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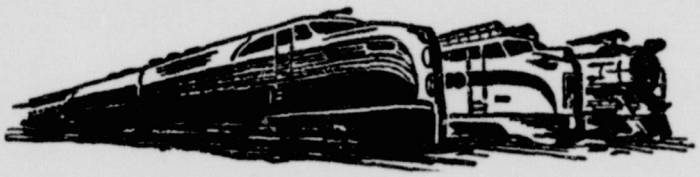

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

GENERAL COMMITTEE OF ADJUSTMENT
ST. LOUIS SOUTHWESTERN RAILWAY LINES
D.E. THOMPSON, CHAIRMAN
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M.R. STEPHENS, SEC'Y TREAS
ROUTE 2 BOX 2250
SCOTT CITY, MO 63780

June 19, 2000

199097

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

Re: Finance Docket No. 32760 (Sub No. 39), 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 copy and ten copies of Petition of the Brotherhood of Locomotive Engineers, St. Louis Southwestern General Committee for review of New York Dock Arbitration opinion and award issued by Arbitrator Eckehard Muessig in Case No. 3 of New York Dock Board No. 332.

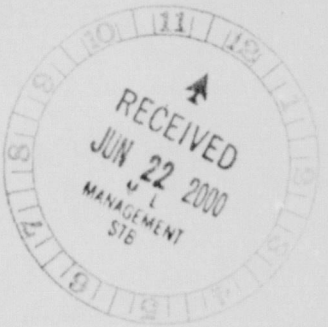
Also enclosed is our check in the amount of $150.00 for the filing fee.

Very truly yours,

D. E. Thompson

Enclosures

199097



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 - Sub No. 39

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

(ARBITRATION REVIEW)

PETITION OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS
ST. LOUIS SOUTHWESTERN GENERAL COMMITTEE
FOR REVIEW OF A NEW YORK DOCK ARBITRATION OPINION AND AWARD

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(573) 264-3232

General Chairman
Brotherhood of Locomotive Engineers
St. Louis Southwestern General Committee

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 - Sub No. 39

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 SOUTWESTERN RAILWAY COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

(ARBITRATION REVIEW)

PETITION OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS
ST. LOUIS SOUTHWESTERN GENERAL COMMITTEE
FOR REVIEW OF A NEW YORK DOCK ARBITRATION OPINION AND AWARD

I.

INTRODUCTION

St. Louis Southwestern General Committee being the Brotherhood of Locomotive Engineers ("BLE"), duly designated and authorized collective bargaining representative for the craft of locomotive firemen, hostlers, engineer trainees and locomotive engineers on the St. Louis Southwestern Railway Company ("SSW"), herewith appeals an arbitration opinion and award, dated April 18, 2000, regarding application of Article 1 (D), Memorandum of Agreement between St. Louis Southwestern Railway Company and Brotherhood of Locomotive Engineers, which was negotiated to become effective August 1, 1995.

A copy of the opinion and award is attached as Appendix A. Accompanying this petition, as Appendix B, is copy of letter dated June 7, 2000 addressed to Mr. Vernon A. Williams, Surface Transportation Board in which this Committee respectfully requested an extension of the time limits for filing an appeal (Arbitration Review) from the Board.

In a telephone call from the Board on Monday, June 12, 2000, we were informed the Board would accept our request and grant the extension as requested. The arbitration review was to be processed as Sub No. 39, Finance Docket No. 32760. Also accompanying this petition as Appendix C is copy of fax sent to Mr. Eckehard Muessig, Arbitrator and his hand written response dated June 9, 2000 in which Mr. Muessig acknowledges he did not provide this office copy of the opinion and award.

The issue raised by this petition is the opinion and award in Question No. 1 and No. 2, Case No. 3, New York Dock Board No. 332 regarding the correct application of Article 1 (D), ADDITIONAL COMPENSATION due the former SSW engineers in calendar year 1998 and 1999.

Question No. 1

Under the provisions of Article 1(D) of the August 1, 1995 Memorandum of Agreement between the St. Louis Southwestern Railway and the Brotherhood of Locomotive Engineers who perform sufficient service during 1998 on the SSW to qualify for vacation in 1999 under the SSW vacation entitled to the $1950.00 additional compensation in calendar year 1998?

Question No. 2

Under the provisions of Article 1 (D) of the August 1, 1995 Memorandum of Agreement between the St. Louis Southwestern Railway and the Brotherhood of Locomotive Engineers who perform sufficient service during 1999 on the SSW to qualify for vacation in 2000 under the SSW vacation entitled to the $1950.00 additional compensation in calendar year 1999?

The BLE/SSW General Committee accepts the opinion and award to Question No. 3 and Question No. 4; therefore, our request for review is limited to the opinion and award in Question No. 1 and Question No. 2.

The BLE/SSW General Committee and the former SSW Engineers requests the Board accept this petition and resolve those issues in the interest of correcting clear error in the

opinion and award in Question No. 1 and Question No. 2. 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 fails to meet this standard and should be overturned.

II.

BACKGROUND OF DISPUTE

On November 30, 1995, Union Pacific Corporation along with UPRR, MPRR, SPR, SPT, SSW, SPCSL, and DRGW, collectively, notified the ICC of their intent to file an application seeking approval and authorization under then 49 U.S.C. §§11343-45 for the common control of SPR and it subsidiaries, including those which are carriers by rail, by UPC and its wholly-owned subsidiaries, UPRR and MPRR.

Under service date of August 12, 1996, the Surface Transportation Board issued its Decision No. 44 approving "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), subject to various conditions. Common control was consummated on September 11, 1996.

The former SSW employees represented by the BLE/SSW General Committee continued to work and receive pay under all provisions of the BLE/SSW Agreements until such time as those former SSW employees elected to place their seniority into one of the various Hub Agreements negotiated between the parties. At the time of implementation of that Hub

Agreement, the former SSW employees were governed by the provisions of the agreement selected for that Hub. For example, the former SSW engineers who selected the North Little Rock Hub were placed on that Hub Roster. The Carrier served the required thirty (30) day notice and implemented the North Little Rock Hub on February 1, 1999. The last Hub involving the former SSW employees was the Southwest Hub, which was implemented on October 1, 1999. Those former SSW employees working in the territory of the Southwest Hub continued to be paid as per the SSW Agreement with the exception of Article 1 until October 1, 1999.

On August 1, 1995, the BLE/SSW Committee signed an agreement with the SSW Officers, which provided additional benefits to the engineers working under the SSW Agreements (BLE Exhibit 7). Article 1 provided additional compensation in the amount of $1950.00 to the engineers who met the qualification to receive the payment. Article 1 (D) required the Carrier to continue the payment after January 1, 1998 unless there were changes in the agreement or changes in the UTU Agreement, which gave rise to the "annual compensation."

The last sentence of Article D required the party to meet in the event of any such changes to determine what, if any, changes would be made in the annual payment as provided.

After the merger, the Carrier eliminated most former SP/SSW Labor Relations positions and transferred jurisdiction of the SSW Agreement to one of the UP Labor Relations Officers. This Committee was informed that Mr. R. D. Rock would be the designated officer to handle SSW contractual issues other than discipline.

The former SSW engineers who were qualified and covered by all provisions of the SSW Agreement did not receive the $1950.00 annual payment on their December 16, 1998 paycheck.

Having prior knowledge of the decision not to pay the $1950.00, this office contacted Union Pacific General Director of Timekeeping, Tony Zabawa and was informed that Labor Relations had instructed him not to pay the $1950.00

This office contacted Mr. Rock regarding the provisions of Article 1 and the information from Mr. Zabawa. Mr. Rock informed this office that the Senior Labor Relations Officers had made a decision not to pay the $1950.00 as provided for in the agreement.

This office sent certified letter to UP General Director of Labor Relations, L. A. Lambert dated November 25, 1998 (BLE/SSW Exhibit 12). In the letter, we explained the agreement and requested the Carrier to comply with the agreement and make the required payment to the SSW Engineers or provide date and time for conference as required in Article 1.

As per letter dated July 27, 1999 (BLE/SSW Exhibit 15), conference was held with Labor Relations Officer R. D. Rock on July 22, 1999 in regards to the annual $1950.00 compensation due the SSW engineers as noted in Article 1 of the August 1, 1995 BLE/SSW Agreement. In the conference, Mr. Rock acknowledged his understanding of the agreement and was unable to provide any changes in the underlying conditions that resulted in the additional compensation due the SSW engineers in Article 1. No Union Pacific Officer has been able to provide changes required to change the provisions of Article 1 and the annual payment due the SSW engineers.

Being unable to resolve the dispute, it was agreed the dispute would be progressed to New York Dock Arbitration as Question No. 1 and No. 2, Case No. 3 with Mr. Eckehard Muessig as the Arbitrator.

III.

THE AGREEMENT

A copy of the August 1, 1995 BLE/SSW Agreement was made a part of the BLE/SSW General Committee's Submission as (BLE Exhibit 7).

Article 1 of the agreement is found below:

ARTICLE 1: ADDITIONAL COMPENSATION

Article 7 of the July 1, 1991 agreement between Southern Pacific Lines and Brotherhood of Locomotive Engineers provided for payment to locomotive engineers of any "additional compensation" paid to other members of the operating crew with which the engineers work. Agreements between St. Louis Southwestern Railway Company and the United Transportation Union representing trainmen and yardmen effective January 1, 1995 provided "additional compensation" to trainmen and yardmen on St. Louis Southwestern Railway. The provisions in this Article are in full and final settlement of Article 7 of the July 1, 1991 BLE Agreement as it relates to the January 1, 1995 UTU Agreement: (emphasis added)

> *(A) Engineers who perform sufficient service during 1995 on the St. Louis Southwestern Railway to qualify for vacation pay in 1996 will receive a lump sum payment of $1950.00. This payment will is to be included with pay for the second period of November 1995.*
>
> *(B) Engineers who perform sufficient service during 1996 on the St. Louis Southwestern Railway to qualify for vacation pay in 1997 will receive a lump sum payment of $1950.00. This payment is to be included with pay for the second period of November 1996.*
>
> *(C) Engineers who perform sufficient service during 1997 on the St. Louis Southwestern Railway to qualify for vacation pay in 1998 will receive a lump sum payment of $1950.00. This payment is to be included with pay for the second period of November 1997.*
>
> *(D) The parties agree that the entitlement set forth in Article 7 of the July 1, 1991 Agreement (superseded by Article 10 of the August 1, 1995 Agreement) continues to exist after January 1, 1998 unless there have been changes in the*

agreement affecting Article 7 (superseded by Article 10 of the August 1, 1995 Agreement) or changes in the underlying conditions which gave rise to additional compensation. In the event of such changes, the parties will meet and determine the changes needed in this Article 1.

IV.

THE ARBITRATION

The BLE General Chairman and the Carrier agreed to the appointment of Mr. Eckehard Muessig as Chairman and Neutral of the NYD Arbitration Board No. 332.

The hearing was held on Wednesday, March 29, 2000 at the National Mediation Board Headquarters in Washington, D. C. at which time submissions were exchanged and provided to the Board. UP General Director of Labor Relations W. S. Hinckley and BLE Vice President D. M. Hahs were the other two (2) members of the Board. Copy of the Carrier's submission over the signature of General Director of Labor Relations W. S. Hinckley is enclosed as Appendix D.

Copies of the BLE/SSW General Committee Submission with exhibits in Case No. 3 is enclosed as Appendix E.

V.

THE AWARD

In Mr. Muessig's Findings and Opinion in Question No. 1, it would appear he is confused regarding the provisions of Article 1 of the BLE/SSW Agreement (BLE Exhibit 7, page 3 of 9) and Article 10 of the BLE/SP/SSW Generic Agreement (BLE Exhibit 5, pages 7 & 8 of 14).

In the finding, Mr. Muessig refers to the preamble to Article 1 (D). He quotes from the preamble and then adds language from Article 1 (D). These two (2) paragraphs have very

different meanings and they must be read and interpreted separately. You simply cannot read one sentence out of the opening paragraph and one out of the closing paragraph to arrive at the intent of the parties.

Mr. Muessig correctly states that the provisions of this Article are in full and final settlement of Article 7 of the July 1, 1991 BLE Agreement as it relates to the January 1, 1985 (should be 1995) UTU Agreement. Given the "me too" provisions in Article 7 of the BLE July 1, 1991 Agreement, the BLE and the Carrier reached "full and final settlement" in the August 1, 1995 BLE Agreement given the additional compensation paid to the trainmen in the January 1, 1995 UTU/SSW Agreement.

In addition to Article 1, there were nine (9) other Articles in the August 1, 1995 BLE/SSW Agreement, which were part of the full and final settlement. We are in complete agreement that the August 1, 1995 Agreement was full and final settlement of the January 1, 1995 UTU/SSW Agreement as per the intent of Article 7 of the BLE/SSW July 1, 1991 Agreement.

Mr. Muessig is correct regarding his remarks as they relate to Article 10. Article 10 is a "me too" safeguard, which provides an avenue for the BLE to be equalized for any UTU Agreement signed after the August 1, 1995 BLE/SSW Agreement. There is nothing in Article 7 of the BLE/SSW 1991 Agreement or Article 10 of the 1995 Agreement that would eliminate any provisions of the August 1, 1995 Agreement. The only way any provision of the August 1, 1995 Agreement could be changed was another agreement. Other than Article 1 (D), the management of Union Pacific fully complied with all other provisions of the BLE/SSW Agreement until such time as these former SSW engineers were brought under the agreements

negotiated in the various Hubs. On the date of implementation of a Hub, the provisions of the SSW Agreement were no longer applicable to those former SSW engineers.

Article 1 (D) states, "The parties agree that the entitlement set for in Article 7 of the July 1, 1991 continues to exist after January 1, 1998 unless there has been changes in the agreement affecting Article 7 or changes in the underlying conditions which gave rise to additional compensation."

Given the clear and precise language of this Article 1 (D), we fail to understand the remarks made by Mr. Muessig or his decision. The "entitlement set forth" were all of the provisions of the August 1, 1995 BLE/SSW Agreement and the parties had agreed these entitlements would continue to exist after January 1, 1998 and until one of the two conditions would require change.

