clients had notice of the Carvatta Award and Interpretation at least by May 4, 1999 in her May 27, 1999 letter to UTU International President Charles L. Little (copy attached hereto as Exhibit 1). The undersigned's June 3, 1999 response to her (copy attached hereto as Exhibit 2) not only responded to her substantive charges therein, but also to the exclusivity of the appeal process to the Board and the twenty-day limitation in 49 C.F.R. § 1115.8, unless extended by the Board. Yet she has waited until now to request such extension. Moreover, as the Declaration of David L. Haakey, with attached exhibits (all

attached hereto as Exhibit 3) makes clear, Ms. Ray's clients knew, or in the exercise of reasonable diligence should have known, of the Carvatta Award and its Interpretation well before that. Finally, it is clear from the Hakey Declaration that the substantive position of Ms. Ray's clients was presented to Arbitrator Carvatta by former General Chairperson L. W. Parsons, but was found wanting. They are merely trying by this motion and by their recent filing with Arbitrator Carvatta to restart a fair and completed process because they failed to avail themselves of the available appeal procedure in a timely manner. They should not be permitted to do so because all it amounts to is bombarding the parties and the Board with tiresome requests for needless review. *Cf. Dozier v. Trans World Airlines*, 760 F.2d 849, 852 (7th Cir. 1985).

For the foregoing reasons, the Motion for Extension of Time to Appeal Arbitration Award should be denied.

Respectfully submitted,



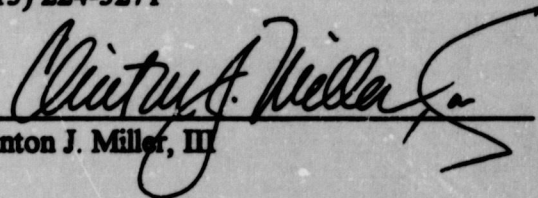
Clinton J. Miller, III
General Counsel
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107-4250
(216) 228-9400
FAX (216) 228-0937

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing Opposition of United Transportation Union to Motion For Extension of Time to Appeal Implementing Agreement Arbitration Award and Clarification have been served via facsimile and Federal Express, airbill prepaid, this 1st day of July, 1999, upon the following:

Brenda Council, Esquire (FAX and Fed. Ex.)
Kutak Rock
1650 Farnam Street
Omaha, NE 68102
(402) 346-6000; FAX (402) 346-1148

JoAnne Ray, Esquire (FAX and Fed. Ex.)
Woodard, Hall & Primm, P.C.
7100 Chase Tower
600 Travis
Houston, TX 77002
(713) 221-3800; FAX (713) 224-3271


Clinton J. Miller, III

101(466)

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Facsimile: (713) 224-3271

Board Certified:
Labor and Employment Law
Civil Trial Law
Texas Board of Legal Specialization

RECEIVED
MAY 28 1999
Office - President

JoAnne Ray
Direct Line: (713) 221-3827
E-mail: jray@whplaw.com

May 27, 1999

VIA FEDERAL EXPRESS and FACSIMILE NO. (216) 228-5755

Mr. Charles L. Little
UTU International President
14600 Detroit Avenue
Cleveland, Ohio 44107-4250

Mr. Roger D. Griffith
UTU General Secretary and Treasurer
14600 Detroit Avenue
Cleveland, Ohio 44107-4250

RE: Arbitration Award and "Clarification" of Same by Roy J. Carvatta pertaining to Merger Implementing Agreement (Houston Hub) between the Union Pacific Railroad Company, Southern Pacific Railroad Company and United Transportation Union ("The Merger Implementing Agreement")

Gentlemen:

This law firm has been retained by the Houston Hub trainmen listed on Exhibit A with regard to their seniority rights in connection with the merger of Union Pacific Railroad Co. ("UP") and Southern Pacific Railroad ("SP"). Our clients all belong to United Transportation Union ("UTU" or "the Union"), and they all worked for UP in various Texas or Louisiana divisions prior to UP's merger with SP.¹ Our clients' prior rights seniority is in peril due to UTU's handling of the above-described Merger Implementing Agreement (hereinafter sometimes referred to as "the MIA") and associated arbitration. In particular, our clients are concerned about the Carvatta award, as modified on February 1, 1999, but not given by the Union to our clients until May 4, 1999. We have been

¹ For convenience, in this letter, "UP trainmen" will refer to trainmen who worked for UP before the UP/SP merger. "SP trainmen" will refer to trainmen who worked for SP before the SP/UP merger.



May 27, 1999

Page 2

retained for several purposes, including to advise our clients about whether UTU's conduct toward our clients was arbitrary, discriminatory, or in bad faith, thereby constituting a breach of its duty of fair representation.

Some of our concerns are set forth below:

(1) Why did UTU tell the drafters of the MIA that Article 90 of the UTU Constitution prevented dovetailing the UP and SP seniority rosters? We are advised that within a few months after UTU made this statement, the Yost award pointed out that it was incorrect, and that UTU then agreed to dovetail rosters in the Salt Lake City Hub. What was the basis for this inaccurate information that the Union apparently gave our clients? This false information created the climate in which our clients agreed to the dual UP/SP seniority system. But for the Union's statement that dovetailing was prohibited, the complexities of the current system would not exist. The dual seniority system--in which SP trainmen maintain their prior system-wide seniority while UP trainmen maintain their prior zone-specific seniority--fragments UP employees' work years into zones for purposes of computing seniority rights, while SP employees' work years are considered as a unified number applicable to any zone where they choose to work. This situation will place our clients at a serious disadvantage as the railroad continues its pattern of attempting to cutback on positions. If cutbacks occur in a UP trainman's zone and he is forced to look for opportunities in another zone, he will be stripped of years of prior rights seniority and placed in such a junior position that he may stop working for the railroad, while the SP trainman can move to any zone with his prior rights seniority intact. The likely effect of this arrangement is that over the next 10 years, many UP trainmen will resign or take early retirement rather than face starting at the bottom again in another zone. All this, of course, confers immense survival advantages on SP trainmen, who will then have greater opportunities for control and will also be in an enhanced position facing less competition when the inevitable day comes that the SP/UP rosters are finally dovetailed based on pure seniority.

(2) Why is the Union--which had at least three International Vice Presidents present to guide the MIA negotiations and knows very well what the deal was--agreeing to be a party to what appears to be a classic "bait and switch" tactic by the SP trainmen? As you know, approval of the MIA required unanimous consent of all eight UTU General Chairmen. Most General Chairmen had few or no employees in their district who would be affected by the Houston Hub MIA. However, two General Chairmen from Houston had mostly SP trainmen in their district, and one General Chairman from Houston had mostly UP trainmen, although he had enough SP trainmen in his district that he felt he could not be totally one-sided. To induce this one UP Chairman to accept a dual SP/UP seniority system, the SP chairmen agreed to accept a "ghost slot" arrangement in which an SP trainman who claimed seniority in a particular zone would be counted as holding a job in that zone for work equity purposes even if he were actually working in another zone. Under this "ghost slot" arrangement, SP men were allowed to maintain their more advantageous system-wide seniority

May 27, 1999

Page 3

in exchange for the SP side conceding certain collective work equity rights. This situation was acceptable to all General Chairmen because the seniority side of the work assignment process was weighted in favor of the SP trainmen, but the work equity side of that process (i.e., the number of slots in a zone actually available to trainmen from the UP or SP side) was weighted in favor of the UP trainmen. UP trainmen warned the SP trainmen that the "ghost slot" arrangement would cost them work equity slots but SP trainmen--intent on maintaining their advantages as to seniority computation--insisted that this was what they wanted. Why is the Union now allowing the deal to be changed so that the SP trainmen have the advantages both in computation of seniority years and in assignment of work equity slots?

