STB FD 32760 (Sub 34) 7-29-99 I 195134

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July 27, 1999

VIA FEDERAL EXPRESS

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

Re: 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).

Dear Mr. Williams:

Enclosed please find Petition for Reconsideration Under 49 CFR 1115.3.

Pursuant to our telephone inquiry as to the amount of filing fee needed, we were told by Nancy Beiter (Surface Transportation Board (202) 565-1592) that no filing fee was required. Thus, we have not included a check.

Thank you for your attention to this matter.

Very truly yours.

JoAnne Ray

JAR\elc

Enclosure:

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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)

PETITIONER E.E. SCHOPPA'S MOTION FOR RECONSIDERATION OF MOTION FOR EXTENSION OF TIME TO APPEAL IMPLEMENTING AGREEMENT ARBITRATION AWARD AND CLARIFICATION

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ATTORNEYS FOR PETITIONER E. E. SCHOPPA

In accordance with 49 U.S.C. § 11153, Petitioner E.E. Schoppa files this Motion for Reconsideration of his Motion for Extension of Time to Appeal Implementing Agreement Arbitration Award and Clarification, which was denied by the Surface Transportation Board in a decision served on July 8, 1999 ("the Decision").[1]

1. As shown by the affidavit attached as Exhibit B, Petitioner E.E. Schoppa is a trainman with 28 years' seniority who is employed by Union Pacific Corporation("the Carrier") in the Houston Hub. He belongs to the United Transportation Union ("the UTU"). The Houston Hub, which was the first hub in which seniority rosters were combined following the 1996 merger of Union Pacific Railroad Company and Southern Pacific Railroad Company, has experienced a great deal of intra-union strife due to the way that UTU handled the merger of the rosters.(See Exhibit C, pp. 5-8, the Carrier's *New York Dock* arbitration submission). Although Article 90 of the UTU's constitution (see Exhibit D) provides a mandatory mechanism for handling intra-union disputes arising from mergers, nevertheless the UTU waited until April 1998--six months after merged seniority rosters had already gone into effect under a Merger Implementing Agreement for the Union Pacific/Southern Pacific merger–and then demanded that the Carrier engage in New York Dock arbitration to settle an issue upon which UTU members could not agree. (see Exhibit F). Within 20 days after Trainman Schoppa learned that an aribtrator had issued an award rewriting his seniority, he filed a motion with the Board seeking to extend his time for the filing of an appeal. Based

[1] The subject decision is attached as Exhibit A.

primarily on misleading statements in a response by the UTU, the Board denied Petitioner's Motion for Extension of Time to Appeal Implementing Agreement Arbitration Award and Clarification.

2. The decision asserts that Petitioner's motion for extension of deadline for filing appeal was late and that he has not shown good cause for late filing. However, Petitioner's motion was timely and, since it appeared timely at the time of filing, he had no reason to show good cause for late filing. Once the UTU and the Carrier filed their oppositions, Petitioner had no procedurally correct method for explaining the alleged late filing, since the Board's rules do not allow a reply. 49 C.F.R. §1104.13(c).

2. Petitioner respectfully asserts that the Board's decision involves material error within the meaning of 49 U.S.C. §1115.3(b)(2) for five reasons. First, the decision involves material error because it implies that trainman Schoppa's appeal should be barred because he learned of the clarified award around May 4, 1999. This conclusion by the Board is based on a false impression created by the UTU in its opposition to Petitioner's motion. The UTU pointed out that Petitioner's attorney wrote to the UTU on May 27, 1999 indicating that she represented trainmen who had learned of the award on May 4, 1999. However, the UTU's own evidence (see Exhibit E, the May 27, 1999, letter which the UTU attached or should have attached to its opposition[2]) shows that Petitioner Schoppa was not among the 47 trainmen referred to in the May 27 letter, all of whom are described on the list attached to that letter. The trainmen described in the May 27 letter are in a different zone of the vast Houston Hub, which spans thousands of miles in Texas and Louisiana.

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[2] Pettitioner's counsel cannot locate in her file the document that UTU attached to its response as Exhibit A and does not know if UTU's counsel ever sent it to her. However,Exhibit E and the list attached thereto (reflecting 47 trainmen and not including Petitioner Schoppa) is a true and accurate version of the May 27 letter and its attachment.

As Trainman Schoppa explains in his affidavit, different zones within the hub learned of this award on different dates. It should also be noted that, although the acts by different trainmen in a different zone who learned of the award at a different time should not be binding on Trainman Schoppa, nevertheless those trainmen also acted promptly and reasonably once they learned of the award on May 4. UTU's constitution mandates that union members, on penalty of expulsion, first present their complaints to the Union before taking legal action (see Exhibit D, Article 28). Therefore, the 47 trainmen listed in Exhibit E complied with Article 28 by having counsel send a letter to their union to try to resolve this. Then, within days after the Union notified their counsel that it would not attempt to resolve or even address their complaints, the trainmen on June 8–following the same procedure that the Union had used successfully a few months before–sought further clairfication from the arbitrator. (see Exhibit G).

3. Second, the Board's decision involves material error in that it states that Petitioner should have been aware of the arbitrator's decision and subsequent clarification he because the clarified award was distributed to Local Chairpersons in February and April 1999. As shown by Petitioner's affidavit attached as Exhibit B, his Local Chairperson, Steve Parker, never notified him of any such award or clarified award.

4. Third, the Board's decision involves material error because the Board adopted the UTU's and the Carrier's argument that Petitioner should have known about the arbitration award because his former General Chairman posted information about it on the Internet. As shown by Exhibit B, Petitioner , whose education ended at the high school level, does not own a computer and has never had one in his home, and has no idea how to access the Internet. Petitioner's lack of Internet access is the norm, in that, as shown by the article attached as Exhibit H , 75 percent of

American homes lack Internet access. Petitioner has never been advised by his Carrier or his Union that it was necessary for him learn how to use the Internet in order to stay advised of his rights. The Carrier and the Union, both multimillion dollar enterprises with vast resources, had myriad ways to communicate with trainman Schoppa–a note in his paycheck or direct deposit receipt, a bulk mailing to all union members, a posting in his workplace. They ignored those proven means of communication with employees, but nevertheless argue that trainman Schoppa should have found out for himself what they were up to by performing Internet research. It was material error for the Board to rely on these arguments because they are based on an elitist view of Internet usage that is totally unrealistic both for the average trainman with a high school education and for the average American home, which is overwhelming lacking in Internet access.

