authority from the Board, the ICC, or a court that establishes a duty to adopt the predominate collective bargaining agreement that is in effect in an area where operations are being coordinated when consolidation of collective bargaining agreements is necessary in such an area to effect the benefits of a merger. While arbitrators may conclude that adoption of the predominate agreement makes sense in given situations, UTU has not explained why the arbitrator's failure to so conclude here was egregious error.

In *RLEA, supra*, the court admonished the ICC to refrain from approving modifications that are not necessary for realization of the public benefits of the consolidation but are merely devices to transfer wealth from employees to their employer. In its appeal, UTU made no effort to show that the UP Eastern District collective bargaining agreement is inferior to the collective bargaining agreements that it replaced. This is not a situation where the carrier is using *New York Dock* as a pretext to apply a new, uniform collective bargaining agreement that is inferior in matters such as wage levels, benefit levels, and working conditions. In fact, UP argues that its Eastern District Agreement is more costly because the collective bargaining agreement for the Denver & Rio Grande Western Railway Company, which was the other pre-merger agreement that might have been selected, has a crew consist provision more favorable to the carrier than the UP Eastern District Agreement.[9]

For these reasons, UTU has not shown that the arbitrator committed egregious error in approving the consolidation of collective bargaining agreements in the Hub territories as necessary for realization of the public benefits of the consolidation. Nor has UTU shown that the arbitrator committed egregious error in imposing the UP Eastern District collective bargaining agreement as the uniform agreement for operations in both of the Hubs. Because UTU has failed to make either of these required showings under the *Lace Curtain* standard of review, we decline to review this finding.

D. Health Benefits

UTU challenges the arbitrator's approval of provisions requiring employees to change their health benefits provider from the DRGW Hospital Association to the UP Hospital Association. UTU argues that: (1) the carrier negotiated implementing arrangements with the carmen, clerical, and engineer crafts that offered employees a choice of plans and that the same choice should be available here; (2) the withdrawal of employees from the DRGW Hospital Association plan will jeopardize that plan; (3) under the DRGW Hospital Association plan, the premiums are $300 lower for a retired couple with no drug limits; and (4) health "fringe benefits" have a protected status under *New York Dock*.

---

[9] (...continued)
Denver Hub but proceeds to argue that (1) UTU has in effect locked itself into its statement that the Eastern District Agreement should apply in both Hubs, if a single collective bargaining agreement is applied, and therefore (2) we should dismiss UTU's attack on the consolidation of collective bargaining agreements on the grounds that the arbitrator applied the agreement sought by UTU.

We will not dismiss UTU's argument on these grounds. While UTU's statements in this portion of its petition are not clear, a fair reading of the entire record submitted by UTU shows that it is interested in preserving prior collective bargaining rights as much as possible and that it believes that the consolidation of collective bargaining agreements approved by the arbitrator would be detrimental to this interest.

[9] The arbitrator rejected the carrier's attempt to reduce train operating crews in the Hubs (and several other changes), apparently finding that crew size was a systemwide "problem" having nothing to do with the *multiplicity* of carriers operating in any given area prior to the merger.

UP responds that UTU waived objection to the change in health benefits provider by failing to object to this change when the carrier submitted it to the arbitrator. We disagree. On page 19 of its separate submission to the arbitrator addressing certain commitments by UP made during the *Merger Proceeding*,[9] UTU argues that, under our labor protective conditions, SP employees are entitled to retain their hospitalization and medical care after the merger. This put the arbitrator on notice that health benefits were at issue and that UTU desired to have negotiated benefits retained. Moreover, as explained below, the issue of health benefits goes to the adequacy of an implementing agreement imposed under our labor conditions—a matter that we are required to address whenever it is brought to our attention. *See Norfolk & Western R. Co. v. Nemitz*, 404 U.S. 37 (1971).

In its decision in *CSX–Conrail–Chessie/Seaboard*, *supra* note 8, the ICC defined the scope of rights, privileges, and benefits that must be preserved as including hospitalization and medical care. It did so by looking to an essential item of legislative history, paragraph 10 of the Model Agreement for the protection of labor under the Urban Mass Transit Act of 1962, which it set forth in its decision (ICC served Dec. 7, 1995, slip op. at 14-15):

> (10) No employee receiving a dismissal or displacement allowance shall be deprived during his protection period, of any rights, privileges, or benefits attaching to his employment, including without limitation, group life insurance, *hospitalization and medical care*, free transportation for himself and his family, sick leave, continued status and participation under any disability or retirement program, and such other employee benefits as Railroad Retirement, Social Security, Workmen's Compensation, and unemployment compensation, as well as any other benefits to which he may be entitled under the same conditions so long as such benefits continue to be accorded to other employees of the bargaining unit, inactive service or furloughed as the case may be. [Emphasis added.]

Immediately after quoting this provision, the ICC summarized its view of rights, privileges, and benefits by stating (slip op. at 15):

> We believe that this is compelling evidence that the term "rights, privileges, and benefits" means the "so-called incidents of employment, or fringe benefits." *Southern Ry. Co.–Control–Central of Georgia Ry. Co.*, 317 I.C.C. 557, 566 (1962), and does not include scope or seniority provisions.

In its decision reviewing *CSX–Conrail–Chessie/Seaboard*, the court adopted the ICC's test, which definitively governs this issue, holding (108 F.3d at 1430):

> In this case, the Commission effort a definition: "rights, privileges, and benefits" refers to "the incidents of employment, ancillary emoluments or fringe benefits—as opposed to the more central aspects of the work itself—pay, rules and working conditions." *See Commission decision* at 14, *reprinted in* J.A. 237. And "the incidents of employment, ancillary emoluments or fringe benefits" refers to employees' vested and accrued benefits, such as life insurance, hospitalization and medical care, sick leave, and similar benefits. *See id.* at 15, *reprinted in* J.A. 238.
>
> * * * *
>
> Under the Commission's interpretation, "rights, privileges and benefits" are protected absolutely, while other employee interests that are not inviolate are protected by a test of "necessity," pursuant to which there must be a showing of a nexus between the changes sought and the effectuation of an ICC-approved transaction. Under this scheme, the public interest in effectuating approved consolidations is ensured without any undue

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[9] *See* Attachment A to Second Declaration of Paul C. Thompson, filed May 5, 1997.

sacrifice of employee interests. In our view, this is exactly what was intended by Congress.

From this definition, we believe that employees' *rights* to membership in the DRGW Hospital Association plan must be preserved because these rights are a fringe benefit pertaining to "hospitalization and medical care."

UP responds that we must uphold the change in health benefits because (1) it is merely incidental to the approved adoption of a uniform collective bargaining agreement and (2) a contrary result would contravene the Board's refusal to allow parties to "cherry pick" among the provisions of pre-merger collective bargaining agreement provisions.[1] Moreover, UP notes that the arbitrator declined to impose the crewing provision it sought from another collective bargaining agreement on the grounds that doing so would violate the prohibition against "cherry picking."

We disagree. Our approval of a uniform collective bargaining agreement and refusal to allow "cherry picking" was not intended, and may not be used, to abrogate UTU's absolute right to the preservation of pre-consolidation rights, privileges, or benefits under collective bargaining agreements as a result of Section 2 of our *New York Dock* labor conditions, as interpreted by the ICC with the approval of the court in *UTU*.

UP also argues that UTU supported similar changes of benefits pursuant to the adoption of uniform agreements in other merger proceedings. Even if UTU did this, however, its support of such changes in the past would not estop UTU from opposing a change here. A union does not waive its right to preservation of rights, privileges, and benefits by failing to assert that right in prior proceedings. Nor does the fact that it might voluntarily agree to changes in rights, privileges and benefits mean that it can be forced to do so where, as here, the implementing agreement is imposed by arbitration. Thus, at a minimum, as UTU contends and as UTU asserts UP has done in other instances, UTU's members should have been afforded the choice of remaining with the DRGW Hospital Association plan or switching to the UP Hospital Association plan.

Regarding UP's argument that the change in health benefits is merely incidental, and that the harms alleged by UTU from the change in health care providers are "entirely speculative," there may be circumstances in which a "change" in a right, privilege, or benefit would be so inconsequential or inconsequential that it is really not a change at all and may thus be made without contravening the requirement in *New York Dock* that rights, privileges, and benefits under pre-existing collective bargaining agreements must be preserved. However, on the record before us, we conclude that the arbitrator exceeded his authority in imposing provisions requiring employees to change to the UP Hospital Association health plan against their will instead of preserving their right to continue to be covered by the DRGW Hospital Association plan.

This decision will not affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The arbitration decision requiring employees to change their health benefit provider from the DRGW Hospital Association to the UP Hospital Association for the Salt Lake Hub and the Denver Hub is reversed. We otherwise decline to review the arbitration decision.

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[1] In approving the underlying merger, we specifically rejected a proposal by a group of unions to allow the unions to "cherry pick" the best provisions from existing UP or SP collective bargaining agreements. *Merger Proceeding*, slip op. at 84-85, 174.

2. The stay of the implementation of the arbitration award is vacated.

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

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

F-00K

April 18, 1997
NYD-217

Mr. J. L. Quilty
General Chairman, TCU
2820 South 87th Avenue
Omaha, NE 68124

Dear Sir:

This refers to your letter of April 15, 1997, your file M-14-9009, requesting to know exactly what job or jobs in the Cheyenne Service Unit will be absorbing the work of SP clerical employee J. M. Murphy, presently assigned to the position of Secretary to the Superintendent at Denver.

Per advice furnished to this office and as noted in the Carrier's Notice, the work of this position will be distributed to other clerical positions in the Cheyenne Service Unit. Specifically, these assignments are: Administrative Clerk position held by Patricia A. Burke; and Administrative Clerk/Steno positions held by Patricia A. Reed and Bernard J. Busch.

I assume this response will satisfy your concerns. If not, however, please advise.

Yours truly,

(original signed)

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

cc - Mr. J. L. Gobel
International Vice President, TCU
4189 North Road
Moose Lake, MN 55767

Mr. J. P. Condo
International Vice President, TCU
53 W. Seegers Road
Arlington Heights, IL 60005

Mr. R. F. Davis
President, ASD/TCU
53 W. Seegers Road
Arlington Heights, IL 60005

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TRANSPORTATION-COMMUNICATIONS UNION

April 15, 1997

File: M-14-9009

Mr. D. D. Matter
Sr. Director-Labor Relations
Union Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179

Dear Sir:

This has reference to letter dated April 10, 1997, file NYD-217 serving notice of the Carrier's intent to abolish Secretary to Superintendent position at Denver, Colorado currently held by J. M. Murphy.

The Organization needs to know exactly which job or jobs in the Cheyenne Service Unit would absorb the work of that position. If you cannot furnish this information, it is our position this is not a proper notice under the terms of New York Dock.

Please advise a time and date we can discuss this matter.

Very truly yours,

J. L. Quilty

J. L. Quilty
General Chairman

cc: Mr. J. L. Gobel, IVP
Mr. J. P. Condo, IVP
Mr. R. F. Davis, GC
Mr. Charles Dickman, LC
Vice General Chairmen

SR. VICE PRESIDENT

APR 17 1997

LABOR RELATIONS

2820 SOUTH 87TH AVENUE, OMAHA, NEBRASKA 68124 / (402) 391-4911
1139 OLIVE BOULEVARD, ROOM 510, ST LOUIS, MISSOURI 63101 / (314) 436-3310

April 10, 1997
NYD-217

Mr. Robert F. Davis, President
Allied Services Division/TCU
53 West Seegers Road
Arlington Heights, IL 60005

Mr. J. L. Quilty
General Chairman, TCU
2820 South 87th Avenue
Omaha, NE 68124

Dear Sirs:

Pursuant to Article II-TRANSACTIONS of New York Dock Implementing Agreement No. NYD-217, notice is hereby given of the Carrier's intent to abolish, on or about June 11, 1997, Position D001-PAD, Secretary to Superintendent, at Denver, Colorado, currently held by J. M. Murphy. The SP Superintendent's office at Denver will be closed and this territory is now under the jurisdiction of the Cheyenne Service Unit. Accordingly, all of the duties of this position will be absorbed by clerical forces currently assigned in the Cheyenne Service Unit. By copy of this letter, Ms. Murphy is being furnished a copy of this Notice, along with a copy of her options as required by New York Dock Implementing Agreement No. NYD-217.

If you have any questions concerning this Notice, please advise.

Yours truly,

(original signed)

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

cc - Mr. J. P. Condo, Int'l President
Transportation Communications Union
53 West Seegers Road
Arlington Heights, IL 60005

Mr. J. L. Gobel, Int'l Vice President
Transportation Communications Union
4189 North Road
Moose Lake, MN 55767

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June 4, 1997

NYD-217

Mr. R. F. Davis
President, ASD/ TCU
53 W. Seegers Road
Arlington Heights, IL 60005

Mr. J. L. Quilty
General Chairman, TCU
2820 South 87th Avenue
Omaha, NE 68124

Gentlemen:

Pursuant to Article II - TRANSACTIONS of Implementing Agreement No. NYD-217, notice is hereby given of the Carrier's intent to implement the transaction outlined in the attached document and transfer all work associated with selected clerical positions within the SP Engineering Department in Houston, TX, Roseville, CA, San Francisco, CA, West Colton, CA, Monterey Park, CA, Denver, CO, to various Sr. Administrative Clerk positions located in Roseville, West Colton, Spring, San Antonio, Portland, Cheyenne and Omaha, as noted.

It is the Carrier's intention to abolish all positions identified at the locations specified effective sixty (60) days from the date of this Notice.

Please contact my office if you have any questions regarding this transaction.

Yours truly,

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

Attach.

cc: Mr. J. P. Condo
International Vice President, TCU
53 W. Seegers Road
Arlington Heights, IL 60005

Mr. J. L. Gobel
International Vice President, TCU
4189 North Road
Moose Lake, MN 55767

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NAME	SSN	TITLE	LOCATION	WORK TRANSFERRED*
L. E. Turner	521-52-4324	Secretary	Denver	Omaha and Cheyenne
M. L. Docken	523-68-9362	Secy Division Engr	Denver	Omaha and Cheyenne
H. Sanders	450-64-2066	Head Material Clerk	Houston	Spring and San Antonio
D. E. Youngblood	462-92-9411	M/W General Clerk	Houston	Spring
K. Santoyo	551-74-7733	Clerk Steno	Monterey Park	Roseville, West Colton, Portland
P. L. Olsen	561-78-5572	Clerk Steno	Roseville	Roseville, West Colton, Portland
W. R. Swayne	530-26-4342	M/W Clerk	Roseville	Roseville, West Colton, Portland
R. D. Torno	517-46-2560	M/W Clerk	Roseville	Roseville, West Colton, Portland
L. P. Wallace	571-92-5731	M/W Clerk Steno	Roseville	Roseville, West Colton, Portland
S. Twitchell	566-80-2622	General Clerk	San Francisco	Roseville
R. C. Jones	558-80-1147	M/W General Clerk	West Colton	Roseville and West Colton

*Work will be absorbed by the Sr. Administrative Clerk at the location(s) specified.

ALLIED SERVICES DIVISION/TCU
53 WEST SEEGERS ROAD
ARLINGTON HEIGHTS, ILLINOIS 60005
847-981-1290
847-981-1890 (FAX)
r443@jano.com (E-[illegible])

To: R. L. Camp, Director - LR/Non-Ops

From: Robert F. Davis, President (PB-97-17)

Re: Steno Clerk Position - West Colton

Date: June 17, 1997

Attached for your review you will find a copy of a memorandum sent to me by Richard Cota concerning a Steno Clerk Position being advertised as a "UP" Sr. Admin Clerk position in West Colton.

Kindly advise me how the carrier believes that it can discontinue an established SP steno clerk position and simply readvertise same as a UP position with a different title.

MEMORANDUM

TO: Robert E. Davis, President-ASD

FROM: Richard M. Cota, District Chairman 890

DATE: June 16, 1997

SUBJECT: UP Advertised Steno Position/West Colton

Enclosed is copy of Clerical Vacancy Notice 20710232, dated June 13, 1997, advertising new position in West Colton. We were informed by Mr. John Steiger, Labor Relations, that the Steno Position in West Colton would be assigned to a UP employee in West Colton. Currently the Steno in West Colton is Ms. Rita Jones. She was also advised that she will not be considered an incumbent, her position would be abolished and her duties would be assigned to the UP employee. Please investigate this matter advising if we should file any necessary claims.

cc: Rita Jones

m/w General Clerk - Steno

558-80-1147

UNION PACIFIC RR COMPANY

CLERICAL VACANCY BULLETIN

DEPARTMENT - ENGINEERING - UP & STAFF WEST COLTN CA

VACANCY DATED.06-04-97 VACANCY BULLETIN NUMBER 97216232

PERMANENT POSITION SR ADMIN CLK 16

POSITION EFFECTIVE DATE - 06-16-97

BULLETIN REASON - NEW POSITION

APPLICATION FOR BULLETINED POSITION MUST BE RECEIVED NO LATER THAN 12:00 PM - 06-10-97

STN/BUREAU - 98988 AUTHORIZED POSITION - 001 PAYROLL - 000 POSITION TYPE - 1Z

RATE NBR 063 ROSTER NBR - 0880 ZONE NBR - 007 LOW RATE - 9188.8100

MEAL PERIOD - 30 MINUTES HIGH RATE - 9188.8100

HOURS OF SERVICE - 0700A 0400P REST DAYS - SAT SUN GRADE - 006

SUPERVISOR - R E PANCHER, MGR FIELD ENGR ADMIN

DUTIES:
PERFORM GENERAL CLERICAL DUTIES INCLUDING, BUT NOT LIMITED TO: ACCOUNTS PAYABLE, PAYING INVOICES, REQUISITIONING SUPPLIES AND MATERIALS, HANDLING CORRESPONDENCE AND FILING FOR ENTIRE OFFICE, HANDLING ALL INQUIRIES FROM GENERAL PUBLIC, DIRECTORS, MANAGERS, SUPERVISORS AND AGREEMENT PERSONNEL AND WORKING WITH LEASED VEHICLES. POSITION REPORTS TO MANAGER ENGINEERING ADMIN. LOCATED IN OMAHA. PERFORM DUTIES FOR DIRECTORS OF TRACK, SIGNAL AND BRIDGE. INDIRECTLY REPORTS TO ALL FIELD MANAGERS AND SUPERVISORS. REQUIRES WORKING KNOWLEDGE OF PERSONAL COMPUTERS (WINDOWS, EXCEL, WORD PERFECT, LOTUS NOTES) PLUS MAINFRAME PROGRAMS (TSO, IMS, CMS, PIMS, COBOL, DOMUS, CARES). WORKING ABILITY OF ALL TYPES OF COPY MACHINES AND PRINTERS.

QUALIFICATIONS:
QUAL-TYPE60

CONTACT: L. LAMP

TCU ASSIGNMENT CENTER - RM-885 OMAHA
(402)-271-2187
PRINTER LATA - IL44409
FAX NUMBER - 271-3077

** TOTAL PAGE.03 **

June 18, 1997
NYD-217

Mr. R. F. Davis
President, ASD/TCU
53 W. Seegers Road
Arlington Heights, IL 60005

Dear Sir:

Reference your Memo of June 17, 1997, and the attachment to your Memo from Richard Cota, regarding a Steno Clerk Position in West Colton.

In a Notice dated June 4, 1997, served under the terms and conditions of Article II - Transactions of Implementing Agreement No. NYD-217, set forth the Carrier's intent to abolish positions in the SP Engineering Department in Houston, Roseville, San Francisco, West Colton, Monterey Park and Denver and, as indicated in the notice, the work of the positions will be absorbed by various UP Sr. Administrative Clerk positions located in Roseville, West Colton, Spring, San Antonio, Portland, Cheyenne and Omaha. The position occupied by Ms. Rita Jones, M/W General Clerk-Steno at West Colton, is one of the positions covered in the Notice, which indicates the work will be transferred to Roseville and West Colton..

The Carrier is not discontinuing an established SP clerical position and simple readvertising same as an UP position with a different title. The position under notice, attached to Richard's note to you, is a position that was transferred under an UP Feb. 7 Implementing Agreement from (UP) Stockton, CA to (UP) West Colton, CA. The UP clerical employee on the position in Stockton opted to take a separation under the UP Feb. 7 Implementing Agreement instead of relocating to West Colton, CA. , ergo, the reason for the bulletin.

I hope the foregoing clears up any confusion regarding the Carrier's Notice dated June 4, 1997, as it relates to Ms. Rita Jones position in West Colton. If you have any further questions, give me a call.

Sincerely,

(original signed)

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

June 23, 1997

NYD-217

CORRECTED NOTICE

Mr. R. F. Davis
President ASD/TCU
53 W. Seegers Road
Arlington Heights, IL 60005

Mr. J. L. Quilty
General Chairman, TCU
2820 South 87th Avenue
Omaha, NE 68124

Gentlemen:

This has reference to letter dated June 4, 1997, giving notice pursuant to Article II - TRANSACTIONS of New York Dock Implementing Agreement No. NYD-217, of the Carrier's intent to abolish Position No. 573 within the SP Engineering Department located in Roseville, California, on or about August 4, 1997. Please be advised the incumbent on this position should be A. Macias, Jr. and not P. L. Olson.

If you have any questions concerning this transaction, please contact my office.

Yours truly,

(original signed)

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

cc - Mr. J. P. Condo
International Vice President, TCU
53 W. Seegers Road
Arlington Heights, IL 60005

Mr. J. L. Gobel
International Vice President, TCU
4189 North Road
Moose Lake, MN 55767

Incumbent Noted Above

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UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
OMAHA NEBRASKA 68179

July 16, 1997

NYD-217

Mr. R. F. Davis
President ASD/TCU
53 W. Seegers Road
Arlington Heights, IL 60005

Mr. J. L. Quilty
General Chairman, TCU
2820 South 87th Avenue
Omaha, NE 68124

Gentlemen:

Reference our letter dated June 4, 1997, therein serving notice pursuant to Article II - TRANSACTIONS of Implementing Agreement No. NYD-217, of the Carrier's intent to implement the transaction outlined in the attachment to our letter, covering the transfer of work associated with selected clerical positions within the SP Engineering Department in Houston, TX, Roseville, CA, San Francisco, CA, West Colton, CA, Monterey Park, CA, and Denver, CO.

This will serve as a cancellation notice, canceling the abolishment of the MW General Clerk position at West Colton, incumbent R. C. Jones.

Yours truly,

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

cc - Mr. J. P. Condo
International Vice President, TCU
53 W. Seegers Road
Arlington Heights, IL 60005

Mr. J. L. Gobel
International Vice President, TCU
4189 North Road
Moose Lake, MN 55767

ALLIED SERVICES DIVISION

Transportation • Communications International Union – AFL-CIO. CLC

ROBERT F. DAVIS
President

TED P. STAFFORD
General Secretary-Treasurer

C. S. MORA
District Chairman
District 198

15 Windstone Court
Sacramento, CA 95831
Telephone: 916-427-6969

September 22, 1997

T.D. Allen
Director-Track Maintenance
Union Pacific Railroad
10031 Foothills Boulevard
Roseville, CA 95678

Post-it™ brand fax transmittal memo 7671	# of pages ▸
To SUE Gottschalk	From TRENT ALLEN
Co.	Co.
Dept.	Phone # 916 7525280
Fax # 280 8249	Fax # 916 7525276

Dear Sir:

The job abolishment/transfer of work notice per NYD-217 that was issued by the Carrier on June 4, 1997, indicated that worked performed by the following clerks would be transferred to Roseville, CA:

P.L. Olson	Clerk Steno
W.R. Swayne	M/W Clerk
R.D. Torno	M/W Clerk
L.P. Wallace	M/W Clerk Steno
K. Santoyo	Clerk Steno
S. Twitchell	General Clerk
R.C. Jones	M/W General Clerk

I am requesting that you provide for me those duties that were transferred to Roseville and to what position/positions as soon as possible.

In recent weeks, the UP has been criticized by federal officials for overworking their employees. In some cases there has been fatal accidents due to tired employees. The UP has even appointed a manager, Mr. Bob Naro, who reports directly to UP President Jerry Davis to review safety related issues. It has been reported by The Journal of Commerce that "The company plans to hire 1,500 new workers by year's end to help ease the heavy workload..."

My concern is twofold. That the UP maintain a sufficient clerical work force in our district to provide the clerical support all departments require and that the safety of clerical employees is a priority! Four (4) clerical employees's, who were under your jurisdiction in Roseville (Linda Wallace is still

working for you), positions were abolished as a result of the UP-SP merger and the work was transferred. It is my understanding that Linda Wallace has absorbed some of the duties assigned to the previously mentioned positions and has enough of a work load for two (2) other clerks. This situation is unfair to her and unfair to Bill Swayne, who was an incumbent of one of the positions abolished and had to exercise his seniority. Your immediate response would be greatly appreciated.

Sincerely,

C.S. Mora
District Chairman ASD/T•CU
District 198

attachment
cc: W.R. Swayne

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
OMAHA NEBRASKA 68179

Ms. C. S. Mora, District Chairman
Allied Services Division/TCU
15 Windstone Court
Sacramento, CA 95831

October 20, 1997
NYD-217

Dear Sir:

This has reference to your letter to Mr. Trent Allen, Director-Track Maintenance, regarding Carrier's notice dated June 4, 1997, served pursuant to the New York Dock Implementing Agreement No. NYD-217. Your letter was referred to my office for handling.

In response to the opening paragraph of your letter, you asserted that the June 4, 1997-notice indicated that work performed by the listed clerks would be transferred to Roseville, indicating that a single position in Roseville would absorb the work of the positions listed in the notice. If that is what you were implying by your statement, you either misunderstood the notice as written, or were given incorrect information as to the intent of the notice.

The June 4, 1997-notice stipulated that the work associated with the selected positions would be transferred to various existing Sr. Administrative Clerk positions located in various locations. One such location was Roseville. The other locations were Spring, TX, San Antonio, TX, Portland, OR, Cheyenne, WY, Omaha, NE and West Colton, CA. To my knowledge, the Carrier acted on the notice as issued, and as indicated in your letter, Linda Wallace absorbed the duties in Roseville.

If you need additional information, please give me a call on Omaha Ext. 271-2237.

Sincerely,

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

cc: Trent Allen - Roseville
Sue Gottschalk - MC3300

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
OMAHA NEBRASKA 68179

July 16, 1997

NYD-217

Mr. R. F. Davis
President ASD/TCU
53 W. Seegers Road
Arlington Heights, IL 60005

Mr. J. L. Quilty
General Chairman, TCU
2820 South 87th Avenue
Omaha, NE 68124

Gentlemen:

Pursuant to Article II - TRANSACTIONS of Implementing Agreement No. NYD-217, notice is hereby given of the Carrier's intent to transfer work associated with the SP MW General Clerk position within the SP Engineering Department at West Colton, CA, with that of the UP Engineering Services Department at West Colton, CA, as follows:

Incumbent	SS#	Position	Effective
R. C. Jones	558-80-1147	MW General Clark	Sept. 15, 1997

It is the Carrier's intention to eliminate the aforementioned MW General Clerk at West Colton and transfer the work to a new Sr. Admin. Clerk position to be established at West Colton, CA, effective September 16, 1997.

Please contact this office if you have any questions regarding this transaction.

Yours truly

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

cc - Mr. J. P. Condo
International Vice President, TCU
53 W. Seegers Road
Arlington Heights, IL 60005

Mr. J. L. Gobel
International Vice President, TCU
4189 North Road
Moose Lake, MN 55767

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June 23, 1997
NYD-217

Mr. R. F. Davis
President ASD/TCU
53 W. Seegers Road
Arlington Heights, IL 60005

Mr. J. L. Quilty
General Chairman, TCU
2820 South 87th Avenue
Omaha, NE 68124

Gentlemen:

Pursuant to Article II - TRANSACTIONS of New York Dock Implementing Agreement No. NYD-217, notice is hereby given of the Carrier's intent to abolish the positions identified below within the SP Operating Department located in Houston, Texas, on or after August 22, 1997:

Location	Incumbent	Position
Houston	K. R. Holloway	Position 632
Houston	S. Pappas	Position 630

The duties of these positions will be transferred to UP clerical employees in the Livonia, Houston, East Texas, St. Louis, Kansas City, North Little Rock, Wichita, Ft. Worth, San Antonio and Tucson Service Units.

If you have any questions concerning this transaction, please contact my office.

Yours truly,

(original signed)

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

cc - Mr. J. P. Condo
International Vice President, TCU
53 W. Seegers Road
Arlington Heights, IL 60005

Mr. J. L. Gobel
International Vice President, TCU
4189 North Road
Moose Lake, MN 55767

Incumbents Noted Above

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February 18, 1998
NYD-217

Mr. R. F. Davis
President ASD/TCU
53 W. Seegers Road
Arlington Heights, IL 60005

Mr. J. L. Quilty
General Chairman, TCU
2820 South 87th Avenue
Omaha, NE 68124

Gentlemen:

Pursuant to Article II-TRANSACTIONS of Implementing Agreement No. NYD-217, notice is hereby given of Carrier's intent to abolish the positions identified below at the Englewood Yard, Houston, Texas, on or about April 19, 1998:

Position	Incumbent
GEB #602	J. Pierce
GEB #603	H. F. Calvert
GEB #604	V. F. Copeland
GEB #605	V. M. Anderson
GEB #606	J. Dunlap
GEB #607	L. Sims
GEB #608	Y. Urbina
GEB #610	S. S. Smith
GEB #611	J. Marroquin
GEB #612	J. Szush

Please feel free to contact my office if you have any questions concerning this transaction.

Yours truly,

(original signed)

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

cc: Mr. J. P. Condo
International Vice President, TCU
53 W. Seegers Road
Arlington Heights, IL 60005

Mr. J. L. Gobel
International Vice President, TCU
4189 North Road
Moose Lake, MN 55767

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UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
OMAHA NEBRASKA 68179

February 5, 1998
NYD-217

Mr. R. F. Davis
President ASD/TCU
53 W. Seegers Road
Arlington Heights, IL 60005

Mr. J. L. Quilty
General Chairman, TCU
2820 South 87th Avenue
Omaha, NE 68124

Gentlemen:

Pursuant to Article II-TRANSACTIONS of Implementing Agreement No. NYD-217, notice is hereby given of Carrier's intent to abolish the position identified below at the Hardy Street Locomotive Plant, Houston, Texas, on or about April 5, 1998:

Position	Title	Incumbent
T380	Steno	J. L. Miller

It is the Carrier's intention to eliminate this SP Hardy Street Locomotive Plant position and transfer the work to one (1) new position in the UP Locomotive Diesel Facility, at Settegast Yard, Houston, Texas. Reference the attached document for hours, rest days, rate of pay, etc.

Please feel free to contact my office if you have any questions concerning this transaction.

Yours truly,

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

cc: Mr. J. P. Condo
International Vice President, TCU
53 W. Seegers Road
Arlington Heights, IL 60005

Mr. J. L. Gobel
International Vice President, TCU
4189 North Road
Moose Lake, MN 55767

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UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
OMAHA NEBRASKA 68179

June 24, 1998

NYD-217

Mr. R. F. Davis
President ASD/TCU
53 W. Seegers Road
Arlington Heights, IL 60005

Mr. J. L. Quilty
General Chairman, TCU
2820 South 87th Avenue
Omaha, NE 68124

Gentlemen:

Pursuant to Article II-TRANSACTIONS of Implementing Agreement No. NYD-217, notice is hereby given of Carrier's intent to abolish the position identified below at the Hardy Street Locomotive Plant in Houston, Texas, on or about August 25, 1998:

Position	Incumbent
T238 Roundhouse Clerk	G. L. Dixon

It is the Carrier's intent to eliminate this position and transfer the work to the UP Locomotive Diesel Facility at Settegast Yard, Houston, TX, and establish one (1) new position. Reference the attached document for hours, rest days, rate of pay, etc.

Please contact my office if you have any questions regarding this transaction.

Yours truly,

D D Matter

D. D. Matter
Gen. Director Labor Relations

cc: Mr. J. P. Condo
International Vice President, TCU
53 W. Seegers Road
Arlington Heights, IL 60005

Mr. J. L. Gobel
International Vice President, TCU
4189 North Road
Moose Lake, MN 55767

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Title:	Control Center Supervisor
Hours:	11:00 PM to 7:00 AM
Rest Days:	Friday & Saturday
Location:	Settegast Yard
Typing Requirement:	35wpm

Description:

Compile and prepare reports, charts, graphs, spreadsheets, statistics and locomotive data. Must be able to interface with field and headquarters Mechanical and other Company personnel to coordinate the efficient and timely preparation of information and reports for our locomotive fleet. Must be able to perform work requirements to meet daily deadlines. Assist in monitoring various measurements within Department. Must handle telephone or other inquiries from customers both internal and external in a courteous and friendly manner. Must be proficient in us of PC's, PC software and UP mainframe systems including but not limited to: IMSOMH, TCS, RYM, LIS, LMS, TSOOMH, ACCESS, POWERPOINT, HARVARD GRAPHICS, WORDPERFECT, WORD, EXTRA, etc., Proficient job performance requires extensive mechanized data retrieval from mainframe and PC database. Must be skilled in grammar, punctuation, spelling and letter/report formal skills. Must have proven administrative and communication skills, both written and verbal.

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
OMAHA NEBRASKA 68179

August 31, 1998
NYD-217

CORRECTION

Mr. R. F. Davis
President ASD/TCU
53 W. Seegers Road
Arlington Heights, IL 60005

Mr. J. L. Quilty
General Chairman, TCU
2820 South 87th Avenue
Omaha, NE 68124

Gentlemen:

Reference my letter dated July 27, 1998, pursuant to Article II-TRANSACTIONS of Implementing Agreement No. NYD-217, wherein notice was given of Carrier's intent to abolish the positions identified below at the Hardy Street Locomotive Facility, Houston, Texas, and transfer the work to the Settegast Diesel Facility, on or about September 27, 1998. Please adjust your records to reflect the following highlighted revision:

Position	Incumbent
329 - Utility Clerk	E. M. Abbs
331 - Utility Clerk	R. J. Punch
R329 - Utility Clerk	A. V. Stewart

Work of these positions will be absorbed by existing clerical assignments at the Settegast Diesel Facility, as follows:

Position	Incumbent
003 - Supv Admin Proc	Bobbie Smith
004 - Valuation Data Clerk	Janice L. Miller
002 - Steno Diesel Clerk	Reva M. Null

If you have any questions regarding this transaction, please contact my office.

Yours truly,

D. D. Matter
Gen. Director Labor Relations/Non-Ops

cc: Mr. J. P. Condo
International Vice President, TCU
53 W. Seegers Road
Arlington Heights, IL 60005

Mr. J. L. Gobel
International Vice President, TCU
4189 North Road
Moose Lake, MN 55767

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UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
OMAHA, NEBRASKA 68179

July 27, 1998
NYD-217

Mr. R. F. Davis
President ASD/TCU
53 W. Seegers Road
Arlington Heights, IL 60005

Mr. J. L. Quilty
General Chairman, TCU
2820 South 87th Avenue
Omaha, NE 68124

Gentlemen:

Pursuant to Article II-TRANSACTIONS of Implementing Agreement No. NYD-217, wherein notice was given of Carrier's intent to abolish the positions identified below at the Hardy Street Locomotive Facility, Houston, Texas, and transfer the work to the Settegast Diesel Facility, on or about September 27, 1998:

Position	Incumbent
329 - Utility Clerk	E. M. Abbs
331 - Utility Clerk	R. J. Punch
004 - Utility Clerk	A. V. Stewart

Work of these positions will be absorbed by existing clerical assignments at the Settegast Diesel Facility, as follows:

Position	Incumbent
003 - Supv Admin Proc	Bobbie Smith
004 - Valuation Data Clerk	Janice L. Miller
002 - Steno Diesel Clerk	Reva M. Null

If you have any questions regarding this transaction, please contact my office.

Yours truly,

D. D. Matter
Gen. Director Labor Relations/Non-Ops

cc: Mr. J. P. Condo
International Vice President, TCU
53 W. Seegers Road
Arlington Heights, IL 60005

Mr. J. L. Gobel
International Vice President, TCU
4189 North Road
Moose Lake, MN 55767

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ARBITRATION PURSUANT TO ARTICLE I, SECTION 4, OF THE NEW YORK DOCK CONDITIONS

In the matter of arbitration between

United Transportation Union and Brotherhood of Locomotive Engineers

-and-

CSX Transportation, Inc.

Background

CSX Transportation, Inc. (hereinafter referred to as CSXT or the Carrier) is a Class I railroad that has evolved from the merger and acquisition of some eleven (11) railroads and their subsidiaries pursuant to the authorization of the Interstate Commerce Commission (hereinafter referred to as the ICC). Since 1962, the Baltimore & Ohio Railroad (hereinafter referred to as the B&O) and the Chesapeake & Ohio Railroad (hereinafter referred to as the C&O) have been commonly controlled and managed. These railroads and some subsidiaries comprised the Chessie System, Inc. The Chessie System, Inc. also controlled the Western Maryland Railway Company (hereinafter referred to as the WM).

In 1980, the Chessie System, Inc. and the Seaboard Family Lines, Inc. were merged to form CSX Transportation, Inc. The ICC approved this merger in Finance Docket No. 28905. In this same Finance Docket, the ICC also authorized the CSX Corporation to control the Richmond, Fredericksburg & Potomac Railroad (hereinafter referred to as the RF&P) through stock ownership.

In 1983, through a Notice of Exemption, the ICC authorized the B&O to operate the railroad properties of WM as part of the B&O system. (Finance Docket No. 30160). In 1987, the ICC issued another Notice of Exemption in Finance Docket No. 31033 merging the B&O into the C&O. As a result of this merger, the B&O ceased to exist as a separate corporate entity. In 1987, the ICC also authorized the merger of the C&O into CSX in Finance Docket No. 31106. In 1988, the ICC authorized the merger of the WM into CSXT (Finance Docket No. 31296). In 1992, the ICC authorized CSXT to operate the properties of the RF&P in the name and for the account of CSXT (Finance Docket No. 32020).

It should be noted that with the exception of the seminal 1980 merger between the Chessie System, Inc. and the Seaboard Coast Line Industries, Inc., all these other mergers were exempt from prior ICC approval. In all of these Finance Dockets, the ICC imposed the labor protective conditions set forth in New York Dock Railway-Control-Brooklyn Eastern District Terminal, 360 ICC 60, (1979) (hereinafter referred to as the New York Dock Conditions).

This arbitration under Article I, Section 4, of the New York Dock Conditions emanates from a January 10, 1994 notice that the Carrier served on four (4) United Transportation Union (UTU) General Committees of Adjustment and three (3) Brotherhood of Locomotive Engineers (BLE) General Committees of Adjustment. The Carrier claims that this notice was served in accordance with Article I, Section 4, of the New York Dock Conditions. The

Carrier contends that this New York Dock notice was served pursuant to ICC Finance Dockets 28905, 30160, 31033, 31106, 31296, 31954 and 32020.

The January 10, 1994, notice advised the affected UTU and BLE General Committees of Adjustment that CSXT intended to fully transfer, consolidate and merge the train operations and associated work force on the former WM, RF&P and a portion of the former C&O in the area between Philadelphia, PA., Richmond, VA., Charlottesville, VA., Lurgan, PA., Connellsville, PA., Huntington, W. VA. and Bergoo, W. VA. This proposed consolidation would include all terminals, mainlines, intersecting branches and subdivisions located in this territory between southern Pennsylvania and southern Virginia. This territory would be known as the Eastern B&O Consolidated District. It would encompass seven (7) existing seniority districts for train service employees and five (5) existing seniority districts for engine service employees.

The January 10, 1994, notice also advised the UTU and BLE General Committees of Adjustment that the aforementioned operations on the C&O, WM and RF&P would be merged into operations on the former Baltimore and Ohio Railroad and the affected train and engine service employees would be governed by the existing collective bargaining agreements on the former B&O applicable to train and engine service employees. Additionally, CSXT proposed that the working lists of the separate districts protecting service in this territory would be merged, including

establishment of common extra boards to protect service out of the respective supply points that would be maintained.

The notice outlined six (6) initial operational changes that the Carrier intended to make in order to facilitate the proposed transfer, consolidation and merger. However, CSXT subsequently withdrew its proposal requiring the Keystone Subdivision to protect certain service west of Cumberland. The Carrier suggested that a meeting be held on January 20, 1994, to commence negotiations for an implementing agreement pursuant to Article I, Section 4, of the New York Dock Conditions.

CSXT estimates that forty-five (45) train and engine positions would be abolished and forty-three (43) new positions would be created as a result of this consolidation. Some positions will be established at new locations. The Carrier asserts that no train or engine service employees will be furloughed as a result of the coordination. However, the Carrier's proposal will result in the closing of a number of supply points on the former C&O, B&O and WM. Reporting points would also change for some train and engine service employees. One seniority district would be created for the proposed Eastern B&O Consolidated District.

On February 10, 1994, the parties met to discuss the Carrier's January 10, 1994, notice. The UTU and the BLE took the position that the notice was improper for a myriad of reasons. They claimed that the proposal was improper because it would cause changes in the rates of pay, rules and working conditions

in existing collective bargaining agreements without compliance with the Railway Labor Act. They further asserted that the proposal did not involve a "transaction" under the New York Dock Conditions. Moreover, the UTU and BLE complained that the notice failed to specifically relate any of the proposed changes to the individual Finance Dockets cited by the Carrier. They also claimed that the proposal was not permitted by the Interstate Commerce Act and had no relation to the merger dating back to 1980 between the Chessie System, Inc. and the Seaboard Coast Line Industries, Inc. because no properties of the former Seaboard Coast Line were involved in the proposed changes. The Unions asked the Carrier to withdraw its January 10, 1994, notice but it refused to do so.

On February 25, 1994, CSXT submitted a proposed implementing agreement to the BLE and UTU involving the properties of the former B&O, C&O, RF&P, and WM it wished to merge. The Unions reiterated their objections to the notice and declined to meet to discuss the Carrier's proposed implementing agreement. On March 25, 1995, CSXT insisted that its notice was proper and legal and suggested that the parties proceed to arbitration pursuant to Article I, Section 4, of the New York Dock Conditions.

The BLE and UTU General Committees of Adjustment agreed to participate in the arbitration requested by CSXT while reserving their rights to challenge the January 10, 1994, notice as improper and procedurally infirm; and that there was no legal basis or authority for the changes proposed in the notice. The

Unions maintained that these arguments, among others, would be presented to the New York Dock arbitrator.

On September 23, 1994, the National Mediation Board designated the undersigned as Arbitrator of this dispute. The parties submitted extensive Submissions and a plethora of evidence in support of their respective positions. A hearing was held on March 28, 1995, in Washington, D.C. Based on the extensive evidence and arguments advanced by the Unions and CSXT, this Arbitrator hereby addresses the issues submitted to him.

Findings and Opinion

The ultimate question before this Arbitrator is whether the Carrier's proposed implementing agreements with the United Transportation Union and the Brotherhood of Locomotive Engineers comport with Article I, Section 4, of the New York Dock labor protective conditions. However, before reaching that paramount question, the Unions have presented several threshold issues that must be addressed. As noted heretofore, when the Unions agreed to CSXT's invocation of arbitration, they specifically reserved their right to submit these issues to the Arbitrator appointed pursuant to Article I, Section 4, of the New York Dock Conditions.

It is a universally accepted principle that Arbitrators appointed pursuant to Article I, Section 4, of the New York Dock Conditions serve as an extension of the ICC. Since these Arbitrators derive their authority from the ICC, they are duty

bound to follow decisions and rulings promulgated by the ICC. The ICC has suggested that New York Dock Arbitrators should initially decide all issues submitted to them, including issues that might not otherwise be arbitrable, subject, of course, to ICC review. Consistent with that mission, the undersigned Arbitrator hereinafter addresses the issues advanced by the UTU and BLE.

I. Has CSXT presented a "transaction" as defined in Article I, Section 1(a) of the New York Dock Conditions?

A "transaction" is defined as any action taken pursuant to a Commission authorization upon which New York Dock Conditions have been imposed. The Unions stress that CSXT is the moving party in this arbitration. Therefore, according to the Unions, CSXT must prove that there is a causal nexus between an ICC approved transaction and the operational changes it wished to make on the C&O, B&O, WM and RF&P railroads.

Rather than demonstrate this requisite causal relationship, the Unions contend that the Carrier merely listed seven Finance Dockets in its purported January 10, 1994, notice and explained eight (now seven) changes it wished to implement without identifying whether any of the particular Finance Dockets bear any relationship to any of the proposed changes. For these reasons, among others, the Union submits that CSXT has not submitted a proper and valid New York Dock notice for this Arbitrator's consideration.

In CSX Corp. - Control - Chessie System, Inc. and Seaboard Coast Line Indus., Inc., 8 I.C.C. 2d 715 (1992), the ICC set

forth guidelines to determine when a proposed coordination constitutes a "transaction" under New York Dock. In that proceeding, CSXT proposed to abolish four dispatcher positions at Corbin, Kentucky and transfer this work to management positions in Jacksonville, Florida. CSXT served this notice under the authority of Finance Docket No. 28905 which the ICC had approved in 1980, eight (8) years prior to the proposed transfer of these dispatcher positions. The American Train Dispatchers Association (ATDA) refused to agree to an implementing agreement and one was imposed by a New York Dock Arbitrator. The ATDA appealed the Arbitrator's Award to the ICC arguing that the change proposed in 1988 occurred too long after imposition of New York Dock conditions in 1980 to qualify as a "transaction."