(3) Why did the Union, after guiding Houston Hub trainmen to trade away valuable bargaining rights for a "ghost slot" arrangement that the carrier did not want and fought hard against, then agree to arbitrate those "ghost slots" out of existence?

(4) If "ghost slots" were not called for under the Merger Implementing Agreement, then why did the Union approve and allow circulation of rosters with "ghost slots"?

(5) If the Merger Implementing Agreement did not call for "ghost slot" rosters, then why did the Union allow SP trainmen to move freely between zones based on the "ghost slot" positions? For example, in summer of 1998, SP trainman R.E. Brown of zone 2 suddenly appeared in zone 3 to fill his "ghost slot" position there, with the result that all UP trainmen beneath him were bumped into other positions. No one from UTU or the carrier and no SP or UP trainman stepped forward to object to this "bumping" because everyone knew this was the deal that had been agreed to in the Merger Implementing Agreement.

(6) Why did UTU allow SP employees to vote in one version of a system-wide seniority system and give the system a "test run" to see how it affected them? UTU's approach allowed the former SP employees to reject the agreed-upon system after they tested it for almost a year to see how it would affect them on a day-to-day basis.

(7) Why did UTU agree to arbitrate the interpretation of the MIA and its associated seniority system after it had already been in effect for over a year and many of our clients had relied on it in making irrevocable relocation decisions? For example, as part of this merger, UP's Palestine Division was closed, and trainmen were required to uproot their families and move to either Houston or Longview. They made that choice in late 1997 based on the seniority arrangements described in the MIA. Before making their final decisions as to relocation, many also saw and relied on rosters merged by the carrier and approved by the Union. These trainmen's children have suffered the trauma of leaving friends and changing schools, and many of their wives have suffered the career setbacks that result from job changes and relocations. Moreover, these trainmen have received their one-time New York Dock transfer-related expenses. It is shocking that UTU, knowing that its own

May 27, 1999

Page 4

members had so heavily and irrevocably relied on version of the MIA actually signed and reflected in the 1997-98 rosters, nevertheless took part in arbitration of an already-implemented MIA, thereby facilitating the SP employees' efforts to change the deal.

(8) Why didn't UTU point out that Arbitrator Carvatta's and the parties' stated basis for the arbitration was incorrect? The Carvatta award states at page 3: "Arbitration proceedings were established pursuant to Article I, Section 11 of NTD to resolve the matter." Various submissions to Arbitrator Carvatta likewise indicate that arbitration was invoked pursuant to NYD Article I, Section 11. However, Article I, Section 11 only creates a basis for arbitration of disputes involving "interpretation, application or enforcement of any provision" of certain sections of appendices of the New York Dock conditions, not including Sections 4 and 12. The Carvatta arbitration involved a purported dispute as to contractual interpretation; it did not involve "interpretation, application or enforcement" of any section of New York Dock appendices. Alternatively, if any section of the New York Dock appendices could be stretched to cover the Carvatta award, it could only be Article I, Section 4, pertaining to agreements to rearrange forces. However, Section 11 expressly excludes Section 4 provisions from serving as a basis for arbitration under Section 11. Therefore, the Carvatta award is void because the arbitrator had no authority over the contract interpretation controversy with which he was presented.

(9) Why did UTU allow the questions submitted to the arbitrator to be framed as they were? The questions were submitted in such a way that only the pro-SP position made sense. Additionally, the questions submitted were exceeding vague--so vague in fact that neither question even mentioned the revision of rosters. Because of this vagueness, most UP trainmen had no idea that the question to be decided by the arbitrator was whether to re-do the rosters they had been operating under for almost a year. Any question to the arbitrator should have noted that rosters based on system-wide seniority had been approved both by the carrier and the Union and circulated and relied on more than a year before, and then asked if such rosters should be changed. A second question should have asked whether, after the MIA had been negotiated and agreed to on the basis of a seniority computation system that favored SP and a work equity situation that favored UP, the MIA should be rewritten one year later to give SP both advantages.

(10) Why hasn't the Union appealed the Carvatta award since it is clear the arbitrator exceeded his authority by rewriting the Merger Implementing Agreement? Under the guise of "interpreting" and "clarifying" the MIA, the arbitrator has totally rewritten the seniority system specified therein.

On behalf of our clients--loyal UTU members who are now on the verge of losing seniority rights and being ultimately forced out of the only work that many of them have ever done--we respectfully request that UTU take all possible steps to remedy this gross injustice. Specifically, we request:

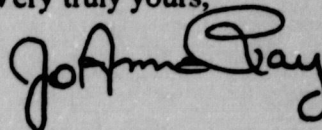
- (1) that UTU exercise all possible appeal rights as to the Carvatta award² and seek an injunction to stay its enforcement pending appeal;
- (2) that UTU give the UP trainmen the same assistance in setting aside the Carvatta award that UTU gave the SP trainmen in obtaining that award;
- (3) that UTU officials who have not already done so refrain from executing the March 29, 1999, proposed letter agreement with the carrier for implementation of the Carvatta award;
- (4) that UTU treat this matter as a grievance pursuant to Article 79 of the UTU constitution. We make this request to lay the predicate for our clients' exhaustion of their administrative remedies in the event that it becomes necessary for them to file a Class Action lawsuit against UTU for breach of its duty of fair representation. This Class Action lawsuit, if one is filed, will be brought by our clients individually and on behalf of the approximately 800 to 900 other UP trainmen whose prior rights seniority will be impaired if the Carvatta award is not corrected. One issue that we intend to fully investigate in any such lawsuit is Union finances, particularly as they relate to issues surrounding the Carvatta award. Please notify me promptly in writing if there are any other administrative remedies other than the Article 79 grievance procedure that UTU believes our clients must exhaust before filing such a lawsuit.
- (5) that UTU advise the carrier that if new rosters are implemented under the Carvatta award, such implementation will constitute a new displacement for purposes of beginning the running of the six-year period during which our clients will be eligible for New York Dock pay. See *New York Dock Railway*, 360 I.C.C. 60 (1979), wherein it is stated in Article I (1)(d) that the protective period "extends from the date on which an employee is displaced or dismissed to the expiration of six years therefrom" (emphasis added). As you know, an employee is "displaced" when his compensation drops due to an STB-approved merger to which the New York Dock has been applied. Many UP trainmen will not suffer a drop in compensation until (or unless) the Carvatta rosters are implemented. The date they suffer a compensation drop is the date the six-year protective period should begin.

² See, e.g., *Employees of the Butte, Anaconda & Pacific Railway Co. v. United States*, 1938 F.2d 1009 (9th Cir. 1991) [in which the ICC set aside the award of an arbitrator who exceeded his authority under the New York Dock]; *Southern Pacific Transportation Co. v. Young*, 890 F.2d 777 (5th Cir. 1989) [indicating that appeal of order pertaining to New York Dock conditions is to the ICC--now STB-- and then the circuit court]; contra, *Armstrong Lodge No. 762 v. Union Pacific R.R.*, 783 F.2d 131 (8th Cir. 1986), and *Brotherhood of Locomotive Engineers v. New York Dock R.R.*, 94 Lab. Cas. (CCH) ¶13,704 (E.D.N.Y. 1981), both holding that §3 of the RLA, 45 U.S.C. §158, gives the federal district courts jurisdiction to review arbitration awards made pursuant to the New York Dock Conditions.

May 27, 1999
Page 6

Of course, our clients would prefer to resolve this without litigation. We request that the Union meet with us promptly in Houston, Texas or other mutually agreeable location to discuss this critical situation. We look forward to hearing from you.

