

STB

FD-32760 (SUB37)

2-29-00

A

197612

1 OF 6



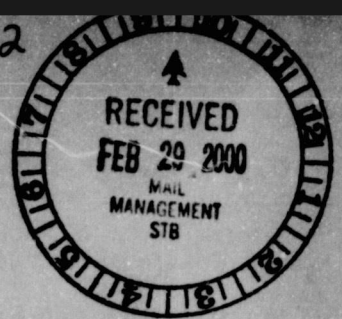
ENTERED  
Office of the Secretary

MAR - 8 2000

Part of  
Public Record

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 - SUB 37



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

(ARBITRATION REVIEW)

PETITION OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS  
UNION PACIFIC RAILROAD - EASTERN REGION  
FOR REVIEW OF A NEW YORK DOCK ARBITRATION OPINION AND AWARD

CHARLES R. RIGHTNOWAR  
320 Brookes Drive Suite 115  
Hazelwood, MO 63042  
(314) 895-5858  
(314) 895-0104 (fax)

General Chairman  
Brotherhood of Locomotive Engineers  
Union Pacific Railroad-Eastern Region

FEE RECEIVED

MAR - 3 2000

SURFACE  
TRANSPORTATION BOARD

FILED

MAR - 3 2000

SURFACE  
TRANSPORTATION BOARD

## TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	3
II. STATEMENT OF FACTS GIVING RISE TO SETTING ASIDE THE AWARD AS TO CASE NO. 7.....	4
III. STATEMENT OF UNDERLYING CASE.....	6
IV. CONCLUSION.....	7
CERTIFICATE OF SERVICE.....	8



BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

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

(ARBITRATION REVIEW)

---

PETITION OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS  
UNION PACIFIC RAILROAD – EASTERN REGION  
FOR REVIEW OF A NEW YORK DOCK ARBITRATION OPINION AND AWARD

---

I.

INTRODUCTION

Union Pacific Railroad-Eastern Region General Committee General Committee of  
Adjustments of the Brotherhood of Locomotive Engineers ("BLE"), being the duly designated  
and authorized collective bargaining representative for the craft of locomotive engineers on the  
Union Pacific Railroad-Eastern Region, herewith appeals Case No. 7, New York Dock Board of  
Arbitration No. 331 (Eckehard Muessig, Chairman), an Arbitration Opinion and Award, dated  
February 8, 2000, regarding application of the Kansas City Hub Merger Implementation  
Agreement, *which Agreement was implemented and placed into effect by Carrier notice dated  
January 16, 1999.*

A copy of the Opinion and Award is attached hereto as Appendix A. The submission filed by  
the Carrier before Chairman Muessig is attached hereto as Appendix B. The submission filed

by the undersigned, representing the BLE General Committee of Adjustment for the Union Pacific Railroad-Eastern Region, before Chairman Muessig, is attached hereto as Appendix C. The submission filed by the BLE General Committee of Adjustment for the Union Pacific Railroad-Eastern District, before Chairman Muessig, is attached hereto as Appendix D.

The Carrier submission was not presented to the undersigned until oral argument was presented before Chairman Muessig on January 18, 2000, at a hearing in Houston, Texas. The Carrier submission and oral argument as to Case No. 7 fraudulently misrepresented the matter before Chairman Muessig, which materially affected the outcome of the Award. Moreover, under the *Lace Curtain* standard, the Board may overturn "an arbitral award when it is shown that the award is irrational or fails to draw its essence from the clear and precise provisions of the negotiated agreement or it exceeds the authority reposed in arbitrators by those conditions." The Award herein also fails to meet this standard, and, as such, should be overturned.

**STATEMENT OF FACTS GIVING RISE TO  
SETTING ASIDE THE AWARD AS TO CASE NO. 7**

Chairman Eckehard Muessig erroneously found that "...this Arbitration arose because the BLE committees *could not agree among themselves* on certain primarily related to the integration of seniority at the various Hubs...." (Appendix A at p. 1, emphasis added). A quick review of the submissions of the two (2) BLE General Committees of Adjustment involved in Case No. 7, attached hereto as Appendices C and D, clearly show *that there is no dispute whatsoever between the positions of the two (2) BLE General Committees of Adjustment*. How did Chairman Muessig miss this?

Carrier Member W. S. ("Scott") Hinckley, General Director Labor Relations, Union Pacific Railroad, fraudulently misrepresented that "...[T]his case is *factually similar to case no. 1....*" (Appendix B at p. 12, emphasis added).



In Case No. 1, the BLE General Committees of Adjustment showed that a clear dispute existed between SSW General Chairman D. E. Thompson and UPED General Chairman M.A. Young (Appendix D at pp. 4-5). *However, in Case No. 7, the undersigned and UPED General Chairman M.A. Young were in complete agreement as to the correct resolution of the matter, and it was the Carrier that refused to properly adjust Seniority dates.* (Appendices C and D).

Chairman Muessig completely relied on the Carrier's fraudulent misrepresentation in making his decision as to the instant case:

The Board has carefully reviewed the submission of the General Chairman as well as their forceful and well-reasoned arguments before us. *The essential issue in this case is the same as in Case No. 1. We settle this case by applying the same reasoning as in Case No. 1.*

The Agreement creating zone 2 was signed on July 2, 1998. The twelve (12) Trainmen responded to a notice dated October 10, 1998 some three and one-half months after the effective date. *Accordingly, for the same reasons as in Case 1, the trainees are not prior righted and the answer to the above question is in the negative.*

(Appendix A at p. 15, emphasis added).

Were this not enough, the Carrier also misrepresented the effective date of the implementation of the Kansas City Hub Merger Implementing Agreement as the date of signature, July 2, 1998, erroneously relied upon as well by Chairman Muessig in his decision (Appendix A at p. 15). *The true date of implementation was January 16, 1999 (see Appendix C, Exhibit C, attached thereto).* The date of implementation was issued by Carrier notice on Carrier letterhead stationary; as such, the Carrier's own document proves its misrepresentation as to the date of implementation. Id.

If Chairman Muessig *had even glanced* at the BLE submissions filed as to Case No. 7, he would have immediately noted that there was no quarrel between the BLE Committees; rather,

that this was clearly a dispute instead between *the Carrier* and the BLE. Obviously, Chairman Muessig did not review the entire record, deciding this matter solely on the Carrier's fraudulent misrepresentation. His decision is, therefore, irrational, failing to draw its essence from the agreement, exceeding his authority as Arbitrator.

### **STATEMENT OF UNDERLYING CASE**

The Kansas City Hub Merger Implementing Agreement was not *actually implemented* until January 16, 1999 (Appendix C at Exhibit C) wherein twelve (12) Trainmen bid on a posting dated October 10, 1998, wherein it was advertised:

Bids will be received for 12 positions to enter an engine service training program, successful applicants will receive training for engine service and upon completion of program will be assigned at Kansas City, Mo. This training program will be used to secure personnel to work the Kansas City, 8<sup>th</sup> District Road Engine Service at Kansas City, Mo., Kansas City to Marysville, KS.

(see Appendix C at Exhibit D, emphasis added).

The Bulletin was closed October 25, 1998, with twelve (12) Trainmen as successful bidders. The bidders began training prior to implementation. Upon promotion to Locomotive Engineer, the twelve (12) successful bidders were placed on the Kansas City Hub Merged Seniority List as "common" seniority employees, rather than "prior right" seniority employees from Zone 2 (the former 8<sup>th</sup> District, the seniority location advertised in the above-quoted bid, upon which the twelve Trainmen relied upon in placing their bids).

General Chairman M.A. Young, *in line with the undersigned's position*, protested the misplacement of the twelve (12) Trainmen bidders/Engineer Trainees; then Carrier Labor Relations Director L.A. Lambert, admitted by his letter dated July 16, 1999, that the language was misleading, and that the employees bidding on the advertisement reasonably could have perceived that prior rights would be provided (Appendix C, Exhibit F at p. 2). However, the

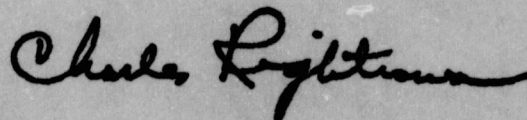


Carrier would not change its position in the matter, leaving the twelve (12) employees misplaced from their proper seniority position. Both BLE Committees *agreed* that the Carrier was wrong in not granting the employees the rights that the Carrier had advertised in the written bid. The Carrier provided no justification for its position against the unified BLE interpretation. It was the position of both BLE Committees that the language of the Bulletin advertising the twelve (12) positions for bid, unilaterally drafted by the Carrier, should be enforced against the Carrier, and the twelve employees should be made "whole" for any lost wages. Chairman Muessig's Award does not even remotely track the true facts underlying the dispute in Case No. 7.

### CONCLUSION

The Brotherhood of Locomotive Engineers, Union Pacific Railroad-Eastern Region, requests that this Board accept this Petition for review and decide the issues raised herein.

Respectfully submitted,

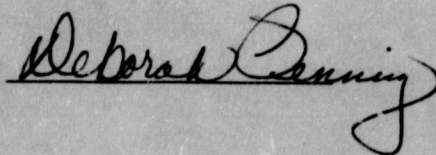


CHARLES R. RIGHTNOWAR  
320 Brookes Drive Suite 115  
Hazelwood, MO 63042  
(314) 895-5858  
(314) 895-0104 (fax)

General Chairman  
Brotherhood of Locomotive Engineers  
Union Pacific Railroad-Eastern Region

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Petition to Review and accompanying appendices were served upon Applicant by mailing copies first class postage prepaid, to W. S. Hinckley, General Director of Labor Relations, Union Pacific Railroad Company, 1416 Dodge Street, Omaha, NE 68179; D. M. Hahs, 1011 St. Andrews, Kingwood, Texas 77337, Eckehard Muessig, Chairman NYD Board 331, 3450 North Venice Street, Arlington, Virginia 22207-4447; Ed Dubroski, President BLE, the Standard Building, 1370 Ontario Avenue, Cleveland, Ohio 44113-1701; Harold A. Ross, Attorney BLE, The Standard Building, Suite 1548, 1370 Ontario Avenue, Cleveland, Ohio 44113; D. E. Thomson, General Chairman BLE, 414 Missouri Blvd., Scott City, Mo 63780; and M. A. Young, General Chairman BLE, 1620 Central Avenue, Room 201, Cheyenne, Wyoming 82001 on this 28 day of February 2000.





BEFORE A BOARD OF ARBITRATION

New York Dock Case 331

In the Matter of Arbitration )  
Between )  
Brotherhood of Locomotive Engineers )  
("BLE") )  
And )  
Union Pacific Railroad Company )  
("UP") )

OPINION AND AWARD

Members of the Board of Arbitration

Eckehard Muessig, Chairman  
Don Hahs, Organization Member  
Scott Hinckley, Carrier Member

APPENDIX A

## I. INTRODUCTION

On August 6, 1996, the Surface Transportation Board ("STB") in Finance Docket 32760 approved the common control and merger of the rail carriers controlled by the Union Pacific Rail Corporation (Union Pacific Railroad Company and Missouri Pacific Railroad Company) ("UP") and the rail carriers controlled by the Southern Pacific Rail Corporation (Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corporation and the Denver and Rio Grande Western Railroad Company) ("SP"). The STB imposed the labor protective conditions contained in New York Dock ("NYD").

Following the STB approval, the Carrier began to serve Section 4 NYD notices to the various BLE General Chairmen concerning its desire to initiate negotiations relative to the terms and conditions of Implementing Agreements to consummate the approved transaction. Subsequently, the Carrier and the BLE General Chairmen as well as the local committees which they represented successfully negotiated NYD Implementing Agreements applicable to the various "Hubs" established by the Carrier. However, this Arbitration arose because the BLE committees could not agree among themselves on certain matters primarily related to the integration of seniority at the various Hubs.

On January 18, 2000, the Board of Arbitration held a hearing at the Carrier's Houston, Texas facility. The following BLE General Chairmen appeared and testified with respect to the questions before the Board that affected their respective committees:

R. A. Poe	C. R. Rightnower
W. R. Slone	D. E. Thompson
M. A. Young	

## DISCUSSION, FINDINGS AND CONCLUSION

The Carrier's position on the general issue of seniority is well-summarized in a letter from Mr. John Marchant, Vice-President of Labor Relations, sent to the BLE International Vice-President. In relevant part, it stated as follows:



"The final issue which was discussed pertained to integration of seniority as a result of post-merger consolidations and implementing agreements. BLE asked if Union Pacific would defer to the interested BLE committees regarding the method of seniority integration where the committees were able to achieve a mutually agreeable method for doing so. In that regard, Union Pacific would give deference to an internally devised BLE seniority integration solution, so long as; 1) it would not be in violation of the law or present undue legal exposure; 2) it would not be administratively burdensome, impractical or costly; and 3) it would not create an impediment to implementing the operating plan."

Subsequently, the seniority issues on which the BLE committees could not agree were submitted to the Arbitration Board in the form of seven cases containing the questions at issue. The submissions, over the signature of each of the General Chairmen, contained detailed arguments in support of each committee's position.

The Carrier, in its submission to the Board, presented its analysis of the seven questions.

This Award will list each of the seven cases, the questions at issue (which have been formulated from the submissions of the parties), a brief narrative (when appropriate), followed by our holding. There will not be a detailed recitation of each and every argument or contention advanced by the parties to each case. Nonetheless, this does not mean that these were not fully considered by the Board in its deliberations.

Before addressing each of the seven cases, several observations must be made at the outset. First, the Carrier, in its Operating Plan filed with its merger application, indicated that it would implement a "hub and spoke" operating scheme for the merged railroad. As a part of the merger process, individual Hub Agreements had to be negotiated with the BLE. However, the parties were only able to negotiate two Hub Agreements at a time. While this negotiating process was taking place, the Carrier, when it needed additional forces, relied on the various Collective Bargaining Agreements to obtain staff.

After a Hub Agreement was negotiated, it was sent to each BLE member for ratification vote. After ratification, the Agreements were signed using the same date as they were originally initialed by the negotiating parties. It was only at that point that the integration process began in earnest, including merging of seniority rosters and familiarization trips to the locations. Because another craft may have been involved in arbitration, there were occasional delays in this process. In view of these circumstances, many months could pass from the time an Agreement was ratified and its final implementation.

Second, as a general observation, in our holdings in these cases, the Board recognizes that there is perhaps not one "right" decision in each and every case. In some instances, our decisions were not easily reached and, during our lengthy deliberations, we acquired an appreciation of the problems faced by the parties to this dispute. In any event, when reaching a decision, the Board was guided by the basic principle of "what is right, not who is right." We tried not to lose sight of the reality that seniority protects and secures an employee's right in relation to the rights of other employees in the same seniority grouping. When in doubt and when a logical basis existed, our decisions reasonably lean to the more senior employees.

#### CASE NO. 1

The Board concludes that there are two separate questions to this case. The first question is:

"Question 1: In the Salina Hub (phase II) are all employees who were in engineer training on the day of implementation May (1999) prior righted to engineer positions or are only those employees who were in engineer training on July 16, 1998 entitled to prior rights?"

Relevant here is Article II of the Salina phase II Agreement which reads as follows:

#### ARTICLE II - SENIORITY CONSOLIDATIONS

- A. To achieve the work efficiencies and allocation of forces that are necessary to make the Salina Hub operate as a unified system, a new seniority district will be formed



and a master Engineer Seniority Roster-UP/BLE Salina Merged Roster #1 will be created for engineers holding seniority in the territory comprehended by this Agreement on the effective date thereof. Prior rights Zone 1 is already intact and will remain unchanged by this Agreement. A new prior rights Zone 2 will be created under this Agreement. Such two prior rights zone rosters shall constitute the new UP/BLE Salina Merged Roster #1.

- B. Prior rights seniority rosters will be formed covering Zone 2 as outlined above. Placement on this roster and awarding of prior rights to such zone shall be based on the following:
  - 1. Zone 2 - This roster will consist of former UP engineers with rights on MPUL Wichita (Roster No. 058111) and former SSW engineers with rights on SSW Pratt (Roster No. 304101) and SSW Herington (Roster No. 303101).
- C. Entitlement to assignment on the prior rights zone roster described above shall be by canvass of the employees from the above affected former rosters contributing equity to such zone.
- D. Engineers on the above-described prior rights Zone 2 roster and the existing Zone 1 roster shall be dovetailed with zone prior rights into one (1) common seniority roster.
- E. All zone and common seniority shall be based upon each employee's date of promotion as a locomotive engineer (except those who have transferred into the territory covered by the hub and thereby established a new date).
- F. Any engineer working in the territories described in Article I. on the date of implementation of this Agreement, but currently reduced from the engineers working list, shall also be given a place on the roster and prior rights.
- G. The total number of engineers on the Zone 2 prior rights roster will be mutually agreed upon by the parties, and then merged with the existing Zone 1 prior rights to form the master UP/BLE Salina Merged Roster.

The above-cited provisions did not address the status of those persons who were in training to be engineers. However, this issue was addressed by the parties when they formulated Side Letter No. 18, dated July 16, 1998. It provides as follows:

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

The three General Chairmen involved could not agree: one argued that the additional classes should be granted prior rights, two contented that employees who entered engineer training after the date of the letter (July 16, 1998), but prior to implementation, should be granted prior rights.

The Board is guided in reaching its decision by a review of how this issue has been addressed in a number of other Hub Agreement. For example, we note the following:

Salt Lake Hub - Article II, F - "Student engineers in training on December 1, 1996 will be assigned prior rights based on the area designated in the bulletin seeking application for engine service."

Denver Hub - Article II, A, 3 - "New Employees hired and placed on the new roster on or after December 1, 1996, will have no prior rights but will have roster seniority rights in accordance with the zone and extra board provisions set forth in this Agreement."

Both of these Hubs were implemented July 1, 1997 due to arbitration with the UTU which delayed the implementation.

Roseville Hub - Article II, B, 5 - "Student engineers in training on or before September 1, 1997 will be assigned prior rights as engineers based on the area designated in the bulleting seeking applications for engine service." (implemented February 1999)

Los Angeles Hub - Article II, B, 2 - "All engineers who entered training after January 13, 1998 and are promoted in the Hub after January 13, 1998 will be considered common engineers (holding no prior rights), and placed on the bottom of the roster. Those engineers who entered training prior to January 13, 1998 and are promoted after that date will be entitled to any prior rights set forth in this agreement. This includes those who entered training and have been hostling." (to be implemented January 16, 2000)



The above examples show that the parties intended to have a specific date as to when prior rights would be cut-off and that employees who entered training after that cut-off date would be common employees.

Side Letter No. 18 does not contain a specific date. However, in our judgment it does provide an indication of the parties intent when they pointed to those engineers "currently" in training. Thus, we conclude that those engineers in training on July 16, 1998 are granted prior rights and those in training after July 16, 1998 are not granted prior rights.

The other question in Case No. 1 is:

"Question 2: What is the correct number of prior righted pool turns for former SSW engineers in the Herington-Kansas City pool and the Herington-Pratt pool as indicated in Article 1,B.2 and Attachment "B" of the Expanded Salina Hub merger implementing agreement?"

Key to resolution of this question is Article 1,B.2 and 3 of the Expanded Salina Hub Agreement ("Salina Hub Agreement"). In relevant part, it reads as follows:

2. The existing former SSW Herington to Kansas City pool operation will be preserved under this Agreement with Herington as the home terminal. Kansas City will serve as the away-from-home terminal. Engineers operating between Herington and Kansas City may utilize any combination of UP or SSW trackage between such points. This pool shall be slotted, and Attachment "B" lists the slotting order for the pool. Former SSW engineers shall have prior rights to said pool turns. The Carrier and the Organization shall mutually agree on the number of turns subject to this arrangement. If turns in excess of that number are established or any of such turns be unfilled by a prior rights engineer, they shall be filled from the zone roster, and thereafter from the common roster.

a. \* \* \* \*

b. \* \* \* \*

3. The existing former SSW Pratt to Herington pool operation will be preserved under this Agreement, except the home terminal will be changed to Herington. Pratt will serve as the away-from-home terminal. Sufficient number of engineers will be relocated to Herington to effect this change. This pool shall be slotted, and Attachment "B" lists the slotting order for the pool. Former SSW engineers shall have prior rights to said pool turns. The

Carrier and Organization shall mutually agree on the number of turns subject to this arrangement. If turns in excess of that number are established or any of such turns be unfilled by a prior rights engineer they shall be filled from the zone roster, and thereafter from the common roster.

Side Letter No. 15, dated July 16, 1998, to the Salina Hub Agreement advised the affected BLE General Chairmen that the Carrier would convene a meeting "to develop equity data for roster formulation and slotting of freight pools associated with the Salina Hub." The letter also stated that, if the BLE could not agree among themselves as to the equity percentages for roster slotting and formulating, the Carrier would make the final decision.

Attachment B, identified above, showed 12 pool allocations for each of the pools. The Agreement was put out for a vote, showing the number as "12" for each pool. However, the two committees could not agree on the allocation number. This disagreement must now be settled by the Board.

The Board has carefully considered the position of the respective Committees as set forth in their submissions and as forcefully expressed by the General Chairmen before the Board.

We conclude that this matter is best resolved by adopting the data shown in the Carrier's record. In this respect, the Board relies on the Carrier's letter of November 19, 1998 to the BLE. This letter contains a change to Attachment B. The change reflects the approximate number of turns operating Herington to Kansas City as thirty-eight (38) and Herington to Pratt as eighteen (18). The Board holds these numbers to be proper and they are so adopted by this Award.

#### CASE NO. 2

The first issue to be resolved is: "What is the proper roster ratcheting method for the three zone rosters at Longview?"

As noted earlier, the UP/SP merger took place over time and unfolded as a series of Hub negotiations were completed. Employees were given an opportunity to select seniority in a given Hub.



The Longview Hub Agreement was negotiated and then initialed on August 13, 1997. Article III provided for the creation of equity rosters for three separate zones, from three different groups of employees (UP, SSW and SP). Each of the BLE committees made concerted efforts to obtain as many prior rights as possible for its committee members.

Side Letter No. 11 of the Longview Hub Agreement set forth a final roster process. It reads in part as follows:

Finally, whether or not the above process result in a voluntary agreement which addresses these matters, Carrier will join with the Organization, within ninety (90) days of implementation of the last of those merged Hubs described above, to execute a one-time upward "ratcheting" of all rosters in all such Hubs which have been consolidated on the basis of work equity. This adjustment, which consists of assigning all vacant equity roster slots to engineers who are occupying identical, lower equity slots which may have occurred as a result of the phased consolidation of the Hubs and exercises of moves between Hubs which might occur under Side Letter No. 5 to this Standby Seniority Implementing Agreement. It is clearly understood that upon completion of this one-time upward ratcheting of merged rosters, such rosters are considered closed to any future adjustments.

The parties met in an effort to reach agreement on the final roster. Unfortunately, they were not able to agree and this question is now before the Board for final resolution.

The parties are in dispute as to the status of those employees who filled the additional 10 slots in the Zone 2 roster and vacant 10 slots in the Zone 3 roster. Simply put: Do these employees participate in the ratcheting process?

It appears from the record that the parties intended to prior right a number of positions on each zone roster. Further, it also appears that there were not enough employees from the appropriate pre-merger rosters to fill all equity slots and that, as a consequence, they were filled by long-term employees from other rosters. A review of the records of the employees in question indicates that they all have at least 20 years of service. As long-term employees who were originally given slots in the agreed upon roster numbers, it

would be appropriate to ratchet them upwards as they were on rosters that contributed to the equity. If they were fairly new hires who had not personally contributed any pre-merger equity, then it would not be appropriate to ratchet them upward. If the parties had not intended to ratchet these long-term engineers upward, then at the time they were placed on the roster in the "equity" slots, the parties should have gone on record as stating that they were to be excluded from the ratcheting process.

Therefore, in consideration of the above reasoning, we conclude that in Zone 2, the Junior SSW Engineer to be ratcheted upwards is T. W. Brown. In Zone 3, the Junior SSW Engineer to be ratched upward is J. V. Rogers.

The final issue is the process that should be used with respect to A/B slots on the roster. The parties had agreed to fill the original roster only with working engineers. Those working as Carrier officers, those who were on leave or those who had been fired were not put in equity slots to afford those working the full use of their equity.

However, when one of the above excluded engineers returned to duty, he would be placed in a roster slot and that number on the roster then would have two engineers designated as A and B. No one was ratched down on the roster. With the current ratcheting, these slots will be handled in the following manner. If a spot above the A position is vacant, the A employee will move up. The B employee then will exclusively hold the numbered position with no A or B designation on that position. No employee will be ratched up to a B position.

### CASE NO. 3

The question in this case is: "Which former HBT engineers should be afforded Zone 5 prior rights? (Zone 5 is a roster created by a merger implementing agreement.)"

Before the merger in Houston, the UPRR, SPRR and the Houston Belt and Terminal Railroad ("HBT") co-existed at that facility.



To facilitate the consolidation of the forces at the Houston Hub, the BLE, the UPRR and SPRR agreed to a Standby Seniority Merger Implementing Agreement on January 17, 1997 ("January 17th Agreement"). The January 17th Agreement provided for seniority consolidation and prior rights within the Houston Hub zones. The two BLE General Chairmen and the Carrier, on that same date, signed Side Letter No. 1 to that Agreement. In pertinent part, it stated:

B. All former HBT employees who transfer to Union Pacific as a result of UP assumption of operation of Settegast Yard shall be entitled to protection benefits contained in the merger implementing agreement for the territory covered by Zones 3, 4 and 5 on an equal basis with all other Union Pacific engineers in those territories. Length of service on the HBT shall be included in determining length of protection under the New York Dock conditions.

Also, on January 17, 1997, the parties signed Side Letter No. 4 which in relevant part stated "the parties reached conceptual agreement that Zone 5 would be protected by a prior rights roster consisting of the five (5) former roster having yard prior rights."

The Board concludes that a reasonable construction of the January 17 Agreement and related documents is that prior rights shall be granted only to those Engineers who had an engineer's date on or before December 1, 1996 or who were in training to become a Locomotive Engineer on or before December 1, 1996. In reaching this conclusion, we particularly note that under Article II, Seniority Consolidation of the January 17 Agreement sets December 1, 1996 as a "cut-off" date in all key elements as follows:

Article II reads:

To achieve the work efficiencies and allocation of forces that are necessary to make the Houston Hub operate efficiently as a unified system, a new seniority district will be formed and a master Engineer Seniority Roster--UP/BLE Houston Hub Merged Roster #1--will be created for the employees assigned in the Houston Hub on December 1, 1996. (Emphasis added).

Article II, Section B Subsection 7 reads:

Any engineer working in one of zones on or before December 1, 1996 (emphasis added) but currently reduced from the engineers working list, shall also be given a place on the roster and prior rights in the appropriate zone.

Article II, Section E reads:

Engineers assigned to the new merged roster after implementation shall be assigned to a zone based on the Carrier's determination of the needs of service at that time in the Houston Hub but without prior rights. Student engineers in training on or before December 1, 1996, (emphasis added) will be assigned a zone based on the area designated in the bulletin seeking application for engine service.

Moreover, Article II of the Memorandum of Agreement of March 18, 1998 section 2 reads:

In conjunction with MP's assumption of control and operations of Settegast Yard, and the concomitant transfer of HBT engineers to MP, former HBT engineers will be placed on the Houston Terminal Seniority District - Zone 5 seniority roster in accordance with applicable provisions of the Standby Seniority Merger Implementing Agreement, dated January 17, 1997, including Side Letter No. 4 thereof, for the Houston Hub and Spoke. (Emphasis added).

Article III of the Memorandum of Agreement of March 18, 1998 Settegast Yard Assignments / Temporary Vacancies also reads:

Regular assignments and temporary vacancies for yard assignments established on the trackage rights lines will be filled in accordance with the provisions of Merger Implementing Agreement for Houston Hub Zones 3, 4 and 5, dated April 23, 1997 and the Standby Seniority Merger Implementing Agreement for the Houston Hub and Spoke, dated January 17, 1997. (Emphasis added).

Subsequent to the Houston Hub implementation and the Letter Agreement of March 18, 1998 (noted above), the two BLE General Chairmen involved signed another Letter Agreement on April 7, 1998, which in relevant part, included a method by which HBT engineers affected by the March 18, 1998 "Trackage Rights Agreement" would be assigned to the Houston Hub.



The argument has been made that this document conveyed the same rights to the newly transferred engineers as was granted to the original merged engineers. However, the Board, after careful review, does not reach the same conclusion. In April 1998, over one year after the Hub Agreement was signed, the merger roster was set. To grant similar rights to the transferred engineers as were granted to the original merger engineers, is not reasonable because several of these engineers were promoted after the approval of the merger. If the newly transferred engineers were granted the same rights, it would have resulted in a different equity arrangement for assignments and would have placed engineers in a different roster position than originally established.

For all of the foregoing reasons, we hold that December 1, 1996 is the controlling date, as noted earlier.

CASE NO. 4

Here, the question is: "What seniority date will be used (system or point) on the DFW Master Dovetail Roster for common assignments when the prior rights period in the DFW Hub expires?"

Relevant to this question is Article II of the Dallas-Fort Worth Hub Agreement and Side Letter No. 5. Article II in pertinent part reads:

II. Seniority and Work Consolidation

The following seniority consolidations will be made:

- A. 1. A new seniority district, known as the DFW Hub, will be formed and a master UP/BLE DFW Hub merged Engineer's Seniority Roster, will be created from engineers assigned/working in the territory comprising the new DFW Hub and those outside the Hub who have rights to place in the Hub and elect to place in the Hub. (See section H of this Article II for integration of Longview Hub seniority)
- B The new rosters will be created as follows:
  - 1. Engineers assigned on the seniority rosters identified in Section A above will be dovetailed based upon their current engineer's seniority date or consolidated seniority date,

whichever is applicable. For UP engineers it will be the pre KATY merger seniority date, not the 1989 merger date. This shall include any engineer working in train service or as a hostler in the DFW Hub. If this process results in engineers having identical seniority dates, seniority ranking will be determined by the employee's earliest retained firemen's date with the Carrier and if still identical then on the earliest retained hire date.

2. All engineers placed on the roster may work all assignments protected by the roster in accordance with their seniority and the provisions set forth in this agreement and the controlling collective bargaining agreement.

D. Prior rights shall be phased out on the following basis:

1. For the first three years after implementation the pools shall retain prior rights up to the baseline level of 100%. At the start of the fourth year the prior rights shall fall to 67% and at the start of the fifth year at 33% and at the start of the sixth year all pool turns shall be assigned off the common roster.
2. DFW Hub Yard assignments and Arlington and GSW TSE assignments prior rights shall be reduced at the same time as the pool assignments except beginning with the 4th year all third shift assignments will be assigned using the common roster, beginning with the 5th year all second shift assignments will be assigned using the common roster and beginning with the 6th year all assignments will be filled using the common roster.

Side Letter No. 5 reads as follows:

H. Longview Hub seniority and DFW Hub seniority shall be consolidated in the following manner:

1. Prior to the phase out of all prior rights in the DFW Hub, jobs advertised in the DFW Hub that do not receive a DFW prior rights bid will be assigned from the DFW common roster. If there are no bids received from the DFW common roster, then the assignments shall be assigned from the Longview common roster. Like wise, jobs advertised in the Longview Hub that do not receive a prior rights bid will be assigned from the Longview common



roster. If there are no bids received from the Longview common roster then the assignment shall be assigned from the DFW common roster. If no bids are received, then the jobs going "no bid" will be assigned in accordance with the respective DFW or Longview Hub Agreement.

2. A new consolidated DFW-Longview dovetailed master common roster will be formed by combining the DFW and Longview dovetailed common seniority rosters into one master dovetailed common roster. Subsequent to the prior rights phase out in the DFW Hub, all jobs in the DFW-Longview Hub will be assigned from the consolidated DFW-Longview master dovetailed common roster.

Thus, pursuant to the above-cited Agreements, prior rights are retained for six years and, as the prior rights are phased out, common rights are applied or used. Accordingly, it would clearly violate a basic notion of fairness if all Engineers in the merged Hub were not granted seniority in a like manner, i.e., equally treated.

In summary, simply stated, does the creation of a Hub and the subsequent phase out of prior rights mean that the Hub should be treated as a neutral site? We conclude that it should be. Therefore, the Engineers earliest continuous seniority date, regardless of which railroad the seniority was held is appropriate.

#### CASE NO. 5

Here the question is: "What is the rightful date of SSW engineer D. O. Kern? Is it the date shown on the seniority rosters provided by General Chairman Thompson (6/12/78), or is it the date that the former SSW rosters were top and bottomed (11/15/83)?"

As in Case No. 4, the earliest continuous Engineer Seniority date is to be used.

#### CASE NO. 6

The question here is: "Is the agreed to template (82/16/68) to be applied to that group of engineers in the DFW Hub above the pre-merger numbers (310UP, 42SP and 23 SSW)? If so, the SSW would be

entitled to two additional slots. Do the prior rights stop at this same number? After the prior rights number is finalized, how are slots above that number filled?"

At the arbitration hearing, the parties agreed that the prior rights cap was 372 positions.

With respect to the positions after 372, we conclude that Engineers should be placed on the roster in order of seniority, without regard to which former railroad or seniority district they were previously employed.

CASE NO. 7

In this case, the question is "Are the twelve engineers who responded to the October 10, 1998 promotion notice at Kansas City entitled to prior rights in Zone 2 of the Kansas City Hub?"

The significant events leading to Question No. 7 occurred on October 10, 1998 when the Carrier bulletined Trainmen for bids for twelve (12) positions to enter Engineer Training. The bulletin was closed on October 25, 1998 and the twelve (12) employees (subject to the question above) were the successful bidders.

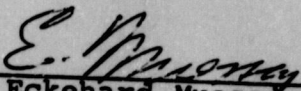
The Board has carefully reviewed the submission of the General Chairmen as well as their forceful and well-reasoned arguments before us. The essential issue in this case is the same as in Case No. 1. We settle this case by applying the same reasoning as in Case No. 1.

The Agreement creating Zone 2 was signed on July 2, 1998. The twelve (12) Trainmen responded to a notice dated October 10, 1998 some three and one-half months after the effective date. Accordingly, for the same reasons as in Case No. 1, the trainees are not prior righted and the answer to the above question is in the negative.



AWARD

As stated in the Findings and Conclusions.

  
Eckehard Muessig  
Neutral Member

Dated: 2-8-2000

**UNION PACIFIC RAILROAD**

**And**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

**NEW YORK DOCK CASE 331**

**CARRIER'S SUBMISSION**

**Mr. ECKHARD MUESSIG  
NEUTRAL**

**January 18, 2000**



## **BACKGROUND**

During negotiations with the BLE in the UP/SP merger there was always a minimum of two BLE General Chairmen and at times as many as four. Each General Chairman represented several local committees. Prior to the beginning of negotiations Mr. John Marchant, Vice-President of Labor Relations for UPRR sent a letter to the BLE International President advising as follows:

"The final issue which was discussed pertained to integration of seniority as a result of post-merger consolidations and implementing agreements. BLE asked if Union Pacific would defer to the interested BLE committees regarding the method of seniority integration where the committees were able to achieve a mutually agreeable method for doing so. In that regard, Union Pacific would give deference to an internally devised BLE seniority integration solution, so long as; 1) it would not be in violation of the law or present undue legal exposure; 2) it would not be administratively burdensome, impractical or costly; and 3) it would not create an impediment to implementing the operating plan."

Much time was spent by the BLE committees trying to reach an unified position with respect to seniority. In some cases they were unable to do so and held private internal arbitration. In other cases they agreed on certain language and after implementation and during the preparation of new merged rosters, disputes arose on the meaning of the language. These seven cases (some with multiple questions) are a result of disagreements among the various BLE General Chairmen on the interpretation of merger implementing agreement language. The Carrier has attempted to act as a mediator in these disputes and still protect the Carrier with regards to the three items mentioned in the letter quoted above.

In some instances the Carrier may agree with the position of one of the General Chairmen or may not agree with any of the General Chairmen positions. The Carrier will outline its position in each of the seven cases and where applicable give examples of what was done in other Hub merger implementing agreements where there was not a dispute.

### Case 1

Upon review of the correspondence, the Carrier believes that there are two separate questions to this case. Other questions posed by the various General Chairmen are merely restating the same questions in another manner.

Question 1: In the Salina Hub (phase II) are all employees who were in engineer training on the day of implementation May (1999) prior righted to engineer positions or are only those employees who were in engineer training on July 16, 1998 entitled to prior rights?

During negotiations for each Hub the Carrier continued to operate under separate collective bargaining agreements. This meant that when additional forces were needed the Carrier would have to hire and/or promote, not on a unified system basis, but on a CBA basis. Since some form of prior rights was granted in most Hubs, the question was raised as to which employees would be entitled to prior rights. Asked differently, would a SSW employee promoted into engine service the day before implementation be entitled to prior rights ahead of a 20 year MPUL employee.

Prior to addressing this question further one needs to understand the bargaining schedule. UPRR held numerous negotiations covering all major Hubs. The parties were only able to handle two Hubs at a time. After a Hub Agreement was negotiated the International BLE office would send out a copy to each member for a ratification



vote. The Agreements were signed with the same date as the date they were originally initialed. The process of implementation was started at that point, with a lot of work needing to be done to put rosters together, hold meetings, start familiarization trips and await any arbitration that may be required with another craft. As a result it could be many months between the ratification of an agreement and the final implementation of the agreement. As an example, Salina II was signed with the BLE with a date of July 16, 1998. The UTU proposal went to arbitration and an award was issued in March of 1999 and implemented a little over a month later. This created a ten month lag time between the signing date and the final implementation date.

The different BLE committees were always lobbying to give prior rights to their members over other committee members. Article II, of the Salina II agreement provided for the creation of a new seniority roster and the granting of prior rights to engineers working as an engineer or demoted but still working as a trainman in the territory. While these provisions covered already existing engineers it did not cover those who were in training to be engineers. Side Letter No. 18 dated July 16, 1998 provided as follows:

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

This dispute is over engineer in training classes that were started after the date of this letter. The SSW General Chairman wants the additional classes granted prior rights and the MPUL and UPED General Chairmen do not want employees who entered

engineer training after the date of the letter but prior to implementation of the Hub to be granted prior rights ahead of their long term members. As explained earlier due to the lag time between signing and final implementation it was necessary to start additional training classes after the signing date.

The identifying of specific dates for using prior rights had been standard in other Hub Agreements. These Agreements were sent out to the members for ratification and every one looked at where they would stand on the seniority roster before they voted. This included knowing who had prior rights.

Examples of language in other Hub Agreements is as follows:

Salt Lake Hub – Article II, F – “Student engineers in training on December 1, 1996 will be assigned prior rights based on the area designated in the bulletin seeking application for engine service.”

Denver Hub – Article II, A, 3 – “New Employees hired and placed on the new roster on or after December 1, 1996, will have no prior rights but will have roster seniority rights in accordance with the zone and extra board provisions set forth in this Agreement.”

Both of these Hubs were implemented July 1, 1997 due to arbitration with the UTU which delayed the implementation.

Roseville Hub – Article II, B, 5 – “Student engineers in training on or before September 1, 1997 will be assigned prior rights as engineers based on the area designated in the bulleting seeking applications for engine service.” (implemented February 1999)

Los Angeles Hub – Article II, B, 2 – “All engineers who entered training after January 13, 1998 and are promoted in the Hub after January 13, 1998 will be considered common engineers (holding no prior rights), and placed on the bottom of the roster. Those engineers who entered training prior to January 13, 1998 and are promoted after that date will be entitled to any prior rights set forth in this agreement. This includes those who entered training and have been hostling.” (to be implemented January 16, 2000)

These are but four examples of how this topic was treated in other Hubs. There was meant to be a clear defined date as to when prior rights was to be cut off and



employees who entered training after that date were to be common employees. In referring back to Side Letter No. 18 the Carrier earlier highlighted the word "currently". Since there is no defined date used in the side letter like is used in the other examples we need to look for other evidence of what was intended. It appears to the Carrier that the parties looked to see what the current state of engineer training was and on the date of July 16, 1998 there was "currently" a group in training. The arbitrator is thus given the responsibility to decide if the intent was to limit prior rights to the "currently" group or to grant it to all groups in training before implementation.

Question #2 – What is the correct number of prior right pool turns for the former SSW engineers in the Herington to Kansas City freight pool as per the provision of Article I,B, 2. And attachment "B" of the Expanded Salina Hub Agreement.

The Carrier's chief negotiator for Salina II has left the company to pursue other interests. His assistant is still with the Carrier and advises that the following is his recollection of the facts behind this case. Article I,B,2, and 3 both provide for a level of prior rights for the pools in question. Both sections use the same language for determining the number of prior right turns, which is: "The Carrier and the Organization shall mutually agree on the number of turns subject to this arrangement." The Carrier gave train information it had in its files to the parties. Pending review by the parties, there was a gentlemen's understanding that Attachment "B" would reflect 12 pool turns as being prior righted for each pool but that it could be changed. The Agreement was put out for a vote on this basis. The SSW committee proposed a number that it believed was the correct number (higher than 12) and then later proposed another number even higher than the first. The UPED committee was evaluating the first proposal against the number of pool turns actually in the pool on the cut over day of the

Hub. When the second number came to them they were concerned about the direction the proposal was taking and took the position that the original Attachment "B" was more correct than either number furnished them. It is the Carrier's position that the number is somewhere between the numbers set forth by the two committees. This has become an issue because this Hub used to have three main lines. With the merger one was abandoned and the other two experienced increased traffic. Who has the right to handle this increased traffic is the root of the dispute.

## CASE 2

Question 1: What is the proper roster ratcheting method for the three zone rosters at Longview?

The Longview Hub agreement provided for the creation of equity rosters for three separate zones. These rosters were created from three different groups of employees, UP, SSW and SP. The number of engineers that could elect to be in the Longview Hub was a given number with each of the three BLE committees being allowed a specific number of positions. Any engineers on the roster below the set number were to not have prior rights but would be common to the whole Hub. Due to the Hubs being negotiated consecutively rather than concurrently the parties understood that there would be a need to adjust the rosters after all Hubs were done. Side Letter No. 11 of the Longview Hub set forth a final roster process and a ratcheting process for each equity Hub.

The parties met and the Carrier advised that each General Chairman should send their version of the correct ratcheted roster and if they agreed with each other the



Carrier would make the changes. Two of the General Chairmen sent rosters, which were in conflict and the third General Chairman did not send one in. After holding a meeting with the General Chairmen it was clear that there was no consensus and the seniority issue was listed to arbitration.

Due to the complexity of trying to put in writing the correct methods of slotting and ratcheting several hundred names, the carrier will discuss this further in oral argument and be able to use a flip chart to explain further its position. Some of the issues deal with whether common employees should move up into prior rights slots left vacant by retirement, should prior right slots that were not filled initially now become prior righted and should employees on a disability be removed from the equity slot they hold.

### CASE 3

Question : Which former HBT engineers should be afforded Zone 5 prior rights? (zone 5 is a roster created by a merger implementing agreement)

Prior to the merger in Houston, in addition to the UPRR and SPRR there existed the Houston Belt and Terminal railroad. Part of the HBT assignments were held by engineers with UPRR seniority. Simultaneously with merger negotiations the Carrier was also eliminating the HBT and folding their seniority into the merged seniority. HBT engineers held no road seniority prior to the merger. The elimination was actually being done in two parts. The first part was the result of UPRR reclaiming a yard that it had been leasing to the HBT and the employees in that yard were covered in the first group. The second part, which was later, was the elimination of the remainder of the HBT.

Side Letter No. 1, dated January 17, 1997 of the Houston Hub stand by agreement states in part:

"All former HBT employees who transfer to Union Pacific as a result of UP assumption of operation of Settegast Yard shall be entitled to protection benefits contained in the merger implementing agreement for the territory covered by Zones 3,4 and 5 on an equal basis with all other Union Pacific engineers in those territories. Length of service on the HBT shall be included in determining length of protection under the New York Dock conditions."

The parties then wrote side letter no. 4 which put together the zone 5 roster with prior rights. At a later date the remainder of the HBT was brought into the UP system. When they were brought over, the UPRR General Chairman wanted them to have prior rights similar to previous HBT engineers merged into the system while the SP General Chairman alleged that the merger roster was set and that they should not now runaround his members. This later action was in April 1998 a little over one year after the Hub Agreement was signed. It was not the intent of the Carrier to grant similar rights to the newly transferred engineers as was granted to the original Merger engineers. It should be noted that several of these engineers were newly promoted after the approval of the merger. Otherwise this would have resulted in a different equity arrangement for the assignments and would place employees in a different position than originally established. The current UP General Chairman is not the same one as the one who negotiated the Houston merger and the Carrier does not have a statement from the original General Chairman as to intent.



#### CASE 4

**Question 4: What seniority date will be used (system or point) on the DFW Master Dovetail Roster for common assignments when the prior rights period in the DFW Hub expires?**

This is a narrow question and affects only a few engineers. Prior to the merger some seniority agreements gave an employee a prior right date at one location and a common date at other locations. This was a result of seniority consolidations at an earlier date. For example, engineer Jones is working in San Antonio and engineer Smith is working in Dallas. They are in separate seniority districts with Jones having a 1-1-78 date and Smith having a 1-1-80 date. In 1982 they consolidate seniority and they keep their original date while at their home terminal but when they work at the other location they have a 1-1-82 date. This means that when engineer Jones is in San Antonio he is senior to Smith and when in Dallas he is junior to Smith.

The merger comes along and both Jones and Smith are in Dallas. The agreement retains prior rights for only six years and then all prior rights are phased out and common rights are to be used. The question is, when the prior rights are phased out, does engineer Jones get to use the 1-1-78 date and move ahead of engineer Smith.