The ICC rejected the ATDA's argument and found that the eight (8) year lapse between its imposition of New York Dock labor protective conditions in Finance Docket No. 28905 and the proposed transfer of dispatching functions in 1988 did not, by itself, render the proposal improper. The ICC explained that the relevant inquiry is not the passage of time but whether the coordination "reasonably flowed" from the control transaction that had been approved in 1980. The ICC declared that approval of a principal transaction extends to and encompasses subsequent transactions that are directly related to and fulfill the purposes of the principal transaction. The ICC did caution, however, that there must be a direct causal connection between the earlier merger transaction and the subsequent operational

changes sought to be implemented by a carrier.

It is instructive to note that in 1980, the ICC authorized the CSX Corporation to control the RF&P in Finance Docket No. 28905. In 1987, the ICC approved the merger of the B&O into the C&O in Finance Docket No. 31033. and the merger of the C&O into CSX (Finance Docket No. 31106). In 1988, the ICC sanctioned the merger of the WM into CSXT which had been formed in 1987 (Finance Docket No. 31296). And in 1992, the ICC authorized CSXT to operate the properties of the RF&P (Finance Docket No. 32020). All these Finance Dockets were cited by the Carrier in its January 10, 1994, notice to the UTU and BLE.

In this Arbitrator's opinion, the operational changes proposed by the Carrier in its January 10, 1994 notice directly related to and flowed from the aforementioned transactions that were authorized by the ICC. Were it not for the ICC permission in those Finance Dockets, CSXT would have no authority to merge the B&O, C&O, WM and RF&P territories into a single, discrete rail freight operation. To this Arbitrator, there is a direct causal relation between the mergers and coordinations sanctioned by the ICC in the Finance Dockets cited in the Carrier's January 10, 1994, notice and the operational changes it sought to implement on the former B&O, C&O, WM and RF&P properties. Accordingly, that proposal constituted a "transaction" as defined in Article I, Section 1(a), of the New York Dock Conditions.

II. **Does the Arbitrator lack authority to grant CSXT's request for modification or relief from existing collective bargaining agreements because Article 1, Section 2, of the New York Dock conditions mandates the preservative of rates of pay, rules, working conditions and rights, privileges and benefits under existing agreements?**

Article I, Section 2, of New York Dock provides as follows:

> 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 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.

In Railway Labor Executives' Association v. United States of America and the Interstate Commerce Commission, 982 F.2d 806 (1993), the United States Court of Appeals for the District of Columbia Circuit ruled that Section 11347 of the Interstate Commerce Act (49 U.S.C. 11347) mandates that rights, privileges and benefits afforded employees under existing collective bargaining agreements must be preserved. The Court remanded the case to the ICC to define "rights, privileges and benefits." The ICC has not yet rendered a ruling in that remanded proceeding.

The Unions argue that until the ICC defines what is meant by the "rights, privileges and benefits" language of Section 405 of the Rail Passenger Service Act, which has been incorporated into Section 11347 of the Interstate Commerce Act, this Arbitrator lacks authority to grant CSXT the right to modify or eliminate any existing collective bargaining agreements.

Although the ICC has suggested that New York Dock arbitrators address all issues submitted to them, subject to its review, clearly it would be inappropriate for this Arbitrator to determine what was intended by the statutory language "rights, privileges and benefits" in Section 405 of the Rail Passenger Service Act. In *Executives*, the Court of Appeals for the D.C. Circuit specifically remanded this determination to the ICC. Therefore, it would be totally inappropriate for this Arbitrator to offer an opinion on the scope of this statutory language and I expressly decline to do so.

Addressing the facts extant in this particular proceeding, it appears that there would be several significant changes in the working conditions of train and engine service employees affected by the Carrier's proposal. For instance, their current seniority districts will be expanded to include all of the C&O, B&O, WM and RF&P territory to be coordinated. Also, the crew reporting points will be expanded to include all reporting points in this combined seniority district. Many present supply points will be eliminated for these employees. And those employees now working under the C&O, WM and RF&P schedule agreements will be placed under B&O schedule agreements. Additionally, some employees will have their representation changed from the UTU to the BLE.

While these are indeed not insignificant changes for many train and engine service employees in the territory to be coordinated, nevertheless similar changes are not uncommon in many New York Dock implementing agreements. Several New York Dock

Arbitrators have imposed implementing agreements placing employees under a different collective bargaining agreement. Moreover, numerous CSXT employees have been transferred to other railroads with different agreements pursuant to ICC implementing agreements. It should be noted that representation changed for many employees when the B&O Central District was created. Moreover, crew reporting points and seniority districts have been changed and expanded as a result of ICC authorized mergers and consolidations. CSXT's current proposed coordination is not markedly different from other mergers and coordinations approved by the ICC or by Arbitrators acting under the authority of the ICC.

III. Does Section 11341 (a) of the Interstate Commerce Act apply to proceedings exempted from prior review and approval by the ICC?

Section 11341(a) of the Interstate Commerce Act (49 U.S.C. 11341(a)) exempts a carrier from the antitrust laws and all other law, including State and municipal law, as necessary to let it carry out a transaction approved by the ICC under Chapter 113 of the Interstate Commerce Act (*49 U.S.C. section 11301 et seq.*) In Norfolk & Western Railway Co. et al. v. American Train Dispatchers et al., 499 U.S. 117 (1991), the United States Supreme Court ruled that the Section 11341(a) exemption "from all other law" includes a carrier's legal obligation under a collective bargaining agreement when necessary to carry out an ICC-approved transaction. The Supreme Court concluded that obligations imposed by laws, such as the Railway Labor Act, will

not prevent the efficiencies of rail consolidations from being achieved.

The Unions contend that this exemption applies only when it is necessary to carry out a transaction approved by the ICC. They maintain that the exemption does not apply when the ICC exempts a railroad from review and approval pursuant to Section 10505 of the Interstate Commerce Act (49 U.S.C. 10505). All of the transactions cited by CSXT in its January 10, 1994, notice, with the exception of the 1980 seminal transaction in Finance Docket No. 28905, involved exemptions under Section 10505 rather than approvals under Chapter 113. Therefore, the Unions assert that the Section 11341(a) exemption from "all other law" is inapplicable to these transactions.

In the light of the Supreme Court's unambiguous decision in *Train Dispatchers*, it cannot be gainsaid that the ICC may exempt transactions approved under Section 11341(a) from the RLA, and collective bargaining agreements entered into thereunder, when this is necessary to carry out a transaction approved by the ICC. The ICC has ruled that this authority extends to Arbitrators when they are working under the delegated authority of the ICC (See CSX Corporation - Control - Chessie System, Inc. and Seaboard Coast Line Industries, 8 I.C.C.2d 715 [1992]). Moreover, several Arbitrators under Article I, Section 4, of New York Dock have concluded that they have the authority to override existing collective bargaining agreements if they are an impediment to carrying out an approved transaction.

At issue here is whether the Section 11341(a) exemption from the RLA and collective bargaining agreements subject to the RLA also applies to transactions exempt from ICC review and approval under Section 10505 of the Interstate Commerce Act. A literal reading of Section 11341(a) would seem to support the Unions' argument that the exemption from other laws does not apply to transactions exempt from ICC approval. However, the ICC has concluded that it has the authority under both Section 11341(a) and Section 11347 of the Interstate Commerce Act to modify collective bargaining agreements under the RLA when they are an impediment to a merger. (See CSX Corporation -- Control -- Chessie System, Inc. and Seaboard Coast Line Industries, Inc., 6 ICC 2d 715 [1990]). This is the so-called ICC "Carmen II" decision. The Court of Appeal for the D.C. Circuit deferred to the ICC's judgment in *Executives*.

As noted at the outset of this proceeding, Arbitrators acting under the authority of the ICC must adhere to ICC rulings and decisions. In the aforementioned Carmen II decision, the ICC expressly stated that Arbitrators appointed under the New York Dock conditions have the authority to modify collective bargaining agreements when necessary to permit mergers. Thus, this Arbitrator has the authority under both Section 11341(a) and 11347 to modify existing collective bargaining agreements if this is necessary to carry out the coordination proposed by CSXT in its January 10, 1994, notice.

IV. Are the provisions of Section 11341(a) inapplicable to combinations of multiple approved or exempted transactions?

When the CSXT served its January 10, 1994, notice on the UTU and BLE, it cited seven (7) Finance Dockets that the ICC had either approved or exempted from prior approval and regulation. The Unions contend that there is no statutory or other legal basis or precedent for combinations of multiple approved or exempt transactions. This Arbitrator must respectfully disagree with the Unions' contention, however.

It is true that Section 11341(a) of the Interstate Commerce Act refers to "the transaction" in the singular. Nevertheless, the Carrier's reference to multiple Finance Dockets does not appear to be barred by the Interstate Commerce Act, ICC decisions, or the New York Dock Conditions. It is noteworthy that all of the cited Finance Dockets apply to CSXT's control of the four (4) properties it now wishes to consolidate. Moreover, the ICC imposed the same labor protective conditions in each of those transactions. Also, for many years, CSXT and its predecessor railroads have served notices under New York Dock and other ICC labor protective conditions listing multiple Finance Dockets. Evidently, neither the affected rail labor organizations nor the ICC took any exception to this practice.

For all the foregoing reasons, this Arbitrator finds that it was not improper for CSXT to reference a combination of seven (7) Finance Dockets in its January 10, 1994, notices to the UTU and BLE.

V. Is the Section 11341(a) exemption necessary to carry out the Carrier's proposed coordination?

In *Dispatchers*, the Supreme Court declared that the Section 11341(a) exemption is applicable only when it is necessary to carry out an approved transaction. The Court ruled that the exemption can be no broader than the barrier which would otherwise stand in the way of implementation. The ICC advocated a similar limitation in *Carmen II*. The ICC assumed that any change in collective bargaining agreements will be limited to those necessary to permit the approved consolidation and will not undermine labor's rights to rely primarily on the RLA for those subjects traditionally covered by that statute.

The Unions argue that the changes now proposed by CSXT are not necessary to carry out the Finance Dockets cited in the Carrier's January 10, 1994 notices in view of the actual transactions involved in those Finance Dockets; the lack of any relationship between the proposed changes; and the years that have passed since those ICC decisions.

CSXT has convinced this Arbitrator that it is necessary to change the seniority districts of the train and engine service employees affected by its proposal if the territory of the erstwhile C&O, B&O, WM and RF&P to be coordinated is to be run as a distinct and unified rail freight operation. Were the Carrier required to continue operating this territory as four separate railroads each with its own work force and seniority district the operating efficiencies contemplated by the coordination would be illusory. According to the Carrier, the proposed consolidation of

the present four seniority districts into a single seniority district will eliminate some train delays and will promote more efficient manpower utilization. To achieve this enhanced efficiency it is necessary to eliminate the current seniority districts on the affected territory and create a single seniority district.

CSXT also contends that to achieve the enhanced operating efficiency intended by its proposed consolidation some crew supply points will have to be closed, such as Hanover, PA, Charlottesville, VA and Haggerstown, MD for freight train operations. These changes, in conjunction with the establishment of Richmond as a common supply point for train service crews, will improve manpower utilization, according to the Carrier, since excess RF&P train and engine service employees at Richmond will be able to supplement the B&O, WM and C&O crews who now operate there. Again, it appears that it will be necessary to close some former crew supply points in order to achieve the efficiencies contemplated by the proposed consolidation.

It must be stressed that employees working in the consolidated territory will continue to receive the same wage rates and benefits that they currently receive. Except for the elimination of their current seniority districts and the closing of some supply points for crews, the present collective bargaining agreements on the B&O, C&O, WM and RF&P will be continued unchanged. This transaction therefore will not result in a mere "transfer of wealth" from these employees to CSXT which

the D.C. Court of Appeals found impermissible in *Executives*. Rather, the savings will be achieved from better utilization of equipment, facilities and manpower. Also, CSXT will not be obligated to hire additional train and engine service employees due to its more efficient use of employees on the combined territory. Moreover, CSXT estimates that train delays will be greatly reduced. Thus, in this Arbitrator's opinion, the transaction itself will yield enhanced efficiency independent of any modifications in the present collective bargaining agreements on the B&O, C&O, WM and RF&P.

VI. Is it permissible for the Carrier to coordinate all or part of properties that are already subject to earlier implementing agreements?

In 1983, the UTU and the BLE executed implementing agreements after the B&O received permission to operate the properties of the Western Maryland in Finance Docket No. 30160. In 1992, the UTU and the BLE executed implementing agreements after the CSXT acquired the rail assets and operations of the RF&P in Finance Docket No. 31954. Those implementing agreements provided that "they shall remain in full force and effect until revised or modified in accordance with the Railway Labor Act."

According to the Unions, those implementing agreements are still in effect since they were never revised or modified pursuant to the RLA. The Unions maintain that the Carrier has no right to re-coordinate the properties that were involved in those implementing agreements.

The Unions cite a 1994 award rendered by Neutral Robert O. Harris in a case between the UTU and CSXT involving Carrier's notice to coordinate work performed on the C&O and the Louisville and Nashville Railroad Company in support of its contention. Arbitrator Harris found that because of an earlier implementing agreement involving the same properties, CSXT was precluded from asking for *de novo* arbitration to coordinate property subject to an implementing agreement which, by its express terms, may only be changed pursuant to the RLA. The Carrier has appealed the Harris Award to the ICC.

It appears that Arbitrator Harris concluded that an implementing agreement may not be changed in a second coordination of the same properties except in accordance with the terms of the implementing agreement. However, CSXT and or its predecessors agreed to implementing agreements involving the WM and the RF&P. Evidently, there were no implementing agreements involving the B&O and C&O. Since over 80% of the territory the Carrier now proposes to coordinate involves former B&O and C&O property the Carrier is not now seeking coordination of "the same properties" which were subject to earlier implementing agreements, in this Arbitrator's judgment.

This would seem to distinguish the Harris Award. In any event, this Arbitrator finds nothing in the Interstate Commerce Act, ICC decisions or the New York Dock Conditions which preclude coordination of property previously coordinated and subject to an implementing agreement which may only be revised or modified

pursuant to the RLA. Any tension between this Award and the Harris Award must be resolved by the ICC.

In this Arbitrator's view, when the drafters agreed that an implementing agreement could only be changed in accordance with the RLA they intended this prohibition to apply to matters subject to bargaining under the RLA. They could not have intended it to affect the jurisdiction of the ICC. Nor did they have the right to preclude the ICC from reviewing mergers and coordinations subject to its jurisdiction. A new transaction would be governed by the Interstate Commerce Act, not the Railway Labor Act.

It is also noteworthy that CSXT and its predecessors have negotiated several implementing agreements containing language similar to that involved in the Harris Award. Many of those properties were subsequently coordinated without resort to the RLA. Rather, they were coordinated in accordance with ICC procedures. The ICC has made it clear that labor disputes arising from transactions which it has approved are resolved through labor protective conditions it has imposed, such as New York Dock, not through the Railway Labor Act.

For all the foregoing reasons, this Arbitrator finds that it was permissible for CSXT to propose a subsequent coordination of property that had been coordinated previously which was subject to an implementing agreement which could only be modified or revised pursuant to the Railway Labor Act.

VII. Is there a public transportation benefit flowing from the Carrier's proposal?

In *Executives* the Court of Appeals for the D.C. Circuit held that to override a collective bargaining agreement, the ICC must find that the underlying transaction yields a transportation benefit to the public, not merely a transfer of wealth from employees to their employer. Although the Court of Appeals remanded that proceeding to the ICC to clarify whether there were, in fact, transportation benefits to be had from the lease transaction involved there, it suggested that "transportation benefits" could include the promotion of safe, adequate and efficient transportation; the encouragement of sound economic conditions among carriers; and enhanced service levels.

The Carrier anticipates that its proposed changes will promote more economical and efficient transportation in the territory now served by the B&O, C&O, WM and RF&P which it wished to coordinate. According to the D. C. Court of Appeals, there would thus be some transportation benefit flowing to the public from the underlying transaction proposed by CSXT in its January 10, 1994, notices to the UTU and BLE.

Conclusion

As observed heretofore, the ICC must decide whether changes in the B&O; C&O, WM and RF&P collective bargaining agreements that are necessary to implement the transaction proposed by the Carrier involve "rights, privileges and benefits" of train and

engine employees affected by the transaction which must be preserved. If the ICC determines that their "rights, privileges and benefits" have been preserved, an issue on which this Arbitrator makes no finding, then the implementing agreements proposed by CSXT on February 25, 1994, meet the requirements of Article I, Section 4, of the New York Dock Conditions. Any employees adversely affected by this transaction will be entitled to New York Dock labor protective benefits.

The Carrier's January 10, 1994, notice to the UTU and BLE comported with the requirements of the New York Dock Conditions. The notices were in writing; were posted and served on the UTU and BLE ninety (90) days in advance; contained a full and adequate statement of the proposed changes; and included an estimate of the number of employees in each craft who would be affected by the proposed changes. The notices were therefore proper New York Dock notices.

Respectfully submitted,

Robert M. O'Brien

Robert M. O'Brien, Arbitrator

April 24, 1995

UNION PACIFIC RAILROAD COMPANY

D. D. MATTER
General Director
Labor Relations-NON-CPS

1416 Dodge Street
Omaha, Nebraska 68179

January 14, 1999

NYD Arbitration (217)

Mr. Robert M. O'Brien
16 Fox Hill Lane
Milton, MA 02186

VIA UPS NEXT DAY AIR N421 635 460 0

Mr. R. F. Davis
President, ASD/TCU
53 W. Seegers Road
Arlington Heights, IL 60005

VIA UPS NEXT DAY AIR N421 635 461 9

Gentlemen:

This has reference to the parties' pay New York Dock Arbitration Hearing held pursuant to Article I, Section 11 of the New York Dock employee protective conditions on January 6, 1999, at Boston, Massachusetts.

Enclosed please find the Carrier's Post Hearing Comments concerning the Organization's "revised position" presented at the Hearing. Because the Organization conceded that crew hauling work at Kansas City was being consolidated, it concentrated its arguments on ramp work at Kansas City and the need to adopt certain SP Collective Bargaining Agreement rules and apply those rules to the consolidated clerical forces working under the UP/TCU at that location. The attached document addresses these arguments.

Yours truly,

D. D. Matter

cc: Mr. Joel Parker
International Vice President, TCU
3 Research Place
Rockville, MD 20850

(VIA UPS NEXT DAY AIR N421 635 462 8)

Enclosure

RECEIVED
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By

Carrier's Response to the Organization's modified Position presented to the NYD Arbitration Panel on January 6, 1999

In its presentation to the New York Dock Arbitration Panel on Wednesday, January 6, 1999, at Boston, Massachusetts, the Organization surprised the Carrier by reversing its position with regard to the consolidation of SP/UP crew hauling work at Kansas City. Briefly, the Organization stated that in light of the overwhelming evidence submitted by the Carrier, it was apparent that crew hauling work at Kansas City was being consolidated as originally stated by the Carrier. As a result of this admission concerning the correctness of the Carrier's position with regard to the consolidation of crew hauling work, the Organization changed the thrust of its arguments, concentrating first on its argument that the ramp work at Kansas City was not being consolidated. Then, with regard to the consolidated crew hauling work, the Organization proceeded to expand its argurnents that the Board should aoply SP wages and certain SP work rules at the facility even though the work was being consolidated under the UP/TCU Collective Bargaining Agreement. The Organization also noted, for the first time, that if the Carrier was willing to consolidate the Kansas City facility under the SP Agreement, there would be no need to proceed with the arbitration of this case.

Addressing the last issue first, the Carrier rejected the Organization's offer to place the clerical work at the consolidated Kansas City Terminal under the SP Collective Bargaining Agreement. As more fully explained in our submission, the Kansas City Terminal will be a UP operation. There will be no SP employees left at Kansas City after the facility is consolidated. Moreover, the Union Pacific Railroad has always been the dominant carrier at that location in terms of number of employees, including clerical employees, number of cars and trains handled, number of train and switch crews working and physical size (number of tracks and total land area). In light of this fact, the Organization's offer to place all the clerical employees at Kansas City under the SP Agreement makes little sense.

Regarding the ramp work, the Carrier is dismayed that the Organization could not see that its position with regard to this issue is completely erroneous as it did with the issue of consolidation of crew hauling work. The fact is, the ramp work at Kansas City is being consolidated. The work will be shifted between the UP and SP facilities. It will be virtually impossible to distinguish SP intermodal business from UP intermodal business. The intermodal work will flow back and forth with no boundaries and no restrictions. The very fact that the work at the SP facility is covered under the SP Collective Bargaining Agreement and the work at the UP facility is not, effectively estops the Carrier from consolidating, commingling, shifting and transferring the work between the two facilities on an as-needed basis in order to meet operating requirements. This, in turn, prevents the Carrier from realizing anticipated efficiencies resulting from the merger.

Even if the Carrier could distinguish between UP and SP intermodal work and keep that work separate (which it cannot do and still "consolidate" the work), the Organization's position again makes little sense. As noted during the Hearing, the Carrier received permission from the STB to "streamline and consolidate operations at major common terminal;..." and "...combine terminal and station facilities at a number of common points;..." (see Carrier's Submission, Exhibit "1", Page 109). Leaving a handful of clerical employees under the SP Agreement while placing a larger number of SP employees under the UP Agreement at Kansas City, maintaining two (2) separate seniority rosters, maintaining two (2) separate Collective Bargaining Agreements and two (2) separate procedures for Agreement administration does not represent the streamlining and consolidation of operations at that location.

Contrary to the Organization's position, the ramp work at Kansas City is being consolidated. Moreover, the Organization's attempt to carve out bits and pieces of work that might retain some SP identity and leave that work under the SP Agreement does not represent a consolidation of terminal operations which the Carrier has a right to do.

In addition to the added emphasis on the ramp work taken in light of their "new position", the Organization spent a considerable amount of time attempting to convince the Board that it had the authority as well as an obligation to impose certain SP Collective Bargaining Agreement rules on the consolidated UP operations thereby modifying the UP/TCU Collective Bargaining Agreement at Kansas City.

In presenting this argument, the Organization noted that a number of New York Dock Panels had overridden certain Collective Bargaining Agreement provisions and, in one instance, adopted a higher wage schedule for a consolidated facility. As information, the higher wage schedule adopted by the Peter Meyers' Award cited by the Organization was taken from the Carrier's proposed BMWE Implementing Agreement presented to the Organization on the property. In other words, the Referee in that instant case merely adopted a wage schedule which both parties had previously agreed was appropriate. The instant case is distinguishable from the Awards cited by the Organization because this is an Article I, Section 11 arbitration proceeding. Neither the Organization nor the Carrier is asking the Board to write a New York Dock Implementing Agreement. The parties have already entered into an Agreement (NYD-217) so no further Agreement language is necessary. Very simply, if the Board determines the consolidation at Kansas City constitutes an STB-approved New York Dock transaction, then no further action should be necessary other than to apply NYD-217 to the transaction. For the Organization to ask this Panel to modify and supplement the parties' existing Implementing Agreement under Article 1, Section 11 is entirely inappropriate.

Moreover, it is the Carrier's position that this New York Dock Panel is without authority to order such modifications. As noted at Page 147 of Exhibit "1" attached to the Carrier's submission, the STB has specifically denied the Organization's request to "cherry

pick" Agreement provisions. The STB stated in its decision the selection or "cherry picking" of Agreement rules is "committed to the implementing agreement procedures". Since NYD does not contain any provisions to cherry pick Collective Bargaining Agreement rules and since this Board has not been empowered to write, modify or supplement NYD-217, it is the Carrier's position that this Panel is without authority to grant the relief requested by the Organization.

Article II of NYD-217 (see Carrier's submission, Exhibit "3", Page 3) describes what is to happen when a transaction takes place. The Carrier abolishes jobs under one Collective Bargaining Agreement and creates jobs under a different Collective Bargaining Agreement. The language of Letter of Understanding No. 5 to that Agreement supports the argument that work and positions are to be transferred from one Agreement to the other without further negotiations. Absolutely nothing in NYD-217 permits either party to select Agreement rules which it believes should be transferred with jobs and employees.

Finally, when the Organization states that it has taken a new position in this case, it truly means that its position is new. After over 130 consolidations under NYD-217 using the same format and same method, the Organization is now taking a new position. TCU admits that a consolidation is taking place but now wants to change the method by which the Implementing Agreement, NYD-217, is applied.

In summary, it remains the Carrier's position that all of the clerical work at Kansas City is being consolidated, including the ramp work. Moreover, the STB has granted approval of the Carrier to consolidate all work at common terminals. There is no justification for leaving small pockets of SP work protected by SP employees at any common point.

Because the work at Kansas City is being consolidated, Implementing Agreement No. NYD-217 is the proper instrument to effect that consolidation. Neither the STB nor NYD-217 permits the "cherry picking" of Agreement rules. For this reason, this Panel is without authority to modify or supplement NYD-217 to permit the selection of specific Agreement rules to be applicable at a consolidated facility. NYD is clear in the method to be used when a consolidation takes place, as evidenced by well over 100 previous consolidations under NYD-217.

In closing, the Carrier again requests the Board to find that the SP and UP clerical work at Kansas City is being consolidated, including the ramp work, and that NYD-217 is the appropriate mechanism to move work and positions from the SP to the UP.

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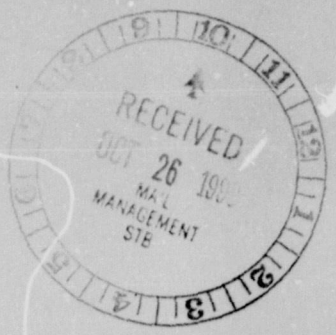

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Finance Docket No. 32760 SUB 34

I

TRANSPORTATION•COMMUNICATIONS INTERNATIONAL UNION
and
SOUTHERN PACIFIC RAILWAY LINES (SSW)
UNION PACIFIC RAILROAD COMPANY

THE RECORD (TCU'S SUBMISSION) OF THE ARBITRATION SUBJECT TO PETITION FOR ENFORCEMENT OF AN ARTICLE I, SECTION 11 ARBITRATION AWARD AND FOR AN ORDER TO CEASE AND DESIST

Mitchell M. Kraus
General Counsel
Christopher Tully
Assistant General Counsel
Transportation•Communications International Union
3 Research Place
Rockville, Maryland 20850
(301) 948-4910

sub upsp 29

ARBITRATION COMMITTEE PURSUANT TO ARTICLE 1, SECTION 11
OF THE NEW YORK DOCK PROTECTIVE CONDITIONS

Neutral Member Robert O'Brien
Boston, Mass., January 6, 1999

TRANSPORTATION•COMMUNICATIONS INTERNATIONAL UNION	**I.C.C. FINANCE DOCKET**
and	
SOUTHERN PACIFIC RAILWAY LINES (SSW) **UNION PACIFIC RAILROAD COMPANY**	**32760**

ORGANIZATION'S QUESTIONS AT ISSUE:

1) Does Carrier's Notice of June 11, 1998, involving positions located at Armourdale, Kansas and Kansas City, Missouri, contemplate a transaction pursuant to the parties' December 16, 1996 Implementing Agreement and the New York Dock conditions, as the Notice relates to:

a) Crew Haulers and Utility Clerks?, or

b) TFC Ramp Clerks?; or

c) Chief Clerks, Telegraphers, and other assignments?

2) If the answer is in the affirmative to any of the subsections of Question No. 1, which provisions of the SP collective bargaining agreement, if any, should be overridden?

INTRODUCTORY STATEMENT

This dispute involves the Carrier's June 11, 1998, Notice to the Organization of its intent to consolidate and rearrange the workforce at two (2) yard locations in the Kansas City area, and to eliminate the SP collective bargaining agreement (CBA) at one of the locations and replace it with the separate and distinct UP CBA.

The June 11, 1998, Notice calls for the proposed "consolidation" and "transfer" of work between two of the rail

yards operated by the Union Pacific Railroad ("UP" or "the Carrier") in the Kansas City metropolitan area. The Neff Yard ("Neff") is a UP facility located in Kansas City, Missouri; the Armourdale Yard ("Armourdale"), a UP facility formerly operated by the Southern Pacific Railroad ("SP"), is located ten (10) miles away in Kansas City, Kansas. The Armourdale Yard is under the SP CBA, and the Neff Yard is under the UP CBA.

It is undisputed that: the UP CBA has lower rates of pay than the SP CBA with respect to many of the involved positions; some of the work allegedly being consolidated is protected under the SP CBA, but contracted out under the UP CBA; and other specific work rules covering the positions are more favorable to the employees under the SP CBA than the UP CBA.

The Employees submit that this dispute involves three distinct issues for consideration by this Committee.

The first issue is whether a bona fide transaction is even contemplated by the Notice. It is our contention that no bona fide rearrangement of forces will actually take place between Armourdale and Neff. The ramp work, office work, and crew hauling work will remain distinct at each facility. Indeed as noted below there is no ramp work performed by UP clerks at Neff Yard. To the extent that the Carrier proposes to remove certain outside of yard crew hauling work from Armourdale, that work may be subcontracted, rather than consolidated at Neff. Therefore, as no work will be coordinated between Armourdale and Neff, the notice is simply a device to impose a CBA with lower rates of pay and less favorable rules upon the employees at Armourdale.

Second, assuming arguendo a transaction is found to exist involving some of the work, such as crew hauling, but found not to exist with regard to other work, such as ramp work, only those positions whose work is actually being coordinated should be subject to the Carriers' June 11 Notice.

Finally, assuming that the Committee determines that a transaction exists as to certain positions and/or work being transferred to the Neff Yard, then the Carrier should not be permitted to override the SP CBA rates of pay, subcontracting restrictions and guaranteed extra board rules.

EMPLOYEES' STATEMENT OF FACTS

Operations at Neff and Armourdale Yards

Prior to the merger of the UP and SP in 1996, both Neff and Armourdale operated as intermodal facilities for their respective railroads. At the Armourdale intermodal ramp, loading and unloading functions are performed by an independent contractor, while the remaining clerical ramp functions are being performed by UP clerical employees. At present, the clerical functions, as well as the loading, unloading and tie-down functions, at Neff's intermodal ramp are performed by an independent contractor.

In its November 30, 1995, application to the Interstate Commerce Commission in support of the merger, the Carrier explained its long-range operating plan for intermodal operations in the Kansas City area. Specifically, the Armourdale Yard is to be "converted to a new intermodal terminal for the UP/SP system," with $16.7 million planned for construction of a new facility at that

site, while the intermodal ramps at Neff are to be closed to "provide space for construction of two additional departure tracks that...will also help expedite traffic through the terminal." Union Pacific--Merger and Control--Southern Pacific (UP/SP Merger), ICC FD 32760, UP/SP-24, Vol. 3 (Operating Plan) at 179-180, 224 (**Employees' Exhibit No. "1"**). Post-approval Carrier correspondence confirm this long-range plan of operation. See Attachment to April 2, 1997, letter from Rich E. Horstmann to Brent Gatti, at 1 (Intermodal Terminal Consolidation Schedule, dated 4/2/97 **Employees' Exhibit No. "2"**).

Crew hauling operations at Neff are divided, pursuant to a 1991 agreement negotiated between the UP and TCU. **(Employees' Exhibit No. "3")** Under this agreement, crew hauling within the Neff Yard itself and between the yard and local hotels (to which operating craft employees are taken between runs) are performed under the UP Agreement. All crew hauling runs made from Neff Yard to other points outside the facility are performed by an independent contractor.

Crew hauling operations out of Armourdale, both within the yard and to points outside the yard, are performed under the SP (SSW) Agreement. Further, pursuant to a 1980 TOPS agreement applicable to Armourdale, the Carrier may not contract out this work. **(Employees' Exhibit No. "4")**

The Applicable Collective Bargaining Agreements

Clerical craft employees at Neff work under a collective bargaining agreement ("CBA") entered into between TCU and the UP,

effective October 1993 (UP Agreement). Clerical employees at Armourdale work under a CBA negotiated between the St. Louis Southwestern Railway (which was merged with SP) and TCU, effective January 1, 1972 (SP Agreement). These agreements differ in the following three key respects:

1. ***Pay rates*** *-- as a general matter, the pay rates for the jobs the Carrier proposes to abolish at Armourdale pursuant to this notice are substantially higher than those of the jobs it proposes to create at Neff and Armourdale, with the new positions paying between 7% and 36% less than the abolished positions;*[1]

2. ***Contracting out*** *-- the Scope Rule of the SP agreement, as amended by the May 21, 1980, TOPS agreement between TCU and SP, expressly prohibits the Carrier from removing work from TCU's jurisdiction. The clerical and crew hauling functions performed by the Armourdale clerks in question are clearly covered by the SP scope rule. The UP-TCU agreement at Neff Yard contains no such prohibition with respect to ramp or certain crew hauling operations, as evidenced by the fact that Neff's ramp operations and crew hauling operations outside the yard are currently contracted out; and*

3. ***Extra boards*** *-- pursuant to a longstanding TOPS agreement on the Armourdale property, the Carrier is required to maintain a guaranteed extra board consisting of a minimum of fifteen percent (15%) of permanent employees; the applicable UP agreement requires a minimum extra board level of only ten percent (10%).*

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[1]Incumbents will be entitled to displacement allowances for up to six (6) years under New York Dock and employees also enjoy lifetime TOPS (Total Operations Processing System) protective rates. However, as we set forth below, neither NYD-217 nor New York Dock itself permit such general reductions in wage levels.

The Applicable Implementing Agreement (NYD-217)

Pursuant to the New York Dock labor protective conditions imposed by the Surface Transportation Board ("STB") relating to the UP/SP merger, see UP/SP Merger, STB Fin. Docket No. 32760, Decision No. 44, at 171-72 (August 6, 1996), the UP and TCU negotiated a master implementing agreement ("NYD-217"). Where Carrier seeks to "*rearrange[ ] and consolidat[e] work and positions from locations throughout SP and UP,*" NYD-217 requires that Carrier

> *...provide the Organization with a detailed plan by location of transactions to take place and distribution of remaining work. The plan will include a listing of the jobs abolished and the incumbents; the jobs to be created; the approximate date(s) of transfer; a description of the work to be transferred and the disposition of work to remain, if any...* [emphasis added]

NYD-217, Article II (**Employees' Exhibit No. "5"**).

The June 11, 1998, Notice

On June 11, 1998, Carrier sent a notice to TCU (pursuant to Article II) in which it stated:

> *Pursuant to Article II-TRANSACTIONS of Implementing Agreement No. NYD-217, notice is hereby given of Carrier's intent to implement the transaction outlined in the attached document and consolidate all clerical work associated with the Southern Pacific (Armourdale Yard) facility located in Kansas City, KS, with that of the Union Pacific facility located in Kansas City, MO.*
>
> *As outlined in the attachment, it is the Carrier's intent to eliminate all of the clerical positions currently assigned to the SP Armourdale Yard operations and transfer all of this work to clerical positions to be established under the Union Pacific/TCU Collective Bargaining Agreement, effective on or after August 10, 1998.* [Employees' Exhibit No. "6"]

The attachment to this notice (**Employees' Exhibit No. "6" page no. 2**) lists the positions to be abolished, the incumbents and

their seniority dates and, at the bottom of the page, reads as follows:

> *Work of the above positions will be transferred to fifteen (15) Utility Clerk positions and six(6) Ramp Clerk positions to be established under the Union Pacific/TCU Collective Bargaining Agreement.*

The notice is silent about where the newly-established utility and ramp clerk positions are to be located, providing only that these newly-established positions are to be under the UP/TCU collective bargaining agreement. The notice is also silent regarding what work, if any, is to be transferred or consolidated from Armourdale to Neff and what work, if any, will remain at Armourdale.

The Effects of the Proposed Transaction

The June 11 notice calls for the abolishment of twenty-one (21) positions at Armourdale. The Carrier has bulletined twenty-three (23) positions -- ten at Neff, ten at Armourdale, and three which report to both yards -- to replace them.[2] The effects of the transaction as proposed are described in more detail below.

1. Ramp Clerk Positions

The Carrier proposes to abolish the six TFC Ramp Clerk positions currently at Armourdale, and to create five (5) "intermodal clerk" positions, one (1) "relief intermodal clerk," and one (1) extra board intermodal clerk at that location.

Under the SP CBA, Ramp Clerks at Armourdale are paid at a rate of $129.66 per day, and are responsible for all gate arrival duties, including a complete walk-around inspection of incoming

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[2] The Carrier has postponed filling these bulletined positions pending the outcome of this arbitration.

intermodal loads for seals, flat tires and other damage, and to ensure that the load is properly secured. Further, Armourdale Ramp Clerks are responsible for all of the clerical work which accompanies loads and unloads and for keeping track of the chassis (flat car upon which the trailers ride). Under the SP Scope and TOPS agreements, this work at Armourdale may not be contracted out by the Carrier.

The seven ramp positions which the Carrier proposes to rebulletin at Armourdale under the UP Agreement will be paid at a daily rate of $120.61, $9.05 (7%) less than the current rate under the SP Agreement for Ramp Clerks at Armourdale Yard. These newly bulletined positions are roughly equivalent to the current position of Ramp Clerk at Armourdale, as reflected by the description of duties (**Employees' Exhibit No."7"**):

> *Data entry into various computer systems, compute and assess intermodal terminal charges, handle U.S. Customs documents, distribute empty equipment, receipt and dispatch containers and trailers, prepare and distribute lineup information, take physical inventory of intermodal equipment, compile reports, maintain records, perform tracing and customer inquiries and requests. Must be qualified at 35 wpm typing.* [underline emphasis added]

"*[R]eceipt and dispatch containers and trailers*" is merely another way of saying that the clerk is required to inspect intermodal loads, one of the key duties of the current Armourdale Ramp Clerks. The remainder of these duties involve the performance of clerical intermodal work, which are also included within the duties of the current Armourdale Ramp Clerks. Unlike the SP scope rule, the current UP agreement contains no prohibition on contracting out ramp work at Neff Yard.

As may be seen above, rebulletining these ramp clerk positions under the UP agreement will result in reducing the rates of pay for these positions by $9.05 (7%), despite performance of the same work. Further, once these positions are rebulletined, the Carrier would arguably contract out the clerical work on the Armourdale ramp, which the Carrier cannot do under the existing SP agreement.[3]

2. Other Clerical Positions at Armourdale

The Carrier's June 11 notice proposes to abolish the following positions under the SP agreement at Armourdale: Chief Clerk (one position abolished); Assistant Chief Clerk (2); General Clerk (7); Clerk/Telegrapher (3); Janitor (1); and Extra Board (1). In place of these positions, the Carrier has bulletined twelve (12) "Utility Clerk" positions and four (4) Extra Board clerical positions. Of these twelve (12) Utility Clerk positions, six (6) will be posted at Neff, three (3) will be posted at Armourdale, and the remaining three (3) will be assigned three days a week to Neff and two days to Armourdale. All four (4) of the Extra Board positions will be bulletined at Neff, effectively bypassing the SP Extra Board ratio restrictions at Armourdale.

The Armourdale Positions

The Chief Clerk and Assistant Chief Clerk at Armourdale are

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[3] Even if the Carrier is permitted to impose the UP Agreement upon the positions at issue, the Organization preserves for future arbitration its objections to the Carrier's contracting out of this work. Such work has traditionally been performed by TCU-represented employees and, as such, we would argue could not be contracted out even under the UP Agreement.

both responsible for supervising clerical employees, computer data entry input, crew hauling, checking tracks, trains and yard consists, and whatever other duties are assigned. The pay rate for the Chief Clerk's position at Armourdale is $132.18 per day; the pay rate for Assistant Chief Clerk is $131.60 per day.

The duties for General Clerks at the Armourdale Yard are essentially the same as those for Chief Clerk and Assistant Chief Clerk, except that General Clerks have no supervisory authority over other clerical employees. The pay rates for General Clerks vary within a range from $129.66 to $132.18, depending on which specific days of the week these clerks work.

Clerk/Telegraphers at Armourdale maintain train performance sheets; maintain general order and general notice files for the UP, as well as for the Missouri Pacific, St. Louis Southwestern, Burlington Northern Santa Fe, and Kansas City Terminal Railroads on enginemen's, trainmen's and switchmen's boards; clear high/wide loads with dispatchers and maintain files; and obtain train line information from connecting lines and make the line up. Of the three positions slated for abolishment, two are classified as "clerk/telegraphers" while the third is classified as a "manager/telegrapher." The only apparent difference between these classifications is that the manager/telegrapher works the day shift, and is paid at a daily rate of $135.44, while the clerk/telegraphers are paid at a daily rate of $130.24.

Although listed as an extra board position, one of the twenty-one incumbents (B.D. Beall) included in the June 11 notice is

currently working as a janitor at the Armourdale facility. The duties of this position consist of performing normal janitorial duties at the Armourdale Yard Office, its intermodal office, and at its west end switch shanty, as well as whatever other duties may be assigned. The daily pay rate for this position is $127.98, although incumbent Beall is being paid the extra board rate of $129.66 per day.

The June 11 notice also lists two extra board positions at Armourdale which are to be abolished. The incumbent from one of these extra board positions (B.D. Beall) is currently working in a janitor's position, which has been accounted for above. These extra board positions were created pursuant to a collectively bargained TOPS agreement in which the SP had agreed to create an extra board at Armourdale (as well as other former SP facilities) with a minimum size of fifteen percent (15%) of the permanent positions at Armourdale. The extra board employees are paid at a daily rate equal to that of other general clerks (i.e., $129.66).

The Proposed Neff Utility Clerk and Extra Board Positions

The Carrier bulletined twelve (12) Utility Clerk positions on July 27. Of these twelve (12) positions, three (3) would be stationed at Armourdale, see **Employees' Exhibit No. "8"**; three (3) would divide their time between Neff and Armourdale, see **Employees' Exhibit Nos. "9" and "10"**; and six (6) would be stationed at Neff.

The pay rates for these positions would be $86.19 per day, substantially less than even the lowest paying of the abolished

positions at Armourdale.[4] The duties for a Utility Clerk, as expressed in the bulletin are as follows:

> *Transport train and engine crews; perform other duties as required including, but not limited to, caboose supply, ordering supplies, distribution of supplies to train and engine crews, supply and load printer paper and ribbons, post bulletins and notices, perform janitorial services, complete/distribute reports and assist in upkeep of vehicles; other duties as may be assigned.*

See, e.g., **Employees' Exhibit No. "8"**. In addition to these duties, these Utility Clerks would be required to

> *...possess sufficient physical capability to perform all required duties, including janitorial services and safe operation of vehicles and cleaning equipment. Incumbent must possess a valid driver's license and, where required by law, a valid chauffeur's license.*

Id. With the exception of crew hauling and janitorial duties, none of the duties included in the job descriptions for the abolished Armourdale clerical positions -- namely, computer data input and checking tracks, trains and yard consists -- are accounted for in the Utility Clerk's job description.

Under the scope rule of the SP agreement, none of the crew hauling performed from Armourdale may be contracted out. Under the UP agreement, crew hauling within the confines of the Neff Yard is performed by UP employees represented by TCU; the UP agreement permits the Carrier to contract out crew hauling involving the pick up and delivery of crews outside the Neff Yard.

If the Carrier is permitted to abolish the Armourdale clerical positions and rebulletin them as Utility Clerk positions, the

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[4] For example, a General Clerk at Armourdale currently makes $129.66 per day, over 50% more than the $86.19 daily pay rate for a Utility Clerk at Neff.

impact on wage rates will be drastic, with rates for these positions falling between 34% and 36%,[5] depending on the incumbent's original position under the SP agreement. Further, the job duties for Utility Clerks (i.e., primarily crew hauling) are substantially different from those of the positions being abolished. The Carrier's notice, however, provides no information as to what will happen to the remaining clerical functions currently performed by the Armourdale clerks. Indeed, even with respect to the crew hauling duties, the Carrier's notice is silent as to whether those duties will be performed entirely within the yards themselves, beyond the yards, or both. The absence of such information is significant because, to the extent that the crew hauling is performed outside of these yards, UP would arguably have the right under its agreement to subsequently abolish those positions and contract the work out if the positions were placed under the UP Agreement.[6]

As shown above, the Carrier's proposal will result in substantial reduction rates of pay, drastic alteration of job duties, and the potential for the bulletin positions to be abolished as the result of contracting out.

Effective Loss of Guaranteed Extra Boards

In addition to enjoying higher rates of pay and protection

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[5] For example, a General Clerk who makes $129.66/day under the current SP Agreement would be paid $86.19/day, or 34% less under the UP Agreement ($129.66 - 86.19 = $43.47/$129.66 = 34%), while the Manager/Telegrapher at Armourdale would make 36% less under the UP Agreement ($135.44 - 86.19 = $49.25/$135.44 = 36%).

[6] See fn. 3, supra.

from subcontracting, the employees at Armourdale also enjoy a comprehensive Guaranteed Extra Board rule which requires the Carrier to maintain an extra board ratio set at **15%** of the established clerical positions. Not only does this assure an adequate workforce for the filling of vacancies due to vacations, sick leave, jury duty and the like, but it also insures that protected work is not diverted to other employees. At Neff, the applicable agreement requires an extra board ratio of only **10%**. Accordingly, if the Neff CBA is imposed on Armourdale employees, the result will be a clear diminution of the extra board protection enjoyed by those employees.