Very truly yours,



JoAnne Ray

JAR\elc

Enclosure:

cc. w/encls: Mr. Varice Valentine - Via Facsimile No. (409) 441-8831
5 Canterbury Court
Conroe, Texas 77304

Mr. David Hakey, General Chairman - Via Facsimile No. (281) 288-5577
400 Randal Way, Suite 102
Spring, Texas 77388

Mr. Tony Evans - CM:RRR #P-795-746-513
Chairman Local #524
3127 Dragonwick
Houston, Texas 77045

HOUSTON HUB,
U.P. EMPLOYEE
GROUP

Revised 05/26/99

1. G.H. WATTS
2. K.L. HIGGINBOTHAM
3. GLEN ANDERSON
4. AMOS HOLLIE
5. JOE DEBRUHL
6. BILL BROWN
7. STEVE ESTEP
8. ANDREW BIRDOW
9. LEON HERBROUGH
10. JOHNNY GURGANUS
11. TANDY SHAW
12. DEAN VINCENT
13. H.E. JEFFERSON
14. MIKE DERRINGTON
15. MIKE FERRELL
16. GENE SHERMAN
17. JAMES ANDRESS
18. CHRIS SMITH
19. SCOTT HALE
20. ROY DAVIS
21. VANCE VALENTINE
22. ROBERT VINEYARD
23. SLY VIDAL
24. JEFF WALKER
25. MARK BLACK
26. VANCE GALLOWAY
27. TIM WRIGHT
28. TONY EVANS
29. JIM HOMAN

30. DELBERT IVES
31. BOB BRADBERRY
32. LARRY SCHATTEL
33. BILL SEAGO
34. RONNY JENKINS
35. JIMMY DRONE
36. W.B. BARNETT
37. CARLOS WALLACE
38. JOHN CONNERS
39. ALLAN GAINES
40. STEVE PERRY
41. STEVE STATHAM
42. JASON STANBERRY
43. BILL HESTER
44. H.E. PARSONS
45. ALVIN SIMPSON
46. SAM WESTBROOK
47. BARRY BISHOP
48. JAMES A. FRANKLIN
49. CARLTON DUNCAN

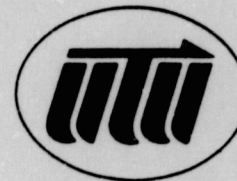
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CHARLES L. LITTLE
International President

BYRON A. BOYD, JR.
Assistant President

ROGER D. GRIFFETH
General Secretary and Treasurer

united transportation union



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• ROBERT L. McCARTY
Associate General Counsel

• DANIEL R. ELLIOTT, III
Assistant General Counsel

Fax and UPS Next Day Air

June 3, 1999

JoAnne Ray, Esquire
Woodard, Hall & Primm, P.C.
7100 Chase Tower
600 Travis
Houston, Texas 77002
(713) 221-3800
Fax (713) 224-3271

Re: Arbitration Award and Interpretation by Neutral Roy J. Carvatta concerning application of Union Pacific-Southern Pacific Merger Implementing Agreement (Houston Hub) with United Transportation Union

Dear Ms. Ray:

This is in response to your May 27, 1999 letter to United Transportation Union International President Charles L. Little and General Secretary and Treasurer Roger D. Griffeth with respect to subject award and interpretation. Please be advised this office represents UTU and all of its subordinate units and officers. All further contact with respect to this matter should be had with the Legal Department.

To begin with, I do not recall that the Houston Hub implementing agreement negotiations eliminated consideration of a date-of-hire dovetail earliest retained date form of seniority integration in a *New York Dock* implementing agreement. Ultimately that form was not chosen by the involved General Chairpersons. As I understand it from the assigned officers, then General Chairperson Larry Parsons, who apparently represented your clients' interests, said he would consider it, but would not commit to it, and, more importantly, General Chairperson R. J. Rossi rejected it. Without consensus among the involved General Chairpersons, a form of work equity allocation was chosen and agreed upon. Moreover, I do not understand how your clients would have been advantaged by a date-of-hire dovetail system. As I understand it, many of them were younger in seniority on their line than the former SP employees were on theirs. Finally, the ultimate result of the Carvatta Award and interpretation I understand affects the former UP employees in different ways in different zones. Some are advantaged and some are disadvantaged.

As to the so-called "ghost slot" issue itself, my understanding is that General Chairperson Carl

EXHIBIT

1 2

Crawford invoked *New York Dock* arbitration because he disputed the carrier's manner of implementation of the implementing agreement in that the rosters were not compressed by the carrier often enough to honor the work equity allocation. I understand that at the arbitration, the officers merely appeared, and all involved General Chairpersons were given the opportunity to and did present their cases and submissions, including General Chairpersons Parsons, Crawford, Rudel and Rossi.

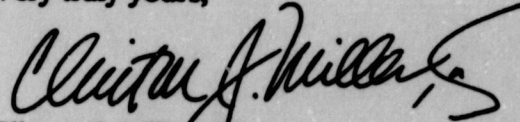
Under 49 C.F.R. § 1115.8, there is a 20-day appeal period to the Surface Transportation Board (unless the Board allows a longer period) that your clients could have used from their May 4, 1999 notice of the award and interpretation, but did not. They were obligated to use that remedy. *See, Rucker v. St. Louis-Southwestern Ry.*, 917 F.2d 1233 (10th Cir. 1990); *Atkins v. Louisville & Nashville R.R.*, 819 F.2d 644 (6th Cir. 1987); *see also Southern Pacific Transp. Co. v. Young*, 890 F.2d 777 (5th Cir. 1989). The primary exclusive jurisdiction of the Interstate Commerce Commission (now the STB as a result of statutory amendment in 1995) to review awards of arbitrators under the *New York Dock* conditions was established by the holding in *UTU v. Norfolk & Western Ry.*, 822 F.2d 1114 (D.C. Cir. 1987), *cert. denied*, 484 U.S. 1006 (1988) [*see Southern Pacific v. Young, supra*, 890 F.2d at 780 and *Rucker, supra*, 917 F.2d at 1237] and the stringent "Lace Curtain" standards for such review were approved in *IBEW v. ICC*, 862 F.2d 330 (D.C. Cir. 1988). In that connection, I do not understand that the reference of this matter to arbitration under Article I, Section 11 was inappropriate. Article I, Section 4 of the conditions provides the procedures for reaching an implementing agreement, by mandatory arbitration if necessary. Article I, Section 12 of the conditions provides the procedures for resolving loss on home sale disputes, including arbitration if necessary. Article I, Section 11 provides the arbitration procedure for resolution of other disputes involving the conditions. A dispute involving a question of application of an Article I, Section 4 implementing agreement certainly fits in that category. Arbitration under the Railway Labor Act would be inappropriate because the working agreement is not involved; rather, the application of the implementing agreement required by the conditions is put at issue. *See generally UTU v. N&W Ry., supra*, 822 F.2d at 1119-20.

There was neither a request for UTU to seek review of the Carvatta Award or the interpretation from any of the involved General Chairpersons, nor could such review have succeeded based on the "Lace Curtain" standards, in my view. More importantly, there does not appear to be any basis for any claim of bad faith, arbitrary conduct, or perfunctory handling by UTU that is required to be shown to establish a breach of the duty of fair representation. *See ALPA v. O'Neill*, 499 U.S. 65 (1991); *Vaca v. Sipes*, 386 U.S. 171, 190 (1967). The fact that every member is not satisfied with the outcome of seniority arrangements is not significant, and as long as the union acts within its "wide range of reasonableness" in resolution of these types of disputes, it incurs no liability. *See Humphrey v. Moore*, 375 U.S. 335 (1964); *Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953). In resolution of this dispute among the General Committees as to the proper application of the Houston Hub implementing agreement, UTU "has acted as honest broker throughout the altercation." *See Southern Pacific v. Young, supra*, 890 F.2d at 777.