5. Fourth, the Board's decision involves material error because it is just not fair to allow the UTU and the Carrier to harshly enforce deadlines against the trainmen while they themselves have ignored mandatory deadlines for the New York Dock procedures that gave rise to this appeal. As shown by Exhibit F, the subject Merger Implementing Agreement went into effect in August 1997 (Olin affidavit, p. 2, par. b) and complaints about the seniority rosters began immediately. Implementation of the Houston Hub was complete on February 1, 1998. The Union waited seven months after the Houston Hub first roster came out and more than two months after the last Houston Hub roster appeared to seek *New York Dock* arbitration (Exhibit F) even though Article 11 – the section the Union claimed to be relying on – requires submission to arbitration within 20 days after the dispute arises. This 20-day time limit for seeking arbitration is mandatory unless waived by the board . *Midsouth Corporation*, Finance Docket No. 31063 (Sub No. 1 §1992 166 LEXIS 139 (1992). Furthermore, neither the Union or the Carrier insisted that the arbitrator adhere to the 45-day

deadline of NYD Article 11 for rendition of his award, with the result that the arbitrator rendered his award 75 days after the hearing (Olin affidavit, p. d). Then, when the award was over two months old, the Union and the Carrier returned to the arbitrator (Exhibit F).

6. Fifth, the Board's decision involves material error because it is inconsistent with prior decisions that have not dealt harshly with trainmen who file appeals that may be slightly late. The Board "does not favor disposing of controversial questions on narrow procedural grounds" such as the untimeliness of an appeal. *St. Louis Southwestern Railway Co.*, Finance Docket No. 28794 (Sub-No.1), 1991 ICC LEXIS 129 (1991). Thus, perhaps recognizing the difficulties that individual trainmen face in understanding complex legal documents and in locating counsel, the Board has accepted an appeal from trainmen in *New York Dock* cases filed more than two months late (*Midsouth Corporation*, Finance Docket No. 31063 (Sub-No. 1) and Finance Docket 31077 (Sub-No. 1), 1992 ICC LEXIS 139 (1992) and has even allowed a trainman a second extension for filing an appeal even though he filed his second extension request one day late (*Consolidated Rail Corporation*, STB Finance Docket No. 32419 (Sub-No. 1), 1999 STB LEXIS 70 (1999). These prior decisions by the Board are wise decisions in that they allow trainmen to be heard on matters that might otherwise be resolved in ways that do not promote harmony and cooperation on the railroad.

For all the above reasons, Petitioner E.E, Schoppa requests that the Board reconsider its decision and grant him leave to file an appeal of the clalrified arbitration award issued by Roy J. Carvatta pertaining to seniority in the Houston Hub.

Respectfully submitted,

WOODARD, HALL, & PRIMM, P.C.

BY: _____
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ATTORNEYS FOR PETITIONER E. E. SCHOPPA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Reply were served this 27 day of July, 1999, by Federal Express upon the following:

Brenda J. Council, Esquire
Kutak Rock
The Omaha Building
1650 Farnam Street
Omaha, Nebraska 68102

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

_____
JoAnne Ray

30344
SEC

SERVICE DATE - JULY 8, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB 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)

Decided: July 7, 1999

By petition filed on June 23, 1999, under 49 CFR 1115.8, Mr. E.E. Schoppa, acting on behalf of himself and other similarly situated employees, requests a 30-day extension, to July 23, 1999, of the deadline for filing an appeal of the decision of Arbitrator R.J. Carvatta.

On July 2, 1999, the United Transportation Union (UTU) and the Union Pacific Railroad Company (UP) filed replies in opposition to the requested extension.

The requested extension will be denied. The arbitrator issued his award on November 17, 1998. On February 1, 1999, the arbitrator issued a decision clarifying the award. Under the assumption that the 20-day deadline began to run on February 1, 1999, rather than November 17, 1998, the appeal was due by February 22, 1999. Thus, petitioners are at least 4 months late in filing an appeal.

Petitioners have not explained their lengthy delay. Petitioners allege that they did not become aware of the effect of the award on them until June 4, 1999. However, in a letter dated May 27, 1999, petitioners' attorney stated that they became aware of the modified award on May 4, 1999.[1] Moreover, petitioners should have been aware of the clarified award even before May 4, 1999, because it was distributed to the "Local Chairpersons in the Houston Hub" on February 10, 1999, and April 16, 1999.[2] In addition, the dispute was discussed on the web home page of the

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[1] Specifically, the letter stated, ". . . [o]ur 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." See Exhibit 1 of UTU's reply filed on July 2, 1999.

[2] Statement of A. Terry Olin, attached to UP's reply filed on July 2, 1999; statement of David L. Hakey, attached to UTU's reply filed on July 2, 1999.

EXHIBIT A

General Committee of UTU's Houston Hub.[3]

Under these circumstances, petitioners had adequate time to prepare an appeal and have not justified their failure to do so.

It is ordered:

1. The petition for an extension is denied.

2. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

[3] Id.

AFFIDAVIT OF E.E. SCHOPPA

STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned notary public, on this day appeared E.E. Schoppa, who upon his oath did depose and state:

My name is E.E. Schoppa. I am over the age of 18 years and am fully competent to make this affidavit. I make this affidavit based on my personal knowledge.

For the past 28 years, I have been continuously employed as a trainman in the Houston, Texas area, first by Houston Belt & Terminal Railroad and then by its successor Union Pacific Railroad Company. Today the area where I work as a trainman is known as the Houston Hub. The Houston Hub includes an area from approximately San Antonio, Texas, to New Orleans and north to Shreveport, Louisiana. I work in Zone 5 of the Houston Hub. I am a member of the United Transportation Union ("the Union").

