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Q.5. In regards to Question 2 above, what happens if a crew in the twenty-five (25) mile zone is delayed and spends more than eight (8) hours in the zone before returning to the origin terminal? Is the answer to Question 2 above intended to deny payment of overtime for time spent in excess of eight (8) hours in the twenty-five (25) mile zone? No, if a crew spends more than eight (8) hours in the twenty-five (25) mile zone, A.5. overtime would apply for all such time in excess of eight (8) hours in the zone. Is it the intent of this agreement to use trainmen beyond the 25-mile zone? Q.6. A.6. No. May the twenty-five (25) mile zone be used for inbound road crews to operate up Q.7. to 25 miles past their destination terminal? No. The 25-mile zone provisions apply to outbound crews at their origin terminal A.7. only, and under no circumstances do such provisions apply to an arriving crew at their destination terminal. Q.8. What is intended by the words "at the basic pro rata through freight rate" as used in Article !? A.8. Payment would be at the high (unfrozen) through freight rate of pay which is applicable to the service portion to the trip. How will initial terminal delay be determined when performing service as outlined above? Initial terminal delay for trainmen entitled to such payments will be governed by the A.9. applicable collective bargaining agreement and will not commence when a crew operates back through the on-duty point. Operation back through the on-duty point shall be considered as operating through an intermediate point. Q.10. At locations common to other hubs, such as Jefferson City, Wichita, Winfield, etc., is it understood that the right of a Kansas City Hub crew to reach out 25 miles beyond the terminal to provide Hours of Service relief under the 25-mile zone provisions of this Agreement are dependent upon reciprocal 25-mile zone agreements in those hubs? A.10. Yes. Q.11. When a crew is used for hours of service relief at the away-from-home terminal pursuant to this Agreement may they be used to provide relief for more than one train? A.11. No, when the crew returns to the away-from-home terminal after performing hours of service relief (on only one train) they will either be deadheaded home or stand first out on their rest to be deadheaded or to perform service to the home terminal.

- Q.12. In Article I.A.8. it is provided that local assignments, assigned freight service, and any other irregular assignments will be protected by prior rights Zone 1 trainmen from the Kansas City Hub "on a prior rights basis." What happens when such service is advertised and goes no bid?
- A.12. The work attrites to trainmen holding seniority in the terminal. For example, such work would attrite to the OMC at Council Bluffs.
- Q.13. In Article I.B.9., is it intended that the Jeffrey Energy Pool work or the employees assigned thereto on date of implementation be covered under this Hub Agreement?
- A.13. No. On implementation date such work and the employees assigned thereto shall be outside the Kansas City Hub. Employees on such assignments, including those protecting extra work eastward out of Marysville, shall be prior righted to such assignments, and if unable to work them or choose to relinquish them, they may exercise their Zone 100 seniority elsewhere (outside the Kansas City Hub).
- Q.14. With regard to Article I.B.9.a., if trainmen who were awarded prior rights to the Jeffrey Energy Pool assignments subsequently bid off or are reduced from such assignments, are they precluded from later reasserting their prior rights seniority to such assignments?

A.14. No.

## ARTICLE II - SENIORITY CONSOLIDATIONS

- Q.1. How shall the seniority of employees on an inactive roster pursuant to previous UP merger agreements be handled?
- A.1. They will not be canvassed at time of roster formulation, and the inactive roster shall continue to be maintained. In the event they return to active service in the future, they shall at that time be afforded a seniority slot on the active roster to which they are attached. If their former roster was split between hubs or prior rights zones, they will at time of return be required to make an election of seniority rights placement.

#### ARTICLE III - EXTRA BOARDS

Q.1. Will extra boards established under this section be confined to protecting extra work exclusively within the zone in which established?

- A.1. All extra boards will only protect extra work within one zone. After implementation, should the Carrier desire to establish extra boards which protect extra work in more than one zone, this will be done pursuant to the existing collective bargaining agreement, and the parties must reach agreement as to how trainmen from the zones involved will be allowed to exercise seniority to such extra board(s). Failure to reach such agreement, common seniority will be used.
- Q.2. Are these guaranteed extra boards?

The provisions of the designated collective bargaining agreement shall apply. A.2. In Article III.A.1. referring to use of the Atchison Extra Board for Hours of Service Q.3. relief, what does "excapt in emergency" mean? The order of providing Hours of Service relief would be use of a rested away-from-A.3. home pool crew or the protecting extra board at Kansas City, including the supplementing extra board described in Article III.A.5.a. If all these sources are exhausted, the Atchison Extra Board could be used in order to move the train. ARTICLE IV - APPLICABLE AGREEMENTS When the Merger Implementing Agreement becomes effective what happens to Q.1. existing claims previously submitted under the prior agreements? The existing claims shall continue to be handled in accordance with the former A.1. agreements and the Railway Labor Act. No new claims shall be filed under those former agreements once the time limit for filing claims has expired. Q.2. Will a trainman gain or lose vacation benefits as a result of the merger? SSW/SPCSL trainmen will retain the number of weeks vacation earned from the A.2. 1998 and 1999 that they would have earned under their previous vacation agreement. The pay for such vacation shall be pursuant to the designated CBA. Beginning with the 2000 calendar year they will be treated as if they had always been a UP trainman and will earn identical vacation benefits as a UP trainman who had the same hire date and same work schedule. When the agreement is implemented, which vacation agreement will apply? Q.3. The vacation agreements used to schedule vacations for 1998 will be used for the A.3. remainder of 1998 and in 1999. Will personal leave be applicable to SSW/SPCSL trainmen in 1998? Q.4. Personal leave days for SSW/SPCSL trainmen will apply effective January 1, 1999. A.4. The number of personal leave days applicable to SSW/SPCSL trainmen in 1998 will be prorated based upon actual implementation date. ARTICLE VII - PROTECTIVE BENEFITS AND OBLIGATIONS Section A: How will test period earnings be calculated for employees returning to service following extended absence (a period of one year or more)? Their test period earnings will be the average of the test period earnings of the two A.1. (2) employees next junior and two (2) employees next senior to such individual returning to service, in the same class of service. How does the Carrier calculate test period earnings if, during the last twelve (12) Q.2. months, an employee has missed two (2) months compensated service? Rev. 9/30/98 -73-

The Carrier will go back fourteen (14) months (or however many months necessary) A.2. to calculate the test period earnings based on twelve (12) months compensated service. How will an employee be advised of his test period earnings? Q.3. Test periods will be furnished to each individual and their appropriate General A.3. Chairman. Q.4. An employee is off one or more days of a month in the test period account of an onduty personal injury. Will that month be used in computing test period averages? Yes, if the employee performed other compensated service during the month. A.4. Is vacation pay received during the test period considered as compensation? Q.5. A.5. Yes. How is length of service calculated? Q.6. It is the length of continuous service an employee has in the service of the Carrier, A.6. as defined in the Washington Job Protection Agreement of 1936. If an employee has three years of engine service and three years of train service, Q.7. how many years of protection will they have? A.7. Six. How will employees know which jobs are higher rated? Q.8. The Carrier will periodically post job groupings identifying the highest to lowest paid A.8. iobs. Will specific jobs be identified in each grouping? Q.9. Pools, locals and extra boards, with different monetary guarantees, may be identified A.9. separately but yard jobs and road switchers will not be. Q.10. What rights does an employee have if he is already covered under labor protection provisions resulting from another transaction? A.10. Section 3 of New York Dock permits employees to elect which labor protection they wish to be protected under. By agreement between the parties, if an employee has three years remaining due to the previous implementation of Interdivisional Service the employee may elect to remain under that protection for three years and then switch to the number of years remaining under New York Dock. If an employee elects New York Dock then he/she cannot later go back to the original protection even if additional years remain. It is important to remember that an employee may not receive duplicate benefits, extend their protection period or count protection payments under another protection provision toward their test period average for this transaction. Q.11. Will the Carr er offer separation allowances? A.11. The Carrier will review its manpower needs at each location and may offer separation allowances if the Carrier determines that they will assist in the merger implementations. Article I Section 7 of New York Dock permits an employee that is Rev. 9/30/98 -74-CH ARORIOPSIWPCMERGRIKCHUB UTUTAL

"dismissed" as defined by New York Dock to request a separation allowance within seven days of his/her being placed in dismissed status in lieu of all other benefits.

Q.12. Does an employee who elects to exercise his seniority outside the Kansas City Hub and not participate in the formulation of rosters for the new Kansas City Hub qualify for wage protection?

A.12. The certification agreed to under Article VII applies only to those employees who are

slotted on the newly formed Kansas City Hub rosters.

#### Section B:

Q.1. Who is required to relocate and is thus eligible for the allowance?

A.1. A trainman who can no longer hold a position at his location and must relocate to hold a position as a result of the merger. This excludes trainmen who are borrow outs or forced to a location and released.

Q.2. Are there mileage components that govern the eligibility for an allowance?

- A.2. Yes, the employee must have a reporting point farther than his old reporting point and at least 30 miles between the current home and the new reporting point and at least 30 miles between reporting points.
- Q.3. Can you give some examples?
- A.3. The following examples would be applicable.
  - Example 1: Trainman A lives 80 miles east of Kansas City and works a yard assignment at Kansas City. As a result of the merger he is assigned to a yard job at Lee's Summit. Because his new reporting point is closer to his place of residence no relocation allowance is given.
  - Example 2: Trainman B lives 35 miles east of Kansas City and goes on duty at the SP yard office in Kansas City. As a result of the merger he goes on duty at the UP yard office in Kansas City which is one mile away. No allowance is given.
  - Example 3: Trainman C lives in Ft. Madison and is unable to hold an assignment at that location and must place on an assignment at Kansas City. The employee meets the requirement for an allowance and whether he is a homeowner, a homeowner who sells their home or a non-homeowner determines the amount of the allowance.
  - Example 4: Trainman D lives and works in yard service in Ft. Madison, and can hold an assignment in Ft. Madison, after merger implementation, but elects to place on a road switcher/zone local at St. Joseph. Because the employee can hold in Ft. Madison, no allowance is given.
  - Example 5: Trainman E lives in Falls City and holds seniority rights at Kansas City at time of canvassing. He relocates from Falls City to Kansas City

claim his roster slot in the Kansas City Hub. The employee meets the requirements for a relocation allowance.

- Q.4. Why are there different dollar amounts for non-home owners and homeowners?
- A.4. New York Dock has two provisions covering relocating. One is Article I Section 9

  Moving expenses and the other is Section 12 Losses from home removal. The
  \$10,000 is in lieu of New York Dock moving expenses and the additional \$10,000 or
  \$20,000 is in lieu of loss on sale of home.
- Q.5. Why is there a set amount offered on loss on sale of home?
- A.5. It is an in lieu of amount. Trainmen have an option of electing the in lieu of amount or claiming New York Dock benefits. Some people may not experience a loss on sale of home or may not want to go through the procedures to claim the loss under New York Dock.
- Q.6. What is loss on sale of home for less than fair value?
- A.6. This refers to the loss on the value of the home that results from the Carrier implementing this merger transaction. In many locations the impact of the merger may not affect the value of a home and in some locations the merger may affect the value of a home.
- Q.7. Can you give an example?
- A.7. Prior to the merger announcement a home was worth \$60,000. Due to numerous employees transferring from a small city the value drops to \$50,000. Upon approval of the sale by the Carrier employee is entitled to \$10,000 under Section 12 and the expenses provided under Section 9, or the owner can claim the in lieu of amount of \$30,000.
- Q.8. If the parties cannot agree on the loss of fair value what happens?
- A.8. New York Dock Article I Section 12 (d) provides for a panel of real estate appraisers to determine the value before the merger announcement and the value after the merger transaction.
- Q.9. What happens if an employee sells a home valued at \$50,000 for \$20,000 to a family member?
- A.9. That is not a bona fide sale and the employee would not be entitled to either an in lieu of payment or a New York Dock payment for the difference below the fair value.
- Q.10. What is the most difficult part of New York Dock in the sale transaction?
- A. 10. Determining the value of the home before the merger transaction. While this can be done through the use of professional appraisers, many people think their home is valued at a different amount.

## **ARTICLE VIII - CREW CONSIST**

Q.1. Under Article VII.A., will employee protection payments be offset by productivity fund payments under Crew Consist?

A.1. Yes. Those SPCSL and SSW employees whose seniority date makes them eligible to participate in the productivity fund under the UP (MPUL) Crew Consist Agreement shall have their TPA's reduced by an amount equivalent to the crew consist allowances which were being received by them on a daily basis under their premerger agreements. The parties will meet to establish a simplified method for calculating this offset.

## ATTACHMENT "B"

Q.1. Why are certain mileages, and especially different mileages for runs to different yards in the consolidated terminal, not listed?

A.1. This Attachment is not all-inclusive and is only intended to give illustrations of the most common runs. It does not take into account or consider the appropriate "gap miles", if any, which may apply within the terminal under national agreement rules.

Attachment "A"

## NEW YORK DOCK CONDITIONS Finance Docket No. 32760

Labor protective conditions to be imposed in railroad transactions pursuant to 49 U.S.C. 11343 at seq. (formerly Sections 5(2) and 5(3) of the interstate Commerce Act), except for trackage rights and lease proposals which are being considered elsewhere, are as follows:

- 1. <u>Definitions</u>.-(a) "Transaction" means any action taken pursuant to authorizations of this Commission on which these provisions have been imposed.
- (b) "Displaced employee" means an employee of the railroad who, as a result of a transaction is placed in a worse position with respect to his compensation and rules governing his working conditions.
- (c) "Dismissed employee" means an employee of the railroad who, as a result of a transaction is deprived of employment with the railroad because of the abolition of his position or the loss thereof as the result of the exercise of seniority rights by an employee whose position is abolished as a result of a transaction.
- (d) "Protective period" means the period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of 6 years therefrom, provided, however, that the protective period for any particular employee shall not continue for a longer period following the date he was displaced or dismissed than the period during which such employee was in the employ of the railroad prior to the date of his displacement or his dismissal. For purposes of this appendix, an employee's length of service shall be determined in accordance with the provisions of Section 7(b) of the Washington Job Protection Agreement of May 1936.
- 2. The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges and benefits (including continuation of pension rights and benefits) of the railroad's employees under applicable laws and/or existing collective bargaining agreements or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes.
- 3. Nothing in this Appendix, shall be construed as depriving any employee of any rights or benefits or eliminating any obligations which

such employee may have under any existing job security or other protective conditions or arrangements; provided, that if an employee otherwise is eligible for protection under both this Appendix and some other job security or other protective conditions or arrangements, he shall elect between the benefits under this Appendix and similar benefits under such other arrangement and, for so long as he continues to receive such benefits under the provisions which he so elects, he shall not be entitled to the same type of benefit under the provisions which he does not so elect; provided further, that the benefits under this Appendix, or any other arrangement, shall be construed to include the conditions, responsibilities and obligations accompanying such benefits; and, provided further, that after expiration of the period for which such employer is entitled to protection under the arrangement which he so elects, he may then be entitled to protection under the other arrangement for the remainder, if any, of this protective period under that arrangement.

4. Notice and Agreement or Decision. -(a) Each railroad contemplation.

4. Notice and Agreement or Decision. - (a) Each railroad contemplating a transaction which is subject to these conditions and may cause the dismissal or displacement of any employees, or rearrangement of forces, shall give at least ninety (90) days' written notice of such intended transaction by posting a notice on bulletin boards convenient to the interested employees of the railroad and by sending registered mail notice to the representatives of such interested employees. Such notice shall contain a full and adequate statement of the proposed changes to be affected by such transaction, including an estimate of the number of employees of each class affected by the intended changes. Prior to consummation the parties shall negotiate in the following manner.

Within five (5) days from the date of receipt of notice, at the request of either the railroad or representatives of such interested employers, a place shall be selected to hold negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this appendix, and these negotiations shall commence immediately thereafter and continue for at least thirty (30) days. Each transaction which may result in a dismissal or displacement of employees or rearrangement of forces, shall provide for the selection of forces from all employees involved on a basis accepted as appropriate for application in the particular case and any assignment of employees made necessary by the transaction shall be made on the basis of an agreement or decision under this Section 4. If at the end of thirty (30) days there is a failure to agree, either party to the dispute may submit it for adjustment in accordance with the following procedures:

- (1) Within five (5) days from the request for arbitration the parties shall select a neutral referee and in the event they are unable to agree within said five (5) days upon the selection of said referee then the National Mediation Board shall immediately appoint a referee.
- (2) No later than twenty (20) days after a referee has been designated a hearing on the dispute shall commence.

(3) The decision of the referee shall be final, binding and conclusive and shall be rendered within thirty (30) days from the commencement of the hearing of the dispute. (4) The salary and expenses of the referee shall be borne equally by the parties to the proceeding; all other expenses shall be paid by the party incurring them. (b) No change in operations, services, facilities or equipment shall occur until after an agreement is reached or the decision of a referee has been rendered. 5. <u>Displacement allowances.-(a)</u> So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules and practices, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protective period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the average monthly compensation received by him in the position from which he was displaced. Each displaced employee's displacement allowance shall be determined by dividing separately by 12 the total compensation received by the employee and the total time for which he was paid during the last 12 months in which he performed services immediately preceding the date of his displacement as a result of the transaction (thereby producing sverage monthly compensation and average monthly time paid for in the test period), and provided further, that such allowance shall also be adjusted to reflect subsequent general wage increases. If a displaced employee's compensation in his retained position in any month is less in any month in which he performs work than the aforesaid average compensation (adjusted to reflect subsequent general wage increases) to which he would have been entitled, he shall be paid the difference, less compensation for time lost on account of his voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but if in his retained position he works in any month in excess of the aforesaid everage monthly time paid for during the test period he shall be additionally compensated for such excess time at the rate of pay of the retained position. (b) If a displaced employee fails to exercise his seniority rights to secure another position available to him which does not require a change in his place of residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position be elects to decline. .

.. (c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for justifiable cause. Dismissal allowances. -(a) A dismissed employee shall be paid s monthly dismissal allowance, from the date he is deprived of employment and continuing during his protective period, equivalent to onetwelfth of the compensation received-by him in the last 12 months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the transaction. Such allowance shall also be adjusted to reflect subsequent general wage increases. (b) The dismissal allowance of any dismissed employee who returns to service with the railroad shall cease while he is so reemployed. During the time of such reemployment, he shall be entitled to protection in accordance with the provisions of Section 5. (c) The dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his representative, and the railroad shall sgree upon a procedure by which the railroad shall be currently informed of the earnings of such employee in employment other than with the railroad, and the benefits received. (d) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the employee's resignation, death, retirement, dismissal for justifiable cause under existing agreements, fallure to return to service after being notified in accordance with the working agreement, failure without good cause to accept a comparable position which does not require a change in his place of residence for which he is qualified and eligible after appropriate notification, if his return does not infringe upon the employment rights of other employees under a working agreement. Separation Allowance. - A dismissed employee entitled to protection under this appendix, may at his option within 7 days of his dismissal, resign and (in lieu of all other benefits and protections provided in this appendix) accept a lump-sum payment computed in accordance with Section 9 of the Washington Job Protection Agreement of May 1936. 8. Eringe benefits .- No employee of the railroad who is affected by a transaction shall be deprived, during his protection period, of benefits attached to his previous employment, such as free transportstion, hospitalization, pensions, reliefs, et cetera, under the same con-ditions and so long as such benefits continue to be accorded to other employees of the railroad, in active or on furlough as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained. the state of the s

- Moving expenses .- Any employee retained in the service c the railroad or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment as a result of the transaction, and who within his protective period is required to move his place of residence, shall be reimhursed for all expenses of moving his household and other personal effects for the traveling expenses of himself and members of his family. including living expenses for himself and his family and for his own actual wage loss, not to exceed 3 working days, the exact extent of the responsibility of the railroad during the time necessary for such transfer and for reasonable time thereafter and the ways and means of transportation to be agreed upon in advance by the railroad and the affected employee or his representatives; provided, however, that changes in place of residence which are not a result of the transaction, shall not be considered to be within the purview of this section; provided further, that the railroad shall, to the same extent provided above, as-sume the expenses, et cetera, for any employee furloughed within three (3) years after changing his point of employment back to his original point of employment. No claim for reimbursement shall be paid under the provision of this section unless such claim is presented to relirosd within 90 days after the date on which the expenses were incurred.
- 10. Should the railroad rearrange or adjust its forces in anticipation of a transaction with the purpose or effect of depriving an employee of benefits to which he otherwise would have become entitled under this appendix, this appendix will apply to such employee.
- 11. Arbitration of disputes.-(a) In the event the 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 20 days after the dispute arises, it may be referred by either party to an arbitration committee. Upon notice in writing served by one party on the other of intent by that party to refer a dispute or controversy to an arbitration committee, each party shall, within 10 days, select one member of the committee and the members thus chosen shall select a neutral member who shall serve as chairman. If any party fails to select its member of the arbitration committee within the prescribed time limit, the general chairman of the involved labor organization or the highest officer designated by the railroads, as the case may be, shall be deemed the selected member and the committee shall then function and its decision shall have the same force and effect as though all parties had selected their members. Should the members be unable to agree upon the appointment of the neutral member within 10 days, the parties shall then within an additional 10 days endeavor to agree to a method by which a neutral member shall be appointed, and, falling such agreement, either party may request the National Mediation Board to designate within 10 days the neutral member whose designation will be binding, upon the parties.

(b) In the event a dispute involves more than one labor organization, each will be entitled to a representative on the arbitration committee, in which event the railroad will be entitled to appoint additional representatives so as to equal the number of labor organization representatives. (c) The decision, by majority vote, of the arbitration committee shall be final, binding, and conclusive and shall be rendered within 45 days after the hearing of the dispute or controversy has been concluded and the record closed. .. (d) The salaries and expenses of the neutral member shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them. ... (e) In the event of any dispute as to whether or not a particular employee was affected by a transaction, it shall be his obligation to identify the transaction and specify the pertinent facts of that transaction relied upon. It shall then be the railroad's burden to prove that factors other than a transaction affected the employee. 12. Losses from home removal.-(a) The following conditions shall apply to the extent they are applicable in each instance to any employee who is retained in the service of the railroad (or who is later restored to service after being entitled to receive a dismissal allowance) who is required to change the point of his employment within his protective period as a result of the transaction and is therefore required to move his place of residence: If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by the railroad for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the date of the transaction so as to be unaffected thereby. The railroad shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other person. If the employee is under a contract to purchase his home, the railroad shall protect him against loss to the extent of the fair value of equity he may have in the home and in addition shall relieve him from any further obligation under his contract. (iii) If the employee holds an unexpired lease of a dwelling occupied by him as his home, the railroad shall protect him from all loss and cost in securing the cancellation of said loase. (b) Changes in place of residence which are not the result of a transaction shall not be considered to be within the purview of this Sec-

- (c) No claim for loss shall be paid under the provisions of this Section unless such claim is presented to the railroad within 1 year after the date the employee is required to move.

  (d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for pur-
- home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through joint conference between the employee, or their representatives and the railroad. In the event they are unable to agree, the dispute or controversy may be referred by either party to a beard of competent real estate appraisers, selected in the following manner. One to be selected by the representatives of the employees and one by the railroad, and these two, if unable to agree within 30 days upon a valuation, shall endesvor by agreement within 10 days thereafter to select a third appraiser, or to agree to a method by which a third appraiser shall be selected, and falling such agreement, either party may request the National Mediation Board to designate within 10 days a third appraiser whose designation will be binding upon the parties. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

#### ARTICLE H

- 1. Any employee who is terminated or furloughed as a result of a transaction shall, if he so requests, he granted priority of employment or reemployment to fill a position comparable to that which he held when his employment was terminated or he was furloughed, even though in a different craft or class, on the railroad which he is, or by training or retraining physically and mentally can become, qualified, not, however, in contravention of collective bargaining agreements relating thereto.
- 2. In the event such training or retraining is requested by such employee, the railroad shall provide for such training or retraining at no cost to the employee.
- 3. If such a terminated or furloughed employee who had made a request under Sections 1 or 2 of the Article II fails without good cause within 10 calendar days to accept an offer of a position comparable to that which he held when terminated or furloughed for which he is qualified, or for which he has satisfactorily completed such training, he shall, effective at the expiration of such 10-day period, forfeit all rights and benefits under this appendix.

## ARTICLE III

Subject to this appendix, as if employees of railroad, shall be employees, if affected by a transaction, of separately incorporated terminal companies which are owned (in whole or in part) or used by railroad

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and employees of any other enterprise within the definition of common carrier by railroad in Section 1(3) of Part I of the Interstate Commerce Act, as amended, in which railroad has an interest, to which railroad provides facilities, or with which relirosd contracts for use of facilities, or the facilities of which railroad otherwise uses; except that the provisions of this appendix shall be suspended with respect to each such employee until and unless he applies for employment with each owning carrier and each using - carrier; provided that said carriers shall establish one convenient central location for each terminal or other enterprise for receipt of one such application which will be effective as to all said carriers and railroad: shall notify such employees of this requirement and of the location for receipt of the application. employees shall not be entitled to any of the benefits of this appendix in the case of failure, without good cause, to accept comparable employment, which does not require a change in place of residence, under the same conditions as apply to other employees under this appendix, with any carrier for which application for employment has been made in accordance with this section.

#### ARTICLE IV

Employees of the railroad who are not represented by a labor organization shall be afforded substantially the same levels of protection as are afforded to members of labor organizations under these terms and conditions.

In the event any dispute or controversy arises between the railroad and an employee not represented by a labor organization with respect to the interpretation, application or enforcement of any provision hereof which cannot be settled by the parties within 30 days after the dispute arises, either party may refer the dispute to arbitration.

## ARTICLE V

- 1. It is the intent of this appendix to provide employee protections which are not less than the benefits established under 49 USC 11347 before February 5, 1976, and under Section 565 of Title 45. In so doing, changes in wording and organization from arrangements earlier developed under those sections have been necessary to make such benefits applicable to transactions as defined in Article I of this appendix. In making such changes, it is not the intent of this appendix to diminish such benefits. Thus, the terms of this appendix are to be resolved in favor of this intent to provide employee protections and benefits no less than those established under 49 USC 11347 before February 5, 1976 and under Section 565 of Title 45.
- 2. In the event any provision of this appendix is held to be invalid or otherwise unenforceable under applicable law, the remaining provisions of this appendix shall not be affected.

## MILEAGE OF RUNS ATTACHMENT "B"

Kansas City to Council Bluffs (via Falls City)		204
Kansas City to Des Moines (former CNW)		221
Kansas City to Ft. Madison	1	225
Kansas City to Quincy		210
Kansas City to Marysville		147
Kansas City to Marysville (via Hiawatha)		143
Marysville to St. Joseph		113
Kansas City to Jefferson (via River Sub)		162
Kansas City to Jefferson City (via Sedalia)		154
Kansas City to Wichita (via BNSF trackage/El Dorado)		197
Kansas City to Wichita (via BNSF trackage/Peabody)		197
Kansas City to Wichita (via BNSF trackage/Newton)		215
Kansas City to Winfield (via BNSF trackage)		215
Kansas City to Coffeyville		190
Kansas City to Pratt (via Hutchinson)		268
Ft. Madison to Chicago (IHB)		230
Quincy to Chicago (IHB)		265

## ATTACHMENT "C"

## **HEALTH AND WELFARE BENEFITS ELECTION FORM**

 (A)	Elect to maintain present coverage.
 (B)	Elect to accept the health and welfare coverage applicable the territory to which transferred.
	ing to make an election within the above time frame shall be ained present coverage under Option (A).
	(Employee Name)
	(Social Security Number)
	(Craft)

MAIL TO:

Joe Cvetas Union Pacific Railroad Company 1416 Dodge Street, Room 332 Omaha, NE 68179

# MERGER IMPLEMENTING AGREEMENT (Kansas City Hub)

between the

UNION PACIFIC RAILROAD COMPANY
Southern Pacific Transportation Company
and the

## BROTHERHOOD OF LOCOMOTIVE ENGINEERS

#### PREAMBLE

The U.S. Department of Transportation, Surface Transportation Board ("STB") approved the merger of the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") and Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp., and the Denver & Rio Grande Western Railroad Company ("DRGW") (collectively referred to as "SP") in Finance Docket 32760. In approving this transaction, the STB imposed New York Dock labor protective conditions. Copy of the New York Dock conditions is attached as Attachment "A" to this Agreement.

Subsequent to the filing of Union Pacific's application but prior to the decision of the STB, the parties engaged in certain discussions which focused upon Carrier's request that the Organization support the merger of UP and SP. These discussions resulted in the parties exchanging certain commitments, which were outlined in letters dated March 8(2), March 9 and March 22, 1996.

On January 30, 1998, the Carriers served notice of their intent to merge and consolidate operations generally in the following territories:

Union Pacific:

Kansas City to Council Bluffs (not including Council Bluffs/Omaha Metro Complex)

Kansas City to Des Moines (not including Des Moines)

Kansas City to Coffeyville (not including Coffeyville)

Kansas City to Parsons (not including Parsons)

Kansas City to Marysville (not including Marysville, but including Topeka)

Kansas City to Jefferson City (not including Jefferson City)

Kansas City Terminal

Southern Pacific:

(SSW and SPCSL) Kansas City to Jefferson City (not including Jefferson City)

Kansas City to Chicago via Ft. Madison (not including Chicago)

Kansas City to Chicago via Quincy (not including Chicago)

Kansas City to Winfield via BNSF trackage rights (not including Winfield)

Kansas City to Wichita via BNSF trackage rights (not including Wichita)

Kansas City to Pratt via Hutchinson via BNSF trackage rights (not including Pratt)

Kansas City Terminal

Pursuant to Section 4 of the New York Dock protective conditions, in order to achieve the benefits of operational changes made possible by the transaction and to modify collective bargaining agreements to the extent necessary to obtain those benefits

## IT IS AGREED:

## ARTICLE I - WORK AND ROAD POOL CONSOLIDATIONS

The following work/road pool consolidations and/or modifications will be made to existing runs:

## Zone 1 - Seniority District

Territory Covered:

Kansas City to Council Bluffs (not including Council Bluffs/Omaha Metro Complex)

Kansas City to Des Moines (not including Des Moines)

Kansas City to Chicago via Ft. Madison (not including Chicago)

Kansas City to Chicago via Quincy (not including Chicago)

The above includes all UP and SPCSL main lines, branch lines, industrial leads, yard tracks and stations between or located at the points indicated. Where the phase "not including" is used above, it refers to other than through freight operations, but does not restrict through freight engineers from operating into/out of such terminals/points or from performing work at such terminals/points pursuant to the designated collective bargaining agreement provisions.

- 2. The existing former UP Kansas City to Council Bluffs and Kansas City to Des Moines pool operations shall be preserved under this Agreement. The home terminal for this pool will be Kansas City. Council Bluffs and Des Moines are the respective away-from-home terminals. This pool shall be governed by the provisions of the ID Agreement dated March 31, 1992, including all side letters and addenda. Engineers in this pool may be transported between destination terminals for the return trip to the home terminal, subject to the terms set forth in Side Letter No. 6.
  - a. Hours of Service relief of trains in this pool shall be protected as provided in the existing agreement rules covering such runs.
- 3. The existing former SPCSL Kansas City to Quincy and Kansas City to Ft. Madison pool operations shall be preserved as a separate pool operation under this agreement, but the home terminal of such runs will be changed to Kansas City. Quincy and Ft. Madison will be the respective away-from-home terminals. Engineers may also be transported between destination terminals for the return trip to the home terminal, subject to the terms set forth in Side Letter No. 6. A sufficient number of engineers at Quincy and Ft. Madison will be relocated to Kansas City to accomplish this change.
  - Ansas City to Ft. Madison or Quincy may be protected by the extra board at Ft. Madison/Quincy if the train has reached Marceline or beyond on the former ATSF line or Brookfield or beyond on the former BN line. If there is no extra board in existence or the extra board is exhausted, an away-from-home terminal engineer may be used, and will thereafter be deadheaded home or placed first out for service on their rest. Such trains which have not reached Marceline or Brookfield shall be protected on a straightaway move by a home terminal pool engineer at Kansas City.

- b. Hours of Service relief of trains in this pool operating from Ft. Madison to Kansas City or Quincy to Kansas City may be protected by the extra board at Kansas City if the train has reached Marceline or beyond on the former ATSF line or Brookfield or beyond on the former BN line; otherwise, a rested away-from-home terminal engineer at Ft. Madison or Quincy shall be used on a straightaway move to provide such relief.
- 4. The existing former SPCSL Quincy to Chicago and Ft. Madison to Chicago pool operations shall be preserved as a single, separate pool operation under this Agreement. The home terminal of this pool will be Ft. Madison. Chicago will be the away-from-home terminal.
  - a. Engineers called to operate from Quincy to Chicago shall report and go on duty at Ft. Madison for transport to Quincy to take charge of their train; engineers operating Chicago to Quincy shall be transported back to Ft. Madison on a continuous time basis. In both instances, the transport between Ft. Madison and Quincy shall be automatically considered as deadhead in combination with service and paid on that basis.
  - b. Hours of Service relief of trains in this pool operating from Ft. Madison/Quincy to Chicago may be protected by a rested away-from-home terminal engineer at Chicago if the train has reached Streator or beyond on the former ATSF line or Galesburg or beyond on the former BN line. Away-from-home terminal engineers so used shall thereafter be deadheaded home or placed first out for service on their rest. Hours of Service relief of trains in this pool operating from Chicago to Ft. Madison/Quincy may be protected by an extra board engineer at Ft. Madison if the train has reached Streator or beyond on the former ATSF line or Galesburg or beyond on the former BN line.
  - c. In the event business conditions result in engineers at Ft. Madison (either in pool service, on the extra board, or otherwise) being unable to hold any assignment as locomotive engineer at Ft. Madison, such engineers required to exercise seniority to Kansas City (or senior engineers who elect to relocate in their stead) shall be eligible for relocation benefits under Article VII of this Agreement. After six (6) years from date of implementation of this Agreement, no future relocation benefits shall be applicable under such circumstances.
  - d. Notwithstanding the above provisions, if at any future date Carrier elects to discontinue its exercise of BNSF trackage rights between Kansas City and Chicago, all engineers at Ft.

Madison will be relocated to Kansas City and would under those circumstances be eligible for Article VII relocation benefits.

NOTE: It is understood the provisions of c. and d. above supersede the general provisions of Article VII.B.4. of this agreement.

- e. No Ft. Madison or Quincy engineer may receive more than one (1) compensated relocation under this Implementing Agreement.
- 5. At the equity meeting held pursuant to Side Letter No. 10 hereto the parties shall agree on a baseline number of pool turns for both of the pools described in Articles I.A.2. and I.A.3 above, and former UP and SPCSL engineers will be prior righted, respectively, to such baseline number of pool turns. In the event of a cessation of trackage rights operations described in 4.d. above, the parties will meet and reach agreement on how the baseline numbers of the two former pools will be consolidated into the remaining single pool for Zone 1. It is understood that under these circumstances all Zone 1 extra work at Kansas City would be consolidated under one (1) extra board.
- At Des Moines, Ft. Madison and Quincy, away-from-home terminal engineers called to operate through freight service to Kansas City may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through Des Moines, Ft. Madison or Quincy to their destination without claim or complaint from any other engineer. At Ft. Madison and Quincy, home terminal engineers called to operate through freight service to Chicago may receive the train for which they were called up to twentyfive (25) miles on the far side of the terminal and run back through Ft. Madison or Quincy to their destination without claim or complaint from any other engineer. When so used, the engineer shall be paid an additional one-half (1/2) day at the basic pro rata through freight rate for this run in addition to the district miles of the run. If the time spent beyond the terminal under this provision is greater than four (4) hours then he shall be paid on a minute basis at the basic pro rata through freight rate.
  - 7. The terminal limits of Des Moines, Ft. Madison and Quincy are as follows:

a. Des Moines: MP 70.37 - Trenton Subdivision
MP 79.2 - Mason City Subdivision
MP 224.76 - Bondurant Spur
MP 304.2 - Perry Branch
MP 4.26 - Ankeny Branch

b. Ft. Madison: MP 234.0 - East

MP 236.0 - West

c. Quincy: MP 135.0 - West

MP 138.0 - East

8. Engineers of an adjacent hub may have certain rights to be defined, if any, in the Merger Implementing Agreement for that hub to receive their through freight trains up to twenty-five (25) miles on the far side of the terminal and run back through Des Moines.

- All road switcher and yard assignments with an on/off duty location at 9. Council Bluffs (Omaha Metro Complex), Des Moines or Chicago will be protected by engineers from those seniority districts even if such assignments perform service within any territories contemplated by Article I.A.1. (Note: This provision does not disturb the current yard job allocation arrangement at Council Bluffs arising out of the UP/MP Merger Implementing Agreement). Local assignments, assigned freight service, and any other irregular assignments (work train, wreck train, etc.) will be protected on a prior rights basis by Zone 1 engineers if such assignments are home terminaled at Council Bluffs (Omaha Metro Complex), Des Moines or Chicago and work exclusively within the territories identified by Article I.A.1. Ft. Madison and Quincy, any such assignment home terminaled at such locations, including the extra board, may work either direction out of such terminal without seniority or other restrictions.
- 10. Engineers protecting through freight service in the pools described above shall be provided lodging at the away-from-home terminals pursuant to existing agreements and the Carrier shall provide the transportation to engineers between the on/off duty location and the designated lodging facility. All road engineers may leave or receive their trains at any location within the terminal and may perform work within the terminal pursuant to the designated collective bargaining agreement provisions. The Carrier will designate the on/off duty points for all engineers, with these on/off duty points having appropriate facilities as currently required in the collective bargaining agreement.
- 11. All existing yard assignments at Atchison and St. Joseph shall be converted to road switcher assignments upon implementation of this Agreement. Notwithstanding any conflicting current agreement provisions, and on a non-precedent, non-referable basis, all road switcher assignments at these two locations shall be paid the 5-day yard rate of pay.
  - a. The regular assignments headquartered at Atchison and St. Joseph shall be collectively prior righted to those former

engineers holding seniority at Atchison and St. Joseph. On and after the implementation of this Agreement, any engineer holding a regular assignment at Atchison or St. Joseph on the basis of his prior rights who voluntarily exercises his seniority elsewhere in the Kansas City Hub shall be deemed to have forfeited his prior rights to assignments at these locations.

b. The prior rights provisions set forth above shall not apply to the extra board at Atchison (Article III.A.1.) established under this Agreement, or any future extra board which may be established at either of these locations.