Additionally, since the carrier agreed to automatic certification of all employees as adversely affected, the protection period runs from the implementation date. Further, I am advised there is no

available internal appeal under Article 79 of the Constitution given that the General Committees were involved in resolution of the dispute. Finally, what I understand happened here is that junior former UP employees obtained windfall seniority the way the carrier was administering the seniority provisions of the implementing agreement that did harm to the equity the senior former SP employees were entitled to by the agreement that was to a degree corrected by the Carvatta Award and interpretation

Very truly yours,



Clinton J. Miller, III
General Counsel

cc: C. L. Little, International President ✓
B. A. Boyd, Jr., Assistant President
D. E. Johnson, Vice President-Administration
P. C. Thompson, Vice President (FAX)
M. B. Futhy, Vice President (FAX)
D. L. Hakey, General Chairperson (FAX)
S. B. Rudel, General Chairperson (FAX)
R. J. Rossi, General Chairperson (FAX)
C. L. Crawford, General Chairperson (FAX)

DECLARATION OF DAVID L. HAKEY

I, David L. Hakey, pursuant to 28 U.S.C. § 1746, declare the following facts are true:

1. I am the General Chairperson of the United Transportation Union ("UTU") General Committee of Adjustment with jurisdiction over UTU's agreements with the Union Pacific Railroad Company ("UP") in the Houston Hub that apply to the clients of JoAnne Ray, and have held such position since January 6, 1999. My predecessor was L. W. Parsons.
2. During the time that L. W. Parsons was General Chairperson, his website, including Anti-Info News, constituted an official publication of the General Committee. The August, 1998 edition included a discussion of the upcoming arbitration before Mr. Carvatta triggered by a request of the former "SP Committees" (copy attached as Exhibit A). The September, 1998 edition included a report of what went on at the arbitration on September 1, 1998 (copy attached as Exhibit B).
3. On December 2, 1998, General Chairperson Parsons put out a letter to all Local Chairpersons and Secretaries of the locals Ms. Ray's clients belong to (copy attached as Exhibit C) enclosing a copy of the November 17, 1998 Findings and Award of Arbitrator Carvatta (copy attached as Exhibit D).
4. On January 27, 1999, I put out a letter to the same Local Chairpersons, again enclosing the Carvatta Award (copy attached as Exhibit E), and also enclosing a request for clarification of that Award filed by the parties January 19, 1999 (copy attached at Exhibit F).
5. On January 28, 1999, I again wrote to the Local Chairpersons in the Houston Hub advising them of the requested clarification and asking them for written detailed information about any seniority issues that existed on their districts (copy attached as Exhibit G).

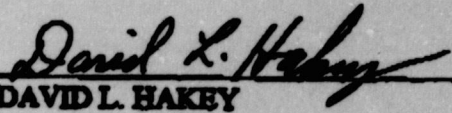


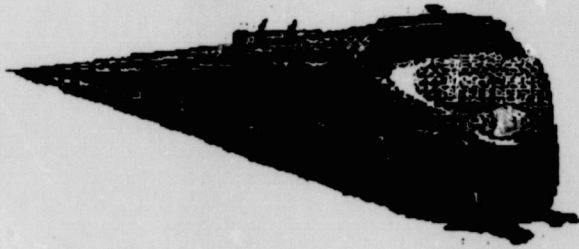
6. On February 10, 1999, I wrote to all Local Chairpersons in the Houston Hub, again enclosing a copy of the Award, the request for clarification (copy attached as Exhibit H), and also enclosing a copy of Arbitrator Carvatta's February 1, 1999 Interpretation (copy attached as Exhibit I).

7. On April 16, 1999, I again wrote to all Local Chairpersons in the Houston Hub, again enclosing a copy of the Award, the request for Interpretation, the Interpretation (copy attached as Exhibit J), and also enclosing a copy of the March 29, 1999 Letter of Understanding of the parties to implement the Award and Interpretation (copy attached as Exhibit K).

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

Executed on July 1, 1999.


DAVID L. HAKEY



ANTI-INFO NEWS

Vol. 7

August 1998

Issue 3

Web Site: <http://www.antiinfo.com>

Email Address: lwpsr@antiinfo.com

Editor & Responsible Party - L. W. Parsons, Sr. (All Views/Opinions Expressly My Own)

IGN AGREEMENT AT PRINTERS!!

In a move I'm sure some of you were beginning to wonder if it would ever happen, the new updated IGN agreement has gone to the printers. And I mean new and improved. When the smoke cleared, the stuff that had been done away with was balanced by all the new stuff we had imported or else had come from Crew Consist and the two National Agreements. So the book will be about 350 pages but in a beautifully well indexed version. For those who have copies of the 1991 version with that pathetic 6 page index, you will be pleased to note the index is now over 20 pages with two (2) columns per page. We cross indexed that sucker every direction we could think of. This is being written on the 13th of August so hopefully the mail outs to the Local Chairmen will happen by the end of the month. The Local Chairmen will hand them out and will make sure all our members get a copy.

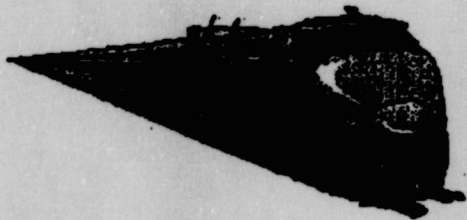
**Anti-Info
Vol. 7 Issue 1**

FORMER SP SENIORITY ARBITRATIONS

Most of you will have heard by now there are two arbitrations coming up. The first one is September 1, 1998 and is concerning the seniority issue in the Houston Hub. The former SP committees filed a question which seeks to make some change to the seniority in the Hub. The reason I say some change is because the question is rather vague. Let me run it by you and see what you think they are asking for....

"Does Section B of Article II, which states in the pertinent part, '(T)rainmen who contributed work equity to the territory comprising each zone shall be entitled to placement on such rosters and awarding of prior rights on that zone,' mean that eligible trainmen can exercise prior rights on only one zone roster at a time and in accordance with Section G of Article II, be awarded common seniority rights on all other zone rosters where no work equity was contributed?"

I have spoken to several former SP fellows and every one of them has a different idea about what is being sought by this question. It could go any one of several directions. Everyone (General Chairmen & the Carrier) involved has to have their submissions or comments in by the 18th of August, so I guess we'll know some more after that. On September 1st, we meet for oral arguments with the arbitrator, and he'll put



ANTI-INFO NEWS

Vol. 7 September 1998 Issue 4

ISSUE MOSTLY UPDATE

This month has been mostly a tedious & not very exciting one. Not that this is a bad thing after what we've had the last year. I'll settle for a little boredom, thank you. Most of this issue is updating items that were in last month's issue. There has been some movement so here we go!

IGN AGREEMENT AT PRINTERS!!

This is not a misprint! The Carrier & this office finally got the agreement done & now the printer is falling behind on their work. Even so, the IGN Agreement should be in the mail as you read this. It was suggested by some cynical souls that we couldn't get the IGN printed for the printer turning out books on how to get your rest & sleep as well as feel good letters from Uncle Dick Davidson & his partner Jerry Davis. IT IS COMING!!!

SP SENIORITY ARBITRATION

On September 1, all of the involved parties met & held this arbitration. There was a lot of discussion & the arbitrator asked quite a few questions. One of them was how can the folks that made an agreement be there disagreeing on how it was supposed to be. Most of our discussion was addressing questions that would have to be answered if the seniority changes. There will be a bunch of questions to answer. The arbitrator promised to not delay a decision any longer than he had to so maybe we will have an answer soon. The Vice Presidents of the UTU were both there. They are the same men who have been working with the involved parties on the Hub negotiations from the very beginning so they know & understand this issue completely.