In approximately late 1997 a Merger Implementing Agreement went into effect for the Houston Hub following the merger of Union Pacific Railroad Co. and Southern Pacific Railroad Co. Rosters reflecting merged seniority were implemented, and I was assigned a new position on a new roster. I have been working under this roster for over 18 months now. Prior to June 3, 1999, I did not know that an arbitration award and its clarification known collectively as "the Carvatta award" had been issued and was being interpreted by the Union to make major changes to the seniority rosters established based on the 1997 Merger Implementing Agreement. I learned this on June 3, 1999, when a Zone 3 trainmen appeared at my workplace and held a meeting after work with me and others whose shift had ended. It is my understanding that trainmen in different zones in the Houston Hub learned on different dates of the Carvatta award and its effect on their seniority.

My Local Chairman, Steve Parker, never gave me a copy of the Carvatta award or discussed it with me and I had no idea that he had received it. The carrier never provided me with any notice about this arbitration award in my payroll check deposit receipt envelope, or in the newsletter that it mails to my home from time to time. I never saw anything posted in my workplace about this arbitration award, and do not believe anything was posted, as something like this would have gotten everyone's attention if it was posted at work and would have been discussed among the trainmen.

EXHIBIT B

I was completely unaware that the Union had posted anything about the Carvatta award at one of its websites. I do not own a computer, have never had a computer in my home, and have no idea how to use a computer to access the Internet. I went to work for the railroad when I was 22 years old, after I had attended high school and served in the military. I did not attend college, and have never had any computer training related to the Internet. I am surprised that the Union would claim that I should have learned about the Carvatta award by reading postings on the Internet, as no one from the Union has ever told me I needed to use the Internet to learn about changes to my seniority rights.

SIGNED this 26th day of July, 1999.

E.E. Schoppa

E.E. SCHOPPA

SUBSCRIBED AND SWORN TO BEFORE ME ON THIS 26th day of July 1999.

WARREN E. TYRRELL
Notary Public, State of Texas
My Commission Expires
November 25, 2001

Warren E. Tyrrell

NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS

My Commission Expires: 11/25/2001

IN THE MATTER OF ARBITRATION
PURSUANT TO THE PROVISIONS OF NEW YORK DOCK

BETWEEN

UNION PACIFIC RAILROAD COMPANY

and

UNITED TRANSPORTATION UNION

(Southern Pacific Eastern Lines, Gulf Coast Lines, Missouri Pacific Upper Lines, former Texas and Pacific Railway Company, former Missouri-Kansas-Texas Railroad Company, former Texas Pacific - Missouri Pacific Terminal Railroad of New Orleans Company and former Houston Belt and Terminal Railway Company)

****

CARRIER'S SUBMISSION

****

STATEMENT OF THE 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?"

EXHIBIT C

The parties in the instant dispute are Union Pacific Railroad Company (hereinafter referred to as "Carrier") and the United Transportation Union General Committees of Adjustment for the Missouri Pacific Upper Lines ("MPUL"), Gulf Coast Lines ("GCL"), Southern Pacific Eastern Lines (trainmen and yardmen) ("SPEL"), former Texas and Pacific Railway Company ("T&P"), former Missouri-Kansas-Texas Railroad Company ("MKT"), former Texas Pacific - Missouri Pacific Terminal Railroad of New Orleans ("TPMP Terminal") and the former Houston Belt and Terminal Railway Company ("HBT") (hereinafter also collectively referred to as "UTU" or "Organization"). This matter is brought before this tribunal for adjudication pursuant to Article I, Section 11, Paragraph (a) of New York Dock Ry. -- Control -- Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) ("New York Dock"). This provision provides, in relevant part:

> *"(a) In the event a railroad and its employees or their authorized representatives cannot settle any dispute or controversy with respect to the interpretation, application or enforcement of any provision of this appendix, except sections 4 and 12 of this article I, within 30 days after the dispute arises, it may be referred by either party to an arbitration committee."*

A copy of New York Dock is attached as **Carrier's Exhibit "A."** The moving parties in this matter are the Southern Pacific Eastern Lines UTU General Committees of Adjustment for trainmen and yardmen.

The question at issue focuses on the application of the provisions of the New York Dock merger implementing document that governs integration of Union Pacific and Southern Pacific train and yard service employees and, specifically, the seniority rights afforded such employees in the territory comprising the Houston Hub. The dispute involves the assignment of prior rights seniority and employees' standing on applicable Houston Hub zone seniority rosters. Specifically, the issue asks whether the names of UTU (SPEL) trainmen and yardmen, who were granted prior rights

EXHIBIT C

seniority in each of the Houston Hub seniority zones, be kept in the appropriate prior rights slots on all of the seniority zone rosters although they can exercise their prior rights seniority in only one zone at a time.

It is Carrier's position this tribunal must answer the posed issue in the negative. As will be shown herein, the position adopted by the UTU (SPEL) is in contradictory to the specific language employed by, and intent of, the Merger Agreement authors. Moreover, the position of the UTU (SPEL) is not even consistent with the positions adopted by other UTU committees.

CARRIER'S STATEMENT OF FACTS:

On November 30, 1995, Union Pacific Corporation filed an application with the Surface Transportation Board ("STB") to merge the rail carriers controlled by Union Pacific Corporation (Union Pacific Railroad Company and Missouri Pacific Railroad Company) with the rail carriers controlled by 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 No. 32760. With its approval, the STB imposed the employee protective conditions contained in New York Dock (reference **Carrier's Exhibit "A"**).

Pursuant to the requirements set forth in Article I, Section 4 of New York Dock, Carrier served notices on September 18, 1996, and February 19, 1997 (copies attached as **Carrier's Exhibit "B"**) advising of its intent to merge the employees and operations of the involved carriers in the

EXHIBIT C

territory comprising the "Houston Hub." Over the following months, the parties met to negotiate the requisite implementing agreement. On June 11, 1997, the parties signed a New York Dock Merger Implementing Agreement for the Houston Hub ("Merger Agreement"). A copy of that accord is attached as **Carrier's Exhibit "C"**.

One item critical to the integration of the involved work and employees is the manner in which seniority is merged. Article II of the Merger Agreement set forth the manner in which this would be accomplished. We cite relevant provisions of Article II in the following section of this submission.

The parties commenced preparations for implementation of the Merger Agreement in August 1997. Pursuant to the requirements of Article VIII, the zone seniority rosters were prepared jointly by Carrier's CMS and Labor Relations representatives and UTU Local Chairmen. In late August, the parties completed preparation of four of the five zone seniority rosters (a map outlining the territories of each of the Houston Hub seniority zones is attached as **Carrier's Exhibit "D"**).