## B. Zone 2 - Seniority District

1. Territory Covered: Kansas City to Marysville (not including Marysville, but including Topeka)

The above includes all UP main lines, branch lines, industrial leads, yard tracks and stations between or located at the points indicated. Where the phase "not including" is used above, it refers to other than through freight operations, but does not restrict through freight engineers from operating into/out of such terminals, points or from performing work at such terminals/points pursuant to the designated collective bargaining agreement provisions.

- Existing Kansas City-Marysville pool operations shall be preserved under this Agreement. The home terminal for this pool will be Kansas City. Marysville will serve as the away-from-home terminal.
- 3. Engineers performing service in the Kansas City to Marysville pool shall receive a two (2) hour call for duty at Kansas City.
- 4. Hours of Service relief of trains in this pool operating from Kansas City to Marysville which have reached Topeka or beyond shall be protected in the following order (it being understood Carrier always reserves the right to call a Kansas City pool engineer to perform such service on a straightaway basis for crew balancing purposes):
  - a. By a rested, available engineer assigned to the Jeffrey Energy Pool and then
  - b. By the Marysville Extra Board, and then
  - c. By the first out, rested away-from-home terminal engineer at Marysville, who will thereafter be deadheaded home or placed first out for service on their rest.

Hours of Service relief of trains in this pool operating from Marysville to Kansas City may be protected by the extra board at Kansas City regardless of the location of such train should Carrier not elect to use a rested away-from-home terminal engineer at Marysville for crew balancing purposes.

- 5. At Marysville, away-from-home terminal engineers called to operate through freight service to Kansas City may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through Marysville to their destination without claim or complaint from any other engineer. When so used, the engineer shall be paid an additional one-half (½) day at the basic pro rata through freight rate for this run in addition to the district miles of the run. If time spent beyond the terminal under this provision is greater than four (4) hours, then he shall be paid on a minute basis at the basic pro rata through freight rate.
- 6. The terminal limits of Marysville are as follows:

MP 142.3 to MP 155.27 - Marysville Subdivision
MP 132.29 - Beatrice Branch
MP .75 - Bestwall Spur

- 7. All road switcher and yard assignments home terminaled at Marysville will be protected by engineers from that seniority district even if such assignments perform service within the territories contemplated by Article I.B.1. Local assignments and any other irregular assignments (work train, wreck train, etc.,) will be protected by Zone 2 engineers (including those at Topeka) if such assignments are home terminaled at Marysville and work exclusively within the territories defined by Article I.B.1.
- 8. The pool service presently protected by the so-called Jeffrey Energy Pool shall attrite to the UP Eastern District Seniority District No. 18 at Manysville and shall not be under the jurisdiction of this hub agreement. On and after the date of implementation of this Agreement, engineers protecting such service shall be governed by the schedule rules and rates of pay comprehending said 18th District. The terms of the August 17, 1979 Jeffrey Pool Agreement and other UP-BLE Eastern District Agreement pertaining to said pool shall be unaffected by this Implementing Agreement, except as modified below.
  - a. Former UP 8th District Engineers coming under the provisions of this Implementing Agreement and establishing Zone 2 prior rights seniority in the Kansas City Hub shall retain prior rights to the Jeffrey Energy Pool assignments on an attrition basis. Engineers presently occupying assignments in said pool will be

grandfathered to these assignments. Additionally, former UP 8th District Engineers performing service in Zone 2 will at time of roster canvasing, per Article VI.B.2., be asked to declare prior rights to assignments in the Jeffrey Energy Pool. If the engineer declares for such prior rights he will be allowed to occupy an assignment seniority permitting. If he does not declare for prior rights in the pool he shall thereafter waive said prior rights to the Jeffrey Energy Pool. The Carrier will maintain a list of those former UP 8th District Engineers who declared for prior rights in the Jeffrey Energy Pool at time of canvasing, but unable to occupy an assignment in the pool. When vacancies occur, such engineers will be canvassed, in seniority order. If the engineer declines to accept the assignment he will waive his prior rights to the Jeffrey Energy Pool. As vacancies occur which are not filled by former UP 8th District Engineers, the assignments will attrite to UP 18th District Engineers at Marysville.

- b. On the effective date of implementation of this Agreement the existing JK Extra Board at Marysville will no longer be preserved. All vacancies in the JK Pool, all extra work associated therewith and all other extra work described in the August 17, 1979 Jeffrey Pool Agreement, will be handled and performed by the UP 18th District Extra Board at Marysville.
- c. In consideration of the assignments described above attriting to the UP 18th District Engineers at Marysville, said 18th District Engineers also acknowledge and agree to the provisions of Section 4 above with regard to Kansas City Hub engineers receiving their trains up to twenty-five (25) miles west of Marysville, such zone to be calculated from the original Marysville switching limits (MP 150.27 West MP 147.33 East).
- 9. Engineers protecting through freight service in the pool described in Article I.B.2. above shall be provided lodging at the away-from-home terminal pursuant to existing agreements and the Carrier shall provide transportation to engineers between the on/off duty location and the designated lodging facility. All road engineers may leave or receive their trains at any location within the terminal and may perform work within the terminal pursuant to the designated collective bargaining agreement provisions. The Carrier will designate on/off duty points for all engineers, with these on/off duty points having appropriate facilities as currently required in the collective bargaining agreement.
- 10. All UP and SSW operations within the Topeka terminal limits shall be consolidated into a single operation. All rail limes, yards and/or sidings at Topeka will be considered as common to all engineers working in,

into and out of Topeka. All engineers will be permitted to perform all permissible road/yard moves pursuant to the designated collective bargaining agreement provisions. Interchange rules are not applicable for intra-carrier moves within the terminal. Topeka will serve as station enroute for all Kansas City Hub engineers.

- a. UP 8th District engineers occupying yard assignments at Topeka and local assignments home terminaled at Topeka on the date of implementation of this Agreement shall establish seniority in the Kansas City Hub and prior rights in Zone 2.
- b. UP 8th District engineers assigned to the extra board at Topeka on the date of implementation of this Agreement shall establish seniority in the Kansas City Hub and prior rights in Zone 2. This extra board shall continue to protect vacancies in yard service at Topeka and other yard and road extra service normally provided by such extra board prior to merger, except that is shall no longer supplement the JK Extra Board, so long as it is in existence, or any other extra board, at Marysville.

## C. Zone 3 - Seniority District

1. Territory Covered: Kansas City to Jefferson City (not including Jefferson City)

The above includes all UP and SSW main lines, branch lines, industrial leads, yard tracks and stations between or located at the points indicated. Where the phase "not including" is used above, it refers to other than through freight operations, but does not restrict through freight engineers from operating into/out of such terminals, points or from performing work at such terminals/points pursuant to the designated collective bargaining agreement provisions.

- 2. All former UP Kansas City to Jefferson City and former SSW Kansas City to Jefferson City pool operations shall be combined into one (1) pool with Kansas City as the home terminal. Jefferson City will serve as the away-from-home terminal. Engineers operating between Kansas City and Jefferson City may utilize any combination of UP or SSW trackage between such points.
  - Attachment "C" lists the slotting order for the pool. Former SSW and UP engineers residing at or in the vicinity of Jefferson City shall have prior rights to said pool turns. The

engineers subject to this prior rights arrangement are identified on Attachment "D". If turns in excess of that number are established or any of such turns be unclaimed by a prior rights engineer, they shall be filled from the zone roster, and thereafter from the common roster. The parties further agreed in Side Letter No. 16 of the St. Louis Hub Agreement to allow former UP and SSW engineers residing in Jefferson City or vicinity on the date notice was served to begin negotiations for the Kansas City Hub (notice dated January 30, 1998) to continue to maintain their residences at that location so long as pool freight service between Kansas City and Jefferson City and extra board work at Jefferson City continue to exist and such engineers possess sufficient seniority to hold such assignments. Such engineers will be allowed to continue to reside at Jefferson City on an attrition basis subject to the terms and conditions of this Merger Implementing Agreement (See Side Letter No. 7).

- Hours of Service relief of trains in this pool operating from Kansas City to Jefferson City may be protected by the extra board at Jefferson City if the train has reached Booneville or beyond on the River Sub or Smithton or beyond on the Sedalia Sub; otherwise, a rested pool engineer at Kansas City shall be used on a straightaway move to provide such relief. Hours of Service relief of trains in this pool operating from Jefferson City to Kansas City may be protected by the Zone 3 Extra Board at Kansas City if the train has reached Renick or beyond on the River Sub or Pleasant Hill or beyond on the Sedalia Sub; otherwise, a rested pool engineer at Jefferson City shall be used on a straightaway move to provide such relief. At the away-from-horne-terminal, if the extra board is exhausted, the first out rested pool engineer may be used, and shall thereafter be deadheaded home or placed first out for service on their rest.
- At Jefferson City, away-from-home terminal engineers called to operate through freight service to Kansas City may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through Jefferson City to their destination without claim or complaint from any other engineer. When so used, the engineer shall be paid an additional one-half (½) day at the basic pro rata through freight rate for this run in addition to the district miles of the run. If the time spent beyond the terminal under this provision is greater than four (4) hours, then he shall be paid on a minute basis at the basic pro rata through freight rate.

- 4. The terminal limits of Jefferson City shall be the same as the preexisting terminal limits on the UP Sedalia Subdivision (MP 124.3 - MP 128).
- 5. Engineers of the St. Louis Hub were granted rights to receive the train for which they were called up to twenty-five (25) miles on the far (west) side of the terminal limits of Jefferson City pursuant to Article I.A.4.c. of the UP-BLE St. Louis Hub Merger Implementing Agreement. This service may be performed without claim or complaint from any Kansas City Hub engineer.
- Pursuant to Article I.A.4.e. of the UP-BLE St. Louis Hub Merger Implementing Agreement any road switcher and yard assignments 6. with a home terminal of Jefferson City shall be under the jurisdiction of the UP-BLE St. Louis Hub Agreement. Locals and other road assignments with an origin/termination at Jefferson City and which perform service exclusively east of Jefferson City shall likewise be under the jurisdiction of the UP/BLE St. Louis Hub Agreement. Locals and other road assignments with an origin/termination at Jefferson City and which perform service exclusively west of Jefferson City on the UP Sedalia or UP River Subdivisions shall be governed by the UP-BLE Kansas City Hub Merger Implementing Agreement. The above is not intended to supersede any national agreements, letters of understanding or arbitration awards which pem.it yard assignments to perform service on more than one (1) seniority district (i.e., hours of service relief within a 25-mile zone, servicing industrial customers, etc.)
  - 7. Engineers protecting through freight service in the pool described in Article I.C.2. above shall be provided lodging at the away-from-home terminal pursuant to existing agreements and the Carrier shall provide transportation to engineers between the on/off duty location and the designated lodging facility. All road engineers may leave or receive their trains at any location within the terminal and may perform work within the terminal pursuant to the designated collective bargaining agreement provisions. The Carrier will designate on/off duty points for all engineers, with these on/off duty points having appropriate facilities as currently required in the collective bargaining agreement.

## D. Zone 4 - Seniority District

1. Territory Covered: Kansas City to Coffeyville (not including Coffeyville)

Kansas City to Parsons (not including Parsons)

Kansas City to Wichita via BNSF trackage rights (not including Wichita)

Kansas City to Winfield via BNSF trackage rights (not including Winfield)

Kansas City to Pratt via Hutchinson via BNSF trackage rights (not including Pratt)

The above includes all UP and SSW main lines, branch lines, industrial leads, yard tracks and stations between or located at the points indicated. Where the phase "not including" is used above, it refers to other than through freight operations, but does not restrict through freight engineers from operating into/out of such terminals, points or from performing work at such terminals/points pursuant to the designated collective bargaining agreement provisions.

- 2. The existing UP Interdivisional Service between Kansas City and Coffeyville shall continue as a separate pool and shall be governed by the provisions of the ID Agreement dated August 15, 1985, including all side letters and addenda.
  - a. Hours of Service relief of trains in this pool shall be protected as provided in the existing agreement rules covering such runs.
- 3. The existing but non-operational SSW Kansas City to Pratt (via Hutchinson) run shall be preserved under this Agreement and in the event such runs resume in the future they shall be governed by the provisions of the UP-BLE Kansas City Hub Agreement. The home terminal will be changed to Kansas City. Pratt will serve as the away-from-home terminal.
- 4. Former SSW yard engine equity in Kansas City shall be placed under Zone 4. The former SSW engineers who elect Zone 4 as their prior rights zone and former UP engineers in Zone 4 shall compete for all assignments in Zone 4 on the basis of their Zone 4 seniority.
- 5. At Coffeyville/Parsons, Wichita, Winfield and Pratt, away-from-home terminal engineers called to operate through freight service to Kansas City may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through Coffeyville/Parsons, Wichita and Winfield to their destination without claim or complaint from any other engineer. When so used, the engineer shall be paid an additional one-half (½) day at the basic pro rata through freight rate for this run in addition to the district miles of the run. If the time spent beyond the terminal under this provision is greater than four (4) hours, then he shall be paid on a minute basis at the basic pro rata through freight rate.

6.	The terminal limits of Coffeyville/Parsons, Wichita and Winfield are as
	follows:

	Coffeyville	MP 462.0		North
<b>a</b> .	Consyvine	MP 661.0	•	South

The north terminal limits of Coffeyville have been modified by this Implementing Agreement.

b.	Parsons	MP 133.4 MP 138.0	•	North South
c.	Wichita	MP 236.0 MP 476.0 MP 254.0	•	Herington Wichita Branch OKT Subdivision
d.	Winfield	MP 248.7 MP 250.8	•	East West
е.	Pratt	MP 292.33 MP 300.16	-	East West

- 7. Engineers of an adjacent hub may have certain rights to be defined, if any, in the Merger Implementing Agreements for these hubs to receive their through freight trains up to twenty-five (25) miles on the far side of the terminal and run back through Wichita or Winfield to their destination without claim or complaint from any other engineer.
- 8. Engineers protecting through freight service in the pool described in Article I.D.2. and I.D.3. above shall be provide lodging at the away-from-home terminal pursuant to existing agreements and the Carrier shall provide transportation to engineers between the on/off duty location and the designated lodging facility. All road engineers may leave or receive their trains at any location within the terminal and may perform work within the terminal pursuant to the designated collective bargaining agreement provisions. The Carrier will designate on/off duty points for all engineers, with these on/off duty points having appropriate facilities as currently required in the collective bargaining agreement.
- 9. All local, road switcher and yard assignments home terminaled at Coffeyville/ Parsons, Wichita, Winfield and Pratt will be protected by engineers from those seniority districts even if such assignments perform service within any territories contemplated by Article I.D.1. Other irregular assignments (work train, wreck train, etc.) will be protected by the engineers from the location where the assignment is home terminaled.

## E. Kansas City Terminal

- 1. All UP, SSW and SPCSL operations within the new Kansas City Terminal limits shall be consolidated into a single operation. The terminal includes all UP/SSW/SPCSL main lines, branch lines, industrial leads, yard tracks and stations between or located at the points indicated. All UP/SSW/SPCSL road crews may receive or leave their trains at any location within the terminal and may perform work within the terminal pursuant to the applicable collective bargaining agreement, including national agreements. The Carrier will designate the on/off duty points for all yard crews, with these on/off duty points having appropriate facilities as currently required in the collective bargaining agreement. Interchange rules are not applicable for intra-carrier moves within the terminal.
- All yard assignments operating within the Kansas City Terminal will be bid and assigned in the manner set forth in Side Letter No. 22 to this Agreement.
- 3. All UP, SSW and SPCSL rail lines, yards and/or sidings within the Kansas City Terminal will be considered as common to all engineers working in, into and out of Kansas City.
- 4. Terminal limits for the consolidated Kansas City terminal are as follows:

<u>UP</u>	Mile Post
Marysville Subdivision Coffeyville Subdivision	6.59 284.22
Sedalia Subdivision Falls City Subdivision Trenton Subdivision (former CNW)	276.32 288.37 500.3

#### SPCSL

Brookfield Subdivision	221.5 (BNSF MP)
Marceline Subdivision	444.2 (BNSF MP)
SPCSL terminal limits have been	n modified by this Agreement

## SSW

Sedalia Subdivision (via UP) BNSF Line to Topeka/Ottawa UP terminal limits are established as Topeka/Ottawa Line	276.32 9.0 (BNSF MP) MP 9.0 on the BNSF
Topeka/Ottawa Line	

- F. At all terminals the Carrier will designate the on/off duty points for all road engineers, with these on/off duty points having appropriate facilities for inclement weather and other facilities as currently required in the designated collective bargaining agreement.
- G. In all of the zones, when local, work, wreck, Hours of Service relief or other road runs are called or assigned which operate exclusively within the territorial limits of one (1) of these zones established in this Agreement, such service shall be protected by engineers in such zone. If such run or assignment extends across territory encompassing more than one (1) zone contemplated by this Agreement, the Carrier and Organization will mutually agree on the method for assigning engineers to such service, otherwise, it will be protected by engineers on the basis of their common senionty date.

## ARTICLE II - SENIORITY CONSOLIDATIONS

- A. To achieve the work efficiencies and allocation of forces that are necessary to make the Kansas City Hub operate efficiently as a unified system, a new seniority district will be formed and a master Engineer Seniority Roster UP/BLE Kansas City Merged Roster #1 will be created for engineers holding seniority in the territory comprehended by this Agreement on the effective date thereof. The new roster will be divided into four (4) zones as described in Articles I.A., I.B., I.C. and I.D. above.
- B. Prior rights seniority rosters will be formed covering each of the four (4) zones outlined above. Placement on these rosters and awarding of prior rights to their respective zones shall be based on the following:
  - Zone 1 This roster will consist of former UP engineers with prior rights on MPUL Merger 2B (Roster No 052111), CNW (Roster No. 053111), St. Joseph Union Terminal (Roster No. 057101) and Northern Kansas (Roster No. 055101) and former SPCSL engineers with rights on SPCSL (Roster No. 310101).
  - Zone 2 This roster will consist of former UP engineers with rights on UP Eighth District (Roster No. 068101) and former SSW engineers with rights on SSW Herington (Roster No. 303101).
  - Zone 3 This roster will consist of former UP engineers with rights on Merged 1 St. Louis (Merged Roster No. 040111) and former SSW engineers with rights on SSW Jefferson City (Roster No. 311101).
  - 4. Zone 4 This roster will consist of former UP engineers with prior rights on Osawatomie Merged 2A (Roster No. 054111) and former SSW engineers with rights on SSW Herington (Roster No. 303101).

C. Entitlement to assignment on the prior rights zone rosters described above shall be the canvass of the employees from the above affected former rosters contributing equity to each of such zones.

D. Engineers on the above-described newly-created prior rights zone rosters shall be integrated into one (1) common seniority roster.

E. All zone and common seniority shall be based upon each employee's date of promotion as a locomotive engineer (except those who have transferred into the territory covered by the hub and thereby established a new date). If this process results in engineers having identical common seniority dates, seniority will be determined by the age of the employees with the older employee placed first. If there are more than two (2) employees with the same seniority date, and the ranking of the pre-merged rosters would make it impossible for age to be a determining factor, a random process, jointly agreed upon by the Director of Labor Relations and the appropriate General Chairman(men), will be utilized to effect a resolution. It is understood this process for ranking employees with identical dates may not result in any employee running around another employee on his former roster.

F. Any engineer working in the territories described in Article I. on the date of implementation of this Agreement, but currently reduced from the engineers working list, shall also be given a place on the roster and prior rights. Engineers currently forced to this territory will be given a place on the roster and prior rights if so desired; otherwise, they will be released when their services are no longer required and will not establish a place on the new roster. Engineers borrowed out from locations within the hub and engineers in training on the effective date of this Agreement shall also participate in formulation of the roster described above.

G. UP engineers currently on an inactive roster pursuant to previous merger agreements shall participate in the roster formulation process described above based upon their date of seniority as a locomotive engineer.

H. With the creation of the new seniority described herein, all previous seniority outside the Kansas City Hub held by engineers inside the new hub shall be eliminated and all seniority inside the new hub held by engineers outside the hub shall be eliminated. All pre-existing prior rights, top and bottom, or any other such seniority arrangements in existence, if any, are of no further force or effect and the provisions of this Agreement shall prevail in lieu thereof. Upon completion of consolidation of the rosters and implementation of this hub, it is understood that no engineer may be forced to any territory or assignment outside the Kansas City Hub.

1. The total number of engineers on the master UP/BLE Kansas City Merged Roster #1 will be mutually agreed upon by the parties, subject to the provisions of Side Letter No. 15.

## ARTICLE III - EXTRA BOARDS

- A. The following extra boards shall be established to protect vacancies and other extra board work into or out of the Kansas City Hub or in the vicinity thereof. It is understood whether or not such boards are guaranteed boards is determined by the designated collective bargaining agreement.
  - 1. Atchison One (1) Extra Board (combination road/yard) to protect all extra service at or in the vicinity of Atchison including St. Joseph, Falls City and Union. This board will also protect work formerly performed by the Nearman coal pool. This board may not be used to provide hours of service relief of pool freight trains operating between Kansas City and Council Bluffs except in emergency, nor may it be used to provide relief of Zone 1 assignments home terminaled at Kansas City.
  - 2. Ft. Madison One (1) Extra Board (combination road/yard) to protect all extra service at or in the vicinity of Ft. Madison and Quincy, including Hours of Service relief in both directions.
  - 3. <u>Jefferson City West</u> One (1) Extra Board (combination road/yard) to protect all Zone 3 vacancies headquartered at Jefferson City including vacancies created by engineers laying off while exercising "reverse lodging" privileges. Local or irregular service originating at Jefferson City working west on the UP Sedalia and River Subdivisions will also be protected by this board. This board will protect extra service on assignments headquartered at Lees Summit until a Zone 3 extra board is established at Kansas City.
  - 4. Topeka One (1) Extra Board (combination road/yard) to protect all road and yard extra service at or in the vicinity of Topeka per Article 1.B.9.b. This board will not be used to provide relief of Zone 2 assignments home terminaled at Kansas City.
  - 5. <u>Kansas City</u> One (1) Extra Board (combination road/yard) to protect each of the following:
    - a. Zone 1 pool freight extra service in the Kansas City-Ft. Madison/Quincy pool so long as it remains in existence as a separate pool. This board will be headquartered in Kansas City. This board will supplement the board described in b. below.
    - b. Zone 1 pool freight extra service and all other road service in Zone 1, except as otherwise provided herein. This board will be headquartered at Kansas City. This board will supplement the board described in 1. above (Atchison).

- c. Zone 2 pool freight extra service and all other road service in Zone 2, except as otherwise provided herein. This board will be headquartered at Kansas City.
- d. Zone 3 pool freight extra service and all other road service in Zone 3 except as otherwise provided herein. This board will be headquartered at Kansas City.
- e. Zone 4 pool freight extra service and all other road service in Zone 4 except as otherwise provided herein. This board will be headquartered at Kansas City.
- 6. One (1) extra board (yard only) to protect all yard extra service within the Kansas City Terminal. This board will be accessed by engineers in the manner set forth in Side Letter No. 22.
- B. If additional extra boards are established or abolished after the date of implementation of this Agreement, it shall be done pursuant to the terms of the designated collective bargaining agreement. When established, the Carrier shall designate the geographic area the extra board will cover.

# ARTICLE IV - APPLICABLE AGREEMENT

- All engineers and assignments in the territories comprehended by this Implementing Agreement will work under the Collective Bargaining Agreement currently in effect between the Union Pacific Railroad Company and the Brotherhood of Locomotive Engineers dated October 1, 1977 (reprinted October 1, 1991), including all applicable national agreements, the "local/national" agreement of May 31, 1996, and all other side letters and addenda which have been entered into between date of last reprint and the date of this Implementing Agreement. Where conflicts arise, the specific provisions of this Agreement shall prevail. None of the provisions of these agreements are retroactive.
- B. All runs established pursuant to this Agreement will be governed by the following:
  - 1. Rates of Pay: The provisions of the June 1, 1996 National Agreement will apply as modified by the May 31, 1996 Local/National Agreement.
  - 2. Overtime: Overtime will be paid in accordance with Article IV of the 1991 National Agreement.
  - 3. <u>Transportation</u>: When a crew is required to report for duty or is relieved from duty at a point other than the on and off duty points fixed for the service established hereunder, the Carrier shall authorize and provide suitable transportation for the crew.

NOTE: Suitable transportation includes Carrier owned or provided passenger carrying motor vehicles or taxi, but excludes other forms of public transportation.

- 4. <u>Suitable Lodging</u>: Suitable lodging will be provided by the Carrier in accordance with existing agreements.
- C. Existing ID run provisions regarding overmile rate and meal allowances as contained in the current UP Kansas City to Fails City ID Agreement (Sections 3. and 4. thereof) shall apply to the through freight pools described in Articles I.A.3. (Kansas City-Ft. Madison/Quincy), i.A.4. (Ft. Madison-Chicago), and I.D.3. (Kansas City-Pratt) of this Implementing Agreement.
- D. The following provisions of the former UP Eastern District Interdivisional Run Agreement dated December 16, 1971 will apply to any pre-October 31, 1985 Kansas City Hub Engineers performing service in the Kansas City to Marysville pool:
  - (1) Part III Paragraph (b) dealing with overtime.
  - (2) Part VII Section 5 dealing with eating en route.
- E. Existing ID run provisions regarding deadhead as contained in the current UP Kansas City to Falls City ID Agreement (Section 9 thereof) shall also apply to the through freight pools described in Articles I.C.2. (Kansas City Jefferson City), I.D.2. (Kansas City Coffeyville/Parsons) and I.D.3. (Kansas City Pratt).
- F. Engineers in the Kansas City Coffeyville/Parsons pool who have an engineer/train service seniority date prior to October 31, 1985, shall begin overtime at the expiration of ten (10) hours on duty. When overtime, initial terminal delay and final terminal delay accrue on the same trip, pay will be calculated pursuant to National Agreement provisions. Employees hired after October 31, 1985, shall be paid overtime in accordance with the National Rules governing same and in the same manner as previously paid on the MPUL prior to the merger.
- G. The following provisions shall apply to all engineers who establish seniority in the Kansas City Hub under this Merger Implementing Agreement. It is understood these provisions shall not be applicable to engineers establishing seniority as engineer in the Hub after the effective (signature) date of this Agreement:

Engineers protecting through freight service who exceed twelve (12) hours on duty shall be paid for all time on duty in excess of 12 hours at the overtime rate of pay regardless of the district miles of the run. When overtime, initial terminal delay and final terminal delay accrue

on the same trip, pay will be calculated pursuant to National Agreement provisions.

- H. Engineers will be treated for vacation, entry rates and payment of arbitraries as though all their time on their original railroad had been performed on the merged railroad. Engineers assigned to the Hub on the effective date of this Agreement (including those engaged in engineer training on such date) shall have entry rate provisions waived. Engineers hired/promoted after the effective date of the Agreement shall be subject to National Agreement rate progression provisions.
- I. Engineers protecting pool freight operations on the territories covered by this Agreement shall receive continuous held-away-from-home terminal pay (HAHT) for all time so held at the distant terminal after the expiration of sixteen (16) hours. All other provisions in existing agreement rules and practices pertaining to HAHT pay remain unchanged.
- J. Except where specific terminal limits have been detailed in the Agreement, is not intended to change existing terminal limits under applicable agreements.
- K. Actual miles will be paid for runs in the new Kansas City Hub. Examples are illustrated in Attachment "B".

# ARTICLE V - FAMILIARIZATION

- A. Engineers involved in the consolidation of the Kansas City Hub covered by this Agreement whose assignments require performance of duties on a new geographic territory not familiar to them will be given full cooperation, assistance and guidance in order that their familiarization shall be accomplished as quickly as possible. Engineers will not be required to lose time or ride the road on their own time in order to qualify for these new operations.
- B. Engineers will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualification shall be handled with local operating officers. The parties recognize that different terrain and train tonnage impact the number of trips necessary and the operating officer assigned to the merger will work with the local Managers of Operating Practices in implementing this Section. If disputes occur under this Article they may be addressed directly with the appropriate Director of Labor Relations and the General Chairman for expeditious resolution.
- It is understood that familiarization required to implement the merger consolidation herein will be accomplished by calling a qualified engineer (or

Manager of Operating Practices) to work with an engineer called for service on a geographical territory not familiar to him.

D. Engineers hired subsequent to the effective date of this document will be qualified in accordance with current FRA certification regulations and paid in accordance with the local agreements that will cover the merged Hub.

# ARTICLE VI - IMPLEMENTATION

- A. The Carrier will give at least thirty (30) days' written notice of its intent to implement this Agreement.
- B. 1. Concurrent with the service of its notice, the Carrier will post a description of Zones 1, 2, 3 and 4 described in Article I herein.
  - 2. Ten (10) days after posting of the information described in B.1. above, the appropriate Labor Relations Personnel, CMS Personnel, General Chairmen and Local Chairmen will convene a workshop to implement assembly of the merged seniority rosters. At this workshop, the representatives of the Organization will construct consolidated seniority rosters as set forth in Article II of this Implementing Agreement.
  - 3. Dependent upon the Carrier's manpower needs, the Carrier may develop a pool of representatives of the Organization, with the concurrence of the General Chairmen, which, in addition to assisting in the preparation of the rosters, will assist in answering engineers' questions, including explanations of the seniority consolidation and implementing agreement issues, discussing merger integration issues with local Carrier officers and coordinating with respect to CMS issues relating to the transfer of engineers from one zone to another or the assignment of engineers to positions.
- C. The roster consolidation process shall be completed in five (5) days, after which the finalized agreed-to rosters will be posted for information and protest in accordance with the applicable agreements. If the participants have not finalized agreed-to rosters, the Carrier will prepare such rosters, post them for information and protest, will use those rosters in assigning positions, and will not be subject to claims or grievances as a result.
- D. Once rosters have been posted, those positions which have been created or consolidated will be bulletined for a period of seven (7) calendar days. Engineers may bid on these bulletined assignments in accordance with applicable agreement rules. However, no later than ten (10) days after closing of the bulletins, assignments will be made.

- E. 1. After all assignments are made, engineers assigned to positions which require them to relocate will be given the opportunity to relocate within the next thirty (30) day period. During this period, the affected engineers may be allowed to continue to occupy their existing positions. If required to assume duties at the new location immediately upon implementation date and prior to having received their thirty (30) days to relocate, such engineers will be paid normal and necessary expenses at the new location until relocated. Payment of expenses will not exceed thirty (30) calendar days.
  - The Carrier may, at its option, elect to phase-in the actual pool consolidations which are necessary in the implementation of this Agreement. Engineers will be given ten (10) days' notice of when their specific relocation/reassignment is to occur.

# ARTICLE VII - PROTECTIVE BENEFITS AND OBLIGATIONS

- A. All engineers who are listed on the prior rights Kansas City Hub merged rosters shall be considered adversely affected by this transaction and consolidation and will be subject to the <a href="New York Dock">New York Dock</a> protective conditions which were imposed by the STB. It is understood there shall not be any duplication or compounding of benefits under this Agreement and/or any other agreement or protective arrangement.
  - 1. Carrier will calculate and furnish TPA's for such engineers to the Organization as soon as possible after implementation of the terms of this Agreement. The time frame used for calculating the TPA's in accordance with <a href="New York Dock">New York Dock</a> will be August 1, 1996 through and including July 31, 1997.
  - 2. In consideration of blanket certification of all engineers covered by this Agreement for wage protection, the provisions of <a href="New York Dock">New York Dock</a> protective conditions relating to "average monthly time paid for" are waived under this Implementing Agreement.
  - Test period averages for designated union officers will be adjusted to reflect lost earnings while conducting business with the Carrier.
  - 4. National Termination of Seniority provisions shall not be applicable to engineers hired prior to the effective date of this Agreement.
  - B. Engineers required to relocate under this Agreement will be governed by the relocation provisions of <a href="New York Dock">New York Dock</a>. In lieu of <a href="New York Dock">New York Dock</a> provisions, an employee required to relocate may elect one of the following options:

- 1. Non-homeowners may elect to receive an "in lieu of" allowance in the amount of \$10,000 upon providing proof of actual relocation.
- 2. Homeowners may elect to receive an "in lieu of" allowance in the amount of \$20,000 upon providing proof of actual relocation.
- 3. Homeowners in Item 2 above who provide proof of a bona fide sale of their home at fair value at the location from which relocated shall be eligible to receive an additional allowance of \$10,000.
  - a) This option shall expire within five (5) years from date of application for the allowance under Item 2 above.
  - b) Proof of sale must be in the form of sale documents, deeds, and filings of these documents with the appropriate agency.

NOTE: All requests for relocation allowances must be submitted on the appropriate form.

- 4. With the exception of Item 3 above, no claim for an "in lieu of" relocation allowance will be accepted after two (2) years from date of implementation of this Agreement.
- 5. Under no circumstances shall an engineer be permitted to receive more than one (1) "in lieu of" relocation allowance under this Implementing Agreement.
- 6. Engineers receiving an "in lieu of" relocation allowance pursuant to this Implementing Agreement will be required to remain at the new location, seniority permitting, for a period of two (2) years.

# ARTICLE VIII - SAVINGS CLAUSES

- A. The provisions of the applicable Schedule Agreement will apply unless specifically modified herein.
- B. It is the Carrier's intent to execute a standby agreement with the Organization which represents engineers on the former St. Joseph Union Terminal. Upon execution of that Agreement, said engineers will be fully covered by this Implementing Agreement as though the Organization representing them had been signatory hereto.
- C. Nothing in this Agreement will preclude the use of any engineers to perform work permitted by other applicable agreements within the new seniority districts described herein, i.e., yard engineers performing Hours of Service Law relief within the road/yard zone, pool and/or ID engineers performing

service and deadheads between terminals, road switchers handling trains within their zones, etc.

D. The provisions of this Agreement shall be applied to all engineers covered by said Agreement without regard to race, creed, color, age, sex, national origin, or physical handicap, except in those cases where a bona fide occupational qualification exists. The masculine terminology herein is for the purpose of convenience only and does not intend to convey sex preference.

# ARTICLE IX - HEALTH AND WELFARE

Engineers of the former UP who are working under the collective bargaining agreement designated in Article IV.A. of this Implementing Agreement belong to the Union Pacific Hospital Association. Former SSW/SPCSL engineers are presently covered under United Health Care (former Travelers GA-2300) benefits. Upon implementation of this Agreement, said former SSW/SPCSL engineers will be granted an option to elect the health and welfare coverage provided by the designated collective bargaining agreement. Any engineer who fails to exercise such option shall be considered as having elected to retain existing coverage.

# ARTICLE X - EFFECTIVE DATE

This Agreement implements railroad operations in the area cover	s the merger of the learned by Notice dated	Union Pacific at January 30, 199	nd SSW/SPCSL 18.
Signed at Denver	thisday of	July	, 1998.

# FOR THE BROTHERHOOD LOCOMOTIVE ENGINEERS:

D. E. Penning General Chairman, BLE

MAY 7-2-98

M. A. Young General Chairman, BLE

D. E. Thompson General Chairman, BLE

J. R. Koonce General Chairman, BLE

# APPROVED:

J. L. McCoy Vice President, BLE

D. M. Hahs Vice President, BLE

## FOR THE CARRIERS:

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M. A. Hartman General Director-Labor Relations Union Pacific Railroad Co.

J. M. Raaz
Asst. Vice President-Labor Relations
Union Pacific Railroad Co.

Side Letter No. 1

July 2, 1998

MR JOHN R KOONCE GENERAL CHAIRMAN BLE 5050 POPLAR AVE STE 501 MEMPHIS TN 38157

MR D E PENNING GENERAL CHAIRMAN BLE 12531 MISSOURI BOTTOM RD HAZELWOOD MO 63042 MR D E THOMPSON GENERAL CHAIRMAN BLE 414 MISSOURI BLVD SCOTT CITY MO 63780

MR M A YOUNG GENERAL CHAIRMAN BLE 1620 CENTRAL AVE RM 203 CHEYENNE WY 82001

#### Gentlemen:

This refers to the Merger Implementing Agreement entered into this date between the Union Pacific Railroad Company, Southern Pacific Lines and the Brotherhood of Locomotive Engineers.

During our negotiations we discussed SSW <u>ARTICLE 6 - LIFE INSURANCE</u>, SSW <u>ARTICLE 9 - DISABILITY INSURANCE</u>, SPCSL <u>ARTICLE 4 - LIFE INSURANCE</u> and SPCSL <u>ARTICLE 6 - DISABILITY INSURANCE</u> of the August 1, 1995 Agreement between Southern Pacific Lines and your Organization. It was your position that coverages provided by the former agreement should be preserved for the former SSW and SPCSL engineers covered by this Implementing Agreement.

This will confirm that Carrier agreed that these insurance premiums would be maintained at current levels and would be grand fathered to those former SSW an SPCSL engineers who are covered by this implementing Agreement and who are presently covered under those plans. These insurance premiums will be maintained at current levels for such employees for a six (6) year period commencing January 1, 1998, unless extended or modified pursuant to the Railway Labor Act.

It is understood this Agreement is made without prejudice to the positions of either party regarding whether or not such benefits are subject to preservation under <a href="New York">New York</a>
<a href="Dock">Dock</a> and it will not be cited by any party in any other negotiations or proceedings.

If the foregoing adequately and accurately sets forth our agreement in this matter, please so indicate by signing in the space provided for that purpose below.

Yours truly,

M. A. Hartman

General Director - Labor Relations

Side Letter No. 1 July 2, 1998 Mr. J. R. Koonce Mr. D. E. Penning Mr. D. E. Thompson Mr. M. A. Young Page 2

#### AGREED:

J. R. Koonce General Chairman, BLE

D. E. Penning General Chairman, BLE

D. E. Thompson General Chairman, BLE

MAY 72-98

M. A. Young
General Chairman, BLE

cc: D. M. Hahs Vice President BLE

> J. L. McCoy Vice President BLE

MR JOHN R KOONCE GENERAL CHAIRMAN BLE 5050 POPLAR AVE STE 501 MEMPHIS TN 38157

MR D E PENNING GENERAL CHAIRMAN BLE 12531 MISSOURI BOTTOM RD HAZELWOOD MO 63042 MR D E THOMPSON GENERAL CHAIRMAN BLE 414 MISSOURI BLVD SCOTT CITY MO 63780

MR M A YOUNG GENERAL CHAIRMAN BLE 1620 CENTRAL AVE RM 203 CHEYENNE WY 82001

#### Gentlemen:

This refers to the Merger Implementing Agreement entered into this date between the Union Pacific Railroad Company, Southern Pacific Lines and the Brotherhood of Locomotive Engineers.