PRODUCTIVITY/TPA DISPUTE

We are progressing with the TPA dispute as it relates to the former SP employees sharing in our Productivity Fund. The Carrier & us have selected an arbitrator, Mr. F.X. Quinn. He is a long time arbitrator, one who knows railroading & how the system works. He will hopefully give us a fair

L. W. PARSONS, SR., GENERAL CHAIRMAN
B. F. MANNING, ASSOCIATE GENERAL CHAIRPERSON
A. B. MAY, VICE CHAIRPERSON
R. C. WATSON, VICE CHAIRPERSON
S. G. HIBDON, SECRETARY



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united transportation union

GENERAL COMMITTEE OF ADJUSTMENT - GO 577
UNION PACIFIC RAILROAD - SOUTHERN DISTRICT
THE TEXAS - MEXICAN RAILWAY
BURLINGTON NORTHERN & SANTA FE RAILWAY

IN REPLY

REFER TO: 2115 R

December 2, 1998

All Local Chairpersons & Secretaries

UTU-Locals: 20, 293, 524, 756, 937, 953, 1205,
1337, 1458, 1524, 1836, 1892 & 1947

Dear Brothers & Sister:

Enclosed is copy of R. J. Carvatta's ruling received in our office this date, concerning the seniority issue in the Houston Hub. How it will be implemented will have to be determined after we study it and have several questions answered.

More information will be forthcoming as we find out.

Fraternally,

Larry W. Parsons, Sr.
General Chairman

LWP/djm
Encl.

cc: Vice Chairpersons

Arbitration Committee

**New York Dock - Merger Implementing Agreement - Houston Hub
(Pursuant To Article I, Section 11 of the New York Dock Conditions, STB Finance Docket No.32760)**

In the Matter of an Arbitration between:

UNITED TRANSPORTATION UNION

and

**FINDINGS
AND
AWARD**

UNION PACIFIC RAILROAD COMPANY

ARBITRATION COMMITTEE:

Roy J. Carvatta, Arbitrator, Chair and Neutral Member
P. C. Thompson, International Vice President, UTU
M. B. Futhy, Jr., International Vice President, UTU
A. Terry Olin, General Director-Employee Relations Planning, UP
W. B. Hutfies, Director - Manpower Planning & CMS Support, UP

APPEARANCES:

FOR THE UTU:

R. J. Rossi, General Chairman
C. L. Crawford, General Chairman
L. W. Parson, Sr., General Chairman
S. B. Rudel, General Chairman
L. P. Barrilleaus, Vice Local Chairman

FOR THE UP:

A. Terry Olin, General Director-Employee Relations Planning
W. B. Hutfies, Director - Manpower Planning & CMS Support

HEARINGS:

Hearings were held at the Hilton Seattle, Seattle, Washington on September 1, 1998. Each party was represented and was given an opportunity to present its evidence and arguments, and to refute the evidence and arguments of the other party.

QUESTION AT ISSUE:

Does Section B of Article II, which states in the pertinent part "(T)rainmen who contributed work equity to the territory comprising each zone shall be entitled to placement on such rosters and awarding of prior rights on that zone," mean that eligible trainmen can exercise prior rights on only one zone roster at a time and in accordance with Section G of Article II, be awarded common seniority rights on all other zone rosters where no work equity was contributed?"

BACKGROUND:

On November 30, 1995, Union Pacific Corporation filed application with the Surface Transportation Board (STB) to merge the rail carrier controlled by Union Pacific Corporation (Union Pacific Railroad Company and Missouri Pacific Railroad Company) with the rail carriers controlled by the Southern Pacific Rail Corporation (Southern Pacific Transportation Company - Eastern and Western Lines, St. Louis Southwestern Railway Company, SPCSL Corporation, and Denver and Rio Grande Western Railroad Company).

The Surface Transportation Board approved the application in its decision in Finance Docket (FD) No. 32760. With its approval, the STB imposed the employee protective conditions contained in New York Dock (NYD).

Pursuant to the requirements set forth in Article I, Section 4 of NYD, the Carrier served notices on September 18, 1996, and February 19, 1997, advising the United Transportation Union (UTU) of its intent to merge the employees and operations of the involved carriers in the territory comprising the "Houston Hub". The parties met to negotiate the requisite implementing agreement. On June 11, 1997, the parties signed a NYD Merger Implementing Agreement for the Houston Hub.

Thereafter, a dispute originated over the application of the Merger Agreement relative to merger of seniority (selection of forces).

The principals were unable to resolve the dispute. Arbitration proceedings were established pursuant to Article I, Section 11 of NYD to resolve the matter. Arbitrator was selected and appointed by the National Mediation Board, (NMD). Notice of hearing presented to all interested parties. Hearing conducted September 1, 1998.

POSITION OF THE CARRIER:

Carrier avers there is no foundation for the position adopted by the UTU SPEL in this dispute. Carrier asserts a complete lack of Agreement language supporting the UTU SPEL position, the desired result of the UTU SPEL is diametrically opposite that intended by the Merger Agreement authors. The UTU SPEL position stands in contrast with that adopted by their brethren committees and with the results of the joint labor - management implementation process. UTU SPEL's case is predicated on a misplaced notion of equity in a merger proceeding and the desire to maintain a poorly disguised manipulation of the work equity process, the status quo, and effectively preclude integration of UP and SP forces in the Houston Hub. Such a result is directly contrary to the language of the Merger Agreement, Carriers representations to the STB, its decision in Finance Docket No. 32760, and the seniority arrangement sought by UTU SPEL.

Carrier rested its case on several points. The Language of Article II, Section B mandates assignments of prior rights to all trainmen who contributed work equity to a zone. The authors of Article II, Section B intended trainmen who contributed work equity in a zone to be assigned prior rights in the zone. That a majority of the involved parties agree the Houston Hub seniority rosters were properly prepared. The moving parties are attempting to use NYD dispute resolution process to obtain that which they could not achieve through collective bargaining and the moving parties have failed to establish an agreement foundation for their position(s) and accordingly to satisfy their requisite burden of proof as the moving party.

The Carrier states Article II, Section B of the Merger Agreement requires "...trainmen who contributed work equity to the territory comprising each zone shall be entitled to placement on such rosters and awarding of prior rights on that zone." Pursuant to this requirement, the parties determined the work equity contributed by each component roster for the zone(s) and assigned eligible trainmen from each of the component rosters to the prior rights roster. Carrier insists the language clearly instructs the parties to incorporate all "...trainmen who contributed work equity to the territory comprising the zone..." on the prior rights zone. Carrier insists the term "trainmen" is specifically intended to include all brakemen, switchmen, and conductors who performed work in, or hold seniority on a component (pre-merger) seniority district involved in the territory comprising the zone.

ORGANIZATION'S POSITION:

The position of the Organization differs among the representatives of the involved employees.

UTU SPEL asserted the Carrier misapplied the Merger Implementing Agreement. The UTU SPEL in articulating its position averred the merger of seniority (selection of forces) was predicated on the percentage of work each group of employees brought to the table in each of the five zones and in each craft within each of the zones. The UTU SPEL argues that the issue was decided at the labor-management implementation process when the equity rosters were formulated and that the carrier erred when making assignments to the equity rosters. UTU SPEL insist the provisions of the Merger Agreement mandate trainmen occupy one equity position in a single craft on a single zone.

UTU TPMP Terminal endorsed the UTU SPEL position.

UTU TP, UTU MP and UTU Gulf Coast Lines argue that the implementation was correct, that the position taken by UTU SPEL was rejected during negotiations with the Carrier and that UTU SPEL's position does not reflect the intent of the Merger Agreement.

FINDINGS AND OPINION OF COMMITTEE:

Absent a majority consensus of the intent of the negotiators of the Merger Agreement the Arbitrator must look to the language of the agreement to derive the meaning and purpose of the applicable agreement provisions.

Several items have been stipulated by the parties; pre-merger seniority was retained in the Houston Hub; the seniority merger arrangement (selection of forces) stems from equity jointly formulated and agreed to by all principals participating in the negotiations; and the zone rosters would be realigned annually.