It is the Carrier's position that the Carrier has served NYD notices and reorganized all previous seniority from multiple groups. The prior right districts are being extinguished, work is being combined and as such all engineers should use their earliest continuous engineer date. Engineers Jones and Smith no longer stand in a one on one situation to each other but also stand in relationship to the engineers from three different committees. If they were at a neutral site, say Longview, then both would use

their earliest date. The question is does the creation of a Hub and the phase out of prior rights cause the Hub to be treated as a neutral site. The Carrier believes that the answer is yes and that the system date should be used.

#### CASE 5

Question : What is the rightful date of SSW engineer D.O. Kern? Is it the date shown on the seniority rosters provided by General Chairman Thompson (6/12/78), or is it the date that the former SSW rosters were top and bottomed (11/15/83)?

The Carrier believes that the answer to this question should be the same as case

4.

#### CASE 6

Question: Is the agreed to template (82/16/6%) to be applied to that group of engineers in the DFW Hub above the pre-merger numbers (310UP, 42SP and 23 SSW)? If so, the SSW would be entitled to two additional slots. Do the prior rights stop at this same number? After the prior rights number is finalized, how are slots above that number filled?

The DFW Hub negotiations were started over 2 years after the merger was announced. Other Texas Hubs had been completed at Houston, Longview and San Antonio. In this period, traffic patterns had changed, some employees had retired, new ones hired and some had selected to work in other Hubs. With all parties wanting to preserve their equity it was agreed to look at both the number of engineers at work the month prior to the merger being approved and the number working at the time the agreement was negotiated.



To further complicate the issue, it was the intent of the parties to consolidate the seniority of engineers in the Longview Hub with those in the DFW Hub. As such the following language was agreed to in Article II,B,4:

"Engineers hired or promoted after the implementation of the Longview Hub (02-01-98) shall only have common seniority unless the Cap in A,1, above is not filled. If not filled, then engineers hired or promoted in either the Longview or DFW Hub after 02-01-98 shall be offered a prior right Cap spot, in seniority order, until the Cap is filled. Once the DFW Cap is filled all other common engineers shall remain as common engineers."

The parties were able to agree upon a template percentage which is stated in the question to this case. The BLE internal dispute arose when it came time to identify who would be allowed to occupy the first slot above the pre merger total number. That number is  $310+42+23= 375$ . Spot 376 thus becomes a coveted spot. Is this spot controlled by the template or is it based on common seniority.

The Carrier believes that the cap is 375 and that after that number, engineers shall be placed on the roster in their seniority order, regardless of which former seniority district they were from. The parties went to great length to count the numbers, build the percentage template and then to add the language providing which employees would be used to fill the cap if not filled by those left in the Hub who were working prior to the merger. The language is specific as to the numbers and procedures and should govern.

#### CASE 7

Question: Are the twelve engineers who responded to the October 10, 1998 promotion notice at Kansas City entitled to prior rights in Zone 2 of the Kansas City Hub?

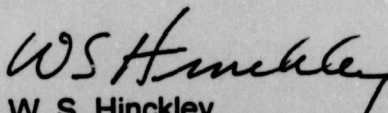
This case is factually similar to case no. 1. The parties negotiated a prior rights seniority system for each of the zones. Placement on these rosters was based on

"engineers holding seniority in the territory comprehended by the Agreement on the effective date thereof." (Article II, A,) Article II, F, states in part: "engineers in training on the effective date of this Agreement shall also participate in formulation of the roster described above". Both of these sentences uses the words "effective date".

Article X is entitled "Effective Date" and states "This Agreement implements the merger of the Union Pacific and SSW/SPCSL railroad operations in the area covered by Notice dated January 30, 1998. Signed at Denver, Co. this 2<sup>nd</sup> day of July, 1998." Since the Article covering the effective date is clear on what date that is then only those in training on that date are covered.

Side Letter No. 21 discusses a group of engineers "currently" in training and allows those engineers to be covered. However it only refers to trainees who were training for "Dalhart/Pratt" and does not discuss any trainees in Kansas City. The trainees in question responded to a notice dated October 10, 1998, over three and one-half months after the effective date. The agreement had been mailed to all engineers for a ratification vote and to allow these later trainees to become prior righted would be contrary to the proposal voted on.

It is the Carrier's position that the answer should be no.

  
W. S. Hinckley  
General Director Labor Relations  
Union Pacific Railroad

January 10, 2000



**BEFORE ECKEHARD MUESSIG**

**In the Matter of Arbitration**

**Between**

**Brotherhood of Locomotive  
Engineers – Eastern Region**

**and**

**Union Pacific Railroad  
Company**

Case No. 7

**SUBMISSION ON BEHALF OF THE BROTHERHOOD  
OF LOCOMOTIVE ENGINEERS – EASTERN REGION**

**Respectfully Submitted by:**

**Charles R. Rightnowar  
General Chairman  
Brotherhood of Locomotive  
Engineers – Eastern Region  
Suite 115  
320 Brookes Drive  
Hazelwood, MO 63042  
(314) 895-5858  
(314) 895-0104 (fax)**

**APPENDIX C**

## **ORGANIZATION QUESTION AT ISSUE:**

Whether Engineers D.R. Nowak (551-48-9916),  
J.K. Ware (484-78-8053),  
D.D. Neal (334-70-9158),  
J.J. Odell (496-90-3465),  
D.W. Hoeppner (496-86-3337),  
C.F. Metzger (514-80-5102),  
W.G. Huff (494-76-4471),  
J.T. White (514-80-2973),  
M.C. Coakley (500-88-7042),  
L.W. Stevens (513-94-7298),  
K.W. Stevens (513-94-6605),  
M.E. Wilson (495-62-1304),  
should be granted prior rights to Zone 2 of the  
Kansas City Hub Merged Roster? If so, what is the remedy?

The Organization requests that the Arbitrator retain jurisdiction for interpretation and remedy, if any.

## **RELEVANT CONTRACT PROVISIONS:**

### **ARTICLE 1 – WORK AND ROAD POOL CONSOLIDATIONS**

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

....

#### **B. Zone 2 – Seniority District**

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

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



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

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

5. At Marysville, away-from-home terminal engineers called to operate through freight service to Kansas City may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through Marysville to their destination without claim or complaint from any other engineer. When so used, the engineer shall be paid an additional one-half (1/2) day at the basic pro rata through freight rate for this run in addition ~~in addition~~ to the district miles of the run. If time spent beyond the terminal under this provision is greater than four (4) hours, then he shall be paid on a minute basis at the basic pro rata through freight rate.

6. The terminal limits of Marysville are as follows:

MP 142.3 to MP 155.7	- Marysville Subdivision
MP 132.29	- Beatrice Branch
MP .75	- Bestwall Spur

7. All road switcher and yard assignments home terminated at Marysville will be protected by engineers from that seniority district even if such assignments perform service within the territories contemplated by Article 1.B.1. Local assignments and any other irregular assignments (work train, wreck train, etc.,) will be protected by Zone 2 engineers (including those at Topeka) if such assignments are home terminated at Marysville and work exclusively within the territories defined by Article 1.B.1.

8. The pool service presently protected by the so-called Jeffrey Energy Pool shall ~~attire~~ <sup>attach</sup> to the UP Eastern District Seniority District No. 18 at Marysville and shall not be under the jurisdiction of this hub agreement. On and after the date of implementation of this Agreement, engineers protecting such service shall be governed by the schedule rules and rates of pay comprehending said 18<sup>th</sup> District. The terms of the August 17, 1979 Jeffrey Pool Agreement and other UP-BLE Eastern District Agreement pertaining to said pool shall be unaffected by this Implementing Agreement, except as modified below.

- a. Former UP 8<sup>th</sup> District Engineers coming under the provision of this Implementing Agreement and establishing Zone 2 prior rights seniority in the Kansas City hub shall retain prior rights to the Jeffrey Energy Pool assignments on an attrition basis. Engineers presently occupying assignments in said pool will be grandfathered to these assignments. Additionally, former UP 8<sup>th</sup> District Engineers performing service in Zone 2 will at time of roster canvassing, per Article VI.B.2., be asked to declare prior rights to assignments in the Jeffrey Energy Pool. If the engineer declares for such prior rights he will be allowed to occupy an assignment seniority permitting. If he does not declare for prior rights in the pool he shall thereafter waive said prior rights to the Jeffrey Energy Pool. The Carrier will maintain a list of those former UP 8<sup>th</sup> District Engineers who declared for prior rights in the Jeffrey Energy Pool at the time of canvassing, but unable to



occupy an assignment in the pool. When vacancies occur, such engineers will be canvassed, in seniority order. If the engineer declines to accept the assignment he will waive his prior rights to the Jeffrey Energy Pool. As vacancies occur which are not filled by former UP 8<sup>th</sup> District Engineers, the assignments will attrite to UP 18<sup>th</sup> District Engineers at Marysville.

- b. On the effective date of implementation of this Agreement the existing JK Extra Board at Marysville will no longer be preserved. All vacancies in the JK Pool, all extra work associated therewith and all other extra work described in the August 17, 1979 Jeffrey Pool Agreement, will be handled and performed by the UP 18<sup>th</sup> District Extra Board at Marysville.
  - c. in consideration of the assignments described above attriting to the UP 18<sup>th</sup> District Engineers at Marysville, said 18<sup>th</sup> District Engineers also acknowledge and agree to the provisions of Section 5 above with regard to Kansas City Hub engineers receiving their trains up to twenty-five (25) miles west of Marysville, such zone to be calculated from the original Marysville switching limits (MP 150.27 West - MP 147.33 East).
9. Engineers protecting through freight service in the pool described in Article 1.B.2. above shall be provided lodging at the away-from-home terminal pursuant to existing agreements and the Carrier shall provide transportation to engineers between the on/off duty location and the designated lodging facility. All road engineers may leave or receive their trains at any location within the terminal and may perform work within the terminal pursuant to the designated collective bargaining agreement provisions. The Carrier will designate on/off duty points for all engineers, with these on/off duty points having appropriate facilities as currently required in the collective bargaining agreement.
10. All UP and SWW operations within the Topeka terminal limits shall be consolidated into a single operation. All rail lines, yards and/or sidings at Topeka will be considered as common to all engineers working in, into and out of Topeka. All engineers will be permitted to perform all permissible road/yard moves pursuant to the designated collective bargaining agreement provisions. Interchange rules are not applicable for intra-carrier moves within

the terminal. Topeka will serve as station enroute for all Kansas City Hub engineers.

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

....

## **ARTICLE II – SENIORITY CONSOLIDATIONS**

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



SSW engineers with rights on SSW Herington (Roster No. 303101).

3. Zone 3 – This roster will consist of former UP engineers with rights on Merged 1 St. Louis (Merged Roster No. 040111) and former SSW engineers with rights on SSW Jefferson City (Roster No. 311101).

4. Zone 4 – This roster will consist of former UP engineers with prior rights on Osawatomic Merged 2A (Roster No. 054111) and former SSW engineers with rights on SSW Herington (Roster No. 303101).

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

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

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

F. *Any engineer working in the territories described in Article 1, on the date of implementation of this agreement, but currently reduced from the engineers working list, shall also be given a place on the roster and prior rights. Engineers currently forced to this territory will be given a place on the roster and prior rights if so desired; otherwise, they will be released when their services are no longer required and will not establish a place on the new roster. Engineers borrowed out from locations within the hub and engineers in training on the effective date of this agreement shall also participate in formulation of the roster described above.*

- G. UP engineers currently on an inactive roster pursuant to previous merger agreements shall participate in the roster formulation process described above based upon their date of seniority as a locomotive engineer.
- H. With the creation of the new seniority described herein, all previous seniority outside the Kansas City hub held by engineers inside the new hub shall be eliminated and all seniority inside the new hub held by engineers outside the hub shall be eliminated. All pre-existing prior rights, top and bottom, or any other such seniority arrangement in existence, if any, are of no further force or effect and the provisions of this Agreement shall prevail in lieu thereof. Upon completion of consolidation of the rosters and implementation of this hub, it is understood that no engineer may be forced to any territory or assignment outside the Kansas City Hub.
- I. The total number of engineers on the master UP/BLE Kansas City Merged Roster #1 will be mutually agreed upon by the parties, subject to the provisions of Side Letter No. 15.

(Exhibit A at pp. 7-10, 16-17, emphasis added).

### **STATEMENT OF FACTS**

The Kansas City Hub Merger Implementing Agreement between the Union Pacific Railroad Company, Southern Pacific Transportation Company, and the Brotherhood of Locomotive Engineers ("BLE"), attached hereto in its entirety as Exhibit A, cited above in pertinent part, was signed by the parties on July 2, 1998, in Denver, Colorado (Exhibit A at p. 25). Zone 2 was created within Article I, Section B (Exhibit A. at pp. 7-10), in part from the Union Pacific Railroad Eastern District Seniority Roster formally known as the Eighth District, and described as follows in the Collective Bargaining Agreement applicable to this territory:

**RULE 88. SENIORITY DISTRICTS.** Engineers will hold seniority rights on the district on which employed, as follows:

....



(h) Eighth District. Kansas City to Junction City, Topeka to Marysville, and including yards at Kansas City and Topeka.

(see Exhibit B at pp. 3-4).

Though the Agreement creating Zone 2 existed upon signing on July 2, 1998 (Exhibit A at p. 25), the Agreement had no applicability until *actually implemented*; as such, the Eighth District continued to exist as cited above until date of implementation of the new Kansas City Hub Merger Implementation Agreement.

The Carrier served notice of its intent to implement the Kansas City Hub Merger Implementation Agreement on January 16, 1999, pursuant to a letter dated October 26, 1998, addressed to the undersigned's predecessor, D.E. Penning, as well as all other affected BLE General Chairmen and participating BLE International Officers (see Exhibit C).

On October 10, 1998, prior to the above -referenced notice of implementation, the Carrier unilaterally bulletined Trainmen for bids for twelve (12) positions to enter Engineer Training:

Bids will be received for 12 positions to enter an engine service training program, successful applicants will receive training for engine service and upon completion of program will be assigned at Kansas City, Mo. This training program will be used to secure personnel to work the Kansas City, 8<sup>th</sup> District Road Engine Service at Kansas City, Mo. Kansas City to Marysville, KS.

(see Exhibit D, emphasis added).

The bulletin was closed on October 25, 1998 (see Exhibit D), and the twelve (12) . Claimants herein were the successful bidders. The closing of the bulletin, and the awarding of the positions was one day prior to the notice of implementation. The notice of implementation

was not sent to the twelve (12) successful bidders, the Claimants herein, nor was the unilateral bulletin sent to the addressees of the notice of implementation.

The twelve (12) Claimants, given a training date of December 12, 1998, were placed in Class No. SE9906, Chicago, Illinois, beginning on January 11, 1999, *prior* to implementation of the Merger Agreement, and clearly shown on the training class scheduling notification *as from the Eighth District Seniority District* (see Exhibit E). All subsequent Engineer Trainees, who entered the training program with training dates *after* the implementation of the Merger Agreement, were shown to be from the "KC HUB" (see Exhibit E).

Upon promotion to the position of Locomotive Engineer on June 11, 1999, the twelve (12) Claimants were placed on the Kansas City Hub Merged Seniority List as "common" seniority employees rather than Zone 2 (former Eighth District Seniority) "prior right" seniority employees.

As the Eighth District Seniority Roster employees (now Zone 2 "prior right" seniority employees) were under the jurisdiction of Union Pacific Railroad Eastern District BLE General Chairman M.A. Young, General Chairman Young made the first protest of the improper status and placement of these employees as "common" seniority employees, rather than Zone 2 "prior right" employees. In response to General Chairman Young's protest, former General Director Labor Relations - Operating Southern Region, L.A. Lambert, by letter dated July 16, 1999, advised that it was the Carrier's position that the twelve (12) Claimant Engineers were "common" employees rather than "prior right" Zone 2 employees; however, Mr. Lambert admitted:



.... The Bulletin language was, at that time, contractually correct *and while the employees may have perceived prior rights would be provided*, the Merger Agreement language does not support such position.

(see Exhibit F at p. 2, emphasis added).

Mr. Lambert attached a letter from his predecessor M.A. Hartman, dated September 17, 1998, to the affected BLE General Chairmen, wherein he admitted that he was unable "to locate any definitive language" as to the seniority rights ("common" or "prior right") of Engineer Trainees promoted subsequent to the date of implementation of the Kansas City Hub Merger Agreement (see Exhibit F at p. 3).

Subsequent to the date of Mr. Lambert's letter, all employees from the former Eighth District Seniority Roster, now "prior right" Zone 2 employees, have been transferred to the undersigned's jurisdiction by the BLE International President. As such, the undersigned has listed this dispute for resolution before this honorable forum.

### **POSITION OF EMPLOYEES**

After exhaustive research, the Organization has found only one prior Award that is "on point" to the instant case: In Award No. 7322, the First Division (NRAB), without the aid of a Referee, sustained the requested change in seniority of a Brakeman-Conductor where the Carrier's bulletin for promotion (and examination for same), created an ambiguity that the Claimant there detrimentally relied on through his perceived reading of same. The Organization took the position that the Carrier had failed to properly notify the Claimant, and that his seniority should be modified due to his reasonable, perceived reading of the bulletin (see Exhibit G at pp. 4-5).

In the instant case, former General Director Lambert admitted that "...the employees *may have perceived* prior rights would be provided..." admitting thereby that the Claimants' perceived reading of the bulletin was reasonable (Exhibit F at p. 2), he then held, without citing to *any* agreement support, that the Merger Agreement does not permit such perceived rights. However, Mr. Lambert's position that the Merger Agreement contains language that somehow defeats the reasonable, perceived reading of the bulletin by the Claimants, is then defeated by the attached letter from former General Director Hartman wherein *he admitted* that there was no "definitive" language in the Merger Agreement that would prevent such a perceived reading of the bulletin.

Where the employees have detrimentally relied on the perceived, reasonable reading of express language of the bulletin that they would be "...personnel to work the Kansas City, 8<sup>th</sup> District Road Engine Service at Kansas City, Mo., Kansas City to Marysville, KS...." (BLE Exhibit D), their seniority must be modified to the language of the bulletin, i.e., that they be deemed as Eighth District Road Engine Service employees, upon the closing date of the bid, October 25, 1998, when they were given notice of being successful bidders, *prior to notice of implementation*, and, as such, thereby automatically within the ambit of the Zone 2 "prior right" status *after* implementation of the Merger Agreement.

The Carrier, who must have had knowledge at the time of the posting of the bulletin that notice of implementation of the Merger Agreement would be mailed within one day of the closing of the bidding, should have notified, either in the original bulletin, or by subsequent notice to the successful bidders under the original bulletin, that upon promotion, they would be stripped of any Eighth District Road Engine Service employee status, and treated as "common"



seniority status employees. Such a notice was only reasonable due to the acknowledged reasonableness of the bidders' perceived reading of the bulletin by Mr. Lambert, and is further supported by the Position of the Organization in Award No. 7322 (see Exhibit G pp. 4-5). Where such notice was never given, the Claimants either in the original bulletin or by subsequent notice, *already acquired* seniority status as "8<sup>th</sup> District Road Engine Service" employees (see Exhibit D and Exhibit E), as successful bidders, cannot unilaterally be taken away from the Claimants; they must be granted, in keeping with the treatment of *all other* "8<sup>th</sup> District Road Engine Service" employees, Zone 2 "prior rights" status.

Any interpretation of the express language of the unilaterally drafted bulletin must be against the party selecting the language. *Elkouri & Elkouri, HOW ARBITRATION WORKS* (Martin M. Volz, Edward P. Goggin, co-editors) (5<sup>th</sup> Ed.), at pp. 509-510 (copy attached hereto for ready reference as Exhibit H). As such, where the Carrier unilaterally drafted the express language of the bulletin, granting the successful bidders the status as "8<sup>th</sup> District Road Engine Service" employees, the Carrier must be held to have given the Claimants such express status on October 25, 1998, the date of their having been awarded the positions as successful bidders, and, thus, Zone 2 "prior right" status after the implementation of the Merger Agreement, automatically granted *all other* "8<sup>th</sup> District Road Engine Service" employees.

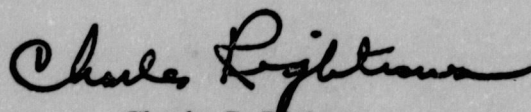
Although these employees fell within the former jurisdiction of the Union Pacific Railroad Eastern District, they now fall under the jurisdiction of the undersigned, the jurisdiction of the former Missouri Pacific Railroad-Upper Lines and the Chicago & Eastern Illinois Railroad Company. It is the undersigned's Schedule Rule that survives the Merger Agreement, and applies now to these employees. Although no prior authority "on point" exists within the

jurisdiction of the undersigned, prior authority clearly exists that the Carrier must give the successful bidders the rights advertised by bulletin. Awards Nos. 3179-3180, NRAB (*without the aid of a Referee*) (attached hereto as Exhibits I and J).

### CONCLUSION

In line with the foregoing, the Organization requests that the Arbitrator find in the affirmative as to the Organization Question at Issue, and that the twelve (12) Claimants be made whole for any losses that they may have sustained due to their improper seniority positioning by the Carrier, and that the Arbitrator retains jurisdiction for interpretation and remedy.

Respectfully Submitted by:



Charles R. Rightnowar  
General Chairman  
Brotherhood of Locomotive  
Engineers – Eastern Region  
Suite 115  
320 Brookes Drive  
Hazelwood, MO 63042  
(314) 895-5858  
(314) 895-0104 (fax)



ORGANIZATION EXHIBIT

A

7

**MERGER  
IMPLEMENTING AGREEMENT  
(Kansas City Hub)**

between the

**UNION PACIFIC RAILROAD COMPANY  
Southern Pacific Transportation Company  
and the**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

**PREAMBLE**

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

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

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

Union Pacific:	Kansas City to Council Bluffs (not including Council Bluffs/Omaha Metro Complex)
	Kansas City to Des Moines (not including Des Moines)
	Kansas City to Coffeyville (not including Coffeyville)
	Kansas City to Parsons (not including Parsons)

**BLE EXHIBIT A**



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

Kansas City to Jefferson City (not including Jefferson City)

Kansas City Terminal

Southern Pacific:

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

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

Kansas City to Chicago via Quincy (not including Chicago)

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

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

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

Kansas City Terminal

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

**IT IS AGREED:**

**ARTICLE I - WORK AND ROAD POOL CONSOLIDATIONS**

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

**A. Zone 1 - Seniority District**

1. Territory Covered: Kansas City to Council Bluffs (not including Council Bluffs/Omaha Metro Complex)

Kansas City to Des Moines (not including Des Moines)

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

STB FD-32760 (SUB37) 2-29-00 A 197612 2 OF 6



**Kansas City to Chicago via Quincy (not including Chicago)**

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

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

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



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

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

- e. No Ft. Madison or Quincy engineer may receive more than one (1) compensated relocation under this Implementing Agreement.
- 5. At the equity meeting held pursuant to Side Letter No. 10 hereto the parties shall agree on a baseline number of pool turns for both of the pools described in Articles I.A.2. and I.A.3 above, and former UP and SPCSL engineers will be prior righted, respectively, to such baseline number of pool turns. In the event of a cessation of trackage rights operations described in 4.d. above, the parties will meet and reach agreement on how the baseline numbers of the two former pools will be consolidated into the remaining single pool for Zone 1. It is understood that under these circumstances all Zone 1 extra work at Kansas City would be consolidated under one (1) extra board.
- 6. At Des Moines, Ft. Madison and Quincy, away-from-home terminal engineers called to operate through freight service to Kansas City may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through Des Moines, Ft. Madison or Quincy to their destination without claim or complaint from any other engineer. At Ft. Madison and Quincy, home terminal engineers called to operate through freight service to Chicago may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through Ft. Madison or Quincy to their destination without claim or complaint from any other engineer. When so used, the engineer shall be paid an additional one-half (½) day at the basic pro rata through freight rate for this run in addition to the district miles of the run. If the time spent beyond the terminal under this provision is greater than four (4) hours then he shall be paid on a minute basis at the basic pro rata through freight rate.
- 7. The terminal limits of Des Moines, Ft. Madison and Quincy are as follows:
  - a. Des Moines: MP 70.37 - Trenton Subdivision
  - MP 79.2 - Mason City Subdivision
  - MP 224.76 - Bondurant Spur
  - MP 304.2 - Perry Branch
  - MP 4.26 - Ankeny Branch

- b.     Ft. Madison: MP 234.0     -     East  
                                  MP 238.0     -     West
- c.     Quincy:         MP 135.0     -     West  
                                  MP 138.0     -     East

8.     Engineers of an adjacent hub may have certain rights to be defined, if any, in the Merger Implementing Agreement for that hub to receive their through freight trains up to twenty-five (25) miles on the far side of the terminal and run back through Des Moines.
9.     All road switcher and yard assignments with an on/off duty location at Council Bluffs (Omaha Metro Complex), Des Moines or Chicago will be protected by engineers from those seniority districts even if such assignments perform service within any territories contemplated by Article I.A.1. (Note: This provision does not disturb the current yard job allocation arrangement at Council Bluffs arising out of the UP/MP Merger Implementing Agreement). Local assignments, assigned freight service, and any other irregular assignments (work train, wreck train, etc.) will be protected on a prior rights basis by Zone 1 engineers if such assignments are home terminated at Council Bluffs (Omaha Metro Complex), Des Moines or Chicago and work exclusively within the territories identified by Article I.A.1. At Ft. Madison and Quincy, any such assignment home terminated at such locations, including the extra board, may work either direction out of such terminal without seniority or other restrictions.
10.    Engineers protecting through freight service in the pools described above shall be provided lodging at the away-from-home terminals pursuant to existing agreements and the Carrier shall provide the transportation to engineers between the on/off duty location and the designated lodging facility. All road engineers may leave or receive their trains at any location within the terminal and may perform work within the terminal pursuant to the designated collective bargaining agreement provisions. The Carrier will designate the on/off duty points for all engineers, with these on/off duty points having appropriate facilities as currently required in the collective bargaining agreement.
11.    All existing yard assignments at Atchison and St. Joseph shall be converted to road switcher assignments upon implementation of this Agreement. Notwithstanding any conflicting current agreement provisions, and on a non-precedent, non-referable basis, all road switcher assignments at these two locations shall be paid the 5-day yard rate of pay.
  - a.     The regular assignments headquartered at Atchison and St. Joseph shall be collectively prior righted to those former



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

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

**B. Zone 2 - Seniority District**

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

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

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

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

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

MP 142.3 to MP 155.7	-	Marysville Subdivision
MP 132.29	-	Beatrice Branch
MP .75	-	Bestwall Spur
7. All road switcher and yard assignments home terminated at Marysville will be protected by engineers from that seniority district even if such assignments perform service within the territories contemplated by Article I.B.1. Local assignments and any other irregular assignments (work train, wreck train, etc.,) will be protected by Zone 2 engineers (including those at Topeka) if such assignments are home terminated at Marysville and work exclusively within the territories defined by Article I.B.1.
8. The pool service presently protected by the so-called Jeffrey Energy Pool shall attrite to the UP Eastern District Seniority District No. 18 at Marysville and shall not be under the jurisdiction of this hub agreement. On and after the date of implementation of this Agreement, engineers protecting such service shall be governed by the schedule rules and rates of pay comprehending said 18th District. The terms of the August 17, 1979 Jeffrey Pool Agreement and other UP-BLE Eastern District Agreement pertaining to said pool shall be unaffected by this Implementing Agreement, except as modified below.
  - a. Former UP 8th District Engineers coming under the provisions of this Implementing Agreement and establishing Zone 2 prior rights seniority in the Kansas City Hub shall retain prior rights to the Jeffrey Energy Pool assignments on an attrition basis. Engineers presently occupying assignments in said pool will be



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

- b. On the effective date of implementation of this Agreement the existing JK Extra Board at Marysville will no longer be preserved. All vacancies in the JK Pool, all extra work associated therewith and all other extra work described in the August 17, 1979 Jeffrey Pool Agreement, will be handled and performed by the UP 18th District Extra Board at Marysville.
  - c. In consideration of the assignments described above attriting to the UP 18th District Engineers at Marysville, said 18th District Engineers also acknowledge and agree to the provisions of Section 5 above with regard to Kansas City Hub engineers receiving their trains up to twenty-five (25) miles west of Marysville, such zone to be calculated from the original Marysville switching limits (MP 150.27 West - MP 147.33 East).
- 9. Engineers protecting through freight service in the pool described in Article I.B.2. above shall be provided lodging at the away-from-home terminal pursuant to existing agreements and the Carrier shall provide transportation to engineers between the on/off duty location and the designated lodging facility. All road engineers may leave or receive their trains at any location within the terminal and may perform work within the terminal pursuant to the designated collective bargaining agreement provisions. The Carrier will designate on/off duty points for all engineers, with these on/off duty points having appropriate facilities as currently required in the collective bargaining agreement.
  - 10. All UP and SSW operations within the Topeka terminal limits shall be consolidated into a single operation. All rail lines, yards and/or sidings at Topeka will be considered as common to all engineers working in,

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

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

C. Zone 3 - Seniority District

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

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

2. All former UP Kansas City to Jefferson City and former SSW Kansas City to Jefferson City pool operations shall be combined into one (1) pool with Kansas City as the home terminal. Jefferson City will serve as the away-from-home terminal. Engineers operating between Kansas City and Jefferson City may utilize any combination of UP or SSW trackage between such points.
  - a. The parties agreed in Article I.A.4.a. of the St. Louis Hub Merger Implementation Agreement the Kansas City to Jefferson City pool would be slotted on a work equity basis. Attachment "C" lists the slotting order for the pool. Former SSW and UP engineers residing at or in the vicinity of Jefferson City shall have prior rights to said pool turns. The



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

- b. Hours of Service relief of trains in this pool operating from Kansas City to Jefferson City may be protected by the extra board at Jefferson City if the train has reached Booneville or beyond on the River Sub or Smithton or beyond on the Sedalia Sub; otherwise, a rested pool engineer at Kansas City shall be used on a straightaway move to provide such relief. Hours of Service relief of trains in this pool operating from Jefferson City to Kansas City may be protected by the Zone 3 Extra Board at Kansas City if the train has reached Renick or beyond on the River Sub or Pleasant Hill or beyond on the Sedalia Sub; otherwise, a rested pool engineer at Jefferson City shall be used on a straightaway move to provide such relief. At the away-from-home-terminal, if the extra board is exhausted, the first out rested pool engineer may be used, and shall thereafter be deadheaded home or placed first out for service on their rest.
3. At Jefferson City, away-from-home terminal engineers called to operate through freight service to Kansas City may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through Jefferson City to their destination without claim or complaint from any other engineer. When so used, the engineer shall be paid an additional one-half (1/2) day at the basic pro rata through freight rate for this run in addition to the district miles of the run. If the time spent beyond the terminal under this provision is greater than four (4) hours, then he shall be paid on a minute basis at the basic pro rata through freight rate.

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

D. Zone 4 - Seniority District

1. Territory Covered: Kansas City to Coffeyville (not including Coffeyville)  
  
Kansas City to Parsons (not including Parsons)  
  
Kansas City to Wichita via BNSF trackage rights (not including Wichita)



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

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

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

2. The existing UP Interdivisional Service between Kansas City and Coffeyville shall continue as a separate pool and shall be governed by the provisions of the ID Agreement dated August 15, 1985, including all side letters and addenda.
  - a. Hours of Service relief of trains in this pool shall be protected as provided in the existing agreement rules covering such runs.
3. The existing but non-operational SSW Kansas City to Pratt (via Hutchinson) run shall be preserved under this Agreement and in the event such runs resume in the future they shall be governed by the provisions of the UP-BLE Kansas City Hub Agreement. The home terminal will be changed to Kansas City. Pratt will serve as the away-from-home terminal.
4. Former SSW yard engine equity in Kansas City shall be placed under Zone 4. The former SSW engineers who elect Zone 4 as their prior rights zone and former UP engineers in Zone 4 shall compete for all assignments in Zone 4 on the basis of their Zone 4 seniority.
5. At Coffeyville/Parsons, Wichita, Winfield and Pratt, away-from-home terminal engineers called to operate through freight service to Kansas City may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through Coffeyville/Parsons, Wichita and Winfield to their destination without claim or complaint from any other engineer. When so used, the engineer shall be paid an additional one-half ( $\frac{1}{2}$ ) day at the basic pro rata through freight rate for this run in addition to the district miles of the run. If the time spent beyond the terminal under this provision is greater than four (4) hours, then he shall be paid on a minute basis at the basic pro rata through freight rate.

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

a. Coffeyville MP 462.0 - North  
MP 661.0 - South

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

b. Parsons MP 133.4 - North  
MP 138.0 - South

c. Wichita MP 236.0 - Herington  
MP 476.0 - Wichita Branch  
MP 254.0 - OKT Subdivision

d. Winfield MP 248.7 - East  
MP 250.8 - West

e. Pratt MP 292.33 - East  
MP 300.16 - West

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



**E. Kansas City Terminal**

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

**UP**

**Mile Post**

Marysville Subdivision	6.59
Coffeyville Subdivision	284.22
Sedalia Subdivision	276.32
Falls City Subdivision	288.37
Trenton Subdivision (former CNW)	500.3

**SPCSL**

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

**SSW**

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

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

## **ARTICLE II - SENIORITY CONSOLIDATIONS**

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



- C. Entitlement to assignment on the prior rights zone rosters described above shall be the canvass of the employees from the above affected former rosters contributing equity to each of such zones.
- D. Engineers on the above-described newly-created prior rights zone rosters shall be integrated into one (1) common seniority roster.
- E. All zone and common seniority shall be based upon each employee's date of promotion as a locomotive engineer (except those who have transferred into the territory covered by the hub and thereby established a new date). If this process results in engineers having identical common seniority dates, seniority will be determined by the age of the employees with the older employee placed first. If there are more than two (2) employees with the same seniority date, and the ranking of the pre-merged rosters would make it impossible for age to be a determining factor, a random process, jointly agreed upon by the Director of Labor Relations and the appropriate General Chairman(men), will be utilized to effect a resolution. It is understood this process for ranking employees with identical dates may not result in any employee running around another employee on his former roster.
- F. Any engineer working in the territories described in Article I. on the date of implementation of this Agreement, but currently reduced from the engineers working list, shall also be given a place on the roster and prior rights. Engineers currently forced to this territory will be given a place on the roster and prior rights if so desired; otherwise, they will be released when their services are no longer required and will not establish a place on the new roster. Engineers borrowed out from locations within the hub and engineers in training on the effective date of this Agreement shall also participate in formulation of the roster described above.
- G. UP engineers currently on an inactive roster pursuant to previous merger agreements shall participate in the roster formulation process described above based upon their date of seniority as a locomotive engineer.
- H. With the creation of the new seniority described herein, all previous seniority outside the Kansas City Hub held by engineers inside the new hub shall be eliminated and all seniority inside the new hub held by engineers outside the hub shall be eliminated. All pre-existing prior rights, top and bottom, or any other such seniority arrangements in existence, if any, are of no further force or effect and the provisions of this Agreement shall prevail in lieu thereof. Upon completion of consolidation of the rosters and implementation of this hub, it is understood that no engineer may be forced to any territory or assignment outside the Kansas City Hub.
- I. The total number of engineers on the master UP/BLE Kansas City Merged Roster #1 will be mutually agreed upon by the parties, subject to the provisions of Side Letter No. 15.

### **ARTICLE III - EXTRA BOARDS**

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



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

#### **ARTICLE IV - APPLICABLE AGREEMENT**

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

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

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

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



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

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

#### **ARTICLE V - FAMILIARIZATION**

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

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

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

#### **ARTICLE VI - IMPLEMENTATION**

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



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

#### **ARTICLE VII - PROTECTIVE BENEFITS AND OBLIGATIONS**

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

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

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

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

#### **ARTICLE VIII - SAVINGS CLAUSES**

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



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

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

#### **ARTICLE IX - HEALTH AND WELFARE**

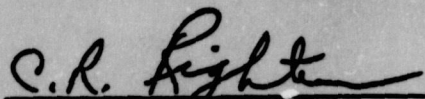
Engineers of the former UP who are working under the collective bargaining agreement designated in Article IV.A. of this Implementing Agreement belong to the Union Pacific Hospital Association. Former SSW/SPCSL engineers are presently covered under United Health Care (former Travelers GA-23000) benefits. Upon implementation of this Agreement, said former SSW/SPCSL engineers will be granted an option to elect the health and welfare coverage provided by the designated collective bargaining agreement. Any engineer who fails to exercise such option shall be considered as having elected to retain existing coverage.

#### **ARTICLE X - EFFECTIVE DATE**

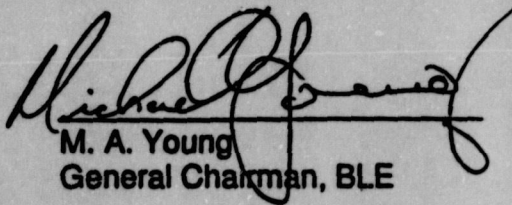
This Agreement implements the merger of the Union Pacific and SSW/SPCSL railroad operations in the area covered by Notice dated January 30, 1998.

Signed at DENVER, CO. this 2<sup>nd</sup> day of July, 1998.

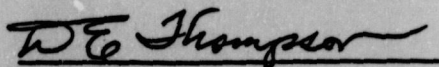
**FOR THE BROTHERHOOD  
LOCOMOTIVE ENGINEERS:**



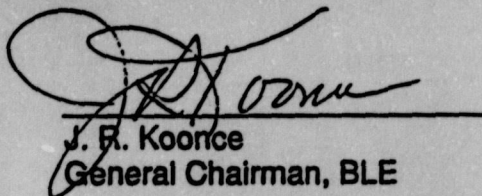
D. E. Penning  
General Chairman, BLE



M. A. Young  
General Chairman, BLE

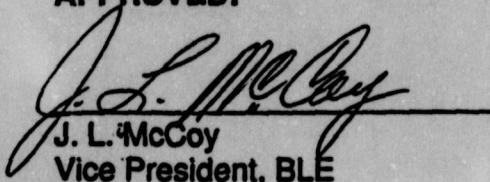


D. E. Thompson  
General Chairman, BLE

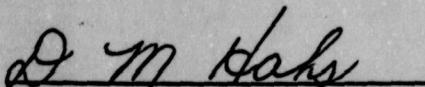


J. R. Koonce  
General Chairman, BLE

**APPROVED:**

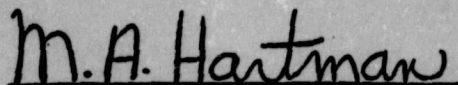


J. L. McCoy  
Vice President, BLE

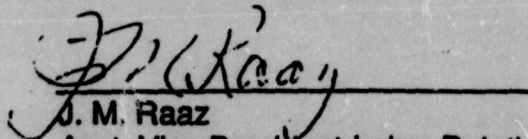


D. M. Hahs  
Vice President, BLE

**FOR THE CARRIERS:**



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



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



July 2, 1998

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

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

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

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

Gentlemen:

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

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

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

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

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

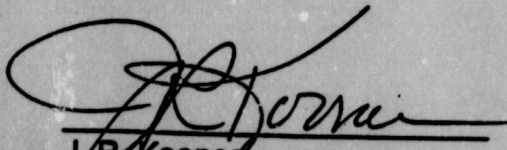
Yours truly,

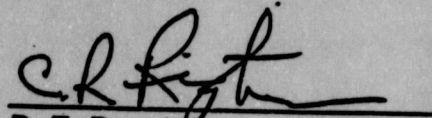
*M. A. Hartman*

M. A. Hartman  
General Director - Labor Relations

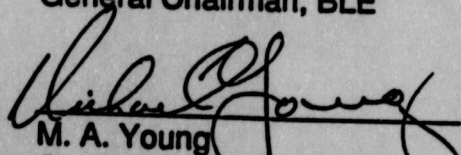
Side Letter No. 1  
July 2, 1998  
Mr. J. R. Koonce  
Mr. D. E. Penning  
Mr. D. E. Thompson  
Mr. M. A. Young  
Page 2

**AGREED:**

  
J. R. Koonce  
General Chairman, BLE

  
D. E. Penning  
General Chairman, BLE

  
D. E. Thompson  
General Chairman, BLE

  
M. A. Young  
General Chairman, BLE

cc: D. M. Hahs  
Vice President BLE

J. L. McCoy  
Vice President BLE



July 2, 1998

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

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

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

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

Gentlemen:

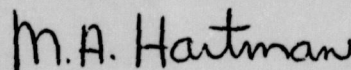
This refers to the Merger Implementing Agreement entered into this date between the Union Pacific Railroad Company, Southern Pacific Lines and the Brotherhood of Locomotive Engineers.

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

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

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

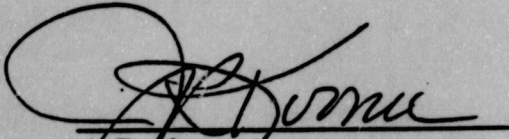
Yours truly,

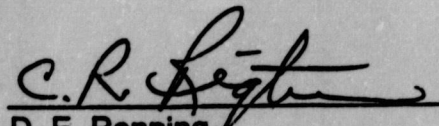


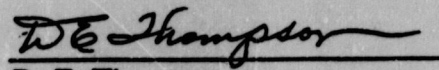
M. A. Hartman  
General Director-Labor Relations

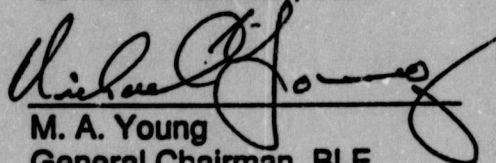
Side Letter No. 2  
July 2, 1998  
Mr. J. R. Koonce  
Mr. D. E. Penning  
Mr. D. E. Thompson  
Mr. M. A. Young  
Page 2

**AGREED:**

  
J. R. Koonce  
General Chairman, BLE

  
D. E. Penning  
General Chairman, BLE

  
D. E. Thompson  
General Chairman, BLE

  
M. A. Young  
General Chairman, BLE

cc: D. M. Hahs  
Vice President BLE

J. L. McCoy  
Vice President BLE



July 2, 1998

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

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

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

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

Gentlemen:

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

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

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

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

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

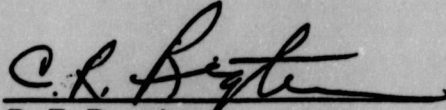
Yours truly,

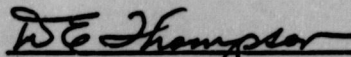
*M. A. Hartman*

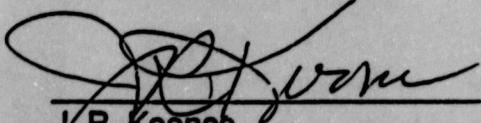
M. A. Hartman  
General Director-Labor Relations

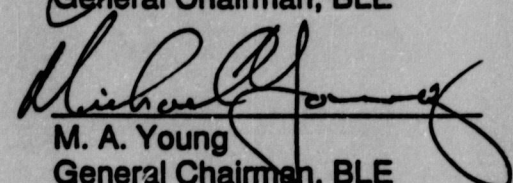
Side Letter No. 3  
July 2, 1998  
Mr. D. E. Penning  
Mr. D. E. Thompson  
Mr. J. R. Koonce  
Mr. M. A. Young  
Page 2

AGREED:

  
D. E. Penning  
General Chairman, BLE

  
D. E. Thompson  
General Chairman, BLE

  
J. R. Koonce  
General Chairman, BLE

  
M. A. Young  
General Chairman, BLE

cc: D. M. Hahs  
Vice President, BLE

J. L. McCoy  
Vice President, BLE



July 2, 1998

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

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

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

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

Gentlemen:

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

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

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

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

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

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

Respectfully,

*M. A. Hartman*

M. A. Hartman  
General Director-Labor Relations



July 2, 1998

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

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

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

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

Gentlemen:

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

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

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

Yours truly,

*M. A. Hartman*

M. A. Hartman  
General Director-Labor Relations

AGREED:

*D. E. Penning*  
D. E. Penning  
General Chairman, BLE

*D. E. Thompson*  
D. E. Thompson  
General Chairman, BLE

*J. R. Koonce*  
J. R. Koonce  
General Chairman, BLE

*M. A. Young*  
M. A. Young  
General Chairman, BLE

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

Side Letter No. 6

July 2, 1998

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

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

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

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

Gentlemen:

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

1. Engineers may be deadheaded prior to the tie-up after the initial trip.

Example: An engineer runs from Kansas City to Ft Madison. He can be deadheaded from Ft. Madison to Quincy for tie-up at Quincy from his original trip from Kansas City.

2. Engineers may also be deadheaded after tie-up and rest after the initial trip.

Example: An engineer runs from Kansas City to Ft. Madison and ties up. After rest, he can be deadheaded from Ft. Madison to Quincy for a trip from Quincy to Kansas City.

- a. This handling can only occur when there are no rested engineers at Quincy to protect the service from Quincy to Kansas City, i.e., it is not permissible to deadhead an engineer to a different away-from-home terminal for additional rest, but only for a return trip to the home terminal.

3. Engineers will not be deadheaded by train between one away-from-home terminal to another away-from-home terminal. Other forms of transportation will be used.
4. Engineers hired prior to implementation of this Agreement will be paid highway miles for the deadhead portion of the trip and engineers hired subsequent to the implementation will be paid actual time for the deadhead portion of the trip.

