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UNION PACIFIC RAILROAD COMPANY

Law Department

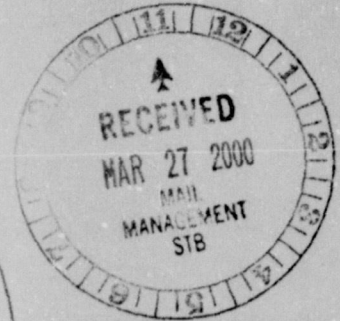
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197910

March 25, 2000



**VIA UPS OVERNIGHT**

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

ENTERED  
Office of the Secretary

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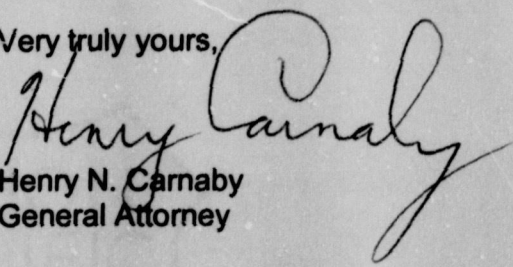
RE: Finance Docket No. 32760 (Sub-No. 38), Union Pacific Corporation,  
Union Pacific Railroad Company and Missouri Pacific Railroad Company --  
Control and Merger -- Southern Pacific Rail Corporation,  
Southern Pacific Transportation Company, St. Louis Southwestern Railway  
Company, SPCSL Corp. and The Denver and Rio Grand Western Railroad Company  
(Arbitration Review)

Dear Mr. Williams:

Enclosed for filing in the above-referenced proceeding are an original and ten copies of Union Pacific Railroad Company's Reply in Opposition To The Appeal Of An Arbitration Award.

Please acknowledge receipt on the enclosed copy of this letter and return to me in the stamped, addressed envelope provided for the purpose.

Very truly yours,

  
Henry N. Carnaby  
General Attorney

HNC/nh  
Enclosures

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**FINANCE DOCKET NO. 32760 (Sub. No. 38)**



**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)**

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**UNION PACIFIC RAILROAD COMPANY'S  
REPLY IN OPPOSITION TO  
THE APPEAL OF AN ARBITRATION AWARD**

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**Henry Carnaby (Nebraska Bar # 21368)  
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Union Pacific Railroad Company  
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UNION PACIFIC RAILROAD COMPANY'S  
REPLY IN OPPOSITION TO THE APPEAL OF AN  
ARBITRATION AWARD

I.  
INTRODUCTION

The General Chairman for the St. Louis Southwestern General Committee of Adjustment ("SSW") of the Brotherhood of Locomotive Engineers ("BLE") has petitioned for review of one of the seven cases resolved in the Opinion and Award issued by Arbitrator Eckehard Muessig on February 8, 2000, in an arbitration under the New York Dock conditions.<sup>1</sup> The Petitioner suggests that the arbitrator erred in finding that employees who were in training to become engineers on July 16, 1998, were entitled to prior rights in the Salina Hub but that those who did not enter training until after July 16, 1998 were not. The BLE General Chairmen who were involved in the Salina Hub Agreement could not reach an agreement with regard to whether or not prior rights should be awarded to employees who entered training after the effective date of the Agreement but prior to its implementation. Although the BLE has mechanisms for internal arbitration of disputes such as the one presented here, the BLE General Committees involved elected to submit the issue for resolution in this arbitration under the New York Dock conditions. Upon information and belief, only the Petitioner was in favor of granting prior rights to employees who entered training after July 16, 1998. The Missouri Pacific Upper Lines ("MPUL") and Union Pacific Eastern District ("UPED") General Chairmen who were also parties to the Salina Hub Agreement did not support the Petitioner and opposed any interpretation of the Agreement which would grant prior

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<sup>1</sup> It is unclear whether the General Chairman of the St. Louis Southwestern General Committee is acting solely on behalf of his committee or whether he is also appearing on behalf of any of the other committees who participated in this proceeding or the entire BLE International Union. The Petitioner clearly does not represent the Union Pacific Railroad - Eastern District General Committee.  
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rights ahead of their long term members. While the Union Pacific was essentially neutral in this dispute, it strongly endorses the apparent view of the arbitrator that before new trainees would be permitted to run around established engineers with more seniority, a clear agreement to that effect would have to be presented. Since the SSW General Chairman is unable to establish such an agreement, the arbitrator's decision cannot be challenged on appeal.