Shortly thereafter, Carrier began receiving complaints and protests, primarily from former SPEL trainmen and Local Chairmen, about the manner in which the seniority rosters were consolidated. The protestants contended the manner in which the rosters were prepared deprived them of their previously held seniority rights and was not a fair and equitable method for consolidating seniority. An example of the complaints received by Carrier follows:

> *"This letter is to formally notify you that we, the undersigned, do hereby protest the Houston Hub zone seniority rosters which resulted from the Houston Hub Agreement which was framed by affected United Transportation Union Committees of Adjustment in consequence of directives from the Union Pacific Railroad to consolidate our division seniority rosters into zone rosters in order to facilitate Union Pacific's post-merger operating plans.*
>
> *". . .Most of the people working on the agreement saw the inequity and tried to correct it. That failing, we, by our signatures below, protest the seniority rosters as*

EXHIBIT C

provided for in our existing agreement:

"that they do not respect seniority (our hire date in class of service is the only thing that every person on the roster has in common);

"that some S.P. equity slots were given to employees who will never work in their slot;

"that the rosters do not reflect true equity within individual zones;

"that the rosters are not correct under the provisions of the Houston Hub Agreement;

"that, we have not been kept adequately informed about the negotiations, the options, the why and how of the equity percentages, the roster consolidation process, nor how our representatives voted on specific issues; and,

"that we were not allowed to vote as individual, affected members concerning the most important aspect of our membership and employment, Our Seniority."

Other complaints mirrored the following:

"I do not agree with my position on any new conductor roster or brakeman roster or switchman roster in the new Houston Hub.

"Please accept this instrument as a formal protest as to the method(s) utilized in the combining of seniority in the Houston Hub (SP-UP) operations. (Zones 1 - 5)

"This is not a fair and equitable solution to the seniority issue.

"...This situation is not acceptable. It is undermining the much needed cooperation of all former SP & UP personnel, as well as creating a volatile work environment.

*"... **** LEGAL ACTION MAY BE AN OPTION *****"*

Copies of the letters of protest are attached as **Carrier's Exhibit "E"**.

Despite their participation in the preparation of the rosters, several UTU (SPEL) Local Chairmen also protested the roster formulations. For example, two UTU (SPEL) Local Chairmen wrote (see **Carrier's Exhibit " F"**):

EXHIBIT C

". . . I am not in agreement with the formulation or application of the Southern Pacific Trainmen's Roster into the Houston Hub.

"The Implementing Houston Hub Agreement does not give the carrier the right to "Dovetail" Southern Pacific Trainmen's Seniority, yet that is what has occurred.

". . . The application is totally inaccurate and unjustly eliminates Southern Pacific prior right district seniority for Trainmen that were employed prior to 1973.

"I adamantly disagree with the application of the seniority and request a resolution to the dispute"

Carrier responded to the Local Chairmen's complaints and demands in correspondence dated December 12, 1997 (reference **Carrier's Exhibit "G"**). In rejecting their request for "resolution" of the alleged dispute, Carrier wrote:

*"This letter will serve to advise we must reject your request for 'resolution' of the supposed dispute. Several irrefutable facts underlie this decision. First, and foremost, we formulated the UP/UTU Houston Hub seniority roster in precisely the manner dictated by the UP/SP New York Dock Merger Implementing Agreement for the Houston Hub . . . This accord mandated creation of the consolidated Houston Hub roster based on the work equity contributed by each of the component districts. We carried the recently completed implementation process out in conformity with that mandate. Second, there is no provision in the Merger Agreement that requires maintenance of pre-1973 prior rights district seniority for Southern Pacific trainmen. Third, understanding **your categorization of this method as 'inaccurate' and which 'unjustly eliminates Southern Pacific prior rights district seniority' is difficult considering the fact your Organization recommended this approach – a method your Organization ratified by an overwhelming majority**. . . . Moreover, your Organization approved the work equity statistics for the Zone 4 roster formulation. Fourth, **preparation of the UP/UTU Houston Hub seniority roster is the product of a joint effort by UP and UTU representatives**. Notwithstanding your protestations, **a substantial majority of the other UTU representatives do not concur with your assessment of the roster preparation**. In other words, there does not appear to be a dispute regarding application of the mandated approach. Finally, we cannot grant your request for 'resolution' inasmuch as there does not exist a uniform dispute that such 'resolution' could redress. Any modifications can now only come about through negotiations between your Organization's representative(s) and the Carrier.*

*"In closing, one must not forget **efforts have already been made by both***

EXHIBIT C

sides to ameliorate concerns such as yours. A session was held in late September for the specific purpose of modifying the seniority consolidation covenants of the Merger Agreement. A number of alternatives were investigated. None of the proposals were, however, adopted. Thus, consolidation of UP and SP trainmen seniority in the territory comprising the Houston Hub must be accomplished according to the merger accord." (Emphasis added)

UTU (SPEL) voiced additional complaints in correspondence dated November 19, 1997, (reference Carrier's Exhibit "H") in which the General Chairman indicated, *". . . this Committee disagree[s] with the Carrier's application of the agreed-upon seniority rosters and the number of trainmen to be assigned in the Houston Hub."* In reply, Carrier wrote:

". . . this letter will serve to acknowledge your Committee's letter protesting 'application' of the June 11, 1997 UP/SP New York Dock Merger Implementing Agreement ("Merger Agreement") and, specifically, the method used for creating the Houston Hub consolidated seniority roster. Despite such objections, the undeniable fact remains the Houston Hub seniority roster was created in strict conformity with the letter and intent of Article II of the Merger Agreement. I must remind you the Merger Agreement, which included said Article II, was ratified by a majority of the employees covered thereby. Moreover, and as important, the creation of this roster is, as mandated by that accord, a joint product of the efforts of both the Organization and the Carrier. Thus, protestations focusing on creation of this roster must not only be directed toward the Carrier, but also to your Organization itself. In much the same vein, the fact your office may have received, ". . . in excess of one-hundred (100) written protest [sic] concerning the allocation of seniority in the Houston Hub . . . !" does not undermine the validity of the parties' joint efforts. One must not forget the method employed in creating the Houston Hub roster was not the methodology proposed or desired by Carrier. . . ."