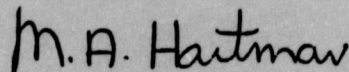


Side Letter No. 6  
July 2, 1998  
Mr. D. E. Penning  
Mr. D. E. Thompson  
Mr. J. R. Koonce  
Mr. M. A. Young  
Page 2

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

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

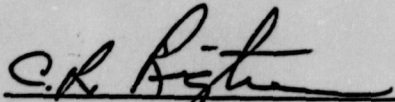
Yours truly,



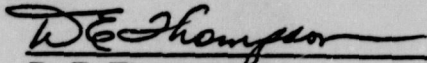
M. A. Hartman  
General Director-Labor Relations

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

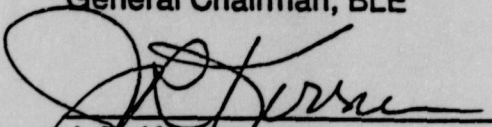
**AGREED:**



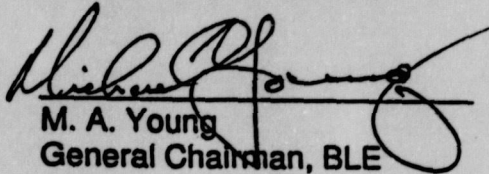
D. E. Penning  
General Chairman, BLE



D. E. Thompson  
General Chairman, BLE



J. R. Koonce  
General Chairman, BLE



M. A. Young  
General Chairman, BLE

cc: D. M. Hahs  
Vice President BLE

J. L. McCoy  
Vice President BLE



July 2, 1998

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

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

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

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

Gentlemen:

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

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

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

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

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

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

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

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

Yours truly,

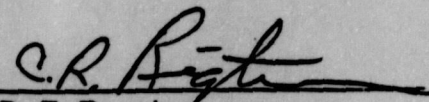
*M. A. Hartman*

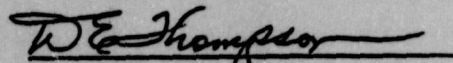
M. A. Hartman  
General Director-Labor Relations

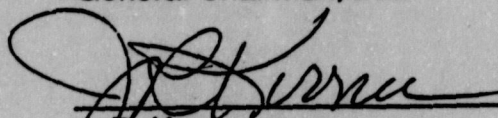



Side Letter No. 7  
July 2, 1998  
Mr. D. E. Penning  
Mr. D. E. Thompson  
Mr. J. R. Koonce  
Mr. M. A. Young  
Page 3

**AGREED:**

  
D. E. Penning  
General Chairman, BLE

  
D. E. Thompson  
General Chairman, BLE

  
J. R. Koonce  
General Chairman, BLE

  
M. A. Young  
General Chairman, BLE

cc: D. M. Hahs  
Vice President, BLE

J. L. McCoy  
Vice President, BLE

July 2, 1998

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

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

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

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

Gentlemen:

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

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

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

Side Letter No. 8



July 2, 1998  
Mr. D. E. Penning  
Mr. D. E. Thompson  
Mr. J. R. Koonce  
M. A. Young  
Page 2

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

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

Yours truly,

*M. A. Hartman*

M. A. Hartman  
General Director-Labor Relations

AGREED:

*C. R. Penning*  
D. E. Penning  
General Chairman, BLE

*D. E. Thompson*  
D. E. Thompson  
General Chairman, BLE

*J. R. Koonce*  
J. R. Koonce  
General Chairman, BLE

*M. A. Young*  
M. A. Young  
General Chairman, BLE

cc: D. M. Hahs  
Vice President, BLE

J. L. McCoy  
Vice President, BLE

July 2, 1998

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

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

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

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

Gentlemen:

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

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

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

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

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

Yours truly,

*M.A. Hartman*

M. A. Hartman  
General Director-Labor Relations



July 2, 1998

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

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

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

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

Gentlemen:

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

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

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

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

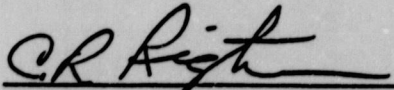
Yours truly,

*M.A. Hartman*

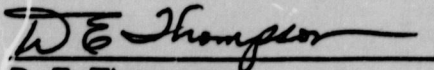
M. A. Hartman  
General Director-Labor Relations

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

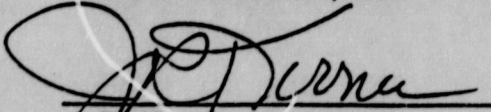
**AGREED:**



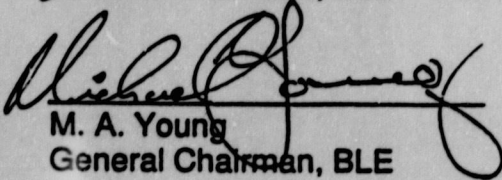
D. E. Penning  
General Chairman, BLE



D. E. Thompson  
General Chairman, BLE



J. R. Koonce  
General Chairman, BLE



M. A. Young  
General Chairman, BLE

cc: D. M. Hahs  
Vice President BLE

J. L. McCoy  
Vice President BLE



July 2, 1998

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

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

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

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

Gentlemen:

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

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

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

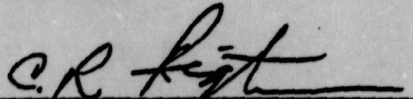
Yours truly,

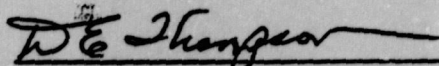
*M.A. Hartman*

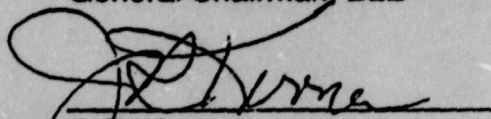
M. A. Hartman  
General Director-Labor Relations

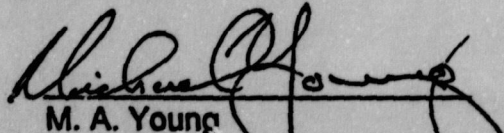
Side Letter No. 11  
July 2, 1998  
Mr. D. E. Penning  
Mr. D. E. Thompson  
Mr. J. R. Koonce  
Mr. M. A. Young  
Page 2

**AGREED:**

  
D. E. Penning  
General Chairman, BLE

  
D. E. Thompson  
General Chairman, BLE

  
J. R. Koonce  
General Chairman, BLE

  
M. A. Young  
General Chairman, BLE

cc: D. M. Hahs  
Vice President BLE

J. L. McCoy  
Vice President BLE



July 2, 1998

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

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

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

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

Gentlemen:

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

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

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

Yours truly,

*M. A. Hartman*

M. A. Hartman  
General Director-Labor Relations

cc: D. M. Hahs  
Vice President BLE

J. L. McCoy  
Vice President BLE

July 2, 1998

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

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

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

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

Gentlemen:

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

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

Yours truly,

*M. A. Hartman*

M. A. Hartman  
General Director-Labor Relations



July 2, 1998

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

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

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

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

Gentlemen:

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

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

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

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

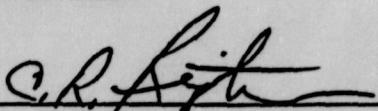
Yours truly,

*M. A. Hartman*

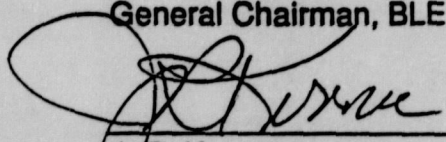
M. A. Hartman  
General Director-Labor Relations

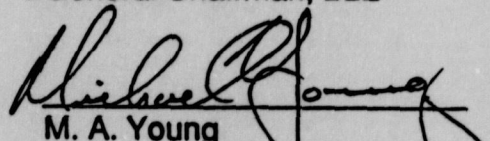
Side Letter No. 14  
July 2, 1998  
Mr. D. E. Penning  
Mr. D. E. Thompson  
Mr. J. R. Koonce  
Mr. M. A. Young  
Page 2

**AGREED:**

  
D. E. Penning  
General Chairman, BLE

  
D. E. Thompson  
General Chairman, BLE

  
J. R. Koonce  
General Chairman, BLE

  
M. A. Young  
General Chairman, BLE

cc: D. M. Hahs  
Vice President BLE

J. L. McCoy  
Vice President BLE



July 2, 1998

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

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

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

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

Gentlemen:

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

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

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

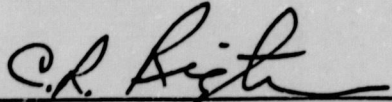
Yours truly,

*M. A. Hartman*

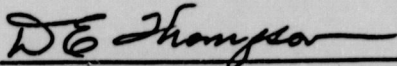
M. A. Hartman  
General Director - Labor Relations

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

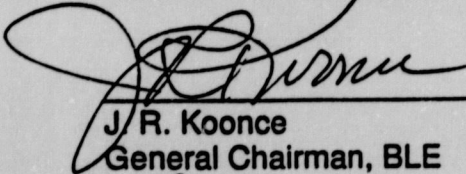
**AGREED:**



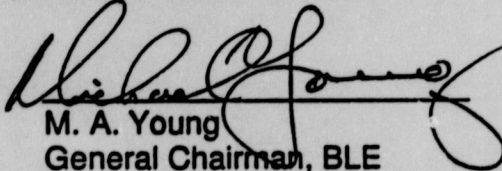
D. E. Penning  
General Chairman, BLE



D. E. Thompson  
General Chairman, BLE



J. R. Koonce  
General Chairman, BLE



M. A. Young  
General Chairman, BLE

cc: D. M. Hahs  
Vice President BLE

J. L. McCoy  
Vice President BLE



July 2, 1998

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

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

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

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

Gentlemen:

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

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

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

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

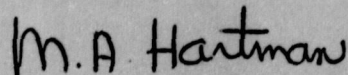
Side Letter No. 16  
July 2, 1998  
Mr. D. E. Penning  
Mr. D. E. Thompson  
Mr. J. R. Koonce  
Mr. M. A. Young  
Page 2

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

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

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

Yours truly,

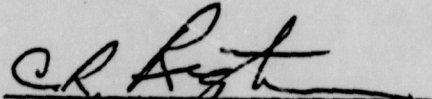


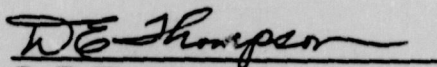
M. A. Hartman  
General Director-Labor Relations

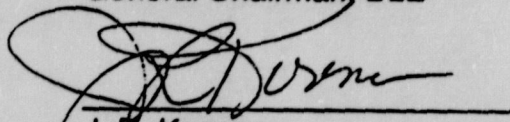


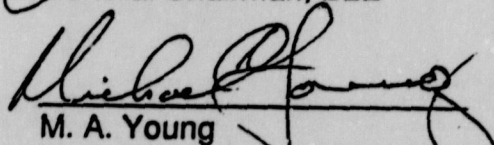
Side Letter No. 16  
July 2, 1998  
Mr. D. E. Penning  
Mr. D. E. Thompson  
Mr. J. R. Koonce  
Mr. M. A. Young  
Page 3

**AGREED:**

  
D. E. Penning  
General Chairman, BLE

  
D. E. Thompson  
General Chairman, BLE

  
J. R. Koonce  
General Chairman, BLE

  
M. A. Young  
General Chairman, BLE

cc: D. M. Hahs  
Vice President BLE

J. L. McCoy  
Vice President BLE

STB

FD-32760 (SUB37)

2-29-00

A

197612

3

OF

6



July 2, 1998

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

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

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

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

Gentlemen:

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

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

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

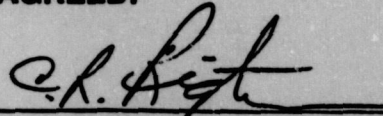
Yours truly,

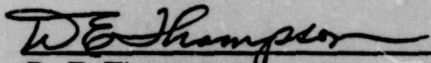
*M. A. Hartman*

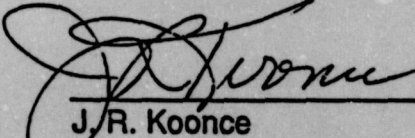
M. A. Hartman  
General Director-Labor Relations

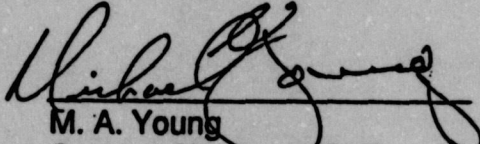
Side Letter No. 17  
July 2, 1998  
Mr. D. E. Penning  
Mr. D. E. Thompson  
Mr. J. R. Koonce  
Mr. M. A. Young  
Page 2

**AGREED:**

  
D. E. Penning  
General Chairman, BLE

  
D. E. Thompson  
General Chairman, BLE

  
J. R. Koonce  
General Chairman, BLE

  
M. A. Young  
General Chairman, BLE

cc: D. M. Hahs  
Vice President BLE

J. L. McCoy  
Vice President BLE



July 2, 1998

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

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

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

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

Gentlemen:

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

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

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

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

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

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

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

July 2, 1998

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

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

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

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

Gentlemen:

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

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

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

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

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

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

Yours truly,

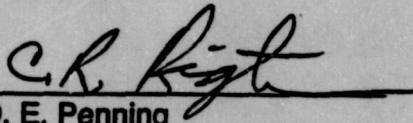
*M.A. Hartman*

M. A. Hartman  
General Director-Labor Relations

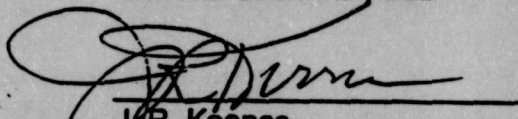


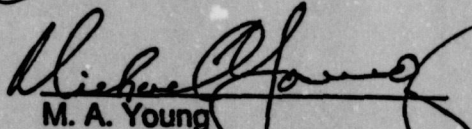
Side Letter No. 19  
July 2, 1998  
Mr. D. E. Penning  
Mr. D. E. Thompson  
Mr. J. R. Koonce  
Mr. M. A. Young  
Page 2

**AGREED:**

  
D. E. Penning  
General Chairman, BLE

  
D. E. Thompson  
General Chairman, BLE

  
J. R. Koonce  
General Chairman, BLE

  
M. A. Young  
General Chairman, BLE

cc: D. M. Hahs  
Vice President BLE

J. L. McCoy  
Vice President BLE

July 2, 1998

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

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

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

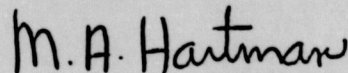
MR M A YOUNG  
GENERAL CHAIRMAN BLE  
1620 CENTRAL AVE RM 203  
CHEYENNE WY 82001

Gentlemen:

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

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

Yours truly,



M. A. Hartman  
General Director-Labor Relations



July 2, 1998

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

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

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

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

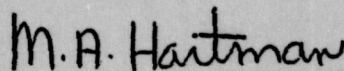
Gentlemen:

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

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

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

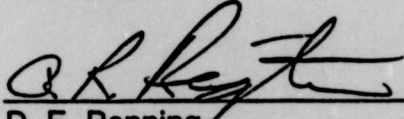
Yours truly,



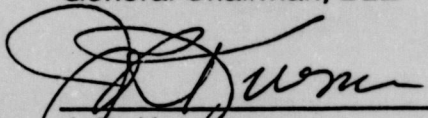
M. A. Hartman  
General Director-Labor Relations

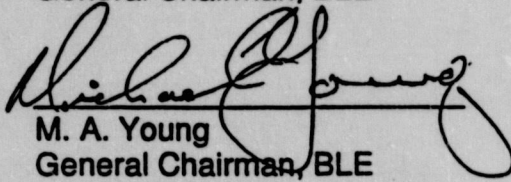
Side Letter No. 21  
July 2, 1998  
Mr. D. E. Penning  
Mr. D. E. Thompson  
Mr. J. R. Koonce  
Mr. M. A. Young  
Page 2

**AGREED:**

  
D. E. Penning  
General Chairman, BLE

  
D. E. Thompson  
General Chairman, BLE

  
J. R. Koonce  
General Chairman, BLE

  
M. A. Young  
General Chairman, BLE

cc: D. M. Hahs  
Vice President BLE

J. L. McCoy  
Vice President BLE



July 2, 1998

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

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

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

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

Gentlemen:

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

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

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

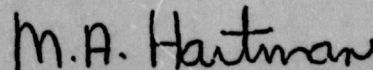
Side Letter No. 22  
July 2, 1998  
Mr. D. E. Penning  
Mr. D. E. Thompson  
Mr. J. R. Koonce  
Mr. M. A. Young  
Page 2

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

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

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

Yours truly,

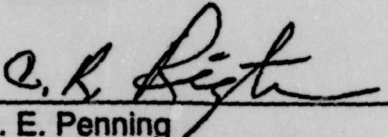


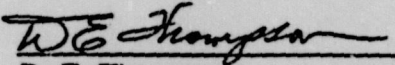
M. A. Hartman  
General Director-Labor Relations

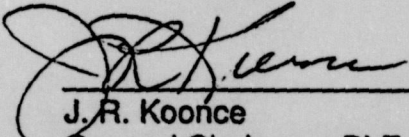


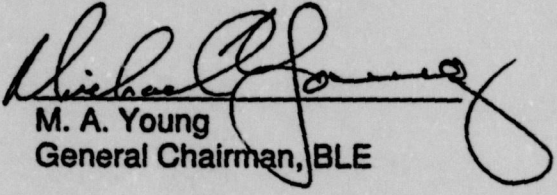
Side Letter No. 22  
July 2, 1998  
Mr. D. E. Penning  
Mr. D. E. Thompson  
Mr. J. R. Koonce  
Mr. M. A. Young  
Page 3

**AGREED:**

  
D. E. Penning  
General Chairman, BLE

  
D. E. Thompson  
General Chairman, BLE

  
J. R. Koonce  
General Chairman, BLE

  
M. A. Young  
General Chairman, BLE

cc: D. M. Hahs  
Vice President BLE

J. L. McCoy  
Vice President BLE

July 2, 1998

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

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

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

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

Gentlemen:

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

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

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

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

Yours truly,

*M.A. Hartman*

M. A. Hartman  
General Director-Labor Relations



July 2, 1998

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

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

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

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

Gentlemen:

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

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

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

Yours truly,


*M. A. Hartman*

M. A. Hartman  
General Director-Labor Relations

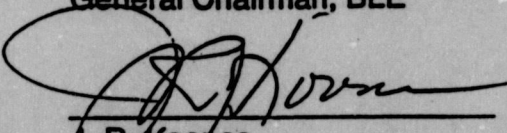
cc: D.M. Hahs  
Vice President - BLE  
J.L. McCoy  
Vice President - BLE

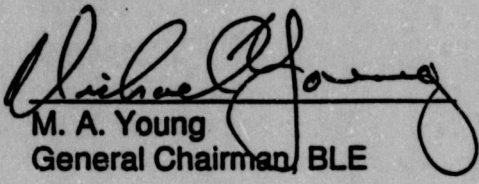
Side Letter No. 23  
July 2, 1998  
Mr. D. E. Penning  
Mr. D. E. Thompson  
Mr. J. R. Koonce  
Mr. M. A. Young  
Page 3

AGREED:

  
D. E. Penning  
General Chairman, BLE

  
D. E. Thompson  
General Chairman, BLE

  
J. R. Koonce  
General Chairman, BLE

  
M. A. Young  
General Chairman, BLE

cc: D. M. Hahs  
Vice President BLE

J. L. McCoy  
Vice President BLE



## **QUESTIONS AND ANSWERS - KANSAS CITY HUB**

### **ARTICLE I - WORK AND ROAD POOL CONSOLIDATION**

- Q.1.** What is the impact of the terminal operations at terminals where both the former UP and SSW/SPCSL had yards/terminal operations being "consolidated into a single operation"?
- A.1.** In a consolidated terminal, all road crews can receive/leave their trains at any location within the boundaries of the new consolidated Terminal and may perform work anywhere within those boundaries pursuant to the applicable collective bargaining agreement. The Carrier will designate the on/off duty points for road crews. All rail lines, yards, and/or sidings within the Terminal are considered as common to all crews working in, into and out of the Terminal and all road crews may perform all permissible road/yard moves pursuant to the applicable collective bargaining agreements.
- Q.2.** Is it the intent of this agreement to use engineers beyond the 25-mile zone?
- A.2.** No.
- Q.3.** Since the 25-mile zone provisions specify that engineers may be called to receive "the train for which they were called", does this preclude their use under such 25-mile zone provision for any other train?
- A.3.** Yes, unless other pre-existing local agreements or practices permit otherwise.
- Q.4.** What is intended by the words "at the basic pro rata through freight rate" as used in this Agreement?
- A.4.** Payment would be at the high (unfrozen) through freight rate of pay which is applicable to the service portion of the trip.
- Q.5.** How will initial terminal delay be determined when performing service as in the 25-mile zone?
- A.5.** Initial terminal delay for engineers entitled to such payments will be governed by the applicable collective bargaining agreement and will not commence when a crew operates back through the on-duty point. Operation back through the on-duty point shall be considered as operating through an intermediate point.
- Q.6.** How is a crew which received their train in the twenty-five (25) mile zone on the far side of the terminal compensated?
- A.6.** When so used, the crew shall be paid an additional one-half (½) basic day at the basic pro rata through freight rate for this service in addition to the district miles of the run. If the time spent beyond the terminal is greater than four (4) hours, they shall be paid on a minute basis at the basic pro rata through freight rate. Miles within the 25-mile zone shall not be added to the district miles of the run. Time spent within the zone does not factor into the computation of overtime; however, if the time spent within the zone, if factored into the computation of overtime, would produce road overtime earnings for the tour of duty in excess of the minimum four (4) hour payment, the higher overtime earnings would apply.

- Q.7. If a crew in the twenty-five (25) mile zone is delayed in bringing the train into the origin terminal so that it does not have time to go to the destination terminal, what will happen to the crew?
- A.7. If the crew had operated back through the origin terminal, they will be transported to the destination terminal, unless emergency conditions (i.e., acts of God, derailment, etc.) prevent such, and be paid district miles, overtime where applicable and a minimum of four (4) hours at the basic pro rata through freight rate.
- Q.8. In regards to Question 6 above. What happens if a crew in the twenty-five (25) mile zone is delayed and does not depart the origin terminal a second time?
- A.8. If the crew origin terminal is the home terminal will be released at the origin terminal and paid a basic day, including overtime when applicable, in addition to the minimum of four (4) hours at the basic pro rata through freight rate for working the 25-mile zone. If the origin terminal is the away terminal, the crew will be deadheaded to the destination terminal, except in cases of emergency (i.e., Acts of God, derailment, etc.).
- Q.9. Is it the intent of this agreement to use engineers in the 25-mile zone if not qualified to operate on that territory?
- A.9. No. It is not the intent of this agreement to require engineers to operate against their will within the 25-mile zone if not familiar with such territory.
- Q.10. Do the 25-mile zone provisions, including the pay provisions thereof, apply to all engineers?
- A.10. These provisions apply equally to pre-1985 engineer, post-1985 engineers, and engineers hired/promoted subsequent to the provisions of this agreement.
- Q.11. Is the ½ day at the basic pro rata through freight rate for operating in the 25-mile zone frozen and/or is it a duplicate payment/special allowance?
- A.11. No, it is subject to future wage adjustments and it is not a duplicate pay/special allowance.
- Q.12. At locations common to other hubs, such as Jefferson City, Wichita, Winfield, etc., is it understood that the right of a Kansas City Hub engineer to reach out 25 miles beyond the terminal to provide Hours of Service relief under the 25-mile zone provisions of this Agreement is dependent upon reciprocal 25-mile zone agreements in those hubs?
- A.12. Yes.
- Q.13. When an engineer is used for hours of service relief at the away from home terminal pursuant to this Agreement may he be used to provide relief for more than one train?
- A.13. No, when the engineer returns to the away from home terminal after performing hours of service relief (on only one train) he will stand first out upon arrival subject to rest and he shall next be either deadheaded or perform actual service to the home terminal.



- Q.14. What does the phrase "interchange rules are not applicable for intra-carrier moves within the terminal" mean?
- A.14. This refers to movements between locations, points or yards of the former pre-merger roads (i.e., UP, SP, DRGW, SSW and SPCSL). Interchange rules do not apply to such movements.
- Q.15. In Article I.A.9 it is provided that local assignments, assigned freight service, and any other irregular assignments will be protected by prior rights Zone 1 engineers from the Kansas City Hub "on a prior rights basis." What happens when such service is advertised and goes no bid?
- A.15. The vacancy would be filled by engineers holding seniority in the terminal. For example, such work would be protected by the OMC at Council Bluffs.
- Q.16. Carrier and the Organization on the former Eastern District have entered into an agreement providing for the establishment of RSS assignments at Marysville, which will be under the ED Agreement at that location. Are any such RSS jobs at Marysville to be treated the same as the Jeffrey Energy Pool assignments for purposes of application of the grandfather provisions of Article I.B.8.?
- A.16. Yes.
- Q.17. With regard to Article I.B.8., is it intended that the attrition of the Jeffrey Energy Pool assignments to the UP 18th District would be applied to force a prior rights former 8th District engineer out of Marysville?
- A.17. No.
- Q.18. With regard to Article I.B.8.a., if an engineer who was awarded prior rights to the Jeffrey Energy Pool assignments subsequently bid off or was reduced from such assignments, is he precluded from later reasserting his prior rights seniority to such assignments?
- A.18. No.
- Q.19. Are there any circumstances under which a former UP 8th District engineer would be entitled to relocation benefits from one location to another location within Zone 2?
- A.19. Since Marysville, Topeka and Kansas City were all within the same seniority district pre-merger, and are retained/prior righted post-merger, not basis for relocation benefits could be established.
- Q.20. Even though under Article I.A.11.b. the extra board at Atchison is not included in the prior rights arrangements at Atchison/St. Joseph, would a prior righted Atchison or St. Joseph engineer forfeit their prior rights under Article I.A.11.a. if they bid in the extra board?
- A.20. No.
- Q.21. After the six (6) year period in Article I.A.4.c. has expired, what application does Article I.A.4.d. have if the Carrier elects to phase out its use of BNSF trackage rights on a gradual basis rather than on an immediate basis?
- A.21. It is not intended that Carrier may circumvent the provisions of Article I.A.4.d. by implementing a plan to discontinue such trackage rights operations on a phased in basis. While the specific facts of the case will speak for themselves, it is undisputed that the intent of the parties is to afford relocation benefits to engineers forced to

relocate to Kansas City as a direct result of discontinuance of exercise of the trackage rights operations.

## **ARTICLE II - SENIORITY CONSOLIDATIONS**

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

## **ARTICLE III - EXTRA BOARDS**

- Q.1. Will extra boards established under this section be confined to protecting extra work exclusively within the zone in which established?
- A.1. All extra boards will only protect extra work within one zone. After implementation, should the Carrier desire to establish extra boards which protect extra work in more than one zone, this will be done pursuant to the existing collective bargaining agreement, and the parties must reach agreement as to how engineers from the zones involved will be allowed to exercise seniority to such extra board(s). Failure to reach such agreement, common seniority will be used.
- Q.2. Are these guaranteed extra boards?
- A.2. The provisions of the designated collective bargaining agreement shall apply.
- Q.3. In Article III.A.1. referring to use of the Atchison Extra Board for Hours of Service relief, what does "except in emergency" mean?
- A.3. The order of providing Hours of Service relief would be use of a rested away-from-home pool engineer on a straightaway move or the protecting extra board at Kansas City, including the supplementing extra board described in Article III.A.5.a. If all these sources are exhausted, the Atchison Extra Board could be used in order to move the train.

## **ARTICLE IV - APPLICABLE AGREEMENTS**

- Q.1. When the Merger Implementing Agreement becomes effective what happens to existing claims previously submitted under the prior agreements?
- A.1. The existing claims shall continue to be handled in accordance with the former agreements and the Railway Labor Act. No new claims shall be filed under those former agreements once the time limit for filing claims has expired.
- Q.2. Under Article IV.G., is it the intent that an engineer may receive duplicate compensation under this provision and some other agreement rule, such as deadhead provisions?
- A.2. No.



## ARTICLE V - FAMILIARIZATION

- Q.1. An engineer who makes familiarization trips only on the portion of the geographic territory where he intends to work may later exercise to another part of the territory with which he is not familiar. Does this Agreement apply to the necessary additional familiarization trips?
- A.1. Yes, no matter how much time has elapsed from date of implementation of this Agreement.
- Q.2. Who will approve an engineer as being properly familiarized on a new territory?
- A.2. An engineer will not be considered qualified on a new territory until check ride is given by the designated Carrier officer as per the requirements of 49 CFR, Parts 240.127 and 240.129.
- Q.3. May a brakeman, conductor, other employee not specified in the Agreement be used to familiarize an engineer on an unfamiliar geographic territory?
- A.3. No.
- Q.4. If an unqualified extra engineer stands first out for an assignment and the next extra engineer is qualified, may the first out extra engineer be run-around?
- A.4. No. The first out extra engineer will be called for the assignment and the next out engineer qualified will be called to act as a pilot.
- Q.5. How shall a qualified engineer used as pilot be compensated?
- A.5. The same as if he had operated the train.

## ARTICLE VI - IMPLEMENTATION

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

## ARTICLE VII - PROTECTIVE BENEFITS AND OBLIGATIONS

### *Section A:*

- Q.1. How will test period earnings be calculated for employees returning to service following extended absence (a period of one year or more)?
- A.1. Their test period earnings will be the average of the test period earnings of the two (2) employees below and two (2) employees above on the pre-merger rosters working in the same class of service.
- Q.2. How will test period earnings be calculated for part time union officers?
- A.2. In the same manner as question 1, Answer 1 above.

- Q.3. How does the Carrier calculate test period earnings if, during the last twelve (12) months, an employee has missed two (2) months compensated service?
- A.3. The Carrier will go back fourteen (14) months (or however many months necessary) to calculate the test period earnings based on twelve (12) months compensated service.
- Q.4. How will an employee be advised of his test period earnings?
- A.4. Test periods will be furnished to each individual and their appropriate General Chairman.
- Q.5. An employee is off one or more days of a month in the test period account of an on-duty personal injury. Will that month be used in computing test period averages?
- A.5. Yes, if the employee performed other compensated service during the month.
- Q.6. An engineer protects an extra board which pays a bonus day to an employee who stays marked up on the board for the entire pay period. Is this payment included in calculation of test period earnings?
- A.6. Yes.
- Q.7. Is vacation pay received during the test period considered as compensation?
- A.7. Yes.
- Q.8. If an engineer is on vacation the entire month and the vacation pay therefor is less than his TPA, would he be entitled to draw a displacement for the difference?
- A.8. Yes.
- Q.9. How is length of service calculated?
- A.9. It is the length of continuous service an employee has in the service of the Carrier, as defined in the Washington Job Protection Agreement of 1936.
- Q.10. If an employee has three years of engine service and three years of train service, how many years of protection will they have?
- A.10. Six.
- Q.11. Claims for a protection guarantee are subject to offset when an employee is voluntarily absent. How are such offsets computed?
- A.11. A prorated portion of the guarantee is deducted for each twenty-four (24) hour period or portion thereof. The proportion varies depending on the number of days in the month and the rest days of a regularly assigned employee. For example, in a thirty (30) day month, the through freight deduction would be 1/30th. For an employee assigned to a six (6) day local, the proration would be 1/26th or 1/27th, depending on how rest days fell. For an unassigned yard employee, the proration would be anywhere from 1/20th to 1/24th, depending on how the rest days fall. A deduction will not be made for an employee required to lay-off due to mileage regulations.



- Q.12. An employee assigned to the extra board lays off for one day. During the period of lay-off, he would not have otherwise had a work opportunity. What offset should be made in the employee's protective claim?
- A.12. A pro rata portion of the guarantee is deducted, such proportion depending on the number of days in the month, i.e., 1/28th, 1/29th, 1/30th or 1/31st. [Except mileage regulation lay-off].
- Q.13. What prorated portion of a protection guarantee will be deducted for an employee working on a guaranteed extra board whereon such employee is entitled to lay off up two (2) days per month without deduction of the extra board guarantee?
- A.13. No deduction will be made from the protection guarantee for the first two (2) days of layoff during the month. Layoffs in excess of two (2) will result in a prorated deduction from the protection guarantee on the basis of the number of days in the month for each day of layoff in excess of two. [Except mileage regulation lay-off.]
- Q.14. How will employees know which jobs are higher rated?
- A.14. The Carrier will periodically post job groupings identifying the highest to lowest paid jobs.
- Q.15. Will specific jobs be identified in each grouping?
- A.15. Pools, locals and extra boards, with different monetary guarantees, may be identified separately but yard jobs and road switchers will not be.
- Q.16. What rights does an employee have if he is already covered under labor protection provisions resulting from another transaction?
- A.16. Section 3 of New York Dock permits employees to elect which labor protection they wish to be protected under. By agreement between the parties, if an employee has three years remaining due to the previous implementation of Interdivisional Service the employee may elect to remain under that protection for three years and then switch to the number of years remaining under New York Dock. If an employee elects New York Dock then he/she cannot later go back to the original protection even if additional years remain. It is important to remember that an employee may not receive duplicate benefits, extend their protection period or count protection payments under another protection provision toward their test period average for this transaction.
- Q.17. Will the Carrier offer separation allowances?
- A.17. The Carrier will review its manpower needs at each location and may offer separation allowances if the Carrier determines that they will assist in the merger implementations. Article I Section 7 of New York Dock permits an employee that is "dismissed" as defined by New York Dock to request a separation allowance within seven days of his/her being placed in dismissed status in lieu of all other benefits.
- Q.18. Does an employee who elects to exercise his seniority outside the Kansas City Hub and not participate in the formulation of rosters for the new Kansas City Hub qualify for wage protection?
- A.18. The certification agreed to under Article VII applies only to those employees who are slotted on the newly formed Kansas City Hub rosters.

- Q.19. In applying the "highest rated job" standard to a protected employee, may the Carrier require an employee to take a higher rated job (or use those earnings as an offset against the protection guarantee) which would require a change in residence?
- A.19. No, unless the job is protected from that source of supply point.

**Section B:**

- Q.1. Who is required to relocate and is thus eligible for the allowance?
- A.1. An engineer who can no longer hold a position at his location and must relocate to hold a position as a result of the merger. This excludes engineers who are borrow outs or forced to a location and released.
- Q.2. Are there mileage components that govern the eligibility for an allowance?
- A.2. Yes, the engineer must have a reporting point farther than his old reporting point and at least 30 miles between the current home and the new reporting point and at least 30 miles between reporting points.
- Q.3. Can you give some examples?
- A.3. The following examples would be applicable.

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

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

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

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

- Q. 4. Why are there different dollar amounts for non-home owners and homeowners?
- A. 4. New York Dock has two provisions covering relocating. One is Article I Section 9 Moving expenses and the other is Section 12 Losses from home removal. The \$10,000 is in lieu of New York Dock moving expenses and the additional \$10,000 or \$20,000 is in lieu of loss on sale of home.
- Q. 5. Why is there a set amount offered on loss on sale of home?
- A. 5. It is an in lieu of amount. Engineers have an option of electing the in lieu of amount or claiming New York Dock benefits. Some people may not experience a loss on



sale of home or may not want to go through the procedures to claim the loss under New York Dock.

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

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

Q. 7. Can you give an example?

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

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

A. 8. New York Dock Article I Section 12 (d) provides for a panel of real estate appraisers to determine the value before the merger announcement and the value after the merger transaction.

Q. 9. What happens if an employee sells a home valued at \$50,000 for \$20,000 to a family member?

A. 9. That is not a bona fide sale and the employee would not be entitled to either an in lieu of payment or a New York Dock payment for the difference below the fair value.

Q. 10. What is the most difficult part of New York Dock in the sale transaction?

A. 10. Determine the value of the home before the merger transaction. While this can be done through the use of professional appraisers, many people think their home is valued at a different amount.

Q.11. Must SPCSL engineers and SSW Jefferson City engineers be forced to an assignment to be eligible for relocation benefits?

A.11. No, since they must relocate (except those Jefferson City engineers electing the benefits of Side Letter No. 7) to Kansas City, they make application for other assignments.

Q.12. Are there any seniority moves that are eligible for an allowance?

A.12. Yes. A seniority move that permits another employee who would have otherwise been forced to move to remain at the same location will be eligible for an allowance. The move may not trigger other relocation allowances.

## SIDE LETTER NO. 2

Q. 1. Will an engineer gain or lose vacation benefits as a result of the merger?

A. 1. SSW/SPCSL engineers will retain the number of weeks vacation earned for 1998 and 1999 that they would have earned under their previous vacation agreement. Beginning with the 2000 calendar year they will be treated as if they had always been a UP engineer and will earn identical vacation benefits as a UP engineer who had the same hire date and same work schedule.

- Q. 2. When the agreement is implemented, which vacation agreement will apply?  
A. 2. The vacation agreements used to schedule vacations for 1998 will be used for the remainder of 1998 and in 1999.
- Q. 3. Will personal leave be applicable to SSW/SPCSL engineers in 1998?  
A. 3. Personal leave days for SSW/SPCSL engineers will apply effective January 1, 1999. The number of personal leave days applicable to SSW/SPCSL engineers in 1998 will be prorated based upon actual implementation date.



**MILEAGE OF RUNS  
ATTACHMENT "B"**

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

**All mileages shown are approximations and are subject to final verification.**

*A-85*

**ATTACHMENT "C"**

**POOL ALLOCATION**

Kansas City - Jefferson City Pool (\_\_\_turns); former UP \_\_\_\_%; former SSW \_\_\_\_%.

- |         |         |
|---------|---------|
| 1. UP   | 11. UP  |
| 2. SSW  | 12. SSW |
| 3. UP   | 13. UP  |
| 4. SSW  | 14. SSW |
| 5. UP   | 15. UP  |
| 6. SSW  | 16. SSW |
| 7. UP   | 17. UP  |
| 8. SSW  | 18. SSW |
| 9. UP   | 19. UP  |
| 10. SSW | 20. SSW |

(Turns in excess of the highest number shown herein will be filled by engineers from the zone roster, and thereafter from the common roster).

A-86



**ATTACHMENT "D"**  
**UP**  
**Jefferson City Engineers**

1.	H. R. Bunch	11/21/73
2.	T. G. Stock	01/16/74
3.	C. P. Beach	02/08/74
4.	E. R. Lister	05/08/74
5.	W. D. Herrington	05/17/74
6.	L. E. Bagby	06/30/74
7.	T. M. Kohn	08/15/74
8.	F. S. Wiggins	08/19/74
9.	D. G. Wagers	09/28/74
10.	D. D. Huff	10/12/74
11.	M. W. Carver	11/04/74
12.	D. A. Slicker	04/16/75
13.	J. G. McCasland	09/01/75
14.	D. W. Roling	09/01/75
15.	M. W. Offineer	12/02/75
16.	S. A. Wheeler	04/17/76
17.	W. J. Shelton	12/10/76
18.	R. J. Berhorst	12/10/76
19.	R. L. Moeckel	04/23/77
20.	L. C. Frank	07/25/77
21.	D. M. Steigers, Jr.	07/25/77
22.	M. W. Smith	10/26/77
23.	R. L. Viessman	11/16/77
24.	R. W. Nowack	11/16/77
25.	J. M. Rackers	04/29/78
26.	W. F. McKinney	04/29/78
27.	D. A. Laune	08/01/78
28.	C. W. Goodin	08/01/78
29.	D. E. Imsland	01/28/78
30.	J. R. Stevens	01/29/79
31.	M. H. Twardowski	02/19/79
32.	S. L. Job	10/21/79
33.	R. K. Sennott	10/22/79
34.	C. W. Kerr	11/10/79

A-87

**ATTACHMENT "D"**  
**UP**  
**Jefferson City Engineers**

35.	C. A. VanLoo	03/11/80
36.	S. G. Asher	05/24/80
37.	L. K. Lorts	05/24/80
38.	H. D. Downing	05/24/80
39.	C. L. Williams	08/16/80
40.	H. W. Schanuth, Jr.	04/26/81
41.	B. M. Britt	04/26/81
42.	A. K. Schad	04/26/81
43.	C. F. Chapman	04/26/81
44.	R. K. Ellis	04/26/81
45.	C. W. Goose	04/26/81
46.	T. J. Schepers	04/26/81
47.	C. E. Weaver	06/09/81
48.	L. A. Frank	02/18/82
49.	C. G. Palmer	02/18/82
50.	J. S. Moss	02/18/82
51.	A. L. Adams	04/09/82
52.	K. W. Pihana	06/05/82
53.	H. J. Smith	11/22/94
54.	R. O. Key	11/22/94
55.	S. P. Keilt	11/25/94
56.	A. I. Lindsey	12/01/94
57.	K. N. Olsen	04/08/96
58.	C. C. Goose	04/08/96
59.	R. J. Berthelson	05/03/96
60.	A. L. Cachere	05/03/96
61.	J. P. Severt	05/03/96
62.	E. V. Ochs	05/03/96
63.	T. C. McCormick	05/03/96
64.	C. L. Goose	01/07/97

A-88



**ATTACHMENT "D" (Cont'd)**  
**SSW**  
**Jefferson City Engineers**

1.	A. R. Barnett	498-64-8641	24.	T. W. Mobley	498-56-9829
2.	W. M. Bond	488-48-7762	25.	L. D. Malloy	487-60-0637
3.	D. A. Brown	430-84-2941	26.	D. G. Morris	498-60-1850
4.	G. M. Campbell	489-48-6291	27.	G. W. Osterhage	350-36-6191
5.	D. L. Claque	431-82-1203	28.	D. L. Patrick	430-84-4709
6.	R. D. Cummings	490-58-6727	29.	R. L. Pettit	498-56-9524
7.	G. W. Davis	488-54-5738	30.	K. D. Pickett	497-50-3013
8.	B. H. Demsey	493-46-5704	31.	R. G. Potter	336-34-4705
9.	G. R. Dildy	432-90-7501	32.	G. B. Ruiz	500-34-9530
10.	M. A. Dixon	432-90-9018	33.	T. C. Sawyer	337-58-8700
11.	S. V. Davenport	432-66-9151	34.	G. H. Schaefer	494-56-1547
12.	M. E. Gage	494-48-1534	35.	J. W. Sissom	494-56-3344
13.	W. E. Gross	486-46-6308	36.	D. R. Snyder	428-88-2388
14.	R. J. Hanschen	494-56-4710	37.	L. W. Steele	498-46-8524
15.	C. J. Hicks	490-52-8319	38.	F. G. Spencer, Sr.	450-66-1573
16.	R. E. Holdt	490-44-1427	39.	W. P. Stover	360-32-6732
17.	T. G. Jenkins	492-50-5232	40.	L. E. Strange	499-48-5076
18.	S. M. Jungers	355-46-3204	41.	D. R. Svetlich	513-44-3474
19.	R. D. Lambeth		42.	F. J. Thielemier	
20.	R. A. Lawrence	489-44-7272	43.	G. W. Thomas	432-02-9718
21.	G. R. Moore	430-90-4525	44.	J. L. Webb	495-52-1476
22.	D. T. Mayberry	430-86-4260	45.	R. L. Wright	494-56-0481
23.	M. J. Menz	480-56-5003	46.	M.O. Coats	

A-89

## ATTACHMENT "E"

### POOL ALLOCATION

**Kansas City - Jefferson City Pool (51 turns); former UP 69%; former SSW 31%**

1.	UP
2.	SSW
3.	UP
4.	UP
5.	SSW
6.	UP
7.	UP
8.	UP
9.	SSW
10.	UP
11.	UP
12.	SSW
13.	UP
14.	UP
15.	SSW
16.	UP
17.	UP
18.	SSW
19.	UP
20.	UP
21.	SSW
22.	UP
23.	UP
24.	UP
25.	SSW
26.	UP

27.	UP
28.	SSW
29.	UP
30.	UP
31.	SSW
32.	UP
33.	UP
34.	SSW
35.	UP
36.	UP
37.	UP
38.	SSW
39.	UP
40.	UP
41.	SSW
42.	UP
43.	UP
44.	SSW
45.	UP
46.	UP
47.	SSW
48.	UP
49.	UP
50.	SSW
51.	UP

(Turns in excess of the highest number shown herein will be filled by engineers from the zone roster, and thereafter from the common roster).

A-90



## ATTACHMENT "F"

### Zone 1 (Baselines)

MP	47
CNW	17
SPCSL	32 (16 Kansas City to Ft. Madison/Quincy and 16 Ft. Madison/Quincy to Chicago)
Total	80

### Zone 4 (Baseline)

Total	69
-------	----

The above totals do not include extra boards, these are regular assigned baselines.

A-91

ORGANIZATION EXHIBIT

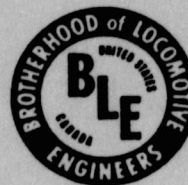
B



AGREEMENT  
BETWEEN THE  
UNION PACIFIC RAILROAD  
EASTERN DISTRICT



AND THE  
BROTHERHOOD OF  
LOCOMOTIVE ENGINEERS



EFFECTIVE DECEMBER 1, 1979  
SUPERCEDING SCHEDULE  
EFFECTIVE MAY 1, 1954

**BLE EXHIBIT B**

SENIORITY RIGHTS

RULE 83. (a) Rights. Rights to runs will be governed by seniority, other things being equal.

(b) District Rights. Engineers will be confined to districts where rights are located.

RULE 84. TRANSFERRING. (a) Engineers temporarily transferred will have the privilege of returning to their respective districts before other men are employed or promoted on such districts. If permanent transfer is desired, they must so decide within 3 months, and in that case will rank as new men with date carrying any portion of last 90 days continuous service.

(b) Engineers on different seniority districts may exchange positions with the approval of the General Chairman and General Manager, and where transfer is made, the employees will each take the seniority date of the junior employee making the change.

RULE 85. TERRITORIAL RIGHTS. When established runs are so changed as to cause engineers to run over more than one district or part thereof runs and vacancies thereon shall be filled in such service by engineers of such districts in proportion to the mileage of each district over which the run or runs extend; provided, that in case either district furnished less than 75% or more than 25% of the mileage on the run, the only two engineers are assigned, each district will furnish one; one assigned, the district with the major portion will furnish the engineer.

RULE 86. RIGHTS ON ACQUIRED OR LEASED ROADS. (a) Engineers found employed on roads acquired or leased and operated by this Company as separate districts shall retain their rights and seniority as heretofore on the road absorbed.