The dispute originates from application of Section B of Article II "(T)rainmen who contributed work equity to the territory comprising each zone shall be entitled to placement on such rosters and awarding of prior rights on that zone," and from the principle of equity in merger proceedings.

The Houston Hub was divided into five zones. The percentage of equity for each of the component groups of employees was different in each of the five zones and different for each craft within the zone.

Article II, Section A dictates the territory to be included in each of the zones.

Article II, Section B dictates who will be eligible for assignment to the prior rights rosters in each zone.

The sections referred to above clarify the intent of the authors of the merger agreement. Trainmen who contributed work equity to a zone are entitled to placement on such rosters within the zone consistent with pre-merger seniority and the equity percentages agreed to. The agreement specifies "...entitled to placement on such rosters and awarding of prior rights on that zone." If it were the intent of the authors to restrict placement of trainmen to a particular craft roster within a zone then certainly the negotiators were capable of articulating such provisions in the Merger Agreement. They did not do so and the Arbitrator is powerless to amend the agreement.

As implemented, the equity arrangement is not in line with the language of the merger agreement when trainmen holding pre-merger seniority on multiple zones were given prior rights on all of the rosters in all (or multiple) zones. Equity is a work contribution principle. The well reasoned theory behind equity is that each component group has access to fill the number of assignments allotted to each component group by virtue of the equity derived from the amount of work brought to the consolidation. When trainmen who held seniority in a territory but not on an active work roster in that territory were placed on the equity roster, this stacked the deck against the true implementation of the equity agreed to by the parties. Had the instruction been to include "all" trainmen who held seniority, then that could have easily been so stated in the agreement. Such was not the case. The instruction was trainmen who contributed work equity to the territory comprising each zone shall be entitled to placement on such rosters.


Support for this conclusion is embodied in the language of Article II, Section B. This provision requires trainmen "...who contributed work equity to the territory..." will be placed on that zone roster and also "... (awarded) prior rights on that zone." It is neither conceivable or plausible a trainmen could contribute work equity simultaneously on all five Houston Hub zones. An employee not working in a zone cannot therefore hold prior rights seniority in both that zone and all others.

AWARD:

From the foregoing, it is clear that the parties have been unable to agree on the implementation of the agreement dated June 11, 1997. It is also obvious that one trainman cannot be in two places at one time and seniority rosters cannot be ratcheted on a daily basis. Any other interpretation would lead to chaos for the employees, Organization, and Carrier.

The question presented is answered in the affirmative, in accordance with the foregoing.

The parties should arrange to jointly make necessary adjustments to each zone roster to reflect the equity arrangement stipulated in the Merger Agreement and in concert with the Findings and Opinion of this Award. In order to see that this decision is properly implemented the Committee that comprised this tribunal retains jurisdiction over this dispute. Because of the unusual nature of the facts involved, this decision is limited to the Houston Hub.



Roy J. Carvatta
Chair and Neutral Member

Chicago, Illinois
November 17, 1998

D. L. HAKEY, GENERAL CHAIRPERSON
J. GARZA, JR., VICE CHAIRPERSON (TEX-MEX)
J. L. MOFFITT, VICE CHAIRPERSON (BNSF)
T. C. ALBARADO, VICE CHAIRPERSON (UPRR-YD)
D. J. BLUDAU, VICE CHAIRPERSON (UPRR-RD)
J. P. CLEM, SECRETARY, GC of AGO 577



400 RANDAL WAY
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FACSIMILE NO. (281) 288-5577

united transportation union

GENERAL COMMITTEE OF ADJUSTMENT - GO 577
UNION PACIFIC RAILROAD - SOUTHERN DISTRICT
THE TEXAS - MEXICAN RAILWAY
BURLINGTON NORTHERN & SANTA FE RAILWAY

IN REPLY *4*
REFER TO: 2115 R

January 27, 1999

All Local Chairpersons/Houston Hub
UTU Locals: 20, 293, 524, 953, 1205, 1337
1458, 1524, 1836, 1892 & 1947

Dear Sirs and Brothers:

Attached find copy of Award pursuant to Article I, Section 11 of New York Dock Conditions, STB Finance Docket No. 32760.

The Award is the result of a dispute involving implementation of the Houston Hub Merger Implementing Agreement.

Also attached, find copy of a request for clarification, which will impact implementation of the Award.

Fraternally,

D. L. Hakey
General Chairperson

DLH/djm
Encls.

A. TERRY OLIN
General Director - Employee
Relations Planning

UNION PACIFIC RAILROAD COMPANY



1416 Dodge St. Rm 332
Omaha NE 68178-0032
(402) 271-3301
Fax: (402) 271-4474

January 19, 1999

Mr. R. J. Carvatta
Arbitrator
P. O. Box 504
Park Ridge, IL 60068

Dear Mr. Carvatta:

This has reference to the arbitration award dated November 17, 1998, rendered pursuant to the provisions of New York Dock, regarding a seniority dispute stemming from implementation of the June 11, 1997 New York Dock Merger Implementing Agreement for the Houston Hub.

In applying the findings set forth in the above-referenced award, a question regarding the intended application of your findings has arisen that requires your further clarification. The issue requiring clarification focuses on the impact of the award on prior rights seniority possessed by Houston Hub trainmen and, specifically, whether its terms require employees possessing such rights to select permanently one zone in which to exercise their prior right seniority. Accordingly, the parties submit the following question/issue for your clarification:

"Pursuant to the findings contained in the November 17, 1998 New York Dock Arbitration Award, do trainmen/yardmen who held pre-merger seniority, or who were granted some prior rights seniority in conjunction with the Houston Hub Merger Implementing Agreement, in territory encompassed in more than one zone comprising the Houston Hub maintain prior rights in those (multiple) zones, or are said trainmen required to select only one (1) prior rights zone?"

Your assistance in addressing the above matter will be appreciated.

Sincerely,

P.C. Thompson

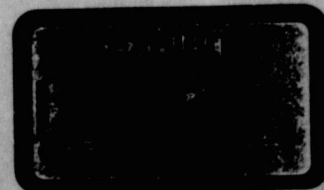
P. C. Thompson
International Vice President
UTU

M. B. Futhey, Jr.

M. B. Futhey, Jr.
International Vice President
UTU

A. Terry Olin

A. Terry Olin
General Director - Employee
Relations Planning



cc: Mr. D. L. Hakey
Mr. R. J. Rossi
Mr. S. B. Rudel
Mr. J. A. Saunders
Mr. C. L. Crawford
Mr. R. D. Hogan, Jr.
Mr. L. P. Barrilleaux

RECEIVED

JAN 21 1999

FEDERAL CHAIRMAN'S OFFICE
U. T. U.

D. L. HAKEY, GENERAL CHAIRPERSON
J. GARZA, JR., VICE CHAIRPERSON (TEX-MEX)
J. L. MOFFITT, VICE CHAIRPERSON (BNSF)
T. C. ALVARADO, VICE CHAIRPERSON (UPRA-YD)
D. J. BLUDAU, VICE CHAIRPERSON (UPRR-RD)
J. P. CLEM, SECRETARY, GC of AGO 577



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united transportation union

GENERAL COMMITTEE OF ADJUSTMENT - GO 577
UNION PACIFIC RAILROAD - SOUTHERN DISTRICT
THE TEXAS - MEXICAN RAILWAY
BURLINGTON NORTHERN & SANTA FE RAILWAY

IN REPLY

REFER TO: 2115 R

January 28, 1999

All Local Chairpersons/Houston Hub
UTU Locals: 20, 293, 524, 953, 1205, 1337
1458, 1524, 1836, 1892 & 1947

Dear Sirs and Brothers:

When Arbitrator R. J. Carvatta furnishes the requested clarification, the Arbitration Award pursuant to Article I, Section 11 of New York Dock, will be implemented. At that time, this office will address any outstanding seniority issues.