The provisions of the January 1, 1995 UTU/SSW Agreement, which gave rise to all additional compensation for engineers continued after January 1, 1998 for all former SSW trainmen/switchmen/conductors up to the date the trainmen were brought under one of the Hub Agreements.

For example, the former SSW trainmen in the North Little Rock Hub ceased to be covered by the UTU/SSW Agreement on February 1, 1998. The Hub Agreement resulted in changes in the underlying conditions, which gave rise to the additional compensation; therefore, there would be no agreement support for any former SSW engineer working in the North Little Rock Hub. In the Southwest Hub, the former SSW trainmen covered by the UTU/SSW January 1, 1995 Agreement continued to receive all benefits until October 1, 1999; therefore, the former SSW engineers should be eligible for the benefits in the August 1, 1995 Agreement.

Mr. Muessig demonstrates additional misunderstanding of Article 1 (D) with his remarks suggesting the negotiating parties were experienced negotiators and keenly knowledgeable of the agreements and provides his opinion as to how the agreement should have read.

The parties, being experienced with knowledge of the increased compensation in the UTU/SSW January 1, 1995 Agreement, reached a negotiated agreement for the SSW engineers with the signing of the August 1, 1995 BLE/SSW Agreement. The parties fully understood the "annual" compensation in the January 1, 1995 Agreement, which would continue to be the same in every subsequent year until such time as there were changes in the January 1, 1995 UTU/SSW Agreement thus the agreed to verbiage in Article 1 (D).

The Carrier continued to pay all compensation noted in the January 1, 1995 Agreement to all UTU/SSW trainmen after January 1, 1998 and up to the date those UTU/SSW trainmen and conductors were brought under one of the Hub Agreements. This is an undisputed fact, which the officers of Union Pacific have never attempted to deny.

The parties who negotiated and wrote Article 1 (D) provided language that is superior to the language suggested by the Arbitrator. The keenly experienced BLE Representatives wanted assurance the entitlement set forth in Article 1 would continue after January 1, 1998 thus the opening verbiage in Article 1 (D). The equally experienced Carrier Representative wanted closure at some point after January 1, 1998 thus the verbiage starting with the word "unless".

If it were the intent of these experienced BLE and Carrier negotiators to discontinue the "annual payment" after the second period of November 1997 there would be no reason to add "D" to Article 1.

The Arbitrator is wrong in his summation and his remarks. The parties added "D" and there can be only one reason the parties would include the words. "The parties agree that the entitlement set forth in Article 7 of the July 1, 1991 Agreement continue to exist after January 1, 1998, unless....."

How can anyone suggest these entitlements would not continue to exist for the SSW engineers after January 1, 1998 until such time as the "unless" provisions became a reality?

On page 17 of the award, the Arbitrator quotes from paragraph "D" with the following, "They did add paragraph "D" **which provides that the parties would meet if the trainmen and conductors covered by the UTU Agreement gained increased benefits."** **This is simply not correct. Those words are found in Article 10, not Article 1, paragraph "D".**

In the dispute in Question 1 and Question 2 before the Board, the BLE was not seeking any additional benefits under Article 10. The BLE/SSW General Committee was requesting the benefits provided for in Article 1 (D) for the SSW engineers who performed sufficient service during 1998 under the SSW Agreement to qualify for vacation in 1999, which would also qualify them for the Article 1 annual compensation in calendar year 1998. Question No. 2 was the same except it was for those former SSW engineers would qualify for vacation in 2000 and the Article 1 payment in 1999.

The BLE/SSW Committee would agree that the burden of proof would be the Organization's responsibility if the Committee were seeking additional benefits as provided for in Article 10.

It would once again appear the Arbitrator is confusing Article 10 with the provisions of Article 1 (D) or he does not understand the questions posed as they relate to Article 1 (D). Under Article 1 (D), it is the Carrier that bears the burden of proof if the Carrier is going to

discontinue the entitlements for the BLE engineers after January 1, 1998. It is the Carrier that has failed to provide any evidence there were subsequent changes in the January 1, 1995 UTU/SSW Agreement upon which the provisions of the August 1, 1995 BLE/SSW Agreement were negotiated and agreed to or changes that would affect the provisions of the BLE/SSW Agreement, which includes Article 1.

Also on page 17 of the award, the Arbitrator provides another erroneous statement in regards to his understanding of the letter dated November 25, 1998 (BLE Exhibit 12) from the BLE/SSW General Committee to the Carrier. The Arbitrator states the Organization requested payment of the $1950.00 for the second pay period of November 1998 pursuant to the provision of Article 10. One merely needs to read the letter to know that this is not correct.

The Arbitrator provides additional erroneous remarks when he suggested that the BLE had asserted the post August 1, 1995 (July 1, 1996) UTU/SSW Agreement provided increased compensation accordingly, the BLE engineers are entitled to compensation greater than the $1950.00. As previously stated, Article 1 and Article 10 are two (2) separate issues, any additional compensation in the July 1, 1996 UTU/SSW Agreement would not trigger any additional compensation as provided in Article 10 for any engineer until such time as there were additional agreements between the BLE and the Carrier.

How anyone could read the Organization's letter of November 25, 1998 and arrive at remarks made by the Arbitrator defies any logical or reasonable explanation. It would appear the Arbitrator read the Carrier's submission and ignored or failed to read the noted letter.

On page 18 of the award, the Arbitrator wrote, "Last, the Carrier's position that the Hub Agreements eliminated the SSW and CBA is soundly based for the reason provided above

under the Carrier's position." Again, it would appear the Arbitrator read the Carrier's submission and ignored the actual facts and documentation in the Organization's submission.

As previously stated, the Organization is in agreement that the SSW and the BLE/SSW CBA were eliminated for those engineers in that Hub with the implementation of each Hub Agreement. If the Carrier had brought all former SSW engineers under a Hub Agreement on February 1, 1998, there would be no SSW engineers who could meet the requirements found in Article 1, no claim, no award, and no appeal.

The two (2) questions refers to those engineers who continued to work as SSW engineers under the BLE/SSW CBA and who could meet the requirements of Article 1 prior to their agreement being eliminated in a Hub Agreement. The Carrier implemented post February 1, 1998 Hub Agreements on different dates; therefore, it would be necessary to look at each former SSW engineer to determine if they meet the requirements of Article.

As previously stated, the Dallas/Fort Worth Hub and the Southwest Hub were not implemented until October 1, 1999. Every former SSW engineer working in the territory of these two (2) Hubs continued to be governed by all provisions of the BLE/SSW Agreement through September 30, 1999. Each of those former SSW engineers clearly met the provisions of Article 1 in 1998 (Question No. 1) and 1999 (Question No. 2).

There is no dispute that the former UTU/SSW trainmen and conductors continued to receive all the provisions of the UTU/SSW January 1, 1995 Agreement until they were brought under one of the two (2) Hub Agreements on October 1, 1999. Likewise, there is no dispute that the former SSW engineers working in the territory of the two (2) Hubs implemented on October 1, 1999 continued to be paid as SSW through September 30, 1999. The only exception being Article 1 of the August 1, 1995 BLE/SSW Agreement now in dispute.

VI.

ARGUMENT

A. The arbitrator went beyond his function and authority in issuing the opinion and award in Case No. 3, Question No. 1 and Question No. 2 based upon factors other than the negotiated and signed agreement that was before him for decision, which violates his legal responsibility as a Chairman of this NYD Board.

1. Arbitrator Muessig had a duty and a legal obligation to render a decision on the two (2) questions given based upon the provisions of Article 1 (D) of the BLE/SSW August 1, 1995 Agreement and the documentation provided in the submissions.

2. In reaching the award and opinion, one could only conclude that Arbitrator Muessig reached decision based upon statements made by the Carrier in their submission and ignored the actual provisions of the agreement.

3. Arbitrator Muessig also refereed to the Organization's letter of November 28, 1998 and made statements in his opinion and award that is not supported by the actual document.

4. It would appear the Arbitrator does not understand the difference between Article 1 and Article 10 and his opinion and award is based upon erroneous remarks made in the Carrier's submission rather than the actual provisions of Article 1 (D).

5. The Arbitrator is of the opinion the Organization has the burden of proof, which is a requirement of Article 10, not Article 1 (D).

6. The Arbitrator further quotes from the Carrier's submission when he agreed the Hub Agreement eliminated the SSW and the SSW/CBA. The SSW/CBA was not eliminated for all former SSW engineers until October 1, 1999; therefore, the SSW/CBA including Article 1 was still a living document until October 1, 1999. From his remarks, it would appear he did not understand there were SSW engineers who continued to work and be paid the provisions of the BLE/SSW Agreement up to September 30, 1999.

7. The opinion and award issued by the Arbitrator in Case No. 3, Question No. 1, and Question No. 2 denied the former SSW engineers who met the qualifying requirement in Article 1 their contractual right to the compensation due them in 1998 and 1999 while allowing the Carrier full benefits of the other provisions of the agreement.

VII.

CONCLUSION

The Brotherhood of Locomotive Engineers, St. Louis Southwestern General Committee requests the Board accept this petition and to decide the issues raised herein. The two (2) questions in Case No. 3 must be decided based upon the provisions of Article 1 of the August 1, 1995 BLE/SSW Agreement. which was presented to the Board for interpretation.

David E Thompson

David E. Thompson, General Chairman
Brotherhood of Locomotive Engineers
414 Missouri Blvd.
Scott City, Missouri 63780
(573) 264-3232

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition to Review and accompanying appendices and attachments were served upon Applicant by mailing copies by priority mail, 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; and Harold A. Ross, Attorney BLE, The Standard Building, Suite 1548, 1370 Ontario Avenue, Cleveland, Ohio 44113 on this 20 day of June 2000.

David E. Thompson

DAVID E. THOMPSON

APPENDIX A

NEW YORK DOCK NO. 332

Case No. 3

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

BACKGROUND

The issues giving rise to this case involve a dispute as to the interpretation of the Memorandum of Agreement between the St. Louis Southwestern Railway ("SSW"), and the Brotherhood of Locomotive Engineers dated August 1, 1995 ("August 1, 1995 Agreement"). Mainly at dispute is the construction of Article I: Additional Compensation. The Parties have presented their disagreement in the form of four (4) questions. An arbitration hearing was held in Washington, D. C. at the offices of the National Mediation Board on March 29, 2000. At that time oral arguments were presented and certain additional exhibits were introduced.

QUESTIONS AT ISSUE

The Parties have agreed that their dispute should be resolved by responses to four interrelated questions as follows:

QUESTION NO. 1

Under the provisions of Article 1(D) of the August 1, 1995 Memorandum of Agreement between the St. Louis Southwestern Railway and the Brotherhood of Locomotive Engineers, are engineers who performed sufficient service during 1998 on the SSW to qualify for vacation in 1999 under the SSW vacation entitled to the $1950.00 additional compensation in calendar year 1998?

QUESTION NO. 2

Under the provisions of Article 1(D) of the August 1, 1995 Memorandum of Agreement between the St. Louis Southwestern Railway and the Brotherhood of Locomotive Engineers, are engineers who performed sufficient service during 1999 on the SSW to qualify for vacation in 2000 under the SSW vacation entitled to the $1950.00 additional compensation in calendar year 1999?

QUESTION NO. 3

Is the $1950.00 additional compensation paid to the SSW engineers in 1997 to be included as compensation earned by each employee for vacation pay in 1998?

QUESTION NO. 4

Is the $1950.00 additional compensation paid to the SSW engineers in 1995 to be included in the total compensation when arriving at the monthly test period average as per part 5 of the agreed to New York Dock Protective Conditions?

Controlling Agreement Provisions - Article I of the August 1, 1995 Agreement (quoted verbatim).

ARTICLE I: ADDITIONAL COMPENSATION

Article 7 of the July 1, 1991 agreement between Southern Pacific Lines and Brotherhood of Locomotive Engineers provided for payment to locomotive engineers of any "additional compensation" paid to other members of the operating crew with which the engineers work. Agreements between St. Louis Southwestern Railway Company and the United Transportation Union representing trainmen and yardmen effective January 1, 1995 provided "additional compensation" to trainmen and yardmen on St. Louis Southwestern Railway. The provisions in this Article are in full and final settlement of Article 7 of the July 1, 1991 BLE Agreement as it relates to the January 1, 1995 UTU Agreement:

(A) Engineers who perform sufficient service during 1995 on the St. Louis Southwestern Railway to qualify for vacation pay in 1996 will receive a lump sum payment of $1950.00. This payment is to be included with pay for the second period of November, 1995.

(B) Engineers who perform sufficient service during 1996 on the St. Louis Southwestern Railway to qualify for vacation pay in 1997 will receive a lump sum payment of $1950.00. This payment is to be included with pay for the second period of November, 1996.

(C) Engineers who perform sufficient service during 1997 on the St. Louis Southwestern Railway to qualify for vacation pay in 1998 will receive a lump sum payment of $1950.00. This payment is to be included with pay for the second period of November, 1997.

(D) The parties agree that the entitlement set forth in Article 7 of the July 1, 1991 Agreement (superseded by Article 10 of the August 1, 1995 Agreement) continues to exist after January 1, 1998 unless there have been changes in the agreement affecting Article 7 (superseded by Article 10 of the August 1, 1995 Agreement) or changes in the underlying conditions which gave rise to additional compensation. In the event of such changes, the parties will meet and determine the changes needed in this Article 1.

POSITIONS OF THE PARTIES

The following is believed to be an accurate abstract of the parties' substantive positions in this dispute. The absence of a detailed recitation of each and every argument or contention advanced by the parties in this matter does not mean that it was not fully considered.

The submissions of the parties and supporting exhibits are incorporated in this Award by this reference.