(b) Engineers found employed on roads acquired or leased by this Company and operated as a part of any district shall take seniority rights on the entire district to which added, in accordance with seniority date in service as an engineer on the absorbed road.

EXHIBIT B  
PAGE 64 2 OF 4



(h) Eighth District. Kansas City to Junction City, Topeka to Marysville, and including yards at Kansas City and Topeka.

(i) Ninth District. Junction City to Ellis, Salina to McPherson, Solomon to Beloit, and Salina to Plainville, including yards at Junction City and Ellis.

(j) Tenth District. (Includes former Tenth and Eleventh Districts.) Ellis to Hugo and Oakley to Plainville.

NOTE: See Appendix E for agreement merging the Tenth and Eleventh Seniority Districts.

(k) Twelfth District. M.P. 775.5 to and including West Switch, Granger, and all yards and branches within this territory.

(l) Fourteenth District. Denver to Sterling, Denver to Hugo, Denver to Cheyenne, and Boulder, Fort Collins, Greeley, Pleasant Valley Branches including yards at Denver, Sterling, and Hugo, and percentage on Denver-Laramie passenger and freight runs. This percentage gives the Fourteenth District runs 1, 3, 4, 6, 7, 9, etc., passenger runs to be counted first.

(m) Fifteenth District. Valley to Bestwall, Valparaiso to Central City, and branch trains between Valley and Council Bluffs, including yard at Beatrice. Marysville and Valley will be district terminals for Fifteenth District crew, except on branch trains destined Council Bluffs or on branch trains from Council Bluffs destined to points south of Valley, including Beatrice.

(n) Eighteenth District. St. Joseph to Grand Island including yards at Marysville and Hastings.

RULE 89. APPLICATIONS. The application of an engineer entering service will be approved or rejected within 90 days. When applicant is not notified to the contrary within 90 days, it will be understood his application is approved unless it should later develop that he gave false information on his application for employment, in which event he will not be dismissed without regular investigation, if he so requests.

RULE 90. OFFICIAL POSITION. An engineer accepting official position representing the Company or its engine service employes will retain his seniority rights.

RULE 91. LEAVING SERVICE. Engineers leaving the service of their own accord will forfeit all seniority rights and, if they re-enter the service after one year will rank as new employes. The one-year limit will not apply to a case pending in the hands of the regularly constituted committee.

EXHIBIT

PAGE

B  
4 OF 4

ORGANIZATION EXHIBIT

C



UNION PACIFIC RAILROAD COMPANY



1416 DODGE STREET  
OMAHA, NEBRASKA 68179

October 26, 1998

**CORRECTED LETTER**

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

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

MR J L McCOY  
VICE PRESIDENT BLE  
6084 BELLE FOREST DR  
MEMPHIS TN 38115

MR DON M HAHS  
VICE PRESIDENT BLE  
1011 ST ANDREWS  
KINGWOOD TX 77339

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

MR DENNIS C SIMMERMAN  
EXECUTIVE STAFF - BLE  
STANDARD BLDG - MEZZ FLR  
1370 ONTARIO ST  
CLEVELAND OH 44113-1702

MR HAROLD A ROSS  
ATTORNEY AT LAW  
STANDARD BLDG STE 1548  
CLEVELAND OH 44113

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

Gentlemen:

Reference is made to the UP-BLE Kansas City Hub Merger Implementing Agreement.

Per Article VI (Implementation), the Carrier serves notice of its intent to implement this Agreement on January 16, 1999.

Please contact the undersigned should any amplification be desired.

Yours truly,

*R. D. Rock*

R. D. ROCK  
DIRECTOR LABOR RELATIONS

**BLE EXHIBIT C**

ORGANIZATION EXHIBIT

D



ADMINISTRATIVE MESSAGE NO. 109 FROM LATA H991928 R.S. SCHNEIDER  
DATE 05/07/99 13:06

UNION PACIFIC RAILROAD CO. MIDWEST SERVICE UNIT  
ENGINEMEN'S VACANCY BULLETIN NO. (E-62825-SD08)

LOCATION: KANSAS CITY, MO.

DATE AND TIME ADVERTISED: 10/10/98 12:00  
DATE AND TIME CLOSED: 10/25/98 12:00 ✓

BIDS WILL BE RECEIVED FOR 12 POSITIONS TO ENTER AN ENGINE SERVICE TRAINING PROGRAM. SUCCESSFUL APPLICANTS WILL RECEIVE TRAINING FOR ENGINE SERVICE AND UPON COMPLETION OF PROGRAM WILL BE ASSIGNED AT KANSAS CITY, MO. THIS TRAINING PROGRAM WILL BE USED TO SECURE PERSONNEL TO WORK THE KANSAS CITY, 8TH DISTRICT ROAD ENGINE SERVICE AT KANSAS CITY, MO.  
KANSAS CITY TO MARYSVILLE, KS

TRAINMEN ELIGIBLE TO BID WILL BE ANYONE ASSIGNED TO THE ZONE 100 ROSTER. ZONE 100 ROSTER INCLUDES TRAINMEN ON THE 1ST DISTRICT, 2ND DISTRICT, 3RD DISTRICT, 4TH DISTRICT, 9TH DISTRICT, 10TH DISTRICT, 11TH DISTRICT, NEBRASKA DIVISION YARDS, AND KANSAS DIVISION YARDS. FIRST PREFERENCE WILL BE GIVEN TO 9TH DISTRICT TRAINMEN.

SENIOR APPLICANTS WILL REMAIN ON THEIR ASSIGNMENTS UNTIL THE START OF TRAINING FOR ENGINE SERVICE. THEY WILL BE NOTIFIED PRIOR TO STARTING TIME AND DATE.

APPLICANT DESIRING ASSIGNMENT WILL CALL THE OMAHA CREW MANAGEMENT SYSTEMS BID/ APPLICATION RECORDER AT 8-997-3431. PLEASE GIVE YOUR NAME, INITIALS, SOCIAL SECURITY NUMBER, SENIORITY DATE, BULLETIN NUMBER AND YOUR DESIRED CHOICES.  
BLTN DESK 800-877-0307

FOR EXAMPLE:

"THIS IS TRAINMAN R. R. BAILEY, 505-00-7631, BIDDING ON BULLETIN E-001-SD05 DATED 12/06/81. MY FIRST CHOICE IS THE BULLETIN VACANCY, SECOND CHOICE IS A CHANGE IN THE CHEYENNE-RAWLINS POOL, AND THIRD CHOICE IS A CHANGE IN THE CHEYENNE-HANNA POOL."

COMMENTS: ANY APPLICANTS WHO SUBMITTED PRIOR BIDS ON PREVIOUS ENGINE SERVICE BULLETINS, WILL NEED TO RESUBMIT APPLICATION FOR THESE VACANCIES .-----

BULLETIN DISPATCHER: MIKE SULLIVAN-----

PARTY POSTING THIS BULLETIN MUST NOTIFY CMS OMAHA OF RECEIPT OF BULLETIN.  
CMS OMAHA NOTIFIED OF RECEIPT OF BULLETIN. DATE - --/---/--- TIME - :---:---  
POSTED BY ----- DATE - --/---/--- TIME - :---:---

CI: POST ALL BULLETIN BOARDS  
TRAINMASTERS  
LOCAL CHAIRMEN  
CMS BULLETIN FILE  
DM

**BLE EXHIBIT D**

ORGANIZATION EXHIBIT

E



# 1999 ENGINEERS TRAINING CLASSES NORTHERN REGION

Training Date	Location	Seniority District	Trainees	Class Number	Class Location	Class Date	Estimated Qualified	Bulletin Number	Bidders List	User Group
12/5/98	CHICAGO	CFT	6	SE9803	CHGO	1/4/99	6/4/99	LOCO-T-4348	808-7-4348	CHNDP
12/5/98	CHICAGO	EA-01 *	3	SE9803	CHGO	1/4/99	8/5/99	LOCO-T-4348	808-1-4348	CHNDP
12/5/98	ST. PAUL	CE-05	3	SE9803	CHGO	1/4/99	6/4/99	LOCO-T-4348	808-5-4348	CHNDP
★ 12/12/98	KANSAS CITY	8TH DIST ★	12	SE9806	CHGO	1/11/99	8/11/99	ACTY-E-4325	808-8CTY	BLTN
12/26/98	NPLATTE	3RD DIST	6	SE9811	SLC	1/25/99	6/25/99	NOPL-E-41711	808-41711	BLTN
12/26/98	NPLATTE	3RD DIST	6	SE9811	SLC	1/25/99	6/25/99	NOPL-T-88517	808-88517	BLTN
1/2/99	BOONE	SO-03	6	SE9814	CHGO	2/1/99	7/1/99	LOCO-T-4348	808-3-4348	CHNDP
1/2/99	CHICAGO	NE-02 *	5	SE9814	CHGO	2/1/99	9/1/99	LOCO-T-4348	808-2-4348	CHNDP
1/23/99	DENVER	DENVER HUB	4	SE9817	CHGO	2/22/99	7/22/99	ORDN-E-88416	808-88416	BLTN
1/23/99	MARYSVILLE	18TH DIST	5	SE9817	CHGO	2/22/99	7/22/99	MRYV-T-88338	808-88338	BLTN
1/23/99	ST. PAUL	NO-04	2	SE9817	CHGO	2/22/99	7/22/99	LOCO-T-87323	808-4-87323	CHNDP
3/13/99	OMC	1ST DIST	6	SE9826	SLC	4/12/99	9/12/99	CBLF-E-82725	808-82725	BLTN
3/20/99	HERINGTON	HERINGTON	12	SE9829	SLC	4/19/99	9/19/99	SNHR-T-75487	808-75487	BLTN
4/3/99	MARYSVILLE	18TH DIST	1	SE9835	SLC	5/3/99	10/3/99	MRYV-T-88338	808-88338	BLTN
4/3/99	SMORRILL/BILL	6TH DIST	12	SE9837	CHGO	5/3/99	10/3/99	LOCO-T-87519	808-87519	CHNDP
4/10/99	NPLATTE	2ND DIST	*12	SE9838	SLC	5/10/99	10/10/99	NOPL-E-87827	808-87827	BLTN
★ 5/15/99	KANSAS CITY	KC HUB ★	12	SE9845	CHGO	6/14/99	11/14/99	ACTY-T-73887	808-73887	BLTN
5/22/99	CHEYENNE	4TH DIST	8	SE9846	SLC	6/21/99	11/21/99	CHEY-E-87827	808-87827	BLTN
5/22/99	CHEYENNE	5TH DIST	8	SE9846	SLC	6/21/99	11/21/99	CHEY-E-88827	808-88827	BLTN
5/28/99	NPLATTE	2ND DIST	12	SE9849	SLC	6/28/99	11/28/99	NOPL-E-88917	808-88917	BLTN
6/12/99	CHICAGO	EA-01 *	5	SE9853	SLC	7/12/99	2/11/00	LOCO-T-4348	808-1-4348	CHNDP
6/12/99	GREEN RIVER	12TH DIST	3	SE9853	SLC	7/12/99	12/12/99	GRN-T-78887	808-78887	BLTN
6/12/99	CHICAGO	CFT	6	SE9854	CHGO	7/12/99	12/12/99	LOCO-T-4348	808-7-4348	CHNDP
6/12/99	ST. PAUL	CE-05	5	SE9854	CHGO	7/12/99	12/12/99	LOCO-T-4348	808-5-4348	CHNDP
6/12/99	ST. PAUL	NO-04	1	SE9854	CHGO	7/12/99	12/12/99	LOCO-T-87323	808-6-87323	CHNDP
★ 8/28/99	KANSAS CITY	KC HUB ★	12	SE9858	SLC	7/28/99	8/28/99	ACTY-E-88117	808-88117	BLTN
8/28/99	BOONE	SO-03	5	SE9859	CHGO	7/28/99	12/28/99	LOCO-T-4348	808-3-4348	CHNDP
8/28/99	CHICAGO	NE-02 *	6	SE9859	CHGO	7/28/99	2/28/00	LOCO-T-4348	808-2-4348	CHNDP
8/28/99	ST. PAUL	NO-04	1	SE9859	CHGO	7/28/99	12/28/99	LOCO-T-87323	808-6-87323	CHNDP
7/3/99	CHICAGO	CFT	1	SE9861	SLC	8/2/99	1/2/00	LOCO-T-4348	808-7-4348	CHNDP

ORGANIZATION EXHIBIT

F



L.A. LAMBERT  
General Director  
Labor Relations-Operating  
Southern Region

UNION PACIFIC RAILROAD COMPANY

1416 Dodge Street  
Omaha, Nebraska 68179-0001  
(402) 271-3796



July 16, 1999

File: 110.61-20

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

Dear Sir:

This is in reply to your Organization's letter of June 23, 1999 requesting records be revised to reflect twelve (12) specific engineers with prior rights to Zone 2 of the Kansas City Hub Merge Roster.

The following provisions of the Kansas City Hub Merger Agreement are quoted in pertinent part:

**"ARTICLE II**

**"A. . . . A new seniority district will be formed and a master engineer seniority roster - UP/BLE Kansas City Merge Roster # 1 will be created for engineers holding seniority in the territory comprehended by this Agreement on the effective date thereof.**

**"F. . . . Engineers borrowed out from locations within the hub and engineers in training on the effective date of this Agreement shall also participate in the formulation of the roster described above.**

**"ARTICLE X - EFFECTIVE DATE**

**This Agreement implements the merger of the Union Pacific and SSW/SPCSL Railroad Operations in the area covered by notice dated January 30, 1998**

**"Signed at Denver, Colorado this 2<sup>nd</sup> day of July 1998."**

Also, attached is a letter of September 17, 1998 from General Director Hartman to your Organization as well as the other affected BLE Committees, wherein it is held that engineers who enter the training program and are promoted subsequent to implementation date will only establish common (hub) seniority. He concludes this letter by stating that unless he hears from your Organization to the contrary, he will assume concurrence on the contents of this letter is correct. The record is undisputed that no reply was proffered by any of the BLE Committees.

**BLE EXHIBIT F**

Mr. Young  
July 16, 1999  
File: 110.61-20  
Page 2

On the issue at hand, the twelve (12) specific engineers in question entered the training program prior to the implementation of the Kansas City Hub Merger Agreement, but were not promoted until just recently. Accordingly, based on the above citations, there is no contractual support for granting these employees prior rights in the Kansas City Hub Merge Roster.

There is no dispute as to the specific language in the October 1998 Bulletin for Engineer Promotion. The specific language however, was required because as of that time period the merger agreement had not been implemented. As such, the Bulletin could only apply and affect those former Eastern District Seniority Trainmen for the former seniority district of the BLE. It was not until the Bulletin was closed that Carrier advised your Organization the Merger Agreement would be implemented on January 16, 1999. Providing prior rights to these employees on the basis of the October Bulletin is without foundation. The Bulletin language was, at that time, contractually correct and while the employees may have perceived prior rights would be provided, the Merger Agreement language does not support such position.

Again, your Organization's request for prior rights must be rejected based upon the undisputed language of the Merge Agreement.

As a final note, your Organization states in its letter that the "...BLE has properly challenged their standing in accordance with the BLE controlling rule(3)", yet, the record is void of any such challenge except your Organization's letter in question.

Yours truly,

L. A. LAMBERT

CC: C. R. Rightnowar  
Harry Straub - WT008  
Tom Dein - WT007  
Bill Hutfles - WT008

F-2



UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET  
OMAHA, NEBRASKA 68102



September 17, 1998

Mr. D. E. Penning  
General Chairman BLE  
12531 Missouri Bottom Road  
Hazelwood, MO 63042

Mr. M. A. Young  
General Chairman BLE  
1620 Central Ave.  
Cheyenne, WY 82001

Mr. D. E. Thompson  
General Chairman BLE  
414 Missouri Blvd  
Scott City, MO 63780

Mr. John R. Koonce  
General Chairman BLE  
5050 Poplar Ave., STE 501  
Memphis, TN 38157

Gentlemen:

This has reference to the Kansas City Hub Merger Agreement.

During roster canvassing a question arose regarding seniority of engineers who enter the training program and are promoted subsequent to implementation date. The question was whether they established zone prior rights seniority or only common (hub) seniority. Of course the answer is that they only establish common (hub) seniority. However, in searching for the specific language which states that intent, I was unable to locate definitive language to that effect such as we have incorporated into our other hub agreements. Apparently we inadvertently omitted that language in the Kansas City Hub agreement.

Although that intent may be more obscure in the Kansas City Hub language, I am certain you will all concur as to the intent of the parties that engineers promoted in the future will only establish common hub seniority and do not establish prior rights to any particular zone. Unless I hear from you to the contrary, I will assume you concur with the contents of this letter.

Yours truly,

M. A. Hartman  
General Director-LR

cc: Mr. Don Hahs, Vice President BLE  
Mr. Jim McCoy, Vice President BLE

F-3

ORGANIZATION EXHIBIT

G



Award No. 7322  
Docket No. 14950

FIRST DIVISION  
NATIONAL RAILROAD ADJUSTMENT BOARD

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN  
WICHITA FALLS AND SOUTHERN RAILROAD COMPANY

**STATEMENT OF CLAIM:** Claim that Brakeman-Conductor J. P. Tolland is entitled to a seniority date as conductor ahead of Brakeman-Conductor A. L. Ditto, in accordance with his seniority rights as J. P. Tolland holds seniority as a brakeman as of March 15, 1923, on the merged lines, with prior rights on the district from Breckenridge to Dublin, Texas, and Brakeman A. L. Ditto holds seniority as brakeman as of October 2, 1924, on the merged lines, with prior rights on the district between Wichita Falls and Breckenridge, Texas, and both men have been used as brakemen accordingly.

**JOINT STATEMENT OF FACTS:** The Wichita Falls & Southern Railway and the Wichita Falls, Ranger & Fort Worth Railway were merged into one line on September 1, 1927—the Wichita Falls & Southern Railroad Company, and the seniority of the brakemen of the two lines were merged, with prior rights to service assigned exclusively to their former territory or respective lines. Brakeman-conductor J. P. Tolland holds seniority date as brakeman as of March 15, 1923 on the merged lines, with prior rights on the district from Breckenridge to Dublin, Texas, (formerly Wichita Falls, Ranger & Ft. Worth Railway), and brakeman A. L. Ditto holds seniority as brakeman as of October 2, 1924, on the merged lines, with prior rights on the district from Wichita Falls to Breckenridge, Texas, (formerly Wichita Falls & Southern Railway). Brakemen hired or promoted to conductor subsequent to September 1, 1927 hold seniority over the entire merged lines, including track jointly operated with Fort Worth & Denver City Railway. Brakemen, in accordance with their seniority standing on the brakemen's seniority list, that is, the senior men, have been promoted in the order of their seniority in all cases except in the case of J. H. Lippard, with, seniority date as brakeman of March 2, 1920, holds seniority date as conductor as of March 3, 1920, while C. H. Bingham, holds seniority date as of March 1, 1920 as brakeman, holds seniority date as conductor as of March 4, 1920; D. Hendrickson, with seniority date as brakeman of March 25, 1921, holds seniority date as conductor as of May 15, 1930, while E. G. Brown with seniority date as brakeman as of March 7, 1920, holds seniority date as conductor as of November 9, 1937. The Management states no record of any protest in either of the two cases, but the Committee states no information as to facts in the case of Lippard and Bingham, however, in the case of Hendrickson and Brown, the Committee states brakeman Brown waived his turn for promotion.

On January 15, 1938, Mr. J. R. Jernigan, Assistant General Manager of the Company, posted Bulletin No. 2, reading as follows:

[194]

7322—2

"Bulletin No. 2:  
Office of Ass't. General  
1938:

To

ALL TRAIN AND ENGINEERS

Following letter received from  
F. W. & D. C. Railroad

'Bi-ennial re-examination of the  
ing department will  
will begin in the  
employees of your  
this fact in order  
consider necessary  
of names of your  
use our tracks and  
tion on our rules.  
not now filling su  
and if at all possi  
selves for examina  
classes. Should a  
cate.'

Conductors	Engineers
W. J. Burt	J. J.
C. H. Bingham	T.
J. H. Lippard	G.
J. H. Emmert	W.
A. C. Bart	Pat
E. G. Brown	W.
R. W. Smith	A.
D. Hendrickson	E.
J. P. Tolland	T.
A. L. Ditto	
J. V. Parrish	
W. C. Newell	

You will note some  
above.

Please arrange to  
ready when you are  
of the F. W. & D. C.

b

On January 19, 1938,  
or Bulletin reading as follows:

"Wichita Falls &  
January 19, 1938:

Mr. S. A. Covington  
F. W. & D. C. Railroad

In Re: List of

We have revised  
you on 15th, and for

W. J. Burt  
J. H. Emmert  
J. H. Lippard

FILE EXHIBIT G

"Bulletin No. 2: Wichita Falls & Southern Railroad Company, Office of Ass't. General Manager, Wichita Falls, Texas, January 15, 1938:

To

**ALL TRAIN AND ENGINEMEN:**

Following letter received from Mr. S. A. Covington, Superintendent F. W. & D. C. Railway Co:

'Bi-ennial re-examination of employes on rules of the operating department Burlington Lines due to be conducted this year will begin in the near future. Be glad if you will acquaint those employes of your lines who have occasion to use our tracks of this fact in order that they may make such preparation as they consider necessary. In this connection kindly let me have list of names of your trainmen and enginemen, also yardmen who use our tracks and who will be required to undergo re-examination on our rules. No doubt there are some employes who are not now filling such positions but who later will desire to do so and if at all possible they should be prepared to present themselves for examination during the time we are conducting these classes. Should appreciate lists being furnished in quadruplicate.'

Conductors	Engineers	Firemen	Brakemen
W. J. Burt	J. H. Fine	Pat Edans	E. G. Brown
C. H. Bingham	T. J. Durham	H. L. Hodges	D. Hendrickson
J. H. Lippard	G. B. Taack	W. H. Thompson	J. P. Tolland
J. H. Emmert	W. H. Berry	A. B. Norwood	A. L. Ditto
A. C. Bart	Pat Edans	J. R. Eason	J. V. Parrish
E. G. Brown	W. H. Thompson	J. L. Kennedy	W. C. Newell
R. W. Smith	A. B. Norwood	T. J. Nichols	
D. Hendrickson	E. L. Kemmerly	J. E. Haigwood	
J. P. Tolland	T. J. Nichols		
A. L. Ditto			
J. V. Parrish			
W. C. Newell			

You will note some of you gentlemen are under two headings listed above.

Please arrange to make preparedness for this examination and be ready when you are called upon to appear before the examining body of the F. W. & D. C. Railway.

b

J. R. Jernigan, A. G. M."

On January 19, 1938, Mr. J. R. Jernigan modified Bulletin No. 2 in a letter or Bulletin reading as follows:

"Wichita Falls & Southern Railroad Company, Wichita Falls, Texas, January 19, 1938:

Mr. S. A. Covington, Superintendent,  
F. W. & D. C. Railway Company

In Re: List of Conductors on W. F. & S. for examination:

We have revised our Conductors list, copy of which was forwarded you on 15th, and following conductors will be examined by you:

W. J. Burt	C. H. Bingham	D. Henderickson
J. H. Emmert	R. W. Smith	W. C. Newell
J. H. Lippard	A. C. Bart	



We will thank you to please make correction on list furnished you.

J. R. Jernigan"

The names of brakeman J. P. Tolland and A. L. Ditto listed in Bulletin No. 2 of January 15, 1938, to report for Ft. Worth and Denver City Railway examination, were eliminated by the letter or bulletin of January 19, 1938. Mr. J. M. Dearman posted Bulletin No. 13 on March 23, 1938, reading as follows:

"Bulletin No. 13—Wichita Falls & Southern Railroad Company, Wichita Falls, Texas, March 25, 1938.

All Train and Enginemen:

The Fort Worth & Denver City Railway Company advises they will have a Book of Rules examination class at 3 o'clock P. M. today and another class at 9 o'clock A. M. tomorrow March 26th. They would like as many as possible to attend one or the other of these two classes. However, for the convenience of those who cannot attend one of these above mentioned meetings, they will have another class at 7:30 o'clock P. M. Sunday March 27th, at which time they would like to have the balance of you present.

Please be governed accordingly.

JMD-b

J. M. Dearman

PS: They also request that you bring your Book of Rules and Time Card.

J. M. D."

On July 23, 1938, Mr. J. R. Jernigan posted Bulletin No. 27, reading as follows:

"Bulletin No. 27: Wichita Falls & Southern Railroad Company, Wichita Falls, Texas, July 23, 1938:

To all Train and Enginemen:

Have following letter from Mr. S. A. Covington, of F. W. & D. C. Ry. Co.:

"There are still a great many W. F. & S. employees in train and engine service who use Wichita Valley tracks or who may have occasion to do so who have not as yet undergone our regular Bi-ennial re-examination on Burlington Lines Operating Rules, notwithstanding we conducted a number of such classes at Wichita Falls last spring.

In order to clean up this work we will conduct classes on Friday, Saturday and Sunday, July 29 to 31 inclusive. The classes on Friday July 29th will begin at 9:00 A. M. and again at 3:00 P. M. Classes for Saturday and Sunday will be fixed at a later date and we will try to hold them at convenient hours for your men.

WE MUST INSIST however that this requirement be taken care of during the period mentioned above and your employees should understand that they will not be eligible to work on Wichita Valley tracks unless they again qualify themselves accordingly.

Please be governed accordingly and prepare yourselves for this examination.

J. R. Jernigan

b

WF Bulletin Book  
BR Bulletin Book"

On July 30, 1940, Bul

Bulletin—SPECIAL

WICHITA FALLS  
Om

ALL TRAINMEN AN

I have just receive Railway Company tha and engine service on occasion to use the Wi and Maples, Texas, or

They are giving us who may have occasio this examination, star

I might add we h Denver Railway Com; who holds seniority o

jrj-b.

Brakeman J. P. Tolland between Breckenridge and had no occasion to b. Worth & Denver City Rai 3.5 miles, or over joint Oklahoma, 35.8 miles.

Brakeman J. P. Tolland brakeman on October 19, as well as the conductors was issued certificate in ex seniority list posted Janua man A. L. Ditto held seni man J. P. Tolland imme against brakeman A. L. D of himself, J. P. Tolland. was senior to brakeman I brakeman J. P. Tolland the promotion to the posi

This protest or claim conference in the usual parties have agreed to su in the statement of claim ment, and request that th

POSITION OF EMPL of the joint schedule rule conductor, in accordance the two cases as explaine.

There is nothing in tl and July 23, 1938, whicl to positions of conductor examinations; further, tl evidence to show that br the position of conducto

On July 30, 1940, Bulletin No. SPECIAL, was posted reading as follows:

"Wichita Falls, Texas  
July 30, 1938.

Bulletin—SPECIAL.

WICHITA FALLS & SOUTHERN RAILROAD COMPANY  
Office of Ass't General Manager

**ALL TRAINMEN AND ENGINEMEN:**

I have just received information from the Fort Worth and Denver Railway Company that it is their desire to qualify W. F. & S. train and engine service employes on their book of rules who will have occasion to use the Wichita Valley tracks either between Wichita Falls and Maples, Texas, or between Wichita Falls and Waurika, Oklahoma.

They are giving us this advance information so all of our employes who may have occasion to use above tracks may be prepared to take this examination, starting on or about September 1, 1940.

I might add we have included in our list to the Ft. Worth and Denver Railway Company all employes in train and engine service who holds seniority on this line.

Yours truly

J. R. Jernigan"

jrj-b.

Brakeman J. P. Tolland was assigned to a regular assignment as brakeman between Breckenridge and Dublin, Texas, 66 miles, from February 2, 1928, and had no occasion to be used on an assignment over the tracks of the Ft. Worth & Denver City Railway, between Southern Junction and Wichita Falls, 3.5 miles, or over joint track between Wichita Falls, Texas and Waurika, Oklahoma, 35.8 miles.

Brakeman J. P. Tolland passed the Ft. Worth & Denver examination for brakeman on October 19, 1937, and again passed the brakemen's examination, as well as the conductors' examination on or about September 1, 1940, and was issued certificate in each case, the latter being on September 9, 1940. The seniority list posted January 1, 1940, or shortly thereafter, showed that brakeman A. L. Ditto held seniority as conductor as of December 10, 1938. Brakeman J. P. Tolland immediately or shortly thereafter, filed protest or claim against brakeman A. L. Ditto being given a seniority date as conductor ahead of himself, J. P. Tolland. Protest by brakeman Tolland was made on basis he was senior to brakeman Ditto. There is no dispute between the parties as to brakeman J. P. Tolland and A. L. Ditto, both having been qualified to take the promotion to the position of conductor.

This protest or claim of brakeman-conductor J. P. Tolland was handled in conference in the usual way and has been declined by the carrier. Both parties have agreed to submit the claim to your Board on the basis set forth in the statement of claim and joint agreement of facts, and waive oral argument, and request that the Board render its award at its earliest convenience.

**POSITION OF EMPLOYES:** In accordance with the seniority provisions of the joint schedule rules, brakemen have been promoted to the position of conductor, in accordance with their seniority standing as brakemen, except in the two cases as explained in the joint statement of facts.

There is nothing in the bulletins or letters of January 15, 19, March 23, and July 23, 1938, which in any way sets forth the promotion of brakeman to positions of conductors, will be governed by the Ft. Worth & Denver City examinations; further, the carrier has failed to produce any rule or other evidence to show that brakeman J. P. Tolland was advised his promotion to the position of conductor would be determined from the date he took the



examination referred to. If this was to govern, then the Committee holds the representative of the carrier should have notified brakeman J. P. Tolland to report for such examination to determine whether he would be promoted to position of conductor.

The name of brakeman J. P. Tolland was listed under the caption of conductors to take the examination for conductors in Bulletin No. 2 of January 15, 1938, and was working into Wichita Falls, Texas, and could have taken such examination, but upon instructions of Mr. J. R. Jernigan, dated January 19, 1938, his name was eliminated from the list of conductors to take the Ft. Worth & Denver City examination along with the names of brakemen A. L. Ditto and J. V. Parrish.

The bulletins or letters relating to the Ft. Worth & Denver City examinations quoted in the joint statement of facts are dated January 15, 19, March 23, and July 23, 1938; however, it will be noted brakeman A. L. Ditto is given seniority date as conductor as of December 10, 1938, which indicates the Ft. Worth & Denver City examination referred to in such bulletins was not the basis used to establish his promotion date; further, his name does not appear on such bulletin except on January 15, 1938, which was eliminated by instructions of January 19, 1938.

After protest, and upon reporting for the Fort Worth & Denver City examination in September, 1940, brakeman Tolland was permitted to take the examination for both positions of brakeman and conductor and certification issued on September 9, 1940.

The Committee for the employees contends that the record fully supports claim of brakeman J. P. Tolland for promotion in his seniority turn, as brakeman, and being a senior brakeman to brakeman A. L. Ditto, he Tolland, is entitled to a seniority date or standing as conductor ahead of conductor A. L. Ditto, and the Board is requested to so decide.

**POSITION OF CARRIER:** In accordance with joint statement of facts, employees were notified by Bulletin issued January 15, 1938, and amended January 19, 1938, of Book of Rules Examination to be held by F. W. & D. C. Railway Examiner, to cover men operating over the trackage operated jointly with that line. Both, Messrs. Tolland and Ditto were first shown to be examined as conductors, and later by letter of January 19, 1938, Mr. J. R. Jernigan changed this to examination for brakemen. However; there was no examination held in response to the Bulletin of January 15th. Later, by Bulletin No. 13 of March 23, 1938, employees were notified of pending Ft. Worth & Denver City examinations; which examinations were held on March 25th, 26th and 27, 1938. Brakeman Ditto reported at this examination and qualified for services both as a conductor and brakeman. The records do not indicate that J. P. Tolland reported for examination. The second examination was held in July, 1938, notice of same being covered by Bulletin No. 27 dated July 23, 1938, and examination was held July 29th to 31st. inclusive, 1938. At this latter examination brakeman Ditto again reported and qualified for service both as a conductor and brakeman. The records do not indicate that J. P. Tolland reported for this examination. Under date of December 10, 1938 brakeman A. L. Ditto was promoted to conductor.

It is the position of the carrier that since both brakemen Ditto and Tolland were on notice for the various examinations to be held, and that brakeman Ditto reported and qualified for such examinations and brakeman Tolland failed to do so, it indicated a lack of interest on his part in not taking advantage of the opportunities presented which would have enabled him to receive promotion in line with his seniority as a brakeman.

The Board is respectfully requested to decline his claim.

(Exhibits not reproduced.)

**FINDINGS:** The First Division holds the record and all the evidence,

The carrier or carriers in dispute are respectively carmen under the Railway Labor Act, as approved by the

This Division of the Adj. Gen. is not involved herein.

The parties to said dispute are

Upon the facts of record

Claim sustained without recommendation

BY  
NAT

Dated at Chicago, Illinois, 1940

**FINDINGS:** The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute waived hearing thereon.

Upon the facts of record it is held that claim is valid.

**AWARD**

Claim sustained without retroactive adjustment of any claims for time lost.

**BY ORDER OF FIRST DIVISION  
NATIONAL RAILROAD ADJUSTMENT BOARD**

**ATTEST: (Sgd.) T. S. McFarland  
Secretary**

Dated at Chicago, Illinois, this 23rd day of September, 1942.



ORGANIZATION EXHIBIT

H

*Elkouri & Elkouri*

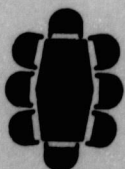
# **HOW ARBITRATION WORKS**

**Fifth Edition**

*Co-Editors*

**Marlin M. Volz**  
*Professor of Law Emeritus  
University of Louisville*

**Edward P. Goggin**  
*Professor of Law  
Northern Kentucky University*



**Committee on ADR in Labor & Employment Law  
American Bar Association  
Section of Labor and Employment Law**



**The Bureau of National Affairs, Inc., Washington, D.C.**

**BLE EXHIBIT H**



sion carries special weight.<sup>209</sup> In effect, mutual settlements often constitute binding precedents for the parties.<sup>210</sup>

Similarly, even oral agreements of the parties as to the application of ambiguous language may subsequently be given significant weight by an arbitrator in the interpreting that language if such oral agreements are clearly proven.<sup>211</sup>

If the agreement is not ambiguous, however, a past settlement that is inconsistent with the clear language of the agreement may be disregarded by an arbitrator in subsequent cases involving that language.<sup>212</sup>

While prior settlements may aid an arbitrator in interpreting ambiguous contractual language, such settlements do not alter the meaning of negotiated provisions.<sup>213</sup> That such is the case was recognized by Arbitrator Jerry A. Fullmer in a decision, in which he noted that "[i]t is of course, the arbitrator's job to interpret the labor agreement, not write it. This is mentioned only as a factor possibly bearing on subsequent interpretations."<sup>214</sup>

If the parties themselves have previously arrived at a settlement that necessarily includes some form of contract interpretation, their settlement interpretation will be given significant weight by arbitrators who have been called upon to construe the same contract language.<sup>215</sup>

### Interpretation Against Party Selecting the Language

It is a standard rule of contract interpretation that ambiguous language will be construed against the party who proposed or drafted it.<sup>216</sup> Enforcement of this rule is practical because it promotes careful

<sup>209</sup>Bendix-Westinghouse Automotive Air Brake Co., 23 LA 706, 710 (Mathews, 1954). Also see Arbitrator Emery in 19 LA 812, 814-15; Wallen in 17 LA 36, 39.

<sup>210</sup>For discussion, see Chapter 5, topic entitled "Grievance Settlements as Binding Precedents."

<sup>211</sup>See Autocar Co., 19 LA 89, 92 (Jaffee, 1952). Also see Arbitrator Gundermann in 46 LA 520, 522.

<sup>212</sup>International Harvester Co., 19 LA 812, 815 (Emery, 1953).

<sup>213</sup>Flexible Materials, 101 LA 408, 412 (Oberdank, 1993); Sterling China Co., 100 LA 697, 699-700 (Ipavec, 1992).

<sup>214</sup>Goodyear Aerospace Corp., 86 LA 584, 586 (1985).

<sup>215</sup>Cases in which arbitrators considered prior settlements in rendering their decisions include Joy Technologies, 96 LA 740, 744 (Hewitt, 1990); Allegheny Ludlum Steel Corp., 85 LA 669 (Duff, 1985) (arbitrator looked to reason behind parties' prior settlement on similar issue in holding that grievance before him lacked merit); National Distillers & Chem. Corp., 85 LA 622 (Caraway, 1985) (arbitrator considered employer payment of wages at overtime rates in settlement of past grievances as evidence that union's contract interpretation was proper). See also Vigo County Sch. Corp., 98 LA 988, 992 (Brookins, 1992) (the notion that ambiguous language should be construed against the drafter "is an interpretive canon of last resort which should be applied only where other interpretive efforts have failed").

<sup>216</sup>This rule was applied in Mesker Indus., 85 LA 921 (Mikrut, 1985) (calculation of three-month rolling period in absentee control program ambiguous; arbitrator construed language against company that drafted it). See George-Pacific Corp., 87 LA 217, 221 (Cohen, 1986) (citing *Brown v. Sharpe Mfg. Co.*, 11 LA 228, 233 (Healy, 1948), and

H-2

STB

FD-32760 (SUB37)

2-29-00

A

197612

4 OF 6



drafting of language and careful disclosure of what the drafter intends by his language. Enforcement of the rule is also equitable because the party 'at fault' for failure to take such care is the one against whom the ambiguity is construed.<sup>217</sup> Arbitrators have applied this principle to provisions involving management rights<sup>218</sup> and seniority.<sup>219</sup>

It is incumbent upon the proponent of a contract provision either to explain what is contemplated or to use language that does not leave the matter in doubt.<sup>220</sup> Where doubt exists, any ambiguity not removed by any other rule of interpretation may be removed by construing the ambiguous language against the party who proposed it.<sup>221</sup> It is reasoned that the draftsman, by exactness of expression, can more easily prevent doubts as to meaning.<sup>222</sup>

Courts of law, however, apply this rule only if a satisfactory result cannot be reached by any other rule of construction,<sup>223</sup> and it would seem that arbitrators should observe the same limitation.<sup>224</sup> Moreover, the rule will not be applied if there is no ambiguity,<sup>225</sup> or if there are special reasons for refusal to apply it, as where the clause finally used differed substantially from the one originally prepared unilaterally, and both parties approved the final draft.<sup>226</sup>

Further, it has been held that ambiguous language need not be interpreted against the party who proposed it where there is no showing that the other party was misled.<sup>227</sup>

concluding that since document was drafted solely by company and probationary employees are not expressly excluded therein as in other documents drafted by company, probationary employees are covered by document). Also see Leo's IGA, 92 LA 337, 339 (Corbett, 1989); Silver's, Inc., 89 LA 850, 853 (McDonald, 1987); Potlatch Corp., 88 LA 1184, 1187 (Corbett, 1987).

<sup>217</sup>Independent Sch. Dist. No. 47, 86 LA 97, 103 (Gallagher, 1985).

<sup>218</sup>See Stow City Sch. Dist. Bd. of Educ., 99 LA 871, 876 (Dworkin, 1992).

<sup>219</sup>See Nelson Tree Serv., 95 LA 1143, 1146 (Loeb, 1990).

<sup>220</sup>See Arbitrator Corbett in 88 LA 1184; McKelvey in 73 LA 846, 850; Barone in 71 LA 524, 532; Dyke in 71 LA 89, 92; Kahn in 44 LA 1196, 1201; Morvant in 36 LA 496, 502; Smith in 21 LA 196, 198. Also see Emery in 17 LA 632, 635.

<sup>221</sup>See Arbitrator Mikrut in 89 LA 398; Gibson in 87 LA 188; Gallagher in 86 LA 97; Bard in 75 LA 1119, 1128; Speroff in 74 LA 861, 864; McKelvey in 73 LA 846, 850; Shaw in 73 LA 569, 573; Richman in 68 LA 1132, 1138; Anrod in 49 LA 988, 990; Sales in 47 LA 1078, 1080; Jenkins in 45 LA 696, 702; Kahn in 44 LA 1196, 1201; Small in 41 LA 370, 372; Haughton in 39 LA 943, 947; Smith in 21 LA 196, 198; Healy in 11 LA 228, 233; Merrill in 11 LA 25, 32; Wolff in 8 LA 452, 458; Elson in 2 LA 399, 403. Cf. Scheiber in 48 LA 663, 667.

<sup>222</sup>Brown & Sharpe Mfg. Co., 11 LA 228, 233 (Healy, 1948). To similar effect, Arbitrator Small in 41 LA 370, 372.

<sup>223</sup>For cases, see 13 Corpus Juris 545 n.44.

<sup>224</sup>The limitation was stated in Deep Rock Oil Corp., 11 LA 25, 32 (Merrill, 1948). To similar effect, Arbitrator Kates in 46 LA 317, 320; Krimsly in 42 LA 311, 314. For a suggestion of a stronger justification for using the rule where commercial rather than labor contracts are involved, see U-Brand Corp., 72 LA 1267, 1270-71 (Ruben, 1979).

<sup>225</sup>John Deere Tractor Co., 2 LA 469, 472 (Updegraff, 1945).

<sup>226</sup>Crescent Warehouse Co., 10 LA 168, 171 (Aaron, 1948).

<sup>227</sup>International Harvester Co., 13 LA 133, 135 (McCoy, 1949). Also see Arbitrator Mulhall in 76 LA 1033, 1036; Goetz in 71 LA 375, 381; Block in 58 LA 912, 917.

Com  
been neg  
a unilate  
binding  
cies that  
agreeme  
it can be  
such pub  
contract  
in interp

Som  
ployer w  
port wit  
union. A  
have cor  
of the c  
agreeme  
of the er  
the coll  
Sembow

<sup>228</sup>Gre  
71 LA 112  
Personnel  
that Man  
see Chapt  
Governme  
<sup>229</sup>See  
pany to a  
agreemen  
<sup>230</sup>See  
and those  
company's  
not been  
practice.  
trator to  
interpret  
Virco Mfg  
<sup>231</sup>See  
gional Tr  
478 (Alle  
to employ  
to handb  
<sup>232</sup>See  
262-64; f  
the empl  
efits whi

H-3

ORGANIZATION EXHIBIT

I



Award No. 3179

Docket No. 4075

**NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION**

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD TRAINMEN**

**MISSOURI PACIFIC RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claims of Brakemen S. A. Shattuck, W. Whaley, L. A. Johnson, W. B. Hay and W. H. Hamilton, Van Buren District, Central Division, various dates June 7 to June 28, 1934, for the full mileage of assigned traveling switch engine with working limits between Muskogee and Oologah, Oklahoma, 130 miles.

**JOINT STATEMENT OF FACTS:** In accordance with provisions of Paragraph (c), Article 9, Trainmen's Schedule, Superintendent and Local Chairman agreed on working limits for traveling switch engine between Muskogee and Oologah, Oklahoma, (Wagoner to Muskogee south, and Wagoner to Oologah north), with tie-up point at Wagoner, Oklahoma. On certain dates during period that this traveling switch engine assignment was in effect, trainmen protecting the assignment while under advertisement, as well as trainmen regularly assigned when advertisement closed, did not operate over the full limits of the assignment, not making trip Wagoner to Oologah, and on such dates as the trainmen did not fill the full assignment, claimed the full mileage, or 130 miles, basing claim on Article 11, Trainmen's Schedule, "Guarantees."

**POSITION OF EMPLOYES:** In accordance with provisions of Paragraph (c), Article 9, Trainmen's Schedule, reading:

"(c) Traveling Switch engines will be assigned to limits agreed to by Superintendent and Local Chairmen and when required to perform service outside their assigned limits, will be paid for such work arbitrarily, actual miles or hours, whichever is the greater."

Traveling switch engine was assigned on the Wagoner District, Central Division with working limits between Muskogee and Oologah, Oklahoma, 65 miles, with tie-up point at Wagoner, as per following Bulletin posted by local chairman June 7th, 1934:

"Van Buren, Ark. June 7, 1934.

**ALL BRAKEMEN WAGONER DISTRICT**

Bids will be received by the undersigned until Noon, Sunday June 17th for two brakemen for traveling switch engine between Muskogee and Oologah, tie-up point Wagoner, daily, starting time 7:00 P. M.

(Signed) H. K. Horne,  
L. C. 290 B. of R. T."

In accordance with understanding and agreement between the Superintendent and Local Chairman, limits for traveling switch engine were agreed to between Muskogee and Oologah, 65 miles in each direction with tie-up

[535]

**BLE EXHIBIT I**

point at Wagoner. The total mileage of this assignment from Wagoner to Oologah and return and Wagoner to Muskogee and return was 130 miles. On certain dates that this assignment was in effect, trainmen assigned to the switcher did not cover the full mileage of the assignment, not making trip Wagoner to Oologah and return, and on such dates that this trip was not made, which reduced the mileage made by the crew below 100 miles, brakemen claimed 130 miles, or the full mileage of the assignment, claim for the full mileage based on the provisions of Article 11, Paragraph (a) and Note following Paragraph (c), Article 9, Trainmen's Schedule, reading:

#### "ARTICLE 11

#### GUARANTEES.

"(a) Regularly assigned way freight, wreck, work and construction trainmen who are ready for service the entire month and who do not lay off of their own accord, will be guaranteed not less than 100 miles or eight hours for each calendar working day, exclusive of overtime, (this to include legal holidays). If through Act of Providence it is impossible to perform regular service, guarantee does not apply."

Paragraph (c), Article 9:

"NOTE—The guarantees in Article 11 apply to traveling switch engines."