Total effect of CBA change

In short, permitting implementation of the "transaction" provided for in its June 11 notice would allow the Carrier to decrease compensation and work opportunities currently available to those individuals at Armourdale by:

1) *effecting a decrease in daily rates of pay*

   a) *of between 34% and 36% for the newly rebulletined crew hauling positions at both Neff and Armourdale; and*

   b) *of 7% for the newly rebulletined intermodal ramp clerk positions at Armourdale;*

2) *providing the Carrier with the ability to contract out ramp and certain crew hauling work by abrogating the existing subcontracting prohibition of the SP Agreement; and*

3) *reducing the guaranteed extra board ratio at Armourdale from its current 15% level to 10%.*

The Carrier's proposal would permit it to implement these changes despite the fact that the bulletins show that all of the ramp work

(and some of the crew hauling work) will remain at Armourdale, and that the crew hauling which is ostensibly being transferred to Neff cannot realistically be so transferred.

TCU's Response to Notice

On July 30, 1998 (**Employees' Exhibit No. "11"**), Mr. Robert F. Davis, President ASD/TCU, responded to the June 11 notice as follows:

> *As I have previously advised you it is the Union's position that this notice is inappropriate and not in accordance with the spirit and intent of NYD-217. I therefore request that this notice be withdrawn and canceled.*
>
> *The Carrier's notice indicates that various clerical positions currently under the Southern Pacific Agreement are to be placed under the Union Pacific Agreement and reclassified as Utility Clerk positions. This has the sole purpose of reducing the rates of pay of the positions. In addition to this, the Carrier advises that it intends to place six Ramp Clerk positions under the Union Pacific Agreement--these are positions that do not even exist under the Union Pacific Agreement at Kansas City as the Union Pacific ramp work is performed by an outside contractor. The effect of this notice is to "cherry pick" collective bargaining agreements and to place employees under an agreement with inferior benefits for the employees. This has no other application but to transfer wealth from employees to the employer. The Carrier's action is not necessary and certainly will not benefit the general public or the employees subject to this merger.*
>
> * * *
>
> *The action contemplated by the Carrier regarding the clerks in Kansas City, without a doubt, has the effect of placing employees under an inferior agreement. First, the rates of pay of the positions are being reduced by a considerable amount; second, the Ramp Clerks are placed in jeopardy of having their work contracted to an outside party; and third, the extra board agreement under the SP Clerical Agreement is far superior to the extra board agreement under the UP Clerical Agreement. These are but three examples of how the SP CBA is superior to the UP CBA at Kansas City.*

The Carrier Response to the Davis Letter of July 30, 1998

On September 11, 1998 (**Employees' Exhibit No. "12"**), the Carrier responded to Mr. Davis as follows:

> *By letter dated July 30, 1998, Mr. Davis advised the Carrier that it was the Union's position the notice of June 11, 1998 was inappropriate and not in accordance with the spirit and intent of NYD-217. Moreover, Mr. Davis stated that if the Carrier did not agree with his position he would demand that the issue be submitted to arbitration. Finally, Mr. Davis requested that if the Carrier wished to arbitrate the issue, then the notice not be effectuated until a decision had been rendered by the arbitrator.*
>
> *First, the Carrier does not agree that the notice issued on June 11, 1998 was inappropriate. Moreover, it is the Carrier's position that the notice and the proposed changes embrace the spirit and intent of NYD-217. In view of this fact, the Carrier is agreeable to submitting this issue to final and binding arbitration on an expedited basis. I will be contacting you in the near future to begin the Referee selection process. Secondly, with regard to your request to delay the implementation of the proposed transaction, the Carrier is reluctantly agreeable to honoring that request with certain reservations. The Carrier reserves the right to immediately effect the changes outlined in the original notice upon receipt of the Arbitrator's Award in the event a decision favorable to the Carrier is rendered without further notice (i.e., a new 60-day notice) to the Organization. Additionally, in the event circumstances change, the Carrier reserves the right to cancel the original notice at any time prior to or after the arbitration Award is rendered, canceling all assignments and option forms and serving a new 60-day notice, which, if necessary, would not be placed into effect until after a decision rendered by the Referee. Of course, it is understood that the Carrier's decision to grant the Organization's request concerning this delay in implementing the transaction is made without prejudice to the Carrier's position regarding this issue.*

As made obvious by the above correspondence, the parties were unable to settle this matter on the property and have agreed that the dispute is properly before this § 11 Committee for adjudication.

Summary of Carrier's Proposal

The Carrier notice proposes to abolish twenty-one (21) positions at SP's Armourdale Yard, and by bulletin it reestablishes seven (7) Ramp Clerk and three (3) Utility Clerk positions at that yard. While these positions will be performing the same or similar functions as the abolished positions, the bulletin jobs will be under the UP agreement providing lower wage rates. Moreover, these jobs will no longer be subject to the subcontracting restrictions of the SP Agreement.

Three Utility Clerk positions will be split between Armourdale and Neff Yards, and ten will be assigned to Neff Yard under the UP agreement. The Neff-based crew hauling within TCU's jurisdiction is limited to the immediate site; crew hauling beyond the immediate location for up to 50 miles is performed by an independent contractor and is not covered by the UP Agreement. These positions will also be under the reduced wage rates of the UP Agreement.

Further, although the Carrier has bulletined four extra board positions at Neff and one at Armourdale, it is dubious that these positions can be truly termed as "guaranteed", given that the applicable extra board agreement at Neff requires a lower guaranteed ratio (10%) than the current agreement at Armourdale. Accordingly, if the Carrier is permitted to impose the UP agreement with respect to the positions in question, it may well be able to abolish these extra board positions at any time.

POSITION OF THE EMPLOYEES

ARGUMENT

The proposed transaction replaces the SP collective bargaining agreement with the UP agreement with a resulting diminution in pay rates as well as the decrease in the ratio of guaranteed extra board positions and subcontracting restrictions. As shown above, however, half of the positions in question are not being moved from their present location; as we demonstrate below, the "movement" of the remaining positions is clearly not within the contemplation of "transaction," neither as commonly understood in New York Dock parlance nor as set forth in NYD-217. Accordingly, neither the language of NYD-217 nor the applicable STB precedent permit the Carrier to utilize New York Dock procedures to reduce employee collective bargaining protections.

UP's Notice Neither Complies With the Requirements of Article II of NYD-217, Nor Does It Constitute a "Transaction" Under That Provision.

Article II of NYD-217 provides that the Carrier will give the Union a "detailed plan" by location of transactions to take place. Said notice is to include "a listing of the jobs to be abolished and the incumbents, the jobs to be created; the approximate dates of transfer; a description of the work to be transferred and the disposition of work to remain, if any."

Carrier's notice fails to identify either what work is being transferred from its Armourdale to its Neff Yard and fails to identify what work, if any, is to remain at Armourdale. Rather, the notice states that the work of the twenty-one (21) positions abolished at Armourdale is to be transferred to clerical positions

"to be established under the Union Pacific/TCU Collective Bargaining Agreement." The notice is silent as to the location of these positions. In fact, based upon the Carrier's subsequent bulletins, half of the involved positions (and the work that accompanies them) will be reestablished at Armourdale,[7] contrary to Article II which expressly describes the notice as revealing "*the plan to transfer work and/or employees.*"

What the notice does make clear is that the newly established positions are to be placed under the Union Pacific/TCU collective bargaining agreement. All of the newly established positions will be posted at the lower wage rates of the UP Agreement. Of the twenty-one positions being abolished, ten are being reestablished at Armourdale Yard at a lower wage rate and less protective work rules, and three will split time between Armourdale and Neff at the lower wage rate and less protective rules of the UP Agreement. Significantly, ramp and crew hauling work not subject to subcontracting under the SP Agreement will be subject to subcontracting under the UP Agreement. The Carrier is attempting to use NYD-217 not to facilitate the transfer of work and/or employees between SP and UP facilities, as was intended, but to permit the replacement of one collective bargaining agreement with another. NYD-217 by its terms in Article II does not define such a replacement as a "*transaction*" under the terms of that agreement.

NYD-217 was entered in December 1996. Since that time, the Carrier has issued hundreds of notices affecting in excess of 1500

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[7] **See Employees' Exhibit Nos. "8" to "9".**

employees. In virtually all, work and/or employees have been transferred from an SP to a UP facility, or vice versa. Although NYD-217 is silent on the question of which collective bargaining agreement is applicable to any work and/or employee transfer, the parties have generally applied the collective bargaining agreement at the receiving location to govern work and/or employees transferred to that location. This practice, however, clearly does not stand for the proposition that the carrier is at liberty to apply the collective bargaining agreement of its choice in the absence of the transfer of either work and/or employees. Stated differently, Armourdale Yard is an SP facility. The Carrier may not replace the SP Agreement with that of the UP under the guise of a claimed New York Dock transaction. Further, as we set forth below, the work allegedly being "*transferred*" to Neff Yard is actually going to be subcontracted. None of the prior transactions under NYD-217 involved such subcontracting or such major discrepancies between applicable agreements.

Where carriers have sought authority to replace one collective bargaining agreement with another, they have explicitly done so in the implementing agreement. For example, the recent implementing agreement between TCU, CSXT, Conrail and Norfolk Southern (NS) explicitly provides that the appropriate NS agreement shall apply to the NS allocated portion of Conrail. It is respectfully submitted that the arbitrator should not construe the agreement's silence as affording a basis to override well-established New York Dock principles so as to allow the Carrier to substitute the UP

collective bargaining agreement for the SP agreement at Armourdale Yard.

The notice's failure to identify the work to be transferred, and the disposition of the work remaining at Armourdale in violation of Article II of NYD-217, is of particular significance in this matter. While the Carrier has rebulletined seven (7) ramp clerks at Armourdale, under the Carrier's proposal these positions would be created under the UP Agreement. Once this work is placed under the UP Agreement, it will no longer be covered by the SP agreement's prohibition on subcontracting. This becomes particularly significant when read in light of the Carrier's clearly stated future intent to consolidate all of its Kansas City intermodal operations at Armourdale, see **Employees' Exhibit Nos. "5" and "6"**, where the clerical ramp work could not be contracted out under the currently operative agreement. Conversely, the same operating plan slates the Neff ramps (where such work can currently be contracted out) to be closed entirely in order to facilitate other operations.

The crew hauling work outside the yard being transferred from Armourdale is not being performed under the current UP agreement by clerks at Neff Yard. The crew hauling currently being performed by UP employees under the operative agreement at Neff is conducted exclusively within the yard and between the yard and local hotels; under the Carrier's proposal, the crew hauling work at Armourdale would be protected only to that same extent. However, intra-yard crew hauling work is by its very nature site-specific and,

consequently, the Carrier cannot credibly claim that this work is being "*transferred*" to Neff. As for the crew hauling which is done outside the yards, no such work is performed under the UP agreement because that work has been contracted out. Accordingly, no work exists with which to coordinate the external crew hauling performed under the SP agreement. As a result, there can be no coordination of the crew hauling work at Neff Yard within the meaning of Article II of NYD-217.

The impact of the Carrier's proposal on extra boards in Kansas City is also disturbing. The two (2) extra board positions it proposes to abolish at Armourdale are currently protected under the SP Agreement, which requires a 15% guaranteed extra board ratio. In their place, the Carrier proposes to bulletin five (5) extra board positions under the UP Agreement, which mandates an extra board ratio of only 10%. In doing so, the Carrier is presumably creating extra board positions at Neff and Armourdale that it can abolish at any time.

In light of these facts, the Carrier's failure to clearly identify the disposition of the involved work is indicative of its intent to use NYD-217 as a means to transfer work from the SP Agreement, with its restrictions on subcontracting, better pay rates, and more favorable guaranteed extra board provisions, to the UP Agreement, which is decidedly weaker on these issues. Such a "transfer" of work is clearly not a transaction within the meaning of NYD-217.

This interpretation of NYD-217 is consistent with STB

precedent that limits "transaction" to a coordination of employees or work, not the mere replacement of one collective bargaining agreement with another. The term transaction, while defined broadly, is derived from the WJPA concept of coordination.

The above definition was clarified by the Second Circuit, U.S. Court of Appeals in New York Dock Ry. v. United States, 609 F.2d 83 (1979) (**Employees' Exhibit No. "13"**) (page 345-6):

> *The definitional provisions contained in the "New York Dock conditions" remain to be discussed. Petitioners' objections to the ICC's definition of the term "transaction" are without merit. Although this definition has no precise ancestor in either the "New Orleans conditions" (as clarified in Southern Control II) or in the Appendix C-1 conditions, it is clear from the definition itself, as well as from the ICC's expressed intention in formulating this definition, that the goal which the ICC had in mind was to encompass in its definition of "transaction" the same situations that were within the parallel term "coordination" employed in the admitted blueprint for all current employee protective packages, the WJPA. We do not believe that this goal is beyond the statutory authority conferred on the ICC in formulating employee protective conditions pursuant to 49 U.S.C. § 11347. Nor do we believe that the ICC's attempt to achieve this goal strays so far from the mark that the term "transactions" needs any redefinition by us.*

WJPA Section 2 defines a "coordination" as:

> *Section 2 (a). The term "coordination" as used herein means joint action by two or more carriers whereby they unify, consolidate, merge or pool in whole or in part their separate railroad facilities or any of the operations or services previously performed by them through separate facilities.*[8]

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[8] See Finance Docket No. 32000 (Sub-No. 11) (4-15-96) (**Employees' Exhibit No. "15"**) wherein the STB held that: "*The WJPA 'generally is conceded to be the blueprint for all subsequent job protection agreement.' New York Dock Ry. v. United States, 609 F.2d 83, 86 (2d Cir. 1979). We have noted that the Transportation Act of 1940, the source of present § 11347, was, in effect, a Congressional endorsement of the WJPA... Thus we conclude that the WJPA arbitral awards do present persuasive*

In TCU v. Missouri Pacific/Union Pacific Railroad Company (12-18-87) (**Employees' Exhibit No. "14"**), Referee John LaRocco traced the historical meaning and implications of the term "*transaction*" and ruled that both the federal courts and the ICC have held it to mean the same as "*coordination*" as it is used and defined in Section 2 of the WJPA.

Referee LaRocco held:

> *The consolidation of work...is analogous to the unification of separate facilities on more than one railroad which is clearly a coordination under the WJPA. As we found at the onset of our discussion, a coordination is, by definition, a transaction within the meaning of Section 1(a) of the New York Dock Conditions. The WJPA defines a coordination as the unification "...in whole or in part..." of separate railroad facilities.*

In CSX and Seaboard Coast Line, FD No. 28905 (Sub-No. 22), and Norfolk Southern Corporation and Southern Railway Company, FD 29430 (Sub-No. 20) (September 22, 1998), referred to herein as Carmen III, the Board held that the term "*transaction*" embraced two categories -- the principal transaction approved by the ICC (generally a consolidation or acquisition of control, as in the instant matter), and subsequent transactions "*that were directly related to, grow out of, or flowed from the principal transaction such as consolidations of facilities, transfer of work assignments, etc.*" While the instant notice appears to be a consolidation or transfer, in reality it is neither. Rather, the notice is being used as a vehicle to replace one agreement with another.

In the instant matter, it is clear that no transaction -- that

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precedent on which a New York Dock arbitration committee may rely."

is, no actual coordination of work or positions -- is taking place. The majority of the jobs being abolished are being rebulletined at Armourdale, but subject to the UP Agreement's subcontracting rules and lower wage rates. The crew hauling work being "*transferred*" to Neff will be subcontracted as permitted by the UP Agreement (and as prohibited by the SP Agreement). Such work is not being transferred to agreement employees as required by Article II of NYD-217. As such, this reassignment does not constitute a transaction under Article II of NYD-217. Nor as we set forth below does the Carrier's proposal meet the standards established by the STB for overriding collective bargaining agreements.

STB Decisions Are Consistent With TCU's Interpretation of NYD-217.

We have established that neither the plain meaning of Article II of NYD-217 nor the parties' past practice support Carrier's claim that its proposal constitutes a transaction under that provision. A review of STB precedent establishes that New York Dock is not intended to afford carriers the opportunity to substitute one collective bargaining agreement for another. These decisions set forth important limitations on arbitrators' authority under Article I, Section 4 of New York Dock Conditions to override pre-existing collective bargaining agreements. NYD-217 should not be construed as giving UP the right to override agreements, sub silentio, where an arbitrator would otherwise be restricted from imposing such an override. Indeed, as we noted above, carriers involved in the recent Conrail transaction expressly bargained for such rights. In the absence of such language, it is respectfully

submitted that the arbitrator in this proceeding should not under Article I, Section 11 infer such override authority.

We start our analysis with the STB's most recent and extensive ruling on the override question in Carmen III (**Employees' Exhibit No. "16"**). This decision was the final ruling of the STB following circuit and Supreme Court review in a case dealing with the agency's authority, under the Interstate Commerce Act, to override collective bargaining agreements under Article I, Section 4 of the New York Dock Conditions.[9] We offer this analysis only to establish the limitations on the override authority under Article I, Section 4 of New York Dock as background to an understanding of NYD-217.

1. STB Retreats From Its Prior Decisions on Override.

The U.S. Supreme Court, in reviewing the ICC's Carmen I decision, held that the so-called immunity provision in the Interstate Commerce Act, which immunizes an approved transaction from "*all other law*," applies to collective bargaining agreements "*as necessary to carry out a transaction.*" 499 U.S. at 133. The Supreme Court made clear, however, that it was not ruling on "*the standard of necessity*" and remanded the case back to the circuit court, which, in turn, remanded to the STB.

While the case was on appeal to the Supreme Court, the ICC issued a second opinion in this matter responding to the opinion of the D.C. Circuit Court of Appeals. Significantly, as noted in

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[9] A full procedural history and summary of the various ICC and court decisions appears in Carmen III.

Carmen III, Carmen II limited the override authority the Commission had previously adopted in DRGW and Maine Central (**Employees' Exhibit Nos. "17" and "18"**):

> *...the ICC tempered what it had said in DRGW and Maine Central. It was still true, the ICC stated in Carmen II, that CBAs and the RLA had to yield to allow implementation of an approved transaction. However, section 11347, and the protective conditions imposed thereunder, only required CBAs and the RLA to yield to permit modifications of the type traditionally made by arbitrators under the WJPA and the ICC's conditions from 1940 to 1980; and section 11341(a) reinforced 11347 by requiring the RLA to yield so as not to block the sort of changes permitted under section 11347. The ICC did not attempt to define what changes should be considered to be necessary but stated in Carmen II that CBAs and the RLA should not be overridden simply to facilitate a transaction, but should be required to yield only when and to the extent necessary to permit the approved transaction to proceed.*

Carmen III at p. 12.

Carmen III reaffirmed a reliance on the 1940-1980 arbitration awards as an important limitation on the override authority:

> *In short, the ICC in Carmen II defined the scope of authority of arbitrators to modify CBAs under Article I, section 4 of New York Dock by reference to the practice of arbitrators during the period 1940-1980. Although this is by no means a bright line definition, it has been accepted as a practicable working definition by the courts, see RLEA, ADTA, and UTU, and we will adopt it too.*

Carmen III at pp. 23-24.

These arbitration awards embraced a practicable approach permitting carriers to transfer work and employees and limited any changes in collective bargaining agreements to those changes that

are necessary to effectuate such transfers.[10] Whatever the exact parameters of the limitation, it is clear that Carmen II did not contemplate that the abolishment and rebulletining of positions at the same location provided a basis for replacing one collective bargaining agreement with another:

> *Negotiators and arbitrators may well have followed the rubric of "selection of forces and assignment of employees" when administering the provisions governing the effect of consolidations. The scope of those terms, however, is not well defined. It must extend beyond the mere mechanism for selection or assignment of employees, and include the modifications of certain important contractual rights. Southern and Bernstein make it clear that work was transferred from one railroad to another despite contrary contractual provisions in CBAs. It was also obvious that contractual seniority rights were modified in order to consolidate rosters of the two separate, combining railroads. See Southern, supra, at 165, 185. These rosters may have been "dove-tailed" or another method agreed upon or decreed by an arbitrator. We can assume that the reassignment of employees would have regularly taken place despite CBA prohibitions. These actions are the sort that would be necessary to permit almost any consolidation of the functions of two merging railroads. The WJPA procedures make it possible.*

In addition to the limitation of the 1940-1980 arbitration decisions, Carmen III imposed three additional "*crucial limitations*" that restrict the CBA modifications that can be effected by an arbitrator under Section 4. First, the transaction must be one that has been approved by the STB. We analyzed this

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[10] The arbitration awards from this period, to which the STB repeatedly referred in Carmen I and II, relief upon a necessity standard requiring much more than carrier convenience and used that standard to reject carrier efforts to override pre-transaction collective bargaining agreements. See, e.g., the Illinois Terminal Trilogy -- Norfolk & Western/Illinois Terminal v. UTU, Leverett Edwards, 12-29-81; Norfolk & Western/Illinois Terminal v. RYA, Joseph Sickles, 12-30-81; Norfolk & Western/Illinois Terminal v. BLE, Nicholas Zumas, 2-1-82 appended as **Employees' Exhibit No. "19"**.

limitation in our discussion of the term "*transaction*" as used in NYD-217. Second, the modification cannot reach CBA rights, privileges and benefits protected by Article I, Section 2 of the New York Dock conditions. Third, the modification of the collective bargaining agreement must be necessary to the implementation of the approved transaction. We discuss these latter two limitations below:

2. Article I, Section 2 of New York Dock.

Article I, Section 2 of New York Dock provides:

> *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.*

Terms of a collective bargaining agreement that fall within the purview of Article I, Section 2 are protected "*absolutely*" while other terms are protected subject to the necessity test. (see subsequent discussion of STB Review of Yost Award, **Employees' Exhibit No. "23"** at p. 6).

The Board in Carmen III and in the appeal of the award rendered in UTU, BLE and CSX (1997), (**Employees' Exhibit No. "20"** hereinafter "O'Brien Award") defined "*rights, privileges and benefits*" as meaning the "*so-called incidents of employment or fringe benefits,*" not including scope or seniority rules. O'Brien at p. 12. This definition excludes the central aspects of the work -- pay, rules and working conditions -- and was accepted by the D.C. Circuit Court of Appeals. UTU v. STB, 108 F.2d 1425, 1429-30

(D.C. Cir. 1997). The court was careful to note, however, that the first part of Section 2 which refers explicitly to "*rates of pay, rules, working conditions...*" was not at issue in that matter. 108 F.2d at 1430, n. 4.

> *No one has suggested that* ***seniority provisions*** *fall within the compass of "rates of pay, rules, working conditions" under* New York Dock*, so the scope of this term is not an issue in this case. It is only the meaning of "other rights, privileges, and benefits" that is at issue* [emphasis in original].

The meaning of the first part of Section 2 focusing on "*rates of pay, rules, and working conditions*" is still an open issue.[11] Unlike the situation addressed by the D.C. Circuit, in the instant matter there is clear evidence that rates of pay and other collectively bargained restrictions (extra board, subcontracting limitations) are to be reduced under the Carrier's proposal.

Whatever the limits of the phrase "rates of pay, rules and working conditions" in Section 2, at a minimum it must mean that rates of pay are not to be reduced as proposed by Carrier herein. Accordingly, Carrier's efforts to replace the SP rates of pay with the lower UP rates of pay must be rejected. Moreover, the guaranteed extra board and subcontracting restrictions also clearly fall within these terms.

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[11] In interpreting the scope of "rights, privileges and benefits," the Board relied upon an interpretation of paragraph 10 of the Model Section 13(c) Agreement, which provides for labor protective conditions in connection with employees affected by federal transit funding. It is important to note that, unlike Article I, Section 2 of New York Dock, neither paragraph 10 of the Model Agreement nor paragraph 3 (which more generally preserves collectively bargained rights) specifically references "rates of pay." (**Employees' Exhibit No. "21"**)

3. Necessity.

An override of a collective bargaining agreement can be imposed only if necessary to effectuate the transaction approved by the STB. *"This necessity finding is not optional, pre-transaction labor arrangements cannot be modified without it."* Carmen III at p. 25.

The STB adopted the D.C. Circuit Court of Appeals' view that a necessity standard must include a finding of public transportation benefits of the underlying transaction, which cannot be effectuated if the only benefit of the modification derives from the CBA modification itself. It is clear that *"merely to transfer wealth from employees to their employer"* does not effectuate the purpose of the transaction. RLEA v. ICC, 987 F.2d 806, 815 (D.C. Cir. 1993).

The STB summarized the necessity standard by quoting from its decision in Fox Valley:

> *Arbitrators should also be aware that in [RLEA] the court admonished us to identify which changes in pre-transaction labor arrangements are necessary to secure the public benefits of the transaction and which are not. We have generally delegated to arbitrators the task of determining the particular changes that are and are not necessary to carry out the purposes of the transaction, subject only to review under our Lace Curtain standards [referenced below]. 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. But arbitrators should*

> *not assume that all pre-transaction labor arrangements, no matter how remotely they are connected with operational efficiency or other public benefits of the transaction, must be modified to carry out the purposes of a transaction.* (Footnote omitted).

Carmen III at pp. 26-27.

This same analysis, calling for a careful balancing of the interests of the involved parties, was utilized by the STB in its Conrail decision wherein the Board rejected applicants' request that it override shipper contracts containing anti-assignment clauses. (Conrail at pp. 72-73.)[12]

A review of the Carmen Trilogy reveals the STB relied on the necessity standard as a means of restricting the breadth of the override authority. Such authority is not to be used simply to "*facilitate*" a transaction; arbitrators are to look to the precedent from 1940 to 1980 as guidance -- not to DRGW and Maine Central; and arbitrators must "reconcile" the operational necessities of the merged carrier with the need to preserve the pre-transaction labor agreements.

4. Recent Operating Craft Decisions.

Recent arbitration decisions involving the operating crafts permitting merged carriers to make changes in seniority districts so as to change crew reporting and supply points are consistent

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[12] STB's authority to override shipper contracts is contained in current 49 U.S.C. § 11321 (formerly 11341) which, as noted by the Board in Carmen III, arguably provides broader override authority than 49 U.S.C. § 11326 (formerly 11347) which is the basis for the override authority herein. ("*We conclude that where as here New York Dock conditions are required to be imposed, section 11341 is constrained by section 11347 and the provision of these labor conditions.*" Carmen III at p. 30.)

with the principles outlined above. Arbitrators have generally recognized that such changes are necessary to permit operating crews to efficiently function over the merged system. Such changes were needed to permit carriers to more efficiently assign work to operating crews. This is in sharp contrast to the changes being sought herein which go well beyond the assignment of work. Rather, in the instant matter the changes reduce wage rates, permit the Carrier to subcontract work that is protected under the SP agreement, and diminish extra board guarantees.

In the O'Brien Award, the § 4 Committee considered CSX's proposal to consolidate the seniority districts of four carriers that had been merged into the CSX system. This consolidation permitted the more efficient use of operating craft employees by requiring some to work different territories and different reporting points. While finding that the proposed change was necessary to effectuate the purposes of the transaction, the arbitrator emphasized their limited nature:

> *Except for the elimination of their current seniority districts and the closing of some supply points for crews, the present collective bargaining agreements on the B&O, C&O, WM and RF&P will be continued unchanged. This transaction therefore will not result in a mere "transfer of wealth" from these employees to CSXT which the D.C. Court of Appeals found impermissible in Executives. Rather, the savings will be achieved from better utilization of equipment, facilities and manpower. Also, CSXT will not be obligated to hire additional train and engine service employees due to its more efficient use of employees on the combined territory. Moreover, CSXT estimates that train delays will be greatly reduced. Thus, in this Arbitrator's opinion, the transaction itself will yield enhanced efficiency independent of any modifications in the present collective bargaining agreements on the B&O, C&O, WM and RF&P.*

Employees' Exhibit No. "20" at pp. 17-18.

In reviewing this decision, the STB also emphasized the limited nature of the proposed change which did not impact wage levels:

> *The changes sought by CSXT do not appear to be a device merely to transfer wealth from employees to the railroad. Indeed, there does not appear to be a significant diminution of the wealth of the employees...The reduction in labor costs will occur through more efficient use of employees and equipment, not by any reduction in current hourly wages and benefits. In order to use employees more efficiently, CSXT will require some employees to work different territories and report to different staging areas.*

CSX Corporation, FD No. 28905 (Sub-No. 27) (November 22, 1995), **Employees' Exhibit No. "22"** at p. 10.

Relying on the D.C. Circuit's opinion in RLEA v. ICC, 987 F.2d at 814-15, the STB held that carriers bear the burden of establishing that the proposed change is necessary to achieve a public transportation benefit:

> *To determine which changes are permissible, the court in RLEA established the following standard (987 F.2d at 814-15): ...it 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 bargaining agreement under 11347 only as "necessary" to effectuate a covered transaction. [citation omitted] ...We look therefore to the purpose for which the ICC has been given this authority [to approve consolidations]. That purpose is presumably to secure to the public some transportation benefit that would not be available if the CBA were left in place, not merely to transfer wealth from employees to their employer... In other words, the court's standard is whether the change is (a) necessary to effect a public benefit of the transaction or (b) merely a transfer of wealth from employees to their employer.*

Id. At pp. 9-10.

The STB in Finance Docket No. 32760 (Sub-No. 22) of June 26,

1997 (**Employees' Exhibit No. "23"**) reviewed the award rendered by James E. Yost (previously referred to as Yost Award) in United Transportation Union and Union Pacific Railroad Company, et al.--Control and Merger--Southern Pacific Transportation Company, et al. (April 14, 1997).

In that dispute, the § 4 Committee was faced with the combining of rosters at two locations (Salt Lake Hub & Denver Hub). The Carrier (UP/SP) served notice on the UTU to place all employees at those two locations under one CBA. The **Yost** Committee held that such coordination of rosters was "*necessary*" as contemplated in the "*commitment letter*" signed by both parties prior to the STB approval of the UP/SP merger.[13]

The UTU petitioned the STB for review, and the STB affirmed the Yost decision (see **Employees' Exhibit No. "23"**), holding that:

> *In RLEA, supra, the court admonished the ICC to refrain from approving modifications that are not necessary for realization of the public benefits of the consolidation but are merely devices to transfer wealth from the employees to their employer.* ***In its appeal, UTU made no effort to show that the UP Eastern District collective bargaining agreement is inferior to the collective bargaining agreements that it replaced. This is not a situation where the carrier is using New York Dock as a pretext to apply a new, uniform collective bargaining agreement that is inferior in matters such as wages levels, benefit levels, and working conditions.*** [bold emphasis added])

5. Carrier Herein Cannot Meet the Necessity Requirement for Override.

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[13] The UTU's commitment letter obtained for the employees automatic certification under NYD; the carriers received the UTU's endorsement of the merger and its recognition that some changes to the CBAs were made necessary by the merger -- one of which was "*a seniority system that was not illegal, administratively burdensome, or costly.*"

As we set forth above, the STB has pulled back from its position in Carmen I permitting an override of pre-transaction collective bargaining agreements in order to facilitate the transaction. Relying on the arbitral history of 1940-1980, a higher standard of necessity to effectuate the purposes of the original transaction is now required. In order to meet this standard, carriers must demonstrate a public transportation benefit independent from cost reductions resulting directly from the override. It is clear that the abolishment and rebulletining of positions at Armourdale under the lower wage rates and less protective working conditions of the UP Agreement cannot be justified under this necessity standard. Similarly, the transfer of crew hauling work to Neff Yard also falls short of this standard. As we set forth above, the involved work is to be subcontracted and the positions established at Neff are to be at lower wage rates.

This case is markedly different from the operating craft cases in the O'Brien and Yost awards. In both cases the involved carriers were able to establish operational efficiencies directly flowing from changes in territories and reporting points. Both cases involved overrides of specific work rules, not, as in the instant matter, the wholesale replacement of one collective bargaining agreement with another. In both cases the involved agreement work remained under agreement and did not, as in the instant matter, become subject to subcontracting. In both cases, the override did not result in a new agreement that was inferior in wage levels and

working conditions, unlike the instant matter, which results in such inferior conditions.

In short, Carrier could not demonstrate sufficient public transportation benefits to justify the requested override if this was an Article I, Section 4 proceeding.

Unlike the circumstances in the O'Brien and Yost awards discussed above, employees herein will suffer a significant diminution in wealth. Any efficiencies gained by the Carrier herein are directly related to the reduction in employee benefits under the UP agreement, as opposed to in O'Brien and Yost where the reduction in labor costs was attained "through more efficient use of employees and equipment, not by any reduction in current hourly wages and benefits." O'Brien STB at p. 17; see also STB Review of Yost, at page 6 ("*This is not a situation where the carrier is using New York Dock as a pretext to apply a new uniform collective bargaining agreement that is inferior in matters such as wages, benefit levels and working conditions.*")

The carrier has the burden of establishing real efficiencies in operations separate and apart from the loss of income to employees. The Carrier cannot meet this burden herein where any efficiencies to be achieved result from lower wage rates and loss of work rule protections (i.e., subcontracting bar and guaranteed extra board ratios) in the SP Agreement. Having established that the arbitrator could not override the SP agreement under Article I, Section 4 of New York Dock, this arbitrator should not, under Article I, Section 11, construe NYD-217, which is silent on the

question of override, to authorize the replacement of the SP Agreement with the UP's.

CONCLUSION

The following has been firmly established by the record:

- *The proposed transaction will result in the replacement of the SP Agreement with the UP Agreement.*

- *The change in agreements will result in lower wage rates as well as the loss of the prohibition on subcontracting in the SP Agreement. It will also result in the diminution of guaranteed extra board positions.*

- *NYD-217 does not permit a transaction used as a means of replacing one collective bargaining agreement with another.*

- *Ten of the involved positions are simply being abolished and rebulletined at the same location -- in the absence of a bona fide transfer of positions or work, this does not constitute a transaction under NYD-217.*

- *The outside the yard crew hauling work being transferred to Neff does not constitute a bona fide transfer under Article II, since this work may be subcontracted.*

- *To the extent that the work and positions are being transferred from Armourdale to Neff Yard consistent with NYD-217, the UP Agreement should not override the SP Agreement as it pertains to wage rates, subcontracting and guaranteed extra board.*

Respectfully submitted,

R. F. Davis

Robert F. Davis
President, ASD/TCU

APPROVED
INTERNATIONAL PRESIDENT
Date 12-29-98

TRANSPORTATION•COMMUNICATIONS INTERNATIONAL UNION

EMPLOYEES' EXHIBIT INDEX

Exhibit No.	Description
1	Union Pacific--Merger and Control--Southern Pacific (UP/SP Merger), ICC FD 32760, UP/SP-24, Vol. 3 (Operating Plan)
2	April 2, 1997, letter from Rich E. Horstmann to Brent Gatti (Intermodal Terminal Consolidation Schedule)
3	1991 Memorandum Agreement (MA) *"Utility Clerk Agreement"*
4	Crew Hauling Agreement appended to the **TOPS** (Total Operating Procedures System) Agreement
5	Implementing Agreement of 12\16\1996
6	Carriers' Notice of June 11, 1998
7	Carrier's Bulletin of new positions at Armourdale
8	Carrier's Bulletin of Utility Clerk positions at Armourdale
9	Carrier's Bulletin of positions at Armourdale and Neff Yards
10	Carrier's Bulletin of Utility Clerk positions at Neff Yard
11	7\30\98 response of Robert F. Davis, President ASD/TCU
12	9\11\98 response of Carrier
13	Decision of the Second Circuit, U.S. Court of Appeals in New York Dock Railway and Brooklyn Eastern District Terminal v. USA and ICC 609 F2d 83 (1979)
14	TCU v. Missouri Pacific/Union Pacific Railroad Company (12-18-87), John LaRocco
15	Decision of STB in FD 32000 (Sub-No. 11) (4-15-96) [FN 8]

Exhibit No.	Description
16	September 22, 1998, decision of STB in CSX Corporation--Control--Chessie System, Inc. and Seaboard Coast Line Industries, Inc. Finance Docket No. 28905 (Sub-No. 22) and Norfolk Southern Corporation--Control--Norfolk and Western Railway Company and Southern Railway Company Finance Docket No. 29430 (Sub-No. 20) [**Carmen III**]
17	Denver and Rio Grande Western Railroad Company -- Trackage Rights Over Missouri Pacific Railroad Company Between Pueblo, CO and Kansas City, MO (10-25-83) [**DRGW**]
18	August 22, 1985, decision of the ICC in MEC, Georgia Pacific Corp. Canadian Pacific Ltd. and Springfield Terminal Railway Company-Exemption from 49 U.S.C. 11342 and 11343 [**Maine Central**]
19	Norfolk & Western - Illinois Terminal, three Article I, Section 4 arbitrations, Edwards - 12-29-81, Sickles - 12-30-81, and Zumas - 2-1-82. [**NYD Trilogy**] [FN 10]
20	United Transportation Union and Brotherhood of Locomotive Engineers and CSX Transportation, Inc. , (4-24-95), Robert O'Brien [**O'Brien Award**]
21	Department of Labor (DOL) -- "Employee Protections Digest", Model 13(C) Agreement for UMTA Operating Assistance [FN 11]
22	CSX Corporation--control--Chessie System and Seaboard Coast Line Industries, Inc., et al., FD 28905 (Sub-No. 27) 11-22-95
23	June 26, 1997, STB decision in FD 32760 (Sub-No. 22) reviewing the award rendered by James E. Yost in United Transportation Union and Union Pacific Railroad Company et al. Control and Merger - Southern Pacific Transportation Company, et al. (4-14-97). [**Yost Award**]

UP/SP-24

Before the

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 32760

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

RAILROAD MERGER APPLICATION

VOLUME 3

OPERATING PLAN (EXHIBIT 13), LABOR IMPACT EXHIBIT, DENSITY CHARTS (EXHIBIT 14), AND SUPPORTING STATEMENTS

CANNON Y. HARVEY
LOUIS P. WARCHOT
CAROL A. HARRIS
JOHN McDONALD SMITH
Southern Pacific Transportation Company
One Market Plaza
San Francisco, California 94105
(415) 541-1000

PAUL A. CUNNINGHAM
RICHARD B. HERZOG
JAMES M. GUINIVAN
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, D.C. 20036
(202) 973-7600

Attorneys for Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and The Denver and Rio Grande Western Railroad Company

CARL W. VON BERNUTH
RICHARD J. RESSLER
Union Pacific Corporation
Martin Tower
Eighth and Eaton Avenues
Bethlehem, Pennsylvania 18018
(610) 861-3290

JAMES V. DOLAN
PAUL A. CONLEY, JR.
LOUISE A. RINN
Union Pacific Railroad Company
Missouri Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179
(402) 271-5000

ARVID E. ROACH II
J. MICHAEL HEMMER
MICHAEL L. ROSENTHAL
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044-7566
(202) 662-5388

Attorneys for Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company

November 30, 1995

EMPLOYEES' EXHIBIT 1
PAGE 1

and three non-agreement positions. Four machinist positions will be transferred to Denver. Four four-axle road switcher locomotives will be released for service elsewhere.

4.2.7 Grand Junction, Colorado

Present Operation - Grand Junction is a major classification point for SP Central Corridor traffic. Eastbound traffic is classified for SP destinations or for connections or intermediate switching carriers at locations such as Denver, Kansas City, East St. Louis and Chicago. SP's East Yard at Grand Junction is a hump yard with 21 classification, six receiving and four departure tracks. It operates eight yard engine assignments and humps about 800 cars per day. A three-track car repair facility and a two-track locomotive servicing facility are also located at the yard. West Yard is a smaller yard with four tracks for staging unit coal trains.

Projected Operation - UP/SP will reroute most of the SP east-west Central Corridor traffic from the SP route through Grand Junction to the UP route east of Ogden, with much of the traffic being classified at the major UP classification facility at North Platte. This will significantly reduce the amount of traffic requiring classification at Grand Junction. Because of this, there will be a reduction of four yard engine assignments, plus six yardmaster, four clerical, and three retarder operator positions. Two switch engines will be made available for use elsewhere. Six machinist positions will be transferred to Denver.

4.3 Midwest Region

4.3.1 Kansas City, Kansas/Missouri

Present Operation - Neff Yard located in the northeast corner of the area, is the major UP yard in Kansas City (Figure 13-15). A hump yard with 22 receiving/departure tracks and 41 classification tracks, Neff humps approximately 1300 cars per day and primarily handles blocking for the north, south and east. Neff also delivers eastbound interchange traffic and serves a significant amount of industry in the Neff area, especially grain-related traffic. A new diesel shop is located at Neff, as is the intermodal facility, which handled approximately 80,000 lifts in 1994. Approximately 21 yard engine assignments work the Neff Yard area daily.

UP's 18th Street Yard is located at the west end of the Kansas City area and has 17 classification tracks and 16 receiving/departure tracks. Its primary function is to receive inbound traffic from the east, including interchange traffic from connecting lines, and to build westbound trains. Eighteenth Street handles approximately 800 cars per day. It has ten yard engine assignments, of which six classify traffic, two handle transfers to connecting lines, and two work industries. A car repair facility is located just east of 18th Street at Armstrong Yard.

UP serves the large Fairfax industrial complex in North Kansas City on the Kansas side of the Missouri River. Fairfax Yard operates ten industrial jobs and two transfer jobs daily.

Armourdale Yard, located adjacent to the UP 18th Street Yard, is SP's only yard in the Kansas City area. It consists of two distinct yards. The "West End" yard has nine receiving/departure tracks and 21 classification tracks and classifies approximately 450 cars per day. Traffic received from connecting lines and traffic from Chicago and St.

Louis that has not been blocked for through movement are handled in this yard. The "Trainyard" has 12 tracks and handles traffic destined to connecting lines at Kansas City, as well as traffic destined to Chicago or St. Louis that has not been blocked for through movement. Armourdale also inspects about five SP coal trains per day. The SP intermodal facility located at Armourdale handled approximately 56,000 lifts in 1994. Car repair and locomotive servicing facilities are also located at Armourdale.

Approximately 15 yard engine assignments work Armourdale daily, of which 11 perform train yard work, three handle transfers with connecting lines and one works industries. In addition, due to capacity constraints at Armourdale, SP utilizes Gateway Western as an intermediate switching carrier to handle some traffic destined to connections in the Kansas City area. Gateway Western receives unblocked trains from SP, switches them, and makes deliveries to connecting carriers for an intermediate switching charge.

Projected Operation - Through the rerouting of some traffic and other changes in blocking and through train operations, UP/SP will consolidate classification operations in the Neff and 18th Street yards. Armourdale Yard will be converted to a new intermodal terminal for the UP/SP system, plus a yard with long tracks for the handling and staging of through trains, especially bulk commodity trains. These changes, plus other changes in the routing of traffic, will have a significant impact not only on UP and SP facilities, but on entire terminal area. UP/SP's operating plans will help relieve the congestion in Kansas City, which is often caused by not having a place to hold trains when they cannot immediately be dispatched from the terminal.

By operating additional run-through trains with connecting lines and by rerouting some traffic around Kansas City, sufficient capacity will be generated at Neff and 18th Street yards to absorb traffic from Armourdale Yard. Eliminating the intermodal ramp at Neff Yard will provide space for construction of two additional departure tracks that, with the addition of several daily yard engine assignments at Neff, will also help expedite traffic through the terminal.

These changes will result in a net reduction of 11 yard engine assignments, as well as a reduction of five yardmaster, eight enginemen (yard hostler), five clerical, five carmen, one laborer, two railway supervisor and five non-agreement positions. Shifting some classification work from Kansas City to Herington will result in the transfer of two enginemen, three trainmen and ten carmen positions to Herington. Six switch engines will be made available for service elsewhere.

4.3.2 Herington, Kansas

Present Operation - Herington is not a significant location on UP (Figure 13-16). It is at the east end of the UP Pueblo-Herington line, which is now dispatched and maintained by SP, the primary user of the line on trackage rights from UP. Local service is still provided by UP, which has exclusive access to local traffic on the line. Herington is also at the north end of the UP Ft. Worth-Herington line via Wichita. This line serves no customers in Herington, and only intermittent service is provided on the Wichita-Herington line north of Lost Springs, Kansas.

Herington is an important location for SP, at the junction of the Central Corridor line via Pueblo and the Tucumcari Line. From Herington, traffic flows to Kansas

7.1.3 Intermodal Terminals

UP/SP will expand current or construct new intermodal facilities at various locations. These projects will allow UP/SP to absorb increases in traffic or obtain the efficiencies associated with consolidating currently separate facilities. UP/SP plans for intermodal facilities include:

	Est. Cost (Millions)
• Construct a new Inland Empire facility in the Colton-Fontana area	$ 67.5
• Expand the SP ICTF facility serving the Ports of Los Angeles and Long Beach	27.2
• Expand the SP Oakland facility and reconfigure the UP facility	3.7
• Expand the Albina Yard facility at Portland	29.3
• Expand the UP facility at Seattle	3.8
• Expand the UP North Yard facility at Salt Lake City	7.7
• Expand the UP Denver facility	8.2
• Expand the UP Global-2 facility in Chicago	12.2
• Expand the UP Dolton facility in Chicago	9.8
• Construct a new facility at Armourdale Yard in Kansas City	16.7
• Expand the UP Dupo, Illinois, facility serving the St. Louis area	38.1
• Construct a new intermodal facility at Texarkana, Arkansas, serving the Texarkana, Shreveport, Marshall and Longview areas	2.5
• Expand the UP facility at South San Antonio	6.1
• Construct a new facility at Harlingen, Texas, serving the Rio Grande Valley	2.0
• Expand the UP Port Laredo, Texas, facility	7.3
Total	$242.1

7.1.4 Special Projects

As part of its plan to increase efficiency and improve intermodal service, UP/SP will undertake two major clearance improvement projects. UP/SP will remove snow sheds on one track, improve clearances in tunnels, modify signaling and otherwise make

UNION PACIFIC RAILROAD

397 [illegible]
[illegible], TN 38017
901-834-1483
Fax: 901-834-1487

April 2, 1997

Mr. Brent Gatti
Vice President - Pricing
Manufacturers Consolidation Service
P. O. Box 240628
Memphis, TN 38124

Dear Brent:

This refers to our conversation concerning UP and SP intermodal terminal consolidations. Attached is a revised copy of the Intermodal Terminal Consolidation Schedule which was previously discussed at our Business Review meeting and included in the handout material.