THE ORGANIZATION'S POSITION

In its detailed thirty-one (31) page submission, supported by twenty-two (22) exhibits and in its supplemental submission at the arbitration hearing, the Organization strongly argues that each of the four questions before me should be answered in its favor. In arriving at its position, it has provided an analysis of what it considers to be significant key events, decisional authorities and agreements between the parties, beginning with Presidential Emergency Board No. 219 of January 15, 1991. Basic to its position throughout this matter is that the SP/SSW engineers did not receive any of the lump sum payments, general wage increases or COLA payments as provided in the July 1, 1991 National Agreement ("July 1, 1991 National Agreement"). It particularly points to Article 7 of the July 1, 1991 National Agreement which reads:

ARTICLE 7

(a) Commencing with the effective date of this Agreement, engineers employed by a Carrier signatory to this Agreement will receive any additional compensation paid to other members of the operating crew with which the engineer works. This entitlement to receive any additional compensation paid to other members of the operating crew shall continue until the effective date of settlement of a Section 6 notice served to amend this Agreement or change "compensation" by either BLE or the Company on or after November 1, 1994.

(b) Additional "compensation" as used in Article 7(a) is defined as compensation (either additional compensation for time worked or pay for time not worked,e.g., additional vacation, personal leave days, holidays or sick leave, etc.) in excess of the compensation paid on the effective date of this Agreement, with the exception of any lump sum payments or general wage increases provided to another operating crew member as the result of the PEB 219/Special Board process. If such additional compensation to another member of the operating crew requires the performance of a specific task, such compensation will only be payable to the engineer if the engineers assists in the performance of the specific task. Such additional compensation shall be paid to the engineer on a comparable basis as paid to other members of the operating crew with which the engineer works. Compensation other than earnings for the tour of duty accruing to another member of the operating crew shall also apply to the engineers. (emphasis added)

A major point that the Organization relies upon here, and throughout its arguments, is that Agreement Article 7 provides for "additional compensation." It does not refer to or include "lump sum" payments or general wage increases.

The Organization in advancing its position notes an Agreement with the UTU/SSW General Committee, effective December 1, 1992 ("December 1, 1992 UTU Agreement") which provided additional compensation as defined in the July 1, 1991 National Agreement. Subsequently, the UP acknowledged "additional compensation" by letter dated February 23, 1993 when it agreed to provide data about additional compensation realized by the UTU members.

In a May 6, 1993 letter, the UP acknowledged the "increased compensation" due each SSW Engineer, although the parties did not reach an agreement. However, on July 1, 1993, the parties resolved their differences and reached agreement which the Organization asserts verified the "additional compensation" due to the SSW engineers. The opening paragraph of that Agreement is relevant here. It states:

> Article 7 of the July 1, 1991 agreement between Southern Pacific Lines and Brotherhood of Locomotive Engineers provided for payment to locomotive engineers of any "additional compensation" paid to other members of the operating crew with which the engineers work. Agreements between St. Louis Southwestern Railway Company and the United Transportation Union representing trainmen and yardmen dated November 12, 1992 provided

> "additional compensation" to trainmen and yardmen on St. Louis Southwestern Railway. This agreement is in full and final settlement of Article 7 of the July 1, 1991 BLE Agreement as it relates to the November 12, 1992 UTU Agreements. (emphasis added)

The Organization argued at the arbitration hearing that it took great pains to include the words "additional compensation" to leave no doubt as to the actual meaning of Article 7 of the July 1, 1991 National Agreement. Thus, the Organization submits that, if the UTU and UP at a later date reached agreement that provided "additional compensation" to the UTU members, the SSW should likewise receive additional compensation.

Subsequently, on January 1, 1995, the UTU and UP finalized an agreement that the Organization contends met the definition of "additional compensation," as contemplated by Article 7 of the July 1, 1991 National Agreement.

Following further negotiations, the parties, on August 1, 1995 signed another SP Lines Generic Agreement covering all SP, BLE General Committees (August 1, 1995 Generic Agreement). This Agreement was in lieu of the 1995 BLE National Wage Movement and the May 31, 1995 National Agreement. Article 10 of the August 1, 1995 Generic Agreement superseded and replaced Article 7 of the July 1, 1991 National Agreement. Article 10 reads as follows:

ARTICLE 10 - COMPETITIVE ADJUSTMENT

Article 7 of the July 1, 1991 Agreement is superseded and replaced with the following:

Section A. Should another member of the operating crew with whom an engineer works receive additional compensation, in excess of what was provided by agreement on the effective date of this Agreement, engineers will also receive such additional compensation.

Section B. This entitlement to initiate a demand for equivalent additional compensation shall continue until the effective date of settlement of a Section 6 notice served in accordance with Article 22 of this Agreement.

Section C. Additional "compensation" as used in this Article 10 is defined as compensation (either additional compensation for time worked or pay for time not worked, e.g., additional vacation, personal leave days, holidays or sick leave, etc.) in excess of the compensation paid on the effective date of this Agreement, with exceptions as listed in Section D below. If such additional compensation to another member of the operating crew requires the performance of a specific task, such compensation will only be payable to the engineer if the engineer assists in the performance of the specific task. Such additional compensation shall be paid to the engineer on a comparable, or essentially matching, basis as paid to other members of the operating crew with whom the engineer works unless, as negotiated in the past, the parties mutually agree to a different form of compensation. Compensation other than earnings for the tour of duty accruing to another member of the operating crew shall also apply to the engineer.

Section D - Exceptions

1. Lump sum payments, general wage increases or cost-of-living allowances provided to another operating crew member as the result of the PEB 219/Special Board process.

2. Compensation to another operating crew member identical to, or essentially matching, compensation provided to engineers in this agreement or in companion local issues agreements.

3. Voluntary separation or dismissal allowances, or payments under a labor protective condition, either imposed or agreed between the parties.

4. If additional compensation is paid to more than one other member of the operating crew with whom the engineer works, it is not intended that the engineer receive multiple payments. For example, if the conductor and brakeman on a crew with whom the engineer works are each paid an additional $10.00 per tour of duty, the engineer would be entitled to an additional payment of $10.00 only, not the total of $20.00 received by other members of the operating crew.

To emphasize its point with respect to what the parties meant when they used the phrase "additional compensation," the Organization relies on the parties' Side Letter No. 3 which, in total, reads as follows:

> This is to confirm our discussion in connection with Article 10, Section D. 2. of the agreement dated August 1, 1995. The parties recognize that Article 6 - Life Insurance; Article 7 - Vacations and Article 9 - Disability Insurance of the agreement dated August 1, 1995 represent changes in compensation. However, these

> changes were in lieu of cost-of-living increases every six months effective 7/1/95, three personal leave days annually negotiated in the 1991 agreement and the 15 cent (15¢) increase in overmiles provided on page 79 of Presidential Emergency Board 219. Therefore, if additional compensation of an identical or essentially matching nature is granted to another member of the crew without an identical or comparable offset, then the additional compensation will be subject to the provisions of this article.

The Organization points out that it only addressed the pertinent provisions of the August 1, 1995 Generic Agreement to demonstrate that the Carrier acknowledged and understood the meaning of the term "additional compensation." Other than that, the 1995 Generic Agreement has no relevance to the four (4) questions before me.

Accordingly, because of the January 1, 1995 UTU Agreement, the Organization began the negotiations process to obtain additional compensation for the SSW engineers. Subsequently, the parties consumated the August 1, 1995 Agreement. As stated earlier, particularly relevant to this dispute is Article 1 of that Agreement.

The Organization contends that paragraph D of Article 1 clearly provides that the engineers are also entitled to annual payments of $1950.00 for each year after 1997.

Additionally, before addressing each of the questions before me, the Organization relies upon letters from the Carrier officials Messrs. Baynes and Sheridan that it submits are on point with its basic position. Mr. Baynes, in a letter dated February 29, 1996, in pertinent part, stated:

> "The $1950.00 lump sum is paid to engineers pursuant to Article 7 of the July 1, 1991 agreement between Southern Pacific Lines and Brotherhood of Locomotive Engineers as a "me too" lump sum in consideration of additional compensation paid to trainmen and yardmen provided by their January 1, 1991 UTU agreement." (emphasis added)

Mr. Sheridan, in a letter dated October 3, 1996, in part stated:

> "This refers to Article 1 (Additional Compensation) of the August 1, 1995 SSW/BLE Local Issues Agreement. Article 1 gives additional compensation in the form of lump sum payments to qualifying engineers on the

> Cotton Belt. For purposes of Article 1, it was agreed that time spent working as a student engineer under the SSW/BLE Agreement governing rates of pay, rules and working conditions shall be considered as time spent working as an engineer. Therefore, such vacation credits earned as a student engineer will be calculated in determining eligibility for the lump sum payment set forth in Article 1."

The Organization also submits, as relevant to this matter, that the parties signed the June 28, 1991 and August 1, 1995 Generic SP/SSW Agreement in lieu of the 1991 and 1996 BLE National Agreement. In these two (2) generic agreements, the SP and the SSW engineers did not receive any of the rate increases and did not receive any of the COLA increase or lump sum payments as provided in the two (2) National Agreements. The SP/SSW engineers rates of pay were frozen at the July 1, 1988 rates.

The Organization then, within the context of the above noted significant events, addressed each of the Questions.

With respect to Question No. 1 and No. 2, a detailed recitation of significant events and circumstances following the SP/UP merger was provided. The Organization argued that the only issue before me in all of the four (4) questions is Article 1(D) of the August 1, 1995 Agreement. The Organization contends that:

> "The agreement is clear, the payments in Article 1 are to continue until such time as there are changes in the underlying conditions which produced the additional compensation or until such time as the parties meet and it is determined the UTU/SSW General Committee and the Carrier reached subsequent agreements which changed or eliminated the provisions of the January 1, 1995 UTU/SSW Agreement that gave rise to the annual payment due the SSW engineers in Article 1. This is the only way to change the compensation in Article 1 short of another BLE/SSW Agreement."

The Organization also contends that the Carrier has acknowledged and has complied with the other Articles of the August 1, 1995 Agreement and all of the Articles in the August 1, 1995 Generic Agreement "while at the same time arguing that Article 1 is no longer applicable."

In summary, with respect to the Questions No. 1 and No. 2, the Organization argued that the questions should be answered in its favor.

With respect to Question No. 3, the Organization contends that, except for the additional week of vacation provided by Article 7 of the August 1, 1995 BLE/SP Generic Agreement, the former SSW engineers are covered by the provisions of Section 2(a) of the National Vacation Agreement of April 29, 1949. It reads as follows:

> (a) An employee receiving a vacation, or pay in lieu thereof, under Section 1 shall be paid for each week of such vacation 1/52 of the compensation earned by such employee under schedule agreements held by the organizations signatory to the April 29, 1949 Vacation Agreement, on the carrier on which he qualified under Section 1 (or carriers in case he qualified on more than one carrier under Section 1(1) during the calendar year preceding the year in which the vacation is taken, but in no event shall such pay for each week of vacation be less than six (6) minimum basic days' pay at the rate of the last service rendered except as provided in subparagraph (b). (emphasis added)

Therefore, the Organization notes that the agreement requires vacation pay to be based upon the compensation earned under scheduled agreements held by the Organization signatory to the April 29, 1949 Vacation Agreement.

The Organization points out that the former SSW engineers were paid $1950.00 in 1997. Moreover, it notes, relying upon copies of "profs notes" to and from the former SP Timekeeping Department that SP officers acknowledged that the $1950.00 was a contractual earning and would be made a part of the gross earnings to determine vacation pay due to the former SSW engineers. Moreover, in a letter dated September 17, 1999, Carrier official Mr. C. R. Wise advised the Organization that the $1950.00 had been included when figuring vacation pay for SSW engineers in 1998. For all of the foregoing, the question should be answered in the affirmative.

Turning to Question No. 4, Part 5 of New York Dock Protective Conditions are controlling. The first and second paragraphs of Part 5 reads as follows:

5. Displacement allowances - (a) So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules and practices, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protective period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the average monthly compensation received by him in the position from which he was displaced.

Each displaced employee's displacement allowance shall be determined by dividing separately by 12 the total compensation received by the employee and the total time for which he was paid during the last 12 months in which he performed service immediately preceding the date of his displacement as a result of the transaction (thereby producing average monthly compensation and average monthly time paid for in the test period), and provided further, that such allowance shall also be adjusted to reflect subsequent general wage increases. (emphasis added)

The Organization's basic position is that all compensation earned under existing Agreements is contractual compensation and, thus, must be included as a part of the compensation received during the test period. Its position is given further support because officials from the former SP and now officials from the UP have agreed that the $1950.00 is "compensation earned" under the National Vacation Agreement. It contends that the $1950.00 at issue here is only one component of the former SSW engineers annual and usual compensation in lieu of the last two (2) BLE National Agreements.

Last, the Organization submits that Article 1 of the August 1, 1995 Agreement does not exclude compensation from the calculation of vacation pay or from the calculation of protective benefits, as was done in numerous past agreements when the parties intended to exclude any payments from vacation or protective benefits.

The Organization contends that the $1950.00 was not a lump sum or bonus payment. Rather it is one component of the SSW engineers annual and usual compensation. As such, it properly must be included in the TPA.

Absent the express language to exclude the Article 1 payment, regardless of how or when paid, the BLE/SSW engineers the Organization state that the Arbitrator does not have the authority to alter the provisions of the BLE/SSW Agreement by adding such an exclusion in the form of an interpretation. Thus, for all of the foregoing, Question No. 4 should also be answered in the affirmative.

THE CARRIER'S POSITION

The Carrier's fundamental position with respect to Question No. 1 is that Article 1 (A)(B)(C) of the August 1, 1995 Agreement specifically provides for the payment of $1950.00 for 1995, 1996 and 1997. Article (D) provides for the retention of the "additional compensation" provisions noted in the preamble to Article 1.

In support of its position, the Carrier notes that the preamble to Article 1, in pertinent part, states: "The provisions of this Article are in full and final settlement of Article 7 of the July 1, 1991 BLE Agreement as it relates to the January 1, 1995 UTU Agreement."