Claim for the full mileage of the assignment was declined on the grounds that the limits between Muskogee and Oologah were established by Superintendent and Local Chairman in accordance with Article 9 of Trainmen's Schedule, which fixed the limits in which they were permitted to work, and which in no wise contains a mileage guarantee.

Committee does not agree with the position taken by the Management that Article 9 in no wise contains a mileage guarantee for the reason that Article 9 provides for pay to trainmen of traveling switch engines on basis of 100 miles or less, 8 hours or less for a day's work and miles over 100 miles to be paid for at the mileage rate; and further provides that the guarantees provided in Article 11 apply to traveling switch engines. Paragraph (a), Article 11, guarantees trainmen, paid under the guarantee rule, the full mileage of their assignment when for any reason they do not cover the full assignment.

Prior to effective date of Supplement No. 16 to General Order No. 27, United States Railroad Administration, dated Washington, April 10th, 1919, trainmen assigned to traveling switch engines were paid on an hourly basis, Paragraph (a) Article 10, Traveling Switch Engines, Schedule of Wages, Trainmen, provided as follows:

#### "ARTICLE 10

#### "TRAVELING SWITCH ENGINES

"(a) Crews of traveling switch engines will be paid:

	Conductors	Brakeman
For calendar month, exclusive of Sundays..	\$125.25	\$83.50
Per day of 8 hours or less.....	4.82	3.21
Overtime, per hour .....	.60	.40 "

which did not provide payment whatever on mileage basis; and specifically provided 8 hours or less to constitute a day's work.

Supplement No. 16 to General Order No. 27, United States Railroad Administration, dated Washington, D. C., April 10, 1919, provided in part as follows:

"Effective January as to employees herein for overtime and work tion are hereby ordere.

#### "ARTICLE IX.—

"(a) All service was paid on a monthly the mileage basis or p and operated under th

"(b) In branch line rates, overtime bases rates shall be applied excess of the mileage existing rates are high be preserved, but the be applied against over shall be applied accor service shall not be a

"(c) On other the rates of this order shal but no change is requ the former rates compe This section does not a nized standard rates a

"(d) If this order because of unavoidable back to the Director

Paragraph (a) of Art quoted above, established the Supplement was paid therefore, accordingly rul souri Pacific Railroad wer IX, Supplement No. 16, "Traveling Switch Engine read as follows:

#### TRAV

"(a) Trainmen of

Per 100 miles or less,  
Over 100 miles, per  
Overtime, per hour

"(b) Trainmen of engines to or from sho hours, or after the co be paid therefore unde

"(c) Traveling sw to by the Superintende perform service outsid work arbitrarily, actua

NOTE—The guar engines."



"Effective January 1st, 1919, except as otherwise provided herein, as to employes herein named, the following rates of pay and rules for overtime and working conditions upon railroads in Federal operation are hereby ordered.

"ARTICLE IX.—MONTHLY, DAILY OR TRIP BASIS.

"(a) All service which prior to the effective date of this order was paid on a monthly, daily or trip basis, shall be established upon the mileage basis or paid the rates according to the class of service and operated under the rules herein provided.

"(b) In branch line service where differentials now exist in either rates, overtime bases and other conditions of service, the main line rates shall be applied for the class of service performed. Miles in excess of the mileage constituting a day will be paid pro rata. If existing rates are higher than the revised main line rates they shall be preserved, but the excess in the rate over the main line rate may be applied against overtime. The passenger or freight overtime bases shall be applied according to the rate. Other existing conditions of service shall not be affected by the foregoing.

"(c) On other than Class 1 roads, independently operated, the rates of this order shall be applied for the class of service performed, but no change is required in the miles, hours or service for which the former rates compensated. Existing higher rates will be preserved. This section does not apply to terminal and other roads where recognized standard rates and conditions are in effect.

"(d) If this order in any way produces abnormally high earnings because of unavoidable long lay-overs, such cases may be referred back to the Director General for special disposition."

Paragraph (a) of Article IX, Supplement 16 to General Order No. 27, quoted above, established all service which prior to the effective date of the Supplement was paid on a monthly, daily or trip basis on mileage basis, therefore, accordingly rules of the Schedule of Wages, Trainmen, Missouri Pacific Railroad were changed to conform to the provisions of Article IX, Supplement No. 16, which included Article 9 of Trainmen's Schedule, "Traveling Switch Engines" (formerly Article 10), which was changed to read as follows:

"ARTICLE 9

TRAVELING SWITCH ENGINES

"(a) Trainmen of traveling switch engines will be paid:

	Trainmen
Per 100 miles or less, 8 hours or less.....	\$4.52
Over 100 miles, per mile .....	4.52
Overtime, per hour .....	.56½

"(b) Trainmen of traveling switch engines required to take their engines to or from shops outside of their regularly assigned working hours, or after the completion of a full day's work of 8 hours will be paid therefore under Article 5.

"(c) Traveling switch engines will be assigned to limits agreed to by the Superintendent and Local Chairman and when required to perform service outside their assigned limits will be paid for such work arbitrarily, actual miles or hours, whichever is the greater.

NOTE—The guarantees in Article 11 apply to traveling switch engines."

Please note the change in basis for computing compensation for trainmen, Traveling Switch Engines, basis being changed from hours to miles and miles over 100 miles paid for at the mileage rate which established mileage basis for traveling switch engine trainmen on same basis as other trainmen paid on mileage basis.

Article 11, Guarantees, which applies to trainmen assigned to traveling switch engines, provides for payment of full mileage of assignment, and when for any reason trainmen paid under Article 11 do not fill their full assignment, they are paid for the full mileage, therefore, trainmen assigned to traveling switch engines under Article 9, which provides that 100 miles or less, 8 hours or less constitutes a day's work and mileage in excess of 100 miles is paid for at the mileage rate, are paid on mileage basis, and where assignment is over 100 miles and they do not cover the full assignment, they are entitled to the full mileage of the assignment as agreed to between the Superintendent and Local Chairman.

Declining claims, Assistant General Manager advised as follows:

"The limits of this traveling switch engine were agreed to between the Superintendent and Local Chairman in accordance with Article 9 of the Trainmen's Schedule, which fixed the boundaries in which they may be permitted to work, and which in no wise contains a mileage guarantee. Traveling switch engine service has been established on this railroad for a great many years and there has not been a single instance where claims such as in this case have previously been made. These men have been compensated in accordance with Article 9 of the Agreement. Claim declined."

which the Committee does not agree with. Article 9, Paragraph (a), Trainmen's Schedule, provides that 100 miles or less, 8 hours or less, shall constitute a day's work on traveling switch engines and over 100 miles to be paid at the mileage rate of .0562 cents per mile, which rule was incorporated into the Schedule in accordance with Article 9, Supplement No. 16 to General Order No. 27, which established all service on a mileage basis; further, the Note in Article 9, following Paragraph (c), reading:

"NOTE—The guarantees in Article 11 apply to traveling switch engines."

guarantees trainmen assigned to traveling switch engines the full mileage of their assignment where such assignment is more than 100 miles on the same basis that it guarantees local freight, wreck, work and construction trainmen the full mileage of their assignment when for any reason they do not fill the full assignment on calendar working day.

The working limits of this traveling switch engine extended from Oologah to Okay on Wagoner District, Central Division, 50 miles, with tie-up point at Wagoner, 41 miles from Oologah and 9 miles from Okay and from Okay to Muskogee on the K. O. & G. Railroad, 15 miles. Crews assigned to traveling switch engines can operate in, out of and through their tied-up point as many times as may be necessary in the course of their day's work on continuous basis, which would permit the crew assigned to this traveling switch engine running from Wagoner to Oologah and return twice in 8 hour period, running 164 miles, and only compensating them for 8 hours service.

**POSITION OF CARRIER:** Brakemen S. A. Shattuck, W. Whaley, L. A. Johnson, W. B. Hays and W. H. Hamilton, regularly assigned to traveling switch engine with tie-up at Wagoner, Oklahoma, with assigned limits between Wagoner, Muskogee and Oologah. The assigned limits aggregating 130 miles.

Article 9 of the Trainmen's Agreement reads as follows:

"(a) Trainmen

Per 100 miles or  
Over 100 miles,  
Per Hour, pro r  
Overtime, per ho

"(b) Trainmer  
engines to or from  
ing hours, or after  
be paid therefor un

"(c) Traveling  
to by Superintenc  
perform service on  
work arbitrarily, s

NOTE—The g  
engines."

It will be noted the  
engines will be assign  
Chairman and when  
limits, will be paid fo  
this crew aggregated  
sary to cover the ent  
the purpose of provi  
outside of the agreed  
a mileage guarantee.

Traveling switch e  
and the agreed limits  
ice which is governe  
sidered the same as l  
by separate rule as s  
not required to han  
While the guarantee  
as work train and loc  
their tour of duty wh  
any claims for miles  
may have exceeded 10  
the employees.

It was apparently  
eral Order 27 that t  
parity with yard eng  
tion No. 1 to Supple  
tees, reading in part:

"(a) Regular  
tion trainmen wh  
do not lay off of  
100 miles, or 8 h  
overtime (this to  
dence, it is impo  
not apply.

"(b) Crews  
guarantee when  
but such service  
from such rates  
in regular assign



### "TRAVELING SWITCH ENGINES"

"(a) Trainmen of traveling switch engines will be paid:

	Trainmen
Per 100 miles or less, 8 hours or less.....	\$5.62
Over 100 miles, per mile.....	.0562
Per Hour, pro rata.....	.70
Overtime, per hour.....	1.05

"(b) Trainmen of traveling switch engines required to take their engines to or from shops outside of their regularly assigned working hours, or after completion of a full day's service of 8 hours will be paid therefor under Article 5.

"(c) Traveling switch engines will be assigned to limits agreed to by Superintendent and Local Chairmen, and when required to perform service outside their assigned limits, will be paid for such work arbitrarily, actual miles or hours, whichever is the greater.

NOTE—The guarantees in Article 11 apply to traveling switch engines."

It will be noted that Paragraph (c) of this rule provides traveling switch engines will be assigned to limits agreed to by Superintendent and Local Chairman and when required to perform service outside their assigned limits, will be paid for such work arbitrarily. The agreed assigned limits of this crew aggregated a total of 130 miles, however, seldom was it necessary to cover the entire agreed to limits. The limits being agreed to for the purpose of providing payment to the crew when performing service outside of the agreed limits, and in no sense has it been construed to mean a mileage guarantee.

Traveling switch engines are in reality nothing more than yard engines, and the agreed limits are nothing more than applies to regular yard service which is governed by yard limit boards. They never have been considered the same as local or way freight service, as this service is covered by separate rule as above quoted; they tie up at one point daily and are not required to handle L. C. L. merchandise as do regular local crews. While the guarantee rule is applicable to traveling switch service the same as work train and locals, yet a work train may have working limits during their tour of duty which may exceed 100 miles, and we have never received any claims for miles from crews in work train service when their limits may have exceeded 100 miles, nor have any such contentions been made by the employees.

It was apparently recognized in the issuance of Supplement 16 to General Order 27 that traveling switch engines were to be considered on a parity with yard engines. The Board's attention is directed to Interpretation No. 1 to Supplement 25 to General Order 27—Article VII—Guarantees, reading in part:

"(a) Regularly assigned way freight, wreck, work and construction trainmen who are ready for service the entire month and who do not lay off of their own accord, will be guaranteed not less than 100 miles, or 8 hours, for each calendar working day, exclusive of overtime (this to include legal holidays). If through Act of Providence, it is impossible to perform regular service, guarantee does not apply.

"(b) Crews may also be used in any other service to complete guarantee when for any reason regular assignment is discontinued, but such service shall be paid for at Schedule rates unless earnings from such rates would be less per day than would have been earned in regular assignment.

"Question 72: What is meant by that portion of the article reading: '... shall be paid for at Schedule rates, unless earnings from such rates would be less than would have been earned in regular assignment'? In other words, if regular assignment covers 125 miles and they are used in through freight service (a) Should their earnings be computed on a through freight basis? (b) Must they be guaranteed not less than the equivalent of 125 miles at way-freight rates?

"Decision: (a) Yes. (b) Yes."

"Question 75: Does this article apply where existing Schedules provide way-freight rates for regularly assigned crews in pick-up and drop service?

"Decision: No. Former guarantees are preserved."

The former guarantee in our Wage Agreement with the Trainmen, Article 6, Paragraph (c), provided in part:

"No deductions shall be made for days local or mixed train conductors assigned to regular runs are idle through no fault of theirs. When assigned local or mixed train conductors are not used on account suspension of traffic due to an Act of Providence, payment shall not be made for longer period than three days."

The Board's attention is called to the guarantee to traveling switch engines prior to issuance of Supplement 16 to General Order 27, which provided for guarantee of days lost through no fault of the employees, but makes no reference to the mileage assignment of their runs.

Under our present guarantee rule of the Agreement, Article 11, quoted in the Employees' position, regularly assigned crews of traveling switch engines (pick-up and drop service) are guaranteed 100 miles or eight hours for each calendar working day, exclusive of overtime, and includes regular holidays. However, if through an Act of Providence it is impossible to perform regular service, the guarantee does not apply.

In the last part of the Employees' position it is stated that the crews may make 164 miles within their assigned limits and yet be compensated for only eight hours. This statement is not correct; the payment for all miles in excess of 100 is clearly provided for in Article 9 of the Agreement, previously quoted. However, it must be understood that the actual miles must exceed 100 before any mileage over 100 is allowed. You will note that the Employees' statement is not supported by any specific case, nor, in our opinion, can it be supported; further, we have no record of any claim having been presented to this office where a crew in traveling switch service making more than 100 miles during their tour of duty within their assigned limits was paid less than the actual miles made, with a minimum of not less than 100 miles, and overtime when the time on duty exceeded the miles run divided by  $12\frac{1}{2}$ ; overtime paid on the basis of  $3/16$ ths of the daily rate.

All evidence introduced in this submission has been previously discussed either in conference or by correspondence by both parties.

Oral hearing is desired by both parties to this dispute.

**FINDINGS:** The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said di

The evidence of record created by bulletin, which was to be operated and sentatives of the parties.

In the instant case as which, therefore, represents assignment considered to since it be shown that assignment on dates cited herein is valid.

Claims sustained.

N/

Dated at Chicago, Illinois:



The parties to said dispute were given due notice of hearing thereon.

The evidence of record shows that the assignment here involved was created by bulletin, which bulletin described the territory on which the same was to be operated and which territory had been agreed upon by representatives of the parties.

In the instant case said agreed upon territory embraced 130 train miles which, therefore, represented the minimum miles those bidding for the assignment considered they would make each day on the assignment, and since it be shown that complainant employes performed service on their assignment on dates cited, it is held that claim made subject of dispute herein is valid.

#### AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of First Division

ATTEST: (Sgd.) T. S. McFarland  
Secretary

Dated at Chicago, Illinois, this 4th day of November, 1938.

ORGANIZATION EXHIBIT

J



Award No. 3180

Docket No. 4076

**NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION**

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD TRAINMEN  
MISSOURI PACIFIC RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Time claim of Brakemen V. R. Carlson and A. A. Harvey, Council Grove District, Central Kansas Division, September 22, 23 and 25, 1935, for 108 miles, full mileage of traveling switch engine assignment in lieu of 100 miles allowed.

**JOINT STATEMENT OF FACTS:** In accordance with provisions of Article 9, Paragraph (c), Trainmen's Schedule, Superintendent and Local Chairman agreed on working limits for traveling switch engine between Gypsum and Geneseo via Council Grove District and between Gypsum and Marquette via Salina District, tie-up point Marquette, 108 miles. Brakemen Carlson and Harvey were assigned to this traveling switch engine. On September 22, 23 and 25, 1935, crew did not operate Marquette to Geneseo and return, 38 miles, with the result that they ran less than 100 miles. Claimed the full mileage of the assignment, 108 miles, basing claim on provisions of Article 11, Paragraph (a), Trainmen's Schedule.

**POSITION OF EMPLOYEES:** In accordance with Paragraph (c), Article 9, Trainmen's Schedule, reading:

"(c) Traveling switch engines will be assigned limits agreed to between the Superintendent and Local Chairman and when required to perform service outside their assigned limits, will be paid for such work arbitrarily, actual miles or hours, whichever is the greater."

traveling switch engine was assigned on the Council Grove District, Central Kansas Division, with agreed working limits Gypsum and Geneseo via Council Grove District and between Gypsum and Marquette via Salina District, with tie-up point at Marquette. The mileage of this traveling switch engine assignment, Gypsum to Geneseo and return via Council Grove District and Marquette to Gypsum via Salina District was 108 miles. On September 22, 23 and 25, 1935, crew did not operate Marquette to Geneseo and return, 38 miles, therefore, ran less than 100 miles, for which claimed 108 miles or the full assignment mileage, basing claim on provisions of Article 11, Paragraph (a) and Note following Paragraph (c), Article 9, Trainmen's Schedule, reading:

**"ARTICLE 11  
GUARANTEES**

(a) Regular assigned way-freight, wreck, work and construction trainmen who are ready for service the entire month and who do not lay off of their own accord, will be guaranteed not less than 100 miles or eight hours for each calendar working day, exclusive of overtime (this to include legal holidays). If through Act of Providence it is impossible to perform regular service, guarantee does not apply."

[542]

Paragraph (c), Article 9:

"NOTE—The guarantee engines."

Claim for the full mileage that the limits between Gypsum and Marquette via Superintendent and Local Chairman in rule, which fixed the limits in no wise contains a mileage

Committee does not agree that Article 9 in no wise covers Article 9 provides for pay of 100 miles or less, 8 hours miles to be paid for at the rates provided in Article 11, Paragraph (a), Article 11, guarantees mileage of their assignment assignment.

Prior to effective date of United States Railroad Administration assigned to travel Paragraph (a), Article 10, Trainmen, provided as follows

**TRAV**

(a) Crews of traveling

For calendar month, exclusive of  
Per day of 8 hours or  
Overtime, per hour...

which did not provide pay provided 8 hours or less to

Supplement No. 16 to the Administration, dated Washington follows:

"Effective January 1, 1936, as to employees herein and overtime and working are hereby ordered."

**MONTHLY**

(a) All service will be paid on a monthly, day mileage basis or paid operated under the rule

(b) In branch line rates, overtime bases rates shall be applied excess of the mileage existing rates are high be preserved, but the

**BLE EXHIBIT J**

Paragraph (c), Article 9:

"NOTE—The guarantees in Article 11 apply to traveling switch engines."

Claim for the full mileage of the assignment was declined on the grounds that the limits between Gypsum and Geneseo via Council Grove District and Gypsum and Marquette via Salina District were established by Superintendent and Local Chairman in accordance with Article 9 of Trainmen's Schedule, which fixed the limits in which they were permitted to work, and which in no wise contains a mileage guarantee.

Committee does not agree with the position taken by the Management that Article 9 in no wise contains a mileage guarantee for the reason that Article 9 provides for pay to trainmen of traveling switch engines on basis of 100 miles or less, 8 hours or less for a day's work and miles over 100 miles to be paid for at the mileage rate, and further provides that the guarantees provided in Article 11 apply to traveling switch engines. Paragraph (a), Article 11, guarantees trainmen, paid under the guarantee rule, the full mileage of their assignment when for any reason they do not cover the full assignment.

Prior to effective date of Supplement No. 16 to General Order No. 27, United States Railroad Administration, dated Washington, April 10, 1919, trainmen assigned to traveling switch engines were paid on an hourly basis, Paragraph (a), Article 10, Traveling Switch Engines, Schedule of Wages, Trainmen, provided as follows:

"ARTICLE 10

TRAVELING SWITCH ENGINES.

(a) Crews of traveling switch engines will be paid:

	Conductors	Brakemen
For calendar month, exclusive of Sundays.....	\$125.25	\$83.50
Per day of 8 hours or less.....	4.82	3.21
Overtime, per hour.....	.60	.40"

which did not provide payment whatever on mileage basis; and specifically provided 8 hours or less to constitute a day's work.

Supplement No. 16 to General Order No. 27, United States Railroad Administration, dated Washington, D. C., April 10, 1919, provided in part as follows:

"Effective January 1, 1919, except as otherwise provided herein, as to employes herein named, the following rates of pay and rules for overtime and working conditions upon railroads in Federal operation are hereby ordered."

"ARTICLE IX

MONTHLY, DAILY OR TRIP BASIS.

(a) All service which prior to the effective date of this order was paid on a monthly, daily or trip basis shall be established upon the mileage basis or paid the rates according to the class of service and operated under the rules herein provided.

(b) In branch line service where differentials now exist in either rates, overtime bases and other conditions of service, the main line rates shall be applied for the class of service performed. Miles in excess of the mileage constituting a day will be paid pro rata. If existing rates are higher than the revised main line rates they shall be preserved, but the excess in the rate over the main line rate may



be applied against overtime. The passenger or freight overtime bases shall be applied according to the rate. Other existing conditions of service shall not be affected by the foregoing.

(c) On other than Class 1 roads, independently operated, the rates of this order shall be applied for the class of service performed, but no change is required in the miles, hours or service for which the former rates compensated. Existing higher rates will be preserved. This section does not apply to terminal and other roads where recognized standard rates and conditions are in effect.

(d) If this order in any way produces abnormally high earnings because of unavoidable long lay-overs, such cases may be referred back to the Director General for special disposition."

Paragraph (a) of Article IX, Supplement 16 to General Order No. 27, quoted above, established all service which prior to the effective date of the Supplement was paid on a monthly, daily or trip basis on mileage basis, therefore, accordingly rules of the Schedule of Wages, Trainmen, Missouri Pacific Railroad, were changed to conform to the provisions of Article IX, Supplement No. 16, which included Article 9 of Trainmen's Schedule, "Traveling Switch Engines" (formerly Article 10), which was changed to read:

#### "ARTICLE 9

#### TRAVELING SWITCH ENGINES.

(a) Trainmen of traveling switch engines will be paid:

	Trainmen
Per 100 miles or less, 8 hours or less.....	\$4.52
Over 100 miles, per mile.....	4.52
Overtime, per hour.....	.56½

(b) Trainmen of traveling switch engines required to take their engines to or from shops outside of their regularly assigned working hours, or after the completion of a full day's work of 8 hours will be paid therefore under Article 5.

(c) Traveling switch engines will be assigned to limits agreed to by the Superintendent and Local Chairman and when required to perform service outside their assigned limits will be paid for such work arbitrarily, actual miles or hours, whichever is the greater.

NOTE—The guarantees in Article 11 apply to traveling switch engines."

Please note the change in basis for computing compensation for trainmen, traveling switch engines, basis being changed from hours to miles and miles over 100 miles paid for at the mileage rate which established mileage basis for traveling switch engine trainmen on same basis as other trainmen paid on mileage basis.

Article 11, Guarantees, which applies to trainmen assigned to traveling switch engines, provides for payment of full mileage of assignment and when for any reason trainmen paid under Article 11 do not fill their full assignment they are paid for the full mileage, therefore, trainmen assigned to traveling switch engines under Article 9 which provides that 100 miles or less, 8 hours or less constitutes a day's work and mileage in excess of 100 miles is paid for at the mileage rate, are paid on mileage basis and where assignment is over 100 miles and they do not cover the full assignment they are entitled to the full mileage of the assignment as agreed to between the Superintendent and Local Chairman.

Declining claims, Assistant General Manager advised as follows:

"The limits of this traveling the Superintendent and Local C of the Trainmen's Schedule, wh may be permitted to work, and guarantee. Traveling switch er this railroad for a great many instance where claims such as in These men have been compens The Agreement. Claim declined

which the Committee does not agr Paragraph (a), provides that 100 day's work on traveling switch eng mileage rate of .0562 cents per m Schedule in accordance with Articl No. 27 which established all servi Article 9, following Paragraph (c)

"(NOTE: The guarantees in engines."

guarantees trainmen assigned to 1 of their assignment where such as same basis as it guarantees local fr men the full mileage of their assi fill the full assignment on calendar

The working limits of this tra from Gypsum to Geneseo on the Co point at Marquette, 19 miles fror and from Gypsum to Marquette v Grove District main line at Gypsu nected again with the Council Gr assigned to Traveling Switch Engi their tie-up point as many times necessary on continuous basis, w Traveling Switch Engine running Salina District, 84 miles, and the via Council Grove District, 56 mil and only compensate the crew for

POSITION OF CARRIER: Br were regularly assigned to traveli limits between Geneseo and Gypsu

Article 9 of the Trainmen's A

#### TRAVELING

(a) Trainmen of traveling sw

Per 100 miles or less, 8 )
Over 100 miles, per mile
Per Hour, pro rata.....
Overtime, per hour ....

(b) Trainmen of traveling engines to or from shops outsi hours, or after completion of paid therefor under Article 5

(c) Traveling switch engin by Superintendent and Local C service outside their assigned l trarily, actual miles or hours,

"The limits of this traveling switch engine were agreed to between the Superintendent and Local Chairman in accordance with Article 9 of the Trainmen's Schedule, which fixed the boundaries in which they may be permitted to work, and which in no wise contains a mileage guarantee. Traveling switch engine service has been established on this railroad for a great many years and there has not been a single instance where claims such as in this case have previously been made. These men have been compensated in accordance with Article 9 of the Agreement. Claim declined."

which the Committee does not agree with. Article 9, Trainmen's Schedule, Paragraph (a), provides that 100 miles or less 8 hours or less, constitutes a day's work on traveling switch engine and over 100 miles to be paid at the mileage rate of .0562 cents per mile, which rule was incorporated into the Schedule in accordance with Article 9, Supplement No. 16 to General Order No. 27 which established all service on a mileage basis, further the Note in Article 9, following Paragraph (c), reading:

"NOTE: The guarantees in Article 11 apply to traveling switch engines."

guarantees trainmen assigned to traveling switch engines the full mileage of their assignment where such assignment is more than 100 miles on the same basis as it guarantees local freight, wreck, work and construction trainmen the full mileage of their assignment when for any reason they do not fill the full assignment on calendar working day of the month.

The working limits of this traveling switch engine assignment extended from Gypsum to Geneseo on the Council Grove District, 47 miles, with tie-up point at Marquette, 19 miles from Geneseo and 28 miles from Marquette, and from Gypsum to Marquette via Salina District, a loop leaving Council Grove District main line at Gypsum, running to Marquette, where it connected again with the Council Grove District, via Salina, 42 miles. Crews assigned to Traveling Switch Engine can operate into and out of or through their tie-up point as many times during course of day's work as may be necessary on continuous basis, which would permit crew assigned to this Traveling Switch Engine running Marquette to Gypsum and return via Salina District, 84 miles, and then from Marquette to Gypsum and return via Council Grove District, 56 miles, or a total of 140 miles within 8 hours and only compensate the crew for 8 hours service.

**POSITION OF CARRIER:** Brakemen V. R. Carlson and A. A. Harvey, were regularly assigned to traveling switch engine operating with assigned limits between Geneseo and Gypsum City with tie-up point at Marquette.

Article 9 of the Trainmen's Agreement reads as follows:

#### TRAVELING SWITCH ENGINES.

(a) Trainmen of traveling switch engines will be paid:

	Trainmen
Per 100 miles or less, 8 hours or less.....	\$5.62
Over 100 miles, per mile.....	.0562
Per Hour, pro rata.....	.70
Overtime, per hour .....	1.05

(b) Trainmen of traveling switch engines required to take their engines to or from shops outside of their regularly assigned working hours, or after completion of a full day's service of 8 hours will be paid therefor under Article 5.

(c) Traveling switch engines will be assigned to limits agreed to by Superintendent and Local Chairmen, and when required to perform service outside their assigned limits, will be paid for such work arbitrarily, actual miles or hours, whichever is the greater.



**NOTE:** The guarantees in Article 11 apply to traveling switch engines."

It will be noted that Paragraph (c) of this rule provides traveling switch engineers will be assigned to limits agreed to by Superintendent and Local Chairman and when required to perform service outside their agreed-to limits, will be paid for such work arbitrarily. The agreed-to limits of this crew aggregated a total of 108 miles; however, seldom was it necessary to cover the entire limits. The limits are agreed to for the purpose of providing payment to the crew when performing service outside of the agreed limits, and in no sense has it been construed to mean a mileage guarantee.

Traveling switch engines are in reality nothing more than yard engines and the agreed limits are nothing more than applies to regular yard service which is governed by yard limit boards. They never have been considered the same as local or way freight service, as this service covered by separate rule as above quoted. They tie up at one point daily and are not permitted or required to handle L. C. L. merchandise as do regular local crews. While the guarantee rule is applicable to traveling switch service the same as work train and locals, yet a work train may have working limits during their tour of duty which may exceed 100 miles, and we have never received any claims for miles from crews in work train service when their limits may have exceeded 100 miles, nor have any such contentions been made by the employees.

It was apparently recognized in the issuance of Supplement 16 to General Order 27 that traveling switch engines were to be considered on a parity with yard engines. The Board's attention is directed to Interpretation in No. 1 to Supplement 25 to General Order 27—Article VII—Guarantees, reading in part:

"(a) Regularly assigned way freight, wreck, work, and construction trainmen who are ready for service the entire month and who do not lay off of their own accord, will be guaranteed not less than 100 miles, or 8 hours, for each calendar working day, exclusive of overtime (this to include legal holidays). If through Act of Providence, it is impossible to perform regular service, guarantee does not apply.

"(b) Crews may also be used in any other service to complete guarantee when for any reason regular assignment is discontinued but such service shall be paid for at schedule rates unless earnings from such rates would be less per day than would have been earned in regular assignment.

"Question 72.—What is meant by that portion of the Article reading: '\*\*\* shall be paid for at schedule rates, unless earnings from such rates would be less than would have been earned in regular assignment?' In other words, if regular assignment covers 125 miles and they are used in through freight service (a) Should their earnings be computed on a through freight basis? (b) Must they be guaranteed not less than the equivalent of 125 miles at way-freight rates?

Decision: (a) Yes. (b) Yes."

**"Question 75.—Does this Article apply where existing schedules provide way-freight rates for regularly assigned crews in pick-up and drop service?**

**Decision:** No. Former guarantees are preserved."

The former guarantee in our wage agreement with the Trainmen, Article 6, Paragraph (c), provided in part:

"No deductions shall be made for days local or mixed train conductors assigned to regular runs are idle through no fault of theirs. When assigned local or mixed train conductors are not used on account suspension of traffic due to an Act of Providence payment shall not be made for longer period than three days."

The Board's attention is c  
gines prior to issuance of Supp  
for guarantee of days lost th  
reference to the mileage assi

Under our present guarantee in the Employees' position, regulars (pick-up and drop service) each calendar working day, except days. However, if through an irregular service, the guarantee

In the last part of the Em make 164 miles within their a eight hours. This statement excess of 100 is clearly provide quoted; however, it must be 100 before any mileage over 1 statement is not supported b it be supported: further, we l sented to this office where a than 100 miles during their t paid less than the actual mile miles, and overtime when the by 12½; overtime paid on th

All evidence introduced in  
either in conference or by co

Oral hearing is desired by

**FINDINGS:** The First Div record and all the evidence, 1

The carrier or carriers and  
dispute are respectively carrier  
way Labor Act, as approved

This Division of the Adjutant General is involved herein.

The parties to said dispute

The evidence of record s created by bulletin, which bull was to be operated and which tives of the parties.

In the instant case said a which, therefore, represented t ment considered they would it be shown that complainant ment on dates cited, it is hel valid.

**Claim sustained.**

**NATIO**  
**B**

Dated at Chicago, Illinois, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

The Board's attention is called to the guarantee to traveling switch engines prior to issuance of Supplement 16 to General Order 27, which provided for guarantee of days lost through no fault of the employees, but makes no reference to the mileage assignment of their runs.

Under our present guarantee rule of the agreement, Article 11, quoted in the Employees' position, regularly assigned crews of traveling switch engines (pick-up and drop service) are guaranteed 100 miles or eight hours for each calendar working day, exclusive of overtime, and includes regular holidays. However, if through an Act of Providence, it is impossible to perform regular service, the guarantee does not apply.

In the last part of the Employees' position it is stated that the crews may make 164 miles within their assigned limits and yet be compensated for only eight hours. This statement is not correct; the payment for all miles in excess of 100 is clearly provided for in Article 9 of the agreement, previously quoted; however, it must be understood that the actual miles must exceed 100 before any mileage over 100 is allowed. You will note that the Employees' statement is not supported by any specific case, nor, in our opinion, can it be supported: further, we have no record of any claim having been presented to this office where a crew in traveling switch service making more than 100 miles during their tour of duty within their assigned limits was paid less than the actual miles made, with a minimum of not less than 100 miles, and overtime when the time on duty exceeded the miles run divided by  $12\frac{1}{2}$ ; overtime paid on the basis of  $3/16$ ths of the daily rate.

All evidence introduced in this submission has been previously discussed either in conference or by correspondence by both parties.

Oral hearing is desired by both parties to this dispute.

**FINDINGS:** The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The evidence of record shows that the assignment here involved was created by bulletin, which bulletin described the territory on which the same was to be operated and which territory had been agreed upon by representatives of the parties.

In the instant case said agreed-upon territory embraced 108 train miles which, therefore, represented the minimum miles thereof bidding for the assignment considered they would make each day on the assignment, and since it be shown that complainant employees performed service on their assignment on dates cited, it is held that claim made subject of dispute herein is valid.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of First Division

ATTEST: (Sgd.) T. S. McFarland  
Secretary

Dated at Chicago, Illinois, this 4th day of November, 1938.



The Board's attention is called to the guarantee to traveling switch engines prior to issuance of Supplement 16 to General Order 27, which provided for guarantee of days lost through no fault of the employees, but makes no reference to the mileage assignment of their runs.

Under our present guarantee rule of the agreement, Article 11, quoted in the Employees' position, regularly assigned crews of traveling switch engines (pick-up and drop service) are guaranteed 100 miles or eight hours for each calendar working day, exclusive of overtime, and includes regular holidays. However, if through an Act of Providence, it is impossible to perform regular service, the guarantee does not apply.

In the last part of the Employees' position it is stated that the crews may make 164 miles within their assigned limits and yet be compensated for only eight hours. This statement is not correct; the payment for all miles in excess of 100 is clearly provided for in Article 9 of the agreement, previously quoted; however, it must be understood that the actual miles must exceed 100 before any mileage over 100 is allowed. You will note that the Employees' statement is not supported by any specific case, nor, in our opinion, can it be supported: further, we have no record of any claim having been presented to this office where a crew in traveling switch service making more than 100 miles during their tour of duty within their assigned limits was paid less than the actual miles made, with a minimum of not less than 100 miles, and overtime when the time on duty exceeded the miles run divided by  $12\frac{1}{2}$ ; overtime paid on the basis of  $3/16$ ths of the daily rate.

All evidence introduced in this submission has been previously discussed either in conference or by correspondence by both parties.

Oral hearing is desired by both parties to this dispute.

**FINDINGS:** The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The evidence of record shows that the assignment here involved was created by bulletin, which bulletin described the territory on which the same was to be operated and which territory had been agreed upon by representatives of the parties.

In the instant case said agreed-upon territory embraced 108 train miles which, therefore, represented the minimum miles those bidding for the assignment considered they would make each day on the assignment, and since it be shown that complainant employees performed service on their assignment on dates cited, it is held that claim made subject of dispute herein is valid.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of First Division

ATTEST: (Sgd.) T. S. McFarland  
Secretary

Dated at Chicago, Illinois, this 4th day of November, 1938.

**NEW YORK DOCK ARBITRATION**

**BOARD NO. 331**

**UNION PACIFIC RAILROAD**

**and**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

**UNION PACIFIC-EASTERN DISTRICT**

**UP GENERAL COMMITTEE SUBMISSION**

**MR. ECKHARD MUESSIG  
NEUTRAL AND CHAIRMAN  
January 18, 2000**

**UP Committee's question at issue:**

- 1. As a result of the Kansas City Hub merger implementing agreement are the twelve (12) employees who were selected for engineer training prior to the hub implementation date of January 16, 1999 entitled to prior rights in Zone 2?**



**COMMITTEE'S STATEMENT OF FACTS:**

In Finance Docket No. 32760, the U.S. Department of Transportation, Surface Transportation Board ("STB") approved the merger of the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") and Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SP"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp., and the Denver & Rio Grande Western Railroad Company ("DRGW") (collectively referred to as "SP"). In approving this transaction, the STB imposed New York Dock (NYD) labor protective conditions. (Decision 44 of the STB is attached as **(Exhibit A)**)

As a result of the STB approval, the Carrier served a notice under Section 4 of **NYD** dated January 30, 1998 on the BLE organization to cover the area known as the Kansas City Hub **(Exhibit B)**.

Negotiations were undertaken almost immediately to cover all BLE represented employees in the hub territory. The Agreement was ratified by the affected BLE membership in the Kansas City on or about August 31, 1998. **(Exhibit C)**

As a result of the negotiations, the parties entered into a Merger Implementing Agreement effective July 2, 1998. A copy of the BLE Kansas City hub Implementing Agreement is attached as **Exhibit D** for the Board's ready review.

The Agreement restructured former Engineer seniority of UP, MPUL, SSW and SPCSL Engineers in the Kansas City Hub and reallocated forces, expanding their work opportunities and in some cases, moving them from locations where lines would be abandoned or would have a cessation of service. The agreement (Article X) provides that all employees who were working as Engineers on July 2, 1998 were eligible for the new hub roster seniority and canvassing for prior right seniority arrangements.

The agreement provides that all employees who had an Engineers seniority date working in the Hub territory on July 2, 1998 were to be canvassed for prior right seniority purposes and were allowed certified NYD protection. Canvassing of the affected employees took place between July 14-16, 1998 at the UP headquarter Building in Omaha, Nebraska with all hub BLE Local Chairmen participating.

Based on the specific provisions of the ratified Agreement all Engineers were given new seniority in the Hub and granted prior rights in one of the four (4) newly created zones and certain parties were granted prior rights to some assignments. The new hub seniority also permitted employee's flexibility to move between the zones. The Agreement was implemented on January 16, 1999.

#### **POSITION OF THE COMMITTEE:**

In the UP/SP merger I represented Engineers in the Salt Lake City hub, the Denver hub, the Salt Lake City hub and the Salina hub. In each case some form of prior righting was granted to Engineers. In each case we addressed



which employee would be entitled to prior rights. This hub agreement is no different.

Article II of the Kansas City Merger Implementing agreement provided for the creation of a new seniority roster and granted prior rights seniority to engineers working as engineers on July 2, 1998 or were demoted engineers on that date.

These provisions did not generally cover those employees who were in training to be engineers unless specifically addressed in the implementing agreement. In the Kansas City Hub Merger agreement the parties addressed one group of the Engineer trainees in Side Letter No. 21 dated July 2, 1998. I have attached a copy of that letter for your ready review identified as Exhibit E.

The seniority dispute progressed to this Board is the position of the BLE Local Chairman at Kansas City. By letter dated May 10, 1999 BLE Local Chairman Schneider advanced the question regarding the granting of prior right seniority of 12 Engineers for Zone 2 of the KC hub. I have attached a copy of that letter for your ready review identified as Exhibit F.

On behalf of the Local Chairman this office advanced the question to the Carrier on June 23, 1999, to which the Carrier replied on July 16, 1999 denying the request for revision. I have attached copies of that correspondence for your ready review and marked them as Exhibit G.

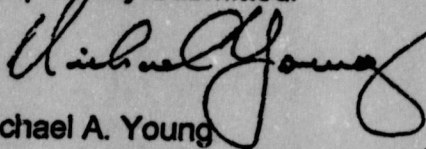
It is the BLE Local Chairman's position that the 12 identified engineers were convinced by the Carrier's advance information that they were making application to former UP 8<sup>th</sup> District Engineer positions and would be entitled to

Zone 2 prior rights in the hub, based on the language of the Engineer's training Bulletin. (Exhibit F)

It is the BLE Local Chairman's position that the 12 Engineers in training prior to hub implementation on January 16, 1999 should be placed on the Zone 2 prior right roster. Further, that the record of handling of this matter on the property was a proper seniority dispute to be challenged and is now properly before this Board for adjudication.

Accordingly, the BLE Local Committee at Kansas City requests this Board to Answer the question at issue in the Affirmative.

Respectfully Submitted:

A handwritten signature in dark ink, appearing to read "Michael A. Young", written over the printed name.

Michael A. Young

General Chairman-BLE  
Union Pacific-Eastern District



This decision will be included in the bound volumes  
of the STB printed reports at a later date.

SERVICE DATE

AUG 12 1996

## SURFACE TRANSPORTATION BOARD

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

Decision No. 44<sup>1</sup>

Decided: August 6, 1996

The Board approves, with certain conditions, the common control and merger of the rail carriers controlled by Union Pacific Corporation (Union Pacific Railroad Company and Missouri Pacific Railroad Company) and the rail carriers controlled by Southern Pacific Rail Corporation (Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company).<sup>2</sup>

<sup>1</sup> This decision covers the Finance Docket No. 32760 lead proceeding and the embraced proceedings listed in Appendix A.

<sup>2</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the Act), enacted December 29, 1995, and effective January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC at the time of its termination that involve functions transferred to the Board pursuant to the Act shall be decided (1) by the Board, and (2) under the law in effect prior to January 1, 1996. The Finance Docket No. 32760 lead proceeding, the Finance Docket No. 32760 (Sub-Nos. 1 to 9) embraced proceedings, and the 17 embraced abandonment and 4 embraced discontinuance proceedings were pending with the ICC at the time of its termination. The Finance Docket No. 32760 (Sub-Nos. 10, 11, 12, 13, 14, 16, and 17) embraced proceedings were not then pending but will be considered as if they had been because responsive applications that seek to invoke the conditioning power of old 49 U.S.C. 11344(c) have never been regarded as independent applications. See Burlington Northern Inc. and Burlington Northern Railroad Company--Control and Merger--Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company, Finance Docket No. 32549, Decision No. 38 (ICC served Aug. 23, 1995) (BN/SF) (slip op. at 55 n.76). Except as noted in the next two paragraphs, all of the proceedings addressed in this decision involve functions that are subject to our jurisdiction pursuant to new 49 U.S.C. 11323-27 (control/merger transactions), new 49 U.S.C. 11102 (terminal facilities), and new 49 U.S.C. 10903-05 (abandonments), and we will therefore decide these proceedings under the law in effect prior to January 1, 1996.

The Finance Docket No. 32760 (Sub-No. 8) proceeding, wherein applicants seek an exemption from the trucking company acquisition requirements of old 49 U.S.C. 11343-44, involves a

(continued...)

Appendix "A"

EMPLOYEES EXHIBIT

A

access to a nearby industrial area jointly served by SP, UP, and KCS.<sup>20</sup> The Beaumont trackage (roughly 1.8 miles between KCS MP's 764.9 and 766.7, including the Neches River Bridge, KCS-32 at 1) is a portion of separate UP and SP Houston-New Orleans routes, and applicants claim that this trackage also is used for switching and interchange purposes and for access to facilities of the Port of Beaumont.<sup>21</sup>

**Abandonments And Discontinuances.** Applicants seek authorization to abandon, or to abandon and to discontinue operations over, 17 line segments that total approximately 584 miles. Authorization is sought by application, by petition, and by notice.<sup>22</sup>

**The Towner-NA Junction Line (Colorado).** In Docket Nos. AB-3 (Sub-No. 130) and AB-8 (Sub-No. 38), respectively, MPRR seeks by application approval to abandon, and DRGW seeks by application approval to discontinue its overhead trackage rights operations over, MPRR's Towner-NA Junction Line, which extends between MP 747.0 near Towner, CO, and MP 869.4 near NA (North Avondale) Junction, CO, a distance of approximately 122.4 miles in Pueblo, Crowley, and Kiowa Counties, CO. The abandonment/discontinuance does not include active industries at NA Junction or at Towner.

**The Sage-Malta-Leadville Line (Colorado).** In Docket Nos. AB-8 (Sub-No. 36X) and AB-12 (Sub-No. 189X), respectively, DRGW seeks by petition to exempt its discontinuance of operations over, and SPT seeks by petition to exempt its abandonment of, SP's Sage-Malta-Leadville Line, which extends a distance of approximately 69.1 miles in Eagle and Lake Counties, CO, (1) between MP 335.0 near Sage, CO, and MP 271.0 near Malta, CO, and (2) between MP 271.0 near Malta, CO, and MP 276.1 near Leadville, CO.

**The Malta-Cañon City Line (Colorado).** In Docket Nos. AB-8 (Sub-No. 39) and AB-12 (Sub-No. 188), respectively, DRGW seeks by application approval to discontinue its operations over, and SPT seeks by application approval to abandon, SP's Malta-Cañon City Line, which extends between MP 271.0 near Malta, CO, and MP 162.0 near Cañon City, CO, a distance of approximately 109.0 miles in Lake, Chaffee, and Fremont Counties, CO.<sup>23</sup>

<sup>20</sup> SP has rights to use this trackage under agreements with KCS and a predecessor dated May 8, 1933, and December 17, 1980. The 1933 agreement covers a 1.32-mile segment of track between engineering stations 8872+81 and 8941+24 (no mileposts have been assigned). The 1980 agreement covers approximately 2.2 miles of track between KCS MP's 559 and 671.2 (or, by KCS' calculations, approximately 2.1 miles of track between KCS MP's 559 and 561.2, see KCS-32 at 1).

<sup>21</sup> MPRR and SP obtained rights to use this trackage pursuant to an agreement dated July 1, 1965, among KCS, MPRR, SP, SF, and the City of Beaumont. SF, however, did not acquire, under the 1965 agreement, the rights sought in the Sub-No. 9 application.

<sup>22</sup> Of the 17 lines for which abandonment authorizations are sought, 4 lines involve both abandonment by one carrier (either MPRR or SPT) and discontinuance by another carrier (DRGW).

<sup>23</sup> The Sage-Malta-Leadville Line connects with the Malta-Cañon City Line at Malta. We shall on occasion refer to the two lines collectively as the Tennessee Pass Line.