"The parties have on several occasions attempted to negotiated alternate approaches for preparing the consolidated roster. For example, the parties met in Springfield, Missouri, in late September for the sole purpose of developing an alternate approach. For whatever reason(s), neither of the two proposals developed during that session were agreed upon by your Organization. Your letter would seem to be an attempt to shift the consequences of an inability to achieve internal consensus to the Carrier or to an arbitrator. . . .

"Apart from the above, Carrier is willing to meet one last time with your Organization's representatives to review concerns regarding the formulation of the

EXHIBIT C

UNITED TRANSPORTATION UNION

INTERNATIONAL
(Canada and U.S.)
AND
UNITED STATES
CONSTITUTIONS

EXHIBIT D

decision shall contain the names of the Board members participating. Decisions of the Board of Appeals shall be final and binding and shall not be appealable to the convention.

The Board shall, at the conclusion of each meeting, submit a report properly authenticated to all interested subordinate bodies and International officers.

A member of the Board of Appeals shall not represent the International in any other capacity while serving as a member of the Board.

ARTICLE 28
OFFICERS, MEMBERS, OR SUBORDINATE BODIES SHALL NOT RESORT TO CIVIL COURTS UNTIL ALL APPEALS HAVE BEEN MADE IN ACCORDANCE WITH THIS CONSTITUTION

No officer, member, or subordinate body of the United Transportation Union shall resort to the civil courts to correct or redress any alleged grievance or wrong, or to secure any alleged rights from or against any officer, member, subordinate body, or the United Transportation Union until such officer, member, or subordinate body shall have first exhausted all remedy by appeal provided in this Constitution for the settlement and disposition of any such rights, grievances, or wrongs.

Any officer, member, or subordinate body of the United Transportation Union violating the provisions of this Article shall be subject to charges and trials as provided by this Constitution.

ARTICLE 29
COMPENSATION AND VACATION BENEFITS OF INTERNATIONAL OFFICERS, BOARD MEMBERS AND STAFF MEMBERS

Adjustments in salaries of International officers, Board members and Staff members will be made in the same proportion as increases or decreases in wages received by employees represented by the United Transportation Union.

All officers, Board members and Staff members, devoting full time to the service of the International, shall receive their salary in equal payments bi-weekly.

Members of the Board of Appeals, Executive Board, and other appointed committees shall receive their salary not less frequently than bi-weekly while in session, or when the work for which they have been assembled is completed.

International officers, Board members, and Staff members, and representatives devoting full time to the service of the International will be entitled to the same vacation benefits for which they would have qualified with their carrier under the National Vacation Agreement. The method of handling

EXHIBIT D

ARTICLE 87
CHAIRPERSON OF GENERAL COMMITTEE

The Chairperson of a General Committee of Adjustment shall be its executive head, preside over all meetings, and exercise general supervision over its affairs and interests.

The Chairperson shall furnish a quarterly report of his/her activities to all Local Chairpersons and locals under his/her jurisdiction and use such other means as necessary to keep the membership well informed. He/she shall attach to the report an itemized statement of receipts and disbursements of his/her Committee which shall be furnished by the General Secretary and Treasurer in sufficient number for distribution with this report.

The Chairperson shall convene the General Committee upon request of a member of said Committee provided (1) a 2/3 majority of the Committee concurs in such request, and (2) sufficient funds are available.

The Chairperson shall perform such other duties as may be required by the General Committee and this Constitution.

ARTICLE 88
VICE CHAIRPERSONS OF GENERAL COMMITTEE

The Vice Chairpersons of a General Committee of Adjustment shall act for or on behalf of the Chairperson when so directed by the Chairperson. They shall perform such other duties as may be delegated to them by the General Committee of Adjustment.

ARTICLE 89
SECRETARY OF GENERAL COMMITTEE

The Secretary of a General Committee of Adjustment shall keep a record of the proceedings of each meeting. He/she shall issue notices of meetings when so directed by the General Chairperson. He/she shall have charge of the books and papers of the Committee pertaining to this office. The Secretary shall prepare and furnish the International President, General Secretary and Treasurer, each local Chairperson, and each local Secretary a copy of the proceedings of the Committee within twenty (20) days of the close of each session. He/she shall notify the International President the names and addresses of the General Committee immediately following their election.

The Secretary shall perform such other duties as might be required by the General Committee and this Constitution.

ARTICLE 90
MERGERS, LEASES, COORDINATIONS, ETC.

When, through lease, purchase, merger, consolidation or other cause, a line or lines of a carrier or a portion thereof is taken over by another carrier or where, because of estab-

EXHIBIT D

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JoAnne Ray
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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.

EXHIBIT E

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

EXHIBIT

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

EXHIBIT E

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:

EXHIBIT E

(1) that UTU exercise all possible appeal rights as to the Carvatta award[2] 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 (l)(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.

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[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.

EXHIBIT

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. Vance 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

EXHIBIT E

FILE-UPHETUBLIST

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

EXHIBIT E

DECLARATION OF A. TERRY OLIN

I, A. Terry Olin, pursuant to 28 U. S. C. Section 1746, declare 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 A. Terry Olin. I am General Director - Employee Relations Planning for the Union Pacific Railroad Company ("UP"). My address is Room 332, 1416 Dodge Street, in Omaha, Nebraska. I have held this position since June 1, 1998. In this position, I have responsibility for various system-wide labor relations functions and activities, including handling of the instant matter. Prior to June 1, 1998, I held the position of General Director - Labor Relations, Southern Region. In that capacity, I had responsibility for the labor relations functions and activities for UP's Southern Region train and engine service employees. This included the geographic area comprising the Houston Hub. One of my responsibilities was to oversee and coordinate preparations for implementing the UP/SP New York Dock Merger Implementing Agreement ("merger agreement").

2. On June 25, 1999, I became aware that Attorney JoAnne Ray, on behalf of UP employee E. E. Schoppa, had filed a request on June 23, 1999, seeking an extension of the time to file an appeal to review an arbitration decision sought by Mr. Schoppa's designated representative -- the United Transportation Union ("UTU") -- in an arbitration proceeding carried out pursuant to Section 11 of New York Dock.