With respect to Article 1 (D), the Carrier argues that it provides for the continuation of the "additional compensation" provisions of Article 10 of the August 1, 1995 BLE Agreement Article 10(A) "Competitive Adjustment" which states:

> "Should another member of the operating crew with whom an engineer works receive additional compensation, in excess of what was provided by agreement on the effective date of this Agreement, (August 1, 1995) engineers will also receive such additional compensation." (emphasis added)

Thus, the Carrier maintains that the above quoted paragraph when read with the "full and final settlement" language of Article 1, means that the "slate" was clean and the engineers were not governed by the August 1, 1995 BLE Agreement. The Carrier argues, if it was the intent to provide a $1950.00 payment each and every year, the parties would have stated so. The three $1950.00 payments were intended for the additional compensation "as it related to the January 1, 1995 UTU Agreement." The term "full and final settlement" was used because the payments would not continue beyond the dates specified in the

Agreement. The Carrier submits that Article D retained the provisions that provided that the engineers would also be equalized with any future compensation adjustments given the UTU.

Moreover, the Carrier notes that, if changes occurred, Section D provides that "in the event of such changes, the parties will meet and determine the changes needed in this Article 1." Therefore, upon proof of changes and a showing that additional compensation was needed, the parties could then agree on a new amount just as they did for the $1950.00. The Carrier maintains that the BLE has not shown that the UP has contractually provided additional provisions to the UTU that would warrant a payment to the BLE. The Carrier contends that the Organization has the burden of proof to demonstrate that the new UTU Agreement pays conductors more than the engineers.

In this respect, the Carrier relies in part upon a letter dated January 20, 1999 that provided a summary to the BLE of the latest UTU Agreement. The Carrier contends that the BLE response, dated July 27, 1999, did not in a substantive fashion counter what the Carrier has claimed.

Last, with respect to its position on Question No. 1, the Carrier points out that SP/UP merger negotiations resulted in a decision to form Hubs around major rail terminals. For each Hub, one Collective Bargaining Agreement ("CBA") was selected. The SSW CBA was not selected for any of the Hubs. To illustrate how this affected the SSW employees, the Carrier uses the BLE Longview Hub Agreement signed in August 13, 1997. Article V.A. of that Agreement provided that the surviving CBA would be the Union Pacific BLE Agreement. Side Letters No. 1 & 2 specifically noted the August 1, 1995 SSW BLE Agreement. The first side letter identified that Article 6 and 9 (life and disability insurance) would be retained for six years. The second side letter specifically provided that those engineers who had earned an extra week of vacation under Article 7 - vacation would receive it for 1998 but not thereafter.

The Carrier contends that because this Hub was implemented on February 1, 1998, and Article 1 of the SSW was not retained then, there was no existing SSW CBA for the engineers that were now operating

under the Hub Agreement. The following Hubs were implemented on or prior to November 1, 1998: Longview, North Little Rock/Pine Bluff and St. Louis.

The Carrier continues that because all of these Hubs were now governed by the Union Pacific CBA and only the SSW insurance and vacation agreement were retained, there were no provisions remaining during the second half of November to provide a payment of $1950.00 to any employee. Since the negotiators were careful to specifically include certain SSW articles for a period of time, then it is logical to assume that all others were eliminated. Therefore, because the former SSW engineers were now subject to the UP CBA there claim does not have a proper basis.

In summary, the Carrier states:

A. The contract clearly provides for only three $1950.00 payments and those have been paid in full and final settlement up to 1998. The contract retained an "additional compensation" provisions for the period after January 1, 1998 and that has been complied with.

B. The Organization has failed to supply any documentation to support its claim that new and better agreements were entered into after January 1, 1995 with the UTU that placed the engineers in a worse compensation relationship to the conductors. Contrary to that, the Carrier has shown the one agreement entered into with the UTU relinquished future payments and extended the moratorium.

C. In the three Hubs noted above, the merger agreement eliminated the SSW CBA except for the three provisions identified earlier. None of the three provisions relates to the $1950.00 question. Therefore, a denial is in order.

Regarding Question No. 2, the Carrier submits that its position with respect to Question No. 1 is also applicable to Question No. 2.

The Carrier points out that, at the beginning of calendar year 1999, it had four remaining Hubs to be implemented where SSW engineers worked. These were Kansas City, Salina (phase 2), Dallas/Ft. Worth and Dalhart. All of the Hubs were finalized in 1999. The SSW CBA was not selected for any of the four Hubs. However, in each of the four Hubs, certain SSW insurance and vacation coverage was retained for a similar length of time as in the Longview Hub Agreement as noted earlier.

With respect to Question No. 3, the Carrier contends that the $1950.00 additional compensation should not be included as "compensation earned" under the provisions of the National Vacation Agreement because this "lump sum" was the product of a special agreement outside of the regular schedule of wages. The Carrier argues that Article 1 of the August 1, 1995 Local Issues Agreement did not expressly include this lump sum payment of $1950.00 to be "compensation earned" for the purpose of vacation payment calculation in subsequent years. Specially, the $1950.00 is linked to any compensation earnings and, therefore, should not be included when vacation pay calculations are made. Therefore, the Carrier contends this claim should be denied.

Concerning Question No. 4, to begin, the Carrier notes that its position on this question adhers to and reflects a cortinued application of longstanding arbitral precedent and on-the-property practice.

One major facet of the Carrier's position is that, although the terminology "total compensation" is contained in Article 1, Section 5 of New York Dock, it cannot be applied literally, as argued by the Organization. The Carrier, relying upon past arbitral Awards and on-the-property documents claims that certain items in employee's pay, if included in a test period average ("TPA") calculation, would mask the true intentions of New York Dock. In support of this position, the Carrier relies (among others) on New York Dock Arbitration Award No. 2, dated June 29, 1990 (Referee, John LaRocco).

> "...The New York Dock Conditions do not contemplate that an employee will be better off as a result of a transaction.
>
> "In addition, the record reflects that the Carrier has been handling lump sum payments in a manner consistent with the spirit and intent of the New York Dock Conditions. The Carrier has not been using lump sum payments to offset displacement allowances which is compatible with excluding the lump sum payments when computing an employee's test period average earnings. The term 'total compensation,' appearing in Section 5(a) of the New York Dock Conditions is a connotation slightly at variance with the literal meaning of the words. This Committee concludes that the lump sum payments are outside the definition of 'total compensation' to avoid a result which would not only be absurd but also contrary to the purpose of the New York Dock Conditions." (Emphasis added)

In addition, it also relies on New York Dock Arbitration Award No. 5, dated March 1, 1988 (Referee, John LaRocco).

> "Prior Arbitration decisions differ over what earnings should be included in a worker's test period average earnings calculation. Compare Arbitration Board No. 284 (Robertson) with Section 13 Disputes Committee, Docket No. 137 (Bernstein). Thus, the 'total compensation' appearing in Section 5(a) of the New York Dock Conditions is susceptible to more than one interpretation. However, the term cannot be wholly void of meaning. If the ICC had desire to restrict test period average earnings to an amount less than aggregate earnings, it would have used words such as 'straight time wages' or 'monthly rate of pay' or 'hourly pay rate' or 'normal earnings' in lieu of the broad terms 'monthly compensation' and 'total compensation' which are found in Section 5(a). While test period average earnings cannot be computed solely with straight time earnings, the term 'total compensation' in protective arrangements like the New York Dock Conditions has evolved over the years into a meaning slightly at variance with the literal language. As the Section 13 Disputes Committee ruled, excessive overtime earnings directly attributable to the imminent coordination are outside the ambit of total compensation." (Emphasis added)

The Carrier has also cited a number of other authorities that have held that certain elements of pay are excluded from TPA calculations, including for example: discretionary bonus payments; commissions; employee rest day earnings and certain overtime earnings.

Concerning on-the-property documentation on the matter of how lump sum payments are handled, the Carrier particularly relies upon two documents. On May 31, 1996, Superintendent M. S. Paras issued Superintendent Notice No. 4 to instruct how TPA would be calculated for benefits pursuant to certain ICC Finance Dockets. It shows, in relevant part, the following: "Excluded from TAP calculations: (a) $1950.00 lump sum bonuses paid to Engineers in 1995." The Carrier contends that the BLE did not protest this exclusion.

Side Letter No. 2, dated November 7, 1997, to the SP Western Lines Modification Agreement (between the UP and BLE) provides that lump sum or bonus payments would be excluded from the calculation of TPAs. In summary, the Carrier's position may be stated as follows:

* Payments in question are similar to lump sum payments provided for in national agreements, which are excluded from construction of TPAs.

* Payments of this type are not appropriately considered as "compensation" in the calculation of test period averages pursuant to Article 1, Sections 5 and 6 of New York Dock.

* Carrier's exclusion of lump sum payments is consistent with previous handling of such payments.

* Contrary to the established intent of New York Dock, BLE seeks a windfall for its constituency.

* Carrier's methodology for excluding such payments is proper, reasonable and equitable.

Therefore, for all of the foregoing, the Carrier requests that Question No. 4 be answered in its favor.

FINDINGS AND OPINION

I have carefully read and analyzed the submissions of the parties and considered the oral arguments that each presented at the arbitration hearing on March 29, 2000. On the basis of this review, I find as follows:

QUESTION NO. 1

The underlying issue contained in this case is the interpretation of Article 1(D) of the August 1, 1995 Agreement. I find the Carrier's position persuasive. The preamble to Article 1(D) specifically states, in pertinent part, that: "The provisions of this Article are in full and final settlement of Article 7 of the July 1, 1991 BLE Agreement as it relates to the January 1, 1985 UTU Agreement." The key words "full and final settlement" are very precise and leave little room for interpretation. The quoted sentence goes on to state that the settlement of "Article 7 of the July 1, 1991 BLE Agreement as it relates to the January 1, 1995 UTU Agreement, Article 7 (superseded by

by Article 10 of the August 1, 1995 Agreement) simply put, this provides an avenue for the BLE to be equalized with the UTU for future compensation adjustments. It is a "me to" safeguard.

Following the preamble statement, the Article then lists three years (1995, 1996 and 1997) for which $1950.00 payments were to be made in the second pay period of November of those years.

I must conclude, given that the negotiating parties were experienced negotiators and keenly knowledgeable of the Agreements that, if it was intented to pay $1950.00 each year after 1997, they simply would have so stated something along this lines: "Moreover, for subsequent years beginning with 1998 and each year thereafter $1950.00 will be included with pay for the second period of November in those years." However, the parties did not say to do this. They did, add paragraph "D", which provides that the parties would meet if the trainmen and conductors covered by the UTU Agreement gained increased benefits. Thus, it provided a vehicle by means of this "me to" provision that would ensure the engineers would be equalized with the benefits the UTU would receive in any future adjustments to its Agreement.

Article 10, titled "Competitive Adjustment," Section A reads:

> "Should another member of the operating crew with whom an engineer works receive additional compensation, in excess of what was provided by agreement on the effective date of this Agreement (August 1, 1995) engineers will also receive such addtional compensation." (emphasis added)

The BLE then had the burden to show that the new provisions of the UTU Agreements provided more compensation or benefits than it received in its agreements. The on-the-property record shows that it has not met its burden.

On November 25, 1998, the Organization sent a letter to the Carrier in which it requested payment of the $1950.00 for the second pay period November 1998 pursuant to the provisions of Article 10, Competitive Adjustment (previously identified). It asserted that the UTU Agreement post August 1995 provided for increased compensation. Accordingly, the BLE engineers "are entitled to compensation greater than the $1950.00."

On January 20, 1999, the Carrier responded to the November 25, 1998 letter. The response noted that the Organization had not provided specific information to support its claim. It also provided a summary of the costs of items that the UTU had obtained and given up. On July 27, 1999, the Organization responded. The Organization did not provide any details to refute the Carrier's contentions concerning the UTU elements contained in its letter of January 20, 1999. It did, however, strongly voice its disagreement with the Carrier's interpretation of the various agreements subject to this claim.

Last, the Carrier's position that the HUB Agreements eliminated the SSW and CBAs is soundly based for the reasons provided above under the Carrier's position.

Accordingly, the Organization's claim with respect to Question No. 1 is denied.

QUESTION NO. 2

My comments relative to Question No. 1 are also applicable to this question. However, at the beginning of 1999, there were four remaining Hubs to be implemented (Kansas City, Salina (phase 2), Dallas/Ft. Worth and Dalhart) all were implemented in 1999, finishing with Dalhart on October, 1999.

Like the other Hubs, a SSW CBA was not selected for any of the above four. Likewise, while certain SSW insurance and vacation coverage was retained in the controlling CBA, like the others, Article 1 of the August 1, 1995 Agreement was not retained. Therefore, because there were no engineers subject to the SSW BLE CBA after the Dalhart implementation on October 1, 1999, the claims leading to Question 2 are denied.

QUESTION NO. 3

I find that the Organization has met its burden of proof on this question. From my review of the record, which includes the exchange of correspondence between the parties, there is no substantive disagreement that the $1950.00 paid to the SSW engineers in 1997 should

be included as compensation earned by each employee for vacation pay in 1998. See, for example: "Vacation Pay due SSW Engineers for 1998" and the Carrier's reply, dated September 17, 1999. The record shows that the engineers, who the Organization claims have not had the $1950.00 included in the computation of their vacation pay, have not been identified. It is inappropriate for me to direct either party on how this should be done. However, I find that the $1950.00 should be included as compensation earned by each engineer for vacation pay in 1998. Accordingly, the parties are directed to resolve the matter within sixty (60) days of this Award. If not resolved at that time, it will be returned to me for final resolution.

QUESTION NO. 4

This question is before me pursuant to Article 1, Section 11 of New York Dock. However, by agreement of the parties, I will serve as the sole arbitrator.