Colorado. Governor Romer supports the merger, and indicates that UP has made commitments respecting: employee impact; the timing for actual discontinuance of service on Colorado lines targeted for abandonment; the timing for removal of abandoned track; the sale, to Colorado or its designee, of part or all of the abandoned track for its net liquidation value within the first 12 months after the merger; the possible conversion of abandoned corridors to trails; and the identification of environmental issues in the corridors targeted for abandonment.

The City of Pueblo (Pueblo) opposes the three proposed Colorado abandonments (Sage-Malta-Leadville, Malta-Cañon City, and Towner-NA Junction) which, it fears, would deprive Pueblo of access to transcontinental rail service, would increase truck traffic on roads serving Pueblo and neighboring communities, would result in the elimination or transfer of 139 full-time jobs in the Pueblo area, and could place Pueblo at a disadvantage in competing for future industrial development projects because of the loss of access to direct east-west service via SP's line. Pueblo asks that we condition any approval of the merger by requiring UP/SP to sell SP's east-west route to MRL for continued freight operations.

The Associated Governments of Northwest Colorado (AGNC), composed of Moffat, Routt, Rio Blanco, Garfield, and Mesa Counties, fears that the merger, by allowing UP/SP to favor PRB coal vis-à-vis Northwest Colorado coal, will jeopardize the economic underpinnings of Northwest Colorado. AGNC therefore opposes the merger unless UP/SP makes a commitment to maintain competitive coal hauling rates for Colorado coal.

Nevada. The Public Service Commission of the State of Nevada (PSCN), concerned that Nevada utilities will not benefit from, and indeed may be negatively impacted by, the merger and the related BNSF and URC agreements, contends that the merger should be conditioned (1) with "open access" provisions that would require UP/SP to grant to third-party railroads such as URC trackage rights to provide single-line service to existing and new utility stations. PSCN, noting that the BNSF agreement will allow BNSF to interchange with the Nevada Northern Railway near Shafter, insists (2) that UP/SP should not be allowed to charge trackage rights compensation fees that would inhibit competition for the interchange traffic. PSCN maintains that Nevada shippers on lines served by both UP/SP and BNSF should be able to access either railroad, and PSCN therefore suggests (3) that, after operating experience has been gained with the BNSF agreement, but in no more than 3 years, we examine the competitive access issue to ascertain the level of shipper interest and evaluate the prospect of expanding competitive opportunities through trackage rights agreements. PSCN also suggests (4) that UP/SP should be required (a) to establish systems to provide timely responses to inquiries from shippers, local governments, and the general public, and (b) to provide, to local governments and local emergency response agencies, information and response plans pertaining to hazardous materials incidents. PSCN also requests (5) that we impose conditions to mitigate the impact of increased rail traffic through Reno, Lovelock, Winnemucca, Carlin, Elko, and Wells.

The City of Reno (Reno), which fears that the merger will result in a substantial increase in traffic on the SP line through Reno and will therefore have substantial adverse impacts on Reno (including highway delays, noise pollution, effects on air and water quality, and increased potential for pedestrian accidents), contends that, without specific conditions to

**General Comments: RTC.** Rails to Trails Conservancy (RTC) asks that we impose: conditions to maximize opportunities to preserve rail corridors for rail banking, interim trail use, and other compatible public uses; and appropriate public interest, public use, environmental, and historic preservation conditions as well. Without such conditions, RTC warns, approval of the merger would constitute a major federal action with significant adverse environmental impacts, and would therefore require the preparation of an environmental impact statement (EIS). RTC also suggests that, because operations are likely to continue for some time on many of the lines for which abandonment authorization has been sought, it would be prudent to issue CITUs and NITUs (Certificates and Notices of Interim Trail Use or Abandonment) not for the customary 180 days (subject to extension) but instead for a 2-year period. RTC therefore requests that we impose on all merger-related abandonments two conditions, each effective for a period of 180 days following the date UP/SP actually ceases to use the relevant line and otherwise consummates an abandonment: (1) a condition preserving our jurisdiction to issue rail banking or other appropriate orders; and (2) a condition barring UP/SP from disposing of or otherwise transferring (other than for public use) any real estate interests, bridges, culverts, or similar structures."

**General Comments: Applicants.** With respect to the Colorado abandonments, applicants state that they are willing to negotiate trail use (i) with the State of Colorado or its designees, and (ii) with any other parties that have filed trail use requests, so long as the State of Colorado is agreeable to negotiations with such parties. With respect to the non-Colorado abandonments, applicants state that they are willing to negotiate trail use for all of the lines covered by trail use requests with any or all of the parties that have made the requests.

**Colorado Abandonments.** Statements respecting the Towner-NA Junction, Sage-Malta-Leadville, and Malta-Cañon City abandonments have been submitted by various parties. The City of Florence, the Transportation Committee of Colorado Counties, Inc., and CLUB 20 (a Western Colorado coalition of counties, communities, businesses, and individuals) claim that these abandonments would have a devastating impact in an area that relies heavily on rail. The City of Florence therefore requests that we condition any approval of the merger by requiring: (1) that the transcontinental main line through this corridor be retained (perhaps by divestiture to another railroad); (2) that UP/SP provide a 24-month period following final merger approval to allow state, local, and private entities to formulate a plan for the corridor and to secure financing for the purchase of the track and improvements; and (3) that UP/SP grant the State of Colorado or its subdivisions a right of first refusal for the purchase of the corridor. The City of Fruita, which is concerned that the abandonments will result in a massive loss of railroad and related jobs now based out of Grand Junction, asks that we reject the merger unless UP/SP retains all existing jobs and rail service in the Mesa County/Grand Junction area. The Colorado Rail Passenger Association supports the merger but opposes the Colorado abandonments, and asks that we require UP/SP to sell the abandonment lines to interested buyers.

A statement respecting the three Colorado abandonments was submitted jointly by the U.S. Department of Agriculture, Rocky Mountain Region, and the U.S. Department of the Interior, Bureau

" Madison County Transit (MCT) supports the two public interest conditions requested by RTC.



of Land Management, Colorado State Office (collectively, the Agencies). The Agencies note that, upon abandonment, the United States will acquire, by reversion, much of the right-of-way of the three Colorado lines. The Agencies therefore request that we impose on these abandonments certain conditions requiring the Railroad: (1) to resolve title encumbrances (i.e., clouds on title) unacceptable to the United States; (2) to inventory all utilities, fiber optic cables, and other linear uses within the rights-of-way, and to notify the owners/managers of these uses that they must apply for authorization for any portion of the right-of-way crossing National Forest System lands or Public Lands; (3) to assess and remediate hazardous materials and toxic spills along the three corridors, as necessary; (4) to clear the rights-of-way of any trash and discarded or abandoned equipment, including railroad ties, lights, and switches; (5) to inventory and classify, in consultation with the Agencies, all bridges, crossings, and culverts for retention for public use or removal by the Railroad; (6) to include a statement in any deed or transfer of property to a salvage operator or entity, that the transfer does not include any lands or interest in lands owned by the United States; and (7) to obtain concurrence from the State Historic Preservation Officer or provide a formal Determination of Eligibility for historic site evaluation.

*Towner-NA Junction Line (Colorado).* Of all the abandonments proposed in this proceeding, the Towner-NA Junction abandonment has generated by far the most intense opposition, and the intensity of this opposition has been greatest in Kiowa County. Statements protesting the Towner-NA Junction abandonment have been filed by, among others, the Kiowa County Board of County Commissioners, Kiowa School District No. Re-2, the Town of Eads, the Town of Haswell, and numerous individuals, including, but by no means limited to, many members of Kiowa County WIFE (Women Involved in Farm Economics) Chapter #124. The abandonment, it is argued, will have a devastating effect on economic activity in Kiowa County because farmers and grain elevators rely entirely upon this line for shipment of grain to market. The direct loss of tax revenue, it is further argued, will severely cripple all local government operations, including the schools (Plainview School, for example, which is one of only two schools in Kiowa County and which has an enrollment, for kindergarten through 12th grade, of approximately 86 students, stands to lose \$75,288 annually if the Towner-NA Junction Line is abandoned). Roughly 20% of Kiowa County's tax revenue is derived from the rail line and rail usage, and other local governments within the County also are funded, in some measure, by the rail line (the Town of Haswell, for example, which has an annual budget of \$35,000, fears the loss of its \$1,000 annual rail assessment). Parties in Kiowa County generally urge the denial of both the merger and the abandonment, although a few ask, in the alternative, that the abandonment, if approved, be delayed to allow local communities time to respond to the loss of rail service and tax revenue.

Opposition to the Towner-NA Junction abandonment also has been expressed by parties based in Crowley County, including the Crowley County Board of County Commissioners and the Towns of Crowley and Olney Springs. These parties argue that the abandonment will have a devastating economic impact in Crowley County, both in terms of rail service (because local feedyards depend on rail) and in terms of tax revenue (Crowley County fears the loss of the roughly 15% of its tax revenue that is derived from this line; the Town of Crowley fears the loss of 36% of its own tax base). Opposition to the Towner-NA Junction abandonment also has been expressed by parties based outside of Kiowa and Crowley Counties, including the Prowers County Board of County Commissioners, which maintains that the rail line is a vital

economic link for all of Southeast Colorado. The abandonment of the line, it is argued, will lead to a decline in economic activity, which will cause at least some local businesses to close and some local residents to leave, and the loss of even a part of the tax base may cause a deterioration of the services provided by local governments at all levels.

Trails Act statements" respecting the Towner-NA Junction Line have been filed by RTC and by the State of Colorado, acting by and through its Parks and Recreation Department.

Tennessee Pass Line (Colorado). Applicants generally address the Sage-Malta-Leadville and Malta-Cañon City Lines separately (and have filed a petition respecting the former and an application respecting the latter), but numerous parties have addressed them as a package. As previously noted, we refer to the two lines collectively as the Tennessee Pass Line.

The Town of Avon insists: that the Tennessee Pass Line is a single continuous line; that segmentation of the administrative process into a petition and an application is artificial and serves only to subject the Sage-Malta-Leadville abandonment to less vigorous scrutiny than the Malta-Cañon City abandonment; and that less vigorous scrutiny of the former is not in the public interest because that segment is the more environmentally sensitive of the two. The Town of Avon further insists that parties: should be permitted to produce evidence concerning the impact on state and local highways and roads that will result from rail-to-truck diversions caused by the Sage-Malta-Leadville abandonment; and should be afforded the opportunity to contravene the claims made by SPT and DRGW that the Sage-Malta-Leadville Line is economically non-viable. The Town of Avon therefore urges that the Sage-Malta-Leadville petition be denied, that the Tennessee Pass Line be treated as the single entity that it is, and that the entire line be the subject of the application heretofore filed with respect to the Malta-Cañon City segment.

The Upper Arkansas Area Council of Governments, composed of Chaffee, Lake, Fremont, and Custer Counties and all local municipalities, opposes the Tennessee Pass abandonment and asks that we condition any approval thereof by requiring UP/SP: to offer the entire line for sale as a unit; if negotiations for sale are unsuccessful, to rail bank the line; and to leave the track in place (on the Tennessee Pass Line and also on the Towner-NA Junction Line) for 24 months after approval of the merger. Similar positions have been taken separately by Fremont and Chaffee Counties, although Chaffee County also has requested: if the Tennessee Pass Line is either abandoned or rail banked, that UP/SP be required to perform an Environmental Assessment and to implement a plan for removal of all hazardous waste, and that bonding be required in connection therewith; and, in order to replace lost property taxes, that UP/SP be required to establish a trust fund of not less than \$1,750,000, with the revenue therefrom to be apportioned to Chaffee County, the Town of Buena Vista, the City of Salida, and all affected special districts.

Abandonment of the Tennessee Pass Line is opposed also by various additional parties, including E.R. Jacobson (co-owner of the family ranching enterprise known as Deep Creek Ranch) and AA#1 Limited Liability Company, who contend that local traffic does in fact move on the Tennessee Pass Line and that an

" A "Trails Act statement" is a 49 CFR 1152.29 statement of willingness to assume financial responsibility for interim trail use.

A



abandonment will therefore hurt local shippers. The Tennessee Pass abandonment is opposed also by E.W. Wotipka, who concedes that local traffic is probably insufficient to justify the line's continued existence but who contends that it is unwise to destroy a viable alternative main line on short-term grounds in the face of rapidly changing and unpredictable economic conditions. The Tennessee Pass Line, he argues, is a well-maintained, fully-signalled, CTC controlled main line that has operated, 34 grade and all, in competition with UPRR for more than a century. Eagle County, Lake County, and the Towns of Red Cliff, Minturn, Vail, Avon, Eagle, and Gypsum state that they will make an Offer of Financial Assistance (OFA) to purchase the Tennessee Pass Line.

RTC notes that there are two Superfund sites along or near the Sage-Malta-Leadville Line (the California Gulch Superfund Site in Leadville, and the Eagle Mine Superfund Site in Minturn) and another Superfund site along or near the Malta-Cañon City Line (the Smeltertown Superfund Site in Salida). RTC further notes that UP/SP will own an interest in certain slag piles at Leadville which may contain toxic material, and that some material from the slag piles may have been used as ballast on the line. RTC maintains that, because the presence of Superfund sites or known toxic contamination can be detrimental (in terms of the legal implications) to all parties in the context of an abandonment proceeding, some baseline information is vital to ensure that a timely rail banking arrangement can be reached. RTC therefore requests the issuance of a condition to require that UP/SP, within 180 days of abandonment authorization, provide the State of Colorado and RTC a Phase I environmental survey (prepared by an independent third entity) identifying all possible toxic contamination on the corridor. RTC adds that, should the Phase I survey report indicate potential problems, further site-specific sampling may be necessary to characterize such problems as exist or to verify that no problems exist.

The Colorado Department of Public Health and Environment (CDPHE) and the United States Environmental Protection Agency, Region VIII (Region VIII or EPA Region VIII), which, like RTC, are interested in Tennessee Pass environmental matters, request that UP/SP be required to perform, prior to approval of the abandonment, a "remedial investigation" to determine the nature and extent of contamination at and emanating from the line along the entire Tennessee Pass corridor.

The Leadville Coalition, representing the Lake County Board of Commissioners, the City of Leadville, and various other local interests, has indicated its concerns regarding the California Gulch Superfund Site and other sites as well. The Coalition, believing that further risk assessment addressing contemplated uses of the Tennessee Pass Line is necessary, asks that we defer a decision on the merger and the abandonments until a complete Consent Decree and a Final Record of Decision are entered by the Environmental Protection Agency (EPA).

Sage-Malta-Leadville Line (Colorado). Trails Act statements respecting the Sage-Malta-Leadville Line have been filed by RTC and by the State of Colorado, acting by and through its Parks and Recreation Department. Vail Associates, Inc. (Vail), which operates ski resorts in the vicinity of the Sage-Malta-Leadville Line, envisions that the line might be used, in whole or in part, for passenger service and/or as a trail; and, to this end, Vail has filed a Trails Act statement and also has indicated an intent to acquire the line, in whole or in part, under OFA procedures.

Viacom International Inc. (Viacom) indicates that it is performing an environmental cleanup at the Eagle Mine site,

rights between Utah Railway Junction, UT, and Grand Junction, CO. BNSF, via the trackage rights it will receive under the BNSF agreement, will be able to move URC-originated coal to destination points west of Provo, UT, and east of Grand Junction. URC has explained that its agreement with applicants "will provide the market discipline to assure competitive rates for coal customers in the western region by means of its cost efficient operations and access to Utah coal acting either in conjunction with the BNSF or with UPSP."<sup>122</sup> As discussed elsewhere in this decision, the URC agreement is an especially important competitive safeguard for those few western coal shippers, such as the SPP/IDPC jointly owned North Valmy Station plant, that are dependent on originations of Utah/Colorado coal. We therefore impose as a condition the terms of the URC agreement.

**Tennessee Pass Line.** Applicants seek to abandon a portion of the Tennessee Pass Line between Malta and Cañon City, CO,<sup>123</sup> and to route traffic over more efficient routes post-merger. Several parties have raised concerns that the Moffat Tunnel Line between Dotsero and Denver, CO, will lack the capacity to handle overhead traffic rerouted from the Tennessee Pass Line.

Parties have requested that we consider alternative conditions designed to ensure that shippers do not suffer a degradation of the level of service now provided by SP as a result of the merger. One such condition would require UP/SP to maintain service on SP's (DRGW's) Tennessee Pass Line between Dotsero and Pueblo, Colorado. An alternative condition would permit UP/SP to discontinue service on, but not physically abandon, the Tennessee Pass Line. If the Moffat Tunnel Line cannot handle the increased traffic, we could then take steps necessary to enable UP/SP to restore the prior level of service over the Tennessee Pass Line. In addition, opponents argue that the Tennessee Pass Line is an important alternate route in the event of a derailment or congestion on the Moffat Tunnel Line.

Applicants assert that, in the 1970s, DRGW operated as many as 25 to 30 trains per day through the Moffat Tunnel, which indicates that this line should be able to handle the projected increase in traffic volume, and that additional capacity improvements on this line could be made if they prove necessary. Nevertheless, opponents point out that the traffic mix has changed considerably since the 1970s. DRGW's operations consisted mostly of short mixed-freight trains, whereas today SP operates longer trains, including heavy unit trains transporting coal. Opponents are concerned that, if SP has difficulty meeting contracted delivery schedules now, shifting more traffic to the Moffat Tunnel Line will cause additional capacity and service problems. Such a degradation in service could increase cycle times for unit trains of shipper-owned cars, and thus require shippers to purchase more cars to receive the same level of service.

Applicants assert that the Tennessee Pass Line is the least efficient link for an overhead route across the Central Corridor;

<sup>122</sup> UTAH-6 at 19.

<sup>123</sup> Specifically, applicants seek by petitions for exemption in Docket Nos. AB-8 (Sub-No. 36X) and AB-12 (Sub-No. 189X) for SPT to abandon, and DRGW to discontinue operations over, SP's Sage-Malta-Leadville line; and by applications in Docket Nos. AB-8 (Sub-No. 39) and AB-12 (Sub-No. 188) for SPT to abandon, and DRGW to discontinue operations over, SP's Malta-Cañon City line.

A



and that the merger will open new, more efficient routes for the present traffic flows. Given the UP/SP and BNSF options that will become available after the merger, applicants claim that routing via Pueblo and the Tennessee Pass Line is an inferior choice.<sup>194</sup>

We acknowledge that applicants have taken the railroad capacity concern seriously and recognize that the inefficient Tennessee Pass Line might need to be retained just in case the Moffat Tunnel Line is overwhelmed. Applicants provided assurances that no action will be taken precipitously to abandon the line, and that overhead traffic flows will leave that line only as their new routes become fully prepared to take them efficiently.<sup>195</sup> Notwithstanding these reassurances, we will grant discontinuance authority rather than full abandonment authority because of the crucial nature of this through route. This will preserve the line intact until applicants demonstrate that overhead traffic over the Tennessee Pass Line has been successfully rerouted.

Related procedural aspects. Consistent with the Board's policy to promote private-sector solutions to disputes, we encourage parties to this proceeding to make their best efforts to resolve among themselves any disputes that may arise concerning the meaning or applicability of any of the terms or conditions imposed or approved before resorting to the Board for resolution. Use of arbitration to resolve disputes can result in resource and time savings for all concerned. If parties choose to use arbitration in the first instance, the Board will entertain appeals from arbitral decisions using the standards in Lace Curtain<sup>196</sup> set forth for review of arbitral decisions under our labor conditions, unless the parties agree otherwise.

No Divestiture Needed. A number of parties have called on us to impose certain broad-based remedies to supplement or replace the BNSF agreement. Most notably, a number of parties request that we impose some version of MRL's plan for divestiture of certain Central Corridor lines and/or some version of KCS' and Conrail's plans for divestiture of certain lines running from St. Louis to the Gulf Coast region.

<sup>194</sup> Applicants note that double-stack traffic is transcontinental traffic that can easily be rerouted to shorter routes through Wyoming or New Mexico and by-pass Colorado completely. Applicants state that the Tennessee Pass Line would be the shorter post-merger route only for coal moving to West Texas, New Mexico, and Arizona. The volume of this coal, applicants assert, currently amounts to about one train per week. UP/SP-232 (Vol. 3), VS Ongerth, at 47-48.

<sup>195</sup> According to applicants, existing service to overhead shippers will be protected until superior options are in place, and the track itself will be left in place for a set period of time in accordance with assurances made to the Governor of Colorado. These include a commitment to maintain service on the line for at least 6 months following consummation of the merger, and to leave track in place until upgrades are completed on the new routes and at Roseville Yard in California, which could take several years. UP/SP-232 (Vol. 3), VS Ongerth, at 49.

<sup>196</sup> Chicago & N.W. Transp. Co.--Abandonment, 3 I.C.C.2d 729 (1987) (Lace Curtain), aff'd, International Bhd. of Elec. Workers v. ICC, 852 F.2d 330 (D.C. Cir. 1988).

A

**Alternative transportation.** Protestants are located at Compro, which, according to applicants, is about 6 miles from Interstate 55, a major Chicago-Springfield-St. Louis truck route. SpPl claims that, if the line were abandoned, it would incur at least \$100,000 in added freight and handling charges. BCI's cost of receiving shipments would allegedly increase \$10,000 per year if the line were abandoned. Applicants respond that, if SpPl used a rail-to-truck transfer operation in the St. Louis area, the additional cost would be \$66,480, which is allegedly a very small portion of the company's profits. SpPl replies that the increased costs would reduce SpPl's yearly profit by 3.8%, while the line's claimed operating loss is less than 0.02% of UP's net income.

**Shipper and community interests.** Protestants argue that the \$110,000 increase in costs for SpPl and BCI indicates that there would be substantial harm to local interests caused by an abandonment. The Economic Development Council for Greater Springfield contends that the abandonment will cause negative economic impacts for any business that relies heavily on rail service. Applicants contend that abandonment will not have a significant effect on shipper and community interests because the only shippers on the line will not incur significant additional transportation charges.

**Discussion and conclusions.** The applicable criteria weigh in favor of granting the abandonment and denying the request for a partial abandonment. We have restated the revenue and cost evidence based on the Barr-Compro segment in the scenario most favorable to protestants. Under our restatement, the avoidable loss is \$33,189 based on revenues of \$191,676. When opportunity costs are included, the total loss is \$576,572. Although the avoidable losses are relatively low, they amount to over \$700 a carload. Moreover, there are large opportunity costs. There is no evidence that there will be a significant increase in traffic in the future.

We recognize, and applicants concede, that the shippers will experience increased costs. Both the ICC and the Board have held, however, that the fact that shippers are likely to incur some inconvenience and added expense is insufficient by itself to outweigh the detriment to the public interest of continued operation of uneconomic and excess facilities. The situation in this proceeding is unusual because the loss to shippers is approximately twice as great as the avoidable loss of \$33,189. As noted, however, when opportunity costs are included, the economic loss is over \$575,000. Moreover, in considering the fact that only 47 cars are projected for the forecast year, applicants' avoidable loss amounts to over \$700 a car, a significant subsidy by the carrier.

We therefore conclude that the burden on shippers and communities resulting from abandonment is outweighed by the burden imposed on UPRR and on interstate commerce by the financial losses that would result if UPRR were required to continue to operate this line. Given these losses, we must conclude that the line is a burden on interstate commerce, and we will grant the abandonment.

**Tennessee Pass Line Abandonments.** SPT seeks to abandon and discontinue operations over, and DRGW seeks to discontinue



operations over, two segments of the Tennessee Pass Line.<sup>251</sup> We will grant the applications and petitions for exemption to the extent to allow for discontinuance, but will deny the application and petition for abandonment authority. Because we are granting discontinuance authority, we will not consider trail use requests or impose public use conditions. We will discuss the discontinuance issues before addressing the abandonment requests.

Discontinuances granted: 10505 petitions. To the extent that SPT seeks to discontinue service in Docket No. AB-12 (Sub-No. 189X) and DRGW seeks to discontinue service in AB-8 (Sub-No. 36X), we find that SPT and DRGW have met the criteria for discontinuance exemptions.

Detailed scrutiny is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of filing discontinuance applications, these exemptions will expedite regulatory decisions and reduce regulatory barriers to exit. 49 U.S.C. 10101a(2) and (7). These exemptions will foster sound economic conditions and encourage efficient management by allowing the carriers to discontinue uneconomic service on the line. 49 U.S.C. 10101a(3), (5), and (10). Other aspects of the rail transportation policy are not affected adversely.

Regulation is not necessary to protect shippers from an abuse of market power. No shipper that actually uses the line to originate or terminate traffic has opposed the discontinuances. Applicants claim that the major recurring source of local traffic on the line has been salvaged rolling stock and cargo from train accidents. No local traffic is expected to be generated on the line in the future.

Given our findings regarding the probable effect of the transactions on market power, we need not determine whether the transactions are of limited scope. Nevertheless, we note that the transactions involve 69.1 miles of line in a single state. Under 49 U.S.C. 10505, we will exempt from the prior approval requirements of 49 U.S.C. 10903-04, the discontinuance by both SP and DRGW of operations on the Sage-Malta-Leadville Line.

Discontinuances granted: applications. To the extent that SPT seeks to discontinue service in Docket No. AB-12 (Sub-No. 188) and DRGW seeks to discontinue service in AB-8 (Sub-No. 39), we find that SPT and DRGW have met the criteria for discontinuance. Most of the opposition to the abandonment and discontinuance applications for the Malta-Cañon City Line are from interested parties concerned about the rerouting of traffic. Also, the major shipper on the line, ASARCO, has expressed concern about the applications.

The statutory standard governing a discontinuance under 49 U.S.C. 10903 is whether the present or future public convenience and necessity require or permit the proposed discontinuance. As in abandonment proceedings, we must weigh the potential harm to affected shippers and communities against the present or future burden that continued operation could impose on the railroad and on interstate commerce. Colorado v. United

<sup>251</sup> SPT and DRGW, respectively, filed applications in Docket Nos. AB-12 (Sub-No. 188) and AB-8 (Sub-No. 39), for the abandonment and discontinuance of service over the 109-mile Malta-Cañon City, CO line; and petitions for exemptions in Docket Nos. AB-12 (Sub-No. 189X) and AB-8 (Sub-No. 36X), for the abandonment and discontinuance of service over the 69.1-mile Sage-Malta-Leadville, CO line.

States. 271 U.S. 153 (1926). In this proceeding, the record indicates that the Malta-Cañon City Line is incurring significant losses, described below.

Train operations. Pursuant to Decision No. 3, applicants provided information relating only to local train service. Service to shippers is usually provided by through trains operating 7 days per week. Minerals, chemicals, and scrap metal are the principal commodities shipped over the line.

Due to the very low volume of local traffic generated by the line, a service frequency of one cycle per week would be adequate if the line were operated solely for local traffic. The total carloads shipped for the nine significant shipper/receivers on the subject line in 1993 and 1994 were 574 and 528, respectively. For the most current partial year available (January 1, 1995, through June 30, 1995), a total of 258 carloads (predominantly minerals) were shipped. Applicants' projected forecast year traffic of 492 cars is not challenged.

Revenue and cost data. As shown in the following table, applicants estimate that for the forecast year November 1, 1995, through October 31, 1996, local traffic on the line will generate avoidable losses that can be avoided by abandonment and cessation of operations. Applicants' cost estimates, including return on value, are not contested. We summarize them as follows:

		(Forecast Year)
Total Revenue		
Total On-Branch Costs	\$891,239	\$1,286,649
Total Off-Branch Costs	915,777	
Total Avoidable Costs		<u>1,807,016</u>
Avoidable Loss, Excluding Return on Value		520,367
Return on Value		<u>1,259,808</u>
Avoidable Loss, Including Return on Value		<u>\$1,780,175</u>

Revenues. Total revenues for the forecast year are projected to be \$1,286,649. This is based on the movement of 492 cars.

Avoidable Costs. Total on-branch costs are estimated to be \$891,239, consisting largely of maintenance-of-way and structure costs, estimated by applicants to be \$555,114. With respect to these track maintenance costs, applicants estimate a normalized annual expenditure of \$5,093 per main track mile to maintain the track at FRA class 1 standards, excluding maintenance costs associated with overhead traffic. Because the line is classified at a level higher than FRA class 1, no rehabilitation is required. Review of applicants' calculations indicates that the maintenance estimate of \$555,114, and the quantities and unit costs used to develop the estimate, appear to be reasonable.

Opportunity Costs. Opportunity costs are estimated to be \$1,259,808, computed by multiplying the average rail pre-tax cost of capital rate for 1994 of 18.3% by the valuation of road property (\$6,809,017) dedicated to the train operations conducted over the line, and adjusting for a holding loss of \$13,758. The majority of the property value committed to the operation of the line is the net salvage value of track structure, which is estimated to be \$7,079,625. Land is valued at \$378,000.



*Projected Losses and Estimated Subsidy.* Applicants project an avoidable loss, excluding opportunity costs, of \$520,367. Including opportunity costs, losses are projected to be almost \$1.8 million in the forecast year. A restatement of these numbers to take into account our 1995 cost of capital determination, which results in a pre-tax cost of capital of 17.5%, produces opportunity costs of \$1,205,336. Losses, including opportunity costs, would be approximately \$1.73 million.

*Alternative transportation.* The main shipper served by the line is ASARCO, whose traffic accounts for 477 of the 492 carloads of lead and zinc ore projected for the forecast year. ASARCO and SPT have discussed building a new transload facility at a site in the Cañon City area where ASARCO could truck the ore following an abandonment or discontinuance of service. ASARCO does not claim transloading is infeasible or that its mine would not be able to operate. It does suggest, however, that the new arrangements would not be as satisfactory as the current one. No other customers who receive or ship traffic on the line filed comments. Applicants contend that trucking of ore was common when the area was much more heavily mined, and that it should not be difficult to build a transloading facility in Cañon City comparable to the one in Malta.

*Shipper and community interests.* As noted, no shippers besides ASARCO filed comments. CWAC argues that there is a much higher demand for local shipping than current traffic indicates. Applicants claim that the projected traffic is unrealistic, arguing that some of the movements are being shipped by truck and that some of the movements originate or terminate at Florence, CO, which is not on the line.

*Discussion and conclusions.* The applicable criteria weigh in favor of discontinuance. The line is incurring heavy operating losses and claims of significantly increased traffic have not been substantiated. Accordingly, the potential harm to shippers and communities from discontinuance of service is outweighed by the burden on the carriers and on interstate commerce from continued operations. Both SPT and DRGW may discontinue service over the subject line.

Abandonments not granted. In most situations, the lack of shipper opposition, little local traffic, and significant losses over the Malta-Cañon City Line, discussed above, would also support a grant of the petition and the application to allow for abandonment. Here, however, there is a significant factor that militates against granting abandonment: indications in the record that the Moffat Tunnel Line may lack the capacity to handle overhead traffic rerouted from the Tennessee Pass Line.

We have discussed this issue earlier. It is clear that, because of the importance of this through route, permitting abandonment now would be inconsistent with the rail transportation policy. We will accordingly deny the petition for exemption to the extent it seeks abandonment authority. Moreover, because of questions raised about the ability of the Moffat Tunnel Line to handle the rerouted overhead traffic, we cannot find that the present or future public convenience and necessity permit the abandonment of the Malta-Cañon City Line. We will therefore deny the abandonment application to the extent it seeks abandonment authority.

Public Interest Conditions.

Trail Use. Requests for issuance of certificates or notices of interim trail use (CITUs or NITUs) to acquire rights-of-way under the National Trails System Act, 16 U.S.C. 1247(d), were filed in 10 proceedings: Docket Nos. AB-3 (Sub-No. 130, 131, and 133X), AB-33 (Sub-Nos. 96, 97X, 98X, and 99X), and AB-12 (Sub-No. 184X, 188, and 189X). We will not issue a CITU or NITU in the two Tennessee Pass Line proceedings, Docket Nos. AB-12 (Sub-Nos. 188 and 189X), because we are denying the requested abandonments and are issuing only discontinuance authority. No trail use or public use conditions may be imposed where only discontinuances are being granted. Southern Pacific Transportation Company--Discontinuance of Service Exemption--In Ventura County, CA. Docket No. AB-12 (Sub-No. 143X) (ICC served Nov. 20, 1992).

We will issue a CITU or NITU in the other eight proceedings.<sup>252</sup> The criteria for imposing trail use and rail banking have been met. The parties have submitted statements of willingness to assume financial responsibility for the rights-of-way and acknowledged that use of the rights-of-way are subject to future reactivation for rail service in compliance with 49 CFR 1152.29. Applicants have indicated their willingness to negotiate trail use agreements.<sup>253</sup>

The parties may negotiate an agreement during the 180-period prescribed below. If the parties reach a mutually acceptable final agreement, further Board approval is not necessary. If no agreement is reached within 180 days, applicants may fully abandon the line, provided the conditions imposed in the applicable proceeding are met. 49 CFR 1152.29(c) and (d). Use of the rights-of-way for trail purposes is subject to restoration for railroad purposes.

Our issuance of the NITUs does not preclude other parties from filing interim trail use requests within 10 days after publication of the notice of exemption in the Federal Register. If, within the 10-day period following publication of the notices of exemption, additional trail use requests are filed, applicants are directed to respond to them within 10 days.

The parties should note that operation of the trail use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10905. As stated in Rail Abandonments--Use of Rights-of-Ways as Trails, 2 I.C.C.2d 591 (1986) (Trails), offers of financial assistance (OFAs) to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking and

<sup>252</sup> The CITUs will be issued within 45 days of the service of this decision if no offer of financial assistance is timely made. The NITUs are being issued as part of this decision.

<sup>253</sup> Applicants state that, for non-Colorado lines proposed for abandonment, they are willing to negotiate trail use with any or all of the parties that have made requests. For Colorado abandonments, applicants are willing to negotiate trail use with the State or any of its designees. They are also willing to negotiate with other parties requesting trail use for Colorado abandonments so long as the State of Colorado is agreeable. Applicants have also submitted letters in various proceedings indicating their willingness to negotiate trail use.

A



While trail use requests can be made if the abandonments are granted, any trail arrangement would not supersede the requirements of the specific laws that govern Superfund sites.<sup>214</sup> Nor would we thereby become involved in negotiating or enforcing consent decrees involving remediation of those sites.

EPA does not view requiring UP/SP to comply with existing federal, state, and local regulation as mitigation. We believe, however, that requiring compliance with other laws and regulations, such as FRA's safety regulations, can assist in reducing the potential environmental impacts of the actions before us. If the railroad fails to comply with conditions that we have imposed, parties can notify us and request that we (as well as the agency that has promulgated the regulation) take appropriate action.

In any event, the mitigation we are imposing here goes well beyond requiring compliance with other laws and regulations. For example, it includes more frequent track and train car inspections to reduce anticipated safety impacts and reduced idling of locomotives and the use of more efficient locomotives to offset air pollution emissions associated with the merger. Moreover, to enhance safety, UP/SP will be required to equip certain trains carrying hazardous materials with two-way end-of-train devices to improve braking capabilities on particular line segments.

EPA suggests that we failed to discuss the environmental impacts associated with the handling and disposal of waste materials for the proposed abandonments and constructions. But we have included detailed mitigation for these actions. See Appendix G, including conditions #26, #27, #62 and #63.

EPA questions whether SEA considered all the settlement agreements reached with competing railroads and trade associations. SEA specifically took all settlement agreements into account in its analysis, as the EA and Post EA show.

Finally, we disagree with EPA's suggestion that SEA should revisit its consultation efforts with Native American tribes. SEA's efforts to contact and consult with Native American tribes have been extensive. As part of its outreach activities, SEA contacted approximately 11 area offices of the Bureau of Indian Affairs to inform them about the proposed merger; three offices commented and provided the names of tribes that should be contacted. Both the EA and Post EA were distributed to 31 American Indian tribes. In addition, there was newspaper and Federal Register notice to inform all affected tribes and communities about the proposed merger and how they could participate. To ensure continued participation, SEA will contact the affected Native American tribes when initiating its mitigation studies for Reno and Wichita and invite them to participate.

#### FINDINGS

In Finance Docket No. 32760, we find: (a) that the acquisition by UPC, UPRR, and MPRR of control of SPR, SPT, SSW, SPCSL, and DRGW through the proposed transaction, as conditioned herein, is within the scope of 49 U.S.C. 11343 and is consistent

<sup>214</sup> See Union Pac. R.R. -- Abandonment -- Wallace Branch, ID. Docket No. AB-33 (Sub-No. 70) (ICC served Dec. 2, 1994).

with the public interest; (b) that the transaction will not adversely affect the adequacy of transportation to the public; (c) that no other railroad in the area involved in the transaction has requested inclusion in the transaction, and that failure to include any such railroad will not adversely affect the public interest; (d) that the transaction will not result in any guarantee or assumption of payment of dividends or of fixed charges, or any increase in total fixed charges, except as specifically approved herein; (e) that the interests of employees affected by the proposed transaction does not make such transaction inconsistent with the public interest, and any adverse effect will be adequately addressed by the conditions imposed herein; (f) that the transaction, as conditioned herein, will not significantly reduce competition in any market; and (g) that the terms of the transaction are just, fair, and reasonable. We further find that the competitive conditions imposed in Finance Docket No. 32760, including but not limited to those embraced in the BNSF, CMA, and URC agreements, and further including but not limited to the various modifications we have required with respect to the terms of the BNSF and CMA agreements (particularly with respect to new facilities, transloading facilities, build-out/build-in options, contracts at 2-to-1 points, and SIT facilities), are consistent with the public interest. We further find that the oversight condition imposed in Finance Docket No. 32760 is consistent with the public interest. We further find that any rail employees of applicants or their rail carrier affiliates affected by the transaction authorized in Finance Docket No. 32760 should be protected by the conditions set forth in New York Dock Ry. -- Control -- Brooklyn Eastern Dist., 360 I.C.C. 60, 84-90 (1979), unless different conditions are provided for in a labor agreement entered into prior to consummation of the transaction authorized in Finance Docket No. 32760, in which case protection shall be at the negotiated level, subject to our review to assure fair and equitable treatment of affected employees.

In Finance Docket No. 32760 (Sub-No. 1), we find that the trackage rights provided for in the BNSF agreement and included in the Sub-No. 1 notice filed November 30, 1995, are exempt from prior review and approval pursuant to 49 CFR 1180.2(d)(7). We further find that any rail employees of applicants or their rail carrier affiliates or of BNSF or its rail carrier affiliates affected by the transaction authorized in Finance Docket No. 32760 (Sub-No. 1) should be protected by the conditions set forth in Norfolk and Western Ry. Co. -- Trackage Rights -- BN, 354 I.C.C. 605, 610-15 (1978), as modified in Mendocino Coast Ry., Inc. -- Lease and Operate, 360 I.C.C. 653, 664 (1980), unless different conditions are provided for in a labor agreement entered into prior to consummation of the transaction authorized

<sup>211</sup> Again, by BNSF agreement, we mean the agreement dated September 25, 1995 (UP/SP-22 at 318-347), as modified by the supplemental agreement dated November 18, 1995 (UP/SP-22 at 348-359), and as further modified by the second supplemental agreement dated June 27, 1996 (UP/SP-266, Exhibit A). We wish to clarify, however, that in imposing the BNSF agreement as a condition to this merger, we will require applicants to honor all of the amendments, clarifications, modifications, and extensions thereof described in: (1) the April 18th CMA agreement (UP/SP-219); (2) the April 29th rebuttal filings (UP/SP-230 at 12-21; UP/SP-231, Part C, Tab 18 at 5-11; see also UP/SP-260 at 8-9, summarizing the clarifications and amendments described in the April 29th rebuttal filings); (3) the June 3rd brief (UP/SP-260 at 23 n.9); and (4) the June 28th filing that accompanied the second supplemental agreement (UP/SP-266 at 3).



in Finance Docket No. 32760 (Sub-No. 1), in which case protection shall be at the negotiated level, subject to our review to assure fair and equitable treatment of affected employees.

In Finance Docket No. 32760 (Sub-No. 2), we find that the three line sales provided for in the BNSF agreement, and operation by BNSF of these lines, are exempt from prior review and approval pursuant to 49 U.S.C. 10505 because such review is not necessary to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from the abuse of market power. We further find that any rail employees of applicants or their rail carrier affiliates or of BNSF or its rail carrier affiliates affected by the transaction authorized in Finance Docket No. 32760 (Sub-No. 2) should be protected by the conditions set forth in New York Dock Ry. -- Control -- Brooklyn Eastern Dist., 360 I.C.C. 60, 84-90 (1979), unless different conditions are provided for in a labor agreement entered into prior to consummation of the transaction authorized in Finance Docket No. 32760 (Sub-No. 2), in which case protection shall be at the negotiated level, subject to our review to assure fair and equitable treatment of affected employees.

In Finance Docket No. 32760 (Sub-Nos. 3, 4, 5, 6, and 7), we find that acquisition and exercise of control of A&S, CCT, OURD, PTRR, and PTRC, respectively, by applicants is exempt from prior review and approval pursuant to 49 U.S.C. 10505 because each such control transaction is limited in scope, and because, in each instance, review is not necessary to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from the abuse of market power. We further find that any rail employees of applicants or their rail carrier affiliates affected by the transactions authorized in Finance Docket No. 32760 (Sub-Nos. 3, 4, 5, 6, and 7) should be protected by the conditions set forth in New York Dock Ry. -- Control -- Brooklyn Eastern Dist., 360 I.C.C. 60, 84-90 (1979), unless different conditions are provided for in a labor agreement entered into prior to consummation of the transactions authorized in Finance Docket No. 32760 (Sub-Nos. 3, 4, 5, 6, and 7), in which case protection shall be at the negotiated level, subject to our review to assure fair and equitable treatment of affected employees.

In Finance Docket No. 32760 (Sub-No. 8), we find that (i) common control of UP and the two motor carriers controlled by SP, and (ii) common control of SP and the one motor carrier controlled by UP, is exempt from prior review and approval pursuant to 49 U.S.C. 10505 because each such control transaction is limited in scope, and because, in each instance, review is not necessary to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from the abuse of market power.

In Finance Docket No. 32760 (Sub-No. 9), we find that the terminal area trackage rights sought therein are practicable and in the public interest and will not substantially impair the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business.

In Finance Docket No. 32760 (Sub-No. 10), we find that the responsive application filed by CMTA is not consistent with the public interest.

In Finance Docket No. 32760 (Sub-No. 11), we find that the responsive application filed by MRL is not consistent with the public interest.

In Finance Docket No. 32760 (Sub-No. 12), we find that the responsive application filed by Entergy is consistent with the

public interest to the extent the application seeks to require that the BNSF agreement be amended to allow BNSF to transport coal trains to and from White Bluff via the White Bluff-Pine Bluff build-out line. In all other respects, we find that the responsive application filed by Entergy is not consistent with the public interest.

In Finance Docket No. 32760 (Sub-No. 13), we find that the responsive application filed by Tex Mex is consistent with the public interest with respect to traffic having a prior or subsequent movement on the Laredo-Robstown-Corpus Christi line. We further find that the responsive application filed by Tex Mex is not consistent with the public interest with respect to traffic not having such a prior or subsequent movement. We further find that any rail employees of Tex Mex affected by the trackage rights authorized in Finance Docket No. 32760 (Sub-No. 13) should be protected by the conditions set forth in Norfolk and Western Ry. Co.--Trackage Rights--BN, 354 I.C.C. 605, 610-15 (1978), as modified in Mendocino Coast Ry., Inc.--Lease and Operate, 360 I.C.C. 653, 664 (1980), unless different conditions are provided for in a labor agreement entered into prior to commencement of operation of the Finance Docket No. 32760 (Sub-No. 13) trackage rights, in which case protection shall be at the negotiated level, subject to our review to assure fair and equitable treatment of affected employees.

In Finance Docket No. 32760 (Sub-No. 14), we find that the terminal area trackage rights sought therein are practicable and in the public interest, with respect to traffic having a prior or subsequent movement on the Laredo-Robstown-Corpus Christi line, and, with respect to such traffic, will not substantially impair the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business.

In Finance Docket No. 32760 (Sub-No. 16), we find that the responsive application filed by WEPCO is not consistent with the public interest.

In Finance Docket No. 32760 (Sub-No. 17), we find that the responsive application filed by MCC and its rail affiliates is not consistent with the public interest.

In Docket No. AB-3 (Sub-No. 129X), we find that the abandonment by MPRR of railroad lines between MP 428.3 near Gurdon, AR, and MP 457.0 near Camden, AR, is exempt from prior review and approval pursuant to 49 U.S.C. 10505 because such review is not necessary to carry out the transportation policy of 49 U.S.C. 10101a, regulation is not necessary to protect shippers from the abuse of market power.

In Docket Nos. AB-3 (Sub-No. 130) and AB-8 (Sub-No. 38), we find that the abandonment by MPRR of, and the discontinuance of trackage rights by DRGW on, railroad lines between MP 747.0 near Towner, CO, and MP 869.4 near NA Junction, CO, is permitted by the present or future public convenience and necessity and will not have a serious adverse impact on rural and community development. The property may be suitable for recreation and trail use. However, we note that no party has requested a public use condition, and we will not impose one at this time.

In Docket Nos. AB-3 (Sub-No. 131) and AB-8 (Sub-No. 37), we find that the abandonment by MPRR of, and the discontinuance of trackage rights by DRGW on, railroad lines between MP 459.20 near Hope, KS, and MP 491.20 near Bridgeport, KS, is permitted by the present or future public convenience and necessity and will not have a serious adverse impact on rural and community development.



The property may be suitable for recreational use as an extension of a trail. However, we note that no party has requested a public use condition, and we will not impose one at this time.