During our negotiations we discussed SSW <u>ARTICLE 7 - VACATION</u> and SPCSL - <u>ARTICLE 17 - VACATION</u> of the August 1, 1995 Agreement between Southern Pacific Lines and your Organization.

This will reflect our understanding that those former SSW and SPCSL engineers who are covered by this Implementing Agreement and who are presently covered by the above agreement provision shall be entitled to obtain the benefits of said ARTICLE 7 and ARTICLE 17 for the calendar year 1999 if said vacation is already earned under existing SSW and SPCSL agreements at the time of implementation of this Agreement. Thereafter, vacation benefits shall be as set forth in the controlling agreement on the merged territory.

If the foregoing adequately and accurately sets forth our agreement in this matter, please so indicate by signing in the space provided for that purpose below.

Yours truly,

M. A. Hartman

General Director-Labor Relations

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Side Letter No. 2 July 2, 1998 Mr. J. R. Koonce Mr. D. E. Penning Mr. D. E. Thompson Mr. M. A. Young Page 2

AGREED:

J. R. Koonce

General Chairman, BLE

D. E. Penning

General Chairman, BLE

D. E. Thompson

General Chairman, BLE

UAY 72-98

M. A. Young General Chairman, BLE

cc: D. M. Hahs
Vice President BLE

J. L. McCoy Vice President BLE

Side Letter No. 3

July 2, 1998

MR D E PENNING GENERAL CHAIRMAN BLE 12531 MISSOURI BOTTOM RD HAZELWOOD MO 63042

MR JOHN R KOONCE GENERAL CHAIRMAN BLE 5050 POPLAR AVE STE 501 MEMPHIS TN 38157 MR D E THOMPSON GENERAL CHAIRMAN BLE 414 MISSOURI BLVD SCOTT CITY MO 63780

MR M A YOUNG GENERAL CHAIRMAN BLE 1620 CENTRAL AVE RM 203 CHEYENNE WY 82001

#### Gentlemen:

This refers to the Merger Implementing Agreement entered into this date between Union Pacific Railroad Company, Southern Pacific Lines and the Brotherhood of Locomotive Engineers.

The parties hereto realize that the merger of the former properties into a unified system is a complex undertaking and with the changes in operations and seniority territories, employees covered by this Agreement will be required to perform service on unfamiliar territory.

Familiarization will be a large undertaking, and it is to the benefit of both parties that this process begin as soon as possible so that implementation can occur in a more orderly and rapid manner. Therefore, it is understood that Carrier may begin qualifying engineers on unfamiliar territory, to the extent it is feasible based upon operational and manpower constraints, between time of execution of this Implementing Agreement and date of implementation thereof.

It is understood that familiarization will be accomplished in accordance with <u>Article V - Familiarization</u> of this Agreement. Engineers making familiarization trips which involve greater mileages than their existing (pre-merger) runs will be paid actual mileage to the new objective terminal as contemplated in Article I of this Agreement. Local BLE officers will work with local Carrier officers to implement this Side Letter in the most effective manner.

If the foregoing adequately and accurately sets forth our agreement in this regard, please so indicate by signing in the space provided for that purpose below.

Yours truly,

M. A. Hartmar

General Director-Labor Relations

Side Letter No. 3 July 2, 1998 Mr. D. E. Penning Mr. D. E. Thompson Mr. J. R. Koonce Mr. M. A. Young Page 2

## AGREED:

D. E. Penning General Chairman, BLE

D. E. Thompson General Chairman, BLE

J. R. Koonce General Chairman, BLE

MAY 7-2-98

M. A. Young General Chairman, BLE

cc: D. M. Hahs Vice President, BLE

> J. L. McCoy Vice President, BLE

Side Letter No. 4

## July 2, 1998

MR D E PENNING GENERAL CHAIRMAN BLE 12531 MISSOURI BOTTOM RD HAZELWOOD MO 63042

MR JOHN R KOONCE GENERAL CHAIRMAN BLE 5050 POPLAR AVE STE 501 MEMPHIS TN 38157 MR D E THOMPSON GENERAL CHAIRMAN BLE 414 MISSOURI BLVD SCOTT CITY MO 63780

MR M A YOUNG GENERAL CHAIRMAN BLE 1620 CENTRAL AVE RM 203 CHEYENNE WY 82001

#### Gentlemen:

This has reference to the Merger Implementing Agreement for the Kansas City Hub entered into this date.

During our negotiations there was considerable discussion surrounding the operational changes resulting from a merger of UP/SSW/SPCSL operations. Specifically, it was your observation that the merged operation might possibly require an increased amount of transporting of engineers, and your Organization has concerns regarding the quality of the vehicles presently used for transporting engineers, as well as the drivers of said vehicles.

It was Carrier's position that there are existing procedures available to resolve any complaints regarding deficiencies in crew transportation and, as such, this was not a proper topic for inclusion in a Merger Implementing Agreement.

Without prejudice to the positions of the respective parties as set forth above, the Carrier believes it is in the best interests of all parties that routine, unannounced safety audits of crew transportation contractors be conducted, and that a process be established for prompt investigation and, if necessary, resolution of complaints of specific instances of deficiencies in this area. In this regard, this will confirm my advice given you during our negotiations that Carrier agreed it would direct its designated manager to contact a Local Chairman to be designated by your Organization for the purpose of scheduling and conducting field safety audits of transportation contractors in the hub. These safety audits will include, but not be limited to, inspection of vehicles, unannounced rides, interviewing crews, and meeting drivers. These safety audits will be performed no less frequently than quarterly.

Side Letter No. 4
July 2, 1998
Mr. D. E. Penning
Mr. D. E. Thompson
Mr. J. R. Koonce
Mr. M. A. Young
Page 2

If issues are raised by the safety audits which cannot be resolved to the satisfaction of your Organization, they may be referred to the appropriate Labor Relations Officer by the General Chairman for discussion in conference at the earliest possible date to seek a resolution. The conference will include the appropriate General Manager or his designate.

Respectfully,

M. A. Hartman

General Director-Labor Relations

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MR D E PENNING GENERAL CHAIRMAN BLE 12531 MISSOURI BOTTOM RD HAZELWOOD MO. 63042

MR JOHN R KOONCE GENERAL CHAIRMAN BLE 5050 POPLAR AVE STE 501 MEMPHIS TN 38157 MR D E THOMPSON GENERAL CHAIRMAN BLE 414 MISSOURI BLVD SCOTT CITY MO 63780

MR M A YOUNG GENERAL CHAIRMAN BLE 1620 CENTRAL AVE RM 203 CHEYENNE WY 82001

#### Gentlemen:

This refers to the Merger Implementing Agreement for the Kansas City Hub entered into this date.

During our execution of this Agreement, it was understood that the parties may discover errors or omissions relating to mile post designations, crew district mileages, etc. It is not the intent of either party to hold the other party to such items simply because there was simply not time to verify them for accuracy.

If the foregoing adequately and accurately describes our agreement in this matter, please so indicate by signing in the space provided for that purpose below.

Mathantman

M. A. Hartman

General Director-Labor Relations

AGREED:

D. E. Penning

General Chairman, BLE

D. E. Thompson

General Chairman, BLE

J. R. Koonce

General Chairman, BLE

MAY 7-2-98

M. A. Young

General Chairman, BLE

CC:

D. M. Hahs Vice President, BLE J. L. McCoy

Vice President, BLE

Side Letter No. 6

## July 2, 1998

MR D E PENNING GENERAL CHAIRMAN BLE 12531 MISSOURI BOTTOM RD HAZELWOOD MO 63042

MR JOHN R KOONCE GENERAL CHAIRMAN BLE 5050 POPLAR AVE STE 501 MEMPHIS TN 38157 MR D E THOMPSON GENERAL CHAIRMAN BLE 414 MISSOURI BLVD SCOTT CITY MO 63780

MR M A YOUNG GENERAL CHAIRMAN BLE 1620 CENTRAL AVE RM 203 CHEYENNE WY 82001

#### Gentlemen:

This refers to the Merger Implementing Agreement for the Kansas City Hub, and specifically to Article I.A.3. regarding repositioning engineers from one away-from-home terminal to another. Such handling will be subject to the following conditions:

- 1. Engineers may be deadheaded prior to the tie-up after the initial trip.
  - Example: An engineer runs from Kansas City to Ft Madison. He can be deadheaded from Ft. Madison to Quincy for tie-up at Quincy from his original trip from Kansas City.
- 2. Engineers may also be deadheaded after tie-up and rest after the initial trip.
  - Example: An engineer runs from Kansas City to Ft. Madison and ties up.
    After rest, he can be deadheaded from Ft. Madison to Quincy for a trip from Quincy to Kansas City.
    - a. This handling can only occur when there are no rested engineers at Quincy to protect the service from Quincy to Kansas City, i.e., it is not permissible to deadhead an engineer to a different away-from-home terminal for additional rest, but only for a return trip to the home terminal.
- 3. Engineers will not be deadheaded by train between one away-from-home terminal to another away-from-home terminal. Other forms of transportation will be used.
- 4. Engineers hired prior to implementation of this Agreement will be paid highway miles for the deadhead portion of the trip and engineers hired subsequent to the implementation will be paid actual time for the deadhead portion of the trip.

Side Letter No. 6
July 2, 1998
Mr. D. E. Penning
Mr. D. E. Thompson
Mr. J. R. Koonce
Mr. M. A. Young
Page 2

- Once deadheaded between the two away-from-home terminals an engineer will not be deadheaded back except in an emergency situation such as a flood or a major derailment.
- 6. It is not the intent of this Agreement to "double deadhead" engineers. If double deadheaded, then the engineer will be paid district miles for the second deadhead. A "double deadhead" in this instance is when an engineer is deadheaded from one-away-from-home terminal to another away-from-home terminal and then deadheaded back to the home terminal.
- 7. Engineers arriving at the away-from-home terminal by train and instructed to deadhead to another away-from-home terminal will remain on terminal time (if applicable) until they are in the vehicle to transport them to the other away-from-home terminal.
- 8. It is understood the provisions set forth above shall also apply to the Kansas City-Council Bluffs/Des Moines pool, and these provisions shall supersede pre-existing agreements and/or practices regarding transporting crews between Council Bluffs and Des Moines. Nothing in this Side Letter may be construed to permit transporting away-from-home terminal crews between Council Bluffs/Des Moines and Ft. Madison/Quincy.

If the foregoing adequately and accurately sets forth agreement in this matter, please so indicate by signing in the space provided for that purpose below.

Yours truly,

M. A. Hartman

**General Director-Labor Relations** 

Side Letter No. 6
July 2, 1998
Mr. D. E. Penning
Mr. D. E. Thompson
Mr. J. R. Koonce
Mr. M. A. Young
Page 3

AGREED:

D. E. Penning

General Chairman, BLE

D. E. Thompson General Chairman, BLE

J. R. Koonce General Chairman, BLE

MAY 7-2-98

M. A. Young General Chairman, BLE

cc: D. M. Hahs Vice President BLE

> J. L. McCoy Vice President BLE

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Side Letter No. 7

July 2, 1998

MR D E PENNING GENERAL CHAIRMAN BLE 12531 MISSOURI BOTTOM RD HAZELWOOD MO 63042

MR JOHN R KOONCE GENERAL CHAIRMAN BLE 5050 POPLAR AVE STE 501 MEMPHIS TN 38157 MR D E THOMPSON GENERAL CHAIRMAN BLE 414 MISSOURI BLVD SCOTT CITY MO 63780

MR M A YOUNG GENERAL CHAIRMAN BLE 1620 CENTRAL AVE RM 203 CHEYENNE WY 82001

#### Gentlemen:

This refers to the Merger Implementing Agreement for the Kansas City Hub entered into this date.

In Side Letter No. 16 of the St. Louis Hub Merger Implementing Agreement and referenced in Article I.B.3.a. of Kansas City Hub Merger Implementing Agreement, the parties agreed to allow former UP and SSW engineers residing at or in the vicinity of Jefferson City to continue to maintain their residences at that location subject to the language of Side Letter No. 16.

The Carrier intends to have Kansas City as the home terminal for all engineers performing service in the Kansas City to Jefferson City pool. The present UP and SSW engineers at Jefferson City covered by this Agreement will be eliminated by attrition. When a former UP or SSW engineer, residing at or in the vicinity of Jefferson City, vacates his pool assignment through retirement, resignation, voluntary seniority move/relocation, etc., and it is not claimed/occupied by a prior rights Jefferson City engineer covered by this Side Letter, such position will no longer be maintained at Jefferson City but will be readvertised as having Kansas City as the designated home terminal.

Initially, upon implementation of this Agreement, the home terminal for the Kansas City to Jefferson City pool will be Jefferson City. (Note: This does not modify or nullify the provisions of Side Letter No. 23 to the St. Louis Hub Merger Implementing Agreement). Sufficient pool turns (along with extra board positions, as described below) shall be established to accommodate those engineers identified on the Attachment to this Agreement. After date of implementation, pool turns which are advertised which exceed the number necessary to fulfill this arrangement may be filled by any other Kansas City Hub engineers. Engineers residing at or in the vicinity of Kansas City who perform service in this pool will be afforded reverse lodging and HAHT privileges at Jefferson City.

Side Letter No. 7
July 2, 1998
Mr. D. E. Penning
Mr. D. E. Thompson
Mr. J. R. Koonce
Mr. M. A. Young
Page 2

An extra board will be maintained at Jefferson City to protect assignments working west in Kansas City Hub Zone 3. This extra board will be maintained at a level of no less than 30% (all fractions are rounded downward) of the number of engineers occupying pool tums and residing at Jefferson City under this attrition arrangement. If there are unfilled positions on such extra board or unfilled positions on locals or other road assignments working out of Jefferson City west, the junior engineer in the Kansas City to Jefferson City pool, residing at or in the vicinity of Jefferson City, will be required to cover such position or assignment. Nothing in this Side Letter is intended to convey the Jefferson City-West Extra board the exclusive right to protect all assignments in Zone 3.

When 51% or more of the turns in the Kansas City to Jefferson City pool are occupied by engineers who reside at or in the vicinity of Kansas City, the home terminal for the pool will become Kansas City. Once this change is effected, it shall remain at Kansas City. Engineers who continue to reside at or in the vicinity of Jefferson City will be afforded reverse lodging and HAHT privileges at Kansas City and lay off privileges at Jefferson City.

If the foregoing adequately and accurately sets forth our agreement in this matter, please so indicate by signing in the space provided for that purpose below.

Yours truly,

M. A. Hartman

General Director-Labor Relations

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Side Letter No. 7
July 2, 1998
Mr. D. E. Penning
Mr. D. E. Thompson
Mr. J. R. Koonce
Mr. M. A. Young
Page 3

AGREED:

D. E. Penning General Chairman, BLE

D. E. Thompson General Chairman, BLE

J. R. Koonce General Chairman, BLE

MAY 7-2-98

M. A. Young General Chairman, BLE

cc: D. M. Hahs
Vice President, BLE

J. L. McCoy Vice President, BLE

MR D E THOMPSON GENERAL CHAIRMAN BLE 414 MISSOURI BLVD SCOTT CITY MO 63780

MR D E PENNING '
GENERAL CHAIRMAN BLE
12531 MISSOURI BOTTOM RD
HAZELWOOD MO 63042

MR JOHN R KOONCE GENERAL CHAIRMAN BLE 5050 POPLAR AVE STE 501 MEMPHIS TN 38157

MR M A YOUNG GENERAL CHAIRMAN BLE 1620 CENTRAL AVE RM 203 CHEYENNE WY 82001

#### Gentlemen:

This refers to the Merger Implementing Agreement for the Kansas City Hub entered into this date.

With regard to Article II.H. of the Agreement, the following shall apply:

- 1. Engineers who participate in the roster formulation process for the Kansas City Hub who presently hold engine service seniority outside the Kansas City Hub will be handled as follows:
  - a. All engine service seniority outside the Kansas City Hub will be held in abeyance and may not be utilized for any purposes except as outlined below:
  - b. When subsequent implementing agreements are concluded in other hubs which encompass the seniority described in a. above, which has been held in abeyance, such seniority may be exercised in the roster formulation process for such hub(s) subject to the following limitations:
    - The exercise of such option shall be considered a seniority move and shall be at the engineer's own expense.
    - An engineer utilizing this provision to select a different hub will forfelt all seniority in the Kansas City Hub.
- II. The rights set forth in (b) above may only be exercised to the extent that there is an unfilled need for engineers at such hub at the time rosters for such hub are formulated. Carrier reserves the right to limit the number of such requests made based upon manpower requirements and the number accepted will be in seniority order. In the event such move will create a shortage of engineers within the Kanaas City Hub the Carrier may hold such applicant for a reasonable amount of time to allow for a replacement.
- When all of the hube involving engineers with former SSW and SPCSL system sensitive have been completed, the Organization may serve notice upon Carrier to meet and negotiate the details surrounding a one-time "Sadie Hawkins Day" for such engineers to make one final, irrevocable move to a hub, which will be without relocation cost to the Carrier. The parties will resolve at this meeting the matters of shortages and/or surpluses in the various hubs, as well as method of seniority integration into the hub to which moving.

Side Letter No. 8 July 2, 1998 Mr. D. E. Penning Mr. D. E. Thompson Mr. J. R. Koonce M. A. Young Page 2

It is understood this Agreement is made without prejudice to the position of any party, does not constitute a precedent, and may not be cited or referred to by any party in any other negotiations or proceedings.

If the foregoing adequately and accurately sets forth our agreement in this matter, please so indicate by signing in the space provided for that purpose below.

Yours truly,

M. A. Hartman

**General Director-Labor Relations** 

matantman

AGREED

D. E. Penning

General Chairman, BLE

D. E. Thompson

General Chairman, BLE

J. R. Koonce

General Chairman, BLE

MAY 7-2-98

M. A. Young General Chairman, BLE

cc: D. M. Hahs Vice President, BLE

> J. L. McCoy Vice President, BLE

MR D E PENNING GENERAL CHAIRMAN BLE 12531 MISSOURI BOTTOM RD HAZELWOOD MO 63042

MR JOHN R KOONCE GENERAL CHAIRMAN BLE 5050 POPLAR AVE STE 501 MEMPHIS TN 38157 MR D E THOMPSON GENERAL CHAIRMAN BLE 414 MISSOURI BLVD SCOTT CITY MO 63780

MR M A YOUNG GENERAL CHAIRMAN BLE 1620 CENTRAL AVE RM 203 CHEYENNE WY 82001

#### Gentlemen:

This refers to the Merger Implementing Agreement for the Kansas City Hub.

During our negotiations your Organization raised some concern regarding the intent of Article VIII - Savings Clauses. Item C thereof. Specifically, it was the concern of some of your constituents that the language of Item C might subsequently be cited to support a position that "other applicable agreements" supersede or otherwise nullify the very provisions of the Merger Implementing Agreement which were negotiated by the parties.

I assured you this concern was not valid and no such interpretation could be applied. I pointed out that Item C must be read in conjunction with Item A, which makes it clear that the specific provisions of the Merger Implementing Agreement, where they conflict with the basic schedule agreement, take precedence, and not the other way around.

The purpose of Item C was to establish with absolute clarity that there are numerous other provisions in the designated collective bargaining agreement, including national agreements, which apply to the territory involved, and to the extent such provisions were not expressly modified or nullified, they still exist and apply. It was not the intent of the Merger Implementing Agreement to either restrict or expand the application of such agreements.

In conclusion, this letter of commitment will confirm that the provisions of Article VIII - Savings Clauses may not be construed to supersede or nullify the terms of the Merger Implementing Agreement which were negotiated in good faith between the parties. I hope the above elaboration clarifies the true intent of such provisions.

Yours truly.

M. A. Hartman

General Director-Labor Relations

MR D E PENNING GENERAL CHAIRMAN BLE 12531 MISSOURI BOTTOM RD HAZELWOOD MO 63042

MR JOHN R KOONCE GENERAL CHAIRMAN BLE 5050 POPLAR AVE STE 501 MEMPHIS TN 38157 MR D E THOMPSON GENERAL CHAIRMAN BLE 414 MISSOURI BLVD SCOTT CITY MO 63780

MR M A YOUNG GENERAL CHAIRMAN BLE 1620 CENTRAL AVE RM 203 CHEYENNE WY 82001

#### Gantlemen:

This refers to the Merger Implementing Agreement for the Kansas City Hub entered into this date.

Prior to implementation of this Agreement, the Carrier and Organization will schedule and convene a meeting in Kansas City, Missouri to develop equity data for roster formulation and slotting of freight pools associated with the Kansas City Hub. The results of this meeting will be appended to this Agreement prior to it being disseminated for a ratification vote.

This meeting will be conducted by Carrier Labor Relations Officers and the appropriate Local Chairmen for the territories concerned. The Carrier will provide the sources of equity data and the Local Chairmen will provide the Carrier with the necessary equity percentages for roster slotting and formulating. In the event the Local Chairmen are unable to agree upon equity percentages, the Carrier will make such determinations and will not be subject to any claims or grievances as a result thereof.

If the foregoing adequately and accurately sets forth our agreement in this matter, please so indicate by signing in the space provided for that purpose below.

Yours truly, Ma Hartman

M. A. Hartman

General Director-Labor Relations

Side Letter No. 10 July 2, 1998 Mr. D. E. Penning Mr. D. E. Thompson Mr. J. R. Koonce Mr. M. A. Young Page 2

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D. E. Penning General Chairman, BLE

D. E. Thompson General Chairman, BLE

J. R. Koonce General Chairman, BLE

MAY 7-2-98

M. A. Young General Chairman, BLE

cc: D. M. Hahs Vice President BLE

> J. L. McCoy Vice President BLE

MR D E PENNING GENERAL CHAIRMAN BLE 12531 MISSOURI BOTTOM RD HAZELWOOD MO 63042

MR JOHN R KOONCE GENERAL CHAIRMAN BLE 5050 POPLAR AVE STE 501 MEMPHIS TN 38157 MR D E THOMPSON GENERAL CHAIRMAN BLE 414 MISSOURI BLVD SCOTT CITY MO 63780

MR M A YOUNG GENERAL CHAIRMAN BLE 1620 CENTRAL AVE RM 203 CHEYENNE WY 82001

#### Gentlemen:

This has reference to the Merger Implementing Agreement for the Kansas City Hub entered into this date, and specifically Article VII.A.1. thereof.

During our discussions regarding the time frame for calculating TPA's, the representatives of the former SSW and SPCSL expressed the view that since all of the engineers represented by them had already received TPA's in connection with "interim protection" related to TCS cutovers, they would prefer to simply adopt those existing TPA's for purposes of application of protection under this Merger Implementing Agreement. Carrier is agreeable to this handling.

If the foregoing accurately describes our Agreement in this matter, please so indicate by signing in the space provided for that purpose below.

Yours truly,

M. A. Hartman

General Director-Labor Relations

Side Letter No. 11 July 2, 1998 Mr. D. E. Penning Mr. D. E. Thompson Mr. J. R. Koonce Mr. M. A. Young Page 2

#### AGREED:

D. E. Penning General Chairman, BLE

D. E. Thompson General Chairman, BLE

J. R. Koonce General Chairman, BLE

MAY 7-2-98

M. A. Young General Chairman, BLE

cc: D. M. Hahs Vice President BLE

> J. L. McCoy Vice President BLE

MR D E PENNING GENERAL CHAIRMAN BLE 12531 MISSOURI BOTTOM RD HAZELWOOD MO 63042

MR JOHN R KOONCE GENERAL CHAIRMAN BLE 5050 POPLAR AVE STE 501 MEMPHIS TN 38157 MR D E THOMPSON GENERAL CHAIRMAN BLE 414 MISSOURI BLVD SCOTT CITY MO 63780

MR M A YOUNG GENERAL CHAIRMAN BLE 1620 CENTRAL AVE RM 203 CHEYENNE WY 82001

#### Gentlemen:

This has reference to our negotiations covering the Merger Implementing Agreement entered into this date between the Union Pacific Railroad Company, Southern Pacific Lines and the Brotherhood of Locomotive Engineers. During these negotiations, the Organization expressed concern that engineers who expire on the Hours of Service Law would not be transported in a timely manner to the destination terminal.

This will confirm the advice given to you. i.e., that when an engineer ties up on the Hours of Service before reaching the objective terminal, the Carrier will make every reasonable effort to relieve subject engineer and transport him to the tie up point, expeditiously. The Carrier recognized the interests of the railroad and its engineers are best served when a train reaches the final terminal within the hours of service. In the event this does not occur, the Carrier is committed to relieving that engineer and providing transportation as soon as practical. It is understood that this commitment contemplates transportation in the form of passenger vehicle, and engineers shall not be transported to the tie-up point after Hours of Service tie-ups by means of train except in case of emergency or extraordinary circumstances which make providing a vehicle impossible.

In the event the Organization feels that this commitment is not being observed at a particular location, the General Chairman shall promptly contact the Director of Labor Relations in writing stating the reasons or circumstances thereof. Within ten (10) days after being contacted the Director of Labor Relations will schedule a conference between the parties to discuss the matter and seek a resolution. The conference will include the appropriate General Manager or his designate.

Yours truly,

M. A. Hartman

General Director-Labor Relations

CC:

D. M. Hahs

Vice President BLE

J. L. McCoy

Vice President BLE

MR D E PENNING GENERAL CHAIRMAN BLE 12531 MISSOURI BOTTOM RD HAZELWOOD MO 63042

MR JOHN R KOONCE GENERAL CHAIRMAN BLE 5050 POPLAR AVE STE 501 MEMPHIS TN 38157 MR D E THOMPSON GENERAL CHAIRMAN BLE 414 MISSOURI BLVD SCOTT CITY MO 63780

MR M A YOUNG GENERAL CHAIRMAN BLE 1620 CENTRAL AVE RM 203 CHEYENNE WY 82001

#### Gentlemen:

This refers to the Merger Implementing Agreement entered into this date between the Union Pacific Railroad Company, Southern Pacific Lines, and the Brotherhood of Locomotive Engineers.

In our discussions regarding Article IV, this will confirm Carrier's commitment to provide copies of the designated collective bargaining agreement referenced therein to all former SSW/SPCSL and UP (former MP Upper Lines) engineers comprehended by this Implementing Agreement at the earliest possible date, but no later than by date of implementation of this Agreement.

Yours truly,

M. A. Hartman

General Director-Labor Relations

Rev. 7/2/98

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MR D E PENNING GENERAL CHAIRMAN BLE 12531 MISSOURI BOTTOM RD HAZELWOOD MO 63042

MR JOHN R KOONCE GENERAL CHAIRMAN BLE 5050 POPLAR AVE STE 501 MEMPHIS TN 38157 MR D E THOMPSON GENERAL CHAIRMAN BLE 414 MISSOURI BLVD SCOTT CITY MO 63780

MR M A YOUNG GENERAL CHAIRMAN BLE 1620 CENTRAL AVE RM 203 CHEYENNE WY 82001

#### Gentlemen:

This refers to the Merger Implementing Agreement for the Kansas City Hub entered into this date.

In discussing the relocation benefits in Article VII of the Agreement, we discussed the situation where an employee may desire to sell his home prior to the actual implementation of the merger. Carrier committed to you that such employee would be entitled to treatment as a "homeowner" for relocation benefits purposes provided:

- 1. Upon actual implementation of the Merger Implementing Agreement the engineer meets the requisite test of having been "required to relocate",
- 2. The sale of the residence occurred at the same location where claimant was working immediately prior to implementation, and
- 3. The sale of the residence occurred after the date of this Agreement.

If the foregoing adequately and accurately sets forth our agreement in this matter, please so indicate by signing in the space provided for that purpose below.

Yours truly,

M. A. Hartman

**General Director-Labor Relations** 

Side Letter No. 14
July 2, 1998
Mr. D. E. Penning
Mr. D. E. Thompson
Mr. J. R. Koonce
Mr. M. A. Young
Page 2

## AGREED:

D. E. Penning General Chairman, BLE

D. E. Thompson General Chairman, BLE

J. R. Koonce General Chairman, BLE

MAY 7-2-98 M. A. Young

General Chairman, BLE

cc: D. M. Hahs Vice President BLE

> J. L. McCoy Vice President BLE

MR D E PENNING GENERAL CHAIRMAN BLE 12531 MISSOURI BOTTOM RD HAZELWOOD MO 63042

MR JOHN R KOONCE GENERAL CHAIRMAN BLE 5050 POPLAR AVE STE 501 MEMPHIS 'TN 38157 MR D E THOMPSON GENERAL CHAIRMAN BLE 414 MISSOURI BLVD SCOTT CITY MO 63780

MR M A YOUNG GENERAL CHAIRMAN BLE 1620 CENTRAL AVE RM 203 CHEYENNE WY 82001

#### Gentlemen:

This has reference to the Merger Implementing Agreement for the Kansas City Hub entered into this date.

During our negotiations the Organization requested a commitment from the Carrier that no engineer currently in the hub would be forced out of the hub. Carrier advised that it could not commit to this since engineers could potentially come into the hub when rosters are formulated, thereby inflating the number of engineers in the hub and creating a surplus. Therefore, in the alternative it was agreed that the total number of engineers in the Kansas City Hub upon finalization of rosters would be no less than the number in the hub on the date of this Implementing Agreement. In the event that number is exceeded because of engineers coming into the hub from other locations in line with their system seniority, the excess may be reduced by the Carrier by forcing junior surplus engineers out of the hub. In the application of this Side Letter, it is understood that engineers coming into the hub from other locations do so as a seniority move and such moves do not trigger relocation benefits. If such moves result in Carrier reducing surplus junior engineers out of the hub, such forced engineers would be eligible for relocation benefits.

If the foregoing adequately and accurately sets forth our agreement regarding this matter, please so indicate by signing in the space provided for that purpose below.

Yours truly,

M. A. Hartman

General Director - Labor Relations

Side Letter No. 15 July 2, 1998 Mr. D. E. Penning Mr. D. E. Thompson Mr. J. R. Koonce Mr. M. A. Young Page 2

## AGREED:

D. E. Penning General Chairman, BLE

D. E. Thompson General Chairman, BLE

J. R. Koonce General Chairman, BLE

MAY 7-2-98

M. A. Young General Chairman, BLE

cc: D. M. Hahs Vice President BLE

MR D E PENNING GENERAL CHAIRMAN BLE 12531 MISSOURI BOTTOM RD HAZELWOOD MO 63042

MR JOHN R KOONCE GENERAL CHAIRMAN BLE 5050 POPLAR AVE STE 501 MEMPHIS TN 38157 MR D E THOMPSON GENERAL CHAIRMAN BLE 414 MISSOURI BLYD SCOTT CITY MO 63780

MR M A YOUNG GENERAL CHAIRMAN BLE 1620 CENTRAL AVE RM 203 CHEYENNE WY 82001

#### Gentlemen:

This refers to the Merger Implementing Agreement for the Kansas City Hub entered into this date.

During our negotiations of this Hub, the parties agreed that in order to operate the large consolidated hub more efficiently, the following would apply:

- 1. Article 26(D) of the designated collective bargaining agreement shall remain in full force and effect except as specifically described below. The following exceptions are applicable only in the Kansas City Hub:
  - a. Freight pool and extra board engineers filling regular assigned engineer vacancies standing first out on the board at time of call and after taking charge of the train will not be considered runaround when another freight pool or extra board engineer called subsequent to the first out engineer departs from a separate location ahead of the first out engineer. Separate location is defined to mean yards, tracks, or exchange points, which would require a crew van to accomplish the engineer exchange.

NOTE:

Freight pool and extra board engineers called to deadhead will continue to be exchanged with other freight pool engineers on duty in order to comply with the first-in/first-out provisions of Article 26(D) and National Railroad Adjustment Board Award No.24679, except it will not be necessary to exchange engineers when the working engineer is called to handle a train from one yard and the deadhead engineer is called to deadhead from another yard. This exception applies to all pools operating out of the Kansas City Hub.

Side Letter No. 16 July 2, 1998 Mr. D. E. Penning Mr. D. E. Thompson Mr. J. R. Koonce Mr. M. A. Young Page 2

- b. Freight pool and extra board engineers filling regular assigned engineer vacancies standing first out on the board at time of call when required to relieve a train on the far side of the terminal under the "25-mile zone" provisions of this Agreement will be considered as having departed the terminal when such engineer departs in the conveyance to said train.
- c. Because of recent experience with start up of new hub operations and to alleviate additional confusion during the initial three (3) pay periods after Kansas City Hub implementation, the terminal runaround rule will be suspended. No departure runarounds will be claimed during that period. Subsequent to those three (3) pay periods, all the provisions of Article 26(D) and the provisions of this Memorandum Letter of Agreement will be in full force and effect.
- A pool freight engineer arriving at the far terminal out of position will, upon arrival at the far terminal, be placed in the same relative position on the board as the engineer held at the home terminal. If the engineer cannot be returned to the proper position because the engineer has not received the necessary Hours of Service rest, the engineer will, upon arrival at the home terminal, be placed in the same relative position on the board as the engineer held at the home terminal at the start of the previous trip.

This Memorandum Letter of Agreement is made with the understanding it is without prejudice to the positions of the respective parties and it will not be cited by any party in any other negotiation or proceeding.

If the foregoing adequately and accurately describes our agreement in this matter, please so indicate by signing in the space provided for that purpose below.

Yours truly,

M. A. Hartman

Side Letter No. 16 July 2, 1998 Mr. D. E. Penning Mr. D. E. Thompson Mr. J. R. Koonce Mr. M. A. Young Page 3

## AGREED:

D. E. Penning General Chairman, BLE

D. E. Thompson
General Chairman, BLE

J. R. Koonce General Chairman, BLE

MAY 7-2-98 M. A. Young

General Chairman, BLE

cc: D. M. Hahs Vice President BLE

MR D E PENNING GENERAL CHAIRMAN BLE 12531 MISSOURI BOTTOM RD HAZELWOOD MO 63042

MR JOHN R KOONCE GENERAL CHAIRMAN BLE 5050 POPLAR AVE STE 501 MEMPHIS TN 38157 MR D E THOMPSON GENERAL CHAIRMAN BLE 414 MISSOURI BLVD SCOTT CITY MO 63780

MR M A YOUNG GENERAL CHAIRMAN BLE 1620 CENTRAL AVE RM 203 CHEYENNE WY 82001

#### Gentlemen:

This refers to the Merger Implementing Agreement for the Kansas City Hub entered into this date.

During our negotiations we discussed engineers holding seniority in the hub who were on leaves of absence for medical, union officer, carrier officer, and other such reasons. We agreed these engineers would be treated as if they were working in the craft for the purposes of roster slotting on the dovetailed roster and for prior rights purposes. As such they will be included on the new rosters with the same status they currently hold. Should they return to service as an engineer, they will be covered under the hub agreement in accordance with their seniority.

If the foregoing adequately and accurately sets forth our agreement in this matter, please so indicate by signing in the space provided for that purpose below.

Ma Harrina

M. A. Hartman

Side Letter No. 17
July 2, 1998
Mr. D. E. Penning
Mr. D. E. Thompson
Mr. J. R. Koonce
Mr. M. A. Young
Page 2

## AGREED:

D. E. Penning General Chairman, BLE

D. E. Thompson General Chairman, BLE

J. R. Koonce General Chairman, BLE

MAY 7-2-98

M. A. Young General Chairman, BLE

cc: D. M. Hahs Vice President BLE

MR D E PENNING GENERAL CHAIRMAN BLE 12531 MISSOURI BOTTOM RD HAZELWOOD MO 63042

MR JOHN R KOONCE GENERAL CHAIRMAN BLE 5050 POPLAR AVE STE 501 MEMPHIS TN 38157 MR D E THOMPSON GENERAL CHAIRMAN BLE 414 MISSOURI BLVD SCOTT CITY MO 63780

MR M A YOUNG GENERAL CHAIRMAN BLE 1620 CENTRAL AVE RM 203 CHEYENNE WY 82001

#### Gentlemen:

This refers to the Merger Implementing Agreement for the Kansas City Hub entered into this date.

During our negotiations of this Hub, the parties discussed the application of the 1946 Local Agreement in the merged territory.

Article 4, specifically, the Memorandum of Agreement entitled "Local Freight Train Service" contained in Pages 11 and 12 of the current Agreement will be interpreted and applied as follows:

The territories to which this rule applies will not be expanded by the addition of other than former MP Upper Lines territories. The Agreement will apply only to those territories (subdivisions) as described.

Additionally, the reference to "subdivisions which do not show any trains in time table." contained in Section 1 of this Memorandum, refers only to the Missouri Pacific Railroad's time table in effect on August 10, 1946.

The territories subsequently added as a result of merging with other properties will not be subject to the requirements of Section 1 of this Memorandum.

This Memorandum Letter of Agreement is made with the uncerstanding it is without prejudice to the positions of the respective parties and it will not be cited by any party in any other negotiation or proceeding.

Side Letter No. 18
July 2, 1998
Mr. D. E. Penning
Mr. D. E. Thompson
Mr. J. R. Koonce
Mr. M. A. Young

Page 2

If the foregoing adequately and accurately describes our agreement in this matter, please so indicate by signing in the space provided for that purpose below.

Yours truly,

M. A. Hartman

General Director-Labor Relations

AGREED:

D. E. Penning

General Chairman, BLE

D. E. Thompson

General Chairman, BLE

J. R. Koonce

General Chairman, BLE

MAY 7-2-98

M. A. Young General Chairman, BLE

cc: D. M. Hahs Vice President BLE

MR D E PENNING GENERAL CHAIRMAN BLE 12531 MISSOURI BOTTOM RD HAZELWOOD MO 63042

MR JOHN R KOONCE GENERAL CHAIRMAN BLE 5050 POPLAR AVE STE 501 MEMPHIS TN 38157 MR D E THOMPSON GENERAL CHAIRMAN BLE 414 MISSOURI BLVD SCOTT CITY MO 63780

MR M A YOUNG GENERAL CHAIRMAN BLE 1620 CENTRAL AVE RM 203 CHEYENNE WY 82001

#### Gentlemen:

This refers to the Merger Implementing Agreement for the Kansas City Hub entered into this date.