The issue here is what should be considered "compensation" for determining New York Dock test period wage averages ("TPA"). Controlling on this point is Article 1, Section 5(a) of New York Dock which reads:

> 5. Displacement allowances - (a) So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules and practices, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protective period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the average monthly compensation received by him in the position from which he was displaced.
>
> Each displaced employee's displacement allowance shall be determined by dividing separately by 12 the total compensation received by the employee and the total time for which he was paid during the last 12 months in which he performed services immediately preceding the date of his displacement as a result of the transaction (thereby producing average monthly compensation and average monthly time paid for in the test period), and provided further, that such allowance

> shall also be adjusted to reflect subsequent general wage increases.
>
> If a displaced employee's compensation in his retained position in any month is less in any month in which he performs work than the aforesaid average compensation (adjusted to reflect subsequent general wage increases) to which he would have been entitled, he shall be paid the difference, less compensation for time lost on account of his voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but if in his retained position he works in any month in excess of the aforesaid average monthly time paid for during the test period he shall be additionally compensated for such excess time at the rate of pay of the retained position. (emphasis added)

The words, "total compensation received by the employee" in Section 5a, if applied literally would place an all-inclusive requirement in the calculation of monies earned during the test period. The Arbitral Awards cited by the Carrier, as well as others, clearly establish that the term "total compensation" has evolved to the point that its meaning is at "variance with the literal language," as held by Referee LaRocco.

The Carrier has persuasively argued that lump sum payments on its property have been excluded from the calculation of TPAs. I particularly note Superintendent Paras's Notice No. 4, dated May 31, 1996, that excluded $1950.00 from the computation. There is no evidence in the record that the Organization objected to this. Likewise, Side Letter No. 2 of the SP Western Lines Modification Agreement between the Carrier and the BLE, dated November 7, 1997, specifically, provided that "Lump sum or bonus payments" would be excluded from the computation of TPAs. Last, as held in this opinion with respect to Questions No. 1 and No. 2, the $1950.00 was not intended to be a permanent component of the employee's compensation.

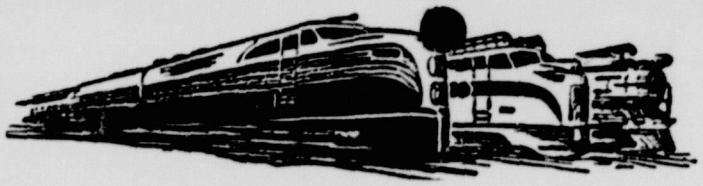
In summary, I find that the Carrier's exclusion of the $1950.00 is consistent with what has been held in past Arbitral Awards involving employee protection provisions of New York Dock.

Therefore, for all of the foregoing, the Organization's claim is denied and Question No. 4 is answered in the negative.

Eckehard Muessig
Arbitrator

Dated: April 18, 2000

APPENDIX B



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M.R. STEPHENS, SEC'Y TREAS.
ROUTE 2 BOX 2250
SCOTT CITY, MO 63780

June 7, 2000

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

Re: 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 Grand Western Railroad Company

Dear Mr. Williams:

I David E. Thompson, General Chairman, being the Brotherhood of Locomotive Engineers duly designated and authorized collective bargaining representative for the craft of locomotive firemen, hostlers, engineer trainees, and locomotive engineers on the former St. Louis Southwestern Railway Company, agreed to New York Dock Arbitration given a monetary contractual dispute with the duly authorized representative of Union Pacific Railroad Company.

The dispute was listed to New York Dock Arbitration Board Number 332 as Case No. 3 with Mr. Eckehard Muessig as the Arbitrator.

The submissions were presented to Mr. Muessig on March 29, 2000 at the arbitration hearing held at the offices of the National Mediation Board in Washington, D. C.

Mr. Muessig issued his written opinion and award with date of April 18, 2000 and sent copy of the award and itemized statement to BLE Vice President D. M. Hahs and Mr. Scott Hinckley, representative for Union Pacific. For some yet unexplained reason, Mr. Muessig failed to provide this office, which was the moving party and signatory to the submission, a copy of the award.

BLE Vice President Hahs forwarded the statement from Mr. Muessig, which was dated April 18, 2000, received in this office on May 8, 2000 (copy enclosed).

This office was informed by Mr. Hinckley and Mr. Hahs that they had received the opinion and award. We attempted to contact Mr. Muessig and received voice message stating he would be out of office for a period of time. As per the voice message, we sent Mr. Muessig a fax dated May 24, 2000 (copy enclosed) and as of this date, other than the statement, we have not heard from Mr. Muessig or received the award from him.

We requested a copy of the award from Mr. Hinckley and Mr. Hahs. When we received the copy of the award from Mr. Hahs, it was beyond the twenty (20) days from date of the award to file an appeal from the arbitrator's decision.

This office, being the moving party, would respectfully request an extension of the time limits for filing an appeal (Arbitration Review) from the Board given the facts as noted above.

Respectfully submitted,

DE Thompson

David E. Thompson

cc: Mr. Eckehard Muessig
Mr. D. M. Hahs
Mr. W. S. Hinckley

APPENDIX C

Brotherhood of Locomotive Engineers
414 Missouri Blvd
Scott City, MO 63780
Phone: (573) 264-3232
Fax: (573) 264-3735

Fax

To:	Eckehard Muessig, Arbitrator	**From:**	D. E. Thompson
Fax:	(703) 538-5144	**Pages:**	cover only
Phone:	(703) 538-4716	**Date:**	05/24/2000
Re:	NYD No. 332, Case 1 & 3	**CC:**	none

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** X **Please Reply** ☐ **Please Recycle**

Mr. Muessig:

I have been provided a copy of your statement dated April 18, 2000 and was informed by both Mr. Hinckley and Vice President Hahs that you have issued a decision in Case No. 1 and Case No. 3, NYD No. 332 between the Brotherhood of Locomotive Engineers (BLE) and the Union Pacific Railroad Company (UP).

This office was the moving party and we did not receive a copy of the awards. I do not know if you failed to send us a copy or if they were lost in the mail. We would appreciate a response from you with copy of the awards.

Sincerely,

D E Thompson

David E. Thompson

Brotherhood of Locomotive Engineers
414 Missouri Blvd
Scott City, MO 63780
Phone: (573) 264-3232
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Re:	NYD No. 332, Case 1 & 3	**cc:**	none

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This office was the moving party and we did not receive a copy of the awards. I do not know if you failed to send us a copy or if they were lost in the mail. We would appreciate a response from you with copy of the awards.

Sincerely,

D E Thompson

David E. Thompson

6/9/00

Mr Thompson:

I just returned from vacation — My Award was sent to VP Hahs & S.M. Hinckley — Mr. Hahs was to send you a copy — I assume that has been done by now — If not please ask him to send you a copy —

Thanks — Eck Muessig

APPENDIX D

UNION PACIFIC RAILROAD

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

NEW YORK DOCK No. 332
Case 3, Questions 1 & 2

CARRIER'S SUBMISSION

Mr. ECKHARD MUESSIG
NEUTRAL

March 29, 2000

BACKGROUND

Case No. 3 has four questions. All four questions relate to an agreement dated August 1, 1995. The questions concern whether the payment made in 1997 should be included in their NYD test period average, their 1998 vacation 1/52nd and whether the payment should also be paid in 1998 and 1999. Since these questions are all interrelated and for the most part will use the same exhibits the Carrier will submit one exhibit book for all four questions.

Question No. 1: Under the provisions of Article I (D) of the August 1, 1995 Memorandum of Agreement between the St. Louis Southwestern Railway and the Brotherhood of Locomotive Engineers who performed sufficient service during 1998 on the SSW to qualify for vacation in 1999 under the SSW vacation entitled to the $1950.00 additional compensation in calendar year 1998?

Prior to the UP/SP merger the SSW held a separate collective bargaining agreement (CBA). In 1991 the BLE entered into an agreement that had an "additional compensation" provision that basically said that if the UTU gets more than the BLE did then the BLE would receive an additional amount. When the parties sat down to negotiate the 1995 agreement the BLE took the position that they had not been fully compensated for UTU provisions entered into after their 1991 agreement. As a result the 1995 agreement provided for three payments of $1950 "in full and final setilement" of their 1991 agreement. In addition they agreed to keep the "additional compensation" provisions as amended. (See Exhibit "W", General Director Lommis's statement).

Article I A,B,C are the provisions that provide for the $1950 payments for 1995, 1996 and 1997 and D provides for the retention of the "additional compensation"

provisions. (Exhibit "K"). The BLE has taken the position that section D also provides for continuing $1950 payments for the years 1998 and 1999.

The Carrier will show that the BLE position is incorrect for the following reasons:

1. The contract, on its face, is very clear and simply does not provide for the payment.

2. There have been no additional agreements entered into with the UTU that would cause additional $1950 payments and to the contrary the UTU agreement resulted in fewer benefits.

3. The Hub agreements eliminated the SSW CBA and the only provisions that were retained were specifically provided for and the $1950 and the additional compensation provisions were not retained.

The contract on its face is clear and does not provide for the payment.

The preamble to Article I states that "The provisions in this Article are in full and final settlement of Article 7 of the July 1, 1991 BLE Agreement as it relates to the January 1, 1995 UTU Agreement." The Agreement then goes on to list **three** specific payments of $1950 to be paid in the second period payroll for November 1995, 1996 and 1997. These three payments were paid and are the subject of questions 3 & 4 of this case. There are no more mentions of payments due for $1950.

Article I,D then provides for the continuation of the "additional compensation" provisions of Article 10 of a separate BLE agreement. (Carrier exhibit "M") Article 10 titled "Competitive Adjustment" Section A states:

"Should another member of the operating crew with whom an engineer works receive additional compensation, in excess of what was provided by agreement on the effective date of this Agreement, (August 1, 1995) engineers will also receive such additional compensation."(emphasis added)

This paragraph combined with the full and final settlement of Article I clearly provides for a wiping clean of the slate and starting over. The employees were now governed by the effective date of the August 1, 1995 agreement and not by any past agreements. If it was the intent to provide a $1950 payment each and every year then the parties could and would have simply stated so. They were able to write it three times, so to write it a fourth time should have been no problem. They did not write it a fourth time because they did not intend it to apply.

What they intended was to make the three $1950 payments for the additional compensation "as it related to the January 1, 1995 UTU agreement." The reason they used the terms "full and final settlement" was because the payments were not continuing beyond the dates specified in the agreement. What they did with Article D is retain the provisions that provided that the engineers would also be equalized with any **future** compensation adjustments given the UTU. At a minimum then, the BLE needs to show that somehow after this agreement was entered into the UTU then received more compensation in new agreements than did the BLE in their agreements. The BLE has not given any evidence that this happened.

Section D then goes on to state what is to happen if changes do occur. "In the event of such changes, the parties will meet and determine the changes needed in this Article 1." Upon proof of changes and a showing that additional compensation was needed the parties could then agree on a new amount just as they did for the $1950. Maybe the new amount would be $100 or $5000 but this could not be known without proof of new compensation for UTU members.

In reading the various sections of the agreement the BLE has been unable to support its position that additional monies are due them and in the amount requested. They have confused the ongoing provisions of Article 10 with the settlement provisions of Article I.

There have been no additional provisions entered into with the UTU which would warrant a payment and to the contrary they relinquished some benefits.

The letters between the parties outline the parties' positions with respect to this point. (Exhibit "X"). On November 25, 1998 the BLE alleges that the $1950 was to go on for perpetuity. The BLE fails or refuses to acknowledge that the agreement provided for only three payments. To bolster their claim for continued payment they allege in their letter as follows:

"Until such time as the carrier can provide proof of changes that would affect the additional compensation, the Carrier does not have the right to discontinue or change any provision of the agreement which includes the $1950."

***

"Given the UTU Agreements signed post August 1, 1995 and the additional compensation therein as defined by Article 10 (c) of the BLE Agreement, there is nothing that would eliminate or reduce the $1950.00 due each SSW Engineer to be included with pay for the second period November 1998."

"The documentation regarding any such changes are undeniable and indisputable. One only need review the agreements signed with the UTU post august 1, 1995. The SSW Engineers are entitled to compensation for greater that (sic) the $1950.00."

While the BLE allegations are certainly bold they are not backed up by any proof. With the BLE having the burden of proof in this case one would assume that they would be able to specifically cite new provisions of the UTU agreement that pay the conductors more than the engineers. If the "documentation...are undeniable and

indisputable" then the BLE should be required to produce the documentation with sufficient analysis to support their position.

The Carrier's response dated January 20, 1999 does provide specifics and clearly shows the incorrectness of the BLE bravado. The letter points to one agreement signed with the UTU and then goes on to explain that the UTU gave up key monetary benefits to obtain an agreement that gave them parity with the BLE. The referenced agreement is attached as exhibit "Y". The letter summarizes the provisions and notes that the UTU received an additional week of vacation, **that the BLE already had**, and additional insurance coverage, **which the BLE already had.** In exchange for these benefits they agreed to forego cost of living adjustments and to lengthen the moratorium provisions for future negotiations.

The BLE response to the Carrier's specific letter, dated July 27, 1999, failed to respond in any detail to the Carrier's points and said the Carrier did not understand the agreement. There has been no rebuttal of the Carrier's position of "full and final settlement" with respect to the $1950 payments nor to the Carrier's position that there have been no additional agreements entered into after 1995 that would trigger any other payment.

The Hub agreements eliminated the SSW CBA and the $1950 and additional compensation provisions relied on by the BLE were not retained.

The Carrier began merger negotiations with the BLE in August 1996. The negotiating plan was to form Hubs around major terminals and negotiate each Hub separately and then implement them on a staggered basis. In each pre merger Hub there were at least three and sometimes four CBA's. When the merger negotiations for

a Hub were completed only one CBA was selected for each Hub. The SSW CBA was never selected in any of the Hubs. The Carrier will use one Hub to show how this was handled and how it affected the SSW employees.

The BLE Longview Hub was signed August 13, 1997. Article V. A. provided that the surviving CBA would be the Union Pacific BLE Agreement, reprinted October 1, 1991. Side Letters No. 1 & 2 specifically mentioned the August 1, 1995 SSW BLE agreement. The first side letter specifically identified that Article 6 and 9 (life and disability insurance) would be retained for six years. The second side letter specifically provided that those engineers who had earned an extra week of vacation under Article 7 – vacation would receive it for 1998 but **not** thereafter. These pages and correlating questions and answers are attached as exhibit "Z".

Since this Hub was implemented on February 1, 1998, and Article I of the SSW was not retained then there was no existing SSW CBA for the engineers that were now operating under the Hub agreement. The following Hubs were implemented on or prior to November 1, 1998.