In Docket No. AB-3 (Sub-No. 132X), we find that the abandonment by MPRR of railroad lines between MP 485.0 near Newton, KS, and MP 476.0 near Whitewater, KS, is exempt from prior review and approval pursuant to 49 CFR 1152.50.

In Docket No. AB-3 (Sub-No. 133X), we find that the abandonment by MPRR of railroad lines between MP 680.0 near Iowa Junction, LA, and MP 688.5 near Manchester, LA, is exempt from prior review and approval pursuant to 49 U.S.C. 10505 because such review is not necessary to carry out the transportation policy of 49 U.S.C. 10101a, regulation is not necessary to protect shippers from the abuse of market power.

In Docket No. AB-3 (Sub-No. 134X), we find that the abandonment by MPRR of railroad lines between MP 0.50 near Troup, TX, and MP 8.0 near Whitehouse, TX, is exempt from prior review and approval pursuant to 49 CFR 1152.50.

In Docket Nos. AB-8 (Sub-No. 36X) and AB-12 (Sub-No. 189X), we find that the discontinuance by DRGW and SPT, respectively, of operations on railroad lines (1) between MP 335.0 near Sage, CO, and MP 271.0 near Malta, CO, and (2) between MP 271.0 near Malta, CO, and MP 276.1 near Leadville, CO, is exempt from prior review and approval pursuant to 49 U.S.C. 10505 because such review is not necessary to carry out the transportation policy of 49 U.S.C. 10101a, regulation is not necessary to protect shippers from the abuse of market power. In Docket No. AB-12 (Sub-No. 189X), however, we further find that the abandonment by SPT of railroad lines (1) between MP 335.0 near Sage, CO, and MP 271.0 near Malta, CO, and (2) between MP 271.0 near Malta, CO, and MP 276.1 near Leadville, CO, is not exempt from prior review and approval because review is necessary to carry out the transportation policy of 49 U.S.C. 10101a.

In Docket Nos. AB-8 (Sub-No. 39) and AB-12 (Sub-No. 188), we find that the discontinuance by DRGW and SPT, respectively, of operations on railroad lines between MP 271.0 near Malta, CO, and MP 162.0 near Cañon City, CO, is permitted by the present or future public convenience and necessity and will not have a serious adverse impact on rural and community development. In Docket No. AB-12 (Sub-No. 188), however, we further find that the abandonment by SPT of railroad lines between MP 271.0 near Malta, CO, and MP 162.0 near Cañon City, CO, is not permitted by the present or future public convenience and necessity.

In Docket No. AB-12 (Sub-No. 184X), we find that the abandonment by SPT of railroad lines between MP 360.1 near Wendel, CA, and MP 445.6 near Alturas, CA, is exempt from prior review and approval pursuant to 49 U.S.C. 10505 because such review is not necessary to carry out the transportation policy of 49 U.S.C. 10101a, regulation is not necessary to protect shippers from the abuse of market power.

In Docket No. AB-12 (Sub-No. 185X), we find that the abandonment by SPT of railroad lines between MP 117.6 near Suman, TX, and MP 105.07 near Benchley, TX, is exempt from prior review and approval pursuant to 49 U.S.C. 10505 because such review is not necessary to carry out the transportation policy of 49 U.S.C. 10101a, regulation is not necessary to protect shippers from the abuse of market power.

In Docket No. AB-12 (Sub-No. 187X), we find that the abandonment by SPT of railroad lines between MP 30.0 near Seabrook, TX, and MP 40.5 near San Leon, TX, is exempt from prior review and approval pursuant to 49 CFR 1152.50.

In Docket No. AB-33 (Sub-No. 93X), we find that the abandonment by UPRR of railroad lines between MP 0.0 near Whittier Junction, CA, and MP 5.18 near Colima Junction, CA, is exempt from prior review and approval pursuant to 49 CFR 1152.50.

In Docket No. AB-33 (Sub-No. 94X), we find that the abandonment by UPRR of railroad lines between MP 5.8 near Magnolia Tower, CA, and MP 10.7 near Melrose, CA, is exempt from prior review and approval pursuant to 49 CFR 1152.50.

In Docket No. AB-33 (Sub-No. 96), we find that the abandonment by UPRR of railroad lines between MP 51.0 near Barr, IL, and MP 89.4 near Girard, IL, is permitted by the present or future public convenience and necessity and will not have a serious adverse impact on rural and community development.

In Docket No. AB-33 (Sub-No. 97X), we find that the abandonment by UPRR of railroad lines between MP 119.2 near DeCamp, IL, and MP 133.8 near Edwardsville, IL, is exempt from prior review and approval pursuant to 49 CFR 1152.50.

In Docket No. AB-33 (Sub-No. 98X), we find that the abandonment by UPRR of railroad lines between MP 133.8 near Edwardsville, IL, and MP 148.78 near Madison, IL, is exempt from prior review and approval pursuant to 49 U.S.C. 10505 because such review is not necessary to carry out the transportation policy of 49 U.S.C. 10101a, regulation is not necessary to protect shippers from the abuse of market power.

In Docket No. AB-33 (Sub-No. 99X), we find that the abandonment by UPRR of railroad lines between MP 0.0 near Little Mountain Junction, UT, and MP 12.0 near Little Mountain, UT, is exempt from prior review and approval pursuant to 49 CFR 1152.50.

In Docket Nos. AB-3 (Sub-Nos. 129X, 130, 131, 132X, 133X, and 134X), AB-8 (Sub-Nos. 36X, 37, 38, and 39), AB-12 (Sub-Nos. 184X, 185X, 187X, 188, and 189X), and AB-33 (Sub-Nos. 93X, 94X, 96, 97X, 98X, and 99X), we further find that any employees affected by the abandonments and discontinuances authorized therein should be protected pursuant to Oregon Short Line R. Co. -- Abandonment -- Goshen, 360 I.C.C. 91, 98-103 (1979), unless different conditions are provided for in a labor agreement entered into prior to consummation of the relevant abandonment or discontinuance, in which case protection shall be at the negotiated level, subject to our review to assure fair and equitable treatment of affected employees.

We further find that this action, as conditioned by the environmental mitigation conditions set forth in Appendix G, will not significantly affect the quality of the human environment or the conservation of energy resources.

We further find that all conditions requested by any party to this proceeding but not granted herein are not in the public interest and should not be imposed.



It is ordered:

1. The UP/SP-262 motion to strike (and request for sanctions) is denied.
2. The BN/SF-61 motion to strike is denied.
3. BNSF's request (BN/SF-54 at 32-33) that a certain document relied upon by KCS (KCS-33 at 72) be stricken from the record is denied.
4. The EBT/KCOSA joint motion dated May 10, 1996, is granted, and the new evidence tendered therewith is made part of the record in this proceeding.
5. Charles W. Downey is permitted to intervene in this proceeding and to become a party of record.
6. In Finance Docket No. 32760, the application filed by UPC, UPRR, MPRR, SPR, SPT, SSW, SPCSL, and DRGW is approved, subject to the imposition of the conditions discussed in this decision. Such conditions include but are not limited to those embraced in the BNSF, CMA, and URC agreements, and further include but are not limited to the various modifications we have required with respect to the terms of the BNSF and CMA agreements (particularly with respect to new facilities, transloading facilities, build-out/build-in options, contracts at 2-to-1 points, and SIT facilities). The Board expressly reserves jurisdiction over the Finance Docket No. 32760 proceeding and all embraced proceedings in order to implement the oversight condition imposed in this decision and, if necessary, to impose further conditions or to take such other action, including the ordering of divestiture, as may be warranted.
7. If applicants consummate the approved transaction, they shall confirm in writing to the Board; within 15 days after consummation, the date of consummation. Where appropriate, applicants shall submit to the Board three copies of the journal entries recording consummation of the transaction.
8. All notices to the Board as a result of any authorization shall refer to this decision by date and docket number.
9. No change or modification shall be made in the terms and conditions approved in the authorized application without the prior approval of the Board.
10. Applicants are hereby directed to file a progress report and an implementing plan on or before October 1, 1996, as discussed in this decision, and to file further progress reports on a quarterly basis thereafter.
11. BNSF is hereby directed to file a progress report and an operating plan on or before October 1, 1996, as discussed in this decision, and to file further progress reports on a quarterly basis thereafter.
12. In Finance Docket No. 32760 (Sub-No. 1), the trackage rights referenced in the Sub-No. 1 notice filed November 30, 1995, are exempted pursuant to 49 CFR 1180.2(d)(7).
13. Applicants and BNSF are hereby directed to file, no later than September 4, 1996, a 49 CFR 1180.2(d)(7) class exemption notice covering the trackage rights added to the

BNSF agreement in accordance with the amendments required by the CMA agreement.

14. Applicants and URC are hereby directed to file, no later than September 4, 1996, a 49 CFR 1180.2(d)(7) class exemption notice covering the trackage rights provided for in the URC agreement.

15. In Finance Docket No. 32760 (Sub-No. 2), the petition for exemption is granted.

16. In Finance Docket No. 32760 (Sub-No. 3), the petition for exemption is granted.

17. In Finance Docket No. 32760 (Sub-No. 4), the petition for exemption is granted.

18. In Finance Docket No. 32760 (Sub-No. 5), the petition for exemption is granted.

19. In Finance Docket No. 32760 (Sub-No. 6), the petition for exemption is granted.

20. In Finance Docket No. 32760 (Sub-No. 7), the petition for exemption is granted.

21. In Finance Docket No. 32760 (Sub-No. 8), the petition for exemption is granted.

22. In Finance Docket No. 32760 (Sub-No. 9), the application for terminal area trackage rights is approved. BNSF and KCS shall jointly submit, by August 22, 1996, the agreed-upon terms respecting implementation of the Sub-No. 9 terminal trackage rights. In the event and to the extent these parties are unable to agree to such terms, they shall submit, by such date, separate proposals respecting implementation of such terminal trackage rights. The Board will then choose the better of the proposals, or some variation thereof, and make it effective on September 11, 1996.

23. In Finance Docket No. 32760 (Sub-No. 10), the responsive application filed by CMTA is denied.

24. In Finance Docket No. 32760 (Sub-No. 11), the responsive application filed MRL is denied.

25. In Finance Docket No. 32760 (Sub-No. 12), the responsive application filed by Entergy is approved to the extent the application seeks to require that the BNSF agreement be amended to allow BNSF to transport coal to and from White Bluff via the White Bluff-Pine Bluff build-out line. In all other respects, the Sub-No. 12 responsive application is denied.

26. In Finance Docket No. 32760 (Sub-No. 13), the responsive application filed by Tex Mex is approved, subject to this restriction: all freight handled by Tex Mex pursuant to its Sub-No. 13 trackage rights must have a prior or subsequent movement on the Laredo-Robstown-Corpus Christi line. Tex Mex and UP/SP shall jointly submit, by August 22, 1996, the agreed-upon terms respecting implementation of the Sub-No. 13 trackage rights. In the event and to the extent these parties are unable to agree to such terms, they shall submit, by such date, separate proposals respecting implementation of such trackage rights. The Board will then choose the better of the proposals, or some variation thereof, and make it effective on September 11, 1996.



38. In Docket No. AB-3 (Sub-No. 134X), the notice is accepted.

39. In Docket No. AB-8 (Sub-No. 36X), the petition for exemption is granted. In Docket No. AB-12 (Sub-No. 189X), the petition for exemption is granted in part (discontinuance authority is granted) and denied in part (abandonment authority is denied).

40. In Docket No. AB-8 (Sub-No. 39), the application is granted. In Docket No. AB-12 (Sub-No. 188), the application is granted in part (discontinuance authority is granted) and denied in part (abandonment authority is denied).

41. In Docket No. AB-12 (Sub-No. 184X), the petition for exemption is granted, and an NITU is hereby issued.

42. In Docket No. AB-12 (Sub-No. 185X), the petition for exemption is granted.

43. In Docket No. AB-12 (Sub-No. 187X), the notice is accepted.

44. In Docket No. AB-33 (Sub-No. 93X), the notice is accepted.

45. In Docket No. AB-33 (Sub-No. 94X), the notice is accepted.

46. In Docket No. AB-33 (Sub-No. 96), the application is granted.

47. In Docket No. AB-33 (Sub-No. 97X), the notice is accepted, and an NITU is hereby issued.

48. In Docket No. AB-33 (Sub-No. 98X), the petition for exemption is granted, and an NITU is hereby issued.

49. In Docket No. AB-33 (Sub-No. 99X), the notice is accepted, and an NITU is hereby issued.

50. In Docket Nos. AB-3 (Sub-Nos. 132X and 134X), AB-12 (Sub-No. 187X), and AB-33 (Sub-Nos. 93X, 94X, 97X, and 99X), notice will be published in the Federal Register on August 12, 1996. In these proceedings:

(a) Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, the exemptions will be effective on September 11, 1996, unless stayed pending reconsideration.

(b) Petitions to stay, formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2), and trail use/rail banking requests under 49 CFR 1152.29<sup>1</sup> must be filed by August 22, 1996.

(c) Petitions to reopen must be filed by September 3, 1996. Except in Docket No. AB-33 (Sub-Nos. 94X, 97X, and 99X), requests for public use conditions must be filed by September 3, 1996.

<sup>1</sup> The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

(d) In Docket Nos. AB-33 (Sub-Nos. 94X, 97X, and 99X), applicants shall leave intact all of the rights-of-way underlying the track, including bridges, culverts, and similar structures, for a period of 180 days from the effective date of this decision to enable any state or local government agency or other interested person to negotiate the acquisition of the rights-of-way for public use.

(e) In Docket Nos. AB-3 (Sub-No. 134X) and AB-12 (Sub-No. 187X), applicants shall leave intact all of the rights-of-way underlying the track, including bridges, culverts, and similar structures, for a period of 90 days from the effective date of this decision to enable any state or local government agency or other interested person to negotiate the acquisition of the rights-of-way for public use.

51. In Docket Nos. AB-3 (Sub-Nos. 129X and 133X), AB-8 (Sub-No. 36X), AB-12 (Sub-Nos. 184X, 185X, and 189X), and AB-33 (Sub-No. 98X), notice will be published in the Federal Register on August 12, 1996. In these proceedings:

(a) Provided no formal expression of intent to file an OFA has been received, the exemptions will be effective on September 11, 1996, unless stayed pending reconsideration.

(b) Petitions to stay, formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2), and (except in Docket Nos. AB-8 (Sub-No. 36X) and AB-12 (Sub-No. 189X)) trail use/rail banking requests under 49 CFR 1152.29<sup>20c</sup> must be filed by August 22, 1996.

(c) Petitions to reopen must be filed by September 3, 1996. In Docket Nos. AB-3 (Sub-No. 129X) and AB-12 (Sub-No. 185X), requests for public use conditions must be filed by September 3, 1996.

(d) In Docket Nos. AB-3 (Sub-No. 133X), AB-12 (Sub-No. 184X), and AB-33 (Sub-No. 98X), applicants shall leave intact all of the rights-of-way underlying the track, including bridges, culverts, and similar structures, for a period of 180 days from the effective date of this decision to enable any state or local government agency or other interested person to negotiate the acquisition of the rights-of-way for public use.

(e) In Docket No. AB-12 (Sub-No. 185X), applicants shall leave intact all of the rights-of-way underlying the track, including bridges, culverts, and similar structures, for a period of 90 days from the effective date of this decision to enable any state or local government agency or other interested person to negotiate the acquisition of the rights-of-way for public use.

52. In Docket Nos. AB-3 (Sub-Nos. 130 and 131) and AB-33 (Sub-No. 96), notice of the findings made with respect to the abandonment authorizations sought therein will be published in the Federal Register on August 12, 1996. In these proceedings:

(a) An OFA to allow rail service to continue must be received by the railroad and the Board by August 22, 1996.

<sup>20c</sup> The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.



The offeror must comply with 49 U.S.C. 10905 and 49 CFR 1152.27(c)(1).

(b) OFAs and related correspondence to the Board must refer to the appropriate abandonment proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "Office of Proceedings, AB-OFA."

(c) Subject to any conditions set forth and provided no offer for continued rail operations is received, an appropriate certificate will be issued. An abandonment may not be effected prior to the effective date of the certificate.

(d) In Docket No. AB-33 (Sub-No. 96), applicants shall leave intact all of the rights-of-way underlying the track, including bridges, culverts, and similar structures, for a period of 180 days from the effective date of this decision to enable any State or local government agency or other interested person to negotiate the acquisition of the rights-of-way for public use.

(e) In Docket No. AB-3 (Sub-Nos. 130 and 131), requests for public use conditions must be filed by September 3, 1996.

53. In Docket Nos. AB-6 (Sub-Nos. 37, 38, and 39) and AB-12 (Sub-No. 188), notice of the findings made with respect to the discontinuance authorizations sought therein will be published in the Federal Register on August 12, 1996. In these proceedings:

(a) An OFA to allow rail service to continue must be received by the railroad and the Board by August 22, 1996. The offeror must comply with 49 U.S.C. 10905 and 49 CFR 1152.27(c)(1).

(b) OFAs and related correspondence to the Board must refer to the appropriate abandonment proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "Office of Proceedings, AB-OFA."

(c) Subject to any conditions set forth and provided no offer to subsidize continued rail operations is received, an appropriate certificate will be issued. Discontinuance may not be effected prior to the effective date of the certificate.

54. In Docket Nos. AB-3 (Sub-No. 133X), AB-33 (Sub-Nos. 96, 97X, 98X, and 99X), and AB-12 (Sub-No. 184X), the exemption authority granted is subject to the additional condition that the carrier(s) comply with the following terms and conditions for implementing trail use/rail banking:

(a) If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad from any potential liability), and the payment of any and all taxes that may be levied or assessed against the right-of-way.

(b) Interim trail use/rail banking is subject to the future restoration of rail service and to the user's

A

continuing to meet the financial obligations for the right-of-way.

(c) If interim trail use is implemented, and subsequently the user intends to terminate trail use, the user must (i) send the Board a copy of the cover page of this decision and the page(s) containing this Ordering Paragraph 56, and (ii) request that Ordering Paragraph 56 be vacated in relevant part on a specified date.

(d) If an agreement for interim trail use/rail banking is reached by the 180th day after the date of service of this decision, interim trail use may be implemented. If no agreement is reached by that time, the carrier may fully abandon the line, provided any conditions imposed are met.

55. In Docket Nos. AB-3 (Sub-Nos. 130 and 131) and AB-33 (Sub-No. 96), subject to the conditions set forth above and provided no offer for continued rail operations is received, a CITU will be issued. Applicant may not effect abandonment and material salvage until permitted under the terms of the CITU.

56. Approval of the application in Finance Docket No. 32760 is subject to the labor protective conditions set out in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60, 84-90 (1979).

57. The trackage rights exempted in Finance Docket No. 32760 (Sub-No. 1) are subject to the labor protective conditions set out in Norfolk and Western Ry. Co.--Trackage Rights--BN, 354 I.C.C. 605, 610-15 (1978), as modified in Mendocino Coast Ry., Inc.--Lease and Operate, 360 I.C.C. 653, 664 (1980).

58. The line sales exempted in Finance Docket No. 32760 (Sub-No. 2) are subject to the labor protective conditions set out in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60, 84-90 (1979).

59. The terminal railroad control transactions exempted in Finance Docket No. 32760 (Sub-Nos. 3, 4, 5, 6 and 7) are subject to the labor protective conditions set out in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60, 84-90 (1979).

60. The trackage rights approved in Finance Docket No. 32760 (Sub-No. 13) are subject to the labor protective conditions set out in Norfolk and Western Ry. Co.--Trackage Rights--BN, 354 I.C.C. 605, 610-15 (1978), as modified in Mendocino Coast Ry., Inc.--Lease and Operate, 360 I.C.C. 653, 664 (1980).

61. The abandonments and discontinuances authorized in Docket Nos. AB-3 (Sub-Nos. 129X, 130, 131, 132X, 133X, and 134X), AB-8 (Sub-Nos. 36X, 37, 38, and 39), AB-12 (Sub-Nos. 184X, 185X, 187X, 188, and 189X), and AB-33 (Sub-Nos. 93X, 94X, 96, 97X, 98X, and 99X), are subject to the labor protective conditions set out in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91, 98-103 (1979).

62. Approval of the transactions authorized in the Finance Docket No. 32760 proceeding and in the various embraced proceedings are subject to the environmental mitigation conditions set forth in Appendix G.

63. All conditions that were requested by any party in the Finance Docket No. 32760 proceeding and/or in the various embraced proceedings but that have not been specifically approved in this decision are denied.



64. This decision shall be effective on September 11, 1996.

65. With respect to the proceedings docketed in Finance Docket Nos. 32760 and 32760 (Sub-Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, and 17):

The requirement of an initial decision is waived pursuant to 49 U.S.C. 11345(f). The decisions embraced herein are final decisions within the meaning of 49 U.S.C. 10327. Any administrative appeal will be entertained only under 49 U.S.C. 10327(g), which permits appeal only on the basis of material error, new evidence, or substantially changed circumstances.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen. Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen commented with separate expressions.

Vernon A. Williams  
Secretary

CHAIRMAN MORGAN, commenting:

Introduction

The proposed merger of the Union Pacific (UP) and the Southern Pacific (SP) railroad systems -- creating the Nation's largest rail system -- stands as a true test of the statutory authority of the Surface Transportation Board (Board) to permit transportation-related transactions that are in the public interest. In determining the public interest in a rail merger case, the Board must carefully balance the benefits flowing from the consolidation against the anticompetitive consequences that may result. In this case, the transportation benefits are clear. And although the anticompetitive effects of approving this merger without conditions could be significant, the Board, through the conditioning authority granted by Congress, can and has imposed conditions to address the potentially significant adverse consequences of the merger.

Throughout this merger proceeding, the Board has heard from a broad cross-section of interests about the potential impacts, both positive and negative, associated with this merger. We have heard from shippers who support the merger and shippers who oppose the merger. We have heard from railroads that are for the merger and railroads that are against it. We have heard from some state and other governmental officials who are for it and some who are against it. We have heard from employees who support it and employees who do not. The Board's challenge has been to weigh all of the extensive evidence and to arrive at a balanced decision that addresses the potentially significant harm while preserving the significant transportation benefits that this merger will produce. I believe that the Board has met that challenge in this decision.

Outright Denial

Some parties have argued that this case should be easy to decide: if there is a competitive problem, you "just say no" and deny the whole application, leaving it to the private parties to attempt to work out a solution more acceptable to the government. With all due respect, while that may be the easy answer here, particularly given the opposition, I do not believe that it is

UNION PACIFIC RAILROAD COMPANY



1416 DODGE STREET  
OMAHA NEBRASKA 68179

January 30, 1998

RECEIVED BLE-GCA  
JAN 14 2000  
UNION PACIFIC RAILROAD COMPANY  
CLEVELAND OH 44113

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

MR H A ROSS  
ATTORNEY AT LAW  
STANDARD BLDG STE 1548  
CLEVELAND OH 44113

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

MR D C SIMMERMAN  
EXECUTIVE STAFF - BLE  
1370 ONTARIO ST  
CLEVELAND OH 44113-1702

MR J L McCOY  
VICE PRESIDENT BLE  
6084 BELLE FOREST DR  
MEMPHIS TN 38115

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

MR D M HAHS  
VICE PRESIDENT BLE  
515 NORTHBELT EAST STE 120  
HOUSTON TX 77060

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

Gentlemen:

The U. S. Department of Transportation, Surface Transportation Board ("STB") approved the merger of Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") with the Southern Pacific Transportation Company, the SPCSL Inc., the St. Louis-Southwestern Railway Company and the Denver and Rio Grande Western Railroad Company (collectively referred to as "SP") in Finance Docket No. 32760.

Therefore, pursuant to Section 4 of the New York Dock Conditions, notice is hereby given to implement that portion of the merger which is covered by Exhibit "A", attached. As you will note from reviewing the Exhibit, this transaction will affect employees, work and work locations and will obviously require the elimination of incompatible agreements in order to ensure the smooth transition of this merger to that of a streamlined, efficient, consolidated operation.

Carrier proposes that the initial conference regarding this matter be held at the Alexis Park Resort, 375 East Harmon Avenue, Las Vegas, Nevada 89109, (800-453-8000), beginning 1 p.m. on February 12, 1998. The meeting will conclude approximately 12 noon on February 13, 1998.

Yours truly,

M. A. Hartman  
General Director-Labor Relations

EMPLOYEES EXHIBIT  
Page 1 of 1



**KANSAS CITY HUB NOTICE**

**TO ALL ENGINE, TRAIN AND YARD SERVICE EMPLOYEES WORKING GENERALLY  
ON THE TERRITORIES:**

**Union Pacific:** Kansas City to Council Bluffs (not including Council Bluffs/Omaha Metro Complex)

Kansas City to Des Moines (not including Des Moines)

Kansas City to Coffeyville (not including Coffeyville)

Kansas City to Parsons (not including Parsons)

Kansas City to Wichita (not including Wichita or Herington)

Kansas City to Marysville (not including Marysville)

Kansas City to Jefferson City (not including Jefferson City)

Kansas City Terminal

**Southern Pacific:**

**(SSW and SPCSL)** Kansas City to Herington (not including Herington)

Kansas City to Jefferson City (not including Jefferson City)

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

Kansas City to Quincy (not including Quincy)

Kansas City to Winfield (not including Winfield)

Kansas City Terminal

**The above includes all main lines, branch lines, yard tracks, industrial leads and stations between the points identified.**

**WHO ARE REPRESENTED BY  
BROTHERHOOD OF LOCOMOTIVE ENGINEERS  
and  
UNITED TRANSPORTATION UNION**

The U.S. Department of Transportation, Surface Transportation Board (STB), in Finance Docket No. 32760, has approved the merger of the Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") with the Southern Pacific Transportation Company, the SPCSL Corp., the St. Louis Southwestern Railway Company and the Denver and Rio Grande Western Railroad Company (collectively referred to as "SP").

Perpetuation of the Union Pacific ("UP") and Southern Pacific ("SP") as separate rail entities will not achieve the public benefits nor the transportation improvements envisioned by the Surface Transportation Board ("STB") in approving the merger application. In order to realize the effective utilization of manpower and resources that derive from a unified rail system, the following changes to employees, seniority, collective bargaining agreements, work and work locations are proposed:

**I. Seniority District Formulation**

A. A new seniority district will be formed and a master seniority roster(s) -- the UP Kansas City Hub Merged Roster -- will be created for the following territory.

- Kansas City to Jefferson City (not including Jefferson City)
- Kansas City to Council Bluffs (not including Council Bluffs/Omaha Metro Complex)
- Kansas City to Des Moines (not including Des Moines)
- Kansas City to Coffeyville (not including Coffeyville)
- Kansas City to Parsons (not including Parsons)
- Kansas City to Wichita (not including Wichita or Herington)
- Kansas City to Marysville (not including Marysville)
- Kansas City to Herington (not including Herington)
- Kansas City to Winfield (not including Winfield)
- Kansas City to Ft. Madison (not including Ft. Madison)



- Kansas City to Quincy (not including Quincy)
- Kansas City Terminal

B. Certain trackage within the Kansas City Hub is coextensive with certain trackage within other hubs (i.e., lines between Kansas City and Menoken Junction and lines between Salina and Wichita via any combination of UP or SSW tracks). Crews from other hubs or seniority districts may operate over such coextensive trackage as directed by the Carrier.

## II. Terminal Consolidations

A. Kansas City - All UP, SSW and SPCSL operations within the greater Kansas City area shall be consolidated into a unified terminal operation. All employees will be permitted to perform all permissible road/yard moves pursuant to the applicable collective bargaining agreement, including the national agreements.

B. Topeka - All UP and SSW operations within the Topeka terminal limits shall be consolidated into a single operation and any yard assignments at Topeka will be converted into zone locals/road switchers. All employees will be permitted to perform all permissible road/yard moves pursuant to the applicable collective bargaining agreement, including the national agreements. Topeka will function as a station en route for all Kansas City Hub road employees.

## III. Dual Point Pool Consolidations

A. Kansas City to Council Bluffs (OMC) - Kansas City to Des Moines - Kansas City to Ft. Madison - Kansas City to Quincy - All Kansas City to Council Bluffs (OMC), Kansas City to Des Moines, Kansas City to Ft. Madison and Kansas City to Quincy pool operations will be combined into one (1) pool with Kansas City as the home terminal. Council Bluffs, Des Moines, Ft. Madison and Quincy are the respective away-from-home terminals. The Carrier shall provide transportation to employees between the away-from-home terminals, referenced above, and the designated lodging facility.

B. Kansas City to Wichita - Kansas City to Herington - Kansas City to Winfield - All Kansas City to Wichita, Kansas City to Herington and Kansas City to Winfield pool operations will be combined into one (1) pool with Kansas City as the home terminal. Wichita, Herington and Winfield are the respective away-from-home terminals. The Carrier shall provide transportation to employees between the away-from-home terminals, referenced above, and the designated lodging facility.

- C. Kansas City to Jefferson City (via UP) - Kansas City to Jefferson City (via SSW) - All Kansas City to Jefferson City (via UP or SSW) pool operations will be combined into one (1) pool with Kansas City as the home terminal. Jefferson City will serve as the away-from-home terminal. The Carrier will provide transportation to employees between the away-from-home terminal and the designated lodging facility.
- D. Pool freight service, road switcher/zone local or local service may be established from any point to any other point within the new seniority district.

IV. Extra Board Operations

- A. At any locations where multiple extra boards now exist, such boards may be consolidated into one, unified extra board. At outside points the Company may establish guaranteed extra boards that cover assignments at multiple locations. When established, the Carrier shall designate the geographic area the extra board will cover. If exhausted, such extra board may be supplemented from the next nearest extra board in the seniority district in accordance with existing agreement rules and practices.

V. Seniority Consolidation

- A. The Kansas City Hub Seniority District shall be created from a sufficient number of employees working in the territories described in I.A. above. The seniority of all such employees shall be consolidated on a dovetail basis into one common new seniority roster.
- B. Employees hired after the effective date of the Implementing Agreement will have seniority on the common yard/road seniority districts described above.

VI. Applicable Agreements

All territories comprehended in this notice shall be governed by a single, common collective bargaining agreement which shall be designated by the Carrier.

VII. Allocation of Employees

The Carrier anticipates relocations of employees from Jefferson City, Herington, Ft. Madison and Quincy to Kansas City.

- VIII. As a result of this transaction, Carrier estimates the following approximate number of employees will be affected by this transaction:



	Engineers	Trainmen
Kansas City, MO	12	13
Kansas City, KS	27	32
Topeka	1	2
Winfield	2	3
Herington	17	18
Quincy	19	17
Ft. Madison	15	13

The number of employees listed above as affected (except Ft. Madison) includes those employees listed in the Labor Impact Statement. The number for Ft. Madison are the estimated number of employees the Carrier intends to relocate to Kansas City.



# Brotherhood of Locomotive Engineers

General Committee of Adjustment, Union Pacific Railroad - Eastern District

1620 Central Ave. • Room 203 • Cheyenne, WY 82001 • (307) 635-6736 • FAX (307) 634-1108

RANDY SCHNEIDER  
Vice General Chairman

MICHAEL YOUNG  
General Chairman

DON LeSAGE  
Secretary-Treasurer

September 4, 1998

Mr. Randy Schneider  
Local Chairman - BLE Division 81  
12821 King  
Overland Park, Kansas 66213

Dear Sir and Brother:

This is in regards to the ratification procedures concerning the Kansas City Hub Agreement.

I have attached a copy of a letter dated August 31, 1998 from C. V. Monin, President BLE, advising all concerned that the Kansas City Hub Agreement has been ratified by a majority of those voting (74% in favor - 25% against).

Please advise your membership accordingly.

Fraternally yours,

Michael Young  
General Chairman-BLE  
UP/Eastern District

cc: ST and President - Division 81



STB

FD-32760 (SUB37)

2-29-00

A

197612

5

OF

6



# Brotherhood of Locomotive Engineers

1370 ONTARIO STREET  
CLEVELAND, OHIO 44113-1702  
TELEPHONE: (216) 241-2630  
FAX: (216) 241-6516

C. V. MONIN  
International President

August 31, 1998

M.A. Hartman  
Director - Labor Relations  
Union Pacific Railroad Company  
1416 Dodge Street, Room 324  
Omaha, Nebraska 68179

RE: Kansas City Hub

Dear Mr. Hartman:

This is to officially inform you of the recent ratification for the Kansas City Hub Implementing Agreement under the Union Pacific/Southern Pacific merger.

For your information, the Kansas City Hub Implementing Agreement ratified with a 74.7% vote in favor and a 25.3% vote against. It is requested that you contact BLE Vice President/Coordinator J.L. McCoy to arrange for a meeting at which these agreements can be signed by all participants.

It would be also be appreciated that once you have a signed agreement that the International Office be provided with a copy of same as well as a disc of the agreement for our files.

Very truly yours,

President

cc: E. Dubroski, FVP  
J.L. McCoy, VP/Coordinator  
D.M. Hahs, VP  
H.A. Ross, Gen. Counsel  
D.E. Penning, GC  
D.F. Thompson, GC  
J.R. Koonce, GC  
M.A. Young, GC  
D.C. Simmerman, Dir. of Research

EMPLOYEES EXHIBIT   C    
Page   2   of



## **MEMORANDUM**

**TO:** J.L. McCoy, VP/Coordinator - UP/SP Merger Negotiations  
D.M. Hahs, VP  
D.E. Thompson, GC  
M.A. Young, GC  
D.E. Penning, GC  
J.R. Koonce, GC

**DATE:** August 31, 1998

**FROM:** D.C. Simmerman, Director of Research *Des*

**RE:** Ratification Count for the Kansas City Hub Implementing Agreement.

Attached is a copy of the final tally for the ballots received by Thursday, August 27, 1998 that reflect that the Kansas City Hub Implementing Agreement has been ratified.

It is hoped that this summary will assist you in analyzing the vote of each of your properties.

### **Attachment**

cc&enc. C.V. Monin, P  
E. Dubroski, FVP  
R.W. Bennett, GST  
M.J. Morrow, ACOS

**KANSAS CITY HUB  
FINAL TALLY**

DIVISION	MEMBERS	LOCATION	RAILROAD	FOR	AGAINST	ABSTAIN
61	43	Falls City, NE	EP-E	23	6	
81	102	Kansas City, MO	UP-C	37	17	
90	19	Council Grove, KS	UP-E	1	0	
118	74	Belleville, IL	SPCSL	27	1	
147	14	Kansas City, MO	UP-E	12	0	
224	32	Marysville, KS	UP-C	0	9	
261	57	Herington, KS	SSW	37	0	
336	74	Osawatomie, KS	UP-E	25	15	
491	51	Kansas City, MO	UP-E	11	13	
609	89	Jefferson City, MO	SSW/UP-E	36	7	
708	35	Kansas City, MO	SSW	15	8	
740	43	Pratt, KS	SSW	18	4	
Total	590					
TOTALS				219	74	0
Grand Totals				293		
		TOTAL	293			
Percentages				74.7%	25.3%	

8/31/98



**KANSAS CITY HUB  
IMPLEMENTING  
AGREEMENT**

**FEBRUARY, 1999**

EMPLOYEES EXHIBIT D  
Page 1 of 106

**MERGER  
IMPLEMENTING AGREEMENT  
(Kansas City Hub)**

between the

**UNION PACIFIC RAILROAD COMPANY  
Southern Pacific Transportation Company  
and the**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

RECEIVED BLE-GCA  
JAN 19 1999  
UNION PACIFIC - ED  
CHEYENNE, WYOMING

**PREAMBLE**

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

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

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

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

Kansas City to Des Moines (not including Des Moines)

Kansas City to Coffeyville (not including Coffeyville)

Kansas City to Parsons (not including Parsons)

EMPLOYEES EXHIBIT 7  
Page 2 of



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

Kansas City to Jefferson City (not including Jefferson City)

Kansas City Terminal

Southern Pacific:

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

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

Kansas City to Chicago via Quincy (not including Chicago)

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

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

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

Kansas City Terminal

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

**IT IS AGREED:**

**ARTICLE I - WORK AND ROAD POOL CONSOLIDATIONS**

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

**A. Zone 1 - Seniority District**

1. Territory Covered: Kansas City to Council Bluffs (not including Council Bluffs/Omaha Metro Complex)

Kansas City to Des Moines (not including Des Moines)

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

Kansas City to Chicago via Quincy (not including Chicago)

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

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



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

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

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

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

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

EMPLOYEES EXHIBIT D  
Page 2 of



- b. Ft. Madison: MP 234.0 - East  
MP 236.0 - West
- c. Quincy: MP 135.0 - West  
MP 138.0 - East

8. Engineers of an adjacent hub may have certain rights to be defined, if any, in the Merger Implementing Agreement for that hub to receive their through freight trains up to twenty-five (25) miles on the far side of the terminal and run back through Des Moines.
9. All road switcher and yard assignments with an on/off duty location at Council Bluffs (Omaha Metro Complex), Des Moines or Chicago will be protected by engineers from those seniority districts even if such assignments perform service within any territories contemplated by Article I.A.1. (Note: This provision does not disturb the current yard job allocation arrangement at Council Bluffs arising out of the UP/MP Merger Implementing Agreement). Local assignments, assigned freight service, and any other irregular assignments (work train, wreck train, etc.) will be protected on a prior rights basis by Zone 1 engineers if such assignments are home terminated at Council Bluffs (Omaha Metro Complex), Des Moines or Chicago and work exclusively within the territories identified by Article I.A.1. At Ft. Madison and Quincy, any such assignment home terminated at such locations, including the extra board, may work either direction out of such terminal without seniority or other restrictions.
10. Engineers protecting through freight service in the pools described above shall be provided lodging at the away-from-home terminals pursuant to existing agreements and the Carrier shall provide the transportation to engineers between the on/off duty location and the designated lodging facility. All road engineers may leave or receive their trains at any location within the terminal and may perform work within the terminal pursuant to the designated collective bargaining agreement provisions. The Carrier will designate the on/off duty points for all engineers, with these on/off duty points having appropriate facilities as currently required in the collective bargaining agreement.
11. All existing yard assignments at Atchison and St. Joseph shall be converted to road switcher assignments upon implementation of this Agreement. Notwithstanding any conflicting current agreement provisions, and on a non-precedent, non-referable basis, all road switcher assignments at these two locations shall be paid the 5-day yard rate of pay.
  - a. The regular assignments headquartered at Atchison and St. Joseph shall be collectively prior righted to those former

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

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

**B. Zone 2 - Seniority District**

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

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

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



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

5. At Marysville, away-from-home terminal engineers called to operate through freight service to Kansas City may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through Marysville to their destination without claim or complaint from any other engineer. When so used, the engineer shall be paid an additional one-half ( $\frac{1}{2}$ ) day at the basic pro rata through freight rate for this run in addition to the district miles of the run. If time spent beyond the terminal under this provision is greater than four (4) hours, then he shall be paid on a minute basis at the basic pro rata through freight rate.
6. The terminal limits of Marysville are as follows:

MP 142.3 to MP 155.7	-	Marysville Subdivision
MP 132.29	-	Beatrice Branch
MP .75	-	Bestwall Spur
7. All road switcher and yard assignments home terminated at Marysville will be protected by engineers from that seniority district even if such assignments perform service within the territories contemplated by Article I.B.1. Local assignments and any other irregular assignments (work train, wreck train, etc.) will be protected by Zone 2 engineers (including those at Topeka) if such assignments are home terminated at Marysville and work exclusively within the territories defined by Article I.B.1.
8. The pool service presently protected by the so-called Jeffrey Energy Pool shall attrite to the UP Eastern District Seniority District No. 18 at Marysville and shall not be under the jurisdiction of this hub agreement. On and after the date of implementation of this Agreement, engineers protecting such service shall be governed by the schedule rules and rates of pay comprehending said 18th District. The terms of the August 17, 1979 Jeffrey Pool Agreement and other UP-BLE Eastern District Agreement pertaining to said pool shall be unaffected by this Implementing Agreement, except as modified below.
  - a. Former UP 8th District Engineers coming under the provisions of this Implementing Agreement and establishing Zone 2 prior rights seniority in the Kansas City Hub shall retain prior rights to the Jeffrey Energy Pool assignments on an attrition basis. Engineers presently occupying assignments in said pool will be

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

- b. On the effective date of implementation of this Agreement the existing JK Extra Board at Marysville will no longer be preserved. All vacancies in the JK Pool, all extra work associated therewith and all other extra work described in the August 17, 1979 Jeffrey Pool Agreement, will be handled and performed by the UP 18th District Extra Board at Marysville.
  - c. In consideration of the assignments described above attriting to the UP 18th District Engineers at Marysville, said 18th District Engineers also acknowledge and agree to the provisions of Section 5 above with regard to Kansas City Hub engineers receiving their trains up to twenty-five (25) miles west of Marysville, such zone to be calculated from the original Marysville switching limits (MP 150.27 West - MP 147.33 East).
- 9. Engineers protecting through freight service in the pool described in Article I.B.2. above shall be provided lodging at the away-from-home terminal pursuant to existing agreements and the Carrier shall provide transportation to engineers between the on/off duty location and the designated lodging facility. All road engineers may leave or receive their trains at any location within the terminal and may perform work within the terminal pursuant to the designated collective bargaining agreement provisions. The Carrier will designate on/off duty points for all engineers, with these on/off duty points having appropriate facilities as currently required in the collective bargaining agreement.
  - 10. All UP and SSW operations within the Topeka terminal limits shall be consolidated into a single operation. All rail lines, yards and/or sidings at Topeka will be considered as common to all engineers working in,



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

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

C. Zone 3 - Seniority District

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

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

2. All former UP Kansas City to Jefferson City and former SSW Kansas City to Jefferson City pool operations shall be combined into one (1) pool with Kansas City as the home terminal. Jefferson City will serve as the away-from-home terminal. Engineers operating between Kansas City and Jefferson City may utilize any combination of UP or SSW trackage between such points.
  - a. The parties agreed in Article I.A.4.a. of the St. Louis Hub Merger Implementation Agreement the Kansas City to Jefferson City pool would be slotted on a work equity basis. Attachment "C" lists the slotting order for the pool. Former SSW and UP engineers residing at or in the vicinity of Jefferson City shall have prior rights to said pool turns. The

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

- b. Hours of Service relief of trains in this pool operating from Kansas City to Jefferson City may be protected by the extra board at Jefferson City if the train has reached Booneville or beyond on the River Sub or Smithton or beyond on the Sedalia Sub; otherwise, a rested pool engineer at Kansas City shall be used on a straightaway move to provide such relief. Hours of Service relief of trains in this pool operating from Jefferson City to Kansas City may be protected by the Zone 3 Extra Board at Kansas City if the train has reached Renick or beyond on the River Sub or Pleasant Hill or beyond on the Sedalia Sub; otherwise, a rested pool engineer at Jefferson City shall be used on a straightaway move to provide such relief. At the away-from-home-terminal, if the extra board is exhausted, the first out rested pool engineer may be used, and shall thereafter be deadheaded home or placed first out for service on their rest.
3. At Jefferson City, away-from-home terminal engineers called to operate through freight service to Kansas City may receive the train for which they were called up to twenty-five (25) miles on the far side of the terminal and run back through Jefferson City to their destination without claim or complaint from any other engineer. When so used, the engineer shall be paid an additional one-half ( $\frac{1}{2}$ ) day at the basic pro rata through freight rate for this run in addition to the district miles of the run. If the time spent beyond the terminal under this provision is greater than four (4) hours, then he shall be paid on a minute basis at the basic pro rata through freight rate.



The terminal limits of Jefferson City shall be the same as the pre-existing terminal limits on the UP Sedalia Subdivision (MP 124.3 - MP 128).

Engineers of the St. Louis Hub were granted rights to receive the train for which they were called up to twenty-five (25) miles on the far (west) side of the terminal limits of Jefferson City pursuant to Article I.A.4.c. of the UP-BLE St. Louis Hub Merger Implementing Agreement. This service may be performed without claim or complaint from any Kansas City Hub engineer.

6. Pursuant to Article I.A.4.e. of the UP-BLE St. Louis Hub Merger Implementing Agreement any road switcher and yard assignments with a home terminal of Jefferson City shall be under the jurisdiction of the UP-BLE St. Louis Hub Agreement. Locals and other road assignments with an origin/termination at Jefferson City and which perform service exclusively east of Jefferson City shall likewise be under the jurisdiction of the UP-BLE St. Louis Hub Agreement. Locals and other road assignments with an origin/termination at Jefferson City and which perform service exclusively west of Jefferson City on the UP Sedalia or UP River Subdivisions shall be governed by the UP-BLE Kansas City Hub Merger Implementing Agreement. The above is not intended to supersede any national agreements, letters of understanding or arbitration awards which permit yard assignments to perform service on more than one (1) seniority district (i.e., hours of service relief within a 25-mile zone, servicing industrial customers, etc.)
7. Engineers protecting through freight service in the pool described in Article I.C.2. above shall be provided lodging at the away-from-home terminal pursuant to existing agreements and the Carrier shall provide transportation to engineers between the on/off duty location and the designated lodging facility. All road engineers may leave or receive their trains at any location within the terminal and may perform work within the terminal pursuant to the designated collective bargaining agreement provisions. The Carrier will designate on/off duty points for all engineers, with these on/off duty points having appropriate facilities as currently required in the collective bargaining agreement.

**D. Zone 4 - Seniority District**

1. Territory Covered: Kansas City to Coffeyville (not including Coffeyville)  
  
Kansas City to Parsons (not including Parsons)  
  
Kansas City to Wichita via BNSF trackage rights (not including Wichita)

EMPLOYEES EXHIBIT 7  
Page 13 of

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

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

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

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



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

a.	Coffeyville	MP 462.0	-	North
		MP 661.0	-	South

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

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

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

E. Kansas City Terminal

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

UP

Mile Post

Marysville Subdivision	6.59
Coffeyville Subdivision	284.22
Sedalia Subdivision	276.32
Falls City Subdivision	288.37
Trenton Subdivision (former CNW)	500.3

SPCSL

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

SSW

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



F. At all terminals the Carrier will designate the on/off duty points for all road engineers, with these on/off duty points having appropriate facilities for inclement weather and other facilities as currently required in the designated collective bargaining agreement.