During our discussions regarding Article V - Familiarization, we reviewed some of the problems experienced in implementing other hubs. A process which was adopted in the Denver and Salt Lake City Hub was introduced and the parties agreed to apply it at Kansas City. Specifically, it was agreed that during implementation of the hub engineers will not be removed from their regular assignments to become peer trainers, and any engineer required to assist an engineer on a familiarization trip will be compensated on a trip by trip basis as follows:

"Engineers who work their assignment (road and yard service) accompanied by an engineer taking a familiarization trip in connection with the merger shall be paid one (1) hour at the straight time rate of pay in addition to all other earnings for each tour of duty. This payment shall not be used to offset any extra board or pool freight guarantee payments."

Engineers will be required to submit a timeslip indicating he/she was required to train another engineer and shall include the name of the engineer taking the familiarization trip on the timeslip.

It was understood the terms of this understanding shall be applicable for only the first 180 days following date of merger implementation; thereafter, existing agreement provisions will apply. This understanding is without prejudice or precedent to either party.

If the foregoing adequately and accurately sets forth our agreement in this matter, please so indicate by signing in the space provided for that purpose below.

Yours truly, Ma Harlman

M. A. Hartman

Side Letter No. 19
July 2, 1998
Mr. D. E. Penning
Mr. D. E. Thompson
Mr. J. R. Koonce
Mr. M. A. Young
Page 2

AGREED:

D. E. Penning

General Chairman, BLE

D. E. Thompson General Chairman, BLE

J. R. Koonce General Chairman, BLE

MAY 7-2-98

M. A. Young General Chairman, BLE

cc: D. M. Hahs Vice President BLE

MR D E PENNING GENERAL CHAIRMAN BLE 12531 MISSOURI BOTTOM RD HAZELWOOD MO 63042

MR JOHN R KOONCE GENERAL CHAIRMAN BLE 5050 POPLAR AVE STE 501 MEMPHIS TN 38157 MR D E THOMPSON GENERAL CHAIRMAN BLE 414 MISSOURI BLVD SCOTT CITY MO 63780

MR M A YOUNG GENERAL CHAIRMAN BLE 1620 CENTRAL AVE RM 203 CHEYENNE WY 82001

#### Gentlemen:

This has reference to the Merger Implementing Agreement for the Kansas City Hub entered into this date, and specifically Article I.A.4.d. thereof.

While the provisions of Article I.A.4.d. contemplate that engineers dislocated from Ft. Madison as the result of a cessation of operations over BNSF trackage rights would be relocated to Kansas City to exercise their hub seniority, this letter will confirm that Carrier did commit to meet and explore the possibility of integrating those engineers desiring to do so into the existing Chicago to Clinton or Clinton to Des Moines pools. This would of course require the concurrence of the involved BLE General Chairman for that territory. It is understood that any notice or negotiations conducted in this regard would not be under the governance of the commitment letters referenced in the Preamble to this Implementing Agreement.

Yours truly, Mathantman

M. A. Hartman

MR D E PENNING GENERAL CHAIRMAN BLE 12531 MISSOURI BOTTOM RD HAZELWOOD MO 63042

MR JOHN R KOONCE GENERAL CHAIRMAN BLE 5050 POPLAR AVE STE 501 MEMPHIS TN 38157 MR D E THOMPSON GENERAL CHAIRMAN BLE 414 MISSOURI BLVD SCOTT CITY MO 63780

MR M A YOUNG GENERAL CHAIRMAN BLE 1620 CENTRAL AVE RM 203 CHEYENNE WY 82001

#### Gentlemen:

This refers to the Merger Implementing Agreement for the Kansas City Hub entered into this date, and particularly Article II.F.

As discussed, there are currently a group of engineers in training for Dalhart/Pratt. Under the SSW Agreement and seniority provisions, some of these trainees bid the training vacancies from Kansas City with the hope they could hold seniority in the Kansas City Hub after implementation of the merger. It was agreed that these trainees would stand to be canvassed for establishment of seniority in the Kansas City Hub if the roster sizing numbers are such that there are roster slots for them. If not, there is no requirement that they be added to the Kansas City Hub roster.

If the foregoing adequately and accurately sets forth our agreement in this matter, please so indicate by signing in the space provided for that purpose below.

Yours truly, Mathachnen

M. A. Hartman

Side Letter No. 21
July 2, 1998
Mr. D. E. Penning
Mr. D. E. Thompson
Mr. J. R. Koonce
Mr. M. A. Young
Page 2

## AGREED:

D. E. Penning General Chairman, BLE

D. E. Thompson General Chairman, BLE

J. R. Koonce General Chairman, BLE

M. A. Young General Chairman, BLE

cc: D. M. Hahs Vice President BLE

MR D E PENNING GENERAL CHAIRMAN BLE 12531 MISSOURI BOTTOM RD HAZELWOOD MO 63042

MR JOHN R KOONCE GENERAL CHAIRMAN BLE 5050 POPLAR AVE STE 501 MEMPHIS TN 38157 MR D E THOMPSON GENERAL CHAIRMAN BLE 414 MISSOURI BLVD SCOTT CITY MO 63780

MR M A YOUNG GENERAL CHAIRMAN BLE 1620 CENTRAL AVE RM 203 CHEYENNE WY 82001

#### Gentlemen:

This has reference to the Merger Implementing Agreement for the Kansas City Hub entered into this date, and specifically Articles I.E.2. and III.A.6. thereof.

Extensive discussions were held regarding allocation of yard assignments and extra board work within the consolidated Kansas City Terminal. Carrier agreed to the method of work assignment described herein with the understanding that such arrangement would in no way compromise the Carrier's right to operate the Kansas City Terminal as a consolidated terminal as set forth in this Implementing Agreement, and all yard assignments may operate anywhere within the terminal without any pre-merger seniority distinctions or lines of demarcation. On this basis, it was agreed:

- 1. All yard assignments and extra board positions in the Kansas City
  Terminal shall be accessed from a dovetailed seniority roster of all
  engineers in the Kansas City Hub. This dovetailed roster shall identify
  every engineer by his zone prior rights, i.e., Zone 1, 2, 3 or 4. Engineers
  promoted after the date of implementation of this Agreement shall be
  common, i.e., no prior rights designation shall be noted on said roster.
- 2. At the equity workshop meeting described in Side Letter No., 10 the parties will develop prior rights percentages to yard work in Kansas City based upon the data used for all the other equity calculations under this Agreement. These percentages will distribute the equity among Zones 1, 2 and 4; Zone 3 will have no equity in the yard work in the Kansas City Terminal.
- 3. After the equity percentages are developed, an add/cut chart will be developed which describes the proportionate allocation of assignments (including extra board) to prior rights Zone 1, 2 and 4 engineers relative to the total of such assignments within the terminal. The proportional numbers shall only be relevant for purposes limiting the number of prior

Side Letter No. 22
July 2, 1998
Mr. D. E. Penning
Mr. D. E. Thompson
Mr. J. R. Koonce
Mr. M. A. Young
Page 2

rights engineers from each zone exercising their prior rights to such assignments; within such limitations, engineers of all the participating prior rights zones shall compete for assignments within the terminal on the basis of their relative seniority.

- 4. At the equity workshop meeting described in Side Letter No. 10 the parties will also agree upon the average number of assignments operated in the Kansas City Terminal during the period covered by the equity data. This number will then represent the cap or maximum number of regular assignments subject to the above arrangement. Any assignments established in excess of that number shall be filled by engineers on the basis of their common hub seniority.
- 5. As indicated above, the extra board described in Article III.A.6 will also be subject to the provisions of Item 3 above. However, the number of extra board positions will not exceed 25% of the number determined under Item 4 above (fractions to be rounded to the next higher number). Once this extra board cap is determined, any extra board positions in excess of that number which are maintained shall be accessed by engineers on the basis of their common hub seniority.
- 6. Where the above provisions conflict with the provisions of the designated collective bargaining agreement, the above provision shall prevail.
- 7. The parties will cooperate in meeting to resolve any unforeseen problems or issues relative to implementation of the above procedures.

If the foregoing adequately and accurately sets forth our agreement in this matter, please so indicate by signing in the space provided for that purpose below.

Yours truly.

M. A. Hartman

Side Letter No. 22
July 2, 1998
Mr. D. E. Penning
Mr. D. E. Thompson
Mr. J. R. Koonce
Mr. M. A. Young
Page 2

rights engineers from each zone exercising their prior rights to such assignments; within such limitations, engineers of all the participating prior rights zones shall compete for assignments within the terminal on the basis of their relative seniority.

- 4. At the equity workshop meeting described in Side Letter No. 10 the parties will also agree upon the average number of assignments operated in the Kansas City Terminal during the period covered by the equity data. This number will then represent the cap or maximum number of regular assignments subject to the above arrangement. Any assignments established in excess of that number shall be filled by engineers on the basis of their common hub seniority.
- 5. As indicated above, the extra board described in Article III.A.6 will also be subject to the provisions of Item 3 above. However, the number of extra board positions will not exceed 25% of the number determined under Item 4 above (fractions to be rounded to the next higher number). Once this extra board cap is determined, any extra board positions in excess of that number which are maintained shall be accessed by engineers on the basis of their common hub seniority.
- 6. Where the above provisions conflict with the provisions of the designated collective bargaining agreement, the above provision shall prevail.
- 7. The parties will cooperate in meeting to resolve any unforeseen problems or issues relative to implementation of the above procedures.

If the foregoing adequately and accurately sets with our agreement in this matter, please so indicate by signing in the space provided for that purpose below.

Mu Hardner

M. A. Hartman

Side Letter No. 22 July 2, 1998 Mr. D. E. Penning Mr. D. E. Thompson Mr. J. R. Koonce Mr. M. A. Young Page 3

#### AGREED:

D. E. Penning General Chairman, BLE

D. E. Thompson General Chairman, BLE

J. R. Koonce General Chairman, BLE

MAY 7-2-98

M. A. Young General Chairman, BLE

cc: D. M. Hahs Vice President BLE

MR D E PENNING GENERAL CHAIRMAN BLE 12531 MISSOURI BOTTOM RD HAZELWOOD MO 63042

MR JOHN R KOONCE GENERAL CHAIRMAN BLE 5050 POPLAR AVE STE 501 MEMPHIS TN 38157 MR D E THOMPSON GENERAL CHAIRMAN BLE 414 MISSOURI BLVD SCOTT CITY MO 63780

MR M A YOUNG GENERAL CHAIRMAN BLE 1620 CENTRAL AVE RM 203 CHEYENNE WY 82001

#### Gentlemen:

This has reference to the Merger Implementing Agreement for the Kansas City Hub entered into this date, and specifically Article I.B.2.

Much discussion occurred surrounding SSW asserted rights to equity in Zone 2 as a result of train changes related to the discontinuance of operations over the Pueblo Line. Without otherwise commenting upon the positions of the respective committees regarding this matter, suffice it to state the Carrier agreed to the following arrangement proffered by the Organization:

When rosters are formulated and engineers are canvassed, there will be five (5) positions opened on the Zone 2 prior rights roster for former SSW engineers. (The 5th slot represents the former SSW equity on a yard assignment at Topeka). The senior SSW engineers desiring such Zone 2 roster slots shall be placed on such roster in accordance with their seniority and shall establish prior rights in Zone 2 by virtue thereof. If any or all of said proffered roster slots in Zone 2 go unclaimed, they shall be extinguished and no further right to make claim to them shall exist. It is understood that none of the provisions of this implementing agreement may be construed to allow more than five (5) former SSW engineers to acquire a prior rights slot on the Zone 2 roster.

If the foregoing adequately and accurately sets forth our agreement in this matter, please so indicate by signing in the space provided for that purpose below.

Yours truly,

M. A. Hartman

General Director-Labor Relations

massachnan

Side Letter No. 23
July 2, 1998
Mr. D. E. Penning
Mr. D. E. Thompson
Mr. J. R. Koonce
Mr. M. A. Young
Page 3

### AGREED:

D. E. Penning General Chairman, BLE

D. E. Thompson General Chairman, BLE

J. R. Koonce General Chairman, BLE

MAY 7-2-98

M. A. Young General Chairman, BLE

cc: D. M. Hahs
Vice President BLE

MR D E PENNING GENERAL CHAIRMAN BLE 12531 MISSOURI BOTTOM RD HAZELWOOD MO 63042

MR JOHN R KOONCE GENERAL CHAIRMAN BLE 5050 POPLAR AVE STE 501 MEMPHIS TN 38157 MR D E THOMPSON GENERAL CHAIRMAN BLE 414 MISSOURI BLVD SCOTT CITY MO 63780

MR M A YOUNG GENERAL CHAIRMAN BLE 1620 CENTRAL AVE RM 203 CHEYENNE WY 82001

#### Gentlemen:

This has reference to the Merger Implementing Agreement for the Kansas City Hub entered into this date.

Much discussion occurred surrounding certain calling procedures and other local provisions, such as "Sadie Hawkins Days", applicable to former UP 8th District Engineers performing service in the Kansas City to Marysville pool prior to implementation of this Agreement.

Without prejudice or precedent the Carrier agreed to meet, post implementation, to review the above referred-to items to consider whether to adopt any of these former provisions to Zone 2 and/or the entire Kansas City Hub.

Yours truly,

M. A. Hartman

General Director-Labor Relations

cc: D.M. Hahs

Vice President - BLE

J.L. McCoy

Vice President - BLE

MR D E PENNING GENERAL CHAIRMAN BLE 12531 MISSOURI BOTTOM RD HAZELWOOD MO 63042

MR JOHN R KOONCE GENERAL CHAIRMAN BLE 5050 POPLAR AVE STE 501 MEMPHIS TN 38157 MR D E THOMPSON GENERAL CHAIRMAN BLE 414 MISSOURI BLVD SCOTT CITY MO 63780

MR M A YOUNG GENERAL CHAIRMAN BLE 1620 CENTRAL AVE RM 203 CHEYENNE WY 82001

#### Gentlemen:

This has reference to the Merger Implementing Agreement for the Kansas City Hub entered into this date.

Upon implementation of this Agreement, and after all assignments have been made in connection therewith, those former SPCSL Engineers who remained at Ft. Madison or continued working between Ft. Madison and Chicago (including Chicago) and who did not relocate to Kansas City will receive a one (1) time in-lieu relocation payment in the gross amount of \$3,500.00. Acceptance of this payment constitutes a waiver of all claims or grievances in connection with the elimination of Quincy as a home terminal for pool operations.

The parties hereto acknowledge this arrangement is made without prejudice or precedent and on a not-to-be cited basis.

The terms of this Side Letter are unrelated to and independent of the provisions set forth in Articles I.A.4.c. and I.A.4.d., and shall not have the effect of reducing or negating such provisions.

If the foregoing adequately and accurately sets forth our agreement in this matter, please so indicate by signing in the space provided for that purpose below.

Yours truly,

M. A. Hartman

Side Letter No. 25 July 2, 1998 Mr. D. E. Penning Mr. D. E. Thompson Mr. J. R. Koonce Mr. M. A. Young Page 2

#### AGREED:

D. E. Penning General Chairman, BLE

D. E. Thompson General Chairman, BLE

J. R. Koonce General Chairman, BLE

MAV 7-2-98

M. A. Young
General Chairman, BLE

cc: D. M. Hahs Vice President BLE

QUESTIONS AND ANSWERS - KANSAS CITY HUB

# ARTICLE I - WORK AND ROAD POOL CONSOLIDATION

Q.1. What is the impact of the terminal operations at terminals where both the former UP and SSW/SPCSL had yards/terminal operations being "consolidated into a single operation"?

A.1. In a consolidated terminal, all road crews can receive/leave their trains at any location within the boundaries of the new consolidated Terminal and may perform work anywhere within those boundaries pursuant to the applicable collective bargaining agreement. The Carrier will designate the on/off duty points for road crews. All rail lines, yards, and/or sidings within the Terminal are considered as common to all crews working in, into and out of the Terminal and all road crews may perform all permissible road/yard moves pursuant to the applicable collective bargaining agreements.

- Q.2. Is it the intent of this agreement to use engineers beyond the 25-mile zone?
- A.2. No.
- Q.3. Since the 25-mile zone provisions specify that engineers may be called to receive "the train for which they were called", does this preclude their use under such 25-mile zone provision for any other train?
- A.3. Yes, unless other pre-existing local agreements or practices permit otherwise.
- Q.4. What is intended by the words "at the basic pro rata through freight rate" as used in this Agreement?
- A.4. Payment would be at the high (unfrozen) through freight rate of pay which is applicable to the service portion of the trip.
- Q.5. How will initial terminal delay be determined when performing service as in the 25-mile zone?
- A.5. Initial terminal delay for engineers entitled to such payments will be governed by the applicable collective bargaining agreement and will not commence when a crew operates back through the on-duty point. Operation back through the on-duty point shall be considered as operating through an intermediate point.
- Q.6. How is a crew which received their train in the twenty-five (25) mile zone on the far side of the terminal compensated?
- A.6. When so used, the crew shall be paid an additional one-half (½) basic day at the basic pro rata through freight rate for this service in addition to the district miles of the run. If the time spent beyond the terminal is greater than four (4) hours, they shall be paid on a minute basis at the basic pro rata through freight rate. Miles within the 25-mile zone shall not be added to the district miles of the run. Time spent within the zone does not factor into the computation of overtime; however, if the time spent within the zone, if factored into the computation of overtime, would produce road overtime earnings for the tour of duty in excess of the minimum four (4) hour payment, the higher overtime earnings would apply.

Q.7. If a crew in the twenty-five (25) mile zone is delayed in bringing the train into the origin terminal so that it does not have time to go to the destination terminal, what will happen to the crew?

A.7. If the crew had operated back through the origin terminal, they will be transported to the destination terminal, unless emergency conditions (i.e., acts of God, derailment, etc.) prevent such, and be paid district miles, overtime where applicable and a minimum of four (4) hours at the basic pro rata through freight rate.

Q.8. In regards to Question 6 above. What happens if a crew in the twenty-five (25) mile zone is delayed and does not depart the origin terminal a second time?

- A.8. If the crew origin terminal is the home terminal will be released at the crigin terminal and paid a basic day, including overtime when applicable, in addition to the minimum of four (4) hours at the basic pro rata through freight rate for working the 25-mile zone. If the origin terminal is the away terminal, the crew will be deadheaded to the destination terminal, except in cases of emergency (i.e., Acts of God, derailment, etc.).
- Q.9. Is it the intent of this agreement to use engineers in the 25-mile zone if not qualified to operate on that territory?
- A.9. No. It is not the intent of this agreement to require engineers to operate against their will within the 25-mile zone if not familiar with such territory.
- Q.10. Do the 25-mile zone provisions, including the pay provisions thereof, apply to all engineers?
- A.10. These provisions apply equally to pre-1985 engineer, post-1985 engineers, and engineers hired/promoted subsequent to the provisions of this agreement.
- Q.11. Is the ½ day at the basic pro rata through freight rate for operating in the 25-mile zone frozen and/or is it a duplicate payment/special allowance?
- A.11. No, it is subject to future wage adjustments and it is not a duplicate pay/special allowance.
- Q.12. When an engineer is used for hours of service relief at the away from home terminal pursuant to this Agreement may he be used to provide relief for more than one train?
- A.12. No, when the engineer returns to the away from home terminal after performing hours of service relief (on only one train) he will stand first out upon arrival subject to rest and he shall next be either deadheaded or perform actual service to the home terminal.
- Q.13. What does the phrase "interchange rules are not applicable for intra-carrier moves within the terminal" mean?
- A.13. This refers to movements between locations, points or yards of the former premerger roads (i.e., UP, SP, DRGW, SSW and SPCSL). Interchange rules do not apply to such movements.
- Q.14. In Article I.A.9 it is provided that local assignments, assigned freight service, and any other irregular assignments will be protected by prior rights Zone 1 engineers from the Kansas City Hub "on a prior rights basis." What happens when such service is advertised and goes no bid?

A.14. The vacancy would be filled by engineers holding seniority in the terminal. For example, such work would be protected by the OMC at Council Bluffs. Q.15. With regard to Article I.B.7., is it intended that the attrition of the Jeffrey Energy Pool assignments to the UP 18th District would be applied to force a prior rights former 8th District engineer out of Marysville? A.15. No. Q.16. Are there any circumstances under which a former UP 8th District engineer

would be entitled to relocation benefits from one location to another location within Zone 2?

A.16. Since Marysville, Topeka and Kansas City were all within the same seniority district pre-merger, and are retained/prior righted post-merger, not basis for relocation benefits could be established.

- Q.17. Even though under Article I.A.11.b. the extra board at Atchison is not included in the prior rights arrangements at Atchison/St. Joseph, would a prior righted Atchison or St. Joseph engineer forfeit their prior rights under Article I.A.11.a. if they bid in the extra board?
- A.17. No.

Q.18. After the six (6) year period in Article I.A.4.c. has expired, what application does Article I.A.4.d. have if the Carrier elects to phase out its use of BNSF trackage rights on a gradual basis rather than on an immediate basis?

A.18. It is not intended that Carrier may circumvent the provisions of Article I.A.4.d. by implementing a plan to discontinue such trackage rights operations on a phased in basis. While the specific facts of the case will speak for themselves, it is undisputer that the intent of the parties is to afford relocation benefits to engineers forced to relocate to Kansas City as a direct result of discontinuance of exercise of the trackage rights operations.

## ARTICLE II - SENIORITY CONSOLIDATIONS

- Q.1. What is the status of pre-October 31, 1985 trainmen/firemen seniority?
- Trainmen/firemen seniority will be in negotiations/arbitration with the appropriate A.1. Organization. Employees will be treated as firemen should they not be able to hold as an engineer. Those currently "treated as" will continue such status.
- Q.2. What is the status of post-October 31, 1985 trainmen/firemen seniority?
- A post-October 31, 1985 engineer will exercise their seniority as a A.2. trainman/fireman in accordance with the applicable agreements should they not be able to hold as an engineer.

## ARTICLE III - EXTRA BOARDS

- Q.1. Will extra boards established under this section be confined to protecting extra work exclusively within the zone in which established?
- All extra boards will only protect extra work within one zone. After A.1. implementation, should the Carrier desire to establish extra boards which protect

Rev. 7/2/98 -77extra work in more than one zone, this will be done pursuant to the existing collective bargaining agreement, and the parties must reach agreement as to how engineers from the zones involved will be allowed to exercise seniority to such extra board(s). Failure to reach such agreement, common seniority will be used.

Q.2. Are these guaranteed extra boards?

A.2. The provisions of the designated collective bargaining agreement shall apply.

Q.3. In Article III.A.1. referring to use of the Atchison Extra Board for Hours of Service

relief, what does "except in emergency" mean?

A.3. The order of providing Hours of Service relief would be use of a rested awayfrom-home pool engineer on a straightaway move or the protecting extra board
at Kansas City, including the supplementing extra board described in Article
III.A.5.a. If all these sources are exhausted, the Atchison Extra Board could be
used in order to move the train.

## ARTICLE IV - APPLICABLE AGREEMENTS

Q.1. When the Merger Implementing Agreement becomes effective what happens to existing claims previously submitted under the prior agreements?

A.1. The existing claims shall continue to be handled in accordance with the former agreements and the Railway Labor Act. No new claims shall be filed under those former agreements once the time limit for filing claims has expired.

- Q.2. Under Article IV.G., is it the intent that an engineer may receive duplicate compensation under this provision and some other agreement rule, such as deadhead provisions?
- A.2. No.

## ARTICLE V - FAMILIARIZATION

Q.1. An engineer who makes familiarization trips only on the portion of the geographic territory where he intends to work may later exercise to another part of the territory with which he is not familiar. Does this Agreement apply to the necessary additional familiarization trips?

A.1. Yes, no matter how much time has elapsed from date of implementation of this

Agreement.

- Q.2. Who will approve an engineer as being properly familiarized on a new territory?
- A.2. An engineer will not be considered qualified on a new territory until check ride is given by the designated Carrier officer as per the requirements of 49 CFR, Parts 240.127 and 240.129.
- Q.3. May a brakeman, conductor, other employee not specified in the Agreement be used to familiarize an engineer on an unfamiliar geographic territory?
- A.3. No.
- Q.4. If an unqualified extra engineer stands first out for an assignment and the next extra engineer is qualified, may the first out extra engineer be run-around?

- A.4. No. The first out extra engineer will be called for the assignment and the next out engineer qualified will be called to act as a pilot. How shall a qualified engineer used as pilot be compensated?
- Q.5. The same as if he had operated the train. A.5.

# ARTICLE VI - IMPLEMENTATION

How will Local Chairmen assisting in the implementation process be treated for Q.1. protection purposes?

Local Chairmen assisting the Carrier in implementing the Agreement shall be paid the greater of their earnings or their protection. While assisting the Carrier A.1. in the implementation process they shall be governed by basic New York Dock protection reduction principals when laying off (other than company service while assisting in implementation) or absent for any reasons. They will not be required to occupy the higher rated job or position during implementation period.

# ARTICLE VII - PROTECTIVE BENEFITS AND OBLIGATIONS

#### Section A:

How will test period earnings be calculated for employees returning to service Q.1. following extended absence (a period of one year or more)?

Their test period earnings will be the average of the test period earnings of the A.1. two (2) employees below and two (2) employees above on the pre-merger rosters working in the same class of service.

- How will test period earnings be calculated for part time union officers? Q.2.
- In the same manner as question 1, Answer 1 above. A.2.
- How does the Carrier calculate test period earnings if, during the last twelve (12) Q.3. months, an employee has missed two (2) months compensated service?
- The Carrier will go back fourteen (14) months (or however many months A.3. necessary) to calculate the test period earnings based on twelve (12) months compensated service.
- How will an employee be advised of his test period earnings? Q.4.
- Test periods will be furnished to each individual and their appropriate General A.4. Chairman.
- An employee is off one or more days of a month in the test period account of an Q.5. on-duty personal injury. Will that month be used in computing test period averages?
- Yes, if the employee performed other compensated service during the month. A.5.
- An engineer protects an extra board which pays a bonus day to an employee Q.6. who stays marked up on the board for the entire pay period. Is this payment included in calculation of test period earnings?

A.6. Yes.

Is vacation pay received during the test period considered as compensation? Q.7. Yes. A.7. If an engineer is on vacation the entire month and the vacation pay therefor is less than his TPA, would he be entitled to draw a displacement for the 0.8. difference? Yes. A.8. Q.9. How is length of service calculated? It is the length of continuous service an employee has in the service of the Carrier, as defined in the Washington Job Protection Agreement of 1936. A.9. Q.10. If an employee has three years of engine service and three years of train service, how many years of protection will they have? A.10. Six. Q.11. Claims for a protection guarantee are subject to offset when an employee is voluntarily absent. How are such offsets computed? A.11. A prorated portion of the guarantee is deducted for each twenty-four (24) hour period or portion thereof. The proportion varies depending on the number of days in the month and the rest days of a regularly assigned employee. For example, in a thirty (30) day month, the through freight deduction would be 1/30th. For an employee assigned to a six (6) day local, the proration would be 1/26th or 1/27th, depending on how rest days fell. For an unassigned yard employee, the proration would be anywhere from 1/20th to 1/24th, depending on how the rest days fall. A deduction will not be made for an employee required to lay-off due to mileage regulations. Q.12. An employee assigned to the extra board lays off for one day. During the period of lay-off, he would not have otherwise had a work opportunity. What offset should be made in the employee's protective claim? A.12. A pro rata portion of the guarantee is deducted, such proportion depending on the number of days in the month, i.e., 1/28th, 1/29th, 1/30th or 1/31st. [Except mileage regulation lay-off). Q.13. What prorated portion of a projection guarantee will be deducted for an employee working on a guaranteed extra board whereon such employee is entitled to lay off up two (2) days per month without deduction of the extra board quarantee? A.13. No deduction will be made from the protection guarantee for the first two (2) days of layoff during the month. Layoffs in excess of two (2) will result in a prorated deduction from the protection guarantee on the basis of the number of days in the month for each day of layoff in excess of two. [Except mileage regulation lay-Q.14. How will employees know which jobs are higher rated? A.14. The Carrier will periodically post job groupings identifying the highest to lowest paid jobs. Q.15. Will specific jobs be identified in each grouping? Rev. 7/2/98 -80-A:WCHUB.WPC(80)

A.15. Pools, locals and extra boards, with different monetary guarantees, may be identified separately but yard jobs and road switchers will not be. Q.16. What rights does an employee have if he is already covered under labor protection provisions resulting from another transaction? A.16. Section 3 of New York Dock permits employees to elect which labor protection they wish to be protected under. By agreement between the parties, if an employee has three years remaining due to the previous implementation of Interdivisional Service the employee may elect to remain under that protection for three years and then switch to the number of years remaining under New York Dock. If an employee elects New York Dock then he/she cannot later go back to the original protection even if additional years remain. It is important to remember that an employee may not receive duplicate benefits, extend their protection period or count protection payments under another protection provision toward their test period average for this transaction. Q.17. Will the Carrier offer separation allowances? A.17. The Carrier will review its manpower needs at each location and may offer separation allowances if the Carrier determines that they will assist in the merger implementations. Article I Section 7 of New York Dock permits an employee that is "dismissed" as defined by New York Dock to request a separation allowance within seven days of his/her being placed in dismissed status in lieu of all other benefits. Q.18. Does an employee who elects to exercise his seniority outside the Kansas City Hub and not participate in the formulation of rosters for the new Kansas City Hub qualify for wage protection? A.18. The certification agreed to under Article VII applies only to those employees who are slotted on the newly formed Kansas City Hub rosters. Q.19. In applying the "highest rated job" standard to a protected employee, may the Carrier require an employee to take a higher rated job (or use those earnings as an offset against the protection guarantee) which would require a change in residence? A.19. No, unless the job is protected from that source of supply point. Section B: Q.1. Who is required to relocate and is thus eligible for the allowance? An engineer who can no longer hold a position at his location and must relocate A.1. to hold a position as a result of the merger. This excludes engineers who are borrow outs or forced to a location and released. Are there mileage components that govern the eligibility for an allowance? Q.2. Yes, the engineer must have a reporting point farther than his old reporting point and at least 30 miles between the current home and the new reporting point and at least 30 miles between reporting points. Q.3. Can you give some examples? The following examples would be applicable. Rev. 7/2/98 -81-A-IKCHUB WPC(81)

Engineer A lives 80 miles east of Kansas City and works a yard Example 1: assignment at Kansas City. As a result of the merger, he is assigned to a yard job with an on duty at Lee's Summit. Because his new reporting point is closer to his place of residence no relocation allowance is given.

Engineer B lives 35 miles east of Kansas City and goes on duty at Example 2: the SP yard office in Kansas City. As a result of the merger he goes on duty at the UP yard office in Kansas City which is one mile away. No allowance is given.

Engineer C lives in Ft. Madison and is unable to hold an Example 3: assignment at that location and must place on an assignment at Kansas City. The engineer meets the requirement for an allowance and whether he is a homeowner, a homeowner who sells their home or a non-homeowner determines the amount of the allowance.

Engineer D lives in Ft. Madison and can hold an assignment in Ft. Example 4: Madison but elects to place on an assignment at Kansas City. Because the engineer can hold in Ft. Madison, no allowance is given.

Q. 4. Why are there different dollar amounts for non-home owners and homeowners? A. 4. New York Dock has two provisions covering relocating. One is Article I Section 9 Moving expenses and the other is Section 12 Losses from home removal. The \$10,000 is in lieu of New York Dock moving expenses and the additional \$10,000 or \$20,000 is in lieu of loss on sale of home.

Q. 5. Why is there a set amount offered on loss on sale of home? A. 5. It is an in lieu of amount. Engineers have an option of electing the in lieu of amount or claiming New York Dock benefits. Some people may not experience a loss on sale of home or may not want to go through the procedures to claim the loss under New York Dock.

Q. 6. What is loss on sale of home for less than fair value?

A. 6. This refers to the loss on the value of the home that results from the Carrier implementing this merger transaction. In many locations the impact of the merger may not affect the value of a home and in some locations the merger may affect the value of a home.

Q. 7. Can you give an example?

A. 7. Prior to the merger announcement a home was worth \$60,000. Due to numerous employees transferring from a small city the value drops to \$50,000. Upon approval of the sale by the Carrier employee is entitled to \$10,000 under Section 12 and the expenses provided under Section 9, or the owner can claim the in lieu of amount of \$30,000.

Q. 8. If the parties cannot agree on the loss of fair value what happens?

A. B. New York Dock Article I Section 12 (d) provides for a panel of real estate appraisers to determine the value before the merger announcement and the value after the merger transaction. Q. 9. What happens if an employee sells a home valued at \$50,000 for \$20,000 to a family member? A. 9. That is not a bona fide sale and the employee would not be entitled to either an in lieu of payment or a New York Dock payment for the difference below the fair value. Q. 10. What is the most difficult part of New York Dock in the sale transaction? A. 10. Determine the value of the home before the merger transaction. While this can be done through the use of professional appraisers, many people think their home is valued at a different amount. Q.11. Must SPCSL engineers and SSW Jefferson City engineers be forced to an assignment to be eligible for relocation benefits? A.11. No, since they must relocate (except those Jefferson City engineers electing the benefits of Side Letter No. 7) to Kansas City, they make application for other assignments. Q.12. Are there any seniority moves that are eligible for an allowance? A.12. Yes. A seniority move that permits another employee who would have otherwise been forced to move to remain at the same location will be eligible for an allowance. The move may not trigger other relocation allowances. SIDE LETTER NO. 2 Q. 1. Will an engineer gain or lose vacation benefits as a result of the merger? A. 1. SSW/SPCSL engineers will retain the number of weeks vacation earned for 1998 and 1999 that they would have earned under their previous vacation agreement. Beginning with the 2000 calendar year they will be treated as if they had always been a UP engineer and will earn identical vacation benefits as a UP engineer who had the same hire date and same work schedule. Q. 2. When the agreement is implemented, which vacation agreement will apply? A. 2. The vacation agreements used to schedule vacations for 1998 will be used for the remainder of 1998 and in 1999. Q. 3. Will personal leave be applicable to SSW/SPCSL engineers in 1998? A. 3. Personal leave days for SSW/SPCSL engineers will apply effective January 1, 1999. The number of personal leave days applicable to SSW/SPCSL engineers in 1998 will be prorated based upon actual implementation date. Rev. 7/2/98 -83-A:WCHUB.WPC(83)

# TRANSPORTATION COMMUNICATIONS UNION ALLIED SERVICES DIVISION LES UNREIN, DISTRICT CHAIRMAN 150 4512 N.E. KINGSTON DRIVE LEE'S SUMMIT, MO 64064

JUN 04 1998

LABOR RELATIONS

D. L. Reams
Labor Relations Officer/Non Ops
Room 335
1416 Dodge Street
Omaha, NE 68179

1127636

Claim Report - District 150

Claimant Information

E. G. Koder 6812 Antioch Apt 167 Merriam, Ks. 66204 Seniority Date 9/6/83 Phone 913-432-1025

Date: May 22, 1998

File: 150-016-98

Union Pacific Railroad Company
Armourdale Yard - Kansas City, Ks.
Position - 007
Rate of Pay \$129.90 Per Day
Primary Duties Computer Data Input, Haul crews, Check trains,
tracks, transfers, payroll, extra board.
Hours of Work 2359-0759
Rest Days Sun/Mon
Immediate Supervisor - MYO Grady Shepherd

Date of Violation May 19, 1998

Statement of Claim:

The Carrier violated the TCU Agreement at Kansas City, Ks., on May 19, 1998, when it allowed or required UP crew hauler at Neff Yard, Kansas City, Mo. to transport engineer, M. A. Dixon from Neff Yard to Howard Johnson's hotel. The Carrier will now be required to compensate claimant, E. G. Koder and any successors, reliefs and first out Extra Board Clerk for Eight hours pay at the time and one-half rate of \$129.90 per day over and above any other compensation received for May 19, 1998.

#### Statement of Facts:

At 0710 hours on May 19, 1998, UP crew hauler at Neff Yard, Kansas City, Mo. transported engineer, M. A. Dixon from Neff Yard, Kansas City, Mo. to the Howard Johnson Hotel, Noland Road, Independence, Mo. No Hub Agreement exists at Kansas City and engineer, Dixon's on and off duty point is Armourdale Yard, Kansas City, Ks. He should have been transported from Neff Yard to Armourdale yard his off duty point by a Armourdale crew hauler. No transaction under NYD-217 exists.

File: 150-016-98 p.2 5/22/97 The transporting of train or switch crews or a member or members thereof to or from Armourdale Yard, Kansas City, Ks. to the a location in the Kansas City Metro area has always been performed 100% by the clerks at Armourdale yard, Kansas City, Ks. In the settlement of claims under the Fletcher award application at Armourdale Yard, Kansas City, Ks., the crew hauling claims from Armourdale Yard to locations in the Kansas City Metro area were paid because it was determined the work belonged exclusively to the clerks at Armourdale Yard, Kansas City, Ks. Position of Employees: It is the position of the Employees that the Carrier violated the Clerks' Agreement, including, but not limited to, Rules 1 (and Addenda thereto), Rules 2 and 69, and Implementing Agreement NO. NYD-217 when it allowed a UP crew hauler to perform clerical work in violation of the Agreement and NYD-217. In statements furnished to Labor Relations Manager, Jim Huffman requesting the crew hauling done by the Clerks at Armourdale Yard he received the following information. The hauling of train crews and switch crews or a member or members thereof at Armourdale Yard, the Kansas City Metro Area and foreign lines located in the Kansas City Metro Area, Kansas City to Topeka, Ks., Kansas City to Maxwell, Mo., Kansas City to Independence, Sugar Creek and Courtney, Mo. belongs exclusively 100% to the Clerks at Armourdale Yard, Kansas City, Ks. The crew hauling as stated are our bulletined and assigned duties and have always been performed by the Clerks at Armourdale Yard, Kansas City, Ks. Please advise when claim will be settled. Yours truly, Les Unrein District Chairman 150 cc: E. G. Koder

0J11 00:31 98/139 U3228 PX62100 . DN N1972 BY TCS FROM H091414 (CS ) OCHS590

\*\*\* MESSAGE SENT: 05/19 00:31 C

CREW NOTIFICATION DATA MX125 /CAERM /15

. JOB START: 05/19-0215 C JOB DESC:

.POWER: UP 007093 UP 007045 SP 000205 EMN MX125 RE41 05/19 0215 FR MX125 TO MX283 AFHT MX283 RE41 NOTIFIED: 0025 C HOURS OF SERVICE: 05/19 14:15 C ENG MA DIXON

FR MX125 TO MX283 AFHT MX283 RT22 THN HX125 RT22 05/19 0215 NOTIFIED: 0029 C CON HE EICKHOFF 00 HOURS OF SERVICE: 05/19 14:15 C

.CREUS/DIST: ENG-RE18 TRN-JC17 ENG INSPECT: N AIR PAY: N

CREW REQUEST: R ACTUAL: R MEALS IN ROUTE: N

0 =TL MESSAGE AVAILABLE

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Tue Sup 0710

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# 4:09 98/139 U6040 PE62100 .ON NO602 BY TCS FROM HB91491 (PR ) OSUN186

ENM ROTATING KC/JEFF CITY JC POOL ENG KING MX283 RE41 05687 311101 311201 15:10C AVAILABLE 001 REST TIME: 1510C 4 HR BREAK: 0000C TIME REM: 0705 \*\*RE18 HELD AWAY STARTS: 05/19 23100 BULLTND-09520 ENG \$5 HX125 XE40 1510C NR V MA DIXON BLANKED FIR 15:15C AVAILABLE 002 REST TIME: 1515C 4 HR BREAK: 0000C TIME REM: 0725 \*\*REO8 HELD AWAY STARTS: 05/19 23150 65 DG MORRIS ENG P 1515C NR QUE 1UKS VACATION 06/01 BLANKED FIR CCSEY 16:15C DNGUTY ++RE 10 HELD AWAY STARTS: 05/19 1825C SS M/U:05/17 2359C DL MAYBERRY AH ENG P BLANKED FIR 2 CGPAT18 05:00C DNDUTY \*\*RE07 CJ HICKS 00 ENG P NOT Q FOR EAST ..... DUE ZUKS VACATION 06/08

DUE 1UKS VACATION 06/01 BLANKED FIR WPEPF18 15:45C UNDUTY ...REO4 65 DR SVETLICH 00 LNG P NOT Q TO GO EAST ....