Longview	February 1, 1998
North Little Rock/Pine Bluff	February 1, 1998
St. Louis	November 1, 1998

Since all three of these Hubs were now governed by the Union Pacific CBA and only the SSW insurance and vacation agreements were retained, there were no provisions remaining during the second half of November to provide a payment of $1950 to any employee. Since the negotiators were careful to specifically include three SSW articles for a period of time then it is logical to assume that all others were

eliminated. As such there can be no claim for the former SSW engineers who were now in these Hubs working under the Union Pacific CBA.

The BLE would have this panel believe that merely qualifying for vacation qualifies one for the $1950. While we have previously argued that the $1950 does not apply, arguendo, if it did it would fail for the former SSW employees in these three Hubs. To qualify one would have to qualify for vacation in 1998 for the next year. Since two of the Hubs were cut over on February 1, 1998 employees could not have earned vacation under the SSW agreement for that year. Secondly while the extra week of vacation was carried over for one year, the $1950 Article I was not. It would be a piggy back argument for the BLE to allege that by specifically retaining Article 7 – vacation, that without any further reference, it retained any other Article in the agreement that had any tie to vacation. The specific actions of the parties are clear and when a clear meaning is provided one need not look at intent.

Summary

The Carrier has shown the following:

1. The contract clearly provides for only three $1950 payments and those have been paid in full and final settlement up to 1998. The contract retained an "additional compensation" provision for after January 1, 1998 and that has been complied with.

2. The Organization has failed to supply any documentation to support its claim that new and better agreements were entered into after January 1, 1995 with the UTU that placed the engineers in a worse compensation relationship to the conductors. Contrary to that the Carrier has shown the one agreement entered into with the UTU relinquished future payments and extended the moratorium.

3. In three of the Hubs the merger agreement eliminated the SSW CBA except for three specific provisions. None of those three provisions concerned the $1950 issue.

The Carrier thus requests a denial award.

Question No. 2: Under the provisions of Article I (D) of the August 1, 1995 Memorandum of Agreement between the St. Louis Southwestern Railway and the Brotherhood of Locomotive Engineers who performed sufficient service during 1998 on the SSW to qualify for vacation in 1999 under the SSW vacation entitled to the $1950.00 additional compensation in calendar year 1999?

This is how the question was presented to the Carrier in the January 27, 2000 letter from the BLE. The Carrier believes that this question has two typographical errors and that it was the intent to state that if qualified in 1999 for the year 2000 then an additional payment should be made in 1999.

All of the Carrier's positions stated above also apply to this question with the addition of the following:

At the beginning of 1999 there were four remaining Hubs to be implemented where SSW engineers worked. Their implementation dates were as follows:

Kansas City	January 16, 1999
Salina (phase 2)	May 1, 1999
Dallas/Ft. Worth	September 1, 1999
Dalhart	October 1, 1999

In each of these four Hubs the Carrier selected a CBA that was not the SSW CBA. In each Hub certain SSW insurance and vacation coverage was retained for a similar length of time as in the Longview Hub agreement. In none of the Hubs was Article I of the SSW 1995 agreement retained. Since no engineers were working under the SSW BLE CBA after October 1, 1999 no payment under that agreement could be

applicable to anyone in the second half November 1999. All employees were paid under either the single surviving CBA or the Section 4 NYD agreement that covered the particular Hub. Absent provisions in those two agreements for the payment requested the Carrier believes that the Board should likewise deny the BLE claim.

W. S. Hinckley
General Director Labor Relations
Union Pacific Railroad
March 22, 2000

APPENDIX E

NEW YORK DOCK ARBITRATION NUMBER 332

Agreed to arbitration between

BROTHERHOOD OF LOCOMOTIVE ENGINEERS
ST. LOUIS SOUTHWESTERN GENERAL COMMITTEE

and

UNION PACIFIC RAILROAD COMPANY

Mr. Eckehard Muessig, Arbitrator

March 29, 2000

Case No. 3 - $1950 Additional Compensation

Question No. 1

Under the provisions of Article I (D) of the August 1, 1995 Memorandum of Agreement between the St. Louis Southwestern Railway and the Brotherhood of Locomotive Engineers, are engineers who performed sufficient service during 1998 on the SSW to qualify for vacation in 1999 under the SSW vacation entitled to the $1950.00 additional compensation in calendar year 1998?

Question No. 2

Under the provisions of Article I (D) of the August 1, 1995 Memorandum of Agreement between the St. Louis Southwestern Railway and the Brotherhood of Locomotive Engineers, are engineers who performed sufficient service during 1999

on the SSW to qualify for vacation in 2000 under the SSW vacation entitled to the $1950.00 additional compensation in calendar year 1999?

Question No. 3

Is the $1950.00 additional compensation paid to the SSW engineers in 1997 to be included as compensation earned by each employee for vacation pay in 1998?

Question No. 4

Is the $1950.00 additional compensation paid to the SSW engineers in 1995 to be included in the total compensation when arriving at the monthly test period average as per part 5 of the agreed to New York Dock Protective Conditions?

History

On January 15, 1991, Presidential Emergency Board No. 219 issued their final decision regarding wage settlement for engineers represented by the BLE. On page 78 of the decision, the Board stated there were Carrier's that could not afford the wage increase and other benefits in their decision and recommended separate negotiations with the labor representatives on these railroads.

It was later agreed that the Southern Pacific and their subsidiaries were one of the Carriers addressed by the Board on page 78. The Southern Pacific Lines included the Southern Pacific (SP), the St. Louis Southwestern Railway Company (SSW), the Denver and Rio Grande (DRGW), and the SPCSL.

Negotiations were held with the BLE International Office and the BLE General Chairmen. On June 28, 1991, Generic Agreement to be effective July 1, 1991 was signed by the Carrier and all affected BLE/SP Lines General Chairmen. There were separate local agreements reached and signed by each General Chairman

effecting only the members represented by the General Committee on that part of Southern Pacific.

The SP Lines Generic Agreement was reached in lieu of the provisions of the 1991 BLE National Agreement which was the result of the 219 Emergency Board. Copy of the July 1, 1991 SP Generic Agreement is enclosed as (BLE/SSW Exhibit 1).

The Board will please note that the SP/SSW engineers did not receive any of the lump sum payments, general wage increases, or any COLA increase found in the 1991 National Agreement.

Article 7 of the Generic Agreement provided for **"additional compensation"** which was paid to other members of the operating crew with which the engineer works. Article 7 gave the definition of "additional compensation" which did not include any **"lump sum"** payments or general wage increases.

Article 7

(a) Commencing with the effective date of this Agreement, engineers employed by a Carrier signatory to this Agreement will receive any additional compensation paid to other members of the operating crew with which the engineer works. This entitlement to receive any additional compensation paid to other members of the operating crew shall continue until the effective date of settlement of a Section 6 notice served to amend this Agreement or change "compensation" by either BLE or the Company on or after November 1, 1994.

(b) Additional "compensation" as used in Article 7(a) is defined as compensation (either additional compensation for time worked or pay for time not worked, e.g., additional vacation, personal leave days, holidays or sick leave, etc.) in excess of the compensation paid on the effective date of this Agreement, with the exception of any lump sum payments or general wage increases provided to another operating crew member as the result of the PEB 219/Special Board process. If such additional compensation to another member of the operating crew requires the performance of a specific task,

such compensation will only be payable to the engineer if the engineers assists in the performance of the specific task. Such additional compensation shall be paid to the engineer on a comparable basis as paid to other members of the operating crew with which the engineer works. Compensation other than earnings for the tour of duty accruing to another member of the operating crew shall also apply to the engineer. (emphasis added)

At this point it is important for this Board to note that the parties who negotiated and signed this agreement placed special emphasis on the words "additional compensation" whereby everyone should understand that these future payments were contractual earnings as compensation and not "lump sums" except as noted in part (b).

The Carrier signed an agreement with the UTU/SSW General Committee on November 12, 1992 to be effective on December 1, 1992 which provided "additional compensation" as defined in Article 7(b) of the July 1, 1991 SP Generic Agreement.

By letter dated February 23, 1993 (BLE/SSW Exhibit 2), the Carrier acknowledged "additional compensation" in the December 1, 1992 UTU Agreement. The Carrier agreed to provide figures indicating "additional compensation" that had actually been realized per each trainman/switchman and further agreed to meet with the SP Eastern Lines and SSW General Chairmen in an attempt to work out an agreement to cover the "additional compensation".

In a letter dated May 6, 1993 (BLE/SSW Exhibit 3), former SSW Director of Labor Relations, W. E. Loomis acknowledged and identified the "INCREASED COMPENSATION". There were differences of opinion as the actual "additional compensation" that was due each SSW Engineer.

The differences were resolved and the parties reached an agreement on July 1, 1993, which is verification of the "additional compensation" due the SSW engineers. Other than the opening paragraph, the provisions of the July 1, 1993 agreement has no relevance in the current dispute now before this Board.

Page 1 of the July 1, 1993 agreement is enclosed as (BLE/SSW Exhibit 4). The opening paragraph reads:

> *Article 7 of the July 1, 1991 agreement between Southern Pacific Lines and Brotherhood of Locomotive Engineers provided for payment to locomotive engineers of any "additional compensation" paid to other members of the operating crew with which the engineers work. Agreements between St. Louis Southwestern Railway Company and the United Transportation Union representing trainmen and yardmen dated November 12, 1992 provided "additional compensation" to trainmen and yardmen on St. Louis Southwestern Railway. This agreement is in full and final settlement of Article 7 of the July 1, 1991 BLE Agreement as it relates to the November 12, 1992 UTU Agreements.*

This opening paragraph leaves no doubt as to the actual meaning of Article 7. If the Carrier and the UTU reached a subsequent agreement that provided "additional compensation" to the trainmen and yardmen on the St. Louis Southwestern Railway Company, the SSW engineers would also be entitled to that additional compensation.

The UTU and the Carrier reached another agreement, which became effective January 1, 1995. There were provisions in the January 1, 1995 UTU/SSW Agreement that met the definition of "additional compensation" and triggered the provisions of Article 7 of the July 1, 1991 SP Lines Generic Agreement.

Article 11(c) of the July 1, 1991 Generic Agreement provided a moratorium provision in which the parties had agreed that no Section 6 notice could be served to change any matter contained therein prior to November 1, 1994.

Given the 1995 BLE National Wage Movement, plus the provisions of the UTU/SSW January 1, 1995 Agreement, the parties agreed to enter voluntary bargaining rather than Section 6 notices. The parties negotiated and signed another SP Lines Generic Agreement covering all SP Lines BLE General Committees on August 1, 1995 in lieu of the 1995 BLE National Wage Movement and the provisions of the May 31, 1996 BLE National Agreement. Copy of the agreement and Side Letter No. 3 is enclosed as (BLE/SSW Exhibit 5 and 5a).

In the August 1, 1995 Generic Agreement, Article 7 of the July 1, 1991 Agreement was superseded and replaced with Article 10 - COMPETITIVE ADJUSTMENT.

ARTICLE 10 - COMPETITIVE ADJUSTMENT

Article 7 of the July 1, 1991 Agreement is superseded and replaced with the following:

Section A. Should another member of the operating crew with whom an engineer works receive additional compensation, in excess of what was provided by agreement on the effective date of this Agreement, engineers will also receive such additional compensation.

Section B. This entitlement to initiate a demand for equivalent additional compensation shall continue until the effective date of settlement of the Section 6 notice served in accordance with Article 22 of this Agreement.

Section C. Additional "compensation" as used in this Article 10 is defined as compensation (either additional compensation for time worked or pay for time not worked, e.g. additional vacation, personal leave days, holidays or sick leave, etc.) in excess of the compensation

paid on the effective date of this Agreement, with exceptions as listed in Section D below. If such additional compensation to another member of the operating crew requires the performance of a specific task, such compensation will only be payable to the engineer if the engineer assists in the performance of a specific task. Such additional compensation shall be paid to the engineer on a comparable, or essentially matching, basis as paid to other members of the operating crew with whom the engineer works unless, as negotiated in the past, the parties mutually agree to a different form of compensation. Compensation other than earnings for the tour of duty accruing to another member of the operating crew shall also apply to the engineer.

Section D - Exceptions

1. Lump sum payments, general wage increases or cost-of-living allowances provided to another operating crew member as the result of the PEB 219/Special Board process.

2. Compensation to another operating crew member identical to, or essentially matching, compensation provided to engineers in this agreement or in companion local issues agreements.

3. Voluntary separation or dismissal allowances, or payments under a labor protective condition, either imposed or agreed between the parties.

4. If additional compensation is paid to more than one other member of the operating crew with whom the engineer works, it is not intended that the engineers receive multiple payments. For example, if the conductor and brakeman on a crew with whom the engineer works are paid an additional $10.00 per tour of duty, the engineer would be entitled to an additional payment of $10.00 only, not the total of $20.00 received by other members of the operating crew.

To further clarify "additional compensation" as noted and defined in Article 10, the parties added Side Letter No. 3 which reads:

This is to confirm our discussion in connection with Article 10, Section D. 2. of the agreement dated August 1, 1995. The parties recognize that Article 6 - Life Insurance; Article 7 - Vacations and Article 9 - Disability Insurance of the agreement dated August 1, 1995 represent changes in compensation. However, these changes were in lieu of cost-of-living increases every six months effective 7/1/95, three personal leave days annually negotiated in the 1991 agreement and

the 15 cent (15¢)increase in overmiles provided on page 79 of Presidential Emergency Board 219. Therefore, if additional compensation of an identical or essentially matching nature is granted to another member of the crew without an identical or comparable offset, then the additional compensation will be subject to the provisions of this article.

Once again, the employees would request the Board to take note of the emphasis placed upon the words "additional compensation" which excluded the exceptions such as "lump sum payment" in Section D and any "additional compensation" of identical or essentially matching nature, assuring that all "additional compensation" will be subject to the provision of Article 10.

The UTU/SSW General Committee had signed a subsequent agreement dated April 16, 1996, which would have triggered the provisions of Article 10 – Competitive Adjustment for the SSW engineers.

Given the merger, this Committee made a decision not to apply the provisions of Article 10; therefore, the provisions of the UTU/SSW April 16, 1996 Agreement is not an issue before the Board.