3. The facts leading to this request are described below:

a. In correspondence dated September 18, 1996, and February 19, 1997, to

EXHIBIT F

UTU, UP served notice pursuant to Section 4 of New York Dock of its intent to consolidate Southern Pacific Transportation Company's employees and operations in southern Texas and Louisiana ("Houston Hub") with UP's employees and operations in that same area. UTU and UP successfully negotiated, and signed on June 11, 1997, a merger implementing agreement for the Houston Hub.

b. UP and UTU commenced preparations for implementing the merger agreement in August 1997. Pursuant thereto, UP and UTU jointly prepared the Houston Hub zone seniority rosters. At about that same time, UP started receiving complaints from certain employees and UTU officers that the seniority rosters were not properly prepared or were not in compliance with the intent of the merger agreement. Between August, 1997, and March, 1998, UP and UTU discussed the seniority roster complaints, but were unable to arrive at a mutually satisfactory resolution.

c. Despite these complaints, UP and UTU progressed with formulation of the rosters and implementation of the merger agreement. Implementation of the Houston Hub was completed on February 1, 1998. On April 2, 1998, UTU served notice of its intent to progress the matter to arbitration pursuant to Article I, Section 11 of New York Dock.

d. Arbitration hearings, with Mr. R. J. Carvatta serving as the neutral member, were held on September 1, 1998, in Seattle, Washington. Mr. Carvatta rendered his decision in an award dated November 17, 1998. In subsequent discussions with

UTU, a question arose regarding the intended application of this award. UTU and UP accordingly agreed to seek a clarification from Mr. Carvatta. In correspondence dated January 19, 1999, UP and UTU jointly asked Mr. Carvatta to clarify the one issue. That question was addressed in his "Arbitration Award - Interpretation" rendered on February 1, 1999.

f. UP and UTU met again in March 1999, to discuss implementation of the arbitration award and the attendant interpretation. During that session, UP and UTU reached an understanding, which was confirmed in correspondence dated March 29, 1999, regarding the method for implementing and applying the award.

g. UP and UTU have worked to make roster adjustments and corrections required in connection with application of the arbitration award. UP intends to implement the arbitration award mandate on or about July 1, 1999.

4. Contrary to Petitioner's assertions, steps were taken to advise Houston Hub trainmen of Mr. Carvatta's findings in this matter. Copies received in my office of correspondence sent by UTU's Houston Hub General Chairperson(s) to various UTU local officers unequivocally point to the fact the award was not kept secret and that employees knew it more than six months ago. In correspondence dated December 2, 1998, UTU General Chairperson Parsons transmitted a copy of the arbitration award to *"All Local Chairpersons & Secretaries"* and to all *"Vice Chairpersons."* A true copy of the December 2, 1998 letter is attached as Exhibit A. The arbitration award, along with the parties' joint request for a clarification by Mr. Carvatta, was again sent, in correspondence dated January

27, 1999, from UTU General Chairperson Hakey (who succeeded Mr. Parsons), to all Local Chairpersons in the Houston Hub. A true copy of the January 27, 1999 correspondence is attached as Exhibit B. The arbitration award was again referenced in correspondence dated January 28, 1999, to Houston Hub Local Chairpersons. A true copy of the January 28, 1999 letter is attached as Exhibit C. Similar letters transmitting or explaining the arbitration award were mailed by UTU on February 10, 1999, and April 16, 1999. True copies of the February 10, 1999 and April 16, 1999 letters are attached as Exhibits D and E, respectively.

In addition, a World Wide Web home page for UTU's Houston Hub General Committee contained regular updates on the handling and status of the seniority dispute and arbitration. In the September 1998 edition of "ANTI-INFO NEWS" (UTU General Parsons' editorial page on the committee's web site), special note was made on the first page that the seniority matter had been arbitrated on September 1. A true copy of the September, 1998 publication posted on the Internet is attached as Exhibit F. Although Mr. Parsons was not reelected to the General Chairperson position, he continued his "ANTI-INFO NEWS" editorial on a new Web site. In the February 1999 edition, he advised his Houston Hub readers of the rulings made by Mr. Carvatta. A true copy of the February, 1999 publication posted on the Internet is attached as Exhibit G. Articles regarding this arbitration award were contained in his "ANTI-INFO NEWS" as recently as the May 1999 edition. A true copy of the May, 1999 publication posted on the Internet is attached as Exhibit H.

Petitioner's representation that employees did not know the rosters would be revised under the arbitration award is inaccurate. This matter has been the subject of extensive and

EXHIBIT F

emotional discussions between this office, UTU officers and employees. Moreover, I have been advised by UTU that this has been the subject of extensive debate at local UTU lodge meetings.

5. Petitioner seeks to appeal the arbitration award and has requested, in correspondence from Attorney JoAnne Ray dated June 8, 1999, Mr. Carvatta to answer four additional *"... questions seeking interpretation and clarification of [the] ... findings and awards."* The questions submitted by Attorney Ray constitute either new issues involving interpretation of the merger agreement or application of the New York Dock conditions or questions presented by General Chairman Parsons during the initial arbitration proceeding. Not one of the questions focuses on interpreting or clarifying the November 17, 1998 award. It is my opinion that inasmuch as Attorney Ray's questions are not requests for clarification, Mr. Carvatta is not empowered to rule on them and must be properly addressed in accordance with either the provisions of New York Dock or the Railway Labor Act, as appropriate.

6. Attorney Ray represents approximately 110 Houston Hub trainmen. This number constitutes about 8% of the total trainman population in the Houston Hub. It appears Ms. Ray's constituents seek to use the resources of the Surface Transportation Board to further embroil UTU and UP in a matter that affects only a small number of employees.

7. It is my opinion there is no need to extend the time to file an appeal to review the arbitration award. Ample notice and time have already been given to affected employees. The petitioners clearly seek to use the Surface Transportation Board as a forum to

EXHIBIT 2

circumvent established procedures for addressing these types of issues. Such issues, including the questions posed by Attorney Ray, are more properly handled under the dispute resolution mechanisms set forth in New York Dock or the Railway Labor Act.

A. Terry Olin
Union Pacific Railroad Company
Room 332
1416 Dodge Street
Omaha, NE 68179

Sworn to before me on this 30th day of June, 1999.