All consolidation dates shown in the far right column (with the exception of Roseville) are proposed dates at this point. *It does now appear though that we are on track to close Roseville effective May 1, 1997.* Actual consolidation dates by terminal are subject to change pending labor negotiations, system cutovers and other issues. Behind that, we are looking at consolidating the UP and SP operations in Denver at the UP ramp location by June 1, 1997.

As we plan for each consolidation, we are analyzing the impact these closures will have on all business and attempting to assess the risks and benefits to minimize the impact overall to both our operations. We recognize that these consolidations may represent some short-term inconvenience, our ultimate objective is to improve service and maintain competitive cost by rationalizing operations and achieving new efficiencies.

Our plan is to keep you apprised of the latest overall Intermodal Terminal Consolidation Schedule with specific, detailed notifications on each ramp consolidation involved no less than 30 days in advance - more if possible. If you have any questions or concerns with this process, please let me know.

Thank you.

Rich

Rich E. Horstmann
Business Manager

EMPLOYEES' EXHIBIT 2
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INTERMODAL TERMINAL CONSOLIDATION SCHEDULE

AVONDALE	WESTWEGO	NONE	2/1/88	12/1/87	12/1/88
NO .LITYLE ROCK	PINE BLUFF	NONE	6/1/87	2/28/87	1/31/87
SAN ANTONIO (UP) SAN ANTONIO (SP)	SAN ANTONIO (SP)	NONE	2/1/88	2/1/88	
MARSHALL SHREVEPORT	MARSHALL SHREVEPORT	NEW FACILITY TEXARKANA	6/1/87	6/1/87	
MEMPHIS (SP) MEMPHIS (UP)	MEMPHIS (UP) MEMPHIS (SP)	NEW FACILITY WEST MEMPHIS	6/1/87	3/31/88	
DUPO ESTL	E. ST. LOUIS	EXPAND DUPO	6/1/87	7/1/88	
KANSAS CITY (SP) KANSAS CITY (UP)	KANSAS CITY (UP)	EXPAND KANSAS CITY (SP)	6/1/87	6/1/88	
DENVER (UP) DENVER (SP)	DENVER (SP)	NONE	6/1/87	6/1/87	

EMPLOYEES' EXHIBIT 2
PAGE 2

INTERMODAL TERMINAL CONSOLIDATION SCHEDULE

LATHROP (UP) ROSEVILLE (SP)	ROSEVILLE	NONE	6/1/86	6/1/87	
OAKLAND (SP) OAKLAND (UP)	OAKLAND (UP)	EXPAND OAKLAND (SP)	6/1/86	7/1/87	
SALT LAKE CITY (UP) SALT LAKE CITY (SP)	SLC (UP)	EXPAND ROPER	6/1/87	10/1/88	
RENO (UP) SPARKS (SP)	RENO /SPARKS	NEW FACILITY	6/1/86	10/1/88	
PORTLAND (UP) BROOKLYN (SP)	BROOKLYN (SP)	EXPAND PORTLAND (UP)	6/1/86	6/1/88	
IMX (SP)	IMX (BECOMES CY)	EXPAND IMX	6/1/87	6/1/87	

EMPLOYEES' EXHIBIT 2
PAGE 3

INTERMODAL TERMINAL CONSOLIDATION SCHEDULE

DOLTON	IMX (TEXAS & MEXICO)	EXPAND DOLTON	2/1/97	11/1/98	
TWIN CITIES	NO OPERATION	NEW FACILITY	N/A	N/A	
TUCSON (SP) PHOENIX (SP)	PHOENIX	EXPAND TUCSON	2/1/98	2/1/98	
E. LOS ANGELES (UP) LATC (SP)	LATC	NONE-APL ON DOCK	5/1/98	NONE	
COL (SP)	CITY OF INDUSTRY	NEW FACILITY INLAND EMPIRE	5/1/98	12/31/98	

MEMORANDUM OF AGREEMENT

BETWEEN

MISSOURI PACIFIC RAILROAD COMPANY

AND THE

TRANSPORTATION-COMMUNICATIONS UNION

- -

The parties signatory hereto recognize the need to address the current crew hauling operations at Kansas City Terminal. Accordingly, and in connection with the provisions set forth in Article VII of the 1986 TCU National Agreement, this Memorandum of Agreement will apply to crew hauling at Kansas City Terminal.

IT IS AGREED:

ARTICLE I - UTILITY POSITIONS

Section 1.

(a) Initially, the Carrier shall establish thirty (30) positions entitled "Utility Clerk" at Kansas City, on MP/TCU Seniority District and Roster No. 38.

(b) All Utility Clerk positions established under Paragraph (a) above will be bulletined in accordance with Rule 8 of the MP/TCU Agreement, effective March 1, 1973.

Section 2.

(a) Concurrent with establishment of the positions pursuant to Section 1 of this Article, the Carrier will abolish clerical positions listed on Attachment "A" which are mainly those positions whose duties consist of transporting crews at Kansas City Terminal.

(b) Employes affected by the abolishment of existing clerical positions under this Agreement may bid on the new positions established by this Agreement under the provisions of Rule 8(g) of the MP/TCU Agreement, effective March 1, 1973.

ARTICLE II - RATE OF PAY

Section 1.

In accordance with the provisions set forth in Article VII of the 1986 National Agreement, the rate of pay for the positions established by this Agreement will be $72.08 per day effective July 1, 1991 and shall be subject to any future general wage adjustments and COLA.

Section 2.

Entry Rates, as provided by the National Agreement, will not apply to the rate of pay established herein.

Section 3.

Clerical employes assigned under Article I, Section 2(b) of this Agreement to the new positions established herein will be compensated at the employe's protected rate or the rate of the position held prior to the effective date of this Agreement, whichever is greater.

Section 4.

(a) An employe assigned under Article I, Section 2(b) to the new positions established by this Agreement who works overtime will be paid at the time and one-half rate of pay of the position held by that employe immediately prior to the position being abolished (including subsequent general wage increases and COLA) so long as that employe remains in continuous service on one (1) of the positions established by this Agreement at Kansas City Terminal

(b) Except as noted above, all overtime on the new positions established by this Agreement will be paid at the time and one-half rate of pay established in Article II, Section 1, of this Agreement.

ARTICLE III - FILLING PERMANENT VACANCIES

Section 1.

Any furloughed non-protected employe who established clerical seniority prior to April 15, 1986, and who is recalled to fill a position covered by this Agreement, may decline recall. Having once declined recall to a position covered by this Agree-

ment, an employe will no longer be eligible for recall to positions covered by this Agreement. A protected employe must respond to recall in accordance with existing rules and agreements.

Section 2.

(a) Except as provided in Paragraphs (b) and (c) of this Section 2, the protected rate of any individual who voluntarily applies for and is subsequently assigned to a bulletined position covered by this Agreement will be lowered to the rate established in Article II, Section 1, in accordance with the February 7, 1965 Job Stabilization Agreement, as amended.

(b) Employes listed on Attachment "A" and furloughed protected employes recalled to Utility Clerk positions will not have their protection lowered to that of Utility Clerk if they bid to other Utility Clerk positions at Kansas City Terminal.

(c) Employes at Kansas City Terminal who acquire a displacement right and cannot hold any positions other than Utility Clerk that do not require a change in residence will be permitted to exercise seniority to a Utility Clerk position without reduction of their protection.

NOTE: A "change in residence" as used in this Agreement shall only be considered "required" if the reporting point of the affected employes would be more than thirty (30) normal route miles from their point of employment at the time affected.

ARTICLE IV - NATURE OF WORK

This Agreement applies to those positions performing any of the work outlined in Section d) of Letter of Understanding #5 to Implementing Agreement No. 15 dated August 30, 1983. Nothing herein shall be construed as amending Letter of Understanding #5 to Implementing Agreement No. 15.

ARTICLE V - GENERAL

Section 1.

The purpose of this Agreement is to address the situations as they exist today and, except as specifically provided in

Article IV, nothing herein shall be construed as an obligation upon the Carrier to maintain or establish any positions, nor will this Agreement be cited as a precedent to affect any rates of pay or any other similar agreements in the future.

Section 2.

The provisions of this Agreement are designed solely to address issues surrounding crew hauling work at Kansas City. This Agreement is being made to address a unique situation. Moreover, the Agreement is made without prejudice to the position of either party on any issue, including (but not limited to) Rule 1, Scope, and protection rates under the February 7, 1965 Job Stabilization Agreement, as amended. Both parties recognize this Agreement does not constitute a waiver of any position that may be taken in the future concerning any issue which may be contrary to the terms of this understanding.

Section 3.

This Agreement will remain in full force and effect for a period of not less than six (6) years from the effective date unless the parties mutually agree otherwise. After six (6) years from the effective date of this Agreement, either party may serve written notice on the other to modify all or any portion of the Agreement. In the event such written notice is served, the parties will meet within thirty (30) days to commence negotiations on the proposed modifications. The parties will continue in negotiations for at least six (6) months from the date of the written notice or until agreement is reached concerning the modifications, whichever occurs first. In the event agreement cannot be reached on the proposed modifications after the expiration of six (6) months from the date of the written modification notice, either party is free to serve a written six (6) months advance notice to cancel this Agreement. The right of either party to cancel the Agreement will not be an issue subject to arbitration under this or any other Agreement.

Except as otherwise mutually agreed, the provisions for modifying this Agreement provided herein will apply to all unilateral requests for modification of the Agreement.

Section 4.

This Agreement shall become effective September 1, 1991.

SIGNED THIS 29th DAY OF AUGUST, 1991, AT OMAHA, NEBRASKA.

FOR THE TRANSPORTATION COMMUNICATIONS UNION

G. L. McCall
General Chairman, TCU

FOR THE CARRIER

D. D. Matter
Senior Director
Labor Relations/Non-Ops

APPROVED:

F. T. Lynch
International Vice President, TCU

GLM97.DOC

ATTACHMENT A

EXISTING CREW HAULING POSITIONS

POSITION	INCUMBENT	SOCIAL SECURITY NUMBER
General Clerk	I. Holmes, Jr.	488-32-6062
General Clerk	T. Gomez	512-38-5437
General Clerk	B. Wyatt	510-22-7380
General Clerk	A. A. Thomas, Jr.	515-26-6727
General Clerk	J. L. Harston	728-03-0882
General Clerk	F. E. Stevenson	497-44-8983
General Clerk	J. L. Duncan	515-48-6808
General Clerk	M. M. Atkins	509-50-2337
General Clerk	W. J. Donner	497-34-0657
General Clerk	M. G. Benson	511-58-8699
General Clerk	T. D. Fowler	497-56-6584
General Clerk	J. R. Lee	500-38-0506
General Clerk	R. L. Evans	514-28-7519
General Clerk	L. M. Doss	500-44-3355
General Clerk	L. F. Dugger	511-60-7773
General Clerk	R. Davis	512-34-7016
General Clerk	C. L. Coats	513-58-7517
General Clerk	R. F. Trotter	531-42-0379
General Clerk	D. D. Schulte	515-48-6798
General Clerk	S. E. Welch	497-56-7977
General Clerk (Relief)	G. H. Peters	510-44-6585
General Clerk (Relief)	S. A. Cullen	339-36-1507
General Clerk (Relief)	J. A. Kraus	486-48-8196
General Clerk (Relief)	E. B. Reese	498-48-1960
General Clerk (Relief)	C. L. Childs	491-52-2541
General Clerk (Relief)	J. E. Weber, Jr.	500-38-5425
General Clerk (Relief)	A. J. Bruscato	488-50-8402
General Clerk (Relief)	R. V. Heslop	486-50-7195
General Clerk (Relief)	P. A. Beebe	495-52-6948
General Clerk (Relief)	E. V. Rogers	513-30-3786

EMPLOYEES' EXHIBIT
PAGE 6

AGREEMENT

between

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

and certain of its employes
represented by

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

* * * * * * * * * * *

IT IS AGREED:

1. The following is added to Rule 1 of the Clerks' Agreement:

Positions or work within the scope of this Rule 1 belong to the employes covered thereby and nothing in this Agreement shall be construed to permit the removal of such positions or work from the application of these rules subject to the exceptions hereinafter set forth and except in the manner provided in Rule 69.

When and where machines are used for the purpose of performing work coming within the scope of this Agreement, not previously handled by machines, such work will continue to be covered by this Agreement. A change in the equipment used for the performance of any remaining work will not remove such work from the coverage of this Agreement.

An officer or employe not covered by this Rule 1 may perform work covered by this Agreement which is incident to his regular duties.

Clerical positions in departments excepted from all of the provisions of this Agreement and specified positions listed in Exception A to Rule 1 are recognized as being within the craft or class covered by this Agreement.

2. Exceptions to Rule 1 are revised to read as follows:

A(1). This agreement shall not apply to clerical employees in the following offices and departments:

Executive Department

Industrial Relations Department,
excluding Personnel Services

EMPLOYEES' EXHIBIT 4
PAGE 1

Office of Internal Auditor

Office of Law Department

Office of Manager of Corporate Accounts

Office of Manager of Corporate Tax

Exception A(1), referred to above, will apply also to positions in the following categories:

Immediate offices of the Vice Presidents and General Purchasing Manager (Corporate), except as otherwise provided in the agreement.

Chief Clerk to Division Superintendents

A(2). The following positions shall be subject only to Rules 1, 3, 16, 20 and 22-1 and to the Agreement and Memorandum of Agreement, both dated January 29, 1953, relating to the Union Shop, and the Agreement of December 16, 1969, relating to deduction of dues:

Yard Office Supervisors

*Statistician - Memphis Traffic Office

*Statistician - St. Louis Traffic Office

OFF-LINE OFFICES

All clerical positions not excluded under Exception A(1).

The incumbents of positions listed above may be removed from their positions without investigation. The exception of additional positions will be by agreement only.

*Will be subject to Exception "C", if and when filled, after being vacated by present incumbent.

B. The following positions in the following offices and departments shall be subject only to the application of Rules 1, 2, 3, 5, 6, 7, 12, 13, 16, 17, 19, 20, 21, 23, 25, 26, 46, 52, 54, 56, 57, 58, 60, 61, 67 and 69:

Office or Department	Title of Position
	TYLER
Manager of Accounting	** Secretary

Revenue Accounting	*Chief Clerk ** First Asst. Cashier
Data Processing	*Chief Clerk
	ST. LOUIS
Traffic	*Senior Clerk - Traffic
	PINE BLUFF
Superintendent	*Secretary to Superintendent **Asst. Chief Clerk-Secretary
Mechanical	**Chief Clerk-Secretary

*Subject to the Agreement and Memorandum of Agreement, both dated January 29, 1953, relating to the Union Shop, and the Agreement of December 16, 1969, relating to deduction of dues.

**Subject to the Agreement and Memorandum of Agreement, both dated January 29, 1953, relating to the Union Shop, and the Agreement of December 16, 1969, relating to deduction of dues, and will be subject to Exception "C", if and when filled, after being vacated by the present incumbent, except that Carrier may promote employees from other positions subject to Exception "B" in the same department. If positions designated by two asterisks are not filled within ninety (90) days after vacated by present incumbents, they may not be filled as partially excepted positions.

NOTE: The exceptions of additional positions subject to Exception B shall be by agreement only.

C. The following positions shall not be subject to Rule 4 but shall be subject to the Agreement and Memorandum of Agreement, both dated January 29, 1953, relating to the Union Shop, and the Agreement of December 16, 1969, relating to deduction of dues:

Office or Department	Title of Position
Revenue Accounting Office	
Tyler	Head Clerk-Agents Accounts Head Clerk-Interline Recheck Head Clerk-O/C Claims Head Clerk-Revising **Assistant Cashier (2)

EMPLOYEES' EXHIBIT 4
PAGE 3

Office or Department	Title of Position
Regional Engineer's Office	
Pine Bluff	Chief Clerk **Maintenance of Way Clerk
Mechanical Dept. Office	
Pine Bluff	Chief Clerk
Purchases & Materials Office	
Pine Bluff	Chief Clerk General Foreman
District Sales Office	
Little Rock	Chief Clerk
Memphis	Chief Clerk
Pine Bluff	Chief Clerk Assistant Chief Clerk
St. Louis	Chief Clerk
Shreveport	Chief Clerk
Texarkana	Steno-Clerk
Tyler	Steno-Clerk
Waco	Chief Clerk
Regional Sales Office	
St. Louis	Senior Clerk-Meetings Secretary-General Clerk **Secretary **Senior File Clerk
Special Agent's Office	
Pine Bluff	Clerk-Steno
Trainmaster's Office	
Illmo	Chief Clerk
Pine Bluff	*Chief Clerk

EMPLOYEES' EXHIBIT 4
PAGE 4

Office or Department	Title of Position
Texarkana	Chief Clerk
Tyler	Chief Clerk

*Hours not compensated for in basic rates of pay, and the compensation for such hours, will be eliminated from these positions, if and when filled, after being vacated by the present incumbent. If positions designated by one asterisk are not filled within ninety (90) days after vacated by present incumbents, they may not be filled as partially excepted positions.

**Will be subject to all rules of the agreement, if and when filled, after being vacated by the present incumbent.

NOTE: The exception of additional positions subject to Exception C shall be by agreement only.

D. In filling positions listed in Exception B of this rule, preference shall be given to employees coming under the provisions of this agreement on the following basis:

(1) From clerical employees on seniority roster in district where vacancy occurs, or

(2) From clerical employees on other rosters, if no qualified employee on seniority roster where vacancy occurs. It is the intent of this paragraph to require that preference be given in filling such vacancies to provisions of D(1) wherever possible.

E. In filling positions listed in Exception C of this rule, preference shall be given to qualified employees from own roster.

F. Occupants of positions listed under Exception B will not be required to perform routine clerical work, which is not a part of their regularly assigned duties, outside regular assigned office hours for the purpose of avoiding payment of overtime to employees subject to overtime rules. This shall not operate to prohibit employees coming under Exception B in any office or station assigned to report on rest days and holidays from handling telegrams, passes, or other similar items.

G. Employees assigned to positions listed under Exceptions B and C may be relieved or demoted therefrom without investigation, at the discretion of Management. This provision shall not operate to set aside, waive, or modify the employees' rights under Rule 23 in case of discipline or dismissal.

3. All positions identified in Exceptions A(2) and B which are not at the present time subject to the agreements relating to the Union Shop and to the deduction of dues will become subject to such coverage and the incumbents of these positions will be required to become members of the Organization party to this agreement effective on and after August 1, 1980.

4. Clerical positions in off-line offices, referred to above in Exception A(2) in Rule 1, consist of the following at the present time:

Steno Clerk	Chicago Traffic Office
Chief Clerk	Cincinnati Traffic Office
Chief Clerk	Cleveland Traffic Office
Clerk-Steno	Detroit Traffic Office
Chief Clerk	Pittsburg Traffic Office
Chief Clerk	San Francisco Traffic Office

Seniority dates for incumbents of these positions will be their continuous service dates with the Carrier in an off-line office and listed on separate roster for off-line offices. Seniority previously acquired and currently held on other rosters will be retained.

5. Positions of Traveling Auditor, previously covered by Exception D to Rule 1 are transferred to coverage under Exception A(1) to Rule 1.

6. Employees promoted to official or excepted positions on or after January 1, 1980 will be required to maintain membership in the organization party to this Agreement effective on and after August 1, 1980 in order to retain seniority under the Clerks' Agreement. In the event such an employee fails to maintain membership as required, the General Chairman shall notify the Manager of Labor Relations and if within 30 days thereafter (from date of letter) the employee has not paid the dues owed, his or her seniority under the Clerks' Agreement will be forfeited.

7. No notice may be served by the organization on the Carrier proposing conversion of so-called non-union positions to contract coverage until on or after July 1, 1982.

This Agreement is effective June 1, 1980, except as otherwise indicated above.

Signed at Wahsington, D. C., this 21st day of May 1980.

FOR THE BROTHERHOOD OF RAILROAD, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES:

R R Pinkard
General Chairman

P R Daffin
Assistant General Chairman

FOR THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY:

M. L. Erwin
Manager of Labor Relations

APPROVED:

C. L. Coleman
International Vice President

Frank J. Troll
International President

EMPLOYEES' EXHIBIT 4
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MEMORANDUM AGREEMENT

This will confirm understanding reached in conference on May 21, 1980 dealing with the adoption of the revised Scope Rule effective June 1, 1980.

It was understood and agreed that in any instance where the new Scope Rule is in conflict with the provisions of the TOPS Agreement, the specific provisions of the TOPS Agreement will apply.

With respect to the present performance of work by outside parties which is covered by the revised Scope Rule but not related to TOPS, the Carrier and the Organization agree that any dispute arising at any location where such work is presently being performed by outside parties, the dispute will be processed under the provisions of the agreement effective January 1, 1972, with the understanding that the Scope Rule as revised and effective June 1, 1980, will not be applicable nor will it be introduced by either party during the processing of such dispute. This will not be construed as license to remove work from the coverage of the Agreement on and after June 1, 1980, except in accordance with the provisions of Rule 69.

When the Company proposes substantial reorganization and/or realignment which contemplates the contracting out of work belonging under the Agreement, or the assignment of any such work to employes not covered by the Agreement, the Company will give the General Chairman sixty (60) days' advance notice in writing of the precise changes being proposed. If agreement is not reached between the General Chairman and the Manager of Labor Relations, the following procedure may be invoked:

(a) The proposal will be referred to the Carrier's Vice President - Industrial Relations and the Brotherhood's International President for consideration and agreement. If agreement is not reached thereon within sixty (60) days, then:

(b) The issue may be processed by either party to final and binding arbitration under Section 7 of the Railway Labor Act, as amended. Should either party decline to participate in the arbitration process, then the other party's position in that particular case shall be considered as being sustained.

EMPLOYEES' EXHIBIT 4
PAGE 8

Signed at Washington, D.C., this 21st day of May 1980.

FOR THE BROTHERHOOD OF RAILROAD, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES:

R R Pinkard
General Chairman

P R Daffin
Assistant General Chairman

FOR THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY:

M. L Erwin
Manager of Labor Relations

APPROVED:

C L Coleman
International Vice President

Fred Stroll
International President

MEMORANDUM AGREEMENT

This will confirm understanding reached in conferences dealing with adoption of revised Scope Rules effective June 1, 1980.

If agreement is not reached between the General Chairman and the Manager of Labor Relations on exception of additional positions under Exception A(2) of Rule 1 of the Agreement, the proposed changes will be referred to the Carrier's Vice President - Industrial Relations and the Brotherhood's International President for consideration and agreement.

Signed at Washington, D.C., this 21st day of May, 1980.

FOR THE BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES:

R R Rinkard
General Chairman

P R Daft
Assistant General Chairman

FOR THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY:

M. L. Erwin
Manager of Labor Relations

APPROVED:

International Vice President

International President

EMPLOYEES' EXHIBIT 4
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MEMORANDUM OF AGREEMENT

The terms and conditions of the Memorandum Agreement of this date relating to resolution of disputes involving performance of certain work by outside parties will apply also to disputes involving performance of work of the same nature by officers and employes not covered by the Clerks' Agreement.

Signed at Washington, D.C., this 21st day of May 1980.

FOR THE BROTHERHOOD OF RAILROAD, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES:

R K Pinkard
General Chairman

P R Daffit
Assistant General Chairman

FOR THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

M. L. Erwin
Manager of Labor Relations

APPROVED:

R. L. Coleman
International Vice President

Frank J. Troll
International President

EMPLOYEES' EXHIBIT 4
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A G R E E M E N T

Between

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

and

ALL THAT CLASS OF CLERKS AND OTHER OFFICE, STATION AND STOREHOUSE EMPLOYEES REPRESENTED BY THE BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES.

Effective January 1, 1972

HOURS OF SERVICE AND WORKING CONDITIONS
GOVERNING EMPLOYEES HEREIN NAMED

RULE 1

Scope

1-1. These rules shall govern the hours of service and working conditions of all the following class of employees, subject to exceptions noted below:

(a) Clerical workers; also Station, Store, and Warehouse General Foreman and Assistant General Foremen.

(b) Machine operators of office or station mechanical equipment used in the performance of clerical work.

(c) Telegraphers (including but not limited to Manager-Telegrapher and Assistant Test Telegrapher), telephoners, agent-telegraphers, agent-telephoners, towermen, tower and train directors, levermen-telegraphers, block operators, staffmen, hourly rated station agents and the monthly rated station agents covered by Addendum No. 2.

(d) Other office, station and storehouse employees such as:

Office boys, messengers, waybill filers and assorters;
Telephone switchboard operators;
Operators of office machine or equipment devices, such as devices for perforating, addressing envelopes, numbering claims and other papers, mimeographing and duplicating machines and machines used to perform work of a like nature;
Train announcers, gatemen, matrons, maids, red caps and ushers;
Yard, train and engine crew callers;
Baggage, mail and parcel room employees;
Building attendants;
Office and station porters, janitors, charwomen, cleaners and maintainers;
Elevator operators;
Office, station, warehouse and storehouse watchmen and other employees performing analogous service.

STORES DEPARTMENT

Gang foremen;
Chauffeurs and truck drivers;
Tractor operators;
Operators of automotive equipment, such as Brown Hoist machines, etc.;
Store helpers including commissary store helpers and employees assigned to check or watch time clocks or cards;

Oil house men and helpers;
Supply car men and helpers;
Operators of shears used in cutting scrap.

(e) Laborers employed in and around stations, store houses and warehouses.

STORES DEPARTMENT

Scrap Sorters;
Laborers employed in and around storehouses, reclamation plant and storage dock where Stores Department material and supplies are kept.

1-2. Where existing payroll classification does not conform to this rule, employees performing service of the classes specified herein shall be classified in accordance therewith.

EXCEPTIONS

A. This agreement shall not apply to clerical employees in the following offices and departments:

Executive Department
Law Department (including General Claim and Tax)
Personnel and/or Labor Relations Departments
Industrial and/or Land Departments
Traffic Department (Off-Line offices only)

B. The following positions in the following offices and departments shall be subject only to the application of Rules 1, 2, 3, 5, 6, 7, 12, 13, 16, 17, 19, 20, 21, 23, 25, 26, 46, 52, 54, 56, 57, 58, 60, 61, 67 and 69:

LOCATION	OFFICE OR DEPARTMENT	TITLE OF POSITION
System	Operating	* Yard Office Supervisors
Tyler	Treasury	** First Assistant Cashier
		** Assistant Cashier
		** Assistant Cashier
		** Secretary
		** Secretary
	Auditor	** Secretary
	Disbursements Acctg.	Chief Clerk
		** Secretary
	Revenue Accounting	Chief Clerk
		** Secretary
		*** Secretary

	Data Processing	Chief Clerk
	Equipment Serv. Accts.	* Chief Clerk
	Communications	* Chief Clerk
	Gen. Frt. Claim Agent	* Chief Clerk ** Secretary
	Traffic	** Senior Clerk-Divisions ** Senior Clerk-RMMC ** Senior Clerk-PFFP ** Senior Clerk-PCA ** Senior Clerk-PCVP ** Senior Clerk-GMMR&R ** Secretary
St. Louis	Traffic	* Senior Clerk-Traffic ** Senior Clerk-Meetings ** Secretary ** Secretary ** Secretary ** Secretary-General Clerk *** Clerk-Files
Pine Bluff	Superintendent	Chief Clerk * Secretary to Superintendent ** Asst. Chief Clerk-Secretary *** File Clerk
	Mechanical	Chief Clerk ** Secretary ** Chief Clerk-Secretary
	Maintenance of Way	* Chief Clerk
	Purchases & Materials	** Chief Clerk ** Steno-File Clerk

* Subject to the Agreement and Memorandum of Agreement, both dated January 29, 1953, relating to the Union Shop, and the Agreement of December 16, 1969, relating to deduction of dues.

** Subject to the Agreement and Memorandum of Agreement, both dated January 29, 1953, relating to the Union Shop, and the Agreement of December 16, 1969, relating to deduction of dues, and will be subject to Exception "C", if and when filled, after being vacated by the present incumbent, except that Carrier may promote employees from other positions subject to Exception "B" in the same department. If positions designated by two asterisks are not filled within ninety (90) days after vacated by present incumbents, they may not be filled as partially excepted positions.

dated January 29, 1953, relating to the Union Shop, and the Agreement of December 16, 1969, relating to deduction of dues, and will be subject to all rules of the agreement, if and when filled, after being vacated by the present incumbent.

NOTE: The exception of additional positions subject to Exception B shall be by agreement only. This does not apply to yard office supervisors, but the establishment of yard office supervisor positions will not result in the abolishment of fully covered positions of Chief Yard Clerk or Assistant Chief Yard Clerk, or positions of Chief Clerk, Freight Office, when Yard and Freight station offices are combined. Selection of yard office supervisors will be from the ranks of employees holding seniority under this agreement.

C. The following positions shall not be subject to Rule 4 but shall be subject to the Agreement and Memorandum of Agreement, both dated January 29, 1953, relating to the Union Shop, and the Agreement of December 16, 1969, relating to deduction of dues.

LOCATION	OFFICE OR DEPARTMENT	TITLE OF POSITION
E.St.Louis	Agent	** Chief Clerk
		** Reconsigning Clerk
Illmo	Trainmaster	* Chief Clerk
Memphis	Agent	** Chief Clerk
Pine Bluff	Division Engineer	Maintenance of Way Clerk
	Purchases & Materials	General Foreman
	Trainmaster	* Chief Clerk
Commerce	Trainmaster	* Chief Clerk
Tyler	Trainmaster	* Chief Clerk
	Disbursements Accounting	* Tax Accountant
		* General Bookkeeper
		* Traveling Accountants (2)
		* Head Clerk-Payrolls
		Head Clerk-Bill & Voucher
		Head Clerk-R&E Accounts
		Bookkeeper
	Revenue Accounting	Head Clerk-Agents Accounts
		Head Clerk-Interline Recheck
		Head Clerk-O/C Claims
		Head Clerk-Revising
		Head Clerk-Statistical
	Gen. Freight Claim Agent	* Freight Claim Adjuster
		Freight Claim Adjusters (5)
	Traffic	Senior Quotations Clerk
		* Secretary
		** Steno Clerks (2)
On Line	Traffic Representatives	** All positions

* Hours not compensated for in basic rates of pay, and the compensation for such hours, will be eliminated from these positions, if and when filled, after being vacated by the present incumbent. If positions designated by one asterisk are not filled within ninety (90) days after vacated by present incumbents, they may not be filled as partially excepted positions.

** Will be subject to all rules of the agreement, if and when filled, after being vacated by the present incumbent, except that in the on-line Traffic Representative offices other than at St. Louis, Pine Bluff and Dallas the Carrier shall have the right to continue one position in each office subject to this Exception "C", and in the on-line Traffic Representative offices at St. Louis, Pine Bluff and Dallas the Carrier shall have the right to continue two such positions.

NOTE: The exception of additional positions subject to Exception C shall be by agreement only.

D. Employees regularly assigned to bona fide road service where special training, experience and fitness are required; such as, traveling auditors, traveling storekeepers, traveling car agents and traveling demurrage inspectors, shall not be subject to Rules 4 and 10, but shall be subject to the Agreement and Memorandum of Agreement, both dated January 29, 1953, relating to the Union Shop, and the Agreement of December 16, 1969, relating to deduction of dues.

NOTE: Hours not compensated for in basic rates of pay, and the compensation for such hours, will be eliminated from positions covered by this exception, if and when filled, after being vacated by the present incumbent.

E. In filling positions listed in Exception B of this rule, preference shall be given to employees coming under the provisions of this agreement on the following basis:

(1) From clerical employees on seniority roster in district where vacancy occurs, or

(2) From clerical employees on other rosters, if no qualified employee on seniority roster where vacancy occurs. It is the intent of this paragraph to require that preference be given in filling such vacancies to provisions of E(1) wherever possible.

F. In filling positions listed in Exception C of this rule, preference shall be given to qualified employees from own roster.

G. In filling positions listed in Exception D of this rule, preference shall be given to employees coming under the provisions of this agreement.

EMPLOYEES' EXHIBIT 4
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H. Occupants of positions listed under Exception B will not be required to perform routine clerical work, which is not a part of their regularly assigned duties, outside regular assigned office hours for the purpose of avoiding payment of overtime to employees subject to overtime rules. This shall not operate to prohibit employees coming under Exception B in any office or station assigned to report on rest days and holidays from handling telegrams, passes, or other similar items.

I. The changing of the title of a position without actual re-classification of the duties assigned will not operate to remove the position from the scope of this agreement, unless by mutual agreement between the Carrier and duly accredited representatives of the employees.

J. Employees assigned to positions listed under Exceptions B, C, and D may be relieved or demoted therefrom without investigation, at the discretion of Management. This provision shall not operate to set aside, waive, or modify the employees' rights under Rule 23 in case of discipline or dismissal.

SUPPLEMENT TO SCOPE RULE

It is agreed that in the receipt and delivery of freight, warehouse employees' work shall begin and end with tailgate delivery. However, the carrier may use its warehouse force outside of the warehouse or beyond tailgate where it has been the practice to do so, or where it so desires, in loading and unloading freight from trucks or other motor vehicles. Truck drivers or other persons not covered by the agreement will not be permitted to perform any service other than that necessary to assist the warehouse employees in unloading freight from their trucks.

RULE 2

Definition of Clerical Workers

2-1. Clerical Workers - Employees who regularly devote not less than four (4) hours per day to the writing and calculating incident to keeping records and accounts, rendition of bills, reports and statements, handling of correspondence and similar work.

2-2. Machine Operators - Employees who regularly devote not less than four (4) hours per day to the operation of office or station mechanical equipment requiring special skill and training; such as, typewriters, calculating machines, bookkeeping machines, dictaphones, and other similar equipment used in the performance of clerical work.

EMPLOYEES' EXHIBIT 4
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IMPLEMENTING AGREEMENT NO. NYD-217

BETWEEN

SOUTHERN PACIFIC TRANSPORTATION COMPANY
UNION PACIFIC RAILROAD COMPANY

AND

ALLIED SERVICES DIVISION/ TCU
TRANSPORTATION COMMUNICATIONS UNION

WHEREAS, Union Pacific Railroad Company (UP) petitioned the Interstate Commerce Commission (now the Surface Transportation Board [STB]) to merge with Southern Pacific Transportation Company (SP) and consolidate operations, and

WHEREAS, the STB granted merger of the UP and SP pursuant to decision rendered under Finance Docket No. 32760, and

WHEREAS, the STB imposed the New York Dock Ry. - Control - Brooklyn Eastern District Terminal, 360 ICC 60 (1979) employee labor protective conditions (hereinafter referred to as "New York Dock Conditions"); and

WHEREAS, pursuant to Article I, Section 4 of the New York Dock Conditions, the following Agreement is made to cover the general rearrangement and selection of forces in connection with the consolidation and rearrangement of functions throughout the UP and the SP, and this rearrangement is made to effect the merger of the UP and SP properties. It is expected that the completion of this rearrangement will involve all areas of the merged railroad's organizational structure.

UP and SP expect that the rearrangement will be implemented in several stages. The Company anticipates that at least 1,800 clerical employees will be affected. These employees are now positioned at various locations across the UP and SP.

The rearrangement of employees and/ or work will commence after the effective date of this Agreement.

IT IS AGREED:

ARTICLE I - ELECTION OF BENEFITS

The labor Protective Conditions as set forth in the New York Dock Conditions which, by reference hereto, are incorporated herein and made a part of this Agreement shall be applicable to this transaction.

Employees affected as a result of the transaction pursuant to this Agreement will be provided an election of available employee protective benefits as set forth in Article I, Section 2 of New York Dock Conditions.

There shall be no duplication of benefits receivable by an employee under this Agreement and any other agreement or protective arrangement. In the event an employee is eligible for protection under the New York Dock Conditions and other agreements or protective arrangements, such employee shall be furnished their New York Dock Conditions test period earnings and shall within thirty (30) days thereafter with copy to the General Chairman, make an election in writing as to whether they desire to retain the protective benefits available under any other agreements or protective arrangements or receive the protective benefits provided under the provisions of this Agreement. In the event the employee fails to make such election within the said thirty (30) day period, the employee shall be deemed to have elected the protection benefits provided under this Agreement to the exclusion of protective benefits under any other agreement or arrangement.

Employees affected as a result of the transaction covered by this Agreement and who elect to accept work at another location, will be provided with protective benefits as set forth in Article I, Sections 2, 9 and 12 of New York Dock Conditions, or the moving benefits outlined in Attachment "B".

An affected employee's test period average (TPA) shall be determined pursuant to Article I, Section 5 of the New York Dock Conditions. (See Side Letter No. 14)

Employees referred to in this Article who elect the New York Dock Conditions protection and benefits prescribed under this Agreement shall, at the expiration of their New York Dock Conditions protective period, be entitled to such protective benefits under applicable protective agreements provided they thereafter continue to maintain their responsibilities and obligations under applicable protective agreements and arrangements.

ARTICLE II - TRANSACTIONS

After the effective date of this Agreement, the Company will commence rearrangement and consolidation of work and positions from locations throughout SP and UP.

The Company will provide the Organization with a detailed plan by location of transactions to take place and distribution of remaining work. The plan will include a listing of the jobs to be abolished and the incumbents; the jobs to be created; the approximate date(s) of transfer; a description of the work to be transferred and the disposition of work to remain, if any. If the transfer of employees or the abolishment of jobs is involved, the plan for each location may be implemented sixty (60) days or later after issuance. It is understood that the sixty (60) days contemplates five (5) days or more notice to the Organization, twenty (20) days for employees to make election, five (5) days for the Carrier to award employee options, and thirty (30) days to prepare for and complete the move. If the plan involves only the transfer of work, such transfer may occur thirty (30) days or later after issuance.

After notifying the Organization of the plan to transfer work and/ or employees, the General Chairman may request a meeting to discuss the Carrier's plan. A request for a meeting from the involved General Chairman must be made within five (5) days after the Carrier's plan notice is received by the Union, and said meeting must be held within ten (10) days after the Union's request is received by the Carrier.

ARTICLE III - SELECTION OF FORCES AND ALLOCATION OF SENIORITY

Section 1. Employees transferring under this Agreement will relinquish seniority on their former seniority district(s) or zone(s) on the effective date their assignment is relocated and will have their earliest clerical seniority date dovetailed into the seniority district or zone (including Master Roster 250) to which transferred. If a transferring employee has the same date as an employee on the seniority district or zone (including Master Roster 250) to which transferring, his/ her ranking on that district or zone will be determined by date of birth, the oldest being ranked first, and, if this fails, by alphabetical order of last names.

Section 2. Employees transferring under this Agreement shall retain a protected status under this Agreement for a period of six (6) years or length of service, whichever is less, and be credited with prior service for vacation, personal leave, sick leave, entry rates,

and all of the benefits which are granted on the basis of qualifying years of service in the same manner as though all such time spent had been in the service of the railroad to which transferred.

Section 3. The Carrier will determine the number of positions to be relocated or abolished at a given location as the result of the implementation of a transaction. Advertised positions to be established at the new location will be awarded in accordance with Letter of Understanding No. 5.

Employees on the affected roster/ zone will be given the simultaneous options of:

A. Receiving severance under the separation program (Attachment "A").
B. Exercising seniority.
C. Relocating to accept a clerical position at a new location.
D. Entering voluntary furlough status (benefits suspended).

Employes will be asked to rank each option in order of preference. The option of each employee will be honored in seniority order until all the relocated positions have been filled or there are no surplus employees on the roster/ zone available to fill the relocated positions. Employees receiving options must select said options within twenty (20) days from the date notice of the transaction is posted. Failure to make an election will be considered as electing to exercise seniority or in the event an employee cannot hold a position in the exercise of seniority, failure to make an election shall be considered as electing voluntary furlough status (benefits suspended). Election or assignment of benefits shall be irrevocable.

Section 4. Assignments will be made thirty (30) days prior to the effective date of the transaction. After assignment is made, the employee will not be subject to displacement from the new position. Said protection from displacement extends only from date assigned until position is occupied, after which time normal seniority rules shall prevail.

On the effective date of the assignment, employees will forfeit all seniority on their current district(s) or zone and establish a dovetailed date on the new district or zone. Accordingly, employees assigned positions on said bulletin will have no seniority right to continue to hold positions on the old district or zone after the effective date of the new assignment.

Agreement and which carries a rate of pay and compensation equal to or exceeding the employee's protected rate, or shall thereafter be treated for the purposes of this Section as occupying the position elected to decline until a position of equal or higher rate is acquired.

Section 3. If an employee is absent from service on the effective date of this Agreement, such employee will be entitled to the benefits as provided in Article I when available for service, if eligible.

Section 4. If an employee who has been notified that his/her position will be affected desires to accept severance and resigns or relocates prior to the expiration of the 30-day notice, he/she may do so dependent upon the requirements of the service and without penalty to the employee or the Carrier.

Section 5. In connection with the application of this Agreement, the parties have agreed without prejudice to either party's position in any other case that positions established will not be counted as TOPS overbase credits, nor will positions abolished or individuals accepting separation allowances as a result of this transaction be counted as TOPS attrition credits.

Where there is sufficient work in a department to require supplementing the assigned work force on a regular basis, a position will be properly bulletined and established.

Section 6. In order for employees who transfer under the terms of this Agreement to acquire training and gain necessary experience, the Carrier agrees to provide paid job-related training for up to eight (8) weeks. The training will begin upon an employee's assignment and may include on-the-job training, classroom instruction, and testing. Typing courses as well as other job-related fundamentals, may be offered in order to develop necessary skill levels. The length of the training period may vary based upon the previous experience, training, skills of each employee as well as the prerequisites of the job and department. An employee afforded training as provided herein will be given full cooperation during the training period. Failure to make satisfactory progress in training will be sufficient grounds for disqualification. Any employee so disqualified will be required to exercise his seniority rights at the location to which transferred in accordance with the applicable rule(s) of the Agreement.

The training period will not exceed eight (8) hours per day, forty (40) hours per work week (Monday through Sunday). However, if training is required in excess of the hours specified, such training will be compensated at the overtime rate.

ARTICLE VI - EFFECTIVE DATE

This Agreement shall become effective on the date signed, and constitutes an Implementing Agreement fulfilling the requirements of Article I, Section 4, stipulated in the New York Dock Conditions imposed by the STB in FD 32760.

Signed this 18th day of December, 1996.

FOR THE ORGANIZATION:

R. F. Davis
President, ASD/ TCU

J. L. Quilty
General Chairman, TCU

M. L. Scroggins
General Chairman, TCU

FOR THE COMPANY:

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

R. L. Camp
Manager Labor Relations

APPROVED:

J. P. Condo
International Vice President, TCU

J. L. Gobel
International Vice President, TCU

ATTACHMENT "A"

SEPARATION/DISMISSAL PAY

In recognition of the anticipated number of changes associated with the merger of the railroads and in an effort to provide alternatives to the clerical employees represented by the Allied Services Division/TCU and the Transportation Communications Union, the Carrier agrees to offer the following options to Southern Pacific Lines and Union Pacific Railroad employees.

Section 1.

Upon the effective date of the Implementing Agreement, the Carriers will be permitted to post a twenty (20) day advance notice at specific locations offering the following separation amounts on a seniority basis:

YEARS OF SERVICE	AMOUNT
30 and Over	$95,000
25, Less than 30	$85,000
20, Less than 25	$75,000
15, Less than 20	$65,000
6, Less than 15	$60,000
Less than 6	$25,000

In calculating an employee's seniority, the earliest continuous seniority date shall apply. The employee's years of service shall be calculated as of the date the notice of separation is posted.

Section 2.

(a) In lieu of the lump sum payments indicated above, employees may elect to accept a dismissal allowance payable in equal monthly installments. Employees electing this option will be entitled to the amount indicated, given their number of years seniority less $500 for every month which the payments are extended for continuation of health and welfare benefits. Payments may be extended for a period not to exceed three (3) years (36 months from date monthly dismissal payments are initiated).

(b) Employees electing Option contained in Section 2(a) above shall be relieved from duty, but considered in active service until the expiration of the last monthly installment at which time their service and seniority shall be terminated. Compensation paid in these monthly installments will be considered the same as regular compensation insofar as taxation and hospital dues deductions are concerned. However, this compensation will not be considered as qualifying payments for the purpose of applying the National Vacation Agreement nor will this extended time allow such employees any other compensation benefits under the Basic or National Agreement. It is understood that all health and welfare benefits as well as all contributions toward Railroad Retirement Tax shall be continued during the period that the monthly installments are in effect.

Section 3.

(a) In lieu of the lump sum payments indicated above, employees may elect to accept a dismissal allowance payable in equal monthly installments. Employees electing this option will be entitled to the amount indicated, given their number of years seniority. Payment may be extended for a period not to exceed three (3) years (36 months from date monthly separation payments are initiated).