Other than to show the Carrier's understanding of the "additional compensation" the provisions of the August 1, 1995 SP Lines Generic Agreement has no relevance in the four (4) questions posed in these disputes with the officers of Union Pacific.

Given the provisions of the January 1, 1995 UTU Agreement and the agreed to dual track negotiation, the BLE/SSW General Committee requested negotiation for the additional compensation due the SSW engineers. As with the 1993 Agreement, there were differences of opinion as to the actual total amount of

"additional compensation" due the SSW engineers. There was no dispute regarding "additional compensation" due, only the annual amount from the increased compensation found in the UTU/SSW Agreement.

Enclosed as (BLE/SSW Exhibit 6) is copy of a document produced by the former SP/SSW Labor Relations Officers dated 11-18-94 providing their figures and the "potential annual cost above minimum." Following a number of on-property BLE/SSW negotiations, the parties agreed to the **"annual"** amount of the "increased compensation" due the SSW engineers and reached agreement that was signed to become effective August 1, 1995, which is the same effective date of the SP Lines Generic Agreement reached in lieu of the 1996 BLE National Agreement.

During the negotiations, the BLE/SSW General Committee had the right to receive the additional compensation in several different ways, same as in the previous on-property agreement. We could have opted for an increase in the enroute meal, the 40/40 allowance, a daily amount, or a weekly amount. It was the Carrier who wanted to pay the additional compensation annually.

The first paragraph of the BLE/SSW Agreement also verifies the Carrier's acknowledgment of the "additional compensation" due the SSW engineers. Copy of the August 1, 1995 BLE/SSW Agreement is enclosed as (BLE/SSW Exhibit 7).

Article 1 of the agreement is found below:

ARTICLE 1: ADDITIONAL COMPENSATION

Article 7 of the July 1, 1991 agreement between Southern Pacific Lines and Brotherhood of Locomotive Engineers provided for payment to locomotive engineers of any "additional compensation" paid to other members of the operating crew with which the engineers work. Agreements between St. Louis Southwestern Railway Company and the United Transportation Union representing trainmen and yardmen

effective January 1, 1995 provided "additional compensation" to trainmen and yardmen on St. Louis Southwestern Railway. The provisions in this Article are in full and final settlement of Article 7 of the July 1, 1991 BLE Agreement as it relates to the January 1, 1995 UTU Agreement: (emphasis added)

> *(A) Engineers who perform sufficient service during 1995 on the St. Louis Southwestern Railway to qualify for vacation pay in 1996 will receive a lump sum payment of $1950.00. This payment will is to be included with pay for the second period of November, 1995.*
>
> *(B) Engineers who perform sufficient service during 1996 on the St. Louis Southwestern Railway to qualify for vacation pay in 1997 will receive a lump sum payment of $1950.00. This payment is to be included with pay for the second period of November, 1996.*
>
> *(C) Engineers who perform sufficient service during 1997 on the St. Louis Southwestern Railway to qualify for vacation pay in 1998 will receive a lump sum payment of $1950.00. This payment is to be included with pay for the second period of November, 1997.*
>
> *(D) The parties agree that the entitlement set forth in Article 7 of the July 1, 1991 Agreement (superseded by Article 10 of the August 1, 1995 Agreement) continues to exist after January 1, 1998 unless there have been changes in the agreement affecting Article 7 (superseded by Article 10 of the August 1, 1995 Agreement) or changes in the underlying conditions which gave rise to additional compensation. In the event of such changes, the parties will meet and determine the changes needed in this Article 1.*

The opening paragraph clearly defines the positions of the parties and the annual payment of $1950.00 per year in (A), (B), and (C) demonstrates the annual amount due the SSW engineers in 1995, 1996, 1997, and each year thereafter as per Article 1 (D).

From the enclosed exhibits, there can be no dispute in regards to the "additional compensation" being an annual payment. From the exhibits, the words "annual cost" is used to determine the increased compensation paid to the trainmen each year. The annual additional compensation due the engineers would be payable

"annually" until such time as there were changes in the January 1, 1995 Trainmen's Agreement, which gave rise to their increased compensation.

The opening paragraph of Article I (D) clearly spells out the intent of the parties regarding the entitlement set forth in Article 7 of the July 1, 1991 Agreement and Article I (D) is equally clear in that the entitlement would continue to exist after January 1, 1998, unless there were changes in the agreement or changes in the underlying conditions which gave rise to the annual "additional compensation."

The last sentence of Article (D) requires the parties to meet in the event of such changes to determine what, if any, changes would be made in the annual payment as provided in Article I.

For a period of approximately eight (8) years, the former SP/SSW Labor Relations Officers who negotiated and signed the agreements clearly understood the difference between "additional compensation" and lump sum payments or bonus payments and placed special emphasis on the "additional compensation" in the pages of four (4) different agreements.

The files regarding the on-property negotiations, the provisions of the Generic Agreement, and each separate Committee's Local Agreement are over four (4) inches thick. We are providing the following four (4) documents in support:

Enclosed as (BLE/SSW Exhibit 8) is letter dated November 5, 1993 over the signature of former Chief of Administration Officer, Thomas J. Matthews explaining the ways and needs for the on-property negotiation in lieu of national handlings.

(BLE/SSW Exhibit 9) is a document dated July 21, 1995 which provides a brief scenario of the proposed August 1, 1995 BLE/SSW Agreement. Article 1 explains the annual "additional compensation" that was to be paid in a lump sum to be included with other payments in the second pay period of November of each year, which would continue beyond 1997, unless there were changes in the UTU Agreement which produced the annual payment.

(BLE/SSW Exhibit 10) is letter dated February 29, 1996 over the signature of former SP Senior Manager of Labor Relations Jane H. Baynes. In the letter, Ms. Baynes was not in agreement with our position but the remarks in the fourth paragraph clearly provided her understanding of the agreement. Her remark is quoted below:

> *"The $1950.00 lump sum is paid to engineers pursuant to Article 7 of the July 1, 1991 agreement between Southern Pacific Lines and Brotherhood of Locomotive Engineers as a "me too" lump sum in consideration of additional compensation paid to trainmen and yardmen provided by their January 1, 995 UTU agreement."* (emphasis added)

The Board will learn in (BLE/SSW Exhibit 11) that the issue in the letter from Ms. Baynes was resolved in favor of the engineer trainees in a letter from Manager of Labor Relations, Kelly Sheridan. In her response agreeing to allow the time for the student engineers, Ms. Sheridan also provided her clear understanding of Article 1 with the following:

> RE: LETTER OF UNDERSTANDING CONCERNING ARTICLE 1 OF THE AUGUST 1, 1995 LOCAL ISSUES AGREEMENT

Dear Mr. Thompson:

This refers to Article 1 (Additional Compensation) of the August 1, 1995 SSW/BLE Local Issues Agreement. Article 1 gives additional compensation in the form of lump sum payments to qualifying engineers on the Cotton Belt.

The Board must also know and understand that the parties signed the June 28, 1991 and August 1, 1995 Generic SP/SSW Agreement in lieu of the 1991 and 1996 BLE National Agreement. In these two (2) generic agreements, the SP and the SSW engineers did not receive any of the rate increases and did not receive any of the COLA increase or lump sum payments as provided in the two (2) National Agreements. The SP/SSW engineers rates of pay were frozen at the July 1, 1988 rates.

Question No. 1 and Question No. 2

After the merger, the Carrier eliminated most former SP/SSW Labor Relations positions and transferred jurisdiction of the SSW Agreement to one of the UP Labor Relations Officers. This Committee was informed that Mr. R. D. Rock would be the designated officer to handle SSW contractual issues other than discipline.

The territory and the engineers governed by the BLE/SSW Agreements were divided and are currently under one of the Union Pacific Agreements in seven (7) different Hubs.

For the record, it is undisputed in that all former SSW engineers would continue to work and be compensated as per the SSW Agreement until such time as they elected to establish seniority in one (1) of the Hubs. On the date of implementation, the former SSW engineers in that Hub were covered by that Hub

Agreement, all other SSW engineers remained under the SSW Agreements until such time as they became a part of the additional Hub Agreements.

For example, part of the SSW engineers became a part of the North Little Rock/Pine Bluff and Longview Hub on February 1, 1998. On that date, the former SSW engineers received the National Rates of pay and all future increases in the daily and mileage rates and each COLA payment after February 1, 1998. The remaining SSW engineers continued to be paid the SSW rates, which were frozen at the July 1988 rate. For example, the former SSW engineers covered under the UP Agreement received a higher 5 day yard rate of pay which was $156.33, the remaining SSW engineers received the $148.31 rate per day. The UP through freight rate was $150.00, the SSW frozen rate was $140.08. The daily engineer's extra board rate for the UP/SSW engineers increased to $179.66. The SSW frozen extra board rate was $155.08.

On July 1, 1998, the former SSW engineers in the two (2) Hubs above received a lump sum payment of three and one-half percent (3½%) of the engineers 1997 compensation.

This office contacted Labor Relations Officer R. D. Rock requesting the 3 ½ percent be paid to all former SSW engineers. Mr. Rock informed this office that the remaining SSW engineers that were not covered in one of the Hub Agreements were still governed by the provisions of the SSW Agreement and would continue to be paid as per the SSW Agreements, which was the correct decision.

The provision of Article I from the August 1, 1995 BLE/SSW Agreement required annual payment of $1950.00 to each qualifying SSW engineer to be paid with the second period November payment.

The former SSW engineers who were still covered by all provisions of the SSW Agreement did not receive the $1950.00 annual payment on their December 16, 1998 paycheck.

Having prior knowledge of the decision not to pay the $1950.00, this office contacted Union Pacific General Director of Timekeeping, Tony Zabawa and was informed that Labor Relations had instructed him not to pay the $1950.00

This office contacted Mr. Rock regarding the provisions of Article I and the information from Mr. Zabawa. Mr. Rock informed this office that the senior Labor Relations Officers had made a decision not to pay the $1950.00 as provided for in the agreement.

This office sent certified letter to UP General Director of Labor Relations, L. A. Lambert dated November 25, 1998 (BLE/SSW Exhibit 12). In the letter, we explained the agreement and requested the Carrier to comply with the agreement and make the required payment to the SSW Engineers or provide date and time for conference as required in Article I.

The only issue before this Board in all four (4) questions is Article I (D) of the BLE/SSW On-property Agreement. We would request the Board closely review the response from Mr. Lambert in his January 20, 1999 response.

Mr. Lambert responded to the letter on January 20, 1999 (BLE/SSW Exhibit 13). In his response, Mr. Lambert attempts to confuse the provisions of Article I

and provides summary of the cost of the items found in a UTU/SSW On-property Agreement signed April 16, 1996. The remarks and figures provided by Mr. Lambert are not relevant and are of no value in this case as they deal with the April 16, 1996 UTU Agreement.

As previously stated, the provisions of the BLE/SSW August 1, 1995 On-property Agreement were based upon the provisions of the January 1, 1995 UTU/SSW Agreement, not the UTU/SSW Agreement signed April 16, 1996.

The employees are providing a copy of the July 1, 1996 UTU/SSW Agreement and cover letter dated March 15, 1996 over the signature of UTU/SSW General Chairman Hollis (BLE/SSW Exhibit 14) for information only as it provides no value in this dispute. In Mr. Hollis' letter to his members, he references the many new and additional benefits to the membership and further notes that the cost of living allowance being deferred until 1999 is a small trade-off for the benefits gained. From the agreement, the Board will discover there were no provisions in the July 1, 1996 UTU/SSW Agreement that changed or eliminated any of the compensation paid to trainmen in the January 1, 1995 UTU/SSW Agreement which resulted in the "additional compensation" due the SSW engineers and as agreed by the parties signatory to the August 1, 1995 BLE/SSW Agreement. The noted cost of living paid for the many new and additional benefits in the 1996 UTU Agreement, not the January 1, 1995 UTU Agreement. The COLA adjustments were not a part of and were not used in arriving at the annual increase or additional compensation in Article I of the August 1, 1995 BLE/SSW Agreement.

Mr. Lambert further attempts to avoid compliance in his statement regarding the Organization's failure to meet the burden of proof or any specifics in support of its claims. The agreement is support, nothing further is required of the employees. He further states there is nothing in Article I(D) that requires the Carrier to provide proof of change that would affect the additional compensation. He is not correct. The agreement is clear, the payments in Article I are to continue until such time as there are changes in the underlying conditions which produced the additional compensation or until such time as the parties meet and it is determined the UTU/SSW General Committee and the Carrier reached subsequent agreements which changed or eliminated the provisions of the January 1, 1995 UTU/SSW Agreement that gave rise to the annual payment due the SSW engineers in Article I. This is the only way to change the compensation in Article I short of another BLE/SSW Agreement.

Up to this date, this has been the only thing the Carrier has presented in support of their decision to stop making the Article I annual payment. From the clear and precise language in Article I, Mr. Lambert's positions cannot be supported by any documented facts.

As noted in (BLE/SSW Exhibit 6), the majority of the additional compensation in the January 1, 1995 UTU/SSW Agreement was the increased compensation paid to the UTU/SSW trainmen/yardmen with the $12.50 meal allowance and the 40/40 payment which, according to the figures by the Carrier, amounted to $608,000.00 annually which the Carrier continued to pay after July 1, 1996.

As stated in the history of this dispute, given the provision of Article 10 of the August 1, 1995 Generic SP/BLE Agreement, this Committee is of the opinion there would have been additional compensation due the BLE/SSW engineers given the benefits provided to the UTU/SSW trainmen in the July 1, 1996 UTU/SSW Agreement and absent the merger, we would be progressing claims for those additional benefits.

As per letter dated July 27, 1999 (BLE/SSW Exhibit 15), conference was held with Labor Relations Officer R. D. Rock on July 22, 1999 in regards to the annual $1950.00 compensation due the SSW engineers as noted in Article I of the August 1, 1995 BLE/SSW Agreement. In the conference, Mr. Rock acknowledged his understanding of the agreement and was unable to provide any changes in the underlying conditions that resulted in the additional compensation due the SSW engineers in Article I. Up to this point, no Union Pacific Officer has been able to provide any contractual explanation as to why the Officers of Union Pacific made the decision to stop the annual payment due the SSW engineers.