GENERAL NOTARY State of Nebraska
PAUL J. WALDMANN
My Comm. Exp. July 16 1999

Notary Public

EXHIBIT F

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June 8, 1999

VIA EXPRESS MAIL and FACSIMILE NO. (773) 252-2359

Mr. Roy J. Carvatta
Arbitrator
P.O. Box 504
Park Ridge, Ill. 60068

Re: Arbitration Award dated November 17, 1998, Regarding Merger Implementing Agreement (Houston Hub) between Union Pacific Railroad Company, Southern Pacific Railroad Company and the United Transportation Union

Dear Arbitrator Carvatta:

We write to seek interpretation and clarification of your November 17, 1998, arbitration award in the captioned matter, together with the clarification thereof dated February 1, 1999 (hereafter collectively "the Carvatta award"). As you may recall, your award expressly retained jurisdiction over this dispute "to see that this decision is properly implemented." Our clients are the 79 trainmen[1] listed on Exhibit A, all of whom were employed by Union Pacific Railroad Company at the time of the merger of Union Pacific Railroad Company and Southern Pacific Railroad Company. With few exceptions, our clients are now employed in the Houston Hub and are subject to the terms of the above-described Merger Implementing Agreement. They are all members of the United Transportation Union ("the Union"), which initially submitted such an incredibly confusing question[2] to the arbitrator that our clients had no idea that roster re-formulation was even on the table. The Union followed up this incredibly confusing submission by waiting until Local meetings in May and June to advise our clients that the rosters were about to be altered and to distribute to union members copies of the arbitrator's award and associated clarification. For example, many

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[1] A few of the persons on this list are currently working as engineers but maintain their trainmen seniority.

[2] The question submitted was compound, and as to part one, was not a serious question at all in that it was tautologic, asking in essence: "Can a man be two places at once?" Even a Union publication termed the question "confusing." See Carrier's submission, p. 24.

EXHIBIT 6

of our clients in Houston Hub Zone 5 (trainmen 59-77 on the attached Exhibit A) received the news of the Carvatta award only last week at their Local meeting. Our clients have tried to resolve this matter through the Union, but were notified in writing yesterday that the Union does not intend to assist them in any way, even though it was the Union that negotiated and approved the very rosters that it now claims are defective. We note that the New York Dock Conditions themselves–particularly Article 11, the section under which the Union purported to seek arbitration–expressly recognize that employees may proceed with arbitration matters even without their bargaining representative.

Since you entertained and responded to a joint request by the Carrier and the Union for clarification of your award on January 19,1999--more than two months after the date your award was issued and presumably furnished to the Carrier and the Union--we respectfully suggest that in fairness you likewise entertain and respond to this request of our clients, who, although they have far few resources than the Carrier or the Union, nevertheless have acted more promptly in seeking interpretation and clarification. Furthermore, we believe it would be inequitable for either the Union or the Carrier to object to the timing of this request, since we are merely following the procedure that they themselves used in seeking the clarification on January 19, 1999.

The Union's interpretation of your awards is about to severely disrupt the lives of many of our clients and their families. These trainmen have relied in irrevocable ways on the October 1997-January 1998 rosters issued by the carrier and approved by the Union in accordance with the Merger Implementing Agreement (hereafter sometimes referred to as "the MIA"). As described in the Employees' Submission of General Chairman Parsons,[3] p. 5, many trainmen relied on these rosters to pick a hub, and some even relied on them to pick a railroad, as they had the choice of joining either Union Pacific or Burlington North. In further reliance on the rosters, children were moved to new cities and schools, wives gave up jobs, and new homes were built in strange cities. Now--18 months after the Merger Implementing Agreement rosters went into effect--our clients are being told by their own Union that those aspects of the roster formation process that benefitted our clients must be re-done, while those aspects that benefitted the Southern Pacific ("SP") trainmen are etched in stone. Our clients are understandably upset and ask only for the same concession you allowed the SP trainmen in granting their request for clarification in January 1999.

Therefore, we respectfully submit the following questions seeking interpretation and clarification of your findings and awards:

Question 1

1. Section II, paragraph D, p. 5 of the MIA states:

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[3] Throughout this letter, General Chairman L.W. Parsons' submission to the arbitrator shall be referred to as "the Parsons submission."

> "Union Pacific trainmen currently on an inactive roster pursuant to previous merger agreements and other UP or SP trainman on long-term leave of absence shall not participate in the roster formulation process . . . The Carrier and Organization shall jointly agree on names of trainmen which are excluded from the roster formulation process and placed on an inactive roster."

The above language, plus Side Letter 11 pertaining to trainmen working as engineers, is the only language in the Merger Implementing Agreement pertaining to "inactive" v. "active" rosters. The arbitrator has found that "trainmen who held seniority in a territory but not on an active work roster in that territory were placed on the equity roster" and that "this stacked the deal" against the true equity agreed to by the parties. This finding is wholly consistent with evidence offered to the arbitrator in the Parsons submission that "operational information concerning the work done by the SP Railroad does not coincide with the equity figures that were used to figure the percentages of the slots on the various rosters. These disputes have lain dormant for the past nine months but would immediately be reactivated should the numbers and occupants of the rosters slots be changed." In light of the evidence presented and the express language of the arbitrator's award, should the work equity computations be revised to remove trainmen who were not "on an active work roster in that territory"?

Question 2

The arbitrator's award, as quoted above, can be read to state that Southern Pacific trainmen should only have been counted in one zone for purposes of figuring work equity. Is this the correct interpretation, and if so, shouldn't the Carrier and the Union recompute the work equity figures ?

Question 3

The matter at issue is a dispute over **"selection of forces."** See Carvatta award, p. 2. Appendix III, Article 4 of the New York Dock mandates use of the Article 4 referee procedure for disputes involving selection of forces[4] and the New York Dock opinion itself expressly cites "consolidation of employee rosters" as an event that might occur years after the initial transaction but that nevertheless would re-trigger the Article 4 requirements that "employees should be given notice and the right to negotiation and arbitration." New York Dock, 360 I.C.C. 60, 1979 ICC LEXIS 91, *22 (1979).[5] Despite this mandatory language of Article 4 and this express language

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[4] Had the Article 4 procedure been used, my clients would not have been caught off guard by an award that radically alters their work assignments, but rather would have known what was at stake and had an opportunity to participate directly for submissions through their Local Chairmen or General Chairmen or retaining counsel.