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VACATION SCHEDULE FOR NEXT 7 DAYS 05/19-05/25

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NO VACATIONS SCHEDULED

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VACATION SCHEDULE FOR FOLLOWING 21 DAYS 05/26-06/15

06/01-06/07 ENG DG MORRIS 06/08-06/21 ENG CJ HICKS 06/01-06/07 ENG GU THOMAS

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05/19/98 14:09C

#### UNION PACIFIC RAILROAD COMPANY

MANA NE BHASA A FA



July 31, 1998 Carrier File No. 1127636 Organization File No. 150-016-98

Mr. L. J. Unrein, District Chairman Allied Services Division/TCU 4512 N. E. Kingston Drive Lee's Summit, MO. 64064

Dear Sir:

In reference to your letter dated May 22, 1998, received in this office on June 4, 1998, in regard to the following:

"The Carrier violated the TCU Agreement at Kansas City, Ks., on May 19, 1998, when it allowed or required UP crew hauler at Neff Yard, Kansas City, Mo. to transport engineer, M. A. Dixon from Neff Yard to Howard Johnson's hotel. The Carrier will now be required to compensate claimant, E. G. Koder and any successors, reliefs and first out Extra Board Clerk for Eight hours pay at the time and one-half rate of \$129.90 per day over and above any other compensation received for May 19, 1998."

This claim is one of two filed for the same shift on the same claim date on behalf of two separate claimants (see Carrier File No. 1127642, Organization's File 150-022-98). The pyramiding and/or stacking of claims is improper under Section 3, first (I) of the Railway Labor Act, as amended, and the claim should be withdrawn from further progression.

Without waiving the Carrier's position outlined above, the transporting of crews has historically been a shared work responsibility which has been performed by others including, but not limited to, clerks, officers, yard supervisors, taxis, buses, and limousine services. The work is not nor ever has been considered exclusively reserved to the clerical craft, and the Organization's contentions to the contrary are denied.

This issue was addressed in Award 42 of Public Law Board 1952, which in pertinent part found:

"... the Organization is not required to prove that the work involved has historically ben performed exclusively by members of the craft. Rather, it need only show that work which was being performed by the craft at the time the Agreement was signed has now been assigned elsewhere. In the present case, the record shows that at the time the Agreement was signed, Carrier employed a variety of means for moving train crews in this territory. In addition to being transported by clerks in Company carryalls, crews were also often moved by taxi,

Mr. L. J. Unrein, District Chairman Allied Services Division/TCU Carrier File No. 1127636; Organization File No. 150-016-98 Page 2 of 2 July 31, 1998

bus, limousine, or Carrier vehicles driven by employees other than clerks. The evidence submitted by the Organization shows only that this practice has been continued to the present day. Without more, it can not be held that Claimant was deprived of work which, at the time the Agreement was signed, he would have been allowed to perform. The claim must therefore be denied, and the Board need not address the issue of whether the award of payment at the overtime rate is a proper penalty."

It is apparent that the situation at this location is no different from the crew hauling issue addressed at many locations across the system. The Carrier has traditionally and historically utilized others to transport crews, and this work is not exclusive to the clerical craft.

In addition, the Organization has failed to provide any documentation supporting their allegations in this instance. In this regard, the Organization is reminded that the burden of proving an agreement violation lies with Claimant and the Organization, and your burden has not been met in this case. In this regard, Referee Perelson stated in award No. 21 of Public Law Board 843:

"A host of awards of the Third Division hold that the burden is upon the Brotherhood to support its assertions with competent evidence. Here, the Brotherhood's entire case rests on allegations and arguments which are not supported by any evidence to overcome the Carrier's defense. The Brotherhood, being the proponent, always has the duty and obligation of submitting and presenting factual evidence to substantiate its claim. This must be done by a preponderance of evidence."

As for the penalty being requested in this instance, even if an agreement violation could be established, which is denied, the compensation requested is both excessive and without agreement support. The proper penalty could only be at the straight time rate for the actual amount of time spent in performing the work as claimed.

Claimant was fully employed and suffered no monetary harm.

There was no violation of Rule 1 or the Addenda thereto, Rules 2 or 69, or any other related rule of the working agreement.

For the reasons stated above, the claim is denied in its entirety.

Yours truly,

Dawn L. Reams

Labor Relations Manager/Non-Ops





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ROBERT F. DAVIS
President

TED P. STAFFORD
General Secretary-Treasurer

LABOR DELATIONS

PHILLIP T. TRITTEL
Assistant to the President

September 9, 1998

POST OFFICE BOX 3095 HUMBLE, TEXAS 77347-3095 PHONE: (201)812-4078 FAX: (281)812-4079

SSW-10-CL-98-173 Carrier # 1127635 Carrier # 1127636

Appeal of claim for and on behalf of Mr. E. G. Koder, any successors and reliefs, and the first out Extra Board Clerk, Kansas City, Kansas, for an additional eight (8) hours pay at the time and one-half rate of \$129.90 for May 18 and 19, 1998 account the Carrier used an non-covered employee to perform clerical work in violation of the Clerks' Agreement.

Mr. R. L. Camp Assistant Director LR/NON-OPS Union Pacific Railroad Room 355, 1416 Dodge Street Omaha, Nebraska 68179

Dear Sir:

Prior to and on the above mentioned dates, Mr. Koder was assigned to Position No. 007, 11:59 p.m. - 7:59 a.m., with Sunday and Monday as rest days. His assigned duties included hauling crews in and around Armourdale Yard.

On May 18, 1998, at 2:45 a.m., UP Car 4 from Neff Yard handled Armourdale Yard Hostlers from Armourdale Yard to the UP 18th Street Yard. Clerk Koder and Moore were available to handle this crew but were no used.

On May 19, 1998, at 7:10 a.m., UP crew hauler at Neff Yard, Kansas City, Missouri transported Engineer M. A. Dixon from Neff Yard to the Howard Johnson Hotel, Nolan Road, Independence, Missouri. Clerk Koder was available to handle this crew but was not used.

In declining this claim Ms. Reams indicated that the Organization furnished no documentation supporting the allegations

in this claim. This incident can be verified by the Hostlers and Engineer Dixon who were hauled by non-covered UP employees.

Ms. Reams asserts a history and practice of others hauling crews in Kansas City, Kansas; however, not one iota of evidence was furnished to support this assertion. The Organization denies this unsupported allegation and directs the Carrier's attention to Award 8 of Public Law Board 2969 and Third Division Award 19924.

In Award 8 of Public Law Board 2969 Referee Kasher states in part:

...However, while recognizing that the Organization cannot claim exclusive right to the work, the Organization can argue that the work is covered by the Scope Rule and that in order for an officer or employee not covered by the rule to properly be assigned the work that it must be shown that the work is incident to his/her regular duties.

In this Board's opinion the Organization has met its initial burden of proof with regard to the question of "incident" to his regular duties; that is, the Organization has established that the messengering and crew hauling functions represent work that ordinarily, although not exclusively, fall within the scope of its agreement. The burden now shifts to the Carrier to establish that the work which is covered by the agreement and which is subject matter of the instant claims was work incident to the regular duties of the supervisory or non-covered employees who perform them.

In this Board's opinion, the Carrier has failed to carry this burden and therefore the claims will be sustained...

The pertinent part of Third Division Award 19924 states as follows:

... The record in this case is devoid of any evidence to support Carrier's contention of

past practice. We have held in many cases over the years that the party asserting a past practice as a defense must prove, by substantial evidence, the existence of such practice. In Award 17000 for example, we said:

"Past practice is an affirmative defense and must by a preponderance of evidence be proven by the party relying on it. Insofar as this record is concerned there is no evidence upon which this Board can find that such practice did in fact exist.... In the absence of evidence to sustain their position however, their argument is reduced to a mere declaration, and we accordingly must reject it."

Since the claimed past practice was not established by Carrier, the provisions of Rule 69 (c) are not applicable to this dispute. Rule 55 (H) is clear and unambiguous and as both parties concede classifies the work coming under the scope of the Agreement. As a basic principal, work of positions covered by an Agreement belongs to those employees for whose benefit the contract was made and such work may not be assigned to employees outside the Agreement. (See Awards 3955, 10871 and others.) Therefore, we must conclude that Carrier erred in assigning the work in question to employees not covered by the Maintenance of Way Agreement...

These Awards are on point and apply to this case at bar. The work of crew hauling was the issue in Award 8 of PLB 2969. The Carrier has not proven this work is incident to outsiders nor has it furnished any proof that others not covered by the Scope Rule have performed this disputed work. As stated above, Award No. 8 of PLB 2969 addressed the issue of crew hauling.

As for the argument of excessive penalty, may I remind you that the minimum call is four (4) hours at the time and one-half rate of pay under the Clerks' Agreement, as amended.

32760 (SUB36) 10-26-99 195938V3

September 9, 1998 Mr. R. L. Camp SSW-10-CL-98-173 The Carrier violated the Clerks' Agreement, including, but not limited to, Rule 1 and Addenda thereto, Rules 2 and 69, when it allowed and/or required a non-covered employee, to haul crew members instead of allowing clerical employees to perform this work. The Carrier shall now allow the claim as presented for an additional eight (8) hours at the time and one-half rate of \$129.90 for May 18 and 19, 1998. These claims have been handled in the proper manner by the Organization and declined by Labor Relations officer D. Reams under files 1127635 and 1127636. This claim is herewith appealed to you for your consideration and no further handling of this matter by local representatives of this Organization shall be permitted without the concurrence of the undersigned. Please advise when this claim will be allowed. Sincerely yours, Phillip T. Trittel Assistant to the President ASD-TCU PTT:jt cc: Mr. Les Unrein, DC (150-015,016-98)

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET

THE OCTOR



November 11, 1998

Carrier File Nos. 1131738; 1131739; 1127637; 1127638; 1127642; 1127639; 1127640; 1127641; 1131740; 1127635; 1127636; 1127634; 1127632; 1127633

Mr. P. T. Trittle Allied Services Division/TCU P. O. Box 3795 Humble, TX 77347-3095

Dear Sir:

Reference is made to appeal letters covering your Claim File Nos. SSW-10-CL-98-169; SSW-10-CL-98-171; SSW-10-CL-98-172; SSW-10-CL-98-168; SSW-10-CL-98-173; SSW-10-98-176; SSW-10-CL-98-174; and SSW-10-CL-98-175 therein appealing Ms. Reams' decision to deny these claims as presented.

After reviewing each of the claims referenced herein, and after reviewing each of the appeals, the Carrier's position remains unchanged and the above claims will remain denied in their entirety.

Yours truly,

Property Company

Robert L. Camp Asst. Director Labor Relations/Non Ops

# TRANSPORTATION COMMUNICATIONS UNION ALLIED SERVICES DIVISION LES UNREIN, DISTRICT CHAIRMAN 150 4512 N.E. KINGSTON DRIVE LEE'S SUMMIT, MO 64064

. .... 04 1998

LABOR RELATIONS

D. L. Reams
Labor Relations Officer/Non Ops
Room 335
1416 Dodge Street
Omaha, NE 68179

Date: May 22, 1998 File: 150-019-98

1127639

Claim Report - District 150

Claimant Information

L. L. Seymour 204 W. 1st St. Tonganoxie, Ks. 66086 Seniority Date 10/15/52 Phone 913-845-2497

Union Pacific Railroad Company
Armourdale Yard - Kansas City, Ks.
Position - 020 Chief Clerk Rate of Pay \$131.44 Per Day
Primary Duties Computer Data Input, Haul crews, Check trains,
tracks, transfers, payroll, extra board.
Hours of Work 0759-1559 Rest Days Fri/Sat
Immediate Supervisor - MYO Grady Shepherd

Date of Violation May 18, 1998

Statement of Claim:

The Carrier violated the TCU Agreement at Kansas City, Ks., on May 18, 1998, when it allowed or required UP crew hauler at Neff Yard, Kansas City, Mo. to transport Engineer, W. M. Bond from the Howard Johnson's hotel to Neff Yard, Kansas City, Mo. The Carrier will now be required to compensate claimant, L. L. Seymour and any successors, reliefs and first out Extra Board Clerk for Eight hours pay at the time and one-half rate of \$131.44 per day over and above any other compensation received for May 18, 1998.

#### Statement of Pacts:

At 1245 hours on May 18, 1998, UP crew hauler, Neff Yard, Kansas City, Mo. transported Engineer, W. M. Bond from the Howard Johnson Hotel, Noland Road, Independence, Mo. to Neff Yard, Kansas City, Mo. No Hub Agreement exists at Kansas City and Engineer, Bond's on and off duty point is Armourdale Yard, Kansas City, Ks. He should have been transported from Armourdale Yard, Kansas City, Ks. his on duty point to Neff Yard, Kansas City, Mo. by a Armourdale Yard crew hauler. No transaction under NYD-217 exists.

0J11 13:18 98/138 U3199 PX62100 .ON N1369 BY TCS FROM H391414 (C5 ) OCMS348

.\*\*\* MESBAGE SENT: 05/18 13:18 C

CREW NOTIFICATION DATA MX283 /MNPDU /16

.JOB START: 05/18-1245 C - JOB DESC: MNPDU TRK .

....

.POWER: UP 009248 UP 002391 DRGW005379 .EMN MX283 RE41 05/18 1245 FR MX283 TO MX125 AFHT MX125 RE41

MUTIFIED: 1317 C ENG UM ROND 00 HOURS OF SERVICE: 05/18 21:20 C

THN MX283 RT22 05/18 1245 FR MX283 TD MX125 AFHT MX125 RT22 NOTIFIED: 1317 C OD CON DU SCHULTZ HOURS OF SERVICE: 05/18 21:20 C

.CREUS/DIST: ENG-REOS TRN-JC13 CREW REQUEST: R ACTUAL: R

THE INSPECT: N AIR PAY: N

NO -TL MESSAGE AVAILABLE

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MEALS IN ROUTE: N

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## UNION PACIFIC RAILROAD COMPANY

MANA NERRASAA GETT



July 31, 1998 Carrier File No. 1127639 Organization File No. 150-019-98

Mr. L. J. Unrein, District Chairman Allied Services Division/TCU 4512 N. E. Kingston Drive Lee's Summit, MO. 64064

Dear Sir:

In reference to your letter dated May 22, 1998, received in this office on June 4, 1998, in regard to the following:

"The Carrier violated the TCU Agreement at Kansas City, Ks., on May 18, 1998, when it allowed or required UP crew hauler at Neff Yard, Kansas City, Mo. to transport Engineer, W. M. Bond from the Howard Johnson's hotel to Neff Yard, Kansas City, Mo. The Carrier will now be required to compensate claimant, L. L. Seymour and any successors, reliefs and first out Extra Board Clerk for Eight hours pay at the time and one-half rate of \$131.44 per day over and above any other compensation received for May 18, 1998."

This claim is one of two filed for the same claim date on behalf of Claimant L. L. Seymour (see Carrier File No. 1127640, Organization's File 150-020-98). The pyramiding and/or stacking of claims is improper under Section 3, first (1) of the Railway Labor Act, as amended, and the claim should be withdrawn from further progression

Without waiving the Carrier's position outlined above, the transporting of crews has historically been a shared work responsibility which has been performed by others including, but not limited to, clerks, officers, yard supervisors, taxis, buses, and limousine services. The work is not nor ever has been considered exclusively reserved to the clerical craft, and the Organization's contentions to the contrary are denied.

This issue was addressed in Award 42 of Public Law Board 1952, which in pertinent part found:

"... the Organization is not required to prove that the work involved has historically ben performed exclusively by members of the craft. Rather, it need only show that work which was being performed by the craft at the time the Agreement was signed has now been assigned elsewhere. In the present case, the record shows that at the time the Agreement was signed, Carrier employed a variety of means for moving train crews in this territory. In addition to being transported

Mr. L. J. Unrein, District Chairman Allied Services Division/TCU Carrier File 1127639; Organization File 150-019-98 Page 2 July 31, 1998

by clerks in Company carryalls, crews were also often moved by taxi, bus, limousine, or Carrier vehicles driven by employees other than clerks. The evidence submitted by the Organization shows only that this practice has been continued to the present day. Without more, it can not be held that Claimant was deprived of work which, at the time the Agreement was signed, he would have been allowed to perform. The claim must therefore be denied, and the Board need not address the issue of whether the award of pay at the overtime rate is a proper penalty."

It is apparent that the situation at this location is no different from the crew hauling issue addressed at many locations across the system. The Carrier has traditionally and historically utilized others to transport crews, and this work is not exclusive to the clerical craft.

In addition, the Organization has failed to provide any documentation supporting their allegations in this instance. In this regard, the Organization is reminded that the burden of proving an agreement violation lies with Claimant and the Organization, and your burden has not been met in this case. In this regard, Referee Perelson stated in award No. 21 of Public Law Board 843:

"A host of awards of the Third Division hold that the burden is upon the Brotherhood to support its assertions with competent evidence. Here, the Brotherhood's entire case rests on allegations and arguments which are not supported by any evidence to overcome the Carrier's defense. The Brotherhood, being the proponent, always has the duty and obligation of submitting and presenting factual evidence to substantiate its claim. This must be done by a preponderance of evidence."

As for the penalty being requested in this instance, even if an agreement violation could be established, which is denied, the compensation requested is both excessive and without agreement support. The proper penalty could only be at the straight time rate for the actual amount of time spent in performing the work as claimed.

Claimant was fully employed and suffered no monetary harm.

There was no violation of Rule 1 or the Addenda thereto, Rules 2 or 69, or any other related rule of the working agreement.

For the reasons stated above, the claim is denied in its entirety.

Yours truly,

Dawn L. Reams

Labor Relations Manager/Non-Ops





Alternational

STP 1 5 1998

ROBERT F. DAVIS
President

LABOR DELATIONS

PHILLIP T. TRITTEL
Assistant to the President

TED P. STAFFORD
General Secretary-Treasurer

September 9, 1998

POST OFFICE BOX 3095 HUMBLE, TEXAS 77347-3095 PHONE: (281)812-4078 FAX: (281)812-4079

SSW-10-CL-98-172

Carrier # 1127639 Carrier # 1127640 Carrier # 1127641

Appeal of claim for and on behalf of Ms. L. L. Seymour, any successors and reliefs, and the first out Extra Board Clerk, Kansas City, Kansas, for an additional eight (8) hours pay at the time and one-half rate of \$131.44 for each date May 18 and 20, 1998, account the Carrier used a non-covered employee to perform clerical work in violation of the Clerks' Agreement.

Mr. R. L. Camp Assistant Director LR/NON-OPS Union Pacific Railroad Room 355, 1416 Dodge Street Omaha, Nebraska 68179

Dear Sir:

Prior to and on the above mentioned dates, Ms. Seymour was assigned to Relief Position No. 154, 049, 7:59 a.m. - 3:59 p.m., with Friday and Saturday as rest days. Her assigned duties included hauling crews in and around Armourdale Yard.

On May 18, 1998, at approximately 12:45 a.m., UP crew hauler at Neff Yard, Kansas City, Missouri, transported Engineer W. M. Bond from the Howard Johnson Hotel, Nolan Road, Independence, Missouri to Neff Yard, Kansas City, Missouri. Ms. Seymour was available to haul this crew from Armourdale Yard to Neff Yard.

On May 18, 1998, at approximately 12:30 a.m., UP crew hauler at Neff Yard, Kansas City, Missouri, transported Conductor D. B. Hill from the Howard Johnson Hotel, Nolan Road, Independence, Missouri to Neff Yard, Kansas City, Missouri. Ms. Seymour was available to haul this crew from Armourdale Yard to Neff Yard.

September 9, 1998 2. Mr. R. L. Camp SSW-10-CL-98-172 On May 20, 1998, at approximately 12:30 a.m., UP crew hauler at Neff Yard, Kansas City, Missouri, transported Conductor D. B. Hill from the Howard Johnson Hotel, Nolan Road, Independence, Missouri to Neff Yard, Kansas City, Missouri. Ms. Seymour was available to haul this crew from Armourdale Yard to Neff Yard. The Carrier violated the Clerks' Agreement, including, but not limited to, Rule 1 and Addenda thereto, Rules 2 and 69, when it allowed and/or required a non-covered UP employee to haul crew members instead of allowing L. L. Seymour to perform this work. The Carrier shall now allow the claim as presented for an additional eight (8) hours at the time and one-half rate of \$131.44 for each date of May 18 and 19, 1998. In declining this claim Ms. Reams indicated that the Organization furnished no documentation supporting the allegations in this claim. This incident can be verified by checking with Engineer Bond and Conductor Hill who were hauled by the UP Clerk. Chief Clerk L. L. Seymour was a witness to the incidents. Ms. Reams asserts a history and practice of others hauling crews in Kansas City, Kansas; however, not one iota of evidence was furnished to support this assertion. The Organization denies this unsupported allegation and directs the Carrier's attention to Award 8 of Public Law Board 2969 and Third Division Award 19924. In Award 8 of Public Law Board 2969 Referee Kasher states in part: while recognizing that Organization cannot claim exclusive right to the work, the Organization can argue that the work is covered by the Scope Rule and that in order for an officer or employee not covered by the rule to properly be assigned the work that it must be shown that the work is incident to his/her regular duties. In this Board's opinion the Organization has met its initial burden of proof with regard to the question of "incident" to his regular duties; that is, the Organization has established that the messengering and crew hauling functions represent work that ordinarily, although not exclusively, fall within the scope of its agreement. The burden

September 9, 1998 3. Mr. R. L. Camp SSW-10-CL-98-172 now shifts to the Carrier to establish that the work which is covered by the agreement and which is subject matter of the instant claims was work incident to the regular duties of the supervisory or non-covered employees who perform them. In this Board's opinion, the Carrier has failed to carry this burden and therefore the claims will be sustained ... The pertinent part of Third Division Award 19924 states as follows: ... The record in this case is devoid of any evidence to support Carrier's contention of past practice. We have held in many cases over the years that the party asserting a past practice as a defense must prove, by substantial evidence, the existence of such practice. In Award 17000 for example, we said: "Past practice is an affirmative defense and must by a preponderance of evidence be proven by the party relying on it. Insofar as this record is concerned there is no evidence upon which this Board can find that such practice did in fact exist.... In the absence of evidence to sustain their position however, their argument is reduced to a mere declaration, and we accordingly must reject it." Since the claimed past practice was not established by Carrier, the provisions of Rule 69 (c) are not applicable to this dispute. Rule 55 (H) is clear and unambiguous and as both parties concede classifies the work coming under the scope of the Agreement. As a basic principal, work of positions covered by an Agreement belongs to those employees for whose benefit the contract was made and such work may not be assigned to employees outside

FILL COLLS

#### UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET



November 11, 1998

Carrier File Nos. 1131738; 1131739; 1127637; 1127638;

1127642; 1127639; 1127640; 1127641;

1131740; 1127635; 1127636; 1127634;

1127632: 1127633

Mr. P. T. Trittle
Allied Services Division/TCU
P. O. Box 3095
Humble, TX 77347-3095

Dear Sir:

Reference is made to appeal letters covering your Claim File Nos. SSW-10-CL-98-169; SSW-10-CL-98-171; SSW-10-CL-98-172; SSW-10-CL-98-168; SSW-10-CL-98-173; SSW-10-98-176; SSW-10-CL-98-174; and SSW-10-CL-98-175 therein appealing Ms. Reams' decision to deny these claims as presented.

After reviewing each of the claims referenced herein, and after reviewing each of the appeals, the Carrier's position remains unchanged and the above claims will remain denied in their entirety.

Yours truly,

Paris de Caraga

Robert L. Camp

Asst. Director Labor Relations/Non Ops

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# TRANSPORTATION COMMUNICATIONS UNION ALLIED SERVICES DIVISION LES UNREIN, DISTRICT CHAIRMAN 150 4512 N.E. KINGSTON DRIVE LEE'S SUMMIT, MO 64064

LABORIGITAL

D. L. Reams
Labor Relations Officer/Non Ops
Room 335
1416 Dodge Street
Omaha, NE 68179

Date: Sept. 18, 1998 File: 150-033-98

1147004

Claim Report - District 150

Claimant Information

D. J. Ellis RT 2 Box 127P Bonner Springs, KS 66012 Seniority Date 6/11/64 Phone 913-724-2553

Union Pacific Railroad Company Armourdale Yard - Kansas City, Ks. Position - 009 Gen Clerk Rate of Pay \$127.98 Per Day Primary Duties Transport crews, Check trains, tracks, transfers.

Hours of Work 0759-1559 Rest Days Sun/Mon Immediate Supervisor - MYO Grady Shepherd

Date of Violation September 1, 1998

0

Statement of Claim:

The Carrier violated the TCU Agreement at Kansas City, Ks., on September 1, 1998, when it allowed or required outside contractor, Renzenberger to transport a train crew from Armourdale Yard office, Kansas City, Ks. to Bonner Springs, Ks., located on the Union Pacific Railroad main line between Armourdale Yard, Kansas City, Ks. and Topeka, Ks. on the Marysville Subdivision, a distance of Twenty miles. The Carrier will now be required to compensate claimant, D. J. Ellis and any successors, reliefs and first out Extra Board Clerk Eight hours pay at the time and one-half rate of \$127.98 per day over and above any other compensation received for September 1, 1998.

### Statement of Pacts:

A train crew consisting of Conductor, L. D. Gardner and Engineer, G. D. Kichhaefer were called at Armourdale Yard, Kansas City, Ks. for 0845 hours on September 1, 1998 to dogcatch train MTUKSX 29, operating from Herington, Ks. to Armourdale Yard, Kansas City, Ks. A clerk at the Armourdale Yard Office was available to

File: 150-033-98

transport this crew via company vehicle to Bonner Springs, Ks. but the Manager Telegrapher, Les Unrein, at the Armourdale Yard Office, Kansas City, Ks., was instructed by train dispatcher, AAD, that he did not want a clerk transporting this crew. He wanted outside Renzenberger, to haul the train crew to Bonner Springs, Ks. and wait for further instructions. Per Engineer, G. D. Kickhaefer, he and conductor, Gardner, departed Kansas City, Ks., in Renzenberger van No. 1265, control 13. 0900118894 and were hauled to Bonner Springs, Ks. and relieved UP train MSIKCX 31 Engines UP 33154, SP 8517, NS 8762 with at count of 69-17-9628 5020 feet. This train was operating from Salina, Ks. to Kansas City, Mo., UP Neff Yard. First, it is obvious that train dispatcher, AAD, does not know what the crew hauling rights of the former (SSW) clerks at Armourdale Yard, Kansas City, Ks. are; and further cannot follow instructions issued by an officer of the Carrier. That is, former (SSW) crews are to be used only to dogcatch (SSW) trains between Topeka and Kansas City. The Clerk's at Armourdale Yard have always performed this duty. The problem now exists with the Kansas City command center, crew callers (CMS) and dispatcher's at the Harriman Dispatching Center knowing it is exclusively our work.

The transporting of train or switch crews or a member or members thereof to or from Armourdale Yard, Kansas City, Ks. to but not including Topeka, Ks., has always been performed 100% by the clerks at Armourdale yard, Kansas City, Ks. In the settlement of claims under the Fletcher award application at Armourdale Yard, Kansas City, Ks., the crew hauling claims to or from Armourdale Yard to but not including Topeka, Ks., were paid because it was determined the work belonged exclusively to the clerks at

Armourdale Yard, Kansas City, Ks.

### Position of Employees:

It is the position of the Employees that the Carrier violated the Clerks' Agreement, including, but not limited to, Rules 1 (and Addenda thereto), Rules 2 and 69, when it used a noncovered agreement person to perform clerical work in violation of the

In statements furnished to Labor Relations Manager, Jim Huffman requesting the crew hauling done by the Clerks at Armourdale Yard in applying the Fletcher Award, he received the following information. The hauling of train crews and switch crews or a member or members thereof at Armourdale Yard, the Kansas City Metro Area and foreign lines located in the Kansas City Metro Area, Kansas City to Topeka, Ks., Kansas City to Maxwell, Mo., Kansas City to Independence, Sugar Creek and Courtney, Mo., belongs exclusively 100% to the Clerks at Armourdale Yard, Kansas City, Ks.

File: 150-033-98 P.3 9/18/98 The crew hauling as stated are our bulletined and assigned duties and have always been performed by the Clerks at Armourdale Yard, Kansas City, Ks.

Please advise when claim will be settled. Yours truly, Les Unrein District Chairman 150 D. J. Ellis Don Hollis cc: J. M. Raaz P. T. Trittel

U11 07:19 98/244 U1266 PX62100 . ON N1849 DY TCS FROM HQ91416 (CS ) CCMS035

\*\*\* MESSAGE SENT: 09/01 07:19 C

CREW NOTIFICATION DATA SWI48 /MTUKSX /29

JOB START: 09/01-0845 C

- JOB DESC: TRK &

POWER: SP 000267 UP 007031 UP 008127

EMN MX283 RE40 09/01 0845 FR MX283 TO MX283 AFHT SU148 RE40 NOTIFIED: 0717 C

ENG GD KICKHAEFER OD

HOURS OF SERVICE: 09/01 20:45 C

THN MX283 RT40 09/01 0845 FR MX283 TO MX283 AFHT SU148 RT40 NOTIFIED: 0718 C CON LO GARDNER DO HOURS OF SERVICE: 09/01: 20:45 C

.CREUS/DIST: ENG-HE79 TRN-HT91 CREW REQUEST: R ACTUAL: R
.ENG INSPECT: N AIR PAY: N MEALS IN ROUT

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Engines up. 3315 + S.P. 8517, NS. 8762 Count: 69 Loads 17 emptys 9628 Tons 5020 feet

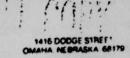
Engineer G.D. Kichaefer Cond. L.D Gardner 9-1-98

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Engines up 3315 + 5.P. 8517, NS. 8762

Count: 69 Loads 17 emptys 9628 Tons 5020 feet

## UNION PACIFIC RAILROAD COMPANY





November 18, 1998 Carrier File No. 1147004 Organization File No. 150-033-98

Mr. L. J. Unrein, District Chairman Allied Services Division/TCU 4512 N. E. Kingston Drive Lee's Summit, MO. 64064

Dear Sir:

In reference to your letter dated September 18, 1998, received in this office on September 29, 1998, in regard to the following:

The Carrier violated the TCU Agreement at Kansas City, Ks., on September 1, 1998, when it allowed or required outside contractor, Renzenberger to transport train crew from Armourdale Yard office, Kansas City, Ks. to Bonner Springs, Ks., located on the Union Pacific Railroad main line between Armourdale Yard, Kansas City, Ks. and Topeka, Ks. on the Marysville Subdivision, a distance of Twenty miles. The Carrier will now be required to compensate claimant, D. J. Ellis and any successors, reliefs and first out Extra Board Clerk Eight hours pay at the time and one-half rate of \$127.98 per day over and above any other compensation received for September 1, 1998."

At the outset, this claim is one of two filed for the same claim date on behalf of the same Claimant (see Carrier File No. 1147452, Organization's File 150-033-98). The pyramiding and/or stacking of claims is improper under Section 3, first (I) of the Railway Labor Act, as amended, and the claim should be withdrawn from further progression.

Without waiving the Carrier's above position, the transporting of crews has historically been a shared work responsibility which has been performed by others including, but not limited to, clerks, officers, yard supervisors, taxis, buses, and limousine services. The work is not nor ever has been considered exclusively reserved to the clerical craft, and the Organization's contentions to the contrary are denied.

This issue was addressed in Award 42 of Public Law Board 1952, which in pertinent part found:

... the Organization is not required to prove that the work involved has historically ben performed exclusively by members of the craft. Rather, it need only show that work which was being performed by the craft at the time the Agreement was signed has now been assigned elsewhere. In the present case, the record shows that at the time the Agreement was signed. Carrier employed a variety of means for moving train crews in this territory. In addition to being transported by clerks in Company carryalis, crews were also often moved by taxi, bus, limousine, or Carrier vehicles driven by employees other than clerks. The evidence submitted by the Organization shows only that this practice has been continued to the present day. Without more, it can not be held that Claimant was deprived of work which, at the time the Agreement was signed, he would have been allowed to perform. The claim must therefore be denied, and the Board need not address the issue of whether the award of payment at the overtime rate is a proper penalty."

Mr. L. J. Unrein, District Chairman/TCU Carrier File No. 1147004; Organization File No. 150-033-98 Page 2 of 2 November 18, 1998

It is apparent that the situation at this location is no different from the crew hauling issue addressed at many locations across the system. The Carrier has traditionally and historically utilized others to transport crews, and this work is not exclusive to the clerical craft.

As for the penalty being requested in this instance, even if an agreement violation could be established, which is denied, the compensation requested is both excessive and without agreement support. The proper penalty could only be at the straight time rate for the actual amount of time spent in performing the work as claimed.

Payroll records reflect that Claimant not only received eight hours regular compensation on the claim date, but he also worked eight hours overtime. Since Claimant performed a total of 16 hours service on the claim date, it could be reasonably assumed that he would have been ineligible for additional overtime service on the claim date.

Claimant was fully employed and has suffered no monetary harm.

There was no violation of Rule 1 or the Addenda thereto, Rules 2 or 69, or any other related rule of the working agreement.

For the reasons stated above, the claim is denied in its entirety.

Yours truly

Dawn L. Reams

Labor Relations Manager/Non-Ops

SR. VICE PRESIDENT

MAY 1 1998

I ABOR RELATIONS

# TRANSPORTATION COMMUNICATIONS UNION ALLIED SERVICES DIVISION LES UNREIN, DISTRICT CHAIRMAN 150 4512 N.E. KINGSTON DRIVE LEE'S SUMMIT, MO 64064

D. L. Reams Labor Relations Officer/Non Ops Room 335 1416 Dodge Street Omaha, NE 68179 Date: May 8, 1998 File: 150-011-98

1123659

Claim Report - District 150

Claimant Information

Geraldine Wilber 16220 Outlook Stillwell, KS Seniority Date 12/21/67 Phone 913-897-9523

Union Pacific Railroad Company
Armourdale Yard - Kansas City, Ks.
Position - 014 Asst. Chief Clerk Rate of Pay \$129.90 Per Day
Primary Duties Computer Data Input, Haul crews, Check trains,
tracks, transfers, Payroll, Manage Extra Board.
Hours of Work 1559-2359 Rest Days Sun\Mon
Immediate Supervisor - MYO W. G. Shepherd

Date of Violation April 22, 1998

Statement of Claim:

The Carrier violated the TCU Agreement at Kansas City, Ks., on April 22, 1998, when it allowed or required outside contractor, Renzenberger, to transport a train crew from the Armourdale yard office, Kansas City, Ks. to Rock Creek in Independence, Mo. The Carrier will now be required to compensate claimant, Geraldine Wilber and any successors, reliefs and first out Extra Board Clerk for Eight hours pay at the time and one-half rate of \$129.90 per day over and above any other compensation received for April 22, 1998.

#### Statement of Pacts:

Train crew consisting of conductor, P. B. Parker and engineer, R. J. Hanschen called for 2250 on 4/22/98 were transported from the Armourdale Yard Office to Rock Creek Jct., Independence, Mo. by outside contractor, Renzenberger. Our Assistant Chief Clerk, E. G. Koder, was dispatched in error to Union Pacific, Neff Yard, Kansas City, Mo. and instructed to transport crew to Lee's Summit, Mo.

File: 150-011-98 p.2 5/8/97 The hauling of crews to or from Armourdale Yard to locations in the Kansas City Metro area has always been performed by the clerks at the Armourdale Yard Office, Kansas City, Ks. In the settlement of claims under the Fletcher award at Kansas City, Ks., the crew hauling claims for Armourdale Yard and including the Kansas City Metro Area were paid because it was determined that it was our work. The General Clerk, C. J. Hime and Asst. Chief Clerk, Geraldine Wilber were available to perform their assigned duties. Position of Employees: It is the position of the Employees that the Carrier violated the Clerks' Agreement, including, but not limited to, Rules 1 (and Addenda thereto), Rules 2 and 69, when it used outside contractor, Renzenberger to perform clerical work in violation of the Agreement. In statements furnished to Labor Relations Manager, Jim Huffman requesting the crew hauling done by the Clerks at Armourdale Yard he received the following information. The hauling of train crews and switch crews or a member or members thereof at Armourdale Yard, the Kansas City Metro Area and foreign lines located in the Kansas City Metro Area, Kansas City to Topeka, Ks., Kansas City to Maxwell, Mo., Kansas City to Independence, Sugar Creek and Courtney, Mo. belongs exclusively 100% to the Clerks at Armourdale Yard, Kansas City, Ks. The crew hauling as stated is our bulletined and assigned duties and have always been performed by the Clerks at Armourdale Yard, Kansas City, Ks. Please advise when claim will be settled. Yours truly, District Chairman 150 cc: Geraldine Wilber

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ON APRIL 20. 1998 RENZEMBERGER ROAD VAN TODE OUR CREW. PR PARKER AND BU HANSCHEN TO POCK CREEK. THAT IS SITE! DALDE CARD CARRYING CLEPICAL WORK. I WAS AVAILABLE FOR THIS MOVE . COUNTE UNS ALSO AVAILABLE FOR THIS MOVE

SINCERELY.