Please advise "in writing", with detailed information, any seniority issues that exist on your respective districts. If this information could be received by February 15, 1999, it would allow time to categorize and prepare for presentation to the Carrier.

Fraternally,

D. L. Hakey
General Chairperson

DLH/djm

JUN-28-1999 15:55

UTU GO 577

281 288 5577 P.04/13

D. L. HAKEY, GENERAL CHAIRPERSON
J. GARZA, JR., VICE CHAIRPERSON (TEX-MEX)
J. L. MOFFITT, VICE CHAIRPERSON (BNSF)
T. C. ALBARADO, VICE CHAIRPERSON (UPRR-YD)
D. J. BLUDAU, VICE CHAIRPERSON (UPRR-RD)
J. P. CLEM, SECRETARY, GC of AGO 577



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GENERAL COMMITTEE OF ADJUSTMENT - GO 577
UNION PACIFIC RAILROAD - SOUTHERN DISTRICT
THE TEXAS - MEXICAN RAILWAY
BURLINGTON NORTHERN & SANTA FE RAILWAY

IN REPLY *1x*
REFER TO: 2115 R

February 10, 1999

All Local Chairpersons
UTU/Houston Hub

RE: Roster Implementation Houston Hub

Dear Sirs and Brothers:

Enclosed find copy of the Award of Arbitration Committee pursuant to Article I, Section 11 of NYD, STB Finance Docket No. 32760.

After receipt of the Award referred to above, question was raised with respect to the meaning and application of the Award.

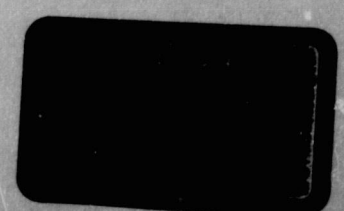
By letter dated January 19, 1999, (copy enclosed), the Arbitration Committee requested clarification of the Arbitrator's decision. Arbitrator R. J. Carvatta issued his interpretation dated February 1, 1999, which is self-explanatory, (copy enclosed).

You will be advised of any implementation of the Award and Interpretation.

Fraternally,

D. L. Hakey
General Chairperson

DLH/djm
Encl.



Arbitration Committee

NEW YORK DOCK MERGER IMPLEMENTING AGREEMENT - HOUSTON HUB (Pursuant to Article I, Section F of the New York Dock Conditions imposed in STB Finance Docket No. 32760)

In the Matter of Arbitration between:

UNITED TRANSPORTATION UNION

and

**ARBITRATION AWARD--
INTERPRETATION**

UNION PACIFIC RAILROAD COMPANY

ARBITRATION COMMITTEE

R. J. Carvatta - Arbitrator, Chairman and Neutral Member
P. C. Thompson - International Vice President, UTU
M. B. Futhy, Jr. - International Vice President, UTU
A. T. Olin - General Director - Employee Relations Planning, UPRR
W. B. Hutfies - Director - Manpower Planning & CMS Support, UPRR

This Arbitration Committee rendered, in accordance with Article I, Section 11, of the New York Dock employee protective conditions, an Award, dated November 17, 1998, which addresses the following question:

"Does Section 8 of Article 11, which states in the pertinent part '(T)rainmen who contributed work equity to the territory comprising each zone shall be entitled to placement on such rosters and awarding of prior rights on that zone' mean eligible trainmen can exercise prior rights on only one zone roster at a time and in accordance with Section 6 of Article 11, be awarded common seniority rights on all other zone rosters where no work equity was contributed?"

In rendering this decision on this matter, the Arbitration Committee found, in relevant part, as follows:

"... it is clear that the parties have been unable to agree on the implementing of the agreement dated June 11, 1997. It is also obvious that one trainman cannot be in two places at one time and seniority rosters cannot be ratcheted on a daily basis. Any other interpretation would lead to chaos for the employees, Organization, and Carrier."

"The question presented is answered in the affirmative, in accordance with the foregoing."

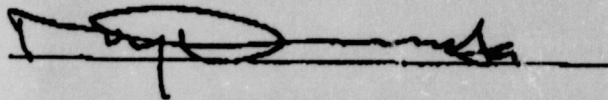
"The parties should arrange to jointly make necessary adjustments to each zone roster to reflect the equity arrangement stipulated in the Merger Agreement and in concert with the Findings and Opinion of this Award. In order to see that this decision is properly implemented the Committee that comprised this tribunal retains jurisdiction over this dispute. Because of the unusual nature of the facts involved, this decision is limited to the Houston Hub."

Pursuant to the foregoing, the parties have requested clarification of this Committee's initial findings. By letter dated January 15, 1999, the parties requested clarification of the following question:

"The issue requiring clarification focuses on the impact of the award on prior rights seniority possessed by Houston Hub trainmen and, specifically, whether its terms require employees possessing such rights to select permanently one zone in which to exercise their prior rights seniority. Accordingly, the parties submit the following question/issue for your clarification:

"Pursuant to the findings contained in the November 17, 1998 New York Dock Arbitration Award, do trainmen/yardmen who held premerger seniority, or who were granted zone prior rights seniority in connection with the Houston Hub Merger Implementing Agreement, in territory encompassed in more than one zone comprising the Houston Hub maintain prior rights in those (multiple) zones, or are said trainmen required to select only one (1) prior rights zone?"

In accordance with this tribunal's initial findings, a qualifying trainman's prior rights, if any, are established and governed by the language of the Houston Hub Merger Agreement. This tribunal is not empowered to eliminate or curtail any prior rights which eligible employees are entitled to receive or exercise. Thus, trainmen are not required to permanently select only one zone in which to exercise their prior rights seniority. Therefore, the answer to the above-posed question is that eligible trainmen maintain prior rights seniority in the multiple zones. Such trainmen can exercise their prior rights seniority on only one zone at a time and, according to Section G of Article II, common seniority on all other zones until the rosters are again ratcheted.

A handwritten signature in dark ink, appearing to read "Roy J. Carvatta", is written over a horizontal line.

Roy J. Carvatta
Chair and Neutral Member

Chicago, Illinois
February 1, 1999

D. L. HAKEY, GENERAL CHAIRPERSON
J. GARZA, JR., VICE CHAIRPERSON (TEX-MEX),
J. L. MOFFITT, VICE CHAIRPERSON (BNSF)
T. C. ALBARADO, VICE CHAIRPERSON (UPRR-YD)
D. J. BLUDAU, VICE CHAIRPERSON (UPRR-RD)
J. P. CLEM, SECRETARY, GC of A, GO 577



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GENERAL COMMITTEE OF ADJUSTMENT - GO 577
UNION PACIFIC RAILROAD - SOUTHERN DISTRICT
THE TEXAS - MEXICAN RAILWAY
BURLINGTON NORTHERN & SANTA FE RAILWAY

IN REPLY

REFER TO: 2115

April 16, 1999

All Local Chairpersons
UTU/Houston Hub

RE: November 17, 1998 Arbitration Award - Meyer
Implementing Agreement - Houston Hub, pursuant to
Article 1, Section 11 of NYD, STB FD 32760

Dear Sirs and Brothers:

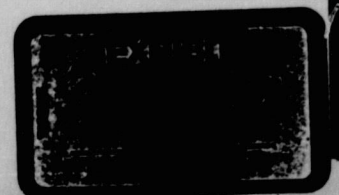
Enclosed for your ready reference and review is copy of the November 17, 1998 Arbitration Award, the January 19, 1999 request for clarification, the February 1, 1999 Arbitration Award Interpretation and an unsigned copy of March 29, 1999 Letter of Understanding to implement the November 17, 1998 Arbitration Award and Interpretation.