[5] The New York Dock opinion states: "...the term 'transaction' [in Article 4] should be redefined to set the notice, negotiation, and arbitration provisions in motion in the same situations as does the term 'coordination.' We also note that the broad definition is necessary in the types of transactions for which approval is required under 49 U.S.C. 11343

from the New York Dock opinion itself, the parties purported to submit this selection of forces dispute to the arbitrator pursuant to Article 11 of the New York Dock. See General Chairman Rossi's Submission, p. 2 and exhibit 2 thereto, as well as the Carrier's Submission, p. 2. In the award, the arbitrator adopted the parties' language, noting at the top of the award that it was made "pursuant to Article I, Section 11 of the New York Dock Conditions." However, Section 11 merely authorizes arbitration of disputes regarding "interpretation, application or enforcement of any provision of this appendix" **except sections 4 (pertaining to transactions that may cause " rearrangement of forces")** and 12. The provisions of the appendix that are covered by Article 11 arbitration deal with topics like displacement allowances (Article 5), dismissal allowances (Article 6), moving expenses (Article 9), etc.[6] Therefore, isn't the subject award advisory only?

Question 4

The Carrier has circulated an agreement purporting to implement your award that states: "The annual 'ratcheting' will be scheduled for July 1 of each year." (See attached Exhibit B). However, the Merger Implementing Agreement specifies that the annual ratcheting **"shall occur on the anniversary date of the effective (implementation) date of this agreement** ." MIA, p. 5. Based on this language in 1998 the annual ratchet dates for each of the zones in the Houston Hub varied, depending on the dates rosters went into effect implementing the merger in those zones. This is an undisputed fact established in the evidentiary submissions of the various General Chairmen, including Chairman Rossi, who states in his submission at page 1 that "implementation did not commence until October 1997" and Chairman Parsons, who lists implementation dates for the various zones at p. 2 of his submission. Was it the arbitrator's intent to revise the Merger Implementing Agreement so as to change the contractually specified "ratchet" dates? Furthermore, if new rosters are to be implemented under the Carvatta award, shouldn't such implementation occur in accordance with the "ratchet" dates specified in the Merger Implementing Agreement? This is an important issue not just from the standpoint of upholding the parties' contract but also from the standpoints of public safety and customer service, as concurrent implementation of all-new rosters in the Houston Hub will cause hundreds of railroad employees to be adjusting to new and unfamiliar jobs all at the same time, causing distraction and possible chaos on the routes and making it nearly impossible to find adequate pilots to be available for training purposes. In the interest of the safety of the trainmen and women as well as the interest of the safety of the general public, we ask that you exercise your continuing jurisdiction to prevent this from occurring.

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et seq., because the event actually affecting the employees might occur at a later date than the initial transaction, yet still pursuant to our approval (**consolidation of employee rosters**, et cetera)..."(emphasis added).

[6] The Union might try to argue that Section 2 of Article I allows Section 4 arbitration of this "merger of forces" issue, but that would be a specious argument as seniority is not a "right, privilege or benefit" within Article 2. *United Transportation Union v. Surface Transportation Board*, 108 F.3d 1425, 1429 (D.C. 1997).

Question 5

Since the Union approved the earlier rosters[7] and allowed them to remain in effect for over six months before even seeking arbitration, shouldn't it be estopped from arguing that such rosters should be changed, in that it is neither fair nor equitable under 49 U.S.C. §11326(a) to allow the Union to approve one set of rosters, allow trainmen to rely on them to make irrevocable decisions, and then change the rosters?

We appreciate your consideration of these matters of vital concern to our clients and their families.

Very truly yours.

JoAnne Ray

JoAnne Ray

JAR\elc

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[7] See MIA, Article VIII(B)(3) and Carrier submission, p. 4.

EXHIBIT G

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EXHIBIT 6

THE ARIZONA REPUBLIC, July 19, 1999

THE ARIZONA REPUBLIC

July 19, 1999 Monday, Final Chaser

SECTION: BUSINESS- PERSONAL COMPUTING & TECHNOLOGY; Pg. E1

LENGTH: 1243 words

HEADLINE: HOW DO WE GET COMPUTER TO EVERYONE?

EXHIBIT H

BYLINE: DAVID HOYE, www.azcentral.com

BODY:

It's easy to lose perspective.

That fact was underscored for me recently when the U.S. Commerce Department released its third technology access survey, "Falling through the Net."

The survey shows how many of us have - and don't have - home computers and Internet access. In case you missed it, you can read the entire 125-page work at www.ntia.doc.gov/ntiahome/digitaldivide.

Here are some highlights:

* About 40 **percent** of American **households** have computers.
* About 25 **percent of those households** with computers have Internet access.
* About 47 **percent** of Whites own computers, but minority ownership is much lower. For example, just 25 **percent** of Hispanics own computers.

So, no matter how many people (including me) write or talk about how computers are everywhere these days, the fact remains that the vast majority of people still do not own computers - at least not at home.

Even more telling was the fact that just 25 **percent** of those who have computers at home also have access to the Internet, to the Web and to all the information and resources the online world offers.

That's amazing. Here we are, looking at a growing e-commerce market that some predict will hit $1 trillion within the next three years. Can you imagine what would be possible if everybody were online?

I thought about all this recently, as I drove my family through the sand dunes and bleak desert that borders Interstate 8 from Yuma and El Centro, Calif.

We had just spent a week in San Diego, a vacation we'd researched and planned using the Web. Travel sites, for example, helped us find a nice hotel with reasonable rates. I think we even checked the weather forecast before leaving home.

We've come to consider checking the Web as just another thing to do in preparation for a trip. It's as natural as packing a suitcase. After reading about the Commerce Department study, though, it's clear that what many of us take for granted is still very much out of reach for most Americans. And that's not good.

Experts constantly tout the need for children to learn computer technology in order to succeed. An increasing number of people are finding new jobs by posting resumes and conducting job hunts online. The ability to communicate on an equal basis with anyone via electronic messages is empowering.

So how do we fix the fact that 60 **percent** of Americans don't have computers at home, and even more lack online access? How do we get a computer in every kitchen? How do we get everybody online? Do we need a device not yet invented to replace our complicated computers? Should we even try to fix the problem?