The SSW challenge to the Award in Case No. 1 does not merit further review. The Board has long held that review of arbitration awards is limited to "recurring or otherwise significant issues of general importance regarding the interpretation of [the] labor protective conditions." Chicago & N.W. Transp. Co. - Abandonment ("Lace Curtain"), 3 I.C.C. 2d 729, 736 (1987), aff'd sub nom., International Brotherhood of Electrical Workers v. I.C.C., 862 F.2d 330, 335-38 (D.C. Cir. 1988). The SSW General Chairman has made no attempt to argue or demonstrate how his desire to allow trainees to run around veteran engineers is a significant issue of general importance to the interpretation of the labor protective conditions. Review is not available on "issues on causation, the calculation of benefits, or the resolution of factual disputes." CSX Corp. - Control - Chessie System, Inc., 4 I.C.C. 2d 641, 649 (1988); See also, Fox Valley & Western Ltd. - Exemption Acquisition & Operation, 1993 ICC LEXIS 228, \*5 (served Nov. 16, 1993); Lace Curtain, 3 I.C.C. 2d at 736. The Board will vacate an award "only when there is egregious error, the award fails to draw its essence from [the labor conditions], or the arbitrator exceeds the specific contract limits on his authority." Norfolk & W. Ry. Co. - Merger, Finance Docket No. 21510 (Sub-No. 5) at 3-4 (served May 25, 1995)(quoting, Lace Curtain at 735); Fox valley & Western, Infra at \*5.

Although Petitioner makes reference to the Lace Curtain standard and asserts in a conclusory fashion that the Award in Case No. 1 fails to meet this standard, the appeal fails to establish an issue that meets the Lace Curtain standard. It is the Petitioner who bears this burden on appeal. From the Petition, the Union Pacific cannot determine whether the SSW Chairman is suggesting that the Award is irrational, whether it fails to draw its essence from the labor conditions, or whether it exceeds the arbitrator's authority, or all three. In each exception, the appeal fails to meet the Lace Curtain standard. Requiring a General Chairman who is proposing an interpretation of an agreement, which is so clearly inequitable to veteran engineers, to provide clear and convincing support is certainly not irrational. There is no suggestion that the prior rights at issue here, in any way draw their essence from the labor conditions set forth in New York Dock. Finally, the SSW cannot suggest that the Award exceeds the arbitrator's authority when a need for an interpretation of the agreement was the very reason why the arbitrator's decision was requested.

The Union Pacific supports the Award and opposes the SSW petition for review. The SSW General Chairman failed in arbitration and has failed in this appeal to establish a clear and convincing agreement to permit trainees to run around more senior employees. As a result the decision of the arbitrator is a fair and equitable interpretation of the intent of the parties with regard to the limited circumstances under which trainees can assert a claim to prior rights in the Salina Hub.



## II.

### STATEMENT OF FACTS

During negotiations for the Salina Hub, different BLE committees were always seeking ways to give prior rights to their members over the members of other committees. 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)

The dispute in Case No. 1 was over a employees who were in training classes to become engineers that were started after the date of this letter. The SSW General Chairman wants the additional classes to be granted prior rights in the Salina Hub. The MPUL and UPED General Chairmen do not want to give 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. There is no agreement specifically addressing whether or not individuals in training to become engineers after July 16, 1998 but before final implementation of the Salina Hub would be entitled to exercise prior rights. The arbitrator was thus given the responsibility to decide if the



intent of the parties to Side Letter No. 18 was to limit prior rights to the group of employees who were "currently" in training on July 16, 1998 or to grant it to all groups in training before implementation. In reaching a decision, the arbitrator was guided by the manner in which this same issue had been resolved between other BLE committees in the Salt Lake, Denver, Roseville and Los Angeles Hub agreements, where specific cut off dates were established for eligibility for prior rights. Although Side Letter 18 did not contain a specific cut off date, the arbitrator held that it did provide an indication of the parties intent when it referenced those engineers "currently" in training. Therefore, the arbitrator concluded that engineers in training on July 16, 1998 are granted prior rights and those in training after July 16, 1998 are not granted prior rights.