G. In all of the zones, when local, work, wreck, Hours of Service relief or other road runs are called or assigned which operate exclusively within the territorial limits of one (1) of these zones established in this Agreement, such service shall be protected by engineers in such zone. If such run or assignment extends across territory encompassing more than one (1) zone contemplated by this Agreement, the Carrier and Organization will mutually agree on the method for assigning engineers to such service, otherwise, it will be protected by engineers on the basis of their common seniority date.

## **ARTICLE II - SENIORITY CONSOLIDATIONS**

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

- C. Entitlement to assignment on the prior rights zone rosters described above shall be the canvass of the employees from the above affected former rosters contributing equity to each of such zones.
- D. Engineers on the above-described newly-created prior rights zone rosters shall be integrated into one (1) common seniority roster.
- E. All zone and common seniority shall be based upon each employee's date of promotion as a locomotive engineer (except those who have transferred into the territory covered by the hub and thereby established a new date). If this process results in engineers having identical common seniority dates, seniority will be determined by the age of the employees with the older employee placed first. If there are more than two (2) employees with the same seniority date, and the ranking of the pre-merged rosters would make it impossible for age to be a determining factor, a random process, jointly agreed upon by the Director of Labor Relations and the appropriate General Chairman(men), will be utilized to effect a resolution. It is understood this process for ranking employees with identical dates may not result in any employee running around another employee on his former roster.
- F. Any engineer working in the territories described in Article I. on the date of implementation of this Agreement, but currently reduced from the engineers working list, shall also be given a place on the roster and prior rights. Engineers currently forced to this territory will be given a place on the roster and prior rights if so desired; otherwise, they will be released when their services are no longer required and will not establish a place on the new roster. Engineers borrowed out from locations within the hub and engineers in training on the effective date of this Agreement shall also participate in formulation of the roster described above.
- G. UP engineers currently on an inactive roster pursuant to previous merger agreements shall participate in the roster formulation process described above based upon their date of seniority as a locomotive engineer.
- H. With the creation of the new seniority described herein, all previous seniority outside the Kansas City Hub held by engineers inside the new hub shall be eliminated and all seniority inside the new hub held by engineers outside the hub shall be eliminated. All pre-existing prior rights, top and bottom, or any other such seniority arrangements in existence, if any, are of no further force or effect and the provisions of this Agreement shall prevail in lieu thereof. Upon completion of consolidation of the rosters and implementation of this hub, it is understood that no engineer may be forced to any territory or assignment outside the Kansas City Hub.
- I. The total number of engineers on the master UP/BLE Kansas City Merged Roster #1 will be mutually agreed upon by the parties, subject to the provisions of Side Letter No. 15.



## **ARTICLE III - EXTRA BOARDS**

**A.** The following extra boards shall be established to protect vacancies and other extra board work into or out of the Kansas City Hub or in the vicinity thereof. It is understood whether or not such boards are guaranteed boards is determined by the designated collective bargaining agreement.

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

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

#### **ARTICLE IV - APPLICABLE AGREEMENT**

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



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

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

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

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

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

#### **ARTICLE V - FAMILIARIZATION**

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



July 2, 1998

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

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

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

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

Gentlemen:

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

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

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

Yours truly,

*M. A. Hartman*

M. A. Hartman  
General Director-Labor Relations

cc: D.M. Hahs  
Vice President - BLE  
J.L. McCoy  
Vice President - BLE

EMPLOYEES EXHIBIT D  
Page 73 of

July 2, 1998

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

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

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

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

Gentlemen:

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

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

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

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

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

Yours truly,

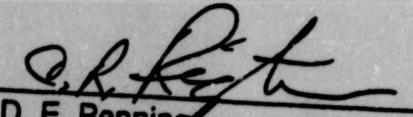
*M. A. Hartman*

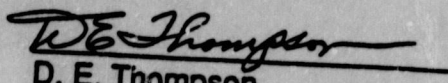
M. A. Hartman  
General Director-Labor Relations

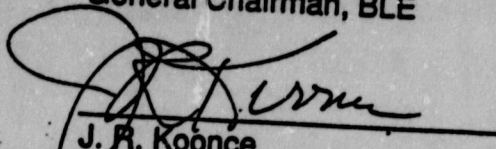


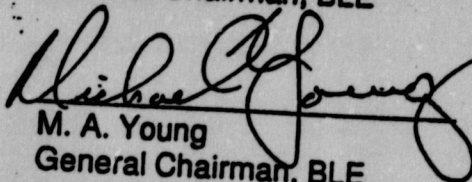
Side Letter No. 25  
July 2, 1998  
Mr. D. E. Penning  
Mr. D. E. Thompson  
Mr. J. R. Koonce  
Mr. M. A. Young  
Page 2

AGREED:

  
D. E. Penning  
General Chairman, BLE

  
D. E. Thompson  
General Chairman, BLE

  
J. R. Koonce  
General Chairman, BLE

  
M. A. Young  
General Chairman, BLE

cc: D. M. Hahs  
Vice President BLE

J. L. McCoy  
Vice President BLE

## QUESTIONS AND ANSWERS - KANSAS CITY HUB

### ARTICLE I - WORK AND ROAD POOL CONSOLIDATION

- Q.1. What is the impact of the terminal operations at terminals where both the former UP and SSW/SPCSL had yards/terminal operations being "consolidated into a single operation"?
- A.1. In a consolidated terminal, all road crews can receive/leave their trains at any location within the boundaries of the new consolidated Terminal and may perform work anywhere within those boundaries pursuant to the applicable collective bargaining agreement. The Carrier will designate the on/off duty points for road crews. All rail lines, yards, and/or sidings within the Terminal are considered as common to all crews working in, into and out of the Terminal and all road crews may perform all permissible road/yard moves pursuant to the applicable collective bargaining agreements.
- Q.2. Is it the intent of this agreement to use engineers beyond the 25-mile zone?
- A.2. No.
- Q.3. Since the 25-mile zone provisions specify that engineers may be called to receive "the train for which they were called", does this preclude their use under such 25-mile zone provision for any other train?
- A.3. Yes, unless other pre-existing local agreements or practices permit otherwise.
- Q.4. What is intended by the words "at the basic pro rata through freight rate" as used in this Agreement?
- A.4. Payment would be at the high (unfrozen) through freight rate of pay which is applicable to the service portion of the trip.
- Q.5. How will initial terminal delay be determined when performing service as in the 25-mile zone?
- A.5. Initial terminal delay for engineers entitled to such payments will be governed by the applicable collective bargaining agreement and will not commence when a crew operates back through the on-duty point. Operation back through the on-duty point shall be considered as operating through an intermediate point.
- Q.6. How is a crew which received their train in the twenty-five (25) mile zone on the far side of the terminal compensated?
- A.6. When so used, the crew shall be paid an additional one-half ( $\frac{1}{2}$ ) basic day at the basic pro rata through freight rate for this service in addition to the district miles of the run. If the time spent beyond the terminal is greater than four (4) hours, they shall be paid on a minute basis at the basic pro rata through freight rate. Miles within the 25-mile zone shall not be added to the district miles of the run. Time spent within the zone does not factor into the computation of overtime; however, if the time spent within the zone, if factored into the computation of overtime, would produce road overtime earnings for the tour of duty in excess of the minimum four (4) hour payment, the higher overtime earnings would apply.



- Q.7. If a crew in the twenty-five (25) mile zone is delayed in bringing the train into the origin terminal so that it does not have time to go to the destination terminal, what will happen to the crew?
- A.7. If the crew had operated back through the origin terminal, they will be transported to the destination terminal, unless emergency conditions (i.e., acts of God, derailment, etc.) prevent such, and be paid district miles, overtime where applicable and a minimum of four (4) hours at the basic pro rata through freight rate.
- Q.8. In regards to Question 6 above. What happens if a crew in the twenty-five (25) mile zone is delayed and does not depart the origin terminal a second time?
- A.8. If the crew origin terminal is the home terminal will be released at the origin terminal and paid a basic day, including overtime when applicable, in addition to the minimum of four (4) hours at the basic pro rata through freight rate for working the 25-mile zone. If the origin terminal is the away terminal, the crew will be deadheaded to the destination terminal, except in cases of emergency (i.e., Acts of God, derailment, etc.).
- Q.9. Is it the intent of this agreement to use engineers in the 25-mile zone if not qualified to operate on that territory?
- A.9. No. It is not the intent of this agreement to require engineers to operate against their will within the 25-mile zone if not familiar with such territory.
- Q.10. Do the 25-mile zone provisions, including the pay provisions thereof, apply to all engineers?
- A.10. These provisions apply equally to pre-1985 engineer, post-1985 engineers, and engineers hired/promoted subsequent to the provisions of this agreement.
- Q.11. Is the ½ day at the basic pro rata through freight rate for operating in the 25-mile zone frozen and/or is it a duplicate payment/special allowance?
- A.11. No, it is subject to future wage adjustments and it is not a duplicate pay/special allowance.
- Q.12. At locations common to other hubs, such as Jefferson City, Wichita, Winfield, etc., is it understood that the right of a Kansas City Hub engineer to reach out 25 miles beyond the terminal to provide Hours of Service relief under the 25-mile zone provisions of this Agreement is dependent upon reciprocal 25-mile zone agreements in those hubs?
- A.12. Yes.
- Q.13. When an engineer is used for hours of service relief at the away from home terminal pursuant to this Agreement may he be used to provide relief for more than one train?
- A.13. No, when the engineer returns to the away from home terminal after performing hours of service relief (on only one train) he will stand first out upon arrival subject to rest and he shall next be either deadheaded or perform actual service to the home terminal.

- Q.14. What does the phrase "interchange rules are not applicable for intra-carrier moves within the terminal" mean?
- A.14. This refers to movements between locations, points or yards of the former pre-merger roads (i.e., UP, SP, DRGW, SSW and SPCSL). Interchange rules do not apply to such movements.
- Q.15. In Article I.A.9 it is provided that local assignments, assigned freight service, and any other irregular assignments will be protected by prior rights Zone 1 engineers from the Kansas City Hub "on a prior rights basis." What happens when such service is advertised and goes no bid?
- A.15. The vacancy would be filled by engineers holding seniority in the terminal. For example, such work would be protected by the OMC at Council Bluffs.
- Q.16. Carrier and the Organization on the former Eastern District have entered into an agreement providing for the establishment of RSS assignments at Marysville, which will be under the ED Agreement at that location. Are any such RSS jobs at Marysville to be treated the same as the Jeffrey Energy Pool assignments for purposes of application of the grandfather provisions of Article I.B.8.?
- A.16. Yes.
- Q.17. With regard to Article I.B.8., is it intended that the attrition of the Jeffrey Energy Pool assignments to the UP 18th District would be applied to force a prior rights former 8th District engineer out of Marysville?
- A.17. No.
- Q.18. With regard to Article I.B.8.a., if an engineer who was awarded prior rights to the Jeffrey Energy Pool assignments subsequently bid off or was reduced from such assignments, is he precluded from later reasserting his prior rights seniority to such assignments?
- A.18. No.
- Q.19. Are there any circumstances under which a former UP 8th District engineer would be entitled to relocation benefits from one location to another location within Zone 2?
- A.19. Since Marysville, Topeka and Kansas City were all within the same seniority district pre-merger, and are retained/prior righted post-merger, not basis for relocation benefits could be established.
- Q.20. Even though under Article I.A.11.b. the extra board at Atchison is not included in the prior rights arrangements at Atchison/St. Joseph, would a prior righted Atchison or St. Joseph engineer forfeit their prior rights under Article I.A.11.a. if they bid in the extra board?
- A.20. No.
- Q.21. After the six (6) year period in Article I.A.4.c. has expired, what application does Article I.A.4.d. have if the Carrier elects to phase out its use of BNSF trackage rights on a gradual basis rather than on an immediate basis?
- A.21. It is not intended that Carrier may circumvent the provisions of Article I.A.4.d. by implementing a plan to discontinue such trackage rights operations on a phased in basis. While the specific facts of the case will speak for themselves, it is undisputed that the intent of the parties is to afford relocation benefits to engineers forced to



relocate to Kansas City as a direct result of discontinuance of exercise of the trackage rights operations.

## ARTICLE II - SENIORITY CONSOLIDATIONS

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

## ARTICLE III - EXTRA BOARDS

- Q.1. Will extra boards established under this section be confined to protecting extra work exclusively within the zone in which established?
- A.1. All extra boards will only protect extra work within one zone. After implementation, should the Carrier desire to establish extra boards which protect extra work in more than one zone, this will be done pursuant to the existing collective bargaining agreement, and the parties must reach agreement as to how engineers from the zones involved will be allowed to exercise seniority to such extra board(s). Failure to reach such agreement, common seniority will be used.
- Q.2. Are these guaranteed extra boards?
- A.2. The provisions of the designated collective bargaining agreement shall apply.
- Q.3. In Article III.A.1. referring to use of the Atchison Extra Board for Hours of Service relief, what does "except in emergency" mean?
- A.3. The order of providing Hours of Service relief would be use of a rested away-from-home pool engineer on a straightaway move or the protecting extra board at Kansas City, including the supplementing extra board described in Article III.A.5.a. If all these sources are exhausted, the Atchison Extra Board could be used in order to move the train.

## ARTICLE IV - APPLICABLE AGREEMENTS

- Q.1. When the Merger Implementing Agreement becomes effective what happens to existing claims previously submitted under the prior agreements?
- A.1. The existing claims shall continue to be handled in accordance with the former agreements and the Railway Labor Act. No new claims shall be filed under those former agreements once the time limit for filing claims has expired.
- Q.2. Under Article IV.G., is it the intent that an engineer may receive duplicate compensation under this provision and some other agreement rule, such as deadhead provisions?
- A.2. No.

## ARTICLE V - FAMILIARIZATION

- Q.1. An engineer who makes familiarization trips only on the portion of the geographic territory where he intends to work may later exercise to another part of the territory with which he is not familiar. Does this Agreement apply to the necessary additional familiarization trips?
- A.1. Yes, no matter how much time has elapsed from date of implementation of this Agreement.
- Q.2. Who will approve an engineer as being properly familiarized on a new territory?
- A.2. An engineer will not be considered qualified on a new territory until check ride is given by the designated Carrier officer as per the requirements of 49 CFR, Parts 240.127 and 240.129.
- Q.3. May a brakeman, conductor, other employee not specified in the Agreement be used to familiarize an engineer on an unfamiliar geographic territory?
- A.3. No.
- Q.4. If an unqualified extra engineer stands first out for an assignment and the next extra engineer is qualified, may the first out extra engineer be run-around?
- A.4. No. The first out extra engineer will be called for the assignment and the next out engineer qualified will be called to act as a pilot.
- Q.5. How shall a qualified engineer used as pilot be compensated?
- A.5. The same as if he had operated the train.

## ARTICLE VI - IMPLEMENTATION

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

## ARTICLE VII - PROTECTIVE BENEFITS AND OBLIGATIONS

### *Section A:*

- Q.1. How will test period earnings be calculated for employees returning to service following extended absence (a period of one year or more)?
- A.1. Their test period earnings will be the average of the test period earnings of the two (2) employees below and two (2) employees above on the pre-merger rosters working in the same class of service.
- Q.2. How will test period earnings be calculated for part time union officers?
- A.2. In the same manner as question 1, Answer 1 above.



- Q.3. How does the Carrier calculate test period earnings if, during the last twelve (12) months, an employee has missed two (2) months compensated service?
- A.3. The Carrier will go back fourteen (14) months (or however many months necessary) to calculate the test period earnings based on twelve (12) months compensated service.
- Q.4. How will an employee be advised of his test period earnings?
- A.4. Test periods will be furnished to each individual and their appropriate General Chairman.
- Q.5. An employee is off one or more days of a month in the test period account of an on-duty personal injury. Will that month be used in computing test period averages?
- A.5. Yes, if the employee performed other compensated service during the month.
- Q.6. An engineer protects an extra board which pays a bonus day to an employee who stays marked up on the board for the entire pay period. Is this payment included in calculation of test period earnings?
- A.6. Yes.
- Q.7. Is vacation pay received during the test period considered as compensation?
- A.7. Yes.
- Q.8. If an engineer is on vacation the entire month and the vacation pay therefor is less than his TPA, would he be entitled to draw a displacement for the difference?
- A.8. Yes.
- Q.9. How is length of service calculated?
- A.9. It is the length of continuous service an employee has in the service of the Carrier, as defined in the Washington Job Protection Agreement of 1936.
- Q.10. If an employee has three years of engine service and three years of train service, how many years of protection will they have?
- A.10. Six.
- Q.11. Claims for a protection guarantee are subject to offset when an employee is voluntarily absent. How are such offsets computed?
- A.11. A prorated portion of the guarantee is deducted for each twenty-four (24) hour period or portion thereof. The proportion varies depending on the number of days in the month and the rest days of a regularly assigned employee. For example, in a thirty (30) day month, the through freight deduction would be 1/30th. For an employee assigned to a six (6) day local, the proration would be 1/26th or 1/27th, depending on how rest days fell. For an unassigned yard employee, the proration would be anywhere from 1/20th to 1/24th, depending on how the rest days fall. A deduction will not be made for an employee required to lay-off due to mileage regulations.

- Q.12. An employee assigned to the extra board lays off for one day. During the period of lay-off, he would not have otherwise had a work opportunity. What offset should be made in the employee's protective claim?
- A.12. A pro rata portion of the guarantee is deducted, such proportion depending on the number of days in the month, i.e., 1/28th, 1/29th, 1/30th or 1/31st. [Except mileage regulation lay-off].
- Q.13. What prorated portion of a protection guarantee will be deducted for an employee working on a guaranteed extra board whereon such employee is entitled to lay off up two (2) days per month without deduction of the extra board guarantee?
- A.13. No deduction will be made from the protection guarantee for the first two (2) days of layoff during the month. Layoffs in excess of two (2) will result in a prorated deduction from the protection guarantee on the basis of the number of days in the month for each day of layoff in excess of two. [Except mileage regulation lay-off].
- Q.14. How will employees know which jobs are higher rated?
- A.14. The Carrier will periodically post job groupings identifying the highest to lowest paid jobs.
- Q.15. Will specific jobs be identified in each grouping?
- A.15. Pools, locals and extra boards, with different monetary guarantees, may be identified separately but yard jobs and road switchers will not be.
- Q.16. What rights does an employee have if he is already covered under labor protection provisions resulting from another transaction?
- A.16. Section 3 of New York Dock permits employees to elect which labor protection they wish to be protected under. By agreement between the parties, if an employee has three years remaining due to the previous implementation of Interdivisional Service the employee may elect to remain under that protection for three years and then switch to the number of years remaining under New York Dock. If an employee elects New York Dock then he/she cannot later go back to the original protection even if additional years remain. It is important to remember that an employee may not receive duplicate benefits, extend their protection period or count protection payments under another protection provision toward their test period average for this transaction.
- Q.17. Will the Carrier offer separation allowances?
- A.17. The Carrier will review its manpower needs at each location and may offer separation allowances if the Carrier determines that they will assist in the merger implementations. Article I Section 7 of New York Dock permits an employee that is "dismissed" as defined by New York Dock to request a separation allowance within seven days of his/her being placed in dismissed status in lieu of all other benefits.
- Q.18. Does an employee who elects to exercise his seniority outside the Kansas City Hub and not participate in the formulation of rosters for the new Kansas City Hub qualify for wage protection?
- A.18. The certification agreed to under Article VII applies only to those employees who are slotted on the newly formed Kansas City Hub rosters.



- Q.19. In applying the "highest rated job" standard to a protected employee, may the Carrier require an employee to take a higher rated job (or use those earnings as an offset against the protection guarantee) which would require a change in residence?
- A.19. No, unless the job is protected from that source of supply point.

**Section B:**

- Q.1. Who is required to relocate and is thus eligible for the allowance?
- A.1. An engineer who can no longer hold a position at his location and must relocate to hold a position as a result of the merger. This excludes engineers who are borrow outs or forced to a location and released.
- Q.2. Are there mileage components that govern the eligibility for an allowance?
- A.2. Yes, the engineer must have a reporting point farther than his old reporting point and at least 30 miles between the current home and the new reporting point and at least 30 miles between reporting points.
- Q.3. Can you give some examples?
- A.3. The following examples would be applicable.
- Example 1: Engineer A lives 80 miles east of Kansas City and works a yard assignment at Kansas City. As a result of the merger, he is assigned to a yard job with an on duty at Lee's Summit. Because his new reporting point is closer to his place of residence no relocation allowance is given.
- Example 2: Engineer B lives 35 miles east of Kansas City and goes on duty at the SP yard office in Kansas City. As a result of the merger he goes on duty at the UP yard office in Kansas City which is one mile away. No allowance is given.
- Example 3: Engineer C lives in Ft. Madison and is unable to hold an assignment at that location and must place on an assignment at Kansas City. The engineer meets the requirement for an allowance and whether he is a homeowner, a homeowner who sells their home or a non-homeowner determines the amount of the allowance.
- Example 4: Engineer D lives in Ft. Madison and can hold an assignment in Ft. Madison but elects to place on an assignment at Kansas City. Because the engineer can hold in Ft. Madison, no allowance is given.
- Q. 4. Why are there different dollar amounts for non-home owners and homeowners?
- A. 4. New York Dock has two provisions covering relocating. One is Article I Section 9 Moving expenses and the other is Section 12 Losses from home removal. The \$10,000 is in lieu of New York Dock moving expenses and the additional \$10,000 or \$20,000 is in lieu of loss on sale of home.
- Q. 5. Why is there a set amount offered on loss on sale of home?
- A. 5. It is an in lieu of amount. Engineers have an option of electing the in lieu of amount or claiming New York Dock benefits. Some people may not experience a loss on

sale of home or may not want to go through the procedures to claim the loss under New York Dock.

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

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

Q. 7. Can you give an example?

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

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

A. 8. New York Dock Article I Section 12 (d) provides for a panel of real estate appraisers to determine the value before the merger announcement and the value after the merger transaction.

Q. 9. What happens if an employee sells a home valued at \$50,000 for \$20,000 to a family member?

A. 9. That is not a bona fide sale and the employee would not be entitled to either an in lieu of payment or a New York Dock payment for the difference below the fair value.

Q. 10. What is the most difficult part of New York Dock in the sale transaction?

A. 10. Determine the value of the home before the merger transaction. While this can be done through the use of professional appraisers, many people think their home is valued at a different amount.

Q.11. Must SPCSL engineers and SSW Jefferson City engineers be forced to an assignment to be eligible for relocation benefits?

A.11. No, since they must relocate (except those Jefferson City engineers electing the benefits of Side Letter No. 7) to Kansas City, they make application for other assignments.

Q.12. Are there any seniority moves that are eligible for an allowance?

A.12. Yes. A seniority move that permits another employee who would have otherwise been forced to move to remain at the same location will be eligible for an allowance. The move may not trigger other relocation allowances.

## SIDE LETTER NO. 2

Q. 1. Will an engineer gain or lose vacation benefits as a result of the merger?

A. 1. SSW/SPCSL engineers will retain the number of weeks vacation earned for 1998 and 1999 that they would have earned under their previous vacation agreement. Beginning with the 2000 calendar year they will be treated as if they had always been a UP engineer and will earn identical vacation benefits as a UP engineer who had the same hire date and same work schedule.



- Q. 2. When the agreement is implemented, which vacation agreement will apply?  
A. 2. The vacation agreements used to schedule vacations for 1998 will be used for the remainder of 1998 and in 1999.
- Q. 3. Will personal leave be applicable to SSW/SPCSL engineers in 1998?  
A. 3. Personal leave days for SSW/SPCSL engineers will apply effective January 1, 1999. The number of personal leave days applicable to SSW/SPCSL engineers in 1998 will be prorated based upon actual implementation date.

**MILEAGE OF RUNS  
ATTACHMENT "B"**

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

**All mileages shown are approximations and are subject to final verification.**



**ATTACHMENT "C"**  
**POOL ALLOCATION**

Kansas City - Jefferson City Pool (\_\_\_turns); former UP \_\_\_\_%; former SSW \_\_\_\_%.

- |         |         |
|---------|---------|
| 1. UP   | 11. UP  |
| 2. SSW  | 12. SSW |
| 3. UP   | 13. UP  |
| 4. SSW  | 14. SSW |
| 5. UP   | 15. UP  |
| 6. SSW  | 16. SSW |
| 7. UP   | 17. UP  |
| 8. SSW  | 18. SSW |
| 9. UP   | 19. UP  |
| 10. SSW | 20. SSW |

(Turns in excess of the highest number shown herein will be filled by engineers from the zone roster, and thereafter from the common roster).

**ATTACHMENT "D"**  
**UP**  
**Jefferson City Engineers**

1.	H. R. Bunch	11/21/73
2.	T. G. Stock	01/16/74
3.	C. P. Beach	02/08/74
4.	E. R. Lister	05/08/74
5.	W. D. Herrington	05/17/74
6.	L. E. Bagby	06/30/74
7.	T. M. Kohn	08/15/74
8.	F. S. Wiggins	08/19/74
9.	D. G. Wagers	09/28/74
10.	D. D. Huff	10/12/74
11.	M. W. Carver	11/04/74
12.	D. A. Slicker	04/16/75
13.	J. G. McCasland	09/01/75
14.	D. W. Roling	09/01/75
15.	M. W. Offineer	12/02/75
16.	S. A. Wheeler	04/17/76
17.	W. J. Shelton	12/10/76
18.	R. J. Berhorst	12/10/76
19.	R. L. Moeckel	04/23/77
20.	L. C. Frank	07/25/77
21.	D. M. Steigers, Jr.	07/25/77
22.	M. W. Smith	10/26/77
23.	R. L. Viessman	11/16/77
24.	R. W. Nowack	11/16/77
25.	J. M. Rackers	04/29/78
26.	W. F. McKinney	04/29/78
27.	D. A. Laune	08/01/78
28.	C. W. Goodin	08/01/78
29.	D. E. Imsland	01/28/78
30.	J. R. Stevens	01/29/79
31.	M. H. Twardowski	02/19/79
32.	S. L. Job	10/21/79
33.	R. K. Sennott	10/22/79
34.	C. W. Kerr	11/10/79



**ATTACHMENT "D"**  
**UP**  
**Jefferson City Engineers**

35.	C. A. VanLoo	03/11/80
36.	S. G. Asher	05/24/80
37.	L. K. Lorts	05/24/80
38.	H. D. Downing	05/24/80
39.	C. L. Williams	08/16/80
40.	H. W. Schanuth, Jr.	04/26/81
41.	B. M. Britt	04/26/81
42.	A. K. Schad	04/26/81
43.	C. F. Chapman	04/26/81
44.	R. K. Ellis	04/26/81
45.	C. W. Groose	04/26/81
46.	T. J. Schepers	04/26/81
47.	C. E. Weaver	06/09/81
48.	L. A. Frank	02/18/82
49.	C. G. Palmer	02/18/82
50.	J. S. Moss	02/18/82
51.	A. L. Adams	04/09/82
52.	K. W. Pihana	06/05/82
53.	H. J. Smith	11/22/94
54.	R. O. Key	11/22/94
55.	S. P. Keilt	11/25/94
56.	A. I. Lindsey	12/01/94
57.	K. N. Olsen	04/08/96
58.	C. C. Groose	04/08/96
59.	R. J. Berthelson	05/03/96
60.	A. L. Cachere	05/03/96
61.	J. P. Severt	05/03/96
62.	E. V. Ochs	05/03/96
63.	T. C. McCormick	05/03/96
64.	C. L. Groose	01/07/97

ATTACHMENT "D" (Cont'd)  
SSW  
Jefferson City Engineers

1.	A. R. Barnett	498-64-8641	24.	T. W. Mobley	498-56-9829
2.	W. M. Bond	488-48-7762	25.	L. D. Malloy	487-60-0637
3.	D. A. Brown	430-84-2941	26.	D. G. Morris	498-60-1850
4.	G. M. Campbell	489-48-6291	27.	G. W. Osterhage	350-36-6131
5.	D. L. Ciaque	431-82-1203	28.	D. L. Patrick	430-84-4709
6.	R. D. Cummings	490-58-6727	29.	R. L. Pettit	498-56-9524
7.	G. W. Davis	488-54-5738	30.	K. D. Pickett	497-50-3013
8.	B. H. Demsey	493-46-5704	31.	R. G. Potter	336-34-4705
9.	G. R. Dildy	432-90-7501	32.	G. B. Ruiz	500-34-9530
10.	M. A. Dixon	432-90-9018	33.	T. C. Sawyer	337-58-8700
11.	S. V. Davenport	432-66-9151	34.	G. H. Schaefer	494-56-1547
12.	M. E. Gage	494-48-1534	35.	J. W. Sissom	494-56-3344
13.	W. E. Gross	486-46-6308	36.	D. R. Snyder	428-88-2388
14.	R. J. Hanschen	494-56-4710	37.	L. W. Steele	498-46-8524
15.	C. J. Hicks	490-52-8319	38.	F. G. Spencer, Sr.	450-66-1573
16.	R. E. Holdt	490-44-1427	39.	W. P. Stover	360-32-6732
17.	T. G. Jenkins	492-50-5232	40.	L. E. Strange	499-48-5076
18.	S. M. Jungers	355-46-3204	41.	D. R. Svetlich	513-44-3474
19.	R. D. Lambeth		42.	F. J. Thielemier	
20.	R. A. Lawrence	489-44-7272	43.	G. W. Thomas	432-02-9718
21.	G. R. Moore	430-90-4525	44.	J. L. Webb	495-52-1476
22.	D. T. Mayberry	430-86-4260	45.	R. L. Wright	494-56-0481
23.	M. J. Menz	480-56-5003	46.	M.O. Coats	



**ATTACHMENT "E"**  
**POOL ALLOCATION**

**Kansas City - Jefferson City Pool (51 turns); former UP 69%; former SSW 31%**

1.	UP	27.	UP
2.	SSW	28.	SSW
3.	UP	29.	UP
4.	UP	30.	UP
5.	SSW	31.	SSW
6.	UP	32.	UP
7.	UP	33.	UP
8.	UP	34.	SSW
9.	SSW	35.	UP
10.	UP	36.	UP
11.	UP	37.	UP
12.	SSW	38.	SSW
13.	UP	39.	UP
14.	UP	40.	UP
15.	SSW	41.	SSW
16.	UP	42.	UP
17.	UP	43.	UP
18.	SSW	44.	SSW
19.	UP	45.	UP
20.	UP	46.	UP
21.	SSW	47.	SSW
22.	UP	48.	UP
23.	UP	49.	UP
24.	UP	50.	SSW
25.	SSW	51.	UP
26.	UP		

**(Turns in excess of the highest number shown herein will be filled by engineers from the zone roster, and thereafter from the common roster).**

## ATTACHMENT "F"

### Zone 1 (Baselines)

MP	47
CNW	17
SPCSL	32 (16 Kansas City to Ft. Madison/Quincy and 16 Ft. Madison/Quincy to Chicago)
Total	80

### Zone 4 (Baseline)

Total	69
-------	----

The above totals do not include extra boards, these are regular assigned baselines.



LA LAMBERT  
General Director  
Labor Relations-Operating  
Southern Region

UNION PACIFIC RAILROAD COMPANY



1416 Dodge Street  
Omaha, Nebraska 68179-0001  
(402) 271-3798

January 4, 1999

File: #1301059901

MR C R RIGHTNOWAR  
GENERAL CHAIRMAN BLE  
12531 MISSOURI BOTTOM ROAD  
HAZELWOOD MO 63042

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

Gentlemen:

This confirms the parties' discussions concerning Hours of Service relief at Marysville, Kansas, as prescribed in Article I, Section B 4, of the Kansas City Hub Merger Implementing Agreement.

Use of the Eastern District Marysville extra board crews was not the intent of the parties and accordingly it was agreed this provision will be deleted and the above-referenced Item 4 will now read as follows: ..

- "4. Hours of Service relief of trains in this pool operating from Kansas City to Marysville which have reached Topeka or beyond shall be protected in the following order (it being understood Carrier always reserves the right to call a Kansas City pool engineer to perform such service on a straightaway basis for crew balancing purposes):
- a. By a rested, available engineer assigned to the Jeffrey Energy Pool and then
  - b. By the first out, rested away-from-home-terminal engineer at Marysville, who will thereafter be deadheaded home or placed first out for service on their rest. In this regard, it is understood if the away-from-home-terminal engineer was on held-away at the time of call for Hours of Service, such engineer if placed first out for subsequent service will return to held-away pay as if such Hours of Service was not performed. In the event such engineer was not on held-away pay, the time so spent at Marysville prior to call for Hours of Service will count towards held-away once the employee is placed first out for service.

A LAMBERT  
General Director  
Labor Relations-Operating  
Southern Region

# UNION PACIFIC RAILROAD COMPANY



1416 Dodge Street  
Omaha, Nebraska 68179-0001  
(402) 271-3796

January 5, 1999

File: #1301049805

MR C R RIGHTNOWAR  
GENERAL CHAIRMAN BLE  
300 BROOKES DR STE 115-118  
HAZELWOOD MO 63042

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

Gentlemen:

This confirms the parties' discussion regarding the Kansas City Hub Merger Agreement, with special reference to prior right Zone 2 engineers' request for retention of their UPED "Sadie Hawkins" conditions.

Carrier is agreeable in allowing the "Sadie Hawkins" conditions under UPED Rule 98 and the Agreement of August 21, 1990, to continue for prior right Zone 2 engineers under the following conditions:

1. The affected engineers are occupying a position within Zone 2.
2. The affected engineers will not be permitted to adopt the "Old Head" MPUL conditions set forth in Article 40 of the Schedule Agreement.

Additionally, Carrier is also agreeable in adopting these conditions on the other prior right zones within the Kansas City Hub upon your Organization's request.

If the above properly reflects our discussion on this matter, please execute in the space provided below.

Yours truly,

L. A. LAMBERT

GREED:

C. R. Rightnowar, Gen. Chmn.

M. A. Young, Gen. Chmn.

1-7-99

(DATE)

1-7-99

(DATE)

EMPLOYEES EXHIBIT

Page 94 of 101



UNION PACIFIC RAILROAD COMPANY

LAMBERT  
General Director  
of Relations-Operating  
St. Louis Region

1416 Dodge Street  
Omaha, Nebraska 68179-0001  
(402) 271-3796



January 4, 1999

File: #1301049993

MR C R RIGHTNOWAR  
GENERAL CHAIRMAN BLE  
12531 MISSOURI BOTTOM ROAD  
HAZELWOOD MO 63042

Dear Sir:

This confirms the parties' discussion regarding the 1999 vacation scheduling for engineers assigned to positions within the Kansas City Hub Merger Agreement.

For the year 1999, the existing vacation schedule arrangements will remain in effect for each prior right zone, which includes the UPED Split Vacation Agreement for prior right Zone 2 employees. Further, Carrier is agreeable in adopting this Split Vacation Agreement for the other seniority zones in the Hub upon your Organization's request, which must be exercised within the next sixty (60) days.

Finally, Carrier also agreed the UPED Split Vacation Agreement will continue to apply for prior right zone employees unless such arrangement is cancelled as provided in the aforementioned agreement.

Yours truly,

L. A. LAMBERT

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

EMPLOYEES EXHIBIT   D    
Page   25   of

UNION PACIFIC RAILROAD COMPANY

LAMBERT  
General Director  
Labor Relations-Operating  
Western Region



1416 Dodge Street  
Omaha, Nebraska 68179-0001  
(402) 271-3796

January 4, 1999

File: #1301059901

MR C R RIGHTNOWAR  
GENERAL CHAIRMAN BLE  
12531 MISSOURI BOTTOM ROAD  
HAZELWOOD MO 63042

Dear Sir:

During the parties' conference on December 29, 1998, the advance assignment to positions within the Kansas City Hub was discussed and this letter confirms Carrier's commitments on this issue.

Prior to the implementing date of the Kansas City Hub Merger Agreement (January 16, 1999), assignment changes for engineers may be made provided such changes do not result in an employee leaving their existing prior right zone or requiring such engineers to take additional familiarization trips prior to performing service.

The above commitment by Carrier was made as a result of your Organization as well as General Chairman Young outlining certain problems with engineers on their existing assignments and does not in any manner infer the assignments made were in violation or in contradiction to the provisions set forth in the Kansas City Hub Merger Implementing Agreement.

Yours truly,

L. A. LAMBERT

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

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

EMPLOYEES EXHIBIT D  
Page 96 of



UNION PACIFIC RAILROAD COMPANY

LAMBERT  
General Director  
Labor Relations-Operating  
St. Louis Region

1416 Dodge Street  
Omaha, Nebraska 68179-0001  
(402) 271-3796



January 4, 1999

File: #1301049901

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

MR C R RIGHTNOWAR  
GENERAL CHAIRMAN BLE  
12531 MISSOURI BOTTOM ROAD  
HAZELWOOD MO 63042

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

Gentlemen:

In reference to Article I, Section D 9 of the Kansas City Hub Merger Agreement, this letter confirms the parties all agree that locals and/or other road assignments, home terminated at Coffeyville, Parsons, Wichita, Winfield and/or Pratt, which performed service exclusively within prior right Zone 4 shall be under the jurisdiction of the Kansas City Hub Merger Agreement and accordingly protected by engineers under such Agreement.

Yours truly,

L. A. LAMBERT

AGREED:

D. E. Thompson

1-7-99  
(DATE)

C. R. Rightnowar

1-7-99  
(DATE)

M. A. Young

1-7-99  
(DATE)

EMPLOYEES EXHIBIT D  
Page 97 of

#1212079845

#1312079845

**MEMORANDUM OF AGREEMENT**  
**between the**  
**UNION PACIFIC RAILROAD COMPANY**  
**For the Territories Missouri Pacific Upper Lines**  
**and Eastern District**  
**and the**  
**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

---

**RELIEF AND STAGING SERVICE**  
**MARYSVILLE, KANSAS**

---

Memorandum of Agreement #1202289845 attached, provided Carrier with the right to establish Relief and Staging assignments (RSS) at terminals listed in that Agreement on the Eastern District territory. One such point is Marysville, Kansas, the location into which Missouri Pacific Upper Lines (MPUL) road crews will work as an away-from-home terminal under the Kansas City Hub Merger Implementing Agreement.

Inasmuch as RSS assignments are intended to operate both west and east of Marysville on the new MPUL territory, the parties signatory to this Agreement have established the following special conditions which are in addition to the conditions in Memorandum of Agreement #1202289845 for such assignments at Marysville, Kansas.

EMPLOYEES EXHIBIT  
Page 98 of 100



- (1) The number of regular RSS assignments established at Marysville, Kansas, will be shared between the Eastern District and MPUL engineers on a fifty percent (50%) basis. The number of assignments will in all cases be divisible by two (2).

**NOTE:** Assignments from MPUL engineers will be in the following order of preference:

- a. Prior right Zone 2 employees
- b. Prior right Zone 1 employees
- c. All other employees in the Kansas City Hub.

- (2) The RSS assignments will be clearly designated as Eastern District or MPUL for the benefit of the employees and for assignment purposes.
- (3) MPUL engineers assigned to RSS assignments will be governed under all the conditions of Memorandum of Agreement #2202289845, except reference to the UP Eastern District Rules are replaced by the corresponding MPUL rules and the rates of pay will be the MPUL rates of pay for road switchers. The RSS basic day will likewise be two (2) times the basic day in MPUL road switcher service.
- (4) Temporary vacancies of less than seven (7) consecutive days on MPUL assignments will be protected by the Eastern District engineers extra board at Marysville. Temporary vacancies known to be or will be in excess of six (6) days on MPUL RSS assignments will be available for protection, on an application basis, to the MPUL Zone 2 engineers at no additional expense to the Carrier. If no voluntary applications are received, Marysville engineers will protect the vacancies.

EMPLOYEES EXHIBIT D  
Page 99 of

- (5) In the event MPUL Zone 2 permanent assignments are not filled voluntarily by MPUL employees, such assignments will be filled by UP Eastern District employees at Marysville in order to minimize the need for an MPUL employee to ~~revocate~~ involuntarily. MPUL Zone 2 employees will subsequently be permitted to displace a UP Eastern District employee on such MPUL assignments at a later date.
- (6) This Memorandum of Agreement will become effective on JANUARY 16, 1999 and will remain in effect for a period of six (6) months, after which either party may give thirty (30) days' notice to cancel the Agreement. Unless agreed otherwise to extend the time period, during this thirty (30) day period, the parties will meet to determine if the Agreement should be or can be amended in order to remain in effect. If this is not possible, at the end of the thirty (30) day period, the Agreement will be canceled in its entirety.

Signed this 7 day of JANUARY, 1999.

FOR THE  
BROTHERHOOD OF LOCOMOTIVE  
ENGINEERS:

FOR THE  
UNION PACIFIC RAILROAD COMPANY:

C. R. Rightnowar  
C. R. Rightnowar  
General Chairman, BLE MPUL

L. A. Lambert  
L. A. Lambert  
General Director Labor Relations

M. A. Young  
M. A. Young  
General Chairman, BLE ED

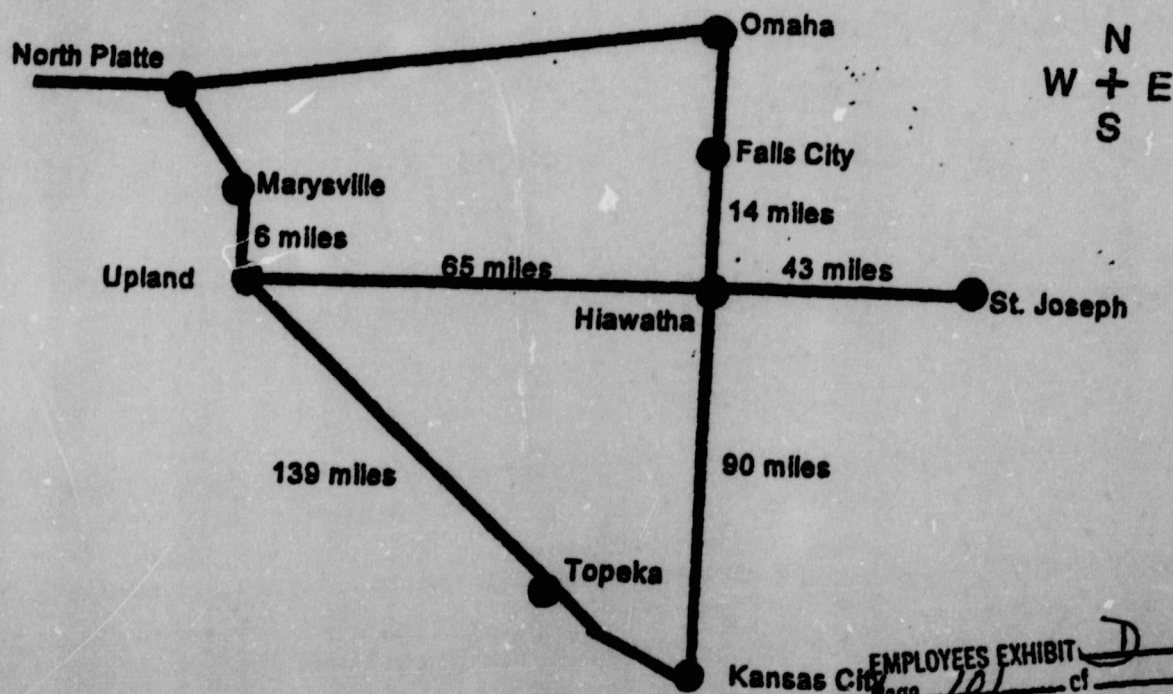
EMPLOYEES EXHIBIT D  
Page 100 of 100



**MEMORANDUM OF AGREEMENT**  
**between the**  
**UNION PACIFIC RAILROAD COMPANY**  
**and the**  
**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

**POOL FREIGHT OPERATION**  
**OVER THE NEKM LINE**

The Carrier has recently purchased the NEKM Railroad which encompasses a rail line from Upland, Kansas, through Hiawatha to St. Joe, Missouri. The Carrier intends on utilizing this line primarily for directional westbound train operation from Kansas City to Marysville, Kansas. The following diagram outlines the new line as well as all other rail lines in the affected area:



EMPLOYEES EXHIBIT D  
Page 101 of 101

Under the direction of westbound operations to Marysville, the trains will operate from Kansas City to Hiawatha and from Hiawatha through Upland to Marysville, Kansas. The Kansas City Hub Merger Implementing Agreement, Article I, Section G, addresses this type of new operation by holding in pertinent part:

"If such run or assignment extends across territory encompassing more than one (1) zone contemplated by this Agreement, the Carrier and Organization will mutually agree on the method for assigning engineers to such service, otherwise it will be protected by engineers on the basis of their common seniority date."

The parties desire to utilize the Kansas City to Marysville pool for this directional operation (prior right Zone 2 employees) inasmuch as this traffic normally operates directly from Kansas City to Marysville via Topeka, Kansas. However, prior right Zone 2 employees will be operating from Kansas City to Hiawatha on Zone 1 territory which does call for an equity arrangement. Accordingly, the following will apply:

1. Carrier will advise the affected Local and General Chairmen on the date it intends to begin operation via the NEKM Line. This advice will be as soon as possible in advance of such operation.
2. Each train operating from Kansas City to Marysville via Hiawatha (NEKM Line) with a Zone 2 Kansas City/Marysville pool engineer will generate a 123 mile Zone 1 credit.

EMPLOYEES EXHIBIT D  
Page 102 of 102