(b) Employees electing Option contained in Section 3(a) above shall be relieved from duty, but considered in active service until the expiration of the last monthly installment at which time their service and seniority shall be terminated. Compensation paid in these monthly installments will be considered the same as regular compensation insofar as taxation is concerned. However, this compensation will not be considered as qualifying payments for the purpose of applying the National Vacation Agreement nor will this extended time allow such employees any other compensation benefits under the Basic or National Agreement. Additionally, employees will not be eligible for any health and welfare benefits. It is understood that all contributions toward Railroad Retirement Tax shall be continued during the period that the monthly installments are in effect.

Section 4.

(a) Except as otherwise provided, employees submitting requests for the options contained herein must, on the date notice is posted, be actively employed and/or receiving compensation from the Carrier either on a regular assigned clerical position, extra board or as a furloughed protected employee.

(b) A clerical employee who is on a leave of absence at the time the notice is posted at a location will be considered an eligible employee upon returning to active service at such location if such employee returns within six (6) months of the date of the notice.

(c) Employees entitled to the lump sum separation will be paid within one week of the last day worked. Employees entitled to the dismissal allowance will be paid monthly beginning within thirty (30) days of the last day worked.

(d) Deductions for income tax, railroad retirement tax, and union dues and assessments will be made.

(e) The Company reserves the right, dependent upon the needs of the service, to limit the number of clerical employees receiving separation or dismissal allowances. Furthermore, employees electing these options need not be immediately released and the separation or dismissal options elected may be deferred up to three (3) months from date the employee is notified of acceptance. Any deferment beyond three (3) months must be by mutual agreement between the parties.

(f) Only the prescribed Request Form may be used. Any other methods of requesting options received from employees other than this prescribed form will not be considered as a valid request. In addition to forwarding the Request Form to the designated Carrier official, interested applicants must also submit completed copies to the individuals listed on the form. In the case of a dispute as to whether the form was submitted on time, etc., the deciding factor will be receipt of the Request Forms to all concerned and absent such receipt may result in having the Request Form considered as invalid.

(g) Each applicant applying for options provided in this Agreement will be notified in writing of their acceptance or rejection no later than thirty-five (35) days after the posting of the notice. A copy of the results will be forwarded to the General Chairman. It is understood the release date of an employee awarded a separation or dismissal allowance pursuant to this Attachment "A" shall be determined by the Company. However, no employee will have their election option deferred beyond three (3) months from the date notified of acceptance.

(h) The applicable union dues and assessment deduction will be at the prevailing rate in effect at the time election of such option is made. This deduction will be made on the following basis:

Eligible Amount	Deduction
$95,000.00	46 months
$85,000.00	41 months
$75,000.00	36 months
$65,000.00	31 months
$60,000.00	28 months
$25,000.00	0

Furthermore, this one-time deduction as set forth in the extended payments will be applied on the initial payment or installment.

(f) It is understood that an employee who accepts the separation/ dismissal amounts set forth herein will also be compensated at the time of separation/ dismissal (lump sum or first monthly installment), any other compensation that may also be applicable to an eligible employee under the National Vacation or the Sick Leave Allowance of the Basic Agreement.

(l) Employees awarded lump sum separations set forth herein will be considered to have resigned from service, terminating all seniority rights with the Southern Pacific/ Union Pacific Railroad Company except where the separation date is extended due to operation requirements.

ATTACHMENT "B"

MOVING EXPENSES AND RELATED BENEFITS

Section 1.

(a) An employee who is required to change place of residence, as defined below, in the exercise of seniority as a result of a transaction under this Agreement who, on the date notice of transaction is issued, owns their home or is under a contract to purchase a home, shall be afforded one of the following options which must be exercised within fifteen (15) days from the date affected or assigned to a position at the new work location:

Option 1: Accept the moving expense and protection from loss in sale of home benefits provided by the terms of the New York Dock Conditions and Section 2 or, in lieu thereof, any property protection agreement or arrangement.

Option 2: Accept a lump sum transfer allowance of $20,000.00 in lieu of any and all other moving expense benefits and allowances provided under terms of the New York Dock Conditions and this Attachment "B".

NOTE: A "change in residence" as used in this Agreement shall only be considered "required" if the reporting point of the affected employee would be more than thirty (30) normal route miles from the employee point of employment at the time affected.

(b) An employee referred to above who does not own a home or is not obligated under contract to purchase a home shall be afforded one of the following options which must be exercised within fifteen (15) days from date affected or assigned to a position at the new work location:

Option 1: Accept the moving expense benefits provided by the terms of the New York Dock Conditions and Section 2 or, in lieu thereof, any property protection agreement or arrangement.

Option 2: Accept a lump sum transfer allowance of $10,000.00 in lieu of any and all other moving expense benefits and allowances provided under terms of the New York Dock Conditions and this Attachment "B".

(c) If an employee holds an unexpired lease of a dwelling occupied as his/her home, the Carrier shall protect such employee for all loss and cost of securing the cancellation of said lease as provided in Sections 10 and 11 of Washington Job Protection Agreement in addition to the benefits provided under this Section.

Section 2.

An employee electing the moving expense benefits under the New York Dock Conditions shall receive a transfer allowance of Two Thousand Five Hundred Dollars ($2,500.00). In addition, the provisions of Section 9, Moving Expenses, of the New York Dock Conditions which provides "not to exceed 3 working days" will be increased to "not to exceed 5 working days."

Section 3.

An employee who voluntarily transfers under terms of this Agreement, and who is required to change place of residence and elects the lump sum transfer allowance in lieu of any and all other moving expense benefits and allowances, shall be accorded on assignment a special transfer allowance of $5,000.00 in consideration of travel and temporary living expenses while undergoing the relocation. However, such employee will not be permitted to voluntarily exercise seniority on a position which again will require a change of residence outside the new point of employment for a period of twelve (12) months from date of assignment, except in cases of documented hardship and then only by written agreement between Labor Relations and the respective General Chairman/President.

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
OMAHA, NEBRASKA 68179

June 11, 1998

NYD-217

Mr. R. F. Davis
President ASD/TCU
53 W. Seegers Road
Arlington Heights, IL 60005

Mr. J. L. Quilty
General Chairman, TCU
2820 South 87th Avenue
Omaha, NE 68124

Gentlemen:

Pursuant to Article II - TRANSACTIONS of Implementing Agreement No. NYD-217, notice is hereby given of Carrier's intent to implement the transaction outlined in the attached document and consolidate all clerical work associated with the Southern Pacific (Armourdale Yard) facility located in Kansas City, KS, with that of the Union Pacific facility located in Kansas City, MO.

As outlined in the attachment, it is the Carrier's intent to eliminate all of the clerical positions currently assigned to the SP Armourdale Yard operations and transfer all of this work to clerical positions to be established under the Union Pacific/TCU Collective Bargaining Agreement, effective on or after August 10, 1998.

Please contact my office if you have any questions regarding this transaction.

Yours truly,

D. D. Matter
Gen. Director Labor Relations

cc: Mr. J. P. Condo
International Vice President, TCU
53 W. Seegers Road
Arlington Heights, IL 60005

Mr. J. L. Gobel
International Vice President, TCU
4189 North Road
Moose Lake, MN 55767

h:\sp\data\armdale.ntc

EMPLOYEES' EXHIBIT 6
PAGE 1

ARMOURDALE CLERICAL ASSIGNMENTS

Position	Incumbent	Seniority Date
Chief Clerk - 020	L. L. Seymour	10-15-52
General Clerk - 009	B. L. Wilson	09-25-57
TFC Clerk - 004	C. E. Sawyer	09-29-57
TFC Clerk - 002	D. E. Earnheart	06-15-60
Clk/Telegrapher - 006	R. A. Nisser	06-29-60
Mgr/Telegrapher - 021	L. J. Unrein	01-11-61
Extra Board	B. D. Beall	02-02-62
Relief Clerk - 019	G. A. Cox	05-22-63
TFC Clerk - 001	D. J. Ellis	06-11-64
Asst. Chf. Clerk - 014	G. J. Wilber	12-21-67
Relief Clerk - 001	C. W. Hicks	11-07-73
TFC Clerk - 005	D. M. Colvert	06-24-83
Asst. Chf. Clerk - 007	E. G. Koder	09-06-83
Relief Clerk - 008	J. E. Ellison	09-25-83
Clk/Telegrapher - 004	D. A. Thompson	01-12-84
Extra Board	B. R. Jones	09-15-89
TFC Rlf. Clerk - 701	R. E. Henley	02-19-91
Relief Clerk - 011	F. R. Moore	03-19-91
TFC Clerk - 003	C. J. Williams	05-01-97
General Clerk - 018	Vacant	
General Clerk - 017	Vacant	

Work of the above positions will be transferred to fifteen (15) Utility Clerk positions and six (6) Ramp Clerk positions to be established under the Union Pacific/TCU Collective Bargaining Agreement.

UNION PACIFIC RR COMPANY

CLERICAL VACANCY BULLETIN

DEPARTMENT - SUPT TSPN SERVICES - TERMINAL OPERATIONS KANSAS CTY

VACANCY DATED 07-27-98 VACANCY BULLETIN NUMBER 22210321

PERMANENT POSITION: INTERMODAL CLK

POSITION EFFECTIVE DATE - 08-24-98

BULLETIN REASON - UP/SP MERGER RELATED - TRANSFERRED FROM THE SP TO UP

APPLICATION FOR BULLETINED POSITION MUST BE RECEIVED NO LATER THAN 12:00 PM - 08-17-98

STN/BUREAU - 03564 AUTHORIZED POSITION - 001 PAYROLL - 355 POSITION TYPE - 1A

RATE NBR 740 ROSTER NBR - 0250 ZONE NBR - 222 LOW RATE - $120.610

MEAL PERIOD - PAID HIGH RATE - $120.610

HOURS OF SERVICE - 0800A 0400P REST DAYS - WED THU GRADE - 004

SUPERVISOR - D. J. COLLINS - MGR INTMDL OPRNS

DUTIES:

DATA ENTRY INTO VARIOUS COMPUTER SYSTEMS, COMPUTE AND ASSESS INTERMODAL TERMINAL CHARGES, HANDLE U.S. CUSTOMS DOCUMENTS, DISTRIBUTE EMPTY EQUIPMENT RECEIPT AND DISPATCH CONTAINERS AND TRAILERS, PREPARE AND DISTRIBUTE LINEUP INFORMATION, TAKE PHYSICAL INVENTORY OF INTERMODAL EQUIPMENT. COMPILE REPORTS, MAINTAIN RECORDS, PERFORM TRACING AND CUSTOMER INQUIRIES AND REQUESTS. MUST BE QUALIFIED AT 35 WPM TYPING.

QUALIFICATIONS:

QUAL-TYP35

CC:

TCU ASSIGNMENT CENTER - RM-335 OMAHA
(402)-271-2128
PRINTER LATA - IL40609
FAX NUMBER 271-2077

EMPLOYEES' EXHIBIT 7
PAGE 1

UNION PACIFIC RR COMPANY

CLERICAL VACANCY BULLETIN

DEPARTMENT - SUPT TSPN SERVICES - TERMINAL OPERATIONS KANSAS CTY KS

VACANCY DATED 07-27-98 VACANCY BULLETIN NUMBER 22210322

PERMANENT POSITION: INTERMODAL CLK

POSITION EFFECTIVE DATE - 08-24-98

BULLETIN REASON - UP/SP MERGER RELATED - TRANSFERRED FROM THE SP TO UP

APPLICATION FOR BULLETINED POSITION MUST BE RECEIVED NO LATER THAN 12:00 PM 08-17-98

STN/BUREAU - 00564 AUTHORIZED POSITION - 002 PAYROLL - 355 POSITION TYPE - 1A

RATE NBR 740 FOOTER NBR - 0250 ZONE NBR - 222 LOW RATE - $120.6100

MEAL PERIOD PAID HIGH RATE - $120.6100

HOURS OF SERVICE 0000A 0400P REST DAYS - SAT SUN GRADE - 004

SUPERVISOR - D. J. COLLINS - MGR INTMDL OPRNS

DUTIES:

DATA ENTRY INTO VARIOUS COMPUTER SYSTEMS, COMPUTE AND ASSESS INTERMODAL TERMINAL CHARGES, HANDLE U.S. CUSTOMS DOCUMENTS, DISTRIBUTE EMPTY EQUIPMENT, RECEIPT AND DISPATCH CONTAINERS AND TRAILERS, PREPARE AND DISTRIBUTE LINEUP INFORMATION, TAKE PHYSICAL INVENTORY OF INTERMODAL EQUIPMENT. COMPILE REPORTS, MAINTAIN RECORDS, PERFORM TRACING AND CUSTOMER INQUIRIES AND REQUESTS. MUST BE QUALIFIED AT 35 WPM TYPING.

QUALIFICATIONS:

BULL-0250

TOU ASSIGNMENT CENTER - AM-335 OMAHA

LVL - 271-1126

PRINTER DATA - ILLEGIBLE

FAX NUMBER - 271-207-

EMPLOYEES' EXHIBIT
PAGE 2

UNION PACIFIC RR COMPANY

CLERICAL VACANCY BULLETIN

DEPARTMENT - SUPT TSPN SERVICES - TERMINAL OPERATIONS KANSAS CTY KS

VACANCY DATED 07-27-98 VACANCY BULLETIN NUMBER 22210323

PERMANENT POSITION: INTERMODAL CLK

POSITION EFFECTIVE DATE - 08-24-98

BULLETIN REASON - UP/SP MERGER RELATED - TRANSFERRED FROM THE SP TO UP

APPLICATION FOR BULLETINED POSITION MUST BE RECEIVED NO LATER THAN 12:00 PM - 08-17-98

STN/BUREAU - 83564 AUTHORIZED POSITION - 003 PAYROLL - 355 POSITION TYPE - 1A

RATE NBR 740 ROSTER NBR - 0250 ZONE NBR - 222 LOW RATE - $120.6100

IDEAL PERIOD PAID HIGH RATE - $120.6100

HOURS OF SERVICE - 0400P 1200A REST DAYS - SAT SUN GRADE - 004

SUPERVISOR - D. J. COLLINS - MGR INTMDL OPRNS

DUTIES:
DATA ENTRY INTO VARIOUS COMPUTER SYSTEMS, COMPUTE AND ASSESS INTERMODAL TERMINAL CHARGES, HANDLE U.S. CUSTOMS DOCUMENTS, DISTRIBUTE EMPTY EQUIPMENT, RECEIPT AND DISPATCH CONTAINERS AND TRAILERS, PREPARE AND DISTRIBUTE LINEUP INFORMATION, TAKE PHYSICAL INVENTORY OF INTERMODAL EQUIPMENT. COMPILE REPORTS, MAINTAIN RECORDS, PERFORM TRACING AND CUSTOMER INQUIRIES AND REQUESTS. MUST BE QUALIFIED AT 35 WPM TYPING.

QUALIFICATIONS:
QUAL-TYP35

TCU ASSIGNMENT CENTER - RM-335 OMAHA
(402)-271-2138
ROUTER CODE - [illegible]
FAX NUMBER [illegible]

EMPLOYEES' EXHIBIT
PAGE 3

UNION PACIFIC RR COMPANY

CLERICAL VACANCY BULLETIN

DEPARTMENT - SUPT TSPN SERVICES - TERMINAL OPERATIONS   KANSAS CTY

VACANCY DATED 07-27-98   VACANCY BULLETIN NUMBER 22210324

PERMANENT POSITION: INTERMODAL CLK

POSITION EFFECTIVE DATE - 08-24-98

BULLETIN REASON - UP/SP MERGER RELATED - TRANSFERRED FROM
THE SP TO UP

APPLICATION FOR BULLETINED POSITION MUST BE RECEIVED NO LATER THAN
12:00 PM - 08-17-98

STN/BUREAU - S3564 AUTHORIZED POSITION - 004 PAYROLL - 355 POSITION TYPE - 1A

RATE_NBR 740 ROSTER NBR - 0250   ZONE NBR - 222   LOW RATE - $120.6100

MEAL PERIOD - PAID   HIGH RATE - $120.6100

HOURS OF SERVICE - 0400P 1200A REST DAYS - SAT SUN   GRADE - 004

SUPERVISOR - D. J. COLLINS - MGR INTMOL OPRNS

DUTIES:
DATA ENTRY INTO VARIOUS COMPUTER SYSTEMS, COMPUTE AND ASSESS INTERMODAL TERMINAL CHARGES, HANDLE U.S. CUSTOMS DOCUMENTS, DISTRIBUTE EMPTY EQUIPMENT, RECEIPT AND DISPATCH CONTAINERS AND TRAILERS, PREPARE AND DISTRIBUTE LINEUP INFORMATION, TAKE PHYSICAL INVENTORY OF INTERMODAL EQUIPMENT. COMPILE REPORTS, MAINTAIN RECORDS, PERFORM TRACING AND CUSTOMER INQUIRIES AND REQUESTS. MUST BE QUALIFIED AT 35 WPM TYPING.

QUALIFICATIONS:
[illegible]

[illegible] OMAHA
[illegible]
PRINTER [illegible]
[illegible]

EMPLOYEES' EXHIBIT 7
PAGE 4

UNION PACIFIC RR COMPANY

CLERICAL VACANCY BULLETIN

DEPARTMENT - SUPT TSPN SERVICES - TERMINAL OPERATIONS KANSAS CTY KS

VACANCY DATED 07-27-98 VACANCY BULLETIN NUMBER 22210325

PERMANENT POSITION: INTERMODAL CLK

POSITION EFFECTIVE DATE - 08-24-98

BULLETIN REASON - UP/SP MERGER RELATED - TRANSFERRED FROM THE SP TO UP

APPLICATION FOR BULLETINED POSITION MUST BE RECEIVED NO LATER THAN 12:00 PM - 08-17-98

STN/BUREAU - 00064 AUTHORIZED POSITION - 005 PAYROLL - 355 POSITION TYPE - 1A

RATE NBR 710 POSTER NBR - 0250 ZONE NBR - 222 LOW RATE - $120.6100

MEAL PERIOD PAID HIGH RATE - $120.6100

HOURS OF SERVICE - 1200A 0000A REST DAYS - THU FRI GRADE - 004

SUPERVISOR - D. J. COLLINS - MGR INTMDL OPRNS

DUTIES:
DATA ENTRY INTO VARIOUS COMPUTER SYSTEMS, COMPUTE AND ASSESS INTERMODAL TERMINAL CHARGES, HANDLE U.S. CUSTOMS DOCUMENTS, DISTRIBUTE EMPTY EQUIPMENT, RECEIPT AND DISPATCH CONTAINERS AND TRAILERS, PREPARE AND DISTRIBUTE LINEUP INFORMATION, TAKE PHYSICAL INVENTORY OF INTERMODAL EQUIPMENT. COMPILE REPORTS, MAINTAIN RECORDS, PERFORM TRACING AND CUSTOMER INQUIRIES AND REQUESTS. MUST BE QUALIFIED AT 35 WPM TYPING.

QUALIFICATIONS:
DUTIES:

FOR ASSIGNMENT, CONTACT [illegible] OMAHA
(402) 271 2120
CENTER DATA - [illegible]
FAX NUMBER [illegible]

EMPLOYEES' EXHIBIT
PAGE 5

UNION PACIFIC RR COMPANY

CLERICAL VACANCY BULLETIN

DEPARTMENT - SUPT TSPN SERVICES - TERMINAL OPERATIONS KANSAS CTY KS

VACANCY DATED 07-27-98 VACANCY BULLETIN NUMBER 22210326

PERMANENT POSITION: RELF INTMDL CLK

POSITION EFFECTIVE DATE - 08-24-98

BULLETIN REASON - UP/SP MERGER RELATED - TRANSFERRED FROM THE SP TO UP

APPLICATION FOR BULLETINED POSITION MUST BE RECEIVED NO LATER THAN 12:00 PM - 08-17-98

STN/BUREAU - 60564 AUTHORIZED POSITION - 701 PAYROLL - 335 POSITION TYPE - 10

RATE NBR 741 ROSTER NBR - 0250 ZONE NBR - 222 LOW RATE - $120.6100

REAL PERIOD VAR HIGH RATE - $120.6100

HOURS OF SERVICE - VAR VAR REST DAYS - MON TUE GRADE - 004

SUPERVISOR - D. J. COLLINS - MGR INTMDL OPRNS

DUTIES:
TERMINAL CHARGES, HANDLE U.S. CUSTOMS DOCUMENTS, DISTRIBUTE EMPTY EQUIPMENT, RECEIPT AND DISPATCH CONTAINERS AND TRAILERS, PREPARE AND DISTRIBUTE LINEUP INFORMATION, TAKE PHYSICAL INVENTORY OF INTERMODAL EQUIPMENT. COMPILE REPORTS, MAINTAIN RECORDS, PERFORM TRACING AND CUSTOMER INQUIRIES AND REQUESTS. MUST BE QUALIFIED AT 35 WPM TYPING.

WED & THUR_____08:00AM - 04:00PM
FRI, SAT, SUN_____04:00PM - 12:00AM
MON & TUES_____REST DAYS

QUALIFICATIONS:
QUAL-TYPOS

TCU ASSIGNMENT CENTER - RM-335 OMAHA
(402)-271-2120
PRINTER LATA - IL40A07
FAX NUMBER 271-2077

EMPLOYEES' EXHIBIT
PAGE 6

UNION PACIFIC RR COMPANY

CLERICAL VACANCY BULLETIN

DEPARTMENT - SUPT TSPN SERVICES - TERMINAL OPERATIONS KANSAS CTY KS

VACANCY DATED 07-27-98 VACANCY BULLETIN NUMBER 22210327

PERMANENT POSITION: INTMDL XBRD CLK

POSITION EFFECTIVE DATE - 09-17-98

BULLETIN REASON - UP/SP MERGER RELATED - TRANSFERRED FROM THE SP TO UP ** CORRECTED EFFECTIVE DATE IS 09/17/98 **

APPLICATION FOR BULLETINED POSITION MUST BE RECEIVED NO LATER THAN 12:00 PM - 08-17-98

STN/BUREAU 03564 AUTHORIZED POSITION - 006 PAYROLL - 355 POSITION TYPE - 1A

RATE NBR 742 ROSTER NBR - 0250 ZONE NBR - 222 LOW RATE - $120.6100

MEAL PERIOD VAR HIGH RATE - $120.6100

HOURS OF SERVICE - VAR VAR REST DAYS - VAR GRADE - 004

SUPERVISOR - D. J. COLLINS - MGR INTMDL OPRNS

DUTIES:
TERMINAL CHARGES, HANDLE U.S. CUSTOMS DOCUMENTS, DISTRIBUTE EMPTY EQUIPMENT, RECEIPT AND DISPATCH CONTAINERS AND TRAILERS, PREPARE AND DISTRIBUTE LINEUP INFORMATION, TAKE PHYSICAL INVENTORY OF INTERMODAL EQUIPMENT. COMPILE REPORTS, MAINTAIN RECORDS, PERFORM TRACING AND CUSTOMER INQUIRIES AND REQUESTS. MUST BE QUALIFIED AT 35 WPM TYPING.

QUALIFICATIONS:
QUAL-TYPES

TCU ASSIGNMENT CENTER - RM-335 OMAHA
(402)-271-2128
PRINTER LATA - IL40609
FAX NUMBER 271 2077

EMPLOYEES' EXHIBIT 7
PAGE 7

PACIFIC RR COMPANY

CLERICAL VACANCY BULLETIN

DEPARTMENT - SUPT TSPN SERVICES - TERMINAL OPERATIONS KANSAS CTY MO

VACANCY DATED 07-27-98 VACANCY BULLETIN NUMBER 22210305

PERMANENT POSITION: UTILITY CLERK

POSITION EFFECTIVE DATE - 08-24-98

BULLETIN REASON - UP/SP MERGER RELATED - TRANSFERRED FROM
THE SP TO THE UP
APPLICATION FOR BULLETINED POSITION MUST BE RECEIVED NO LATER THAN
12:00 PM - 08-17-98

STN/BUREAU - S4425 AUTHORIZED POSITION - 250 PAYROLL - 355 POSITION TYPE - 1A

RATE NBR 934 ROSTER NBR - 0250 ZONE NBR - 222 LOW RATE - $86.1900

MEAL PERIOD - PAID HIGH RATE - $86.1900

HOURS OF SERVICE - 0759A 0359P REST DAYS - WED THU GRADE - 001

SUPERVISOR - J. A. COX JR. - MGR TRAIN OPRNS

DUTIES:
TRANSPORT TRAIN AND ENGINE CREWS; PERFORM OTHER DUTIES AS REQUIRED INCLUDING, BUT NOT LIMITED TO, CABOOSE SUPPLY, ORDERING SUPPLIES, DISTRIBUTION OF SUPPLIES TO TRAIN AND ENGINE CREWS, SUPPLY AND LOAD PRINTER PAPER AND RIBBONS, POST BULLETINS AND NOTICES, PERFORM JANITORIAL SERVICES, COMPLETE/DISTRIBUTE REPORTS AND ASSIST IN UPKEEP OF VEHICLES; OTHER DUTIES AS MAY BE ASSIGNED. INCUMBENT MUST POSSESS SUFFICIENT PHYSICAL CAPABILITY TO PERFORM ALL REQUIRED DUTIES, INCLUDING JANITORIAL SERVICES AND SAFE OPERATION OF VEHICLES AND CLEANING EQUIPMENT. INCUMBENT MUST POSSESS VALID DRIVER'S LICENSE AND, WHERE REQUIRED BY LAW, A VALID CHAUFFEUR'S LICENSE.
ARMOURDALE, KS LOCATION

QUALIFICATIONS:

TO: TCU ASSIGNMENT CENTER - RM-335 OMAHA
(402)-271-2128
PRINTER LATA - IL40609
FAX NUMBER 271 2077

EMPLOYEES' EXHIBIT 8
PAGE 1

UNION PACIFIC RR COMPANY

CLERICAL VACANCY BULLETIN

DEPARTMENT - SUPT TSPN SERVICES - TERMINAL OPERATIONS KANSAS CTY MO

VACANCY DATED 07-27-98 VACANCY BULLETIN NUMBER 22210306

PERMANENT POSITION: UTILITY CLERK

POSITION EFFECTIVE DATE - 08-24-98

BULLETIN REASON - UP/SP MERGER RELATED - TRANSFERRED FROM SP TO THE UP

APPLICATION FOR BULLETINED POSITION MUST BE RECEIVED NO LATER THAN 12:00 PM - 08-17-98

STN/BUREAU - S4425 AUTHORIZED POSITION - 251 PAYROLL - 355 POSITION TYPE - 1A

RATE NBR 934 ROSTER NBR - 0250 ZONE NBR - 222 LOW RATE - $86.1900

MEAL PERIOD - PAID HIGH RATE - $86.1900

HOURS OF SERVICE - 0359P 1159P REST DAYS - THU FRI GRADE - 001

SUPERVISOR - J. A. COX JR. - MGR TRAIN OPRNS

DUTIES:
TRANSPORT TRAIN AND ENGINE CREWS; PERFORM OTHER DUTIES AS REQUIRED INCLUDING, BUT NOT LIMITED TO, CABOOSE SUPPLY, ORDERING SUPPLIES, DISTRIBUTION OF SUPPLIES TO TRAIN AND ENGINE CREWS, SUPPLY AND LOAD PRINTER PAPER AND RIBBONS, POST BULLETINS AND NOTICES, PERFORM JANITORIAL SERVICES, COMPLETE/DISTRIBUTE REPORTS AND ASSIST IN UPKEEP OF VEHICLES; OTHER DUTIES AS MAY BE ASSIGNED. INCUMBENT MUST POSSESS SUFFICIENT PHYSICAL CAPABILITY TO PERFORM ALL REQUIRED DUTIES, INCLUDING JANITORIAL SERVICES AND SAFE OPERATION OF VEHICLES AND CLEANING EQUIPMENT. INCUMBENT MUST POSSESS VALID DRIVER'S LICENSE AND, WHERE REQUIRED BY LAW, A VALID CHAUFFEUR'S LICENSE.
ARMOURDALE, KS LOCATION

QUALIFICATIONS:

CC: TCU ASSIGNMENT CENTER - RM-335 OMAHA
(402)-271-2128
PRINTER LATA - IL40609
FAX NUMBER - 271-2077

UNION PACIFIC RR COMPANY

CLERICAL VACANCY BULLETIN

DEPARTMENT - SUPT TSPN SERVICES - TERMINAL OPERATIONS KANSAS CTY MO

VACANCY DATED 07-27-98 VACANCY BULLETIN NUMBER 22210307

PERMANENT POSITION: UTILITY CLERK

POSITION EFFECTIVE DATE - 08-24-98

BULLETIN REASON - UP/SP MERGER RELATED - TRANSFERRED FROM
THE SP TO UP
APPLICATION FOR BULLETINED POSITION MUST BE RECEIVED NO LATER THAN
12:00 PM - 08-17-98

STN/BUREAU - S4425 AUTHORIZED POSITION - 252 PAYROLL - 355 POSITION TYPE - 1A

RATE NBR 934 ROSTER NBR - 0250 ZONE NBR - 222 LOW RATE - $86.1900

MEAL PERIOD - PAID HIGH RATE - $86.1900

HOURS OF SERVICE - 1159P 0759A REST DAYS - SAT FRI GRADE - 001

SUPERVISOR - J. A. COX JR. - MGR TRAIN OPRNS

DUTIES:
TRANSPORT TRAIN AND ENGINE CREWS; PERFORM OTHER DUTIES AS REQUIRED INCLUDING, BUT NOT LIMITED TO, CABOOSE SUPPLY, ORDERING SUPPLIES, DISTRIBUTION OF SUPPLIES TO TRAIN AND ENGINE CREWS, SUPPLY AND LOAD PRINTER PAPER AND RIBBONS, POST BULLETINS AND NOTICES, PERFORM JANITORIAL SERVICES, COMPLETE/DISTRIBUTE REPORTS AND ASSIST IN UPKEEP OF VEHICLES; OTHER DUTIES AS MAY BE ASSIGNED. INCUMBENT MUST POSSESS SUFFICIENT PHYSICAL CAPABILITY TO PERFORM ALL REQUIRED DUTIES, INCLUDING JANITORIAL SERVICES AND SAFE OPERATION OF VEHICLES AND CLEANING EQUIPMENT. INCUMBENT MUST POSSESS VALID DRIVER'S LICENSE AND, WHERE REQUIRED BY LAW, A VALID CHAUFFEUR'S LICENSE.
ARMOURDALE, KS. LOCATION

QUALIFICATIONS:

C: TCU ASSIGNMENT CENTER - RM-335 OMAHA
(402)-271-2128
PRINTER LATA - IL40609
FAX NUMBER - 271 2077

EMPLOYEES' EXHIBIT 8
PAGE 3

UNION PACIFIC RR COMPANY

CLERICAL VACANCY BULLETIN

DEPARTMENT - CUPT TSPN SERVICES - TERMINAL OPERATIONS KANSAS CTY MO

VACANCY DATED 07-27-98 VACANCY BULLETIN NUMBER 22210314

PERMANENT POSITION: UTILITY CLERK

POSITION EFFECTIVE DATE - 08-24-98

BULLETIN REASON - UP/SP MERGER RELATED - TRANSFERRED FROM THE SP TO UP

APPLICATION FOR BULLETINED POSITION MUST BE RECEIVED NO LATER THAN 12:00 PM - 08-17-98

STN/BUREAU - 84425 AUTHORIZED POSITION - 785 PAYROLL - 355 POSITION TYPE - 1A

RATE NBR 934 ROSTER NBR - 0250 ZONE NBR - 222 LOW RATE - $86.1900

MEAL PERIOD - PAID HIGH RATE - $86.1900

HOURS OF SERVICE - VAR VAR REST DAYS - SUN MON GRADE - 001

SUPERVISOR - J. A. COX JR. - MGR TRAIN OPRNS

DUTIES:
TRANSPORT TRAIN AND ENGINE CREWS; PERFORM OTHER DUTIES AS REQUIRED INCLUDING, BUT NOT LIMITED TO, CABOOSE SUPPLY, ORDERING SUPPLIES, DISTRIBUTION OF SUPPLIES TO TRAIN AND ENGINE CREWS, SUPPLY AND LOAD PRINTER PAPER AND RIBBONS, POST BULLETINS AND NOTICES, PERFORM JANITORIAL SERVICES, COMPLETE/DISTRIBUTE REPORTS AND ASSIST IN UPKEEP OF VEHICLES; OTHER DUTIES AS MAY BE ASSIGNED. INCUMBENT MUST POSSESS SUFFICIENT PHYSICAL CAPABILITY TO PERFORM ALL REQUIRED DUTIES, INCLUDING JANITORIAL SERVICES AND SAFE OPERATION OF VEHICLES AND CLEANING EQUIPMENT. INCUMBENT MUST POSSESS VALID DRIVER'S LICENSE AND, WHERE REQUIRED BY LAW, A VALID CHAUFFEUR'S LICENSE.

JEFF YARD	TUES	$254		07:00AM - 03:00PM
ARGUNDALE	WED & THUR	$250		07:59AM - 03:59PM
JEFF YARD	FRI & SAT	$253		07:00AM - 03:00PM

QUALIFICATIONS:

CCU ASSIGNMENT CENTER - RM-333 OMAHA
(402)-271-2128
PRINTER LATA - IL40609
FAX NUMBER 271 2077

EMPLOYEES' EXHIBIT
PAGE 1

UNION PACIFIC RR COMPANY

CLERICAL VACANCY BULLETIN

DEPARTMENT - SUPT TSPN SERVICES - TERMINAL OPERATIONS KANSAS CTY MO

VACANCY DATED 07-27-98 VACANCY BULLETIN NUMBER 22210315

PERMANENT POSITION: UTILITY CLERK

POSITION EFFECTIVE DATE - 08-24-98

BULLETIN REASON - UP/SP MERGER RELATED - TRANSFERRED FROM THE SP TO UP
APPLICATION FOR BULLETINED POSITION MUST BE RECEIVED NO LATER THAN 12:00 PM - 08-17-98

STN/BUREAU - 84425 AUTHORIZED POSITION - 786 PAYROLL - 355 POSITION TYPE - 1A

RATE NBR 934 ROSTER NBR - 0250 ZONE NBR - 222 LOW RATE - $86.1900

MEAL PERIOD - PAID HIGH RATE - $86.1900

HOURS OF SERVICE - VAR VAR REST DAYS - MON TUE GRADE - 001

SUPERVISOR - J. A. COX JR. - MGR TRAIN OPRNS

DUTIES:
TRANSPORT TRAIN AND ENGINE CREWS; PERFORM OTHER DUTIES AS REQUIRED INCLUDING, BUT NOT LIMITED TO, CABOOSE SUPPLY, ORDERING SUPPLIES, DISTRIBUTION OF SUPPLIES TO TRAIN AND ENGINE CREWS, SUPPLY AND LOAD PRINTER PAPER AND RIBBONS, POST BULLETINS AND NOTICES, PERFORM JANITORIAL SERVICES, COMPLETE/DISTRIBUTE REPORTS AND ASSIST IN UPKEEP OF VEHICLES; OTHER DUTIES AS MAY BE ASSIGNED. INCUMBENT MUST POSSESS SUFFICIENT PHYSICAL CAPABILITY TO PERFORM ALL REQUIRED DUTIES, INCLUDING JANITORIAL SERVICES AND SAFE OPERATION OF VEHICLES AND CLEANING EQUIPMENT. INCUMBENT MUST POSSESS VALID DRIVER'S LICENSE AND, WHERE REQUIRED BY LAW, A VALID CHAUFFEUR'S LICENSE.

NEFF YARD	WED	$254		07:00AM - 03:00PM
ARMOURDALE	THUR & FRI	$251		03:59PM - 11:59PM
NEFF YARD	SAT & SUN	$256		03:00PM - 11:00PM

QUALIFICATIONS:

C. TCU ASSIGNMENT CENTER - RM-335 OMAHA
(402)-271-2128
PRINTER DATA - [illegible]
FAX NUMBER - 271-[illegible]

EMPLOYEES' EXHIBIT 9
PAGE 2

UNION PACIFIC RR COMPANY

CLERICAL VACANCY BULLETIN

DEPARTMENT - SUPT TSPN SERVICES - TERMINAL OPERATIONS KANSAS CTY MO

VACANCY DATED 07-27-98 VACANCY BULLETIN NUMBER 22210316

PERMANENT POSITION: UTILITY CLERK

POSITION EFFECTIVE DATE - 08-24-98

BULLETIN REASON - UP/SP MERGER RELATED - TRANSFERRED FROM THE SP TO UP

APPLICATION FOR BULLETINED POSITION MUST BE RECEIVED NO LATER THAN 12:00 PM - 08-17-98

STN/BUREAU - 34425 AUTHORIZED POSITION - 787 PAYROLL - 355 POSITION TYPE - 1A

RATE NBR 734 ROSTER NBR - 0250 ZONE NBR - 222 LOW RATE - $86.1900

MEAL PERIOD - PAID HIGH RATE - $86.1900

HOURS OF SERVICE - VAR VAR REST DAYS - MON TUE GRADE - 001

SUPERVISOR - J. A. COX JR. - MGR TRAIN OPRNS

DUTIES:
TRANSPORT TRAIN AND ENGINE CREWS; PERFORM OTHER DUTIES AS REQUIRED INCLUDING, BUT NOT LIMITED TO, CABOOSE SUPPLY, ORDERING SUPPLIES, DISTRIBUTION OF SUPPLIES TO TRAIN AND ENGINE CREWS, SUPPLY AND LOAD PRINTER PAPER AND RIBBONS, POST BULLETINS AND NOTICES, PERFORM JANITORIAL SERVICES, COMPLETE/DISTRIBUTE REPORTS AND ASSIST IN UPKEEP OF VEHICLES; OTHER DUTIES AS MAY BE ASSIGNED. INCUMBENT MUST POSSESS SUFFICIENT PHYSICAL CAPABILITY TO PERFORM ALL REQUIRED DUTIES, INCLUDING JANITORIAL SERVICES AND SAFE OPERATION OF VEHICLES AND CLEANING EQUIPMENT. INCUMBENT MUST POSSESS VALID DRIVER'S LICENSE AND, WHERE REQUIRED BY LAW, A VALID CHAUFFEUR'S LICENSE.

NEFF YARD	WED & THUR	$257	11:00PM - 07:00AM
ARMOURDALE	FRI & SAT	$232	11:59PM - 07:59AM
NEFF YARD	SUNDAY	$258	11:59PM - 07:59AM

QUALIFICATIONS:

TCU ASSIGNMENT CENTER - RM-335 OMAHA
(402)-271-2128
PRINTER DATA - IL40A79
FAX NUMBER - 271-2077

EMPLOYEES' EXHIBIT 9
PAGE 3

UNION PACIFIC RR COMPANY

CLERICAL VACANCY BULLETIN

DEPARTMENT - SUPT TSPN SERVICES - TERMINAL OPERATIONS KANSAS CTY MO

VACANCY DATED 07-27-98 VACANCY BULLETIN NUMBER 22210308

PERMANENT POSITION: UTILITY CLERK

POSITION EFFECTIVE DATE - 08-24-98

BULLETIN REASON - UP/SP MERGER RELATED - TRANSFERRED FROM THE SP TO UP

APPLICATION FOR BULLETINED POSITION MUST BE RECEIVED NO LATER THAN 12:00 PM - 08-17-98

STN/BUREAU - S4425 AUTHORIZED POSITION - 253 PAYROLL - 355 POSITION TYPE - 1A

RATE NBR 934 ROSTER NBR - 0250 ZONE NBR - 222 LOW RATE - $86.1900

MEAL PERIOD - PAID HIGH RATE - $86.1900

HOURS OF SERVICE - 0700A 0300P REST DAYS - SAT FRI GRADE - 001

SUPERVISOR - J. A. COX JR. MGR TRAIN OPRNS

DUTIES:
TRANSPORT TRAIN AND ENGINE CREWS; PERFORM OTHER DUTIES AS REQUIRED INCLUDING, BUT NOT LIMITED TO, CABOOSE SUPPLY, ORDERING SUPPLIES, DISTRIBUTION OF SUPPLIES TO TRAIN AND ENGINE CREWS, SUPPLY AND LOAD PRINTER PAPER AND RIBBONS, POST BULLETINS AND NOTICES, PERFORM JANITORIAL SERVICES, COMPLETE/DISTRIBUTE REPORTS AND ASSIST IN UPKEEP OF VEHICLES; OTHER DUTIES AS MAY BE ASSIGNED. INCUMBENT MUST POSSESS SUFFICIENT PHYSICAL CAPABILITY TO PERFORM ALL REQUIRED DUTIES, INCLUDING JANITORIAL SERVICES AND SAFE OPERATION OF VEHICLES AND CLEANING EQUIPMENT. INCUMBENT MUST POSSESS VALID DRIVER'S LICENSE AND, WHERE REQUIRED BY LAW, A VALID CHAUFFEUR'S LICENSE.
NEFF YARD

QUALIFICATIONS:

TO: TCU ASSIGNMENT CENTER - RM-335 OMAHA
(402)-271-2128
PRINTER LATA - IL40609
FAX NUMBER - 271-2077

EMPLOYEES' EXHIBIT 1(
PAGE 1

UNION PACIFIC RR COMPANY

CLERICAL VACANCY BULLETIN

DEPARTMENT - SUPT TSPN SERVICES - TERMINAL OPERATIONS KANSAS CTY MO

VACANCY DATED 07-27-98 VACANCY BULLETIN NUMBER 22210309

PERMANENT POSITION: UTILITY CLERK

POSITION EFFECTIVE DATE - 08-24-98

BULLETIN REASON - UP/SP MERGER RELATED - TRANSFERRED FROM
THE SP TO UP
APPLICATION FOR BULLETINED POSITION MUST BE RECEIVED NO LATER THAN
12:00 PM - 08-17-98

STN/BUREAU - S4425 AUTHORIZED POSITION - 254 PAYROLL - 355 POSITION TYPE - 1A

RATE NBR 934 ROSTER NBR - 0250 ZONE NBR - 222 LOW RATE - $86.1900

MEAL PERIOD - PAID HIGH RATE - $86.1900

HOURS OF SERVICE - 0700A 0300P REST DAYS - TUE WED GRADE - 001

SUPERVISOR - J. A. COX JR. - MGR TRAIN OPRNS

DUTIES:
TRANSPORT TRAIN AND ENGINE CREWS; PERFORM OTHER DUTIES AS REQUIRED INCLUDING, BUT NOT LIMITED TO, CABOOSE SUPPLY, ORDERING SUPPLIES, DISTRIBUTION OF SUPPLIES TO TRAIN AND ENGINE CREWS, SUPPLY AND LOAD PRINTER PAPER AND RIBBONS, POST BULLETINS AND NOTICES, PERFORM JANITORIAL SERVICES, COMPLETE/DISTRIBUTE REPORTS AND ASSIST IN UPKEEP OF VEHICLES; OTHER DUTIES AS MAY BE ASSIGNED. INCUMBENT MUST POSSESS SUFFICIENT PHYSICAL CAPABILITY TO PERFORM ALL REQUIRED DUTIES, INCLUDING JANITORIAL SERVICES AND SAFE OPERATION OF VEHICLES AND CLEANING EQUIPMENT. INCUMBENT MUST POSSESS VALID DRIVER'S LICENSE AND, WHERE REQUIRED BY LAW, A VALID CHAUFFEUR'S LICENSE.
NEFF YARD

QUALIFICATIONS:

CC: TCU ASSIGNMENT CENTER - RM-335 OMAHA
(402)-271-2128
PRINTER LATA - IL40609
FAX NUMBER - 271 2077

EMPLOYEES' EXHIBIT 10
PAGE 2

UNION PACIFIC RR COMPANY

CLERICAL VACANCY BULLETIN

DEPARTMENT - SUPT TSPN SERVICES - TERMINAL OPERATIONS KANSAS CTY MO

VACANCY DATED 07-27-98 VACANCY BULLETIN NUMBER 22210310

PERMANENT POSITION: UTILITY CLERK

POSITION EFFECTIVE DATE - 08-24-98

BULLETIN REASON - UP/SP MERGER RELATED - TRANSFERRED FROM THE SP TO UP

APPLICATION FOR BULLETINED POSITION MUST BE RECEIVED NO LATER THAN 12:00 PM - 08-17-98

STN/BUREAU - S1425 AUTHORIZED POSITION - 255 PAYROLL - 355 POSITION TYPE - 1A

RATE NBR 934 ROSTER NBR - 0250 ZONE NBR - 222 LOW RATE - $86.1900

ICAL PERIOD - PAID HIGH RATE - $86.1900

HOURS OF SERVICE - 0759A 0359P REST DAYS - SUN MON GRADE - 001

SUPERVISOR - J. A. COX JR. - MGR TRAIN OPRNS

DUTIES:

TRANSPORT TRAIN AND ENGINE CREWS; PERFORM OTHER DUTIES AS REQUIRED INCLUDING, BUT NOT LIMITED TO, CABOOSE SUPPLY, ORDERING SUPPLIES, DISTRIBUTION OF SUPPLIES TO TRAIN AND ENGINE CREWS, SUPPLY AND LOAD PRINTER PAPER AND RIBBONS, POST BULLETINS AND NOTICES, PERFORM JANITORIAL SERVICES, COMPLETE/DISTRIBUTE REPORTS AND ASSIST IN UPKEEP OF VEHICLES; OTHER DUTIES AS MAY BE ASSIGNED. INCUMBENT MUST POSSESS SUFFICIENT PHYSICAL CAPABILITY TO PERFORM ALL REQUIRED DUTIES, INCLUDING JANITORIAL SERVICES AND SAFE OPERATION OF VEHICLES AND CLEANING EQUIPMENT. INCUMBENT MUST POSSESS VALID DRIVER'S LICENSE AND, WHERE REQUIRED BY LAW, A VALID CHAUFFEUR'S LICENSE.
NEFF YARD