### III.

#### ARGUMENT

Before the Board considers the whether this appeal may satisfy the Lace Curtain standards, some thought must be given to the unique position of the Petitioner in this matter. Although this proceeding is captioned as a dispute between the Union Pacific and the BLE, the real controversy is between different General Committees within the BLE. The Petitioner here is not the BLE International Union but merely one of the General Chairman who participated at the hearing. The Petition has been opposed by at least one of the other BLE Committees and it is unclear whether the BLE International Union has taken any position with regard to the propriety of the Award. In the unprecedented posture of this appeal, Union Pacific must inquire whether the SSW

General Chairman has any individual standing to file a petition requesting review of the Award.

It is ironic that the SSW General Chairman attempts to assign alleged error in this matter to the Carrier's submission. It is well established that the Union Pacific was in reality neutral in these proceedings and absent illegality, undue burden or interference with the overall operating plan, took no position on the merits of the claims of the individual BLE Chairmen. With this in mind, the Union Pacific negotiated each of the Hub agreements required to implement the UP/SP merger in good faith. It was not surprised by requests for featherbedding provisions, like prior rights in various zones, being sought by certain BLE chairmen. Nor was the Union Pacific surprised to encounter disputes between various General Chairmen when a prior rights request would benefit the members of one committee at the expense of the members of another committee. Although it attempted to mediate these disputes, the Union Pacific did not have a position on this issue and its submission was well supported in fact. Because the Union Pacific had no direct interest in the outcome of these proceedings, it is not surprising that the arbitrator may have found their submission to be credible.

The threshold question is whether the parties reached an agreement with regard to any alleged entitlement by trainees to assert prior rights in the Salina Hub? If they did not reach any specific agreement, the question becomes what the intent of the parties appeared to be in the negotiation of the Salina Hub Agreement? The fact that different BLE Chairmen are on opposite sides of the issue is a pretty good indication that there was no definitive agreement. In addition, the existence of Side Letter 18 is also a good



indicator, since if the SSW General Chairman is right, there would have been no need to address trainees in the side agreement.

The arbitrator found that the Salina Hub Agreement addressed already existing engineers, but it did not cover those employees who were in training to be engineers. When you sort through the material submitted by the SSW Chairman, he is really just arguing that this finding is contrary to the language in Article II.B.1. and Article II.F. of the Salina Hub Agreement. Yet it is clear from the Award that this contract language was not overlooked by the arbitrator. Article II of the Agreement was quoted in its entirety in the Opinion and Award. What the SSW Chairman overlooks is that neither Article II.B.1. or Article II.F. makes any mention of employees in training to become engineers. In effect, the SSW Chairman is unilaterally promoting them before they are able to work as engineers in order to support his interpretation of the contract language. No agreement or documentation was submitted in arbitration or on appeal to support this quantum leap. There is certainly ample evidence that this was not the intent of the other BLE Chairmen participating in the agreement. As a result, there is no basis upon which the Board can find that the Award is contrary to any provision in the Salina Hub Agreement. Even if it was, the Petitioner is merely arguing a question of fact, which is not subject to review under Lace Curtain.

The arbitrator seemed to make it clear that as a matter of equity, he would not permit trainees to run around engineers with greater seniority unless a General Chairman could demonstrate to him that this was the result the parties intended under a clear and concise provision of an agreement. This approach makes sense to the Union Pacific and it is consistent with what it understood the intent of the various BLE committees to



have been in all of the Hub agreement negotiations. The SSW General Chairman fails here on appeal, just as he failed in arbitration, to establish the existence of an agreement which would result in the inequitable result he seeks for the benefit of his members.

IV.

CONCLUSION

For the foregoing reasons, the Petition of the St Louis Southwestern General Committee should be denied.

Respectfully submitted,

By: 

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CERTIFICATE OF SERVICE

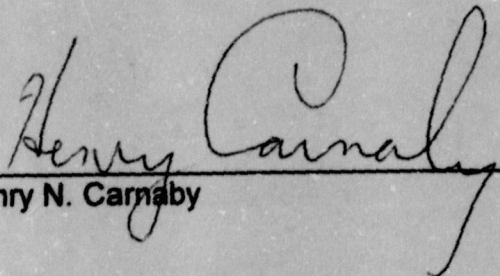
I certify that I have this date served a copy of the foregoing document on the party listed below. Service was made by First Class Mail.

Dated at Omaha, Nebraska this 25<sup>th</sup> day of March, 2000.

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Scott City, Missouri 63780

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Eckehard Muessig  
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