AFTERMOON CHIEF CLERK Geralding Willer

AFTERNOON FLERE Connie J. Line APRILIFIELE VARI

125

PB Parker CATTIVEL MEF YOR THAN CAlled 1005 pm & Deg carch Up TRAIN & RENZENBERGER ROLD VAN FICKEL Craw UP AT HOTAL 4-12-90 Broagns to yard office for paperwork And Than FORK Crew to ROCK Crook Set. 5 pickal Crow UP AT NEFF YORAND FORK Brow 12 Les Summiss. Dene Kolen ALSO due club

#### UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET OMANA NEBRASKA 83179



July 9, 1998 Carrier File No. 1123659 Organization File No. 150-011-98

Mr. L. J. Unrein, District Chairman Allied Services Division/TCU 4512 N. E. Kingston Drive Lee's Summit, MO. 64064

Dear Sir:

In reference to your letter dated May 8, 1998, received in this office on May 11, 1998, in regard to the following:

"The Carrier violated the TCU Agreement at Kansas City, Ks., on April 22, 1998, when it allowed or required outside contractor, Renzenberger, to transport a train crew from the Armourdale Yard Office, Kansas City, Ks. to Rock Creek in Independence, Mo. The Carrier will now be required to compensate claimant, Geraldine Wilber and any successors, reliefs and first out Extra Board Clerk for Eight hours pay at the time and one-half rate of \$129.90 per day over and above any other compensation received for April 22, 1998."

The transporting of crews has historically been a shared work responsibility which has been performed by others including, but not limited to, clerks, officers, yard supervisors, taxis, buses, and limousine services. The work is not nor ever has been considered exclusively reserved to the clerical craft, and the Organization's contentions to the contrary are denied.

This issue was addressed in Award 42 of Public Law Board 1952, which in pertinent part found:

"... the Organization is not required to prove that the work involved has historically ben performed exclusively by members of the craft. Rather, it need only show that work which was being performed by the craft at the time the Agreement was signed has now been assigned elsewhere. In the present case, the record shows that at the time the Agreement was signed, Carrier employed a variety of means for moving train crews in this territory. In addition to being transported by clerks in Company carryalls, crews were also often moved by taxi, bus, limousine, or Carrier vehicles driven by employees other than clerks. The evidence submitted by the Organization shows only that this practice has been continued to the present day. Without more, it can not be held that Claimant was deprived of work which, at the time the Agreement was signed, he would have been allowed to

Mr. L. J. Unrein, District Chairman Allied Services Division/TCU Carrier File 1123659; Organization File 150-011-98 Page 2 July 9, 1998

perform. The claim must therefore be denied, and the Board need not address the issue of whether the award of pay at the overtime rate is a proper penalty."

It is apparent that the situation at this location is no different from the crew hauling issue addressed at many locations across the system. The Carrier has traditionally and historically utilized others to transport crews, and this work is not exclusive to the clerical craft.

In addition, the Organization has failed to provide any documentation supporting their allegations in this instance. In this regard, the Organization is reminded that the burden of proving an agreement violation lies with Claimant and the Organization, and your burden has not been met in this case. In this regard, Referee Perelson stated in award No. 21 of Public Law Board 843:

"A host of awards of the Third Division hold that the burden is upon the Brotherhood to support its assertions with competent evidence. Here, the Brotherhood's entire case rests on allegations and arguments which are not supported by any evidence to overcome the Carrier's defense. The Brotherhood, being the proponent, always has the duty and obligation of submitting and presenting factual evidence to substantiate its claim. This must be done by a preponderance of evidence."

As for the penalty being requested in this instance, even if an agreement violation could be established, which is denied, the compensation requested is both excessive and without agreement support. The proper penalty could only be at the straight time rate for the actual amount of time spent in performing the work as claimed.

Claiment was fully employed and suffered no monetary harm.

There was no violation of Rule 1 or the Addenda thereto, Rules 2 or 69, or any other related rule of the working agreement.

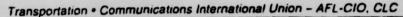
For the reasons stated above, the claim is denied in its entirety.

Yours truly,

Dawn L. Reams

Labor Relations Manager/Non-Ops







ROBERT F. DAVIS President

TED P. STAFFORD General Secretary-Treasurer 'LES UNREIN District Chairman 150

July 17, 1998 DLR-APL-98-7-17

1: . . . . .

Ms. D. L. Reams Labor Relations Officer/Non Ops Room 335 1416 Dodge Street Omaha, NE 68179

Dear Ms. Reams,

Regarding Carrier file nos. 1123656, 1123657, 1123658, and 1123659, dated July 9, 1998 and postmarked July 9, 1998 and received in this office on July 11, 1998. This is to advise you that your decision in these matters are not acceptable and are

being appealed to Mr. P. T. Trittel for further handling.

These files bear my office date of May 8, 1998 and were mailed May 8, 1998, receipt for certified mail enclosed and the receipt for certified return mail was received and signed D. W. Schroeder, UP RR, Omaha, NE, on May 11, 1998, copies enclosed. This is to advise you that you are in violation of Rule 24, Section 1, which states, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance in writing of the reasons for such disallowance.

Please advise when claims will be paid.

Yours truly.

District Chairman 150

P. T. Trittel

B. L. Wilson

G. J. Wilber

# Z 378 950 467

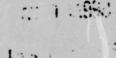
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ROBERT F. DAVIS

TED P. STAFFORD
General Secretary-Treasurer



PHILLIP T. TRITTEL
Assistant to the President

August 3, 1998

POST OFFICE ROX 3095 HUMBLE, TEXAS 77347-3095 PRONE: (281)812-4078 FAX: (281)812-4079

SSW-10-CL-98-150 Carrier # 1123659

Appeal of claim for and on behalf of Ms. G. Wilber, any successors and reliefs, and the first out Extra Board Clerk, Kansas City, Kansas, for an additional eight (8) hours pay at the time and one-half rate of \$129.90 for April 22, 1998 account the Carrier used a non-covered outside contractor to perform clerical work in violation of the Clerks' Agreement.

Mr. R. L. Camp Assistant Director LR/NON-OPS Union Pacific Railroad Room 335, 1416 Dodge Street Omaha, Nebraska 68179

Dear Sir:

Prior to and on the above mentioned dates, Ms. Wilber was assigned to Position No. 014, 3:59 p.m. - 11:59 p.m., with Sunday and Monday as rest days. Her assigned duties included hauling crews in and around Armourdale Yard.

On April 22, 1998, at 2:50 p.m., a train crew, Conductor P. B. Parker and Engineer R. J. Hanschen, were transported to Rock Creek Jct. from the Armourdale Yard Office by outside contractor Renzenberger. A clerk was available to handle this crew but was not used.

In declining this claim Ms. Reams indicated that the Organization furnished no documentation supporting the allegations in this claim. This incident can be verified by checking with P. Parker and R. Hanschen. Attached are statements from witnesses.

Ms. Reams asserts a history and practice of others hauling crews in Kansas City, Kansas; however, not one iota of evidence was furnished to support this assertion. The Organization denies this

unsupported allegation and directs the Carrier's attention to Award 8 of Public Law Board 2969 and Third Division Award 19924.

In Award 8 of Public Law Board 2969 Referee Kasher states in part:

...However, while recognizing that the Organization cannot claim exclusive right to the work, the Organization can argue that the work is covered by the Scope Rule and that in order for an officer or employee not covered by the rule to properly be assigned the work that it must be shown that the work is incident to his/her regular duties.

In this Board's opinion the Organization has met its initial burden of proof with regard to the question of "incident" to his regular duties; that is, the Organization has established that the messengering and crew hauling functions represent work that ordinarily, although not exclusively, fall within the scope of its agreement. The burden now shifts to the Carrier to establish that the work which is covered by the agreement and which is subject matter of the instant claims was work incident to the regular duties of the supervisory or non-covered employees who perform them.

In this Board's opinion, the Carrier has failed to carry this burden and therefore the claims will be sustained...

The pertinent part of Third Division Award 19924 states as follows:

... The record in this case is devoid of any evidence to support Carrier's contention of past practice. We have held in many cases over the years that the party asserting a past practice as a defense must prove, by substantial evidence, the existence of such practice. In Award 17000 for example, we said:

August 3, 1998

Mr. R. L. Camp SSW-10-CL-98-150

"Past practice is an affirmative defense and must by a preponderance of evidence be proven by the party relying on it. Insofar as this record is concerned there is no evidence upon which this Board can find that such practice did in fact exist...In the absence of evidence to sustain their position however, their argument is reduced to a mere declaration, and we accordingly must reject it."

3.

Since the claimed past practice was not established by Carrier, the provisions of Rule 69 (c) are not applicable to this dispute. Rule 55 (H) is clear and unambiguous and as both parties concede classifies the work coming under the scope of the Agreement. As a basic principal, work of positions covered by an Agreement belongs to those employees for whose benefit the contract was made and such work may not be assigned to employees outside the Agreement. (See Awards 3955, 10871 and others.) Therefore, we must conclude that Carrier erred in assigning the work in question to employees not covered by the Maintenance of Way Agreement...

These Awards are on point and apply to this case at bar. The work of crew hauling was the issue in Award 8 of PLB 2969. The Carrier has not proven this work is incident to outsiders nor has it furnished any proof that others not covered by the Scope Rule have performed this disputed work. As stated above, Award No. 8 of PLB 2969 addressed the issue of crew hauling.

As for the argument of excessive penalty, may I remind you that the minimum call is four (4) hours at the time and one-half rate of pay under the Clerks' Agreement, as amended.

The Carrier violated the Clerks' Agreement, including, but not limited to, Rule 1 and Addenda thereto, Rules 2 and 69, when it allowed and/or required an outside contractor, to haul crew members instead of allowing clerical employees to perform this work.

The Carrier shall now allow the claim as presented for an additional eight (8) hours at the time and one-half rate of \$129.90

August 3, 1998 4. Mr. R. L. Camp SSW-10-CL-98-150 for April 22, 1998. This claim has been handled in the proper manner by the Organization and declined by Labor Relations officer D. Reams under file 1123659. This claim is herewith appealed to you for your consideration and no further handling of this matter by local representatives of this Organization shall be permitted without the concurrence of the undersigned. Please advise when this claim will be allowed. Sincerely yours, Phillip T. Trittel
Assistant to the President ASD-TCU PTT:jt Attachments cc: Mr. Les Unrein, DC (150-011-98)

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#### UNION PACIFIC RAILROAD COMPANY





October 9, 1998

Carrier File Nos. 1119536; 1120048; 1119542; 1119538; 1120043; 1121839; 1123653; 1119541; 1120046; 1123655; 1120050; 1126150; 1126151; 1126156; 1126157; 1126152; 1126153; 1126154; 1126155; 1123656; 1123657; 1123658; 1123659

Mr. P. T. Trittle Allied Services Division/TCU P. O. Box 3095 Humble, TX 77347-3095

Dear Sir:

Reference is made to appeal letters covering your Claim File Nos. SP-04-CL-98-140, SP-04-CL-98-147, SP-04-CL-98-139, SP-04-CL-98-136, SP-04-CL-98-148, SP-04-CL-98-153, SP-04-CL-98-154, CL-04-CL-98-160, SP-04-CL-98-151, SP-04-CL-98-155, SP-04-CL-98-157, SP-04-CL-98-158, SP-04-CL-98-159, SSW-10-CL-98-149, and SSW-10-CL-98-150 therein appealing Ms. Reams' decision to deny these claims as presented.

After reviewing each of the claims referenced herein, and after reviewing each of the appeals, the Carrier's position remains unchanged and the above claims will remain denied in their entirety.

Yours truly,

Robert L. Camp

Asst. Director Labor Relations/Non Ops

Pourt of (ampl

TRANSPORTATION COMMUNICATIONS UNION ALLIED SERVICES DIVISION LES UNREIN, DISTRICT CHAIRMAN 150 4512 N.E. KINGSTON DRIVE LEE'S SUMMIT, MO 64064

SR. VICE PRESIDENT MAY 1 1 1998 LABOR RFI ATIONS

D. L. Reams Labor Relations Officer/Non Ops Room 335

Date: May 8, 1998 File: 150-009-98

1416 Dodge Street Omaha, NE 68179

1123657

Claim Report - District 150

Claimant Information

B. L. Wilson 315 E. Sea Independence, MO 64050 Seniority Date 9/25/57 Phone 816-254-0462

Union Pacific Railroad Company Armourdale Yard - Kansas City, Ks. Position - 009 Gen Clerk Rate of Pay \$127.98 Per Day Primary Duties Haul crews, Check trains, tracks, transfers.

Hours of Work 0759-1559 Rest Davs Sun\Mon Immediate Supervisor - MYO W. G. Shepherd

Date of Violation April 23, 1998

Statement of Claim:

The Carrier violated the TCU Agreement at Kansas City, Ks., on April 23, 1998, when it allowed or required MYO, Grady Shepherd to transport train crew from 18th St UP Yard to Armourdale Yard. The Carrier will now be required to compensate claimant, B. L. Wilson and any successors, reliefs and first out Extra Board Clerk for Eight hours pay at the time and one-half rate of \$127.98 per day over and above any other compensation received for April 23, 1998.

Statement of Facts:

Train crew consisting of conductor, R. A. Bettles and engineer, D. R. Wilson were transported upon there arrival at the UP 18th St. Yard at 1415 hours on April 23, 1998 to the Armourdale Yard Office, Kansas City, Ks. by MYO, Grady Shepherd.

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#### UNION PACIFIC RAILROAD COMPANY



July 9, 1998
Carrier File No. 1123657
Organization File No. 150-009-98

Mr. L. J. Unrein, District Chairman Allied Services Division/TCU 4512 N. E. Kingston Drive Lee's Summit, MO. 64064

Dear Sir:

In reference to your letter dated May 8, 1998, received in this office on May 11, 1998, in regard to the following:

"The Carrier violated the TCU Agreement at Kansas City, Ks., on April 23, 1998, when it allowed or required MTO, Grady Shepherd to transport train crew from 18th St UP Yard to Armourdale Yard. The Carrier will now be required to compensate claimant, B. L. Wilson and any successors, reliefs and first out Extra Board Clerk for Eight hours pay at the time and one-half rate of \$127.98 per day over and above any other compensation received for April 23, 1998."

The transporting of crews has historically been a shared work responsibility which has been performed by others including, but not limited to, clerks, officers, yard supervisors, taxis, buses, and limousine services. The work is not nor ever has been considered exclusively reserved to the clerical craft, and the Organization's contentions to the contrary are denied.

This issue was addressed in Award 42 of Public Law Board 1952, which in pertinent part found:

"... the Organization is not required to prove that the work involved has historically ben performed exclusively by members of the craft. Rather, it need only show that work which was being performed by the craft at the time the Agreement was signed has now been assigned elsewhere. In the present case, the record shows that at the time the Agreement was signed, Carrier employed a variety of means for moving train crews in this territory. In addition to being transported by clerks in Company carryalls, crews were also often moved by taxi, bus, limousine, or Carrier vehicles driven by employees other than clerks. The evidence submitted by the Organization shows only that this practice has been continued to the present day. Without more, it can not be held that Claimant was deprived of work which, at the time the Agreement was signed, he would have been allowed to

Mr. L. J. Unrein, District Chairman Allied Services Division/TCU Carrier File 1123657; Organization File 150-009-98 Page 2 July 9, 1998

perform. The claim must therefore be denied, and the Board need not address the issue of whether the award of pay at the overtime rate is a proper penalty."

It is apparent that the situation at this location is no different from the crew hauling issue addressed at many locations across the system. The Carrier has traditionally and historically utilized others to transport crews, and this work is not exclusive to the clerical craft.

In addition, the Organization has failed to provide any documentation supporting their allegations in this instance. In this regard, the Organization is reminded that the burden of proving an agreement violation lies with Claimant and the Organization, and your burden has not been met in this case. In this regard, Referee Perelson stated in award No. 21 of Public Law Board 843:

"A host of awards of the Third Division hold that the burden is upon the Brotherhood to support its assertions with competent evidence. Here, the Brotherhood's entire case rests on allegations and arguments which are not supported by any evidence to overcome the Carrier's defense. The Brotherhood, being the proponent, always has the duty and obligation of submitting and presenting factual evidence to substantiate its claim. This must be done by a preponderance of evidence."

As for the penalty being requested in this instance, even if an agreement violation could be established, which is denied, the compensation requested is both excessive and without agreement support. The proper penalty could only be at the straight time rate for the actual amount of time spent in performing the work as claimed.

Payroll records reflect that Claimant was unavailable for service on the claim date as a result of his voluntary absence due to illness. The claim on his behalf thereby lacks merit and must be denied.

There was no violation of Rule 1 or the Addenda thereto, Rules 2 or 69, or any other related rule of the working agreement.

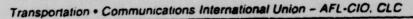
For the reasons stated above, the claim is denied in its entirety.

Naun & Rama

Dawn L. Reams

Labor Relations Manager/Non-Ops







ROBERT F. DAVIS

TED P. STAFFORD
General Secretary-Treasurer

\*LES UNREIN District Chairman 150

July 17, 1998 DLR-APL-98-7-17

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Ms. D. L. Reams Labor Relations Officer/Non Ops Room 335 1416 Dodge Street Omaha, NE 68179

Dear Ms. Reams,

Regarding Carrier file nos. 1123656, 1123657, 1123658, and 1123659, dated July 9, 1998 and postmarked July 9, 1998 and received in this office on July 11, 1998. This is to advise you that your decision in these matters are not acceptable and are

being appealed to Mr. P. T. Trittel for further handling.

These files bear my office date of May 8, 1998 and were mailed May 8, 1998, receipt for certified mail enclosed and the receipt for certified return mail was received and signed D. W. Schroeder, UP RR, Omaha, NE, on May 11, 1998, copies enclosed. This is to advise you that you are in violation of Rule 24, Section 1, which states, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance in writing of the reasons for such disallowance.

Please advise when claims will be paid.

Yours truly,

Ves Unrein

District Chairman 150

cc: P. T. Trittel

B. L. Wilson

G. J. Wilber

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SR. VICE PRESIDENT
MAY 1 1998
LABOR RELATIONS

# TRANSPORTATION COMMUNICATIONS UNION ALLIED SERVICES DIVISION LES UNREIN, DISTRICT CHAIRMAN 150 4512 N.E. KINGSTON DRIVE LEE'S SUMMIT, MO 64064

D. L. Reams Labor Relations Officer/Non Ops Room 335 Date: May 8, 1998 File: 150-010-98

Room 335 1416 Dodge Street Omaha, NE 68179

1123658

Claim Report - District 150

Claimant Information

B. L. Wilson 315 E. Sea Independence, MO 64050 Seniority Date 9/25/57 Phone 816-254-0462

Union Pacific Railroad Company Armourdale Yard - Kansas City, Ks. Position - 009 Gen Clerk Rate of Pay \$127.98 Per Day Primary Duties Haul crews, Check trains, tracks, transfers.

Hours of Work 0759-1559 Rest Days Sun\Mon Immediate Supervisor - MYO W. G. Shepherd

Date of Violation April 25, 1998

Statement of Claim:

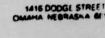
The Carrier violated the TCU Agreement at Kansas City, Ks., on April 25, 1998, when it allowed or required UP hauler in car 4 to transport train crew from 18th St UP Yard to Armourdale Yard. The Carrier will now be required to compensate claimant, B. L. Wilson and any successors, reliefs and first out Extra Board Clerk for Eight hours pay at the time and one-half rate of \$127.98 per day over and above any other compensation received for April 25, 1998.

## Statement of Pacts:

Train crew consisting of conductor, R. A. Bettles and engineer, D. T. Hull were transported upon there arrival at the UP 18th St. Yard at 1530 hours on April 25, 1998 to the Armourdale Yard Office, Kansas City, Ks. by UP hauler in car 4.

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# UNION PACIFIC RAILROAD COMPANY





July 9, 1998 Carrier File No. 1123658 Organization File No. 150-010-98

Mr. L. J. Unrein, District Chairman Allied Services Division/TCU 4512 N. E. Kingston Drive Lee's Summit, MO. 64064

Dear Sir:

In reference to your letter dated May 8, 1998, received in this office on May 11, 1998, in regard to the following:

"The Carrier violated the TCU Agreement at Kansas City, Ks., on April 25, 1998, when it allowed or required UP hauler in car 4 to transport train crew from 18th St UP Yard to Armourdale Yard. The Carrier will now be required to compensate claimant, B. L. Wilson and any successors, reliefs and first out Extra Board Clerk for Eight hours pay at the time and one-half rate of \$127.98 per day over and above any other compensation received for April 25, 1998."

The transporting of crews has historically been a shared work responsibility which has been performed by others including, but not limited to, clerks, officers, yard supervisors, taxis, buses, and limousine services. The work is not nor ever has been considered exclusively reserved to the clerical craft, and the Organization's contentions to the contrary are denied.

This issue was addressed in Award 42 of Public Law Board 1952, which in pertinent part found:

"... the Organization is not required to prove that the work involved has historically ben performed exclusively by members of the craft. Rather, it need only show that work which was being performed by the craft at the time the Agreement was signed has now been assigned elsewhere. In the present case, the record shows that at the time the Agreement was signed, Carrier employed a variety of means for moving train crews in this territory. In addition to being transported by clerks in Company carryalls, crews were also often moved by taxi, bus, limousine, or Carrier vehicles driven by employees other than clerks. The evidence submitted by the Organization shows only that this practice has been continued to the present day. Without more, it can not be held that Claimant was deprived of work which, at the time the Agreement was signed, he would have been allowed to

Mr. L. J. Unrein, District Chairman Allied Services Division/TCU Carrier File 1123658; Organization File 150-010-98 Page 2 July 9, 1998

perform. The claim must therefore be denied, and the Board need not address the issue of whether the award of pay at the overtime rate is a proper penalty."

It is apparent that the situation at this location is no different from the crew hauling issue addressed at many locations across the system. The Carrier has traditionally and historically utilized others to transport crews, and this work is not exclusive to the clerical craft.

In addition, the Organization has failed to provide any documentation supporting their allegations in this instance. In this regard, the Organization is reminded that the burden of proving an agreement violation lies with Claimant and the Organization, and your burden has not been met an agreement violation lies with Claimant and the Organization, and your burden has not been met in this case. In this regard, Referee Perelson stated in award No. 21 of Public Law Board 843:

"A host of awards of the Third Division hold that the burden is upon the Brotherhood to support its assertions with competent evidence. Here, the Brotherhood's entire case rests on allegations and arguments which are not supported by any evidence to overcome the Carrier's defense. The Brotherhood, being the proponent, always has the duty and obligation of submitting and presenting factual evidence to substantiate its claim. This must be done by a preponderance of evidence."

As for the penalty being requested in this instance, even if an agreement violation could be established, which is denied, the compensation requested is both excessive and without agreement support. The proper penalty could only be at the straight time rate for the actual amount of time spent in performing the work as claimed.

Payroll records reflect that Claiment bypassed overtime work opportunity on the claim date. The claim on his behalf requesting punitive payment for time not worked lacks merit and is denied.

There was no violation of Rule 1 or the Addenda thereto, Rules 2 or 69, or any other related rule of the working agreement.

For the reasons stated above, the claim is denied in its entirety.

Lauri D. Rama

Dawn L. Reams

Labor Relations Manager/Non-Ops



Transportation • Communications International Union - AFL-CIO, CLC

ROBERT F. DAVIS

TED P. STAFFORD
General Secretary-Treasurer

\*LES UNREIN District Chairman 150

July 17, 1998 DLR-APL-98-7-17

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1: ...

Ms. D. L. Reams Labor Relations Officer/Non Ops Room 335 1416 Dodge Street Omaha, NE 68179

Dear Ms. Reams,

Regarding Carrier file nos. 1123656, 1123657, 1123658, and 1123659, dated July 9, 1998 and postmarked July 9, 1998 and received in this office on July 11, 1998. This is to advise you that your decision in these watters are not acceptable and are being appealed to Mr. P. T. Trittel for further handling.

These files bear my office date of May 8, 1998 and were mailed May 8, 1998, receipt for certified mail enclosed and the receipt for certified return mail was received and signed D. W. Schroeder, UP RR, Omaha, NE, on May 11, 1998, copies enclosed. This is to advise you that you are in violation of Rule 24, Section 1, which states, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance in writing of the reasons for such disallowance.

Please advise when claims will be paid.

Yours truly,

Les Unrein

District Chairman 150

cc: P. T. Trittel

B. L. Wilson

G. J. Wilber

File: 150-010-98 p.2 5/8/97 The hauling of crews to or from Armourdale Yard to locations in the Kansas City Metro area has always been performed by the clerks at the Armourdale Yard Office, Kansas City, Ks. In the settlement of claims under the Fletcher award at Kansas City, Ks., the crew hauling claims for Armourdale Yard and including the Kansas City Metro Area were paid because it was determined that it was our work. The General Clerk, B. L. Wilson, was available to perform his assigned duties. The Union Pacific Clerks cannot perform our work because it has not been transferred or consolidated per the NYD-217 Agreement. Position of Employees: It is the position of the Employees that the Carrier violated the Clerks' Agreement, including, but not limited to, Rules 1 (and Addenda thereto), Rules 2, 69 and the NYD-217 Implementing Agreement, when it used a Union Pacific Clerk to perform clerical work in violation of the Agreement. In statements furnished to Labor Relations Manager, Jim Huffman requesting the crew hauling done by the Clerks at Armourdale Yard he received the following information. The hauling of train crews and switch crews or a member or members thereof at Armourdale Yard, the Kansas City Metro Area and foreign lines located in the Kansas City Metro Area, Kansas City to Topeka, Ks., Kansas City to Maxwell, Mo., Kansas City to Independence, Sugar Creek and Courtney, Mo. belongs exclusively 100% to the Clerks at Armourdale Yard, Kansas City, Ks. The crew hauling as stated is our bulletined and assigned duties and have always been performed by the Clerks at Armourdale Yard, Kansas City, Ks. Please advise when claim will be settled. Yours truly District Chairman 150 cc: B. L. Wilson

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ALLIED SERVICES DMISION

ROBERT F. DAVIS

TED P. STAFFORD
General Secretary-Treasurer

AL 3 (129.)

PHILLIP T. TRITTEL
Assistant to the President

August 3, 1998

POST OFFICE HOX 3095 HUMBLE, TEXAS 77347-3095 PHONE: (281)812-4078 FAX: (281)812-4079

SSW-10-CL-98-149 Carrier # 1123656 Carrier # 1123657 Carrier # 1123658

Appeal of claim for and on behalf of Mr. B. L. Wilson, any successors and reliefs, and the first out Extra Board Clerk, Kansas City, Kansas, for an additional eight (8) hours pay at the time and one-half rate of \$127.98 for March 19, April 23 and 25, 1998 account the Carrier used non-covered Carrier officers to perform clerical work in violation of the Clerks' Agreement.

Mr. R. L. Camp Assistant Director LR/NON-OPS Union Pacific Railroad Room 335, 1416 Dodge Street Omaha, Nebraska 68179

Dear Sir:

Prior to and on the above mentioned dates, Mr. Wilson was assigned to Position No. 009, 7:59 a.m. - 3:59 a.m., with Sunday and Monday as rest days. His assigned duties included hauling crews in and around Armourdale Yard.

On March 19, 1998, Engineer T. Jacobson was transported by MTO, Gary Barnes, to Train IHNBP 13 at 12th Street and Hickory. A clerk was available to handle this Engineer but the MTO hauled him instead.

On April 23, 1998, at 2:15 p.m., a train crew, Conductor R. A. Bettles and Engineer D. R. Wilson, were transported to the Armourdale Yard Office from 18th Street Yard by MYO Grady Shepherd. A clerk was available to handle this crew but was not used.

On April 25, 1998, at 3:30 p.m., a train crew, Conductor R. A. Bettles and Engineer D. T. Hull, were transported from 18th Street Yard to the Armourdale Yard Office. A clerk was available to handle this crew but not used.

August 3, 1998

2.

Mr. R. L. Camp SSW-10-CL-98-149

In declining this claim Ms. Reams indicated that the Organization furnished no documentation supporting the allegations in this claim. This incident can be verified by checking with Tom Jacobson and Roger Bettles. Attached are statements from these crew members.

Ms. Reams asserts a history and practice of others hauling crews in Kansas City, Kansas; however, not one iota of evidence was furnished to support this assertion. The Organization denies this unsupported allegation and directs the Carrier's attention to Award 8 of Public Law Board 2969 and Third Division Award 19924.

In Award 8 of Public Law Board 2969 Referee Kasher states in part:

...However, while recognizing that the Organization cannot claim exclusive right to the work, the Organization can argue that the work is covered by the Scope Rule and that in order for an officer or employee not covered by the rule to properly be assigned the work that it must be shown that the work is incident to his/her regular duties.

In this Board's opinion the Organization has met its initial burden of proof with regard to the question of "incident" to his regular duties; that is, the Organization has established that the messengering and crew hauling functions represent work that ordinarily, although not exclusively, fall within the scope of its agreement. The burden now shifts to the Carrier to establish that the work which is covered by the agreement and which is subject matter of the instant claims was work incident to the regular duties of the supervisory or non-covered employees who perform them.

In this Board's opinion, the Carrier has failed to carry this burden and therefore the claims will be sustained...

The pertinent part of Third Division Award 19924 states as follows:

August 3, 1998

Mr. R. L. Camp SSW-10-CL-98-149

... The record in this case is devoid of any evidence to support Carrier's contention of past practice. We have held in many cases over the years that the party asserting a past practice as a defense must prove, by substantial evidence, the existence of such practice. In Award 17000 for example, we said:

"Past practice is an affirmative defense and must by a preponderance of evidence be proven by the party relying on it. Insofar as this record is concerned there is no evidence upon which this Board can find that such practice did in fact exist...In the absence of evidence to sustain their position however, their argument is reduced to a mere declaration, and we accordingly must reject it."

Since the claimed past practice was not established by Carrier, the provisions of Rule 69 (c) are not applicable to this dispute. Rule 55 (H) is clear and unambiguous and as both parties concede classifies the work coming under the scope of the Agreement. As a basic principal, work of positions covered by an Agreement belongs to those employees for whose benefit the contract was made and such work may not be assigned to employees outside the Agreement. (See Awards 3955, 10871 and others.) Therefore, we must conclude that Carrier erred in assigning the work in question to employees not covered by the Maintenance of Way Agreement...

These Awards are on point and apply to this case at bar. The work of crew hauling was the issue in Award 8 of PLB 2969. The Carrier has not proven this work is incident to outsiders nor has it furnished any proof that others not covered by the Scope Rule have performed this disputed work. As stated above, Award No. 8 of PLB 2969 addressed the issue of crew hauling.

As for the argument of excessive penalty, may I remind you that the minimum call is four (4) hours at the time and one-half

August 3, 1998 Mr. R. L. Camp SSW-10-CL-98-149 rate of pay under the Clerks' Agreement, as amended. The Carrier violated the Clerks' Agreement, including, but not limited to, Rule 1 and Addenda thereto, Rules 2 and 69, when it allowed and/or required non-covered officers, Gary Barnes and Grady Shepherd, to haul crew members instead of allowing clerical employees to perform this work. The Carrier shall now allow the claim as presented for an additional eight (8) hours at the time and one-half rate of \$127.98 for March 19, April 23 and 25, 1998. These claims have been handled in the proper manner by the Organization and declined by Labor Relations officer D. Reams under files 1123656, 1123657 and 1123658. This claim is herewith appealed to you for your consideration and no further handling of this matter by local representatives of this Organization shall be permitted without the concurrence of the undersigned. Please advise when this claim will be allowed. Sincerely yours, Phillip T. Trittel Assistant to the President ASD-TCU PTT: jt Attachments cc: Mr. Les Unrein, DC (150-008,9,10-98)

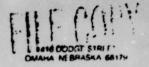
IHNBP 13 K.C Cf 950 Am West Quing Took to Hickory Dun Tom Jacobson Jary Barnes 2 pm. 3/19/98 Get statements as Diforto from Tom facolison a clerk was available to Transport Tim Jarobann and MTO Gary Baines hauled me to IHNBF 13. Therefore Filst Engineer: Wariney, Ma.

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## UNION PACIFIC RAILROAD COMPANY





October 9, 1998

Carrier File Nos. 1119536; 1120048; 1119542; 1119538; 1120043; 1121839; 1123653; 1119541; 1120046; 1123655; 1120050; 1126150; 1126151; 1126156; 1126157; 1126152; 1126153; 1126154; 1126155; 1123656; 1123657; 1123658; 1123659

Mr. P. T. Trittle Allied Services Division/TCU P. O. Box 3095 Humble, TX 77347-3095

Dear Sir:

Reference is made to appeal letters covering your Claim File Nos. SP-04-CL-98-140. SP-04-CL-98-147. SP-04-CL-98-139. SP-04-CL-98-136. SP-04-CL-98-148. SP-04-CL-98-153. SP-04-CL-98-154. CL-04-CL-98-160. SP-04-CL-98-151. SP-04-CL-98-155. SP-04-CL-98-157. SP-04-CL-98-158. SP-04-CL-98-159. SSW-10-CL-98-149. and SSW-10-CL-98-150 therein appealing Ms. Reams' decision to deny these claims as presented.

After reviewing each of the claims referenced herein, and after reviewing each of the appeals, the Carrier's position remains unchanged and the above claims will remain denied in their entirety.

Yours truly,

Robert L. Camp

Asst. Director Labor Relations/Non Ops

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32760 (SUB36) 195938V3

# TRANSPORTATION COMMUNICATIONS UNION ALLIED SERVICES DIVISION LES UNREIN, DISTRICT CHAIRMAN 150 4512 N.E. KINGSTON DRIVE LEE'S SUMMIT, MO 64064

JUN 04 1998

LABUR MELATIONS

D. L. Reams
Labor Relations Officer/Non Ops
Room 335
1416 Dodge Street
Omaha, NE 68179

1127635

Claim Report - District 150

Claimant Information

E. G. Koder 6812 Antioch Apt 167 Merriam, Ks. 66204 Seniority Date 9/6/83 Phone 913-432-1025

Date: May 22, 1998

File: 150-015-98

Union Pacific Railroad Company
Armourdale Yard - Kansas City, Ks.
Position - 007
Primary Duties Computer Data Input, Haul crews, Check trains, tracks, transfers, payroll, extra board.
Hours of Work 2359-0759
Rest Days Sun/Mon
Immediate Supervisor - MYO Les Mackovich - Yardmaster Kyle

Date of Violation May 18, 1998

Statement of Claim:

The Carrier violated the TCU Agreement at Kansas City, Ks., on May 18, 1998, when it allowed or required UP car 4 from Neff Yard, Kansas City, Mo. to transport the Armourdale Hostlers from Armourdale Yard, Kansas City, Ks. to the UP 18th St. Yard. The Carrier will now be required to compensate claimant, E. G. Koder and any successors, reliefs and first out Extra Board Clerk for Eight hours pay at the time and one-half rate of \$129.90 per day over and above any other compensation received for May 18, 1998.

#### Statement of Facts:

At 0245 hours on May 18, 1998, UP car 4 from Neff Yard, Kansas City, Mo. transported the Armourdale Yard hostlers from Armourdale Yard to the UP 18th St. yard. MYO, Les Mackovich at the UP 18th St yard was responsible for this move. In his claim statement Asst. Chief Clerk, E. G. Koder states he was available to transport this crew and General Clerk, F. R. Moore was setting in the yard and could have also transported this crew. There is no Hub Agreement or merger of yard operations nor has any clerical work been transferred.

File: 150-015-98 p.2 5/22/97 The transporting of train or switch crews or a member or members thereof from Armourdale Yard, Kansas City, Ks. to the a location in the Kansas City Metro area has always been performed 100% by the clerks at Armourdale yard, Kansas City, Ks. In the settlement of claims under the Fletcher award application at Armourdale Yard, Kansas City, Ks., the crew hauling claims from Armourdale Yard to locations in the Kansas City Metro area were paid because it was determined the work belonged exclusively to the clerks at Armourdale Yard, Kansas City, Ks. Position of Employees: It is the position of the Employees that the Carrier violated the Clerks' Agreement, including, but not limited to, Rules 1 (and Addenda thereto), Rules 2 and 69, when it allowed UP Car 4 to perform clerical work in violation of the Agreement.

In statements furnished to Labor Relations Manager, Jim Huffman requesting the crew hauling done by the Clerks at Armourdale Yard he received the following information. The hauling of train crews and switch crews or a member or members thereof at Armourdals Yard, the Kansas City Metro Area and foreign lines located in the Kansas City Metro Area, Kansas City to Topeka, Ks., Kansas City to Maxwell, Mo., Kansas City to Independence, Sugar Creek and Courtney, Mo. belongs exclusively 100% to the Clerks at Armourdale Yard, Kansas City, Ks. The crew hauling as stated are our bulletined and assigned duties and have always been performed by the Clerks at Armourdale Yard, Kansas City, Ks. Please advise when claim will be settled. Yours truly, es Unrein District Chairman 150 cc: E. G. Koder

# ALLIED SERVICES DIVISION TRANSPORTATION COMMUNICATIONS UNION Les Unrein, District Chairman 150 4512 N. E. Kingston Dr. Lee's Summit, MO 64064

Date:

Mr. N. T. Miller Labor Relations Officer/Non Ops Room 335 1416 Dodge Street Omaha, NE 68179

Claim Report - District 150

Claimant Information

Name E. M. Koden	Seniority Date Sept L, 1983
Home Address 1812 ANTIOCH APT	167 Merrian, KS. 66204
	Phone 913-452-1025
Company Employed By Union Pac	ific Railroad Company
Work Location Amagurdale Verd	
Position ChiefChrk	Rate of Pay
Primary Duties Haul Creus - CK Hd	Fracks C'K OUT BOWN FRAINS Made up
By Window Bullrion arc	
Hours of Work 1154 - 759am	Rest Days Sun- Mon
Immediated Supervisor Vdm KVLC	- MFO LES MACKOVICH
Date of Violation May 18 14 199	9
Claim: Car 4 From Neff TOOK AIM	
	W MAS JUST BACK (240AM) From
	Kyle "Nothing to do, come upstains"
AT 245 cm Car 4 Arrives To Take	
	CEFF ACCT OUT VANS WERE 80Th BUSY
I left for BNSF at USan And	Returned AT 240am.
BASE YARD IS ONLY ONE MILE A	way, while NEFF Nd 15 over baile
Away Car Four Otiver was Re	

## UNION PACIFIC RAILROAD COMPANY



CMAHA NERHASAA EMIT

July 31, 1998

Carrier File No. 1127635 Organization File No. 150-015-98

Mr. L. J. Unrein, District Chairman Allied Services Division/TCU 4512 N. E. Kingston Drive Lec's Summit, MO. 64064

Dear Sir:

In reference to your letter dated May 22, 1998, received in this office on June 4, 1998, in regard to the following:

"The Carrier violated the TCU Agreement at Kansas City, Ks., on May 18, 1998, when it allowed or required UP car 4 from Neff Yard, Kansas City, Mo. to transport the Armourdale Hostlers from Armourdale Yard, Kansas City, Ks. to the UP 18th St. Yard. The Carrier will now be required to compensate claimant, E. G. Koder and any successors, reliefs and first out Extra Board Clerk for Eight hours pay at the time and one-half rate of \$129.90 per day over and above any other compensation received for May 18, 1998."