The parties met in Omaha, Nebraska, March 22 and 23, 1999, to discuss implementation of the November 17, 1998 Arbitration Award and other seniority issues. The Carrier is currently adjusting the seniority rosters to reflect what the records indicate is the proper seniority standing of trainmen.

With regard to the November 17, 1998 Arbitration Award the attached unsigned March 29, 1999 Letter of Understanding reflects the parties agreement on the procedure to be followed to implement the Award. Consistent with the Award and Section 2 of the March 29, 1999 Letter of Understanding, the Carrier will establish an eligible employee's prior rights in the zone in which he or she is working on May 3, 1999.

Thereafter, the Carrier will furnish corrected seniority rosters for review. During the review process, CMS will continue to use the current seniority rosters for bid assignments, etc. The annual "ratchet" of the zone seniority rosters will be scheduled for July 1 of each year.

Section 5 of the March 29, 1999 Letter of Understanding outlines the precise procedure to be followed. Eligible trainmen desiring to exercise prior rights in a zone other than the one

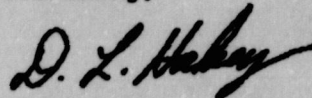


March 26, 1999

established on May 3, 1999, must complete the attached form and follow the instructions on the form.

In order that all Houston Hub trainmen are informed of the implementation process, several copies of this correspondence are being included for posting and distribution.

Fraternally,



D. L. Hakey
General Chairperson

DLH/djm
Encls.

cc: UTU Local Presidents, Houston Hub
UTU Local S/T, Houston Hub

UNION PACIFIC RAILROAD COMPANY

1416 DOOGUE STREET
OMAHA, NEBRASKA 68179



March 29, 1999

Mr. D. L. Hakey
General Chairman
United Transportation Union
400 Randal Way, Suite 102
Spring, TX 77388

Mr. R. J. Rossi
General Chairman
United Transportation Union
2040 North Loop West, Suite #310
Houston, TX 77018

Mr. S. B. Rudel
General Chairman
United Transportation Union
7817 Camelot Road
Fort Worth, TX 76134

Mr. J. A. Saunders
General Chairman
United Transportation Union
P. O. Box 581
Smithville, TX 78957-0581

Mr. C. L. Crawford
General Chairman
United Transportation Union
1854 Lockhill-Selma Road, Suite 102
San Antonio, TX 78213

Mr. R. E. Karstetter
General Chairman
United Transportation Union
1721 Elfindale Drive, Suite 309
Springfield, MO 65807

Mr. L. P. Barrilleaux
Vice Local Chairman
United Transportation Union
2204 Deerlick Lane
Harvey, LA 70058-2209

Gentlemen:

This has reference to the parties' discussions regarding the "Houston Hub prior rights seniority dispute" and application of the findings contained in the New York Dock arbitration award dated November 17, 1998, and the attendant clarification issued February 1, 1999. In connection therewith, this letter will confirm the parties' understandings and agreement regarding application of those findings.

The parties agree the implementation of the November 17, 1998 award and the February 1, 1999 clarification and the associated issue(s) regarding the exercise of prior rights in the Houston Hub will be handled as set forth below:

1. An employee who, pursuant to applicable provisions of the New York Dock Merger Implementing Agreement for the Houston Hub ("Merger Agreement"), possesses prior rights on more than one seniority zone will be permitted to hold

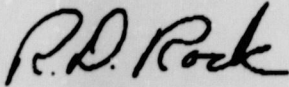
and/or exercise such prior rights on only one zone at a time.

2. For implementing this award, we will establish an eligible employee's prior rights in the zone in which he or she is working on May 3, 1999.
3. After implementation of this award, an employee possessing prior rights in one zone may exercise his or her seniority in another zone, except that the employee must use his or her common seniority in that other zone until we have "ratcheted" the roster according to the provisions of the Merger Agreement and this award. Such employee's prior rights in that zone, if any, will be established in connection with the annual roster "ratcheting" process. After the annual roster "ratcheting," the eligible employee may thereafter exercise his or her prior rights in that other zone according to applicable Agreement rules.
4. Pursuant to the Merger Agreement, the zone seniority rosters comprising the Houston Hub will be "ratcheted" at the same time. The annual "ratcheting" will be scheduled for July 1 of each year.
5. Trainmen in the Houston Hub who are eligible to hold prior rights in more than one zone may elect to exercise their common seniority in the zone in which they are presently working and leave their prior rights in another zone. Trainmen electing to exercise his or her common seniority, rather than his or her prior rights seniority, in the zone that they are working at the time of the annual roster ratcheting must advise the designated Carrier official by completing and forwarding the appropriate form (copy attached) no sooner than forty five (45) days and no later than ten (10) days before the date of the annual roster "ratcheting." An eligible employee must indicate the zone in which he or she desires to retain the prior rights. All such requests will be irrevocable until the subsequent annual roster ratchet. Employees not properly completing the form and submitting it to the designated Carrier official within the proper time frames will have his or her prior rights automatically placed in the zone he or she is working at the time the roster ratchet is accomplished.
6. An employee returning from inactive status who possesses prior rights in more than one seniority zone will have his or her prior rights established in the zone in which he or she first works after marking up for service. Said employee may have his or her prior rights placed in another zone in which he or she is eligible to hold such rights, which is different from the one in which he or she initially works, by completing the appropriate form at the time of, or prior to, marking-up for service.
7. The names and appropriate seniority rankings of all Houston Hub trainmen will be placed and appear on all rosters for that zone.
8. The purpose of this accord is to address matters concerning implementation of the November 17, 1998 New York Dock arbitration award. Accordingly, we do not intend the provisions hereof to otherwise modify any other provision or

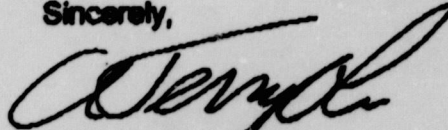
arrangement contained in or associated with the Merger Agreement.

If the foregoing properly and accurately reflects the parties' understandings in this matter, please so indicate by affixing your respective signature in the spaces provided below.

Sincerely,

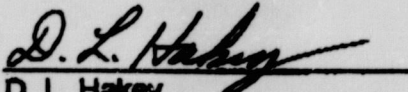


R. D. Rock
Director - Labor Relations

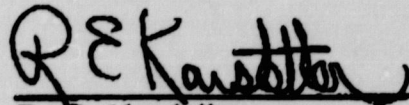


A. Terry Olin
Gen. Director-Employee Relations Plng.

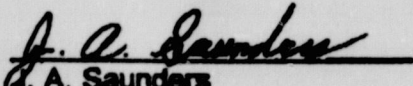
AGREED:



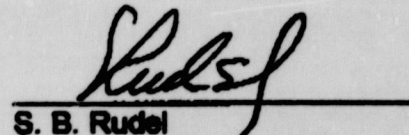
D. L. Hakey
General Chairman, UTU



R. E. Karstetter
General Chairman, UTU



J. A. Saunders
General Chairman, UTU



S. B. Rudel
General Chairman, UTU



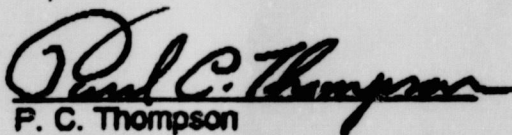
R. Rossi, Sr.
General Chairman, UTU



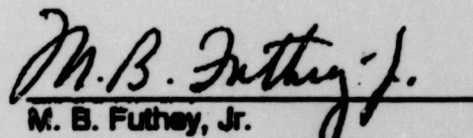
C. L. Crawford
General Chairman, UTU

L. Barrilleaux
Vice Local Chairman, UTU

APPROVED:



P. C. Thompson
International Vice President, UTU



M. B. Futhy, Jr.
International Vice President, UTU