QUALIFICATIONS:

C: TCU ASSIGNMENT CENTER - RM-335 OMAHA
(402)-271-2128
PRINTER LATA - IL40609
FAX NUMBER 271-2077

EMPLOYEES' EXHIBIT 1(
PAGE 3

UNION PACIFIC RR COMPANY

CLERICAL VACANCY BULLETIN

DEPARTMENT - SUPT TSPN SERVICES - TERMINAL OPERATIONS KANSAS CTY MO

VACANCY DATED 07-27-98 VACANCY BULLETIN NUMBER 22210311

PERMANENT POSITION: UTILITY CLERK

POSITION EFFECTIVE DATE - 08-24-98

BULLETIN REASON - UP/SP MERGER RELATED - TRANSFERRED FROM THE SP TO UP
APPLICATION FOR BULLETINED POSITION MUST BE RECEIVED NO LATER THAN 12:00 PM - 08-17-98

STN/BUREAU - S4425 AUTHORIZED POSITION - 256 PAYROLL - 355 POSITION TYPE - 1A

RATE NBR 934 ROSTER NBR - 0250 ZONE NBR - 222 LOW RATE - $86.1900

MEAL PERIOD - PAID HIGH RATE - $86.1900

HOURS OF SERVICE - 0300P 1100P REST DAYS - SAT SUN GRADE - 001

SUPERVISOR - J. A. COX JR. - MGR TRAIN OPRNS

DUTIES:
TRANSPORT TRAIN AND ENGINE CREWS; PERFORM OTHER DUTIES AS REQUIRED INCLUDING, BUT NOT LIMITED TO, CABOOSE SUPPLY, ORDERING SUPPLIES, DISTRIBUTION OF SUPPLIES TO TRAIN AND ENGINE CREWS, SUPPLY AND LOAD PRINTER PAPER AND RIBBONS, POST BULLETINS AND NOTICES, PERFORM JANITORIAL SERVICES, COMPLETE/DISTRIBUTE REPORTS AND ASSIST IN UPKEEP OF VEHICLES; OTHER DUTIES AS MAY BE ASSIGNED. INCUMBENT MUST POSSESS SUFFICIENT PHYSICAL CAPABILITY TO PERFORM ALL REQUIRED DUTIES, INCLUDING JANITORIAL SERVICES AND SAFE OPERATION OF VEHICLES AND CLEANING EQUIPMENT. INCUMBENT MUST POSSESS VALID DRIVER'S LICENSE AND, WHERE REQUIRED BY LAW, A VALID CHAUFFEUR'S LICENSE.
NEFF YARD

QUALIFICATIONS:

TO: TCU ASSIGNMENT CENTER - RM-335 OMAHA
(402)-271-2128
PRINTER LATA - IL40609
FAX NUMBER - 271-2077

EMPLOYEES' EXHIBIT 10
PAGE 4

UNION PACIFIC RR COMPANY

CLERICAL VACANCY BULLETIN

DEPARTMENT - SUPT TSPN SERVICES - TERMINAL OPERATIONS KANSAS CTY MO

VACANCY DATED 07-27-98 VACANCY BULLETIN NUMBER 22210312

PERMANENT POSITION: UTILITY CLERK

POSITION EFFECTIVE DATE - 08-24-98

BULLETIN REASON - UP/SP MERGER RELATED - TRANSFERRED FROM THE SP TO UP

APPLICATION FOR BULLETINED POSITION MUST BE RECEIVED NO LATER THAN 12:00 PM - 08-17-98

STN/BUREAU - S4425 AUTHORIZED POSITION - 257 PAYROLL - 355 POSITION TYPE - 1A

RATE NBR 934 ROSTER NBR - 0250 ZONE NBR - 222 LOW RATE - $86.1900

ICAL PERIOD - PAID HIGH RATE - $86.1900

HOURS OF SERVICE - 1100P 0700A REST DAYS - WED THU GRADE - 001

SUPERVISOR - J. A. COX JR. - MGR TRAIN OPRNS

DUTIES:
TRANSPORT TRAIN AND ENGINE CREWS; PERFORM OTHER DUTIES AS REQUIRED INCLUDING, BUT NOT LIMITED TO, CABOOSE SUPPLY, ORDERING SUPPLIES, DISTRIBUTION OF SUPPLIES TO TRAIN AND ENGINE CREWS, SUPPLY AND LOAD PRINTER PAPER AND RIBBONS, POST BULLETINS AND NOTICES, PERFORM JANITORIAL SERVICES, COMPLETE/DISTRIBUTE REPORTS AND ASSIST IN UPKEEP OF VEHICLES; OTHER DUTIES AS MAY BE ASSIGNED. INCUMBENT MUST POSSESS SUFFICIENT PHYSICAL CAPABILITY TO PERFORM ALL REQUIRED DUTIES, INCLUDING JANITORIAL SERVICES AND SAFE OPERATION OF VEHICLES AND CLEANING EQUIPMENT. INCUMBENT MUST POSSESS VALID DRIVER'S LICENSE AND, WHERE REQUIRED BY LAW, A VALID CHAUFFEUR'S LICENSE.
NEFF YARD

QUALIFICATIONS:

C: TCU ASSIGNMENT CENTER - RM-335 OMAHA
(402)-271-2128
PRINTER LATA - IL40609
FAX NUMBER - 271-2077

UNION PACIFIC RR COMPANY

CLERICAL VACANCY BULLETIN

DEPARTMENT - SUPT TSPN SERVICES - TERMINAL OPERATIONS KANSAS CTY MO

VACANCY DATED 07-27-98 VACANCY BULLETIN NUMBER 22210313

PERMANENT POSITION: UTILITY CLERK

POSITION EFFECTIVE DATE - 08-24-98

BULLETIN REASON - UP/SP MERGER RELATED - TRANSFERRED FROM THE SP TO UP

APPLICATION FOR BULLETINED POSITION MUST BE RECEIVED NO LATER THAN 12:00 PM - 08-17-98

STN/BUREAU - 54425 AUTHORIZED POSITION - 259 PAYROLL - 355 POSITION TYPE - 1A

RATE NBR 934 ROSTER NBR - 0250 ZONE NBR - 222 LOW RATE - $86.1900

MEAL PERIOD - PAID HIGH RATE - $86.1900

HOURS OF SERVICE - 1159P 0759A REST DAYS - SAT SUN GRADE - 001

SUPERVISOR - J. A. COX JR. - MGR TRAIN OPRNS

DUTIES:
TRANSPORT TRAIN AND ENGINE CREWS; PERFORM OTHER DUTIES AS REQUIRED INCLUDING, BUT NOT LIMITED TO, CABOOSE SUPPLY, ORDERING SUPPLIES, DISTRIBUTION OF SUPPLIES TO TRAIN AND ENGINE CREWS, SUPPLY AND LOAD PRINTER PAPER AND RIBBONS, POST BULLETINS AND NOTICES, PERFORM JANITORIAL SERVICES, COMPLETE/DISTRIBUTE REPORTS AND ASSIST IN UPKEEP OF VEHICLES; OTHER DUTIES AS MAY BE ASSIGNED. INCUMBENT MUST POSSESS SUFFICIENT PHYSICAL CAPABILITY TO PERFORM ALL REQUIRED DUTIES, INCLUDING JANITORIAL SERVICES AND SAFE OPERATION OF VEHICLES AND CLEANING EQUIPMENT. INCUMBENT MUST POSSESS VALID DRIVER'S LICENSE AND, WHERE REQUIRED BY LAW, A VALID CHAUFFEUR'S LICENSE.
NEFF YARD

QUALIFICATIONS:

CU ASSIGNMENT CENTER - RM-335 OMAHA
(402)-271-2128
PRINTER LATA - IL40609
FAX NUMBER 271-2077

EMPLOYEES' EXHIBIT 10
PAGE 6

UNION PACIFIC RR COMPANY

CLERICAL VACANCY BULLETIN

DEPARTMENT - SUPT TSPN SERVICES - TERMINAL OPERATIONS KANSAS CTY MO

VACANCY DATED 07-27-98 VACANCY BULLETIN NUMBER 22210317

PERMANENT POSITION: EXTRA BOARD GRADE 1

POSITION EFFECTIVE DATE - 08-24-98

BULLETIN REASON - UP/SP MERGER RELATED - TRANSFERRED FROM THE SP TO UP

APPLICATION FOR BULLETINED POSITION MUST BE RECEIVED NO LATER THAN 12:00 PM - 08-17-98

STN/BUREAU - 84425 AUTHORIZED POSITION - 259 PAYROLL - 355 POSITION TYPE - 1A

RATE NBR 731 ROSTER NBR - 0250 ZONE NBR - 222 LOW RATE - $86.1900

MEAL PERIOD - PAID HIGH RATE - $86.1900

HOURS OF SERVICE - VAR VAR REST DAYS - VAR GRADE - 001

SUPERVISOR - J. A. COX JR. - MGR TRAIN OPRNS

DUTIES:
TRANSPORT TRAIN AND ENGINE CREWS, CABOOSE SUPPLY, ORDERING SUPPLIES, DISTRIBUTION OF SUPPLIES TO TRAIN AND ENGINE CREWS, SUPPLY AND LOAD PRINTER PAPER AND RIBBONS, POST BULLETINS AND NOTICES, PERFORM JANITORIAL SERVICES, COMPLETE/DISTRIBUTE REPORTS AND ASSIST IN UPKEEP OF VEHICLES. INCUMBENT MUST POSSESS SUFFICIENT PHYSICAL CAPABILITY TO PERFORM ALL REQUIRED DUTIES, INCLUDING JANITORIAL SERVICES AND SAFE OPERATIONS OF VEHICLES AND CLEANING EQUIPMENT. INCUMBENT MUST POSSESS VALID DRIVER'S LICENSE AND, WHERE REQUIRED BY LAW, A VALID CHAUFFEUR'S LICENSE.

QUALIFICATIONS

C. TOU ASSIGNMENT CENTER RM 005 OMAHA
(402)-271-2128
PRINTER DATA - [illegible]
FAX NUMBER 271-2971

EMPLOYEES' EXHIBIT 1(
PAGE 7

UNION PACIFIC RR COMPANY

CLERICAL VACANCY BULLETIN

DEPARTMENT - SUPT TSPN SERVICES - TERMINAL OPERATIONS KANSAS CTY MO

VACANCY DATED 07-27-98 VACANCY BULLETIN NUMBER 22210318

PERMANENT POSITION: EXTRA BOARD GRADE 1

POSITION EFFECTIVE DATE - 08-24-98

BULLETIN REASON - UP/SP MERGER RELATED - TRANSFERRED FROM THE SP TO UP

APPLICATION FOR BULLETINED POSITION MUST BE RECEIVED NO LATER THAN 12:00 PM - 08-17-98

STN/BUREAU - 64425 AUTHORIZED POSITION - 260 PAYROLL - 355 POSITION TYPE - 1A

RATE NBR 701 ROSTER NBR - 0250 ZONE NBR - 222 LOW RATE - $86.1900

MEAL PERIOD - PAID HIGH RATE - $86.1900

HOURS OF SERVICE - VAR VAR REST DAYS - VAR GRADE - 001

SUPERVISOR - J. A. COX JR. - MGR TRAIN OPRNS

DUTIES:
TRANSPORT TRAIN AND ENGINE CREWS, CABOOSE SUPPLY, ORDERING SUPPLIES, DISTRIBUTION OF SUPPLIES TO TRAIN AND ENGINE CREWS, SUPPLY AND LOAD PRINTER PAPER AND RIBBONS, POST BULLETINS AND NOTICES, PERFORM JANITORIAL SERVICES, COMPLETE/DISTRIBUTE REPORTS AND ASSIST IN UPKEEP OF VEHICLES. INCUMBENT MUST POSSESS SUFFICIENT PHYSICAL CAPABILITY TO PERFORM ALL REQUIRED DUTIES, INCLUDING JANITORIAL SERVICES AND SAFE OPERATIONS OF VEHICLES AND CLEANING EQUIPMENT. INCUMBENT MUST POSSESS VALID DRIVER'S LICENSE AND, WHERE REQUIRED BY LAW, A VALID CHAUFFEUR'S LICENSE.

QUALIFICATIONS.

TCU ASSIGNMENT CENTER - RM 335 OMAHA
(402)-271-2128
PRINTER DATA - IL40609
FAX NUMBER - 271-2077

UNION PACIFIC RR COMPANY

CLERICAL VACANCY BULLETIN

DEPARTMENT - SUPT TSPN SERVICES - TERMINAL OPERATIONS KANSAS CTY MO

VACANCY DATED 07-27-98 VACANCY BULLETIN NUMBER 22210319

PERMANENT POSITION: EXTRA BOARD GRADE 1

POSITION EFFECTIVE DATE - 08-24-98

BULLETIN REASON - UP/SP MERGER RELATED - TRANSFERRED FROM THE SP TO UP

APPLICATION FOR BULLETINED POSITION MUST BE RECEIVED NO LATER THAN 12:00 PM - 08-17-98

STN/BUREAU - S4425 AUTHORIZED POSITION - 261 PAYROLL - 335 POSITION TYPE - 1A

RATE NBR 731 ROSTER NBR - 0250 ZONE NBR - 222 LOW RATE - $86.1900

MEAL PERIOD - PAID HIGH RATE - $86.1900

HOURS OF SERVICE - VAR VAR REST DAYS - VAR GRADE - 001

SUPERVISOR - J. A. COX JR. - MGR TRAIN OPRNS

DUTIES:

TRANSPORT TRAIN AND ENGINE CREWS, CABOOSE SUPPLY, ORDERING SUPPLIES, DISTRIBUTION OF SUPPLIES TO TRAIN AND ENGINE CREWS, SUPPLY AND LOAD PRINTER PAPER AND RIBBONS, POST BULLETINS AND NOTICES, PERFORM JANITORIAL SERVICES, COMPLETE/DISTRIBUTE REPORTS AND ASSIST IN UPKEEP OF VEHICLES. INCUMBENT MUST POSSESS SUFFICIENT PHYSICAL CAPABILITY TO PERFORM ALL REQUIRED DUTIES, INCLUDING JANITORIAL SERVICES AND SAFE OPERATIONS OF VEHICLES AND CLEANING EQUIPMENT. INCUMBENT MUST POSSESS VALID DRIVER'S LICENSE AND, WHERE REQUIRED BY LAW, A VALID CHAUFFEUR'S LICENSE.

QUALIFICATIONS:

TCU ASSIGNMENT CENTER RM-335 OMAHA
(402)-271-2128
PRINTER LATA - IL40609
FAX NUMBER - 271 2077

UNION PACIFIC RR COMPANY

CLERICAL VACANCY BULLETIN

DEPARTMENT - SUPT TCDN SERVICES - TERMINAL OPERATIONS KANSAS CTY MO

VACANCY DATED 07-27-98 VACANCY BULLETIN NUMBER 22210320

PERMANENT POSITION: EXTRA BOARD GRADE 1

POSITION EFFECTIVE DATE - 08-24-98

BULLETIN REASON - UP/SP MERGER RELATED - TRANSFERRED FROM THE SP TO UP

APPLICATION FOR BULLETINED POSITION MUST BE RECEIVED NO LATER THAN 12:00 PM - 08-17-98

STN/BUREAU - 94425 AUTHORIZED POSITION - 262 PAYROLL - 355 POSITION TYPE - 1A

RATE NBR 731 ROSTER NBR - 0250 ZONE NBR - 222 LOW RATE - $86.1900

CAL PERIOD - PAID HIGH RATE - $86.1900

HOURS OF SERVICE - VAR VAR REST DAYS - VAR GRADE - 001

SUPERVISOR - J. A. COX JR. - MGR TRAIN OPRNS

DUTIES:
TRANSPORT TRAIN AND ENGINE CREWS, CABOOSE SUPPLY, ORDERING SUPPLIES DISTRIBUTION OF SUPPLIES TO TRAIN AND ENGINE CREWS, SUPPLY AND LOAD PRINTER PAPER AND RIBBONS, POST BULLETINS AND NOTICES, PERFORM JANITORIAL SERVICES, COMPLETE/DISTRIBUTE REPORTS AND ASSIST IN UPKEEP OF VEHICLES. INCUMBENT MUST POSSESS SUFFICIENT PHYSICAL CAPABILITY TO PERFORM ALL REQUIRED DUTIES, INCLUDING JANITORIAL SERVICES AND SAFE OPERATIONS OF VEHICLES AND CLEANING EQUIPMENT. INCUMBENT MUST POSSESS VALID DRIVER'S LICENSE AND, WHERE REQUIRED BY LAW, A VALID CHAUFFEUR'S LICENSE.

QUALIFICATIONS:

TCU ASSIGNMENT CENTER RM-335 OMAHA
(402)-271-2128
PRINTER DATA - [illegible]
FAX NUMBER 271-2057

EMPLOYEES' EXHIBIT
PAGE 10

ALLIED SERVICES DIVISION

Transportation • Communications International Union – AFL-CIO, CLC

ROBERT F. DAVIS
President

TED P. STAFFORD
General Secretary-Treasurer

File: 279-100

July 30, 1998

Mr. D. D. Matter, Senior Director
Labor Relations - Non-Ops.
Union Pacific Railroad
1416 Dodge Street
Omaha, NE 68179

Dear Sir:

This will have reference to Carrier's notice of June 11, 1998, allegedly served under the auspices of NYD-217 advising that the Carrier intended to consolidate all clerical work from the Southern Pacific (Armourdale Yard) with that of the Union Pacific facility at Kansas City, and further, that said work and employees would be subject to the Union Pacific/TCU Collective Bargaining Agreement effective on or after August 10, 1998.

As I have previously advised you it is the Union's position that this notice is inappropriate and not in accordance with the spirit and intent of NYD-217. I therefore request that this notice be withdrawn and canceled.

The Carrier's notice indicates that various clerical positions currently under the Southern Pacific Agreement are to be placed under the Union Pacific Agreement and reclassified as Utility Clerk positions. This has the sole purpose of reducing the rates of pay of the positions. In addition to this, the Carrier advises that it intends to place six Ramp Clerk positions under the Union Pacific Agreement--these are positions that do not even exist under the Union Pacific Agreement at Kansas City as the Union Pacific ramp work is performed by an outside contractor. The effect of this notice is to "cherry pick" collective bargaining agreements and to place employees under an agreement with inferior benefits for the employees. This has no

53 W. Seegers Road • Arlington Heights, Illinois 60005 • 847-981-1290 • Fax 847-981-1890

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other application but to transfer wealth from employees to the employer. The Carrier's action is not necessary and certainly will not benefit the general public or the employees subject to this merger.

In reviewing a recent arbitration award (UTU v. UP--Yost Award) the Surface Transportation Board reiterated what the Supreme Court held in *Railway Labor Executives Association v. United States*, 987 F.2d 806 (D.C. Cir. 1993), "[I]n *RLEA*, supra, the court admonished the ICC to refrain from approving modifications that are not necessary for realization of the public benefits of the consolidation but are merely devices to transfer wealth from employees to their employer." While the STB affirmed the arbitrator's decision in this area it did so solely due to the fact that the UTU "made no effort to show that the UP Eastern District collective bargaining agreement is inferior to the collective bargaining agreements that it replaced."

The action contemplated by the Carrier regarding the clerks in Kansas City, without a doubt, has the effect of placing employees under an inferior agreement. First, the rates of pay of the positions are being reduced by a considerable amount; second, the Ramp Clerks are placed in jeopardy of having their work contracted to an outside party; and third, the extra board agreement under the SP Clerical Agreement is far superior to the extra board agreement under the UP Clerical Agreement. These are but three examples of how the SP CBA is superior to the UP CBA at Kansas City.

Nowhere in NYD-217 is it contemplated that the Carrier has the right to "cherry pick" agreements. On the contrary, the Implementing Agreement contemplates the Carrier transferring work and employees in order to effectuate the merger. All the Carrier is attempting to do with this notice is to place the former SP employees under the UP CBA. No employees or work are being transferred. The result of this would simply be to transfer wealth from the employees to the employer.

The Carrier's actions are not only in violation of NYD-217, but also contravene findings of the United States Supreme Court in *RLEA*. Something that even the STB finds violative of its merger approval.

As stated above, the Union hereby demands that this notice be withdrawn and canceled. If the Carrier is unwilling to do this then you may consider this as a demand for arbitration of this issue. If the Carrier wishes to arbitrate the issue then it is requested that the notice not be effectuated until a decision is rendered by an arbitrator.

Kindly advise the Carrier's position and if you intend to withdraw this notice.

Yours truly,

Robert F. Davis, President

cc: R. A. Scardelletti, IP
J. L. Gobel, IVP
J. P. Condo, IVP
J. L. Quilty, GC
S. R. Steeves, VP/ASD
P. T. Trittel, ATP/ASD

UNION PACIFIC RAILROAD COMPANY

D D MATTER
General Director
Labor Relations-NON-OPS

1416 Dodge Street
Omaha, Nebraska 68179

September 11, 1998
NYD-217

Mr. R. F. Davis
President ASD/TCU
53 W. Seegers Road
Arlington Heights, IL 60005

Mr. J. L. Gulley
General Chairman, TCU
2820 South 87th Avenue
Omaha, NE 68124

Gentlemen:

This has reference to my letter dated June 11, 1998, serving notice under the auspices of NYD-217 advising that the Carrier intended to consolidate all clerical work from the Southern Pacific (Armourdale Yard) with that of the Union Pacific Facility at Kansas City and place that work and employees under the Union Pacific/TCU Collective Bargaining Agreement. In accordance with that notice, the Carrier bulletined jobs to be transferred to SP employees with an effective date of September 17, 1998.

By letter dated July 30, 1998, Mr. Davis advised the Carrier that it was the Union's position the notice of June 11, 1998 was inappropriate and not in accordance with the spirit and intent of NYD-217. Moreover, Mr. Davis stated that if the Carrier did not agree with his position he would demand that the issue be submitted to arbitration. Finally, Mr. Davis requested that if the Carrier wished to arbitrate the issue, then the notice not be effectuated until a decision had been rendered by the arbitrator.

First, the Carrier does not agree that the notice issued on June 11, 1998 was inappropriate. Moreover, it is the Carrier's position that the notice and the proposed changes embrace the spirit and intent of NYD-217. In view of this fact, the Carrier is agreeable to submitting this issue to final and binding arbitration on an expedited basis. I will be contacting you in the near future to begin the Referee selection process. Secondly, with regard to your request to delay the implementation of the proposed transaction, the Carrier is reluctantly agreeable to honoring that request with certain reservations. The Carrier reserves the right to immediately effect the changes outlined in the original notice upon receipt of the Arbitrator's Award in the event a decision favorable to the Carrier is rendered without further notice (i.e., a new 60-day notice) to the Organization. Additionally, in the event circumstances change, the Carrier reserves the right to cancel the original notice at any time prior to or after the arbitration Award is rendered, cancelling all assignments and option forms and serving a new 60-day notice, which, if necessary, would not be placed into effect until after a decision rendered by the Referee. Of course, it is understood that the Carrier's decision to grant the Organization's request concerning this delay in implementing the transaction is made without prejudice to the Carrier's position regarding this issue.

Yours truly,

D. D. Matter

cc: Mr. J. P. Condo
International Vice President, TCU
53 W. Seegers Road
Arlington Heights, IL 60005

Mr. J. L. Gobel
International Vice President, TCU
4189 North Road
Moose Lake, MN 55767

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a taxpayer's identity, the nature, source, or amount of his income . . . or any other data, received by, recorded by, *prepared by*, furnished to, or collected by *the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability* (or the amount thereof) *of any person under this title for any tax* . . . . (emphasis supplied).

26 U.S.C. § 6103(b)(2)(A). The government argues that the requested document falls within this exception, and the district court agreed. Breuhaus responds that § 6103 is inapplicable to organizations exempt from taxes under § 501(c).

The government has the burden of proving that the letter is within an exception to FOIA. *Tax Analysts & Advocates v. IRS*, 164 U.S.App.D.C. 243, 246, 505 F.2d 350, 353 (D.C.Cir.1974); *Lumiah v. United States*, 425 F.Supp. 31, 35–36 (D.Minn.), *aff'd*, 564 F.2d 101 (8th Cir. 1977). If a document constitutes "return information" under § 6103, it comes within FOIA exception three. *Fruehauf Corp. v. IRS*, 566 F.2d 574, 578 (6th Cir. 1977); *Lobosco v. IRS*, 78–2 U.S.Tax Cas.Par. 9678 (E.D.N.Y.1978); *Belisle v. Commissioner*, 462 F.Supp. 460, 462 (W.D.Okl.1978); *Grosier v. IRS*, 449 F.Supp. 884, 849 (D.Md.1978).

The letter clearly comes within the literal definition of return information, for it is a document "prepared by . . . the Secretary with respect to . . . the existence, or possible existence, of liability . . . of any person under this title for any tax . . . ." Appellant does not deny this, but argues that since other sections of the Code require extensive disclosure of financial information by tax exempt organizations, it makes no sense to read § 6103 to protect the return information of those organizations.

It is true that exempt organizations, except for those with a religious purpose and certain others with gross annual receipts under $5,000, must submit an annual return itemizing gross income receipts, disbursements, and such other information as the IRS may prescribe, see 26 U.S.C. §§ 6104(b), 6033(a)(1), (b), and that these returns are open for public inspection, *id.* § 6104(b). Nevertheless we reject appellant's argument that IRS documents pertaining to tax exempt organizations are therefore unprotected by § 6103. Were we to accept this interpretation, *every* IRS document relating to these organizations would be open to disclosure. Neither § 6104(b) nor § 6033(a)(1), (b) refers to a document relating to an application for a tax exempt status. Moreover, Congress, in amending § 6104(a) of the Code in the Tax Reform Act of 1976, see note 2 *supra*, carefully limited the provision for public access to materials which do not include that type of document. Appellant's reading of § 6103 would render these guidelines meaningless. We must therefore conclude that § 6103 applies to tax exempt organizations along with all others, and that the documents in dispute here come within exception three of FOIA.

Accordingly we hold that appellant is not entitled to disclosure of the IRS letter either under § 6104 of the Code or under FOIA and affirm the decision of the district court.

KEYNUMBER SYSTEM

NEW YORK DOCK RAILWAY and Brooklyn Eastern District Terminal, Petitioners,

v.

UNITED STATES of America and Interstate Commerce Commission, Respondents.

No. 61, Docket 79–4066.

United States Court of Appeals, Second Circuit.

Argued Sept. 19, 1979.

Decided Nov 7, 1979.

Proceeding was instituted on petition to review an order of the Interstate Com-

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merce Commission on establishing labor protective conditions as a matter of general transportation importance in railroad merger, control, consolidation, coordination and unification transactions. The Court of Appeals, Waterman, Circuit Judge, held that: (1) labor protective conditions established by Interstate Commerce Commission as a matter of general transportation importance were directly traceable to either the "New Orleans conditions" as clarified in *Southern Control II* or the Appendix C–1 conditions and were not in excess of that required by statute because they contained a 90-day advance notice requirement, requirement of an implementation agreement as a precondition to initiation of any action directed toward consummation of a proposed transaction, and a binding arbitration requirement, and (2) prohibition on pyramiding of benefits did not preclude an employee from electing to be covered by rehiring priority provision and other arrangement at same time and did not prevent him from continuing to be covered by rehiring priority provision for remainder of term albeit expiration of principal benefit package originally elected by him.

Petition denied, and order affirmed.

1. Commerce ⇐85.7

Interstate Commerce Commission may fashion employee protective conditions that are tailored to special circumstances present in individual cases and, in fulfilling its statutory duty to require a fair and equitable arrangement to protect employee interests in certain types of rail carrier transactions, may require a greater degree of employee protection than that required as statutory minimum. Revised Interstate Commerce Act, 49 U.S.C.A. § 11347; Interstate Commerce Act, § 5(2)(f), 49 U.S.C. (1976 Ed.) § 5(2)(f).

2. Commerce ⇐85.7

Reference in Interstate Commerce Act to "those provisions • • • heretofore imposed pursuant to [section 5(2)(f) of the I.C. Act]" is to the "New Orleans conditions" as clarified in *Southern Control II*, and reference in Revised Interstate Commerce Act to "those [provisions] established pursuant to section 565 of Title 45 [section 405 of the Amtrak Act]" is to the Appendix C–1 conditions. Revised Interstate Commerce Act, 49 U.S.C.A. § 11347; Interstate Commerce Act, § 5(2)(f), 49 U.S.C. (1976 Ed.) § 5(2)(f).

3. Commerce ⇐85.7

Interstate Commerce Commission in formulating a new set of employee protective conditions in railroad merger, control, consolidation, coordination and unification proceedings, must combine those benefits provided under both the "New Orleans conditions" as clarified in *Southern Control II* and the Appendix C–1 conditions and, if conflicting benefits are provided under each of the two sets, must select the more beneficial of the two for inclusion in the new set. Revised Interstate Commerce Act, 49 U.S.C.A. § 11347; Interstate Commerce Act, § 5(2)(f), 49 U.S.C. (1976 Ed.) § 5(2)(f).

4. Commerce ⇐85.7

Imposition by Interstate Commerce Commission in railroad merger proceedings of any employee protective provision which can be traced directly to either the "New Orleans conditions" as clarified in *Southern Control II* or the Appendix C–1 conditions should be unobjectionable as embodying minimum degree of protection contemplated. Revised Interstate Commerce Act, 49 U.S.C.A. § 11347; Interstate Commerce Act, § 5(2)(f), 49 U.S.C. (1976 Ed.) § 5(2)(f).

5. Commerce ⇐85.7

Employee protective conditions formulated by Interstate Commerce Commission in railroad merger proceedings, combining those benefits provided under both the "New Orleans conditions" as clarified in *Southern Control II* and the Appendix C–1 conditions, include a 90-day advance notice requirement, requirement of an implementation agreement as a precondition to initiation of any action directed toward confirmation of a proposed transaction, and binding arbitration. Revised Interstate Commerce Act, 49 U.S.C.A. § 11347; Interstate Commerce Act, § 5(2)(f), 49 U.S.C. (1976 Ed.) § 5(2)(f).

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6. Commerce ⇐85.7

Labor protective conditions established by Interstate Commerce Commission as a matter of general transportation importance in railroad merger, control, consolidation, coordination and unification proceedings were directly traceable to either the "New Orleans conditions" as clarified in *Southern Control II* or the Appendix C–1 conditions and were not in excess of that required by statute because they contained a 90-day advance notice requirement, requirement of an implementation agreement as a precondition to initiation of any action directed toward consummation of a proposed transaction, and binding arbitration. Revised Interstate Commerce Act, 49 U.S.C.A. § 11347.

7. Commerce ⇐85.7

Provisions of labor protective conditions, "New York Dock conditions," established by Interstate Commerce Commission as a matter of general transportation importance in railroad merger, control, consolidation, coordination and unification proceedings were not subject to being stricken because they were only a matter of general transportation importance and were not particularly applicable to fact situation presented as long as they could be traced directly to either the "New Orleans conditions" as clarified in *Southern Control II* or the Appendix C–1 conditions. Revised Interstate Commerce Act, 49 U.S.C.A. § 11347; Interstate Commerce Act, § 5(2)(f), 49 U.S.C. (1976 Ed.) § 5(2)(f).

8. Commerce ⇐85.7

Term "transaction," contained in labor protective conditions established by Interstate Commerce Commission as a matter of general transportation importance in railroad merger, control, consolidation, coordination and unification proceedings, was not subject to being redefined judicially, even though it had no precise ancestor in either the "New Orleans conditions" as clarified in *Southern Control II* or in the Appendix C–1 conditions, where goal which the ICC had in mind was to encompass the same situations as were within the parallel term "coordination" employed in the admitted blueprint for all current employee protective packages. Revised Interstate Commerce Act, 49 U.S.C.A. § 11347; Interstate Commerce Act, § 5(2)(f), 49 U.S.C. (1976 Ed.) § 5(2)(f).

9. Commerce ⇐85.7

Labor protective conditions established by Interstate Commerce Commission as matter of general transportation importance in railroad merger, control, consolidation, coordination and unification proceedings were to be interpreted as meaning that full benefits in retaining rights package originally elected by employee expired at end of a six-year period, and that if employee had not yet reached normal retirement age, prohibition against pyramiding of benefits did not prevent him from continuing to be covered by rehiring priority provision for remainder of term albeit expiration of principal benefit package originally elected by him. Revised Interstate Commerce Act, 49 U.S.C.A. § 11347; Interstate Commerce Act, § 5(2)(f), 49 U.S.C. (1976 Ed.) § 5(2)(f).

10. Commerce ⇐85.7

When component benefits are provided under different sets of employee protective conditions established as a matter of general transportation importance in railroad merger proceedings, and those benefits differ only as to duration and amount, and not as to type or kind, an employee, in electing coverage under one set of conditions, receives such benefits provided under other sets, but when different sets of employee protective conditions contain component benefits that differ as to type or kind between sets, an employee, in electing coverage under one set of conditions, should not be rendered ineligible to receive benefits contained in other sets that have no counterpart in set he elected. Revised Interstate Commerce Act, 49 U.S.C.A. § 11347; Interstate Commerce Act, § 5(2)(f), 49 U.S.C. (1976 Ed.) § 5(2)(f).

Stuart H. Johnson, Jr., Walter M. King, Jr., Washington, D. C., Christine A. Pasquariello, Brooklyn, N. Y., for petitioners.

EMPLOYEES' EXHIBIT 13
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Christine N. Kohl, Deputy Assoc. Gen. Counsel, Mark L. Evans, Gen. Counsel, I.C.C.; John E. Shenefield, Asst. Atty. Gen., John J. Powers, III, Robert Lewis Thompson, Attys., Dept. of Justice, Washington, D. C., for respondents.

William G. Mahoney, John O'B.Clarke, Jr., Highsaw, Mahoney & Friedman, P. C., Washington, D. C., for intervenor-respondent Ry. Labor Executives' Ass'n.

Harold A. Ross, Ross & Kraushaar Co., L.P.A., Cleveland, Ohio, for intervenor-respondent Brotherhood of Locomotive Engineers.

Harry J. Breithaupt, Jr., James I. Collier, Jr., Richard T. Conway, Shea & Gardner, Washington, D. C., for amicus curiae, Ass'n of American Railroads.

Before WATERMAN, FEINBERG and TIMBERS, Circuit Judges.

WATERMAN, Circuit Judge:

Petitioners seek judicial review of an order of the Interstate Commerce Commission[1] ("ICC"), establishing as a matter of general transportation importance the labor protective conditions the challenged order imposed under section 5(2)(f) of the Interstate Commerce Act (the "I.C. Act"), as amended by section 402(a) of the Railroad Revitalization and Regulatory Reform Act of 1976 (the "4R Act"), recently recodified as 49 U.S.C. § 11347, in railroad merger, control, consolidation, coordination and unification transactions as defined in sections 5(2) and (3) of the I.C. Act, 49 U.S.C. §§ 11343–11346. The petition for review is denied.

Before setting forth the factual situation involved in the present case and the substantive positions of the parties to this action, a brief outline of the history of railway labor protective conditions relevant to consolidations, mergers, acquisitions and other similar transactions will be detailed. Such an historical outline is able in placing the present case in context, and in describing more accurately the positions advanced by the parties in response to the ICC's imposition of the labor protective conditions here at issue.

Historical Background

It long ago was recognized that consolidations of railroad operations, although beneficial to the industry as a whole and to the particular carriers involved, could have devastating effects on the employees of those carriers. Accordingly, Congress in 1933 enacted the Emergency Railroad Transportation Act, which sought to protect the employees of railroads engaging in consolidation of operations by mandating a "job freeze" approach so as to guarantee the continued employment for the entire labor force of the railroads involved.

Due to the effects a "job freeze" approach to employee protection could have on operational efficiency, representatives of approximately 85% of the railroad mileage in the country agreed with 20 of the 21 national labor organizations representing railroad workers in 1936 to a form of job security arrangement that provided bargaining and compensation protection to employees but left employers free to alter the size of their work force. That agreement, the Washington Job Protection Agreement of 1936 ("WJPA"), generally is conceded to be the blueprint for all subsequent job protection arrangements.

The pertinent provisions of the Agreement, applicable to any "coordination," defined as "joint action by two or more carriers whereby they unify, consolidate, merge or pool in whole or in part their separate railroad facilities or any of the operations or services previously performed by them through such separate facilities," (§ 2(a)), were as follows:

Employees of the carriers involved in a particular coordination were entitled to various compensatory protections:

1. New York Dock Railway—Control—Brooklyn Eastern District Terminal, Finance Docket No. 28250 (February 9, 1979). The ICC's decision is attached as Exhibit A to the Petition for Review in this case

i. any employee displaced into a lower paying position was entitled to an allowance to equalize his new rate of pay with his previous rate of pay for a period of up to five years following the effective date of the coordination (§ 6)

ii. any employee deprived of employment as a result of a coordination was entitled to receive a "coordination allowance" for a period, depending on his length of service, of up to five years following the effective date of the coordination, with the amount of the allowance equivalent to 60% of his most recent average annual compensation; in the alternative, the employee could resign and accept a "lump sum separation allowance" (§§ 7, 9)

iii. accumulated employee benefits were protected (§ 8)

iv. any employee required to change his residence as a result of the coordination was entitled to reimbursement from his employer for his moving expenses and for any loss incurred on the sale of his previous residence (§§ 10, 11)

And in addition to these compensatory protections, the WJPA also required:

v. advance notice to all employees of the affected carriers, at least 90 days prior to the effective date of the proposed coordination, this 90 day advance notice period to be used to negotiate an implementing agreement to provide for the assignment and selection of a combined work force; and the successful negotiation of such an agreement was an implicit precondition to the consummation of the proposed coordination (§§ 4, 5) [2]

vi. the submission of disputes concerning the operation of particular provisions of the WJPA, or of particular provisions of agreements reached pursuant to the terms of the WJPA, to a process of resolution employing binding arbitration (§§ 11, 13).

A few years later, in a proceeding concerning the approval of a lease of railroad property, *Chicago, R. I. & G. Ry. Trustees Lease*, 230 I.C.C. 181 (1938), *modified*, 232 I.C.C. 21 (1939), the ICC prescribed employee protective conditions similar to those found in the WJPA, although there was no specific statutory language authorizing this action; and in *United States v. Lowden*, 308 U.S. 225, 60 S.Ct. 248, 84 L.Ed. 208 (1939), the Supreme Court upheld the imposition of these labor protective conditions, finding such action to be within the ICC's authority pursuant to its mandate to act in the "public interest."

Soon after this decision, in the Transportation Act of 1940, Congress enacted various amendments to the I.C. Act, including the original labor protective provisions contained in section 5(2)(f), 49 U.S.C. § 5(2)(f), which provided as follows:

> As a condition of its approval, under this paragraph, of any transaction involving a carrier or carriers by railroad subject to the provisions of this chapter, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the

2. In a subsequent case discussing the purposes and operation of sections 4 and 5 of the WJPA, the ICC concluded that

> The inclusion of provisions of the type contained in sections 4 and 5 of the [WJPA] was required, in our opinion, in order to provide the employees the protection to which they were entitled under the statute
>
> The inclusion of conditions insuring the right of the employees here involved to notice and the negotiation of implementing agreements were indispensable prerequisites in effectuating a valid order of approval in the proceeding.
>
> Southern Ry. Control-Central of Ga. Ry., 331 I.C.C. 151, 166 (1967)

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employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this chapter and chapters 8 and 12 of this title, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees.

Later, in a subsequent case involving both a carrier abandonment and purchase application, *Oklahoma Ry. Trustees-Abandonment of Operations*, 257 I.C.C. 177 (1944), the ICC developed, pursuant to the statutory authority granted in section 5(2)(f) of the I.C. Act, the so-called "Oklahoma conditions." These conditions essentially paralleled the provisions of the WJPA, with two principal exceptions: (i) the maximum prescribed protective period was four years following the effective date of the ICC's order, as contrasted to the five years following the effective date of the coordination provided in the WJPA; and (ii) there were no express provisions dealing with required advance notice to affected employees, nor with the prior negotiation of an agreement concerning the reassignment of employees.

As a result of these exceptions, an employees' union challenged the ICC's imposition of the standard "Oklahoma conditions" in *New Orleans Union Passenger Terminal Case*, 267 I.C.C. 703 (1948). In its review of the ICC's decision in that case, the Supreme Court, after examining the legislative history of section 5(2)(f), concluded that the explicit reference to a four year period in the second sentence of that section was intended to establish the minimum period of protection only, and should not have been construed as also setting the statutory maximum period. Consequently, the Court reversed the ICC's decision and remanded the case to the ICC for further consideration. *Railway Labor Executives' Ass'n v. United States*, 339 U.S. 142, 70 S.Ct. 530, 94 L.Ed. 721 (1950). Upon its reconsideration of the case, the ICC then devised the so-called "New Orleans conditions." Essentially, these conditions consisted of the "Oklahoma conditions" supplemented by the additional protections afforded by the WJPA. *New Orleans Union Passenger Terminal Case*, 282 I.C.C. 271 (1962).

Nearly 10 years later, the U. S. Supreme Court rejected the contention of an employees' union that the "New Orleans conditions" provided inadequate employee protection and should be supplemented by modified "job freeze" provisions. The Court concluded that the clear intent of section 5(2)(f) was to provide affected employees with compensation, not guaranteed jobs. *Brotherhood of Maintenance of Way Employes v. United States*, 366 U.S. 169, 81 S.Ct. 913, 6 L.Ed.2d 208 (1961). The next year, labor again renewed its request for "job freeze" protective provisions. The ICC rejected this new request, and, in doing so, set forth the "New Orleans conditions" as the standard of employee protection. *Southern Ry.-Control-Central of Ga. Ry.*, 317 I.C.C. 557 (1962), *modified*, 317 I.C.C. 729 (1963) [*Southern Control I*]. However, the ICC's decision did not explicitly set out as components of the standard "New Orleans conditions" the prior notice and negotiation and the mandatory arbitration provisions which were contained in §§ 4 and 5 of the WJPA. Hence, because of the uncertainty surrounding this matter, the case reached the Supreme Court on review. The Court, *Railway Labor Executives' Ass'n v. United States*, 379 U.S. 199, 85 S.Ct. 307, 13 L.Ed.2d 238 (1964), chose to remand the case to the ICC for clarification of the conditions it had intended to impose in its *Southern Control I* decision. On remand, the ICC declared its intent to include in the "New Orleans conditions" all of the substantive protections provided under the WJPA, including the prior notice and negotiation and mandatory arbitration provisions found in §§ 4 and 5. *Southern Ry.-Control-Central of Ga. Ry.*, 331 I.C.C. 151 (1967) [*Southern Control II*].

Then, more recently, in the course of laying the foundation for a national rail passenger system, Congress enacted the Rail Passenger Service Act of 1970 (the "Amtrak Act"). Section 405 of that stat-

ute, codified as 45 U.S.C. § 565, provides as follows:

(a) A railroad shall provide fair and equitable arrangements to protect the interests of employees, including employees of terminal companies, affected by a discontinuance of intercity rail passenger service . . . . A "discontinuance of intercity rail passenger service" shall include any discontinuance of service performed by railroad under any facility or service agreement under sections 545 and 562 of this title pursuant to any modification or termination thereof or an assumption of operations by the Corporation [Amtrak].

(b) Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) to such employees under existing collective-bargaining agreements or otherwise; (2) the continuation of collective-bargaining rights; (3) the protection of such individual employees against a worsening of their positions with respect to their employment; (4) assurances of priority of reemployment of employees terminated or laid off; and (5) paid training or retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(2)(f) of [the Interstate Commerce Act.] Any contract entered into pursuant to the provisions of this subchapter shall specify the terms and conditions of such protective arrangements. No contract under section 561(a)(1) of this title between a railroad and [Amtrak] may be made unless the Secretary of Labor has certified to [Amtrak] that the labor protective provisions of such contract afford affected employees, including affected terminal employees, fair and equitable protection by the railroad.

Shortly thereafter, in 1971, pursuant to the statutory authority contained in the above quoted section 405 of the Amtrak Act, Secretary of Labor Hodgson certified a labor protective arrangement that became known as "Appendix C–1." Appendix C–1 basically adopted the core benefits originally provided under the WJPA. However, Appendix C–1 differed materially from the WJPA in several respects: (i) the benefits provided under Appendix C–1 are not static, but may be adjusted upward as wages increase (Art. I, § 5(a)); (ii) the protective period is increased to six years from the date an employee actually is dismissed or displaced from his former position as a result of the discontinuance of his employer's rail passenger service (Art. I, § 1(d)), and such employees are eligible for priority as to reemployment and for paid retraining rights (Art. II, §§ 1 & 2); (iii) all protective benefits are extended to employees of separately incorporated terminal companies who are affected by the transaction (Art. III); and (iv) the prior notice and negotiation and the mandatory arbitration provisions are modified so that only 20 days advance notice is required, and the railroads involved are authorized expressly to proceed with the transaction before any agreement concerning the selection and assignment of a work force is reached (Art. I, § 4). Also, there is a provision that specifically prohibits "duplication or pyramiding of benefits" (Art. I, § 3). And, finally, there is a provision specifying the allocation of the burden of proof between the respective parties in dispute arising under these labor protective provisions, which provision first requires the employee to identify the transaction and indicate the factors he relies upon to support his claim of entitlement to benefits, whereupon the burden shifts to his employer who must prove that factors other than those the employee indicated are actually responsible for any adverse effects to the employee (Art. I, § 11(c)).