This claim is one of three filed for the same shift on the same claim date (see Carrier File No. 1127637, Organization File 150-017-98 and Carrier File 1127638, Organization's File 150-018-98). The pyramiding and/or stacking of claims is improper under Section 3, first (I) of the Railway Labor Act, as amended, and the claim should be withdrawn from further progression.

Without waiving the Carrier's position outlined above, the transporting of crews has historically been a shared work responsibility which has been performed by others including, but not limited to, clerks, officers, yard supervisors, taxis, buses, and limousine services. The work is not nor ever has been considered exclusively reserved to the clerical craft, and the Organization's contentions to the contrary are denied.

This issue was addressed in Award 42 of Public Law Board 1952, which in pertinent part found:

"... the Organization is not required to prove that the work involved has historically ben performed exclusively by members of the craft. Rather, it need only show that work which was being performed by the craft at the time the Agreement was signed has now been assigned elsewhere. In the present case, the record shows that at the time the Agreement was signed, Carrier employed a variety of means for moving train crews in this territory. In addition to being transported

Mr. L. J. Unrein, District Chairman Allied Services Division/TCU Carrier File 1127635; Organization File 150-015-98 Page 2 July 31, 1998

by clerks in Company carryalls, crews were also often moved by taxi, bus, limousine, or Carrier vehicles driven by employees other than clerks. The evidence submitted by the Organization shows only that this practice has been continued to the present day. Without more, it can not be held that Claimant was deprived of work which, at the time the Agreement was signed, he would have been allowed to perform. The claim must therefore be denied, and the Board need not address the issue of whether the award of pay at the overtime rate is a proper penalty."

It is apparent that the situation at this location is no different from the crew hauling issue addressed at many locations across the system. The Carrier has traditionally and historically utilized others to transport crews, and this work is not exclusive to the clerical craft.

In addition, the Organization has failed to provide any documentation supporting their allegations in this instance. In this regard, the Organization is reminded that the burden of proving an agreement violation lies with Claimant and the Organization, and your burden has not been met in this case. In this regard, Referee Perelson stated in award No. 21 of Public Law Board 843:

"A host of awards of the Third Division hold that the burden is upon the Brotherhood to support its assertions with competent evidence. Here, the Brotherhood's entire case rests on allegations and arguments which are not supported by any evidence to overcome the Carrier's defense. The Brotherhood, being the proponent, always has the duty and obligation of submitting and presenting factual evidence to substantiate its claim. This must be done by a preponderance of evidence."

As for the penalty being requested in this instance, even if an agreement violation could be established, which is denied, the compensation requested is both excessive and without agreement support. The proper penalty could only be at the straight time rate for the actual amount of time spent in performing the work as claimed.

Claimant was fully employed and suffered no monetary harm.

There was no violation of Rule 1 or the Addenda thereto, Rules 2 or 69, or any other related rule of the working agreement.

For the reasons stated above, the claim is denied in its entirety.

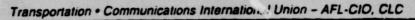
Yours truly,

Dawn L. Reams

Labor Relations Manager/Non-Ops



MISION





STO 15 1008

ROBERT F. DAVIS

TED P. STAFFORD

General Secretary-Treasurer

LABOR THE ATTOMS

PHILLIP T. TRITTEL
Assistant to the President

September 9, 1998

POST OFFICE BOX 3095 HUMBLE, TEXAS 77347-3095 PHONE: (281)812-4078 FAX: (281)812-4079

SSW-10-CL-98-173 Carrier # 1127635 Carrier # 1127636

Appeal of claim for and on behalf of Mr. E. G. Koder, any successors and reliefs, and the first out Extra Board Clerk, Kansas City, Kansas, for an additional eight (8) hours pay at the time and one-half rate of \$129.90 for May 18 and 19, 1998 account the Carrier used an non-covered employee to perform clerical work in violation of the Clerks' Agreement.

Mr. R. L. Camp Assistant Director LR/NON-OPS Union Pacific Railroad Room 355, 1416 Dodge Street Omaha, Nebraska 68179

Dear Sir:

Prior to and on the above mentioned dates, Mr. Koder was assigned to Position No. 007, 11:59 p.m. - 7:59 a.m., with Sunday and Monday as rest days. His assigned duties included hauling crews in and around Armourdale Yard.

On May 18, 1998, at 2:45 a.m., UP Car 4 from Neff Yard handled Armourdale Yard Hostlers from Armourdale Yard to the UP 18th Street Yard. Clerk Koder and Moore were available to handle this crew but were no used.

On May 19, 1998, at 7:10 a.m., UP crew hauler at Neff Yard, Kansas City, Missouri transported Engineer M. A. Dixon from Neff Yard to the Howard Johnson Hotel, Nolan Road, Independence, Missouri. Clerk Koder was available to handle this crew but was not used.

In declining this claim Ms. Reams indicated that the Organization furnished no documentation supporting the allegations

in this claim. This incident can be verified by the Hostlers and Engineer Dixon who were hauled by non-covered UP employees.

Ms. Reams asserts a history and practice of others hauling crews in Kansas City, Kansas; however, not one iota of evidence was furnished to support this assertion. The Organization denies this unsupported allegation and directs the Carrier's attention to Award 8 of Public Law Board 2969 and Third Division Award 19924.

In Award 8 of Public Law Board 2969 Referee Kasher states in part:

...However, while recognizing that the Organization cannot claim exclusive right to the work, the Organization can argue that the work is covered by the Scope Rule and that in order for an officer or employee not covered by the rule to properly be assigned the work that it must be shown that the work is incident to his/her regular duties.

In this Board's opinion the Organization has met its initial burden of proof with regard to the question of "incident" to his regular duties; that is, the Organization has established that the messengering and crew hauling functions represent work that ordinarily, although not exclusively, fall within the scope of its agreement. The burden now shifts to the Carrier to establish that the work which is covered by the agreement and which is subject matter of the instant claims was work incident to the regular duties of the supervisory or non-covered employees who perform them.

In this Board's opinion, the Carrier has failed to carry this burden and therefore the claims will be sustained...

The pertinent part of Third Division Award 19924 states as follows:

... The record in this case is devoid of any evidence to support Carrier's contention of

past practice. We have held in many cases over the years that the party asserting a past practice as a defense must prove, by substantial evidence, the existence of such practice. In Award 17000 for example, we said:

"Past practice is an affirmative defense and must by a preponderance of evidence be proven by the party relying on it. Insofar as this record is concerned there is no evidence upon which this Board can find that such practice did in fact exist.... In the absence of evidence to sustain their position however, their argument is reduced to a mere declaration, and we accordingly must reject it."

Since the claimed past practice was not established by Carrier, the provisions of Rule 69 (c) are not applicable to this dispute. Rule 55 (H) is clear and unambiguous and as both parties concede classifies the work coming under the scope of the Agreement. As a basic principal, work of positions covered by an Agreement belongs to those employees for whose benefit the contract was made and such work may not be assigned to employees outside the Agreement. (See Awards 3955, 10871 and others.) Therefore, we must conclude that Carrier erred in assigning the work in question to employees not covered by the Maintenance of Way Agreement...

These Awards are on point and apply to this case at bar. The work of crew hauling was the issue in Award 8 of PLB 2969. The Carrier has not proven this work is incident to outsiders nor has it furnished any proof that others not covered by the Scope Rule have performed this disputed work. As stated above, Award No. 8 of PLB 2969 addressed the issue of crew hauling.

As for the argument of excessive penalty, may I remind you that the minimum call is four (4) hours at the time and one-half rate of pay under the Clerks' Agreement, as amended.

September 9, 1998 Mr. R. L. Camp SSW-10-CL-98-173 The Carrier violated the Clerks' Agreement, including, but not limited to, Rule 1 and Addenda thereto, Rules 2 and 69, when it allowed and/or required a non-covered employee, to haul crew members instead of allowing clerical employees to perform this work. The Carrier shall now allow the claim as presented for an additional eight (8) hours at the time and one-half rate of \$129.90 for May 18 and 19, 1998. These claims have been handled in the proper manner by the Organization and declined by Labor Relations officer D. Reams under files 1127635 and 1127636. This claim is herewith appealed to you for your consideration and no further handling of this matter by local representatives of this Organization shall be permitted without the concurrence of the undersigned. Please advise when this claim will be allowed. Sincerely yours, Phillip T. Trittel Assistant to the President ASD-TCU PTT:jt cc: Mr. Les Unrein, DC (150-015,016-98)

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#### UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREE" OMAHA, NEBHASKA 68179



November 11, 1998

Carrier File Nos. 1131738; 1131739; 1127637; 1127638; 1127642; 1127639; 1127640; 1127641; 1131740; 1127635; 1127636; 1127634; 1127632; 1127633

Mr. P. T. Trittle Allied Services Division/TCU P. O. Box 3095 Humble, TX 77347-3095

Dear Sir:

Reference is made to appeal letters covering your Claim File Nos. SSW-10-CL-98-169; SSW-10-CL-98-171; SSW-10-CL-98-172; SSW-10-CL-98-168; SSW-10-CL-98-173; SSW-10-98-176; SSW-10-CL-98-174; and SSW-10-CL-98-175 therein appealing Ms. Reams' decision to deny these claims as presented.

After reviewing each of the claims referenced herein, and after reviewing each of the appeals, the Carrier's position remains unchanged and the above claims will remain denied in their entirety.

Yours truly,

Robert L. Camp

Asst. Director Labor Relations/Non Ops

SR VICE PRESIDENT
MAY 1 158
LABOR RELATIONS

# TRANSPORTATION COMMUNICATIONS UNION ALLIED SERVICES DIVISION LES UNREIN, DISTRICT CHAIRMAN 150 4512 N.E. KINGSTON DRIVE LEE'S SUMMIT, MO 64064

D. L. Reams
Labor Relations Officer/Non Ops
Date: May 8, 1998
File: 150-008-98

Room 335 1416 Dodge Street Cmaha, NE 68179

1123656

Claim Report - District 150

Claimant Information

B. L. Wilson
315 E. Sea
Independence, MO 64050

Seniority Date 9/25/57
Phone 816-254-0462

Union Pacific Railroad Company
Armourdale Yard - Kansas City, Ks.
Position - 009 Gen Clerk Rate of Pay \$127.98 Per Day
Primary Duties Haul crews, Check trains, tracks, transfers.

Hours of Work 0759-1559 Rest Days Sun\Mon Immediate Supervisor - MYO W. G. Shepherd

Date of Violation March 19, 1998 Statement of Claim:

The Carrier violated the TCU Agreement at Kansas City, Ks., on March 19, 1991, when it allowed or required MTO, Gary Barnes, to transport the engineer, T. Jacobson to train IHNBP 13. The Carrier will now be required to compensate claimant, B. L. Wilson and any successors, reliefs and first out Extra Board Clerk for Eight hours pay at the time and one-half rate of \$127.98 per day over and above any other compensation received for March 19, 1998.

## Statement of Pacts:

The train IHNBP 13 called for 0950 hours operating Kansas City, KS to West Quincy, MO, left Armourdale Yard without pilotengineer, T. Jacobson. MTO, Gary Barnes, transported pilotengineer, T. Jacobson to train IHNBP 13 located at 12th St and Hickory, the Hickory Inn, Kansas City, Ks. Per T. Jacobson's signed statement he stated = clerk was available to transport him but the MTO transported him instead.

File: 150-008-98 p. 2 5/8/97 The hauling of crews from Armourdale Yard to locations in the Kansas City Metro area has always been performed by the clerks at the Armourdale Yard Office, Kansas City, Ks. In the settlement of claims under the Fletcher award at Kansas City, Ks., the crew hauling claims for Armourdale Yard and including the Kansas City Metro Area were paid because it was determined that it was our work. The General Clerk, B. L. Wilson, was available to perform his assigned duties. Position of Employees: It is the position of the Employees that the Carrier violated the Clerks' Agreement, including, but not limited to, Rules 1 (and Addenda thereto), Rules 2 and 69, when it used a noncovered agreement person to perform clerical work in violation of the Agreement. In statements furnished to Labor Relations Manager, Jim Huffman requesting the crew hauling done by the Clerks at Armourdale Yard he received the following information. The hauling of train crews and switch crews or a member or members thereof at Armourdale Yard, the Kansas City Metro Area and foreign lines located in the Kansas City Metro Area, Kansas City to Topeka, Ks., Kansas City to Maxwell, Mo., Kansas City to Independence, Sugar Creek and Courties, Mo. belongs exclusively 100% to the Clerks at Armourdale Yard, Kansas City, Ks. The crew hauling as stated is our bulletined and assigned duties and have always been performed by the Clerks at Armourdale Yard, Kansas City, Ks. Please advise when claim will be settled. Yours, truly, District Chairman 150 cc: B. L. Wilson

IHNBP 13 Cf 950 Am Took to Hickory West Owney Dun Tom Jacobson-Jary Barnes 2 pm. 3/19/98 Get statement as to facto from Tom facolison a clesh was available to Transport Tem Jordenn and MTO Gany Baines hauled me to IHNBF 13. Theoher filst linguier:

## UNION PACIFIC RAILROAD COMPANY





July 9, 1998 Carrier File No. 1123656 Organization File No. 150-008-98

Mr. L. J. Unrein, District Chairman Allied Services Division/TCU 4512 N. E. Kingston Drive Lee's Summit, MO. 64064

Dear Sir:

In reference to your letter dated May 8, 1998, received in this office on May 11, 1998, in regard to the following:

"The Carrier violated the TCU Agreement at Kansas City, Ks., on March 19, 1998, when it allowed or required MTO, Gary Barnes, to transport the engineer, T. Jacobson to train IHNBP 13. The Carrier will now be required to compensate claimant, B. L. Wilson and any successors, reliefs and first out Extra Board Clerk for Eight hours pay at the time and one-half rate of \$129.98 per day over and above any other compensation received for March 19, 1998."

The transporting of crews has historically been a shared work responsibility which has been performed by others including, but not limited to, elerks, officers, yard supervisors, taxis, buses, and limousine services. The work is not nor ever has been considered exclusively reserved to the clerical craft, and the Organization's contentions to the contrary are denied.

This issue was addressed in Award 42 of Public Law Board 1952, which in pertinent part found:

"... the Organization is not required to prove that the work involved has historically ben performed exclusively by members of the craft. Rather, it need only show that work which was being performed by the craft at the time the Agreement was signed has now been assigned elsewhere. In the present case, the record shows that at the time the Agreement was signed, Carrier employed a variety of means for moving train crews in this territory. In addition to being transported by clerks in Company carryalls, crews were also often moved by taxi, bus, limousine, or Carrier vehicles driven by employees other than clerks. The evidence submitted by the Organization shows only that this practice has been continued to the present day. Without more, it can not be held that Claimant was deprived of work which, at the time the Agreement was signed, he would have been allowed to

Mr. L. J. Unrein, District Chairman Allied Services Division/TCU Carrier File 1123656; Organization File 150-008-98 Page 2 July 9, 1998

perform. The claim must therefore be denied, and the Board need not address the issue of whether the award of pay at the overnime rate is a proper penalty."

It is apparent that the situation at this location is no different from the crew hauling issue addressed at many locations across the system. The Carrier has traditionally and historically utilized others to transport crews, and this work is not exclusive to the clerical craft.

In addition, the Organization has failed to provide any documentation supporting their allegations in this instance. In this regard, the Organization is reminded that the burden of proving an agreement violation lies with Claimant and the Organization, and your burden has not been met in this case. In this regard, Referee Perelson stated in award No. 21 of Public Law Board 843:

"A host of awards of the Third Division hold that the burden is upon the Brotherhood to support its assertions with competent evidence. Here, the Brotherhood's entire case rests on allegations and arguments which are not supported by any evidence to overcome the Carrier's defense. The Brotherhood, being the proponent, always has the duty and obligation of submitting and presenting factual evidence to substantiate its claim. This must be done by a preponderance of evidence."

As for the penalty being requested in this instance, even if an agreement violation could be established, which is denied, the compensation requested is both excessive and without agreement support. The proper penalty could only be at the straight time rate for the actual amount of time spent in performing the work as claimed.

Payroll records reflect that Claimant was unavailable for service on the claim date as a result of his voluntary absence due to illness. The claim on his behalf thereby lacks merit and must be denied.

There was no violation of Rule 1 or the Addenda thereto, Rules 2 or 69, or any other related rule of the working agreement.

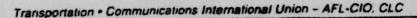
For the reasons stated above, the claim is denied in its entirety.

Vacuni de Rama

Dawn L. Reams

Labor Relations Manager/Non-Ops







ROBERT F. DAVIS

TED P. STAFFORD
General Secretary-Treasurer

\*LES UNREIN District Chairman 150

July 17, 1998 DLR-APL-98-7-17



1/2. . . . . .

Ms. D. L. Reams Labor Relations Officer/Non Ops Room 335 1416 Dodge Street Omaha, NE 68179

Dear Ms. Reams,

Regarding Carrier file nos. 1123656, 1123657, 1123658, and 1123659, dated July 9, 1998 and postmarked July 9, 1998 and received in this office on July 11, 1998. This is to advise you that your decision in these matters are not acceptable and are

being appealed to Mr. P. T. Trittel for further handling.

These files bear my office date of May 8, 1998 and were mailed May 8, 1998, receipt for certified mail enclosed and the receipt for certified return mail was received and signed D. W. Schroeder, UP RR, Omaha, NE, on May 11, 1998, copies enclosed. This is to advise you that you are in violation of Rule 24, Section 1, which states, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance in writing of the reasons for such disallowance.

Please advise when claims will be paid.

Yours truly

Les Unrein

District Chairman 150

cc: P. T. Trittel

B. L. Wilson

G. J. Wilber

Z 378 950 467

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or 150-012-78
\$ 78
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3. Avida Addressed to.  D. L. REAMS  ROOM 335  1416 00066 ST  OMANN, NE 68179		Certified in
5. Received By: (Phil Marie) N-U1 NA  [1/1/ ] 1000  6. Signstate: (Addressee of Aphil)  X (4) L.L.	8. Addresse's Address (Only II requested and tee is paid)  Domestic Return Receipt	
PS Form 3811, December 1994		

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ROBERT F. DAVIS

TED P. STAFFORD
General Secretary-Treasurer

TI 3 (138c)

PHILLIP T. TRITTEL
Assistant to the President

August 3, 1998

POST OFFICE BOX 3095 HUMBLE, TEXAS 77347-3095 PHONE: (281)812-4078

SSW-10-CL-98-149 .C

Carrier # 1123656 (281)812-4079 Carrier # 1123657 Carrier # 1123658

Appeal of claim for and on behalf of Mr. B. L. Wilson, any successors and reliefs, and the first out Extra Board Clerk, Kansas City, Kansas, for an additional eight (8) hours pay at the time and one-half rate of \$127.98 for March 19, April 23 and 25, 1998 account the Carrier used non-covered Carrier officers to perform clerical work in violation of the Clerks' Agreement.

Mr. R. L. Camp Assistant Director LR/NON-OPS Union Pacific Railroad Room 335, 1416 Dodge Street Omaha, Nebraska 68179

Dear Sir:

Prior to and on the above mentioned dates, Mr. Wilson was assigned to Position No. 009, 7:59 a.m. - 3:59 a.m., with Sunday and Monday as rest days. His assigned duties included hauling crews in and around Armourdale Yard.

On March 19, 1998, Engineer T. Jacobson was transported by MTO, Gary Barnes, to Train IHNBP 13 at 12th Street and Hickory. A clerk was available to handle this Engineer but the MTO hauled him instead.

On April 23, 1998, at 2:15 p.m., a train crew, Conductor R. A. Bettles and Engineer D. R. Wilson, were transported to the Armourdale Yard Office from 18th Street Yard by MYO Grady Shepherd. A clerk was available to handle this crew but was not used.

On April 25, 1998, at 3:30 p.m., a train crew, Conductor R. A. Bettles and Engineer D. T. Hull, were transported from 18th Street Yard to the Armourdale Yard Office. A clerk was available to handle this crew but not used.

2. August 3, 1998 Mr. R. L. Camp SSW-10-CL-98-149 In declining this claim Ms. Reams indicated that the Organization furnished no documentation supporting the allegations in this claim. This incident can be verified by checking with Tom Jacobson and Roger Bettles. Attached are statements from these crew members. Ms. Reams asserts a history and practice of others hauling crews in Kansas City, Kansas; however, not one iota of evidence was furnished to support this assertion. The Organization denies this unsupported allegation and directs the Carrier's attention to Award 8 of Public Law Board 2969 and Third Division Award 19924. In Award 8 of Public Law Board 2969 Referee Kasher states in part: .. However, while recognizing that Organization cannot claim exclusive right to the work, the Organization can argue that the work is covered by the Scope Rule and that in order for an officer or employee not covered by the rule to properly be assigned the work that it must be shown that the work is incident to his/her regular duties. In this Board's opinion the Organization has met its initial burden of proof with regard to the question of "incident" to his regular duties; that is, the Organization has established that the messengering and crew hauling functions represent work that ordinarily, although not exclusively, fall within the scope of its agreement. The burden now shifts to the Carrier to establish that the work which is covered by the agreement and which is subject matter of the instant claims was work incident to the regular duties of the supervisory or non-covered employees who perform them. In this Board's opinion, the Carrier has failed to carry this burden and therefore the claims will be sustained ... The pertinent part of Third Division Award 19924 states as follows:

August 3, 1998

3.

... The record in this case is devoid of any evidence to support Carrier's contention of past practice. We have held in many cases over the years that the party asserting a past practice as a defense must prove, by substantial evidence, the existence of such practice. In Award 17000 for example, we said:

"Past practice is an affirmative defense and must by a preponderance of evidence be proven by the party relying on it. Insofar as this record is concerned there is no evidence upon which this Board can find that such practice did in fact exist.... In the absence of evidence to sustain their position however, their argument is reduced to a mere declaration, and we accordingly must reject it."

Since the claimed past practice was not established by Carrier, the provisions of Rule 69 (c) are not applicable to this dispute. Rule 55 (H) is clear and unambiguous and as both parties concede classifies the work coming under the scope of the Agreement. As a basic principal, work of positions covered by an Agreement belongs to those employees for whose benefit the contract was made and such work may not be assigned to employees outside the Agreement. (See Awards 3955, 10871 and others.) Therefore, we must conclude that Carrier erred in assigning the work in question to employees not covered by the Maintenance of Way Agreement...

These Awards are on point and apply to this case at bar. The work of crew hauling was the issue in Award 8 of PLB 2969. The Carrier has not proven this work is incident to outsiders nor has it furnished any proof that others not covered by the Scope Rule have performed this disputed work. As stated above, Award No. 8 of PLB 2969 addressed the issue of crew hauling.

As for the argument of excessive penalty, may I remind you that the minimum call is four (4) hours at the time and one-half

4 . August 3, 1998 Mr. R. L. Camp SSW-10-CL-98-149 rate of pay under the Clerks' Agreement, as amended. The Carrier violated the Clerks' Agreement, including, but not limited to, Rule 1 and Addenda thereto, Rules 2 and 69, when it allowed and/or required non-covered officers, Gary Barnes and Grady Shepherd, to haul crew members instead of allowing clerical employees to perform this work. The Carrier shall now allow the claim as presented for an additional eight (8) hours at the time and one-half rate of \$127.98 for March 19, April 23 and 25, 1998. These claims have been handled in the proper manner by the Organization and declined by Labor Relations officer D. Reams under files 1123656, 1123657 and 1123658. This claim is herewith appealed to you for your consideration and no further handling of this matter by local representatives of this Organization shall be permitted without the concurrence of the undersigned. Please advise when this claim will be allowed. Sincerely yours, Phillip T. Trittel Assistant to the President ASD-TCU PTT: jt Attachments cc: Mr. Les Unrein, DC (150-008, 9, 10-98)

IHNBP 13 K.C Cf 950 Am Took to Hickory West Quincy Dun Tom Jacobson Dary Barnes 230m. 3/19/98 Get statements as De facto from Tom facolison a clesh was available to Transport 

### UNION PACIFIC RAILROAD COMPANY





October 9, 1998

Carrier File Nos. 1119536; 1120048; 1119542; 1119538; 1120043; 1121839; 1123653; 1119541; 1120046; 1123655; 1120050; 1126150; 1126151; 1126156; 1126157; 1126152; 1126153; 1126154; 1126155; 1123656; 1123657; 1123658; 1123659

Mr. P. T. Trittle Allied Services Division/TCU P. O. Box 3095 Humble, TX 77347-3095

Dear Sir:

Reference is made to appeal letters covering your Claim File Nos. SP-04-CL-98-140, SP-04-CL-98-147, SP-04-CL-98-139, SP-04-CL-98-136, SP-04-CL-98-148, SP-04-CL-98-153, SP-04-CL-98-154, CL-04-CL-98-160, SP-04-CL-98-151, SP-04-CL-98-155, SP-04-CL-98-157, SP-04-CL-98-158, SP-04-CL-98-159, SSW-10-CL-98-149, and SSW-10-CL-98-150 therein appealing Ms. Reams' decision to deny these claims as presented.

After reviewing each of the claims referenced herein, and after reviewing each of the appeals, the Carrier's position remains unchanged and the above claims will remain denied in their entirety.

Yours truly,

Robert L. Camp

Asst. Director Labor Relations/Non Ops

Court of (ampl

TRANSPORTATION COMMUNICATIONS UNION ALLIED SERVICES DIVISION 160 LES UNREIN, DISTRICT CHAIRMAN 150 4512 N.E. KINGSTON DRIVE LEE'S SUMMIT, MO 64064 Date: June 26, 1998 File: 150-029-98 Labor Relations Officer/Non Ops 1416 Dodge Street

Claim Report - District 150

1131739

Claimant Information

Omaha, NE 68179

D. L. Reams

Room 335

F. R. Moore 12923 N. Oakland Ln. Kansas City, MO 64166 Seniority Date 3/19/91 Phone 816-781-0757

Union Pacific Railroad Company Armourdale Yard - Kansas City, Ks. Rate of Pay \$129.90 Per Day Chief Clerk Position - 007 Computer Data Input, Haul crews, Check trains, Primary Duties tracks, transfers, payroll, extra board. Rest Days Wed/Thu Hours of Work 2359-0759 Immediate Supervisor - MYO UP 18th St Yard

Date of Violation June 9, 1998

Statement of Claim:

The Carrier violated the TCU Agreement at Kansas City, Ks., on June 9, 1998, when it allowed or required outside contractor, Renzenberger to transport train crew from Howard Johnson Hotel, Independence, Mo. to Amtrak Station, Kansas City, Mo. The Carrier will now be required to compensate claimant, F. R. Moore and any successors, reliefs and first out Extra Board Clerk Eight hours pay at the time and one-half rate of \$129.90 per day over and above any other compensation received for June 9, 1998.

### Statement of Facts:

Train crew consisting of conductor, J. A. Richards and engineer, A. C. Steele were transported from the Howard Johnson Hotel, Independence, No. to Amtrak Station, Kansas City, Mo. Chief Clerk, F. R. Moore, was available to haul crew to Amtrak station a distance of six miles from the crews on duty point at Armourdale Yard, Kansas City, Ks.

File: 150-029-98 p.2 6/26/98 The Clerk's at Armourdale Yard have always performed this duty. The problem now exists with the Kansas City command center and crew callers, CMS, Omaha, not knowing it is exclusively our The transporting of train or switch crews or a member or members thereof to or from Armourdale Yard, Kansas City, Ks. to the a location in the Kansas City Metro area has always been performed 100% by the clerks at Armourdale yard, Kansas City, Ks. In the settlement of claims under the Fletcher award application at Armourdale Yard, Kansas City, Ks., the crew hauling claims from Armourdale Yard to locations in the Kansas City Metro area were paid because it was determined the work belonged exclusively to the clerks at Armourdale Yard, Kansas City, Ks. Position of Employees: It is the position of the Employees that the Carrier violated the Clerks' Agreement, including, but not limited to, Rules 1 (and Addenda thereto), Rules 2 and 69, when it used a noncovered agreement person to perform clerical work in violation of the In statements furnished to Labor Relations Manager, Jim Huffman requesting the crew hauling done by the Clerks at Armourdale Yard he received the following information. The hauling of train crews and switch crews or a member or members thereof at Armourdale Yard, the Kansas City Metro Area and foreign lines located in the Kansas City Metro Area, Kansas City to Topeka, Ks., Kansas City to Maxwell, Mo., Kansas City to Independence, Sugar Creek and Courtney, Mo. belongs exclusively 100% to the Clerks at Armourdale Yard, Kansas City, Ks. The crew hauling as stated are our bulletined and assigned duties and have always been performed by the Clerks at Armourdale Yard, Kansas City, Ks. Please advise when claim will be settled. yours truly, les Unitein District Chairman 150 cc: F. R. Moore

ALLIED SERVICES DIVISION
TRANSPORTATION COMMUNICATIONS UNION
Les Unrein, District Chairman 150
4512 N. E. Kingston Dr.
Lee's Summit, MO 64064

Date:

Mr. N. T. Miller Labor Relations Officer/Non Ops Room 335 1416 Dodge Street Omaha, NE 68179

Claim Report - District 150

Claimant Information	0 10 01
Name F.R. MOORE	_ Saniority Date91
Home Address 12923 N. Oakland	nd La K.C. Mrs 64167
	Phone (8/6) 78/-0757
Company Employed By Union Pa	cific Railroad Company
Work Location Armourdate, K	
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Position Chief Cheek	al Tali
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Chick Outbound Marke-UD 7	PAINS.
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	F.R. Moore
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.\*\*\* MESSAGE SENT: 06/09 04:44 C

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.JOB START: 06/09-0630 C

- JOB DESC: TRK #

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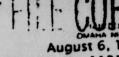
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# UNION PACIFIC RAILROAD COMPANY





Carrier File No. 1131739 Organization File No. 150-029-98

Mr. L. J. Unrein, District Chairman Allied Services Division/TCU 4512 N. E. Kingston Drive Lee's Summit, MO. 64064

Dear Sir:

in reference to your letter dated June 26, 1998, received in this office on June 30, 1998, in regard to the following:

"The Carrier violated the TCU Agreement at Kansas City, Ks., on June 9, 1998, when it allowed or required outside contractor, Renzenberger, to transport a crew from Howard Johnson Hotel, Independence, Mo. to Amtrak Station, Kansas City, Mo. The Carrier will now be required to compensate claimant, F. R. Moore and any successors, reliefs and first out Extra Board Clerk for Eight hours pay at the time and one-half rate of \$129.90 per day over and above any other compensation received for June 9, 1998."

The transporting of crews has historically been a shared work responsibility which has been performed by others including, but not limited to, clerks, officers, yard supervisors, taxis, buses, and limousine services. The work is not nor ever has been considered exclusively reserved to the clerical craft, and the Organization's contentions to the contrary are denied.

This issue was addressed in Award 42 of Public Law Board 1952, which in pertinent part found:

... the Organization is not required to prove that the work involved has historically ben performed exclusively by members of the craft. Rather, it need only show that work which was being performed by the craft at the time the Agreement was signed has now been assigned elsewhere. In the present case, the record shows that at the time the Agreement was signed, Carrier employed a variety of means for moving train crews in this territory. In addition to being transported by clerks in Company carryalls, crews were also often moved by taxi, bus, limousine, or Carrier vehicles driven by employees other than clerks. The evidence submitted by the Organization shows only that this practice has been continued to the present day. Without more, it can not be held that Claimant was deprived of work which, at the time the Agreement was signed, he would have been allowed to perform. The claim must therefore be denied, and the Board Mr. L. J. Unrein, District Chairman Allied Services Division/TCU Carrier File No. 1131739; Organization File No. 150-029-98 Page 2 of 2 August 6, 1998

> need not address the issue of whether the award of payment at the overtime rate is a proper penalty."

It is apparent that the situation at this location is no different from the crew hauling issue addressed at many locations across the system. The Carrier has traditionally and historically utilized others to transport crews, and this work is not exclusive to the clerical craft.

In addition, the Organization has failed to provide any documentation supporting their allegations in this instance. In this regard, the Organization is reminded that the burden of proving an agreement violation lies with Claimant and the Organization, and your burden has not been met in this case. In this regard, Referee Pereison stated in award No. 21 of Public Law Board 843:

"A host of awards of the Third Division hold that the burden is upon the Brotherhood to support its assertions with competent evidence. Here, the Brotherhood's entire case rests on allegations and arguments which are not supported by any evidence to overcome the Carrier's defense. The Brotherhood, being the proponent, always has the duty and obligation of submitting and presenting factual evidence to substantiate its claim. This must be done by a preponderance of evidence."

As for the penalty being requested in this instance, even if an agreement violation could be established, which is denied, the compensation requested is both excessive and without agreement support. The proper penalty could only be at the straight time rate for the actual amount of time spent in performing the work as claimed.

Claimant was fully employed and suffered no monetary harm.

There was no violation of Rule 1 or the Addenda thereto, Rules 2 or 69, or any other related rule of the working agreement.

For the reasons stated above, the claim is denied in its entirety.

Yours truly. Rams

Labor Relations Manager/Non-Ops

SEP 151993

ROBERT F. DAVIS

TED P. STAFFORD
General Secretary-Treasurer

LABOR BELIEFER

PHILLIP T. TRITTEL
Assistant to the President

September 9, 1998

POST OFFICE BOX 3095 HUMBLE, TEXAS 77347-3095 PHONE: (281)812-4078 FAX: (281)812-4079

SSW-10-CL-98-169 Carrier # 1131738 Carrier # 1131739

Appeal of claim for and on behalf of Mr. F. R. Moore, any successors and reliefs, and the first out Extra Board Clerk, Kansas City, Kansas, for an additional eight (8) hours pay at the time and one-half rate of \$129.90 for each date June 4 and 9, 1998, account the Carrier used a non-covered employee to perform clerical work in violation of the Clerks' Agreement.

Mr. R. L. Camp Assistant Director Lk/NON-OPS Union Pacific Railroad Room 355, 1416 Dodge Street Omaha, Nebraska 68179

Dear Sir:

Prior to and on June 4 and 9, 1998, Mr. Moore was assigned to Relief Position No. 154, 049, 11:59 p.m. - 7:59 a.m., with Wednesday and Thursday as rest days. His assigned duties included hauling crews in and around Armourdale Yard.

On June 4, 1998, at approximately 1:00 a.m., Conductor J. L. Freeman and Engineer, J. G. Hatzidakis, were transported by outside contractor Renzenberger from the Amtrak Station to the Howard Johnson Hotel, Independence, Missouri. Carry-all Driver F. R. Moore was available to haul this crew from Amtrak Station to Armourdale Yard.

On June 9, 1998, Conductor J. A. Richards and Engineer A. C. Steele were transported by outside contractor Renzenberger from the Howard Johnson Hotel, Independence, Missouri to Amtrak Station, Kansas City, Missouri. Carry-all Driver F. R. Moore was available to haul this crew.

September 9, 1998 2. Mr. R. L. Camp SSW-10-CL-98-169 The Carrier violated the Clerks' Agreement, including, but not limited to, Rule 1 and Addenda thereto, Rules 2 and 69, when it allowed and/or required non-covered outside contractor Renzenberger to haul crew members instead of allowing F. R. Moore to perform this work. The Carrier shall now allow the claim as presented for an additional eight (8) hours at the time and one-half rate of \$129.90 for each date of June 4 and 9, 1998. In declining this claim Ms. Reams indicated that the Organization furnished no documentation supporting the allegations in this claim. This incident can be verified by checking with Conductors Freeman and Richards who were hauled by the outside contractor. Chief Clerk F. R. Moore was a witness to the incident.

Ms. Reams asserts a history and practice of others hauling crews in Kansas City, Kansas; however, not one iota of evidence was furnished to support this assertion. The Organization denies this unsupported allegation and directs the Carrier's attention to Award 8 of Public Law Board 2969 and Third Division Award 19924.

In Award 8 of Public Law Board 2969 Referee Kasher states in part:

...However, while recognizing that the Organization cannot claim exclusive right to the work, the Organization can argue that the work is covered by the Scope Rule and that in order for an officer or employee not covered by the rule to properly be assigned the work that it must be shown that the work is incident to his/her regular duties.

In this Board's opinion the Organization has met its initial burden of proof with regular to the question of "incident" to his regular duties; that is, the Organization has established that the messengering and crew hauling functions represent work that ordinarily, although not exclusively, fall within the scope of its agreement. The burden now shifts to the Carrier to establish that the work which is covered by the agreement and which is subject matter of the instant claims was work incident to the regular duties of the supervisory or non-covered employees who

Mr. R. L. Camp

perform them.

In this Board's opinion, the Carrier has failed to carry this burden and therefore the claims will be sustained...

The pertinent part of Third Division Award 19924 states as follows:

...The record in this case is devoid of any evidence to support Carrier's contention of

... The record in this case is devoid of any evidence to support Carrier's contention of past practice. We have held in many cases over the years that the party asserting a past practice as a defense must prove, by substantial evidence, the existence of such practice. In Award 17000 for example, we said:

"Past practice is an affirmative defense and must by a preponderance of evidence be proven by the party relying on it. Insofar as this record is concerned there is no evidence upon which this Board can find that such practice did in fact exist.... In the absence of evidence to sustain their position however, their argument is reduced to a mere declaration, and we accordingly must reject it."