In 1971, the District Court for the District of Columbia rejected the contention of various labor unions that the certification of the Appendix C–1 conditions by the Secretary of Labor was invalid for having failed to satisfy the minimum requirements

of section 405 of the Amtrak Act. *Congress of Railway Unions v. Hodgson*, 326 F.Supp. 68 (D.D.C.1971). The district court, although holding as an initial matter that the Secretary's certification was an unreviewable agency action committed to his sole discretion, proceeded to assume reviewability and found that the protective conditions "not only meet the requirements of Section 405 of the [Amtrak] Act and of Section 5(2)(f) of the Interstate Commerce Act but they in fact exceed these requirements in significant respects." *Id.* at 76 (footnote omitted).

Lastly, in 1976, Congress substantially revised Part I of the I.C. Act when it adopted the 4R Act. By section 402(a) of the 4R Act, Congress amended section 5(2)(f) of the I.C. Act, then codified at 49 U.S.C. § 5(2)(f), as follows (new material italicized):

> As a condition of its approval, under this paragraph [(2)] or paragraph (3), of any transaction involving a carrier or carriers by railroad subject to the provisions of this chapter, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. *Such arrangement shall contain provisions no less protective of the interests of employees than those heretofore imposed pursuant to this subdivision and those established pursuant to section 565 of Title 45 [section 405 of the Rail Passenger Service Act].* Notwithstanding any other provisions of this chapter and chapters 8 and 12 of this title, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees.

This amendment to section 5(2)(f) of the I.C. Act, effected by section 402(a) of the 4R Act, provided the impetus for the ICC to adopt the newer and more beneficial labor protective arrangement at issue in the present case.[3] These labor protective provisions, hereinafter referred to as the "New York Dock conditions," comprise the subject matter of this petition for review.

Factual Summary

Petitioners, New York Dock Railway ("NYD") and Brooklyn Eastern District Terminal ("BEDT"), are two small Class III terminal railways, each engaging in railmarine operations in the New York City harbor zone. To carry out a plan to consolidate these two operations, NYD sought approval from the ICC pursuant to 49 U.S.C. §§ 11343–11346 (sections 5(2) and (3) of the I.C. Act) to acquire control of BEDT through a tender offer for BEDT stock, and to issue additional NYD securities for that purpose.

After holding oral hearings on the matter, Administrative Law Judge Robert M. Glennon, by an Initial Decision dated May 13, 1977, approved NYD's application to acquire control of BEDT and granted NYD authority to issue securities for that pur-

3. Since the inception of this litigation, Congress has recodified 49 U.S.C. § 5(2)(f) as 49 U.S.C. § 11347. Although this recent recodification involved an almost total rewording of old § 5(2)(f), Congress did not intend to effect any substantive changes. Moreover, the language that § 402(a) of the 4R Act added to old § 5(2)(f) has been carried forward largely intact. Therefore, for purposes of simplicity this opinion will employ the language of 49 U.S.C. § 5(2)(f) as it appeared prior to its recodification as 49 U.S.C. § 11347 in all subsequent discussions pertaining to either 49 U.S.C. § 5(2)(f) or 49 U.S.C. § 11347.

pose.[4] However, as a condition of this approval, certain labor protective provisions were imposed. These consisted of the "New Orleans conditions" (as clarified in *Southern Control II*—*i. e.*, including the 90 day advance notice and negotiation and the mandatory arbitration provisions contained in §§ 4 and 5 of the WJPA) augmented by various components of the Appendix C–1 conditions (specifically, the extension of the protective period to six years, and the allocation of burden of proof between the parties).

Upon the parties' filing of exceptions to the ALJ's decision, Division 3 of the ICC, by an Order dated September 28, 1977, approved and adopted the ALJ's Initial Decision, except that the Appendix C–1 conditions were substituted for those that originally had been imposed by the ALJ. Intervenor-respondent Railway Labor Executives' Association ("RLEA") petitioned for a stay of this decision. By a further Order dated September 29, 1977, Division 3 of the ICC denied RLEA's request for a stay to permit NYD and BEDT to consummate the tender offer (NYD has acquired 92% of BEDT's capital stock pursuant to this tender offer), but prohibited NYD and BEDT from taking any action that would affect employees' rights, pending further ICC review of the protective conditions imposed.

On April 11, 1978, Division 3 of the ICC, acting as an appellate division, reviewed the entire record and rendered its decision in this case, once again approving the acquisition of control of BEDT by NYD and further modifying the labor protective provisions that were required to be imposed.[5] Essentially, the net effect of these modifications to the set of labor protective conditions returned matters full circle to the labor protective conditions originally imposed by the ALJ. However, due to the fact that some of the parties had acted in reliance on prior agency pronouncements in this case, the Division's order did not require strict compliance with the advance notice and negotiation provisions.

Throughout these proceedings, RLEA had had a petition on file with the ICC seeking a determination that the proceeding involved a matter of "general transportation importance" such that review by the full ICC was warranted. Upon the issuance of Division 3's final decision in this case, RLEA renewed its petition, which the ICC granted by a decision dated July 17, 1978.

The ICC thus reopened the case for further consideration, and, in a unanimous[6] decision dated February 9, 1979, formulated a definitive set of employee protective conditions, which it conceived to be "commensurate with our statutory [49 U.S.C. § 11347] obligation."[7] Briefly, the ICC, in formulating the "New York Dock conditions" selected the most favorable of the labor protective provisions contained in both the "New Orleans conditions" (as clarified in *Southern Control II*) and the Appendix C–1 conditions. In addition, the ICC made certain modifications to the definitions of several key terms, thereby delineating more precisely the extent and nature of the intended coverage of the "New York Dock conditions."

Introduction

[1] In overall effect, the "New York Dock conditions" can be fairly characterized as significantly more protective of the interests of railway labor than any previously imposed single set of employee protective conditions. Of course, it is beyond challenge that within its discretion the ICC may fashion employee protective conditions that

4. New York Dock Railway-Control-Brooklyn Eastern District Terminal, Finance Docket No. 28250 (May 13, 1977). The ALJ's Initial Decision is attached as Exhibit B to the Petition for Review in this case.

5. New York Dock Railway-Control-Brooklyn Eastern District Terminal, 354 I.C.C. 399 (1978).

6. Vice Chairman Brown was absent and did not participate. Commissioner Graham concurred in the result only.

7. *New York Dock Railway*, *supra* note 1 at 16

are tailored to the special circumstances present in individual cases. Moreover, in fulfilling its statutory duty to "require a fair and equitable arrangement" to protect employee interests in certain types of rail carrier transactions, the case law clearly establishes that the ICC has the discretion to require a greater degree of employee protection than that required as the statutory minimum. *See Railway Labor Executives' Ass'n v. United States*, 339 U.S. 142, 70 S.Ct. 530, 94 L.Ed. 721 (1950).[8]

Nevertheless, for several reasons, we do not believe that the ICC was exercising this type of discretion in formulating the employee protective conditions at issue here. For example, the ICC readily acknowledges the possibility that several of the provisions contained in the "New York Dock conditions" may have no application to the particular factual situation presented by the transaction involving NYD and BEDT. In explaining the inclusion of these provisions the ICC asserts that the presence of such seemingly irrelevant provisions is at least partially attributable to a conscious decision to employ this case as a vehicle for the formulation of a new set of employee protective conditions of general applicability.[9] In addition, language in the ICC's decision suggests that it regarded the formulation of the "New York Dock conditions" to be required in order to satisfy the statutory minimum degree of employee protection mandated by 49 U.S.C. § 11347.[10] Accordingly, we will assume, for purposes of our review of that decision, that the ICC intended the "New York Dock conditions" to satisfy only the baseline level of employee protection mandated by 49 U.S.C. § 11347.

We now turn to a discussion of the merits of the conflicting positions of the parties. We point out at once that all the parties to this proceeding are in substantial agreement in two important particulars. All parties appear willing to concede that when amended section 5(2)(f) of the I.C. Act speaks of "[those] provisions . . . heretofore imposed pursuant to this subdivi-

8. However, when an agency chooses to exercise such discretion, rather than adhering to the precise statutory mandate, the case law also clearly establishes that the agency "must 'disclose the basis of its order' and 'give clear indication that it has exercised the discretion with which Congress has empowered it.'" *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168, 83 S.Ct. 239, 248, 9 L.Ed.2d 207 (1962) (quoting *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 197, 61 S.Ct. 845, 85 L.Ed.2d 1271 (1941)). Moreover, when an agency chooses to exercise such discretion, it "must make findings that support its decision, and those findings must be supported by substantial evidence." *Burlington Truck Lines*, *supra*, 371 U.S. at 168, 83 S.Ct. at 248 (citations omitted). In light of our assumption that the ICC did not exercise such discretion in formulating the "New York Dock conditions," *see* text at footnotes 9 and 10, *infra*, we of course express no opinion as to whether the ICC's decision contains those elements required under *Burlington Truck Lines* to sustain the imposition of the "New York Dock conditions" as an exercise of agency discretion.

9. The ICC's decision characterized the "New York Dock conditions" as "appropriate for imposition in this proceeding as well as (in) other proceedings involving rail carriers arising under 49 U.S.C. § 11343 *et seq.*" *New York Dock Railway*, *supra* note 1, at 25. The ICC further noted that "[w]hile each labor protective provision may not be involved in the situation arising from the transaction approved here (i. e., provisions regarding moving expenses, etc.), there is ample evidence of record upon which to base a determination of the appropriate conditions to be applied in the usual case." *Id.* at 15. Certainly, if, pursuant to its authority to respond to the peculiarities of a specific rail carrier transaction, the ICC had intended to exercise its discretion by formulating the "New York Dock conditions" as a special set of employee protective conditions, it would have realized that it would be most inappropriate to extend such a special set of employee protective conditions to a wide range of factually dissimilar rail carrier transactions in the future.

10. At various points in its decision, the ICC stated: that it was "concerned here with the level of labor protective conditions required by 49 U.S.C. § 11347" *New York Dock Railway*, *supra* note 1, at 15; that "the level of protection developed here and set forth in Appendix III to this decision represents a fair arrangement meeting the minimum requirements of 49 U.S.C. § 11347" *Id.* at 25; that in deciding as it did the Commission "reaffirmed our general conclusions as to this minimum level of protection" *Id.* at 16 (footnote omitted); and, finally, that "here we are only establishing a fair, yet minimum, level of protection to be applied in certain proceedings." *Id.* at 25. *See also* text at note 7, *supra*.

sion" the intended reference is to the "New Orleans conditions" (as clarified in *Southern Control II*). All parties also appear to agree that the amendment to section 5(2)(f) of the I.C. Act by section 402(a) of the 4R Act was intended to require that some level of employee protection, in addition to the level provided by the standard "New Orleans conditions," should be imposed in subsequent rail carrier transactions subject to sections 5(2) and (3) of the I.C. Act, recently recodified as 49 U.S.C. §§ 11343–11346.

The parties disagree over the correct interpretation of the phrase "those [provisions] established pursuant to section 565 of Title 45 [section 405 of the Rail Passenger Service [Amtrak] Act]." Petitioners NYD and BEDT, as well as amicus curiae, Association of American Railroads ("AAR"), insist that the unambiguous intent of this passage only requires that any set of employee protective conditions adopted pursuant to 49 U.S.C. § 11347 explicitly address each of the five factors enumerated in section 405(b) of the Amtrak Act. Consequently, they allege that the ICC seriously misconstrued the statutory mandate of 49 U.S.C. § 11347, and incorrectly imposed employee protective provisions that are far in excess of the minimum required by statute. Respondent ICC, on the other hand, maintains that this passage is an unambiguous command to incorporate the Appendix C–1 conditions into any set of employee protective conditions imposed pursuant to 49 U.S.C. § 11347. Accordingly, the ICC contends that its formulation of the "New York Dock conditions" comports precisely with the statutory mandate. Based upon our understanding of the "New York Dock conditions," an understanding we explain hereafter, we agree with the position taken by the ICC.

As noted above, both sides in this case are confident that the express language of the involved statute provides unambiguous support for their respective positions. The parties, however, apparently recognizing that this may not be the typical case where there is "no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes," *United States v. American Trucking Ass'ns, Inc.*, 310 U.S. 534, 543, 60 S.Ct. 1059, 1063, 84 L.Ed. 1345 (1940), have attempted to resort to the legislative history of the 4R Act to bolster their positions. Unfortunately, section 402(a) of the 4R Act, the source of the eventual amendment to section 5(2)(f) of the I.C. Act, was a last-minute addition, appearing only in the final version of the 4R Act. Consequently, there is no legislative history that deals specifically with this particular section.[11] Thus we must move beyond an examination of the statutory language and legislative history.[12]

11. We do, however, find the legislative history concerning the general treatment of labor protective arrangements in the 4R Act advanced by intervenor respondent RLEA in support of the ICC's position to be more persuasive than the legislative history concerning a similar passage of the 4R Act advanced by amicus AAR in support of the petitioners' position. Nevertheless, our holding is not based solely on an examination of the language of section 402(a) of the 4R Act and the Act's legislative history.

12. Indeed, the only evidence of congressional intent relative to the meaning of amended section 5(2)(f) that petitioners advance is contained in an earlier decision of the ICC, which also dealt with a related question concerning the meaning of the language added to section 5(2)(f) by section 402(a) of the 4R Act. *Missouri P. R. R.-Merger-Texas & P. Ry. and Chicago & E. Ill. R. R.*, 348 I.C.A. 414 (1976) ["*Mo-Pac Merger*"], *rev'd in part on other grounds sub nom. City of Palestine v. United States*, 559 F.2d 408 (5th Cir. 1977), *cert. denied*, 435 U.S. 950, 98 S.Ct. 1578, 55 L.Ed.2d 800 (1978).

Petitioners place great reliance on the following statement, which appears in the ICC's opinion in that case: "Congress did not intend to have the Commission significantly change its policy in this area." *Mo-Pac Merger*, *supra*, 348 I.C.C. at 427. Although facially supportive of petitioners' contention that the amendment to section 5(2)(f) of the I.C. Act was not intended to produce any dramatic changes in the substance of the employee protective conditions imposed pursuant to that section, an examination of the context in which this statement was made undercuts any inference favorable to petitioners. In the relevant portion of its *Mo-Pac Merger* opinion, the ICC was addressing the argument of various labor groups that the amendment to section 5(2)(f) of the I.C. Act indicated Congress's belief that compensatory protective provisions were insufficient, and that future labor protective arrangements imposed under that section should con-

In so doing, we perceive the most telling evidence against the correctness of petitioners' interpretation of amended section 5(2)(f) of the I.C. Act to be the inherent inconsistency in the argument they advance in support of their position. Petitioners concede that when amended section 5(2)(f) mentions "[those] provisions . . . heretofore imposed pursuant to [section 5(2)(f) of the I.C. Act]" it is referring to the "New Orleans conditions" (presumably, although petitioners do not so state, as clarified in *Southern Control II*). However, petitioners contend that when amended section 5(2)(f) mentions "those [provisions] established pursuant to section 565 of Title 45 [section 405 of the Amtrak Act]," it is referring only to the statutory minima explicitly set forth in section 405(b) of the Amtrak Act. Thus, petitioners would have us believe that these two passages, employing nearly identical language, are intended to have two very different meanings, one permitting reference to provisions promulgated pursuant to the authority of section 5(2)(f) of the I.C. Act, and the other forbidding reference to anything beyond the express statutory language of section 405(b) of the Amtrak Act. Such a curious construction of the amendment to section 5(2)(f) of the I.C.Act effected by section 402(a) of the 4R Act is untenable for several reasons.

Most importantly, the very language of section 405(b) of the Amtrak Act refutes such a construction. Indeed, that section begins by stating that "[s]uch protective arrangements shall include, *without being limited to*, [the five factors subsequently enumerated]." Therefore, it is clear that even the express statutory language which petitioners rely upon would require (or, at least, permit the imposition of) employee protective provisions in addition to the five factors specifically enumerated to meet the statutory minima.

[2] Accordingly, in light of the language of the statute, a survey of the legislative history, and the inconsistencies that attach to petitioners' interpretation, we agree with the ICC's interpretation of amended section 5(2)(f) of the I.C. Act, namely that "[those] provisions . . . heretofore imposed pursuant to [section 5(2)(f) of the I.C. Act]" means the "New Orleans conditions" (as clarified in *Southern Control II*), and that "those [provisions] established pursuant to section 565 of Title 45 [section 405 of the Amtrak Act]" means the Appendix C–1 conditions. Accepting this interpretation of the relevant statute, the bulk of petitioners' challenges to the ICC's decision in this case can be disposed of rather succinctly.

[3–6] As so interpreted, the plain language of 49 U.S.C. § 11347 requires that the ICC, in formulating a new set of employee protective conditions, combine those benefits provided under both the "New Orleans conditions" (as clarified in *Southern Control II*) and the Appendix C–1 conditions. Obviously, where conflicting benefits are provided under each of the two sets, the ICC is to select the more beneficial of the two for inclusion in the new set. Accordingly, the imposition of any employee protective provision which can be traced directly to either the "New Orleans conditions" (as clarified in *Southern Control II*) or the Appendix C–1 conditions clearly should be unobjectionable as embodying the minimum degree of protection contemplated by 49 U.S.C. § 11347. Such provisions include: the 90 day advance notice requirement (Art. I, § 4(a)), the requirement of an implementation agreement as a precondition to the initiation of any action directed toward the consummation of a proposed transaction (Art. I, § 4(b)), and the binding arbitration requirements (Art. I, § 11), all of which are drawn from related provisions contained in the "New Orleans conditions" (as clarified

tain some sort of "job freeze" provisions as well. Because the ICC's statement was made in refuting that argument, it seems clear that the "policy" spoken of refers to a compensation based approach to labor protection rather than to a job freeze approach, and does not refer to the particular elements comprising the compensation based approach. Furthermore, the ICC's opinion in this case, *New York Dock Railway*, *supra* note 1, at 16 n. 13, indicates that this was the meaning its prior statement in *Mo-Pac Merger* was intended to convey

in *Southern Control II*);[13] and the extension of the protective period to six years (Art. I, § 1(d)) together with the express allocation of the burden of proof between the parties (Art. I, § 11(c)) both of which are drawn directly from identical provisions contained in the Appendix C–1 conditions.[14]

[7] Before next proceeding to discuss petitioners' remaining challenges to other provisions contained in the "New York Dock conditions," we shall treat briefly their arguments that all provisions contained in the "New York Dock conditions" that are not applicable to the present transaction should be stricken from the ICC's decision. Petitioners contend that because the present transaction is purely local in nature, certain provisions contained in the "New York Dock conditions" (*e. g.*, the provisions requiring employer reimbursement for the moving expenses and losses on sales of homes incurred by employees as a result of the transaction) are irrelevant, and consequently should not have been imposed. Although petitioners' premise may or may not be correct, we do not agree with their conclusion. First, if as claimed, these provisions have no application to the present transaction, they cannot result in any adverse consequences to NYD or BEDT. For, as surplusage, these parties have no grounds for complaint about their inclusion. Second, the ICC explicitly recognized that in selecting this case as a vehicle for the formulation of a new set of generally applicable protective conditions, certain provisions of necessity would be included that would have no particular relevance to the fact situation presented by the NYD/BEDT transaction.[15] Finally, as counsel for RLEA noted at oral argument, the harm suffered by petitioners as a result of being subject to seemingly irrelevant provisions is far outweighed by the harm that would be suffered by affected employees if these provisions were to be deleted and the events which they are designed to protect against were, by some presently unexpected circumstance, actually to occur.

[8] The definitional provisions contained in the "New York Dock conditions" remain to be discussed. Petitioners' objections to the ICC's definition of the term "transaction" are without merit.[16] Although this definition has no precise ancestor in either the "New Orleans conditions" (as clarified in *Southern Control II*) or in the Appendix C–1 conditions, it is clear from the definition itself, as well as from the ICC's expressed intention in formulating this definition, that the goal which the ICC had in mind was to encompass in its definition of "transaction" the same situations that were within the parallel term "coordination" employed in the admitted blueprint for all current employee protective packages, the WJPA. We do not believe that this goal is beyond the statutory authority conferred on the ICC in formulating employee protective conditions pursuant to 49 U.S.C. § 11347. Nor do we believe that the ICC's attempt to achieve this goal strays so far from the mark that the term "transaction" needs any redefinition by us.

Petitioners' objections to the ICC's rephrasing of the prohibition against duplication or pyramiding of benefits, an essential element of the original Appendix C–1 conditions, do, however, appear to raise some serious difficulties. In the ALJ's Initial Decision in this case, the provision from Appendix C–1 that prohibits duplication or

13. As previously noted, the ICC, in *Southern Control II*, clarified its intention that the "New Orleans conditions" contain all the substantive protections afforded by the WJPA. Thus, the 90 day advance notice requirement can be traced through the "New Orleans conditions" directly to § 4 of the WJPA, the requirement of an implementation agreement to language in § 5 of the WJPA and language in the ICC's opinion in *Southern Control II* (see note 2, *supra*); and the binding arbitration requirements to §§ 5 and 13 of the WJPA.

14. The six year protective period is drawn directly from Art. I, § 1(d) of Appendix C–1 and the burden of proof allocation is drawn directly from Art. I, § 11(c) of Appendix C–1.

15. *See* note 2, *supra*.

16. Article I, § 1(b) of the New York Dock conditions defines the term "transaction" as "any action taken pursuant to authorization by the Commission with respect to which these provisions have been imposed."

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pyramiding of benefits was adopted verbatim.[17] Upon its review of the ALJ's decision, the ICC, after analyzing the wording, history and subsequent interpretations of this provision, concluded that a rephrasing was necessary. Accordingly, in the ICC's final decision, the following language is intended to carry forward the original intent of the prohibition against duplication or pyramiding of benefits first contained in the Appendix C–1 conditions:

> 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 employee is entitled to protection under the arrangement which he so elects, he may then be entitled to protection under the other arrangement for the remainder, if any, of this protective period under that arrangement.[18]

The ICC went on to explain that

> Both RLEA and BLE express concern over the interpretation of Article I, section 3 as it is now written [*i. e.*, as a verbatim copy of Art. I, § 3 of Appendix C–1]. We agree that a fair and equitable arrangement usually should not require a complete forfeiture of other existing labor protective conditions. Because the section as now written has been interpreted in such a manner, we feel it is necessary to rephrase the condition so as to preclude the possibility of such a reading. Our study of the provision . . . indicates that it preserves existing protections yet with the required prohibitions against duplication of benefits (see the first proviso) and against pyramiding (see the latter portion of the final proviso). We will adopt the proposed provision as we feel it is an appropriate clarification of the intent of [the original provision prohibiting pyramiding and duplication of benefits contained in Appendix C–1].[19]

We have no doubt that the language adopted by the ICC preserves intact the original intent underlying Appendix C–1's prohibition against duplication of benefits. Surely the plain meaning of the first proviso is that an employee who is covered by more than one set of protective conditions cannot receive the same type of benefit under each plan at the same time (*e. g.*, an employee covered by wage protective provisions contained in a collective bargaining agreement, and also covered by the wage protective provisions contained in the "New York Dock conditions," could not receive two compensatory payments for lost wages in the same period, but would have to choose between the compensatory payment provided under one plan and the compensatory payment provided under the other).

17. This provision was contained in Appendix C–1 as Art. I, § 3, and read as follows:

> 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 there shall be no duplication or pyramiding of benefits to any employees, and, 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.

18. *New York Dock Railway*, *supra* note 1, Appendix III at 1–2.

19. *Id.* at 21–22.

The language employed by the ICC in the first proviso appears both to capture the concept of duplication of benefits and to prohibit it effectively.

Unfortunately, the language employed by the ICC in the final proviso's latter portion, which is intended to carry forward the prohibition against pyramiding of benefits, is capable of several interpretations, not all of which we believe to be consistent with the intent underlying the original prohibition against pyramiding of benefits contained in Appendix C–1. At this point, therefore, it may be helpful to survey the history of this Appendix C–1 provision and to examine subsequent interpretations of its language in an attempt to discover the ICC's purpose in rephrasing this prohibition.

In its original form as part of Article I, § 3 of Appendix C–1, this provision rather tersely stated that "there shall be no duplication or pyramiding of benefits to any employee." Not until litigation commenced over the sufficiency of the Appendix C–1 conditions was an explanation of the purposes and intended effects of these prohibitions offered. In that litigation, *Congress of Railway Unions v. Hodgson*, 326 F.Supp. 68 (D.D.C.1971), Secretary of Labor Hodgson submitted an affidavit detailing his intentions in certifying the Appendix C–1 conditions. The following portion of that affidavit relates to the provisions prohibiting duplication or pyramiding of benefits.

> Plaintiffs raise a question concerning the proviso to section 3, alleging it would deprive employees of benefits governed by other protective agreements.
>
> On the contrary section 3 specifically preserves the rights of an employee under other protective arrangements, although it does prohibit the pyramiding and duplication of benefits. The proviso simply recognizes that there may be certain obligations related to a particular benefit which an employee may not ignore if he chooses to take advantage of that benefit as opposed to another contained in a different protective agreement. Thus, each benefit carries with it the obligations which accompany that benefit. No other requirement could be deemed "fair and equitable."

As is apparent, Secretary Hodgson's explanation does little to clarify the types of situations that the prohibition against pyramiding of benefits is intended to encompass.

The most definitive pronouncement on the meaning of the prohibition against duplication or pyramiding of benefits is not contained in any agency communication but in an arbitration award handed down by a three-man split arbitration panel.[28] The so-called "Weston award," named after the neutral swing member of the arbitration panel, placed the following interpretation on the prohibitions against duplication or pyramiding of benefits contained in Appendix C–1:

> 1. The provisions of Article I Section 3 of Appendix C–1 require an employe [sic] who is covered by [the set of employee protective conditions contained in a collective bargaining agreement involved in the case], and who is affected by the discontinuance of intercity rail passenger service to elect either all of the benefits and obligations of Appendix C–1 or all of the benefits and obligations of [the employee protective conditions contained in the collective bargaining agreement].

Thus, the "Weston award" interprets the prohibition against duplication or pyramiding of benefits contained in Appendix C–1 to require an employee to elect an all or nothing choice: an employee covered by two sets of employee protective conditions must choose to accept all of one set or all of the other set, and, in so choosing, is precluded from ever receiving any of the benefits contained in the set not chosen.

The third member of the arbitration panel found this interpretation of the prohibi-

28. The arbitration proceeding was instituted to resolve a dispute between Penn Central Transportation Co. and the Brotherhood of Railway Airline and Steamship Clerks. A copy of the arbitration panel's decisions and award is attached as Exhibit [illegible] to the Brief for Petitioners NYD and BEDT

tions against duplication or pyramiding of benefits to be wholly unsupported by either the language of Appendix C–1 or the expressed intent of Secretary Hodgson, and detailed his objections to the award in a "vigorous" dissent. The basic position advanced in this dissent, and amply supported by citations to testimony given by Secretary Hodgson before Congress, is that the prohibitions against duplication or pyramiding of benefits were not intended to supersede the provisions of other existing employee protective arrangements that might be involved in particular cases.[21]

We think it a fair characterization that the ICC's principal purpose in rephrasing the prohibition against pyramiding of benefits was to circumvent the unnecessarily harsh "all or nothing" interpretation of that prohibition contained in the "Weston award," and that the ICC's position on this issue basically parallels the approach taken by the dissenting member of the arbitration panel. However, in its rephrasing the ICC uses language that is interpretable as completely nullifying any real substance in the prohibition against pyramiding.

The common understanding of the term "pyramiding" calls to mind a process in which things are stacked or piled, one on top of the other. We have not uncovered, nor has the ICC brought to our attention, any evidence indicating that the term "pyramiding," as employed in Appendix C–1, is intended to convey a meaning different from this one suggested by common understanding.[22] Nevertheless, language in the

21. The dissenting member's opinion reproduces the following portions of Secretary Hodgson's testimony given on April 28, 1971 before the U. S. House of Representatives Committee on Interstate and Foreign Commerce, Subcommittee on Transportation and Aeronautics:

> Mr. M[illegible]. There are some carriers who have an arrangement worked out between management and labor in which they give protection for life. . . . [H]ow do you respect the arrangements that some of these carriers have made on the attritional basis that already are in existence? Do you recognize them or does your order supersede them?
>
> Secretary Hodgson. It does not supersede them, these arrangements and agreements remain in effect.
>
> Mr. Dingell. . . . On Section 3, Article I, the conditions you certified included language which said as follows: "Provided further, that the benefits under this or any other arrangement shall be construed to include [the] conditions, responsibilities and obligations accompanying such benefits."
>
> Does this mean, for example, that your certified arrangements supersedes [sic] in any fashion existing protective agreements?
>
> Secretary Hodgson. This does not supersede either protective agreements or collective bargaining agreements of any kind.

While Secretary Hodgson's testimony clearly indicates that the Appendix C–1 conditions were not intended to supersede other existing employee protective arrangements, we think this proves no more than the correct interpretation of the first sentence of Art. I, § 3 of Appendix C–1 (*see* footnote 17, *supra*). However, a fair reading of the prohibitions against duplication or pyramiding of benefits qualifies this "no superseding of benefits" language. That is to say, choosing to receive the benefits provided under Appendix C–1 will not preclude an employee from receiving benefits provided under other existing employee protective arrangements, except to the extent that receiving such other benefits would run afoul of the prohibitions against duplication or pyramiding of benefits.

22. The following passage appears in the opinion of the dissenting member in the "Weston award" proceedings, which purports to explain both the concepts of duplication and of pyramiding of benefits:

> [A]n employee covered by the [collective bargaining] agreement who chooses the "moving expense" protection of Appendix C–1 must accept the obligations as well as the benefits of the specific provision in Appendix C–1 which provides that protection—he cannot have both the "moving expense" allowance provided in Appendix C–1 and the "moving expense" allowance provided in the [collective bargaining] Agreement as that would be duplication; nor may he select the more attractive benefit of a specific provision of one formula of protection and the lesser obligations contained in a similar provision in another formula of protection as that would be pyramiding. "*Each* benefit carries with it the obligations which accompany *that* benefit." (emphasis in original).

Although we are in total agreement with this interpretation of the prohibition against the duplication of benefits, we must disagree with the interpretation of the prohibition against the pyramiding of benefits. The dissenting member cites no source material compelling his in-

final proviso, which is intended to embody the prohibition against pyramiding, could be interpreted here in such a manner as to render the prohibition meaningless.[28]

We do not believe that the ICC intended its rephrasing of the prohibition against pyramiding to strip that provision of all its substance, and so we advance what we believe to be encompassed by the concept of pyramiding, and then illustrate by example what we believe is and what we believe is not prohibited by the language of the final proviso. First, we believe that the concept of pyramiding refers to a situation where the same type or kind of benefit is made available to an employee under two or more employee protective arrangements, and those benefits differ only as to amount and duration. To use a variation of the example given in the BLE illustration reproduced in note 28, *supra*, let us assume that such benefits are wage protective provisions, one guaranteeing an employee 75% of

terpretation of the concept of pyramiding. Moreover, the final quoted sentence in the above passage, which the dissenting member excerpted from Secretary Hodgson's affidavit in the *Congress of Railway Unions v. Hodgson* litigation, *see* p. 97 *supra*, was not, in its original context, clearly intended as an interpretation of the prohibition against pyramiding of benefits. More likely, it was merely a paraphrasing of the final proviso of Art. I, § 3 of Appendix C-1: "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." *See* note 17 *supra*. From all appearances, the language in this final proviso was intended to operate independently of both the language in the first proviso (concerning the prohibitions against both duplication and pyramiding of benefits) and the language in the section's introductory clause (preserving existing employee benefits under other arrangements). Because the practice of linking the greater benefits of one provision to the lesser obligations of another provision already appears to be clearly prohibited by the final proviso of Art. I, § 3 of Appendix C-1, we decline to follow the dissenting member's opinion which ascribes this function to the prohibition against pyramiding of benefits. Although our interpretation of the prohibition against pyramiding of benefits is not compelled by any source material, at least it is consistent with the original language of Art. I, § 3 of Appendix C-1 and ensures that each of its elements retains substantive effect. *See* text pp. 100–101 *infra*.

1. It would appear that intervenor-respondent Brotherhood of Locomotive Engineers ("BLE") approaches such an interpretation of the language that the ICC employed to express the prohibition against pyramiding of benefits, as the following excerpt from its brief demonstrates:

> For example, a forty year old locomotive engineer employed on the Burlington Northern at the time of its merger on March 1, 1971, could have lifetime employment and earnings under the attrition-type protection imposed in that case. If the Burlington Northern merged with the St. Louis-San Francisco Railway, as is proposed, the Commission would now impose the so-called *New York Dock* conditions before the Court. Under those conditions, the employee would only have six years protection. However, since 1971, the engineer's earnings have increased so that his guaranteed earnings may no longer be indicative of his earning capacity. Naturally, it would be appropriate and to his benefit to have the greater test period earnings used to determine any wage loss that he may incur from the second transaction or merger. Under petitioners' theory, the employee should be placed in a no-win situation. If he doesn't select the latest imposed conditions, he suffers unreimburseable losses. If he does, he suddenly finds himself at age 54 without any protection, including the loss of privileges and fringe benefits.

Brief for Intervenor-Respondent BLE at 20–21.

While this example stops just short of stating precisely what benefits the hypothetical engineer could receive consistent with the rephrased prohibitions against duplication or pyramiding of benefits, its direction seems clear: the engineer should not be limited to either the higher six year wage compensation provisions or the lower lifetime wage compensation provisions, but should be entitled to either some hybrid form of wage protection combining the best aspects of both provisions (an interpretation we believe is clearly incorrect in light of the final proviso of Art. I, § 3 of Appendix C-1, *see* notes 17 and 22 *supra*, and effectively prohibited by the identical language contained in the "New York Dock conditions," *see* p. 96 *supra*) or, at minimum, entitled to elect coverage under the higher wage protective provisions for six years, and then to resume coverage under the lower lifetime wage protective provisions (an interpretation we believe would have been clearly incorrect under the language expressing the prohibition against pyramiding of benefits in Art. I, § 3 of Appendix C-1, but which is arguably consistent with the ICC's rephrasing of the prohibition against pyramiding of benefits contained in the "New York Dock conditions," *see* text p. 96 *supra*).

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his most recent annual earnings for life, the other guaranteeing an employee just for a six year period 100% of his most recent annual earnings, and also providing for subsequent indexing to keep current with cost of living and wage increases. We believe that an employee would be engaging in a prohibited pyramiding of benefits if he elected coverage under the employee protective arrangement containing the higher guaranteed wage for a six year period, and then, at the expiration of that wage protective period, elected to receive the lower guaranteed wage for the remainder of his life.

[9] We do not, however, subscribe to the view expressed in the "Weston award" that the concept of pyramiding has any application to a situation where different types or kinds of benefits are made available to an employee under two or more employee protective arrangements. As an illustration, let us assume the existence of two identical employee protective arrangements, except that one arrangement contains a provision guaranteeing an employee retraining rights for a six year period, while the other arrangement contains a provision guaranteeing him a right of priority in rehiring until he reaches normal retirement age. We do not believe that once an employee elects to be covered by the arrangement containing the retraining rights provision, the prohibition on pyramiding of benefits should preclude him from electing to be covered by the rehiring priority provision in the other arrangement at the same time. Furthermore, we take "the remainder, if any" language in the final proviso to mean that if all benefits in the retraining rights package originally elected by the employee expired at the end of a six year period, and the employee by that time had not yet reached normal retirement age, the prohibition against pyramiding of benefits would not prevent him from continuing to be covered by the rehiring priority provision for the remainder of its term, notwithstanding the fact that the principal benefit package that he originally had elected has expired.[24]

[10] To summarize briefly, we believe that the ICC, in formulating the final proviso dealing with the prohibition against pyramiding of benefits, intended its meaning to be substantially as follows: when component benefits are provided under different sets of employee protective conditions, and those benefits differ only as to duration and amount, and not as to type or kind, then an employee, in electing coverage under one set of employee protective conditions, receives such component benefits to the exclusion of similar component benefits provided under the other sets; however, when different sets of employee protective conditions contain component benefits that differ as to type or kind between the sets, then an employee, in electing coverage under one

24. The ICC, both in its brief and at oral argument, placed great stress on the fact that an employee, upon the expiration of the benefits provided under the plan originally selected, would be entitled to the benefits contained in the plan not selected only "for the remainder, if any, of (the) protective period under that arrangement." Apparently the ICC believes that this limiting phrase captured the essence of the original prohibition against pyramiding of benefits contained in Appendix C-1. Certainly, however, the two cannot be equated. The very concept of pyramiding has no relevance to a situation where benefits provided under different plans expire at the same time. Thus, in those situations where there are no "remainder benefits" in existence when the benefits provided under the originally selected plan expire, pyramiding of benefits is prevented, not by any prohibition against pyramiding, but as there are no "benefits" to pyramid, by force of logic.

Our interpretation of the ICC's rephrasing of the prohibition against pyramiding is not an attempt to substitute our view for that of the agency. As previously developed, an employee could not receive the same type of benefit under different plans at the same time, for that would be prohibited duplication. *See* note 22 *supra*. Further, an employee could not combine the greater benefits of one provision with the lesser obligations of another, for that would be prohibited by the final proviso of Art. I, § 3 of Appendix C-1, language that has been included verbatim in the "New York Dock conditions." *See* note 1 and text p. 98, *supra*. Therefore, since it seems apparent that the ICC wished to soften the harsh effect of the Weston interpretation without depriving the prohibition against pyramiding of all content, we believe our interpretation of the Commission's language to be the intended one.

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set of employee protective conditions, should not be rendered ineligible to receive benefits contained in the other sets that have no counterpart in the set he elected. This construction of the final proviso would seem to retain genuine substance in the prohibition against pyramiding of benefits, while at the same time circumventing the most objectionable aspects of the "Weston award."

In conclusion, we are unable to agree with petitioners that the ICC's imposition of the "New York Dock conditions" is not supported fully by a fair reading of the statutory authority contained in 49 U.S.C. § 11347. We are not unmindful of the fact that the ICC's imposition of these labor protective conditions may place substantial hurdles in the path of rail carrier management seeking to consummate in a smooth and rapid manner transactions covered by 49 U.S.C. §§ 11343–11346. If that proves to be the case, however, the solution would appear to lie in an appeal to Congress, rather than to the courts.

The petition for review is denied, and the ICC's decision of February 9, 1979 is affirmed.

Domingo BASTIDAS, Petitioner,

v.

IMMIGRATION AND NATURALIZATION SERVICE, Respondent.

No. 78-2871.

United States Court of Appeals, Third Circuit.

Argued Sept. 7, 1979.

Decided Oct. 30, 1979.

Alien filed petition seeking review of determination by special inquiry officer of Immigration and Naturalization Service, subsequently approved by the Board of Immigration Appeals, that the alien was statutorily ineligible for suspension of deportation. The Court of Appeals, James Hunter, III, Circuit Judge, held that where the special inquiry officer gave insufficient consideration to noneconomic hardship which would result from the alien's deportation, and the Board of Immigration Appeals relied on mistaken understanding of applicable case law in approving determination of the special inquiry officer, remand for further proceedings was required.

Order denying suspension of deportation vacated and case remanded to Board of Immigration Appeals.

1. Aliens ⇐ 44

Where special inquiry officer's determination of statutory ineligibility for suspension of deportation was made in course of hearing conducted pursuant or statute governing proceedings to determine deportability, it was reviewable by Court of Appeals as final order of deportation under statute governing judicial review of orders of deportation. Immigration and Nationality Act, §§ 106, 242(b), 8 U.S.C.A. §§ 1105a, 1252(b).

2. Aliens ⇐ 53.16(2), 54.3(3)

Decision whether to suspend deportation of individual who satisfies statutory requirements is discretionary and can only be overturned for abuse of discretion; however, the determination whether individual has satisfied the statutory requirements in first place must be supported by reasonable, substantial, and probative evidence on record considered as whole, and under such standard of review, courts may not determine substantiality of evidence by looking solely to evidence which supports finding, but rather must take into account whatever in record fairly detracts from its weight. Immigration and Nationality Act, §§ 106(a), (a)(4), 244(a)(1), 8 U.S.C.A. §§ 1105a(a), (a)(4), 1254(a)(1).

ARBITRATION COMMITTEE

In the Matter of the Arbitration Between:	
TRANSPORTATION-COMMUNICATIONS INTERNATIONAL UNION (BRAC), Organization,	OPINION AND AWARD Pursuant to Article I, Section 11 of the New York Dock Conditions
and	
MISSOURI PACIFIC RAILROAD COMPANY and UNION PACIFIC RAILROAD COMPANY, Carriers.	Case No. 6 Award No. 1

Hearing Date: November 11, 1987
Hearing Location: Sacramento, California
Date of Award: December 18, 1987

MEMBERS OF THE COMMITTEE

Employees' Member: F. T. Lynch
Carriers' Member: L. A. Lambert
Neutral Member: John B. LaRocco

QUESTIONS AT ISSUE

Is the coordination of the MP-UP Centralized Crew Dispatching Centers at Omaha, Nebraska, a "transaction" as that term is used in the New York Dock Conditions?

If the answer to the above question is in the affirmative, shall Carrier be required to serve proper notice and enter into the necessary implementing agreement as provided in New York Dock?

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OPINION OF THE COMMITTEE

I. INTRODUCTION

In September, 1982, the Interstate Commerce Commission (ICC) approved the merger and consolidation of the Union Pacific Railroad (UP), the Missouri Pacific Railroad (MP) and the Western Pacific Railroad (WP). [ICC Finance Docket No. 30000.] To compensate and protect employees affected by the merger, the ICC imposed the employee merger protection conditions set forth in New York Dock Railway - Control - Brooklyn Eastern District Terminal, 360 I.C.C. 60, 84-90 (1979); affirmed, New York Dock Railway v. United States, 609 F.2d 83 (2nd Cir. 1979) ("New York Dock Conditions") on the UP, MP and WP pursuant to the relevant enabling statute. 49 U.S.C. §§ 11343, 11347.

II. BACKGROUND AND SUMMARY OF THE FACTS

Subsequent to 1982, the merged Carriers began to consolidate and centralize crew calling and timekeeping (for train, engine and yard employees) functions. Pursuant to implementing agreements, the Carriers centralized crew calling and timekeeping work into three crew management centers (CMC). The Salt Lake City Center calls UP and WP crews. Prior to 1986, WP crew management duties were performed at Stockton, California. When the work was transferred to Salt Lake City, affected employees were accorded New York Dock protective benefits as set forth in a June 29, 1983

Memorandum of Agreement.[1] The CMC located at Spring, Texas (near Houston) performs only MP crew calling and timekeeping services. As a result of Implementing Agreement No. 29 dated July 16, 1986 which was negotiated under the auspices of Section 4 of the New York Dock Conditions, the Carriers transferred and consolidated the UP's Omaha Crew Management System (CMS) with MP crew calling and timekeeping functions at Kansas City.[2] Thus, the third CMC located in Kansas City performs both UP and MP crew calling and timekeeping work.

The parties stipulated to a two paragraph summary of the pertinent facts. The stipulated factual summary, which also explains the nature of this controversy, states:

> "The UP and MP Railroads maintain three (3) Centralized Crew Dispatching Centers which are responsible for the calling and timekeeping functions associated with the train and engine employes within their respective jurisdictions. These Centers utilize clerical employes for these functions, two of which are governed by the hours of service and working conditions of the MP-BRAC Agreement effective May 1, 1973, with employes headquartered at Houston, Texas and Kansas City, Missouri with the final one headquartered at Salt Lake City, Utah with the employees governed by the UP-BRAC Agreement effective May 16, 1981.

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[1]The June 29, 1983 Agreement can best be described as a Master Merger Agreement since it provided for the UP to completely assimilate WP workers. The WP became a new seniority zone (Western District Zone No. 209) of the UP. The names of former WP workers were dovetailed into the UP Master Seniority Roster and were thereafter covered by the UP May 16, 1981 Working Agreement.

[2]All sections pertinent to this case appear in Article I of the New York Dock Conditions. Thus, the Committee will only cite the particular section number.

* * * *

"The Carrier intends to consolidate and coordinate the three Centers into one functional office in Omaha, Nebraska with all of its clerical employes governed under the UP-BRAC Agreement. In that respect, the parties are in dispute as to what agreements are applicable for the transfer of work and employes from these three Centers to Omaha, Nebraska. The Carrier contends the transfer of the MP offices will constitute a transaction under the New York Dock Conditions and that the transfer of the UP office at Salt Lake City would fall under the UP-BRAC February 7, 1965 Agreement, as amended. The Organization disagrees, contending that the consolidation of all three offices is a transaction and must be governed by the New York Dock Conditions." [Emphasis in text.]

III. THE POSITIONS OF THE PARTIES

A. The Organization's Position

In summary, the Organization argues that creation of a centralized CMC at Omaha is a single, merger related consolidation within the definition of a New York Dock transaction.

Since the UP does not currently maintain a CMS at Omaha, all the crew dispatching functions from both the UP and MP will be flowing into Omaha. UP crew calling and timekeeping duties will be commingled with similar MP functions. UP employees transferring from Salt Lake City to Omaha will be performing MP crew dispatching duties. The consolidation of three centers into one new CMS office which will call crews across the entire merged system is a single transaction undertaken pursuant to the ICC's approval in Finance Docket 30000. The CMS unification could not be executed without authority from the ICC. The consolidation of crew calling centers could hardly be segregated so that, as the

Carriers unreasonably assert, the transfer of work and employees from Salt Lake City to Omaha falls solely within the purview of the February 7, 1965 Job Stabilization Agreement (as amended). The consolidation includes all involved employees. The coordination cannot be a transaction for only a portion of the affected workers. As part of the consolidation, all employees, regardless of whether they currently work in Salt Lake City, Spring, or Kansas City, will be governed by one working agreement and will hold seniority on one roster. Combining seniority rosters constitutes a New York Dock transaction. BLE v. NYD RR, NYD § 4 Arb. (Quinn; 12/15/80). If the Carriers are allowed to split the transaction, they would denigrate the protection afforded by the New York Dock Conditions.

When it promulgated the definition of a transaction in Section 2(a) of the New York Dock Conditions, the ICC intended for the term to broadly embody any action to merge, coordinate, consolidate or unify separate railroad facilities or functions which is the definition of a "coordination" in the 1936 Washington Job Protection Agreement (WJPA). The establishment of one CMC to perform work presently performed at three different points across two railroads is clearly a coordination and thus also a transaction.

Contrary to the Carriers' argument, the UP could not transfer the Salt Lake City CMS to Omaha under the February 7, 1965 Agreement and then later transfer and consolidate crew calling work from Spring and Kansas City into Omaha. Under such a

scenario, the shifting of crew dispatching functions from Salt Lake City to Omaha would obviously be accomplished in anticipation of moving the MP crew calling work into Omaha. Section 10 of the New York Dock Conditions protects employees affected by a force rearrangement undertaken in anticipation of a transaction.

Undoubtedly, the CMS consolidation will cause the displacement and dismissal of employees. The purpose of a negotiated or arbitrated implementing agreement is to provide for "...the selection of forces from all employees involved..." Thus, both questions at issue should be answered affirmatively.

B. <u>The Carriers' Position</u>

The Carriers contend that the transfer of crew dispatching and timekeeping duties from Salt Lake City to Omaha is solely an intra-UP transfer. The Organization seeks to expand the New York Dock transaction to unjustly enrich the Salt Lake City employees even though, subsequent to the consolidation, they will continue to be governed by the same UP Working Agreement. If the Carriers had decided to transfer crew calling and timekeeping work from Kansas City into Salt Lake City, current UP employees at the Salt Lake City CMC would not obtain New York Dock benefits. Therefore, the UP's contractual right to transfer the CMC from Salt Lake City to Omaha is solely grounded in the amended February 7, 1965 Job Stabilization Agreement.

Since both cities are former UP points, the intended transfer of crew dispatching work from Salt Lake City to Omaha is

not a merger related transaction. The transfer may be implemented wholly independent of the ICC's authority. Before the New York Dock Conditions are applied to a particular work transfer or consolidation, the Organization must demonstrate a causal nexus between the merger and the alleged transaction. UTU v. MC/PTC, NYD § 11 Arb. (O'Brien; 8/10/84). Unlike the transfer of work from the two MP centers into Omaha, the movement of work from Salt Lake City to Omaha is completely unconnected to the merger. Not every post merger change is a New York Dock transaction. ATDA v. MP, NYD § 11 Arb. (Zumas; 7/31/81).

The Carriers could have simply moved the Salt Lake City CMS to Omaha and, at a later date, consolidated the two MP centers into the Omaha office. While the latter action would be a New York Dock transaction, the initial transfer of work, separately undertaken, would be effectuated under an Implementing Agreement negotiated in accord with the February 7, 1965 Agreement. This very same situation occurred with the consolidation of PBX offices. First, in Job Stabilization Implementing Agreement W-22, dated October 28, 1985, the UP transferred eight Salt Lake City PBX clerical positions to Omaha. Next, the parties negotiated Implementing Agreement No. 25, in accord with Section 4 of the New York Dock Conditions, to cover the transfer and consolidation of MP PBX clerical functions at St. Louis with the UP Communication Department at Omaha. There is no difference between the PBX consolidation and the proposed CMC consolidation.

Since the 1982 merger, the Carriers and the Organization have executed more than 30 New York Dock Implementing Agreements. Nonetheless, they have also continued to negotiate Implementing Agreements under the February 7, 1965 Agreement. Thus, the parties recognize that not all operational changes are due to the merger.

IV. DISCUSSION

In Section 1(a) of the New York Dock Conditions, the ICC defined a transaction as "...any action taken pursuant to authorizations of this Commission on which these provisions have been imposed." The issue presented to this Committee is whether the Carriers' proposed consolidation of crew dispatching and timekeeping functions at a new Omaha office is completely or only partially a Section 1(a) transaction. Put differently, we must decide if the Carriers may segregate the CMS consolidation (so that one segment is governed by the New York Dock Conditions while the other segment is covered by the February 7, 1965 Agreement) or if the Carriers' proposed activity is a single, integrated transaction within the meaning of Section 1(a).

When it promulgated the New York Dock Conditions, the ICC adopted an expansive definition for the term "transaction." New York Dock Railway - Control - Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979). The ICC emphasized that the term incorporated not only the merger itself but also "...any future related action taken pursuant to our approval (i.e., consolidation

of rosters as a result of the control)..." 360 I.C.C. 60, 75. In addition, the Commission wrote:

> "... Since article I, section 4 here is intended to incorporate the full protections of sections 4 and 5 of WJPA, the term "transaction" should be redefined to set the notice, negotiation, and arbitration provisions in motion in the same situations as does the term "coordination." We also note that the broad definition is necessary in the types of transactions for which approval is required under 49 U.S.C. 11343 et seq., because the event actually affecting the employees might occur at a later date than the initial transaction, yet still pursuant to our approval (consolidation of employee rosters, et cetera)." 360 I.C.C. 60, 70.

The Second Circuit affirmed that the ICC intended "...to encompass in its definition of 'transaction' the same situations that were within the parallel term 'coordination' employed in the admitted blueprint for all current employee protective packages, the WJPA." New York Dock Railway v. United States, 609 F.2d 83, 95 (1979). Section 2(a) of the WJPA provides:

> "The term 'coordination' as used herein means joint action by two or more carriers whereby they unify, consolidate, merge or pool in whole or in part their separate railroad facilities or any of the operations or services previously performed by them through such separate facilities."

The definition of a New York Dock transaction is so broad that any coordination within the meaning of WJPA Section 2(a) is a subset of Section 1(a) of the New York Dock Conditions. Any manipulation of inter-Carrier operations, facilities or services which is a coordination under the WJPA is absolutely and automatically a transaction under the New York Dock Conditions. In summary, a New York Dock transaction is any activity which is a coordination

under the WJPA or any other action taken pursuant to the ICC's authorization.

In this case, the Carriers intend to establish a single CMS to administer all crew calling and timekeeping functions across the entire merged system. At the onset, we note that the Carrier does not presently maintain a CMS at Omaha. Thus, the proposed activity involves not merely the transfer of work but also the establishment of a new CMS office. Crew calling and timekeeping work will be flowing into Omaha from both UP and MP points. As a direct consequence of the proposed consolidation, MP CMS work will be permanently intermixed with UP crew dispatching work at the newly established Omaha office. The Omaha office will not merely supplant the Salt Lake City center. Rather, the consolidation is structured so that UP and MP crew calling work will become indistinguishable and interchangeable at a new, central location. In essence, the advent of the new office will convert previously separate CMS work into a fungible systemwide crew dispatching and timekeeping function.

Aside from Kansas City, crew dispatching and timekeeping work has been performed separately on the UP and MP. Once the consolidation is implemented, the complete commingling of crew management functions renders it impossible to treat Salt Lake City workers differently from the employees involved in the portion of the consolidation which both parties concur is a New York Dock transaction. If the UP was only transferring the Salt Lake City CMC to Omaha, the UP crew calling functions would remain

readily identifiable and separate from similar work on the MP. However, since the Carrier is creating a new facility to perform crew management services across the merged system and UP crew calling work will no longer be distinct from MP CMS functions, it is simply not feasible to sever the consolidation into two mutually exclusive segments. The ICC's approval of the UP, MP and WP merger was designed to induce the participating Carriers to achieve economies of scale by combining operations performed separately on each railroad. The ICC did not contemplate that a consolidation involving one or more of the merged railroads could be split into fragments to avoid application of the New York Dock Conditions.

The consolidation of work at Omaha is analogous to the unification of separate facilities on more than one railroad which is clearly a coordination under the WJPA. As we found at the onset of our discussion, a coordination is, by definition, a transaction within the meaning of Section 1(a) of the New York Dock Conditions. The WJPA defines a coordination as the unification "...in whole or in part..." of separate railroad facilities. The "whole" unification of CMS facilities constitutes one coordination. The language in WJPA Section 2(a) militates against a finding that the Carriers may, at their discretion, carve a coordination into multiple parts.

Furthermore, the ICC, in New York Dock, twice referred to the combination of seniority rosters as an example of a necessary consequence of a Carrier action taken pursuant to a merger

approval. The Salt Lake City CMS workers, who transfer to Omaha, will be participating in a seniority roster consolidation with MP employees at the new CMS facility.

Thus, the ICC envisioned that the proposed consolidation herein would constitute a New York Dock transaction.

Pointing to a recent transfer and consolidation of PBX offices, the Carriers contend that the UP could initially transfer the Salt Lake City CMC to Omaha and then later consolidate the two remaining centers into the Omaha office. We disagree. Section 10 of the New York Dock Conditions prohibits the Carriers from doing indirectly that which they cannot do directly. The Carriers' CMS consolidation is a single, integrated transaction. The consolidation would not lose its characterization as a New York Dock transaction merely because the Carriers implement the consolidation in incremental steps. With regard to the PBX offices, the Carriers did not present sufficient evidence to show that the transfer of work, under Implementing Agreement W-22, and the subsequent consolidation, covered by Implementing Agreement No. 25, was equivalent to the complete integration of all crew calling work at a new, centralized facility. The Committee also notes that Article VIII, Section 2 of the W-22 Implementing Agreement provided that the Agreement "...will not be cited as a precedent in future situations."

The Committee emphasizes that its holding on the issues herein is narrow. We cannot foresee all the possible operational changes that the Carriers might accomplish in the future. These

matters should be handled on a case by case basis. As in the past, some intra-railroad actions, divorced from a concurrent or later New York Dock transaction, would fall solely within the ambit of the amended February 7, 1965 Agreement. Suffice to say, the proposed consolidation herein cannot be divided into a New York Dock transaction and an operational change under the February 7, 1965 Agreement.

Looking at the second question at issue, the Carriers' intent to implement a transaction triggers the notice, negotiation and, if necessary, arbitration procedures set forth in Section 4 of the New York Dock Conditions. Absent an agreement to the contrary, an Implementing Agreement must be in place before the Carriers may consummate the proposed CMS consolidation. The parties are free, of course, to mutually agree to extend the time limits set forth in Section 4 of the New York Dock Conditions.

AWARD AND ORDER

The Answer to the First Question at Issue is Yes.

The Answer to the Second Question at Issue is Yes.

Dated: December 18, 1987

F. T. Lynch
Employees' Member

L. A. Lambert
Carriers' Member

John B. LaRocco
Neutral Member

Surface Transportation Board (S.T.B.)
RIO GRANDE INDUSTRIES, INC., SPTC HOLDING, INC., AND
THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY
--CONTROL--SOUTHERN PACIFIC TRANSPORTATION COMPANY
(ARBITRATION REVIEW)

Decided: April 15, 1996

Service Date: April 29, 1996

SURFACE TRANSPORTATION BOARD [FN1] DECISION
Finance Docket No. 32000 (Sub-No. 11)

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

This proceeding involves an appeal of an arbitrator's decision determining an employee's displacement allowance under New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) (New York Dock). We will deny the appeal.

BACKGROUND

In New York Dock, the ICC adopted rules to implement its mandate under what was then 49 U.S.C. 11347 to provide protective benefits for employees affected by consolidations it approved. Under New York Dock, employees who are forced into lower paying jobs as a result of consolidations approved by this agency are entitled to a monthly "displacement allowance" to compensate them for diminished compensation. The length of the displacement allowance, up to 6 years, depends on the employee's length of service. The amount of the allowance depends on the employee's earnings before the displacement. The employee's earnings before displacement are determined if the adverse effect on an employee is due to a consolidation approved by that agency, as distinguished from general business conditions or efforts to cut costs that are not linked to a consolidation approved by that agency. This tenet has not been challenged here. SP agrees that McAvoy is entitled to a displacement allowance because her displacement from the crew caller position was a result of operational changes that were a part of the consolidation approved in Finance Docket No. 32000. [FN2] Both parties agree that McAvoy's displacement from her prior position as a corridor manager did not entitle her to protection under New York Dock, because that displacement was due to general, systemwide business conditions rather than operational changes that can be linked to the consolidation approved in Finance Docket No 32000 or any other ICC-approved transaction.

The parties differ, however, over the pay that should be included in McAvoy's test period. SP maintains that the test period should reflect only McAvoy's rate of pay for the 4 months when she was a crew caller. [FN3] TCU argues that the test period must reflect McAvoy's higher pay as a corridor manager for the initial 8 months of the test period when she occupied that position, as well as the lower pay in the subsequent 4 months when she was a crew caller. [FN4] TCU

took the dispute to arbitration under New York Dock. In an award dated October 2, 1995, an arbitrator, William E. Fredenberger, Jr., ruled in favor of McAvoy, holding that her test period compensation must reflect her salary as a corridor manager. The arbitrator relied on the direct language of Article I, section 5(a) of New York Dock, which, without qualification, provides for a 12-month test period based on "total compensation received" during "the last 12 months in which [the employee] performed services immediately preceding the date of his displacement as a result of the transaction." [FN5]

Fredenberger cited three arbitration decisions as precedent. [FN6] The lead decision is the Stallworth arbitration. There, employees who held management positions were displaced to non-management positions, and were then displaced or dismissed from their non-management positions by a transaction that was merger related. The carrier argued that test period wages could not include the higher, non-management compensation. The Stallworth panel held to the contrary, reasoning that: (1) the literal language of section 5(a) requires that all income during the 12-month period be considered; and (2) if the ICC had intended to preclude consideration of income from more than one job, the agency would have simply directed that wages at the time of severance be considered and there would have been no need to go back an entire year. The other two cited decisions involved the same factual pattern as the Stallworth arbitration, citing that decision. The Fletcher award added two additional arguments. First, the Fletcher panel held that, while the Stallworth precedent protected demoted employees at their higher pay prior to the demotion, the formula benefitted carriers vis-a-vis employees who receive a promotion during the 12-month period prior to their separation. Second, the panel found that the language of section 5(a) refers to "compensation," not rate of pay. [FN7]

By petition filed October 23, 1995, SP appealed the Fredenberger award. On December 13, 1995, TCU filed its reply. In its reply, TCU requests that McAvoy be awarded interest on the amounts alleged to have been wrongfully withheld from the date of the arbitrator's decision.

ARGUMENTS OF THE PARTIES

The parties dispute whether the award is reviewable under the deferential Lace Curtain standard of review. [FN8] SP argues that the award is reviewable because the arbitrator made a mistake in his interpretation of how test period earnings should be defined under section 5(a) of New York Dock. According to SP, this is an important legal issue involving the scope of benefits, not a factual issue that should be deferred to arbitrators under Lace Curtain. *3 TCU argues that Lace Curtain requires that the Board refuse to hear the merits of the appeal. TCU calls attention to the ICC's statement in Lace Curtain that the agency did not intend "to become a regular participant in the [arbitration] process as a reviewer of arbitration decisions" and asserts that this will happen if the Board reviews the Fredenberger award. SP's then claims that the award is contrary to the intent and purposes of New York Dock. First, SP argues that the ICC had a longstanding general principle that employees are not entitled to benefits under New York Dock unless there is a link between the transaction and the loss of earnings suffered by the employee. SP cites Atlantic Richfield Co and Anaconda Co.--Control--Butte Anaconda and Pacific Railroad Co. and Tooele Valley Railroad Company, Finance Docket No. 28490 (Sub-No.

1) (ICC served Mar. 2, 1988) at 8-9, subsequent decision printed at 5 I.C.C.2d 934, 948 (1989). SP also argues that the direct language of section 5(a) of New York Dock requires such a link. [FN9] SP argues that the required link between the New York Dock-protected transaction and the employee's loss would be severed if the employee's benefits were to reflect wages earned in a prior position, the displacement from which was not subject to New York Dock. According to SP, TCU's position would allow employees who were removed from a higher paying job for disciplinary reasons and subsequently displaced under New York Dock to be compensated for their misconduct by receiving an allowance reflecting their prior salary. SP also argues that TCU's position would encourage employees seeking New York Dock benefits to take "anticipatory employment actions," such as voluntarily resigning from a management position and taking a job soon to be eliminated under New York Dock in order to receive a dismissal allowance reflecting the higher compensation. SP asserts (p. 12) that "arbitrators have universally rejected the argument that an employee who voluntarily resigns from a non-agreement position is entitled to protective benefits. [FN10] SP attempts to distinguish the three precedents cited by Fredenberger (see note 6, above). SP seeks to distinguish the Stallworth arbitration by arguing that the prior displacements to non-management positions involved in that award were also covered by New York Dock (along with the subsequent displacements), unlike McAvoy's prior displacement from her managerial position. SP argues that, to the extent that the Eischen and Fletcher awards cannot be distinguished on their facts, they were in error.

TCU, by contrast, argues that the ICC had a policy of deferring to the consistent interpretations of arbitrators and that arbitrators have consistently upheld Fredenberger's interpretation of the test period. In support of its argument that the ICC had a policy of deferring to the consistent decisions of arbitrators, TCU cites the following language from American Train Dispatchers Association v. CSX Transportation, Inc., 9 I.C.C.2d 1127 (1993), aff'd American Train Dispatchers Ass'n v. I.C.C., 54 F.3d 842 (D.C.Cir.1995), Petition for cert. pending, No. 95-273 (American Train Dispatchers) (9 I.C.C.2d at 1133-4):

The WJPA [Washington Job Protection Agreement] "generally is conceded to be the blueprint for all subsequent job protection agreements." New York Dock Ry. v. United States, 609 F.2d 83, 86 (2d Cir.1979). We have noted that the Transportation Act of 1940, the source of present 11347, was, in effect, a Congressional endorsement of the WJPA. See Carmen, supra, 6 I.C.C.2d at 739. In any event, article I, s 5 of the New York Dock conditions was in turn taken without substantive change from the WJPA. Thus, we conclude that the WJPA arbitral awards do present persuasive precedent on which a New York Dock arbitration committee may rely.

To show that arbitrators have consistently upheld Fredenberger's interpretation of the test period, TCU relies on the three decisions cited by Fredenberger and the following three additional decisions.

The Rinaldo Decision. An arbitration panel (Thomas N. Rinaldo, neutral member) held that the test period of a displaced carman who had worked as a supervisor during an earlier part of his 12-month test period must reflect his higher compensation as a supervisor, not merely his compensation as a carman. In reaching this result, the panel interpreted the language of a negotiated implementing agreement similar to section 5(a) of New York Dock.

The Robertson Decision. In a 1964 arbitration decision interpreting language in the ICC's Oklahoma [FN11] conditions that was similar to section 5(a) of New York Dock, an arbitrator,

Francis J. Robertson, held that the test period earnings of a clerk displaced by abandonment of a car float operation must reflect his higher earnings in positions held prior to the one from which he was displaced. TCU cited the following language in Robertson's decision (TCU Exhibit C, pp. 4-5):

It will be noted that the words "worse position" as they first appear in the language of the Conditions are in line with the provisions of the statute. There can be no doubt that as the word position is used in the statute it is not synonymous with job or assignment but rather connotes status, situation or posture. The provisions of section 4 apply to all classes of employes operating and non-operating. It is common knowledge that in the operating group a large proportion of such employes work on assignments which might vary from day to day. Hence in referring to an employe's position with respect to compensation and rules governing work conditions it is apparent that in this context the word "position" cannot be intended to mean a specific job or assignment. Hence it is clear that what the Commission was seeking to accomplish in imposing the Oklahoma Conditions was to assure an affected employe that his employment status insofar as compensation and working conditions were concerned would be preserved to him for the four years protective period.

Robertson's decision also contained the following pertinent reasoning (TCU Exhibit C, p. 5):

> To determine what amount of compensation would be protected it is clear that the Commission adapted a pragmatic and arbitrary formula. A formula which it must be presumed to have recognized would result in inequities at times against the employe and at times against the Carrier. For example, during the twelve months immediately preceding displacement an affected employe might have experienced a long period of illness and the amount of his "protected" compensation would be substantially affected by operation of the formula. On the other hand, perhaps in anticipation of an abandonment, the carrier might have curtailed its hirings with the result that considerable amount of overtime would be worked during the test period. We cannot believe that the Commission was blind to these factors. Its emphasis upon "compensation received" during the test period and "compensation produced" during the protective period indicates that its concern was with the actual earnings attributable to the affected individual's employment status rather than the earnings accruing on a given assignment.

The Rogers Decision. In upholding claims for benefits in a 1960 arbitration decision, a panel (Daniel C. Rogers, neutral member) interpreted language in the Burlington conditions [FN12] that was similar to section 5(a) of New York Dock. TCU calls attention to the following portion of Rogers' decision (TCU Exhibit D, p 4):

> From a reading of Section 1 of the "[Burlington conditions]", as a whole, it is discerned that the "position" from which an employee is displaced in an abandonment case is not limited, necessarily, to the single assignment on which the employee was working at the time of the abandonment. The term "position", in this first sense in which it is used, comprehends as many assignments, including

both regular and extra assignments, as an employee may have worked during the "test period". And the average monthly compensation of such "position" is the aggregate of his earnings during the "test period" divided by 12. [Emphasis in original.]

DISCUSSION

We find that the award is reviewable on its merits under Lace Curtain because it involves an important and recurring issue of the proper calculation of the test period averages for dismissal or displacement allowances for employees under all of our labor protective conditions. We will deny the appeal because the award was based on a reasonable and consistent line of arbitral interpretation of section 5(a) of New York Dock and of comparable predecessor provisions.

The issue is whether a displaced employee's 12-month test period earnings must reflect only the compensation earned in the position from which the employee was displaced as a result of the transaction for which New York Dock conditions were imposed, or whether the test period must also reflect earnings in prior positions held in the test period from which the employee was displaced for reasons not related to the transaction.

We have no evidence or documents showing how the original drafters of the test period average definition in section 5(a) intended to define test period earnings. The test period average definition (see note 5) originated in 1936 in section 6(c) of the Washington Job Protection Agreement (WJPA), a privately negotiated labor protection agreement that provided the basic framework for the labor protection provisions that were subsequently enacted by Congress and implemented by the ICC. [FN13] This definition of the test period eventually became Article I, section 5 of New York Dock.

We interpret this provision in light of its plain language, the overall purposes of the New York Dock protection scheme, and the general policies of subtitle IV of title 49. We agree with the reasoning in the Stallworth arbitration that the literal language of section 5(a) requires that all income during the 12-month period be considered, and that if the ICC had intended to preclude consideration of income from more than one position, it could have simply directed that only an average of earnings from the position held at the time of severance be considered.

Arbitral precedent also favors TCU's approach. SP's attempt to distinguish the Stallworth arbitration by arguing that the prior displacements to non-management positions involved in that award were also covered by New York Dock (along with the subsequent displacements) is not persuasive because that opinion contains no indication that the prior displacements would in fact have been covered by New York Dock

As Arbitrator Robertson noted, reliance on a 12-month period comports with the statutory intent that the test period reflect the fact that some employees work on assignments that last only a relatively short time. The use of a 12-month period to determine the prior compensation of such an employee is a reasonable attempt to paint a more accurate picture of such an employee's earnings than would be achieved by simply looking at his or her earnings in the position occupied at the time the employee was dismissed or displaced. [FN14] TCU's literal

interpretation of section 5(a) has the additional advantage of deterring disputes over whether employees have been demoted in anticipation of a protected transaction. Moreover, Fredenberger's decision does not appear to discriminate against carriers. While carriers would pay higher protection payments to employees who occupied lower paying positions during the last part of a test period, they would pay lower protection payments to employees who occupied a higher paying position during the last part of a test period. Finally, this case is easily distinguishable from American Train Dispatchers, supra. There, the ICC determined that it would be unfair and contrary to the basic purposes of New York Dock to include certain overtime wages resulting directly from the merger transaction itself in the test period computation. The ICC said that would be giving the employees a windfall of up to 6 years of increased wages based on overtime that would not have even occurred but for the merger transaction. The ICC said that such inclusion it would be inconsistent with the basic purpose of New York Dock, i.e., compensating for merger-caused harms, to give employees an increased level of pay reflecting a benefit from the merger, namely, receipt of overtime pay.

Here, we are faced with the typical sort of changes in employment that may occur during any New York Dock test period. McAvoy's displacement to her position as a crew caller was not caused by the transaction itself, unlike the transaction-caused overtime in American Train Dispatchers. Rather, her displacement was a result of normal fluctuations in employment in the railroad industry. It did not create any windfall for the employer and hence should not be considered in calculating the test period average.

For all of these reasons, we will deny the appeal.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

1. The appeal is denied.
2. This decision will be effective on May 29, 1996.

FN1. The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the Act), which was enacted on December 29 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain function to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11326. Therefore, this decision applies the law in effect prior to the Act, and citations are to the former sections of the statute, unless otherwise indicated.

FN2. Rio Grande Industries, et al.--Control--SPT Co., et al., 4 I.C.C.2d 834 (1988).

FN3. SP calculated McAvoy's monthly test period earnings to be $3077.16, her average monthly compensation over the 4 months when she was a crew caller. The carrier did not use a 12-month test period, arguing that McAvoy's compensation could not reflect her higher rate of

compensation as a corridor manager because she was not entitled to benefits due to her displacement from that position.

FN4. Based on her theory that the test period must be 12 months and must reflect all income earned during that 12 months, she calculated her monthly test period compensation to be $3892.39.

FN5. Article I, section 5(a) of New York Dock provides in pertinent part as follows (360 I.C.C. at 78):

> 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 compensation and average monthly time paid for the test period), and provided further, that such allowance shall also be adjusted to reflect subsequent general wage increases. [Emphasis in the original.]

FN6. The three decisions, reproduced in the separate volume of exhibits filed with SP's appeal, are: (1) TCU and Union Pacific Railroad Company, Feb. 28, 1989 (Stallworth, Neutral); (2) International Brotherhood of Electrical Workers and CSX Transportation, Inc., Oct. 3, 1990 (Fletcher, Neutral); and (3) CSX Transportation, Inc. and TCU, July 20, 1992 (Eischen, Neutral).

FN7. In this latter argument, the panel seems to have reasoned that "compensation" involves a broad interval of time rather than the instantaneous picture implied by the term "rate of pay."

FN8. Under 49 CFR 1115.8, the standard for review is provided in Chicago & North Western Tptn. Co.--Abandonment, 3 I.C.C.2d 729 (1987), aff'd sub nom., International Broth. of Elec. Workers v. I.C.C., 862 F.2d 330 (D.C.Cir.1988) (Lace Curtain). Under the Lace Curtain standard, the Board (1) does not review "issues of causation, the calculation of benefits, or the resolution of other factual questions" in the absence of "egregious error" and (2) limits its review to "recurring or otherwise significant issues of general importance regarding the interpretation of our labor protective conditions." Id. at 735-36. In Delaware and Hudson Railway Company--Lease and Trackage Rights Exemption--Springfield Terminal Railway Company, Finance Docket No. 30965 (Sub-No. 1) et al. (ICC served Oct. 4, 1990) at 16-17, remanded on other grounds in Railway Labor Executives' Ass'n v. United States, 987 F.2d 806 (D.C.Cir.1993), the ICC elaborated on the Lace Curtain standard as follows:

> Once having accepted a case for review, we may only overturn an arbitral award when it is shown that the award is irrational or fails to draw its essence from the imposed labor conditions or it exceeds the authority reposed in arbitrators by those conditions. [Citations omitted.]

FN9. Article I, section 5(a) of New York Dock provides in pertinent part as follows (360 I.C.C. at 78):

> (a) 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 protected 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. [Emphasis SP's.]

SP also notes that the remainder of section 5(a) (quoted in note 5, above) defines the test period as the 12 months preceding the date of "displacement as a result of the transaction."

FN10. SP cites In the Matter of United Transportation Union and Boston and Maine Railroad Co., an August 30, 1990 arbitration award (SP exhibit 3.) There, the panel held that a carman displaced under New York Dock was not entitled to benefits reflecting his salary in a prior managerial position from which he had voluntarily resigned 3 months before. Concerning the general purpose of labor protection, the panel reasoned (Arbitration decision, p. 6):

> This allowance is intended to stabilize that level of income which attached to and most likely would have continued for an adversely affected employee had the transaction not taken place.

After having established the claimant's right to at least some compensation, the arbitrators found (Id.):

> However, that the Grievant is a covered employee, does not establish that he is, as claimed, entitled to be protected against any loss of compensation as a consequence of his voluntary resignation from a management, or non-represented, position some three months prior to the transaction. He was not, by any stretch of the imagination, placed as a result of the transaction in a worse position with respect to compensation which had been paid to him in his management position.

FN11. In Oklahoma Ry. Co. Trustees Abandonment, 257 I.C.C. 177 (1944), the ICC adopted its then standard "Oklahoma" labor protection conditions for leases and trackage rights.

FN12. In Chicago. B. & O.R. Co. Abandonment, 257 I.C.C. 700 (1944) the ICC adopted its then standard "Burlington" labor protections conditions for abandonments.

FN13. A legislative history of the labor protection provisions appears in CSX Corp.--Control--Chessie and Seaboard C L I., 6 I.C.C.2d 715 (1990). The WJPA appears in Appendix B of that decision. Section 6(c) of that Agreement provided as follows (6 I.C.C.2d at 780):

> (c) Each displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee and his total time paid for during the last twelve (12) months in which he performed service immediately

preceding the date of his displacement (such twelve (12) months being hereinafter referred to as the "test period") and by dividing separately the total compensation and the total time paid for by twelve, thereby producing the average monthly compensation and average monthly time paid for, which shall be the minimum amounts used to guarantee the displaced employee, and if his compensation in his current position is less in any month in which he performs work than the aforesaid average compensation he shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but he shall be compensated in addition thereto at the rate of the position filled for any time worked in excess of the average monthly time paid for during the test period.

FN14. As noted above, SP claims that TCU's position would allow employees who voluntarily resigned or were removed for disciplinary reasons from a higher paying job and subsequently displaced under New York Dock to receive an allowance reflecting their prior salary. However, our decision here should not be interpreted to allow such absurd results. The intent of what is now section 11326 and its predecessors was not to allow an employee to benefit from his own discretion or wrongdoing but rather to ensure that the employee is placed in no worse position with respect to his employment as a result of an approved transaction.

1996 WL 203544 (I.C.C.)

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SERVICE DATE - SEPTEMBER 25, 1998

This decision will be included in the bound volume of printed reports at a later date.

SURFACE TRANSPORTATION BOARD[1]

DECISION

Finance Docket No. 28905 (Sub-No. 22)

CSX CORPORATION—CONTROL—CHESSIE SYSTEM, INC.
AND SEABOARD COAST LINE INDUSTRIES, INC.
(ARBITRATION REVIEW)

Finance Docket No. 29430 (Sub-No. 20)

NORFOLK SOUTHERN CORPORATION—CONTROL—
NORFOLK AND WESTERN RAILWAY COMPANY AND
SOUTHERN RAILWAY COMPANY
(ARBITRATION REVIEW)

Decided: September 22, 1998

We are affirming the orders entered by the ICC in these proceedings in its decisions served in 1988, affirming in one case (4 I.C.C.2d 1080) and affirming in part and reversing in part in the other (4 I.C.C.2d 641) the

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[1] The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), effective January 1, 1996, abolished the Interstate Commerce Commission (ICC or Commission), and established the Surface Transportation Board (Board). The Act transferred from the ICC to the Board a number of the functions formerly performed by the ICC, including the rail carrier control functions formerly codified at 49 U.S.C. 11341-11347, and now codified at 49 U.S.C. 11321-11326.

Section 204(b)(1) of the ICCTA provides, in general, that any proceedings pending before the ICC at the time of its termination and that involve functions transferred from the ICC to the Board shall be decided by the Board under the law as in effect prior to the enactment of the ICCTA. We will therefore decide these proceedings under the old law (i.e., under old 49 U.S.C. 11341, 11343, 11344, and 11347).

ICCTA made no significant changes to the substantive law as relevant to these proceedings, although it did effect a renumbering of the sections. All further statutory references in this decision will be, except as specifically indicated otherwise, to the sections of the law as in effect prior to January 1, 1996.

arbitration awards previously entered in these proceedings in accordance with Article I, section 4 of the New York Dock conditions. New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60, 84-90 (1979) (New York Dock). We do so employing the reasons and the standards set forth in the ICC's subsequent 1990 decision in this matter served on June 21, 1990 (6 I.C.C.2d 715). However, we are not remanding the matters to the parties for further negotiation as that decision proposed to do because developments in the law since then have made it unnecessary to do so and because the parties have waited long enough for a final resolution of these proceedings.

We answer the question left open by the Supreme Court decision in Norfolk & Western R. Co. v. Train Dispatchers, 499 U.S. 117, 134 (1991) (N&W), as follows: Where New York Dock labor protection is required to be imposed upon a rail consolidation by virtue of 49 U.S.C. 11347, now section 11326, the scope of an arbitrator's authority to modify collective bargaining agreements (CBAs) as "necessary ... to carry out the transaction" under section 11341(a), now section 11321(a), is limited by the provisions of these labor protective conditions as explained by the ICC in its 1990 decision and as updated and further explained in this decision. We conclude that it is unnecessary, premature and inappropriate for us to address in the abstract at this time the reach of the immunity provision of section 11341(a), now section 11321(a), where it is not constrained by the required imposition of New York Dock labor conditions.

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BACKGROUND

Finance Docket No. 28905 (Sub-No. 22). In CSX Corp.-Control-Chessie and Seaboard C.L.I., 363 I.C.C. 518 (1980) (CSX Control), the ICC approved, subject to the New York Dock conditions, the control by CSX Corporation of two noncarrier railroad holding companies, the Chessie System, Inc. (Chessie) and Seaboard Coast Line Industries, Inc. (SCLI). The railroads controlled by Chessie included the Chesapeake and Ohio Railway Company (C&O). The railroads controlled by SCLI included the Seaboard Coast Line Railroad Company (SCL).[2]

In 1980, when the ICC approved the CSX Control transaction, C&O operated a freight car heavy repair shop at Raceland, KY, and SCL operated a freight car heavy repair shop at Waycross, GA. These two shops continued to function for the next several years. The Raceland shop continued to perform freight car heavy repair work for C&O, and the Waycross shop continued to perform freight car heavy repair work for SCL and, after a time, for SCL's corporate successor, an entity first known as Seaboard System

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[2] In Seaboard Air Line R. Co.-Merger-Atlantic Coast Line, 320 I.C.C. 122 (1963) (SCL Merger), the ICC had approved, subject to the then standard labor protective conditions, the formation of the SCL through the merger of the Seaboard Air Line Railroad Company (SAL) and the Atlantic Coast Line Railroad Company (ACL). In 1966, in anticipation of the consummation of the SCL Merger transaction, SAL and ACL had entered into a labor protective agreement, commonly referred to as the Orange Book agreement, with the Brotherhood of Railway Carmen (BRC) and 16 other unions. The Orange Book gave SCL the right to transfer work and employees throughout the merged SCL system, and gave all covered employees (those employed on or before July 1, 1967) certain lifetime job protections.

Railroad, Inc. and later known as CSX Transportation, Inc. (CSXT).

In August 1986, C&O and CSXT (hereinafter referred to collectively as CSX) served notice under New York Dock, Article I, section 4, on BRC and other involved unions that, on or about December 31, 1986, the Waycross freight car heavy repair shop would be closed and its functions would be transferred to the Raceland freight car heavy repair shop. The notice stated that the work to be moved from Waycross to Raceland, which was then being performed at Waycross under the SCL Agreement, would be "coordinated with such work presently being performed at Raceland under the C&O Agreement." The notice indicated that 149 positions (121 of which were represented by BRC) would be abolished at Waycross, and that 107 positions (99 of which would be represented by BRC) would be established at Raceland. CSX and BRC attempted to negotiate regarding the proposed transfer, but were unable to reach agreement. The matter was then submitted to arbitration.

On March 23, 1987, the arbitration committee entered its opinion and award (LaRocco Award). The committee, relying heavily upon the ICC's 1983 DRGW decision,[3] determined that, under Article I, section 4 of the New York Dock conditions, it had jurisdiction to formulate an implementing agreement, and that, pursuant to 49 U.S.C. 11341(a), the implementing agreement would be immunized from conflicting provisions in the Railway Labor Act (RLA) and in existing CBAs. The committee further determined, however, that, on account of the section 11341(a) "necessity" requirement, such an implementing agreement had to "reasonably accommodate" existing CBAs and collective bargaining rights.[4] The "reasonable accommodation" formula attained

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[3] Denver and Rio Grande Western Railroad Company--Trackage Rights Over Missouri Pacific Railroad Company Between Pueblo, CO and Kansas City, MO, et al., Finance Docket No. 30000 (Sub-No. 18) (ICC served Oct. 25, 1983) (DRGW), rev'd sub nom. Brotherhood of Locomotive Engineers v. ICC, 761 F.2d 714 (D.C. Cir. 1985), discussed infra, at 10. A few months after the entry of the committee's opinion and award, the D.C. Circuit's decision was vacated on procedural grounds in ICC v. Brotherhood of Locomotive Engineers, 482 U.S. 270 (1987).

[4] "[T]he [section 11341(a)] exemption is only triggered when necessary . . . . To the extent that terms of collective bargaining agreements and collective bargaining rights do not thwart or substantially impede the approved transaction, those

(continued...)

particular significance on account of the committee's finding that the Orange Book, in explicitly according SCL the right to transfer Orange Book protected employees and their work throughout the SCL system, implicitly barred SCL and its successors from transferring Orange Book protected employees or their work beyond the SCL system.

The implementing agreement that the committee formulated reflected what it considered to be a "reasonable accommodation" of the section 11341(a) immunity provision with the Orange Book agreement. Acknowledging section 11341(a), the committee concluded that the Orange Book provision barring the transfer of *the work* of covered employees beyond the former SCL system "must be subordinated to the Carriers' right to engage in the authorized New York Dock transaction. Otherwise, the Carriers would be effectively thwarted from transferring all the Waycross freight car heavy repair work to Raceland." LaRocco Award, at 36-37. But, reflecting its "reasonable accommodation" standard, the committee ruled that the Orange Book provision barring the transfer of *covered employees* beyond the former SCL system would not be thus subordinated. "Unlike the work, the Orange Book limitation on transferring covered employees throughout the SCL system can be reasonably accommodated with the transaction. Permitting Orange Book covered workers to be transferred only throughout the SCL (absent a voluntary agreement with the Organization) will only slightly impair the transaction while preserving the essence of the Orange Book pursuant to Section 3 of the New York Dock conditions." LaRocco Award, at 37.

Accordingly, the committee, in formulating an implementing agreement, directed the parties to adopt the implementing agreement that had been proposed by CSX, subject to this one significant exception: that Waycross employees covered by the Orange Book could not be compelled to transfer to Raceland.

In CSX Corp.-Control-Chessie and Seaboard C.L.I., 4 I.C.C.2d 641 (1988) (Carmen I), the ICC affirmed in part and reversed in part the committee's opinion and award, and remanded to the committee for further proceedings consistent with the ICC's decision.

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[4](...continued)
agreements and rights are preserved. . . . If feasible, the transaction should reasonably accommodate existing collective bargaining agreements and collective bargaining rights." LaRocco Award, at 33 (emphasis added).

The ICC affirmed the part of the committee's opinion and award that approved the movement of the work performed at Waycross. The ICC noted that the committee had concluded that "it had the authority to move both work and employees to Raceland, despite potentially conflicting provisions in the RLA and the Orange Book Agreement ('the ICC has emphasized that a transaction hurdles all legal obstacles preventing implementation,' award at 34). This is a correct statement of our position and we affirm the committee's finding on its authority." Carmen I, 4 I.C.C.2d at 649. The ICC restated the applicable standard as follows:

> [T]he carrier is permitted to carry out and fully implement [a transaction the Commission has authorized] despite potential impediments in existing agreements upon compliance with the provisions for the protection of the rights of employees contained in New York Dock or imposed by the Commission upon the involved transaction. As the committee found, and we agree, it has the authority to override these obstacles in the implementing agreement it will fashion.

Carmen I, 4 I.C.C.2d at 650.

The ICC reversed the part of the committee's opinion and award that created an Orange Book employees exception to the prescribed implementing agreement. The ICC ruled that the committee had erred in fashioning a standard of "slight impairment of the transaction" for permitting a CBA provision to conflict with the implementation of an approved transaction. This "slight impairment of the transaction" standard, the ICC stated, contradicted the correct standard ("a transaction hurdles all legal obstacles preventing implementation"), and would effectively undercut the ICC's authorization of the transaction at issue.

> [E]ven if the committee did properly interpret the Orange Book as prohibiting the transfer of employees outside former SCL limits, its attempted "accommodation" of this supposed prohibition to the proposed transaction must be overturned because the Orange Book agreement as interpreted by the committee serves as an impediment to

implementation of a transaction authorized by the Commission.

Carmen I, 4 I.C.C.2d at 649-50. The ICC added that, even if the committee's "slight impairment of the transaction" standard were appropriate, the evidence of record did not support the application of that standard in the present circumstances. The evidence, the ICC said, established that a prohibition against the transfer of Orange Book protected employees "imposed a significant, if not insurmountable, obstacle to implementation of the transfer." Carmen I, 4 I.C.C.2d at 649. Accordingly, the ICC set aside the portion of the decision holding that CSX may not require transfer of employees and remanded the matter with the instruction that such transfers are of course subject to the terms set forth in New York Dock for the protection of the interests of affected employees.

Finance Docket No. 29430 (Sub-No. 20). In Norfolk Southern Corp.-Control-Norfolk & W. Ry. Co., 366 I.C.C. 171 (1982) (NS Control), the ICC authorized Norfolk Southern Corporation to acquire control of the separate railroad systems of Norfolk and Western Railway Company (N&W) and Southern Railway Company (Southern). The approval was subject to the New York Dock conditions.

In 1982, when the ICC approved the NS Control transaction, each railroad system performed its own power distribution work. On the N&W, power distribution was performed at an N&W facility in Roanoke, VA, by supervisors who were represented by the American Train Dispatchers Association (ATDA), and who were covered by an ATDA/N&W CBA. On the Southern, power distribution was performed at a Southern facility in Atlanta, GA, by supervisors who were considered management, and who, for this reason, were neither represented by a union nor covered by a CBA.

In September 1986, N&W and Southern (hereinafter referred to collectively as NS) notified ATDA that power distribution for the two railroad systems would be consolidated. This consolidation would involve the transfer of the work performed in the N&W's Roanoke facility to the Southern's Atlanta facility, which would thereafter be responsible for power distribution for the entire NS system. It was envisioned that the work at the Atlanta facility would be performed by Southern supervisors, and therefore would not be subject to a CBA. In a proposed implementing agreement, NS offered the N&W supervisors the opportunity to request consideration for new supervisor positions to be created on the Southern. NS was unwilling, however, to

assign the transferred N&W supervisors the same duties and territorial responsibilities they had had on the N&W. NS and ATDA attempted to negotiate regarding the proposed consolidation, but they were unable to reach agreement. The matter was then submitted to arbitration.

On May 19, 1987, the arbitration committee entered its decision and award (Harris Award). The committee, relying heavily upon the ICC's 1985 Maine Central decision,[5] determined, in essence, that, under Article I, section 4 of the New York Dock conditions, it had jurisdiction to formulate an implementing agreement, and that, pursuant to section 11341(a), the implementing agreement would be immunized from conflicting provisions in existing CBAs and in the RLA. The committee also ruled that Article I, section 4 of the New York Dock conditions empowered it to approve the transfer of work from a location subject to a CBA to a location not subject to a CBA. Accordingly, the committee adopted, with one minor exception, the implementing agreement that had been proposed by NS.

In Norfolk Southern Corp.-Control-Norfolk & W. Ry. Co., 4 I.C.C.2d 1080 (1988) (Dispatchers I), the ICC affirmed the committee's decision and award. The ICC said that, under the auspices of the section 11341(a) exemption, the mandatory arbitration scheme of Article I, section 4 of New York Dock took precedence over RLA procedures whether asserted independently or based on an existing CBA.

> Article I, section 4 of New York Dock provides for compulsory, binding arbitration of disputes. It has long been the ICC's view that private collective bargaining agreements and RLA provisions must give way to the ICC-mandated procedures of section 4 when parties are unable to agree on changes in working conditions required to implement a transaction authorized by the Commission. Absent such a resolution, the intent of Congress that Commission-authorized transactions be consummated and fully implemented

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[5] Maine Central Railroad Company, Georgia Pacific Corporation, Canadian Pacific Ltd. and Springfield Terminal Railway Company-Exemption From 49 U.S.C. 11342 and 11343, Finance Docket No. 30532 (ICC served Sept. 13, 1985) (Maine Central), aff'd mem. sub nom. RLEA v. ICC, 812 F.2d 1443 (D.C. Cir. 1987). (Commission order approving transaction and imposing labor protection--rather than RLA--governs labor management relations in implementing approved transaction.)