Since the claimed past practice was not established by Carrier, the provisions of Rule 69 (c) are not applicable to this dispute. Rule 55 (H) is clear and unambiguous and as both parties concede classifies the work coming under the scope of the Agreement. As a basic principal, work of positions covered by an Agreement belongs to those employees for whose benefit the contract was made and such work may not be assigned to employees outside the Agreement. (See Awards 3955, 10871 and others.) Therefore, we must conclude that Carrier erred in assigning the work in question to employees not covered by the Maintenance of Way Agreement...

September 9, 1998 Mr. R. L. Camp SSW-10-CL-98-169 These Awards are on point and apply to this case at bar. The work of crew hauling was the issue in Award 8 of PLB 2969. The Carrier has not proven this work is incident to outsiders nor has it furnished any proof that others not covered by the Scope Rule have performed this disputed work. As stated above, Award No. 8 of PLB 2969 addressed the issue of crew hauling. As for the argument of excessive penalty, may I remind you that the minimum call is four (4) hours at the time and one-half rate of pay under the Clerks' Agreement, as amended. This claim has been handled in the proper manner by the Organization and declined by Labor Relations officer D. Reams under files 1131738 and 1131739. This claim is herewith appealed to you for your consideration and no further handling of this matter by local representatives of this Organization shall be permitted without the concurrence of the undersigned. Please advise when this claim will be allowed. Sincerely yours, Phillip T. Trittel Assistant to the President ASD-TCU PTT:jt cc: Mr. Les Unrein, DC (150-028,029-98)

LILL UULL

## UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET OMAHA, NEBRASKA 68179



November 11, 1998

Carrier File Nos. 1131738; 1131739; 1127637; 1127638; 1127642; 1127639; 1127640; 1127641; 1131740; 1127635; 1127636; 1127634; 1127632; 1127633

Mr. P. T. Trittle Allied Services Division/TCU P. O. Box 3095 Humble, TX 77347-3095

Dear Sir:

Reference is made to appeal letters covering your Claim File Nos. SSW-10-CL-98-169; SSW-10-CL-98-171; SSW-10-CL-98-172; SSW-10-CL-98-168; SSW-10-CL-98-173; SSW-10-98-176; SSW-10-CL-98-174; and SSW-10-CL-98-175 therein appealing Ms. Reams' decision to deny these claims as presented.

After reviewing each of the claims referenced herein, and after reviewing each of the appeals, the Carrier's position remains unchanged and the above claims will remain denied in their entirety.

Yours truly,

Remote de Caralta

Robert L. Camp Asst. Director Labor Relations/Non Ops PARTIES ) BROTHERHOOD OF RAILROAD SIGNALMEN TO ) DISPUTE ) UNION PACIFIC RAILROAD COMPANY

### ISSUE

Is the Carrier's notice of January 8, 1997, appropriate and in furtherance of the Surface Transportation Board's ("STB") decision rendered in Finance Docket 32760 with respect to Field Engineers, Chief Draftsman, Draftsman, Assistant Engineers, Detector Car and Assistant Detector Car Engineers?

### OPINION OF BOARD

STB approval of the Union Pacific ("UP")/Southern Pacific ("SP") merger occurred by order dated August 6. 1996 (Finance Docket 32760), and imposed New York Dock conditions. ARTE (which merged with the Organization), represented Draftsmen. Valuation Clerks, Detector Car Operators, Field Engineers and Chemists on the SP (Western Lines) under a separate agreement. Those positions on the UP are represented by TCU, ARASA or are non-covered.

By letter dated January 8, 1997, the Carrier notified the Organization of the following: ... [P]ursuant to Section 4 of the New York Dock conditions, notice is hereby given of UP's intent to abolish and transfer the following work and positions:

All work performed by and accruing to "ARTE" represented employees of the Southern Pacific Transportation Company (Western Lines). Such work and positions will be transferred to various locations throughout the UPRR system. Such employees electing to transfer will assume the representational status of UPRR employees performing comparable work.

For the treatment of certain ARTE represented positions from the SP, negotiations between the parties were successful resulting in an implementing agreement of March 7, 1997. However, the parties were unable to agree upon the treatment of Field Engineers, Chief Draftsman, Draftsman, Assistant Engineers, Detector Car and Assistant Detector Car Engineers. The parties agreed to submit the treatment of the outstanding classifications to arbitration, agreeing further that a an

award favorable to the Carrier would result in application of the March 7, 1997 implementing agreement to the disputed classifications.

In Finance Docket 32760 at 99. the STB stated that it had to consider "the public benefits that will result from the transaction" which "may be defined as efficiency gains such as cost reductions, cost savings, and service improvements." The STB found at 109 that public benefits would exist from the merger, in part, because "UP/SP will: ... pursue numerous coordinations and consolidations of transportation, mechanical, engineering, information, purchasing, customer service, and other operating and marketing functions and service ... land elconomics will also be achieved in applicant carriers' administrative functions by combining SP and UP departments to permit more efficient use of existing personnel and reduce overall staff and office space."

In this case, the Carrier therefore must show that its actions will result in a transportation benefit in furtherance of the STB's order. As just discussed, that benefit to the public could be efficiency of operations.

The Carrier's burden is not a heavy one. This Board's role and the Carrier's burden in these cases were discussed in Finance Docket No. 32035 (1995) at 3:

... Arbitrators should discuss the necessity of modifications to pre-transaction labor arrangements, taking care to reconcile the operational needs of the transaction with the need to preserve pre-transaction arrangements. Arbitrators should not require the carrier to bear a heavy burden (for example, through detailed operational studies) in justifying operational and related work assignment and employment level changes that are clearly necessary to make the merged entity operate efficiently as a unified system rather than as two separate entities. if these changes are identified with reasonable particularity. ....

Here, the Carrier has met its burden.

First, with respect to the SP Chief Draftsmen and Draftsmen, the Carrier plans to transfer those individuals to Omaha and combine their functions with the UP drafting functions. This will allow utilization of both SP and UP draftsmen system wide with the distribution of work between the two groups. The Carrier has sufficiently shown there will be more efficient operations through this action.

Second, with respect to Detector Car Operators, the Carrier intends to realign the territories over which these cars function so as to permit the cars and Operators to function system wide which will eliminate overlapping functions. Again, the result will be more efficient operations.

Third, the Field Engineering personnel are charged with developing survey data, supervision of construction forces and inspection of contracted work. The Carrier's plan is to use these employees system wide which will give increased mobility and flexibility. The Carrier has thus sufficiently shown that the combination of these individuals will result in a more efficient use of their skills.

In sum then, the Carrier has shown that by combining the forces as planned, the result will be the ability to use these individuals on a system wide basis without having the boundary restrictions that might exist by keeping the former SP and UP employees in these categories separate. The bottom line is therefore more efficient operations. The Carrier has sufficiently shown a transportation benefit. The treatment of these employees as contemplated by the Carrier will thus be in furtherance of the STB's order concerning this merger.

The ARTE represented employees' objections are understandable. Reallocations may well be the end

product of the Carrier's actions. The representational status of the employees will change. However, it has been demonstrated that by not permitting the Carrier's actions, the former SP and UP boundaries will remain and the Carrier has shown under the degree of its burden required in these cases that without the changes it will not be able to operate as efficiently as it could with the system wide flexibility it seeks. A transportation benefit has been shown.

### AWARD

The issue is answered in the affirmative.

Edwin H. Benn Neutral Member

Carrier Member

Organization Member

Mount Prospect, Illinois

Dated: 8-20-97

Arbitration Proceedings pursuant to Article I, Section 4 of the New York Dock Conditions as stated in ICC Finance Docket No. 30,000 issued October 20, 1982

AWARD AND DECISION

Parties

: Railroad Yardmasters of America

:

and

Union Pacific Railroad Company Missouri Facific Railroad Company

Background: The parties selected the Undersigned to be the Arbitrator on March 21, 1983 to determine the provisions that should be included in an implementing agreement that would provide an appropriate basis for selecting and assigning the yardmaster forces operating in the Omaha Yards of the Eissouri Pacific, and the yardmaster forces operating in the Omaha and Council Bluffs Yards of the Union Pacific in the course of effecting an ICC approved consolidation of these sereral yards into a single combined terminal operation.

The Organization raised a threshhold question as to whether it was appropriate for the arbitration proceedings to be progressed in view of the fact that the subject of yar-master representation on the Union Pacific property was currently being litigated in the federal courts.

As hereinafter set forth, the Arbitrator ruled that it was proper to proceed with the substantive aspects of the dispute in view of the fact that the Union Facific had dealt with

and was dealing with the RYA as the appropriate bargaining agent of the yardmasters.

The chronology of events involved in this dispute is:

On February 14, 1983 the Carriers served notice on the

Organization of its wish to effect a consolidation of the Missouri Pacific and the Union Pacific yardmaster operations being performed at Omaha and Council Bluffs into a single combined operation controlled by the Union Pacific and under the Union Pacific Schedule Agreement rules.

The initial bargaining session was convened on February 23, 1983 with the Carriers presenting substantive proposals in furtherance of the objectives of their February 14, 1983 Notice. The Organization took the position that it could not negotiate an implementing agreement unless the Union Pacific recognized its representatives as "first class" representatives in the same way as it did other employee representatives on the property. It added that this recognition could be evidenced by the Up issuing a formal statement stating that the RYA was the recognized bargaining agent of the yardmasters and by the UP releasing to it the dues it had collected but not forwarded to the RYA since the Kational Mediation Board had issued a certification to another yardmaster organization, but which NMB action had been restrained by a federal district court. The Carriers' response was that the RYA's requests regarding formal recognition and union dues collection were not proper subjects to raise in a New York Dock arbitration proceeding.

On March 3, 1982 the parties met and discussed, interalla, the concept of "controlling carrier". The Organization wanted the Carriers to agree to pay Union Pacific rates at Omaham Council Bluffs and Kansas Citý, but to have the Missouri Pacific Schedule Agreement apply at Kansas City and Omaha/Council Bluffs and MP rates and schedule rules would apply at Kansas City.

The Organization also raised the issue of Bridge Dispatchers and Yardmaster training. The Carrier objected to considering the first issue because it was extraneous to this arbitration proceeding and moreover, it was a subject that was being considered a public law board on the UP property.

On March 16, 17, 18, 1983, the parties met and discussed a number of subjects. The principal focus was on seniority, with the Organization stressing the acceptance of the "prior rights" principle, with the Carriers favoring the dovetailing of seniority. At the March 16 session, the Organization again asserted that the Carrier's February 14, 1983 Notice could not be negotiated until the issues of representation and dues collection were settled. At the Harch 17 meeting the Carriers set forth their reasons why the "prior rights" concept was not an appropriate method of dealing with the seniority issue. The Organization persisted in seeking to get an agreement on the representation and dues matters. Despite offers and counter offers on these subjects, no agreement could be reached and negotiations broke off. On Karch 18 the parties commenced discus-

sions which resulted in the establishment of the New York Dock Conditions arbitration machinery.

On April 18, 1983 the Arbitrator met in Omaha with the parties in interest. Prior to this meeting, and in preparation thereof, the Carriers presented the Arbitrator with their prehearing Submission dealing both with the history of the negotiations as well as the Carriers' substantive position on the disputed issues. The Organization's Submission, while it related briefly to the history of negotiations, stressed its procedural position, namely, that it was inappropriate to arbitrate this dispute while the issue of representation was being litigated in federal appellate courts. The Organization also emphasized the untenable financial position it was being maneuvered into by the UP refusing to transmit to it the dues it was collecting from yardmasters. The Carriers reiterated that the matters that the Organization persisted in raising were matters that had to be resolved in other fora.

At the conclusion of the April 18, 1983 arbitration hear ing, the Arbitrator directed the parties to continue to engage in
good faith bargaining for twenty days, because it was evident to
him that the parties had not bargained, except superficially, over the core issues relating to the selection and rearrangement
of forces incident to the operation of a single combined terminal. The Arbitrator instructed the parties to engage in good
faith bargaining until they reached agreement, but this bargaining period would not extend beyond May 9, 1983. On April 18,
1983 the Arbitrator issued an Interim Award to this effect.

On April 19, 1983 the Organization petitioned the Arbitrator for leave to submit a Supplemental Submission for implementing the terminal consolidation.

On May 4, 1983 both parties notified the Arbitrator that they had convened on April 19, May 2 and 3, 1983 but were unable to reconcile their differences and were at impasse. The Carriers also objected to the Organization being granted permission at this time to file a Supplemental Submission, and it maintained that the Arbitrator should proceed to draft an Implementing Agreement based on the record made at the April 18, 1983 hearing. On the same day, the Organization renewed its request for permission to file a Supplemental Submission.

On May 6, 1983, the Arbitrator issued an Award denying the Organization's request, because he found that the Organization had persisted in holding to its procedural position throughout the proceedings, and that it would be inappropriate now to allow the Organization to present a substantive position after its procedural position had been rejected.

Since the parties were unable to negotiate voluntarily an Implementing Agreement, the Arbitrator has promulgated such an Agreement which is Attachment "A" to this Decision and Award.

We also make the following conclusionary. Findings in explanation of the major provisions of the attached Supplemental Agreement:

(1) We find it inappropriate, in drafting an Implementing Agreement pursuant to the New York Dock Conditions, to give consideration to such unrelated matters as bargaining agent recognition and union dues collection. The first matter is exclusively within the jurisdiction of the National Mediation Board and the second has to be decided in a forum other than this one.

- (2) We find that the ICC has declared in Finance Docket 30,000 that the controlling carrier concept shall be applicable, when it held that Omaha/Council Bluffs yards were to be operated by Union Pacific as a Union Pacific single controlled terminal, as a consolidated common point. This concept is not now open to question or contest by the Organization. We find further that, consonant with this concept, is this single terminal can be operated under Union Pacific wage rates and schedule rules. Also consonant with this concept is that Missouri Pacific Yardmasters may be transferred to the Union Pacific RR and function under the Union Pacific Schedule Agreement and wage rates.
- (3) While we find impressive the Carriers' arguments in favor of dovetailing into a single seniority roster for a single integrated terminal, nevertheless, we conclude, that we should accept the Organization's plea that the constructed seniority roster reflect and recognize the "prior rights" of affected employees. Acceptance of prior rights here would recognize the dominant and established role that UP yardmasters have long occupied in the Omaha and Council Bluffs yards.

We find that therefore it would be appropriate to desig

nate UP employees who, prior to the consolidation, worked west of the River as "OH" employees and UP employees who have worked east of the River as "CB" employees. Missouri Pacific yardmasters should be also treated and designated as employees who worked west of the River.

We find that Yardmaster positions should be designated either "OH" or "CB" assignments based on where a preponderance of the work was performed.

We find that there should be no prior rights designation to yardmasters who acquire seniority after the date of the consolidation.

A copy of the consolidated seniority roster for the Omaha/ Council Bluffs Terminal, emboding these principles, is attached hereto as Attachment "B".

(4) We find with regard to Protective Benefits and Obligations thereunder, that the New York Dock Conditions as prescribed by the ICC in its Pinance Docket No. 30,000 shall apply to those employees directly affected by the transfer and consolidation of the Terminal.

The attached Implementing Agreement (Attachment "A") contains the specific details pertaining to "test earnings", the affect of unemployment compensation as well as other earnings on the prescribed allowances.

The Implementing Agreement also contains the prescribed Monthly Form to be used to calculate benefits and allowances for "Dismissed" and "Displaced Employees". See Attachment "D".

employees on the integrated single seniority roster (Attachment "B") shall be afforded the opportunity to bid simultaneously in accordance with the requisite provisions of the UP Schedule on all yardmester positions in the Omaha/Council Bluffs Terminal. The bulletining and assignment of these positions shall be administered in such a manner so as to make the effective date of these assignments concurrent with the effective date of the consolidation of the Terminal.

(6) We find that service credits shall be accorded to all Missouri Pacific employees who transfer to the Union Pacific in accordance with the Implementing Agreement. These MP employees shall be treated for Agreement purposes as though their MP service was performed on the Union Pacific Railroad.

AWARD: In order to effect these Findings and related cognate matters, and to carry out the purposes and intent of the New York Dock Conditions, the parties shall adopt and execute the Attached Implementing Agreement.

(Attachment "A").

Jack Selbenberg, New York Door Conditions Arbitrator

Alay 18,1983

ARBITRATION PROCEEDING

United Transportation Union and Union Pacific Railroad Company, et al. Control and Merger - Southern Pacific Transportation Company, et al.

STB Finance Docket No. 32760

Findings and Award Pursuant to Art. I, Section 4, New York Dock Conditions

## Appearances:

# For the Organization:

Byron A. Boyd, Jr., Assistant President Clinton J. Miller III, General Counsel J. Previsich, General Chairman

## For the Carrier:

W. S. Hinckley, General Director Labor Relations Dick Meredith, Asst. Vice President-Employee Relations, Planning Catherine J. Andrews, Assistant Director Labor Relations Mark E. Brennan, Operating Department

### FINDINGS:

The parties to this dispute are the United Transportation Union and the Union Pacific System/Southern Pacific System. Finance Docket No. 32760, the U.S. Department of Transportation, Surface Transportation Board (STB) approved the merger of the two systems which included various rail entities.

In accordance with New York Dock provisions the Carrier served notices on the Organization's General Chairmen covering two geographical areas referred to by the Carrier as the Salt Lake Hub and the Denver Hub. The parties in their submissions detailed the negotiating dates which covered approximately a 120 day period. The parties were unable to reach an agreement and a request was made for arbitration in accordance with New York Dock. The parties were unable to jointly select an arbitrator and through a joint letter to the National Mediation Board requested that one be appointed. By letter dated February 21, 1997 the undersigned was appointed by the National Mediation Board.

This arbitration is somewhat unique in that in addition to the normal terms and conditions of arbitration, under New York Dock, the Organization requested arbitration of what is known as the

"commitment letter". This letter was signed by the Carrier and addressed to the Organization's President and provided for certain with regards to the entire merger process beginning position that the Carrier did not live up to the commitments and as a result the issues raised therein should be arbitrated.

Two separate arbitration presentations were made beginning on March 25, 1997, one covering the commitment letter and the other the terms and conditions to govern the two Hubs. Since these two hearings are so intertwined, they shall be dealt with in this one award.

# COMMITMENT LETTER

The purpose of the letter was to 1. Limit the Organization's exposure in the merger to items "necessary" to completing the merger, 2. Gain protection certification under New York Dock for a number of employees, and 3. Give affected General committees an opportunity to develop a seniority system for the merged areas.

In exchange, the Carrier wanted 1. the UTU's support for the merger and operating plans, 2. the Organization's recognition that some changes were "necessary" in the merger and, 3. a seniority system that was not illegal, administratively burdensome or costly.

It is apparent that the writer and the addressee of the commitment letter understood the benefits of a simpler merger process than the parties had previously undertaken: however, the negotiators on both sides failed to see the same benefits and in essence pushed the envelope too far. Both parties included items in their proposals that went beyond what was necessary. While the Organization was the moving party in requesting arbitration over the letter, their proposals included several unnecessary items such as changing work rules, cherry picking work rules, certification beyond the number in the commitment letter in lieu of relocation and a seniority system that was administratively burdensome and potentially more costly. However, when the Carrier's proposals, which included an unnecessary 25 mile zone and crew consist changes are brought before this arbitrator, it is not difficult to say that anything beyond what was contemplated in the commitment letter will not be used to escape any commitment to provide for automatic certification as provided later in this award, because the parties failed to make a voluntary agreement.

It is apparent to this arbitrator that not all the parties to the negotiations are aware or understand the value the Organization received by the letter. Some members of the Organization's

negotiating team apparently feel there is no need to reach a voluntary agreement in order to achieve automatic certification and have made demands that most certainly will not lead to such a voluntary agreement. On the other hand, as mentioned above the Carrier has reached beyond the limits that would be acceptable to

Neither party should take comfort in future negotiations that this award provides for future automatic certification. commitment letter is an example of responsible recognition of the needs of both parties and for the first round of merger negotiations/arbitration this arbitrator simply will not substitute his judgement for those behind the commitment letter.

# TERMS AND CONDITIONS

One of the key areas of dispute deals with what is "necessary" to accomplish the merger. In reviewing previous mergers and the need to coordinate employees and operations at common points and over parallel operations, it is proper to unify the employees and operations under a single collective bargaining agreement and single seniority system in each of the two Hubs. This does not mean the Carrier has authority to write a new agreement, but the Carrier's selection of one of the existing collective bargaining agreements to apply to all those involved in a Hub as proposed in

While selecting one existing collective bargaining agreement puts many issues to rest, both parties recognized in the letter that other changes may be necessary for a merger to accomplish a smooth flow of operations. These changes, however, were not to be monetary but operational. Such operational changes would include the combining of yards into single terminals, consolidating pool freight, local and road switcher operations and combining extra boards into fewer extra boards that would cover the more expansive

Seniority is always the most difficult part of a merger. There are several different methods of putting seniority together but each one is a double-edged sword. In a merger such as this one that also involves line abandonments and alternate routing possibilities on a regular basis, the tendency is to present a more complicated seniority structure as the Organization did. What is called for is not a complicated structure but a more simplified one that relies on New York Dock protection for those adversely affected and not perpetuating seniority disputes long into the future. The Carrier's proposals fairly address the issue in both

There are two issues that must be addressed with regards to crew consist. The first is the special allowance/productivity fund issue and the second is the Carrier's request for the least restrictive yard/local provisions to overlay the Eastern District agreement. The second is easier to deal with. If the Carrier believed that another agreement would better fit this area, it had the opportunity to select that agreement for this area in total. Since it did not, this arbitrator will not give a separate crew consist provision to them. The Eastern District agreement covers this area with respect to crew size and work in both yard and road The special allowance/productivity funds must be coordinated. This arbitrator does not see any undue advantage to the Carrier in its proposal to pay out the existing funds and create a new one.
Those who would have been eligible for a productivity fund and special allowance had they worked under the Eastern District agreement since their entry into train service shall be entitled to them under the new plan. Those who sold their special allowances/productivity funds previously are not entitled to a

windfall now and would not be eligible for those payments Without the commitment letter, the Carrier is not required to certify any employees as protected. The letter identified a number of employees to be protected and the Carrier's notices, as amended, identified a larger number. Since the Carrier's proposal exceeded the commitment letter, it should protect the larger number referenced in its notices. If the Eastern District General Chairman and Carrier are not able to agree within 30 days of this Award who the specific employees are, then it shall be the employees whose assignments are involuntarily changed until the number in the notices is reached. If both proposals were proper and were not over reaching, as they were here, then this arbitrator would not have imposed this provision.

I have identified the major issues in more detail above and now turn to the proposals. In reviewing the proposals, this Board finds that the Carrier's proposals, including questions and answers, for each Hub, submitted to this panel are appropriate for inclusion as part of this Award except for the following:

Salt Lake City proposal:

1. Article III A (2) and (3) concerning the metro complex. 2. Article IV B (1) concerning the 25 mile zone.

3. Article VI protection is amended per above.

4. Article VIII E. Concerning the least restrictive crew

5. All questions and answers referring to these eliminated Denver Hub proposal: 1. Article IV B (1) concerning the 25 mile zone. 2. Article VI protection is amended per above. 3. Article IX E concerning the least restrictive crew 4. All questions and answers referring to these eliminated Copy of Carrier's proposed implementing agreement for the Salt Lake Hub and the Denver Hub are attached hereto and made a part of This arbitrator is convinced from the facts of record that the changes contained in the Carrier's proposals as modified by the exceptions noted herein are necessary to effectuate the STB's approved consolidation and yield enhanced efficiency in operations benefiting the general public and the employees of the merged This Award is final and effective immediately. Should the Organization and the Carrier desire to continue negotiations over other elements then they should so proceed. These negotiations should be between the Eastern District General Chairman and the Carrier. These would be voluntary and not subject to Section 4 New York Dock arbitration if they do not prove fruitful. Signed this 14th day of April 1997. -5-

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SERVICE DATE - LATE RELEASE JUNE 26, 1997

## SURFACE TRANSPORTATION BOARD

#### DECISION

STB Finance Deelest No. 32760 (Sub-No. 22)

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 RID GRANCE WESTERN RAILROAD COMPANY

(Arbivaton Review)

Decided: June 26, 1997

We great the petition of the United Transportation Union (UTU) for review of the arbitration decision issued by Jumes E. Yest as it portains to backle benefits and decline to review the decision concerning the remaining issues raised by UTU.

### BACKGROUND

By decision served August 12, 1996, in Finance Docker No. 22760 (the Marger Proceeding), we approved the common control and surger of the rail carriers controlled by the Union Pacific Corporation and the rail carriers controlled by the Southern Pacific Rail Corporation. The controlling operating milroad is now the Union Pacific Railroad Company (UP or the carrier), the respondent in this proceeding. In our decision approving the control and merger application, we imposed the employee protection conditions established in New York Dock Ry.—Cantrol.-Branklyn Esstern Dist., 360 LC.C. 60, 84-90 (1979) (New York Dock), off'd sub some. New York Dock Ry. v. United Sames, 609 Y.24 23 (26 Cir. 1979).

Under New York Dook, labor changes related to approved transactions are effected through implementing agreements appointed before the changes occur. If the parties entered agree, the bases are resolved by arbitration, with possible appeal to the Board under for deferential Lacer Currents manded of serious. Affected employees reactive comprehensive displacement and termination benefits for up to 6 years.

Once having eccepted a case for review, we only only everture an arbitral award when it is chown that the award is breatonal or falls to draw its essence from the imposed labor conditions or it exceeds the authority repeated in arbitrature by these conditions. [Cassions ornited.]

<sup>\*\*</sup> Under 4% CFR 1115.8, the standard for review is provided in Chicago & Morth Wattern Ipan. Ca.—Aboverness, 3 LC.C.2d 729 (1987), offer sub-nom. International fresherhood of Electrical Works. is LCC., 362 F.2d 330 (D.C. Cir. 1988) (popularly known as the "Laco Curanin" care). Under the Laco Curanin standard, the Sound does not review Tenum of cassasian, the calculation of benefits, or the standard, the Sound does not review Tenum of cassasian, the calculation of benefits, or the standard of other factual questions" in the shance of "opposition error." M. at 735-34. In Deleneuro and Haston Rathony Company. Lacon and Trushage. Rights Encaption—Springfield Torontonal Rathony Company, Timesco Dochet No. 30365 (Sub-No. 1) et al. (ICC surved Oct. 4, 1990) at 16-17, remarked on other grounds in Rathony Labor Encaptures' Acris v. United Sames, 967 F.2d 806 (D.C. Cir. 1998), the Internation Communica Commission (ICC) alaborated on the Laco Curanin standard to follows:

CEATRMAN MORGAN

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STB Finance Docket No. 32760 (Sub-No. 32)

Here, the parties were unable to reach as implementing agreement on labor changes covering two geographical areas, referred to by UP as the "Satt Lake Hub" and the "Denver Hub." When the parties could not agree, the dispute was salan to orbitation. On April 14, 1997, arbitrator James E. Yout issued his decision. The decision adopted the two implementing arrangements proposed by the carrier, with exceptions that have not been appealed by the carrier. The arbitrator found that the implementing provisions adopted in his decision were "necessary to effect the STB's approved consolidation and yield enhanced efficiency in operations benefitting the general public and the employees of the merged operations."

On May 5, 1997, UTU filed an appeal of the arbitrator's decision. UTU also requested a stay of the decision pending our review. On May 21, 1997, UTU filed a motion for leave to submit a supplement se its petition for review and a tendered supplemental petition. UP filed a reply in appealision to admication of UTU's tendered supplement on May 21, 1997. UP filed its raphy in apposition to UTU's appeal on May 27, 1997.

### PRELIMINARY MATTER

. In its motion for leave to supplement its petition, UTU subunits two UP notices scheduling implementation of the award, which were sent to UTU on May 1, 1997. We will consider these notices because they provide material that was not available to UTU until shortly before the deadline for submission of its appeal and UP does not object.

UP does object to consideration of the remaining content of UTU's tendered supplement to its petition, arguing that UTU is not entitled to file "yet enotice brief on the merits." We agree. Under 49 CFR 1115.8, UTU is entitled to file only one appeal plending. Moreover, UTU's supplement assentially constitutes repetitive and cumulative argument.

#### **DISCUSSION AND CONCLUSIONS**

UTU raises four issues in its appeal: (a) whether it was proper for the arbitrator to include language in his decision regarding representation during future negociations: (b) whether the arbitrator properly approved provisions allowing the carrier to merge seniority districts and to force amployees to switch scalerly districts; (c) whether the arbitrator's approval of the current UT Entern District Agreement as the uniform collective bargalaing agreement for the affected employees (replacing the separate pre-consolidation agreements) was proper; and (d) whether the arbitrator properly approved the provisions in the implementing arrangements requiring employees to switch health care providers.

If y decisions served May 30, 1997, and June 10, 1997, implementation of the arbitrator's decision was stayed, with the latter stay running until July 1, 1997. The Brotherhood of Locometrive Engineers, on June 19, 1997, filed in opposition to the grant of a further stay. On the state dam, UP filed a pothion to vacate the stay. Olvan our decision have resolving the merits of the patition for serieu, the relief sought in these two plendings has become most. Moreover, both BLB and UP could have, and indeed abould have, made the arguments contained in these plendings in response to the inject stay request rather than some 45 days afterwards. Further, we find introdible the claim by UP now that a less than 30-day stay of the implementation of the suderlying assents arbitral award has most fully disrupted the implementation of the underlying assents. Per approval of which has been in effect since September 11, 1996. And we continue to expect UP to subsult an in-depth analysis of the effects of the merger and condition implementation in to July 1, 1997 quarterly program report on the underlying merger. Because we are resolving the marks of the patition for review, however, we will vector the stay to of the service dote of this decision.

CHAIRMAN MORGAN

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STB Finance Docket No. 32760 (Sub-No. 22)

### 1. UP's Allegation of Waiver

Before we discuss these issues, we must consider UP's contention that UTU waived consideration of them for the Denver Hub. During arbitration, UTU submitted a separate implementation proposal concerning the Salt Lake Hub but did not submit a separate proposal for the Denver Hub. The carrier argues that, by nor making its own proposal concerning the Denver Hub, UTU waived its right to raise any of the aforementioned four issues on appeal as they apply to that Hub.

We disagree. A party can waive its objections only by falling to make them below. UTU did not fall to make objections below concerning the Desver Hub. In its submission, UTU phrased its criticism of UP in general terms that applied equally to the changes proposed by UP for both krubs, which changes were virtually identical. There was nothing in UTU's overall submission to indicate that UTU did not object to the changes proposed by the carrier for the Desver Hub. UTU's submission put the arbitrator on notice that UTU believed that certain changes proposed by UP were improper under New York Dock for both hubs. The arbitrator must have been on notice as to the scope of UTU's objections because he rejected implementation provisions proposed by the carrier for both hubs, not just the Salt Lake Hub. Because the record shows that UTU did object to the carrier's Denver Hub proposals, we conclude that UTU has not waived all arguments for the Desver Hub simply by not submitting its own separate proposal for that Hub.

### IL The Issues Appealed by UTU

As explained in greater detail below, only one lasts — whether the arbitrator properly approved the provisions in the implementing arrangements requiring emptoyees to switch health care providets — satisfies the orderia for review by us under our Lace Curson mandard of review. The health care issue is reviewable because it involves an allegation that the arbitrator's decision accords the authority carried to him under our New York Dock inher conditions. The issue lavolving language persalang to union representation during future negotiations is most in light of our interpretation of the arbitrator's decision. The issues lavolving the necessary of scalarity district changes and the consolidation of collective bargalang agreements are the sort of matters that have historically been decided by arbitrators under the Washington Job Protection Agreement of May 1936 and subsequently under our labor protective conditions on which, with the approval of the courts, we have traditionally deferred to arbitrators in the absence of egregious error. CSX Corp.—Control—Chessie and Seeboard C.L.L. 6 1.C.C.2d 715 (1990).

### A. Representation During Future Negotiations

The arbitrator's decision stated (at 4 and 5) that, if there are to be future acgotistions, they should be between the "Eastern District General Chairman" and the carrier. UTU asserts that any future negotiations asset be between "UTU" and the carrier, arguing that only UTU, as the current bargaining representative of the affected employees, has the authority to direct the carrier to the persons with whom the carrier must negotiate.

We do not interpret the decision as interfering with UTU's right to designate its own representative for finare bergalating over issues affecting the Hubs. UTU has selected the UP Eastern District General Chairman to burgale for employees who come under the UP Eastern District Agreement. The arbitrator imposed the UP Eastern District Agreement. When the arbitrator referred to possible ficture negotiations as being between the carrier and the Eastern District Oceanal Chairman, he was not encoupting to lock UTU into this choice of a bergaining representative but was nectely referring to the purson whose UTU itself had designated to represent its members as being best able to discuss with management what various provisions mean. His suggestion was limited to the implementing agreement process and was not made any

Declaration of W. Sone Hinckley, filed May. 27, 1997. at 5-6.

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STB Finance Docket No. 32760 (Sub-No. 22)

part of the award we are asked to review. Plainly, the arbitrator did not purport to not could be, dictors representation for future bargaining purposes. Our interpretation mosts UTU's appeal concerning this issue.

### B. Changes is Seniority Districts'

UTU objects to the general provisions of the implementing arrangements approved by the arbitrator that allow the carrier to alter soulority districts and to force employees within the new hubs to snove to different scalerity districts. The implementing arrangements also contain special provisions that, in conjunction with the afternentioned general provisions, specifically allow the eartier to make scalerity district changes for faramen, and UTU specifically objects to these provisions as well. UTU argues that all of these provisions constructs New York Dock by overriding collective bargaining agreement provisions? when an override is not necessary to realize the public benefits of the consolidation.

It is now firmly established dust the Board, or arbitrators acting pursuant to authority delegated to them under New York Deck, may everylde provisions of collective bargaining agreements when an everylde is accessary for realization of the public benefits of approved transactions. Where modification has been necessary, it has been approved under either former sections I 1341(a) (recodified in section 11321(a)) or 11347 [recodified in section 11326(a)]. Norfolk & Western v. American Train Dispatchers, 499 U.S. 117 (1991); Rathway Labor Executives' Ast'n v. United States, 987 F.24 806 (D.C. Cir. 1993) (RLEA); American Train Dispatchers Association v. LC.C., 26 F.34 1157 (D.C. Cir. 1994) (ATDA); and United Transportation Union v. Surface Transportation Board, 108 F.34 1625 (D.C. Cir. 1997) (UTU). In RLEA, 987 F.24 at 814-15, the court elaborated on the accessity test, as follows:

[1]k is clear that the Commission may not modify a CBA willy-nilly: § 11347 requires that the Commission provide a "fair arrangement." The Commission itself has stated that it may modify a collective bergalaing agreement under § 11347 only as "necessary" to affectante a covered trussaction. [Citation emitted.] ... We look therefore to the purpose for which the ICC has been given this authority [to approve consolidations]. That purpose is presumably to ascure to the public some trussportation benefit that would not be available if the CBA were left in place, not merely to trussfer wealth from employees to their employer ....

In other words, the court's susulard is whether the charge is accessary to effect a public benefit of the transaction.

At noted, the arbitrator found that the consolidation was "accessary to officet the STB's approved consolidation and yield enhanced efficiency in operations bandlating the general public and the coupleyers of the merged operations." This was a focused feeling to which we count accept deference to the arbitrator under our Law Curtain standard of review. Under our Lace Curtain standard of service, such factual findings are reviewed only if the arbitrator committed ogregious creek. Because UTU has falled to make the required showing, applying the Lace Curtain standard of review, we decline to review this finding.

Due to the sense of week in the mileted industry, operating employees are senigged to "seniority districts," which are lists of employees who are eligible to work in a given small or operation in a defined geographical area, such to a but. The order in which employees appear on these lists determines various employment rights.

<sup>\*</sup> Except for the Seanen, UTU does not also or provide the specific solicative bargaining agreement provisions that are alleged to be congressed by the provisions of the implementing arrangements that allow mendatory switching of seniority districts. For the firemen, UTU cites language in Article XIII, section 1(7) of the October 31, 1985 UTU National Agreement.

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CHAIRMAN MORGAN



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STB Finance Docket No. 32760 (Sub-No. 23)

### C. Uniform Collective Bargalaing Agracanest

UTU challenges the arbitrator's decision to allow UP to select its collective bergaining agreement for the Eastern District as the uniform collective bergaining agreement that will apply to the afformed employees (replacing the separate pre-entablishing agreements). As noted in our discussion of the changes in seniority districts, it is now firmly established that the Board (or arbitrators assing under New York Dock) may override provisions of collective bargaining agreements when an override is necessary for realization of the public benefits of approved transactions. Here, the arbitrator found that application of a uniform collective bargaining agreement was also among the changes that were secontary to effect the STB's approved consolidation and yield enhanced efficiency in operations benefitting the general public and the employees of the energed operations. This was a factual finding to which we must accord defenses to the arbitrator under our Loca Currain standard of review, such factual findings are reviewed only if the arbitrator contained operations error.

UTU itself admits that there are circumquances in which collective bargaining agreements many be marged to effect the goals of morgors, stating on page 29 of its submission to the arbitrator: "The Organization has continually recognized where there is a coordination, a fusion of collective bargaining agreements is supported by the number of collective bargaining agreements is supported by the number of collective bargaining agreements alone that were in affect before the merger — before the merger, the Salt Late Hub consisted of six collective bargaining agreements, and the Duaver Hub consisted of three collective bargaining agreements. The arbitrator could measurably find that UP cannot effectively manuals employees in a merged and coordinated operation if the operation must be burdened with six collective bargaining agreements, each with its own set of work rules. Our preducessor agency has previously upheld the consolidation of collective bargaining agreements. Under these circumstances, UTU bears a heavy burden in assempting to show that the consolidation of collective bargaining agreements is the Hubs was agregious error. We find that UTU has failed to exact its burden of showing that the arbitrator committed spregious error in approving the consolidation of collective bargaining agreements in the Hubs.

UTU also seems to argue that the arbitrator erred by falling to apply the predominate collective bergulaing agreements in the respective Hubs. We disagree. UTU has submitted as

<sup>\*</sup> Declaration of W. Soon Hinckley, filed May 27, 1997, at 5.

<sup>\*</sup> UTU states (Pecision at 23) that it agreed to application of UP's Eastern District
Agreement for the Salt Lake Hob and that the Bastern District Agreement prodominates in the
Denver High. UP responds that the UP Eastern District Agreement does not predominate in the
(continued...)