What is truly astonishing in this dispute is the UP Labor Relations Officers acknowledgment and compliance with the other Articles in the August 1, 1995 BLE/SSW Agreement and all articles in the August 1, 1995 Generic Agreement while at the same time arguing Article I is no longer applicable.

The decision of Union Pacific Officers to ignore the clear and precise provisions of this agreement is a classic example of Union Pacific's decision to deny payments under other provisions of the agreements. They are of the opinion they have nothing to lose by declining and refusing to pay perfectly good claims.

Enclosed for the Board's review as (BLE/SSW Exhibit 20) is one of numerous letters denying valid claims. The engineers had filed claims for one-half (1/2) basic day runaround, which was a valid claim in which the engineers provided all data required by the Carrier. Timekeeping denied the claim with their standard response, "claim denied, not supported by the agreement." The Local Chairmen makes the appeal and the Labor Relations Officers issue the response as noted on (BLE/SSW Exhibit 20).

> *"Claims are under research to determine validity thereof. Pending the results of that research, these claims must remain denied in their entirety."*

On this railroad and on any railroad in this Country, the Carrier will fire you for stealing time. The Carrier's handling of contractually supported claims is equal to any employee stealing time.

Enclosed as (BLE/SSW Exhibit 21) is copy of Award No. 91, BLE/SSW Public Law Board No. 452. Chairman and Neutral Member Richard Kosher sustained the claims with the following remarks:

> *"This Board had determined to sustain the claim of all the Claimants. Rule 41-1 explicitly states that compensatable time shall be computed from the roundhouse register or engineer's slip. The Carrier cannot avoid the clear language of this Rule by unilaterally implementing a system that computes time by a different method. While the Carrier certainly is not obligated to automatically pay for any time submitted by the engineers, in this case it has the burden of establishing that the time claimed was improper. The Carrier cannot shift to the employees the burden of establishing that the time claimed is legitimate when it is so on its face.*
>
> *In this case, the Carrier has failed to present evidence establishing the time claimed by the Claimants was improper. The time return forms submitted by the Claimants on their face present claims for legitimately compensable time. The engineers are obligated*

to accurately complete the time return forms and are subject to penalties if they deliberately fail to do so. In the absence of proof from the Carrier establishing otherwise, we find that the time return forms submitted by the Claimants are accurate. Accordingly, the claims are sustained in the entirety." (emphasis added)

As with the FTD, the Carrier cannot avoid the clear language of the rule and in this case, the Carrier has the burden of establishing facts to support their decision. Mr. Lambert cannot shift this burden to the employees when the agreement requires the Carrier to provide the proof.

Under the provisions of this Article I (D), the parties are required to meet and determine the changes in this Article I. The record is clear, the parties have not determined any needed changes in Article I. Given the absence of any changes in Article I, the annual settlement set forth in Article I continues to exist after January 1, 1998 and cannot be reduced or changed merely because the Union Pacific does not want to continue the payment.

The Carrier will not be able to produce any documents that changed anything in Article I. Given this absolute, the employees are of the opinion that the documentation provided with this submission, plus the Carrier's failure to identify, much less proves changes that would affect the benefits in Article I requires Question No. 1 and No. 2 to be answered in favor of the employees to which we respectfully request.

There are various claims in which the employees should be entitled to interest on the payments due from the date due up to and including the date the claim is paid. The employees believe the Carrier's decision not to make the annual

payment to the qualifying engineers in this case is a flagrant violation that should warrant the payment of interest and to which we would request the Board to impose the prevailing rate. If there was ever a case that would warrant an additional penalty, such as interest, this would be a classic example.

This dispute has been handled both in conference and in correspondence and it is mutually agreed that Question 1 through 4 is properly before the Board for adjudication.

Question No. 3

Except for the additional week vacation as provided for in Article 7 of the August 1, 1995 BLE/SP Line Generic Agreement (BLE/SSW Exhibit 5), the former SSW engineers are covered by the provision of the National Vacation Agreement of April 29, 1949, as amended.

Section 2(a) of the Vacation Agreement provides:

> *(a) An employee receiving a vacation, or pay in lieu thereof, under Section 1 shall be paid for each week of such vacation 1/52 of the compensation earned by such employee under schedule agreements held by the organizations signatory to the April 29, 1949 Vacation Agreement, on the carrier on which he qualified under Section 1 (or carriers in case he qualified on more than one carrier under Section 1(l) during the calendar year preceding the year in which the vacation is taken, but in no event shall such pay for each week of vacation be less than six (6) minimum basic days' pay at the rate of the last service rendered, except as provided in subparagraph (b).* (emphasis added)

The agreement requires vacation pay to be based upon the compensation earned under scheduled agreements held by the organization signatory to the April 29, 1949 Vacation Agreement.

There can be no question in that the $1950.00 is compensation earned as per the provisions of Article 1 of the BLE/SSW August 1, 1995 On-property Agreement. It is indisputable in that the former SSW engineers were paid the $1950.00 in 1997 and tnat it is contractual compensation earned as per the agreement.

Union Pacific Timekeeping refused to include the $1950.00 in the gross earnings for calendar year 1997 when figuring vacation pay due the SSW engineer in 1998.

Vacation pay for SSW Engineer R. D. Kramer was handled with Union Pacific Labor Relations Officer R. D. Rock. Mr. Rock sent the information to timekeeping requesting he be advised their decision with copy to this office.

On February 4, 1998, we faxed Mr. Rock regarding two (2) other SSW engineers vacation pay. Mr. Rock sent that information to timekeeping again requesting to know how the vacation pay was figured. In a letter dated March 5, 1998, (BLE/SSW Exhibit 16) UP Assistant Director of Timekeeping, Michael D. Stom provided figures which showed how the vacation rates were figured for SSW Engineer G. T. Roark and J. P. Dunger. Their gross earnings did not include the $1950.00 as provided in Article 1. For some reason, the $1950.00 was shown as Productivity Fund.

Mr. Stom further stated that since these figures were first computed, it has been decided to allow the Productivity Fund of $1950.00 which will require some programming changes to adjust the vacation pay to reflect the additional amount.

This office had provided Mr. Rock with copies of profs notes to and from the former SP Timekeeping Department in which the SP Officers acknowledged the $1950.00 was contractual earnings and would be made a part of the gross earnings to determine vacation pay due the SSW engineers. Copy of the profs note is enclosed as (BLE/SSW Exhibit 17).

Given these documents, there is no question that the officers of both Timekeeping and Labor Relations are in agreement regarding the $1950.00 being contractual/agreement earnings.

The programming, as noted in Mr. Stom's letter, did not take place, or if it did become reality, the $1950.00 was not added to the gross earnings in 1997 for vacation pay in 1998 for the SSW engineers.

After numerous conferences, this office sent another letter to Mr. Rock dated July 26, 1999 (BLE/SSW Exhibit 18). Given changes in the UP Labor Relations Department, UP Director of Labor Relations, C. R. Wise responded by letter dated September 17, 1999 (BLE/SSW Exhibit 19). In the letter, Mr. Wise stated that he had been advised by Timekeeping and the accounting department that the $1950.00 had been included when figuring vacation pay for SSW engineers in 1998.

This office has contacted every BLE/SSW Local Chairman requesting response to the letter from Mr. Wise. From our research, the Timekeeping Department has not included the $1950.00 in the 1997 gross earnings for 1998 vacation pay.

These letters are akin to the Timekeeping declinations and the letter from Labor Relations Officer Waldman (BLE Exhibit 21). These Officers do not know if the $1950.00 was included; therefore, you get their standard response in hope that some of the claims will be forgotten or lost in the muddle.

In conference with Mr. Hinckley and Mrs. Gansen, prior to listing to this Board, they acknowledged the $1950.00 was earned compensation paid in 1997 and should have been included in the SSW engineers vacation pay in 1998. The letter of March 5, 1998 (BLE/SSW Exhibit 16) from the Timekeeping Department clearly proves the $1950.00 was not included. They were told the $1950.00 had been included.

In the conference, we told Mr. Hinckley that this issue could be resolved by providing the figures for the SSW engineers' 1998 vacation pay. As of this date, we are still awaiting those figures. We can only assume the lack of response proves the $1950.00 was not included.

This question should be answered in the affirmative and the Carrier should be required to provide the payroll records for each SSW engineers, which would prove the SSW engineers were or were not paid correctly. If need be, this office will provide the list of all SSW engineers and their Social Security Number. Given the Carrier's handling and failure to provide payroll records that would prove the $1950.00 was not included for 1998 vacation pay, the employees would request this Board to direct the Carrier to make the payments within sixty (60) days. These payments should also include the prevailing interest rate given the flagrant violation.

Question No. 4

It is undisputed in that the management of Union Pacific has agreed that every former SSW engineer that was employed in the year August 1, 1995 to July 31, 1996 was automatically certified to receive the protective benefits in the New York Dock given the UP/SP merger. The parties have agreed that the one (1) year (12 months) test period for "total compensation" would also be August 1,1995 to July 31, 1996.

The former SSW engineers were paid $1950.00 as contractual earnings in November 1995 as per the provision of Article 1 of the August 1, 1995 BLE/SSW Agreement (BLE/SSW Exhibit 7).

The Carrier has refused to include the $1950.00 as compensation in the total compensation paid to the SSW engineers during the agreed to twelve (12) months.

There is no dispute that this dispute has been handled both in correspondence and in conferences and is properly before this Board for adjudication.

In a letter dated November 23, 1998 (BLE/SSW Exhibit 22) over the signature of Director of Protection Management, Marilyn J. Ahart which was in response to our letter of October 23, 1998, Mrs. Ahart refused to include the $1950.00 and stated:

> *"I have discussed the facts of this case with Mr. Rock and Mr. Raaz. I have also reviewed New York Dock case history, and awards that support the exclusion of lump sum payments from the calculation of test period averages. Based on this review of the facts surrounding this case, I find no basis to support your request to include the November, 1995 $1950.00 lump sum payment into the TPA calculations of your members."* (emphasis added)

Under the agreed to New York Dock conditions and the automatic certification, the only dispute is the total compensation to be used in arriving at the average monthly compensation due each SSW engineer.

The first and second paragraph from Part 5 of the agreed to New York Dock conditions is quoted below:

> *5. Displacement allowances - (a) So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules and practices, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protective period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the average monthly compensation received by him in the position from which he was displaced.*
>
> *Each displaced employee's displacement allowance shall be determined by dividing separately by 12 the total compensation received by the employee and the total time for which he was paid during the last 12 months in which he performed service immediately preceding the date of his displacement as a result of the transaction (thereby producing average monthly compensation and average monthly time paid for in the test period), and provided further, that such allowance shall also be adjusted to reflect subsequent general wage increases.* (emphasis added)

The protection is based upon compensation received by the employee during the test period and the compensation received by the employee during the protection period, which is six (6) years in most cases.

It is the position of the SSW engineers and this BLE Committee that all compensation earned under the provisions of the On-property Agreement, which were agreed to in lieu of the BLE National Agreements, is contractual compensation that must be included in the compensation received during the test period. Given

the agreements, the numerous supportive documents in this submission, plus the acknowledgement of both UP and SP Labor Relations Officers regarding the $1950.00 being "compensation earned" under the Vacation Agreement there should be no dispute in that the $1950.00 is compensation noted in Part 5 of the New York Dock conditions.

Under Part 5, the monthly TPA is to be adjusted with all subsequent general wage increases. During the merger negotiations, in addition to the COLA lump sum payments, there were two (2) general wage increases, 3.5 percent July 1, 1997 and another 3.5 percent July 1, 1999. The UP engineer's TPA's were adjusted as per the provisions of the protective benefits. The SSW engineers that were still working under the SSW agreement did not receive the COLA lump sum and their TPA's were not adjusted as were the UP engineers.

During the test period, a UP engineer working twenty-two (22) days per month in yard service would have a monthly TPA which would be $152.02 per month more than the SSW yard engineer working the same number of days per month. In road service, the UP engineer would have $186.00 per month higher TPA. When you add the two (2) general wage increases, the difference becomes even more unfair.

Under the SSW Agreement, the engineers were still at the 108 mile basic day. When the SSW engineers were brought under one of the UP Agreements in one of the Hubs, they did not get the increase in their TPA equal to the increase given the UP engineers. Under the UP Agreements, the basic day was 130 miles; therefore, the SSW engineers were required to work sixteen percent (16%) more

during the protection period. The former SSW engineers' rate of pay was increased to the BLE National rates, which further reduced any TPA the SSW engineer may have received given the fact the SSW engineers did not receive the increases to their TPA's that the UP engineers received.

This Committee is of the opinion that we would be legally correct should we attempt to have the former SSW engineer's TPA increased a percentage equal to the percent of increase in the daily rate plus the two (2) general wage increases. The $1950.00 annual payment would pale when compared to the percentages. Absent the $1950.00, there would be an even greater disparity.

Regardless, the Carrier will argue and produce Board Awards that the $1950.00 was a lump sum payment or bonus payment and not compensation to be used in arriving at a total compensation for the twelve (12) months test period. The Carrier will argue the $1950.00 was payments in addition to the employee's usual compensation. In some agreement provisions, this Committee would agree that lump sum or bonus in excess of usual compensation should not be counted.

The $1950.00 in this case is not something that was to be paid in excess of usual compensation, it is not a lump sum payment or bonus paid in addition; therefore, the awards would not be relevant in this case. **The $1950.00 in this case is one component of the SSW engineers annual and usual compensation which was agreed to** by the former SSW Labor Relations Officers as a result of the SP generic agreements and the SSW General Committee Agreement reached in lieu of the last two (2) BLE National Agreements.

Given the clear and precise language in Article 1, the $1950.00 is contractual compensation to be paid to the qualifying SSW engineers in 1995, 1996, 1997 and after January 1, 1998 absent further changes in the agreement.

Absent the merger, there is no question in that the Article 1 compensation would have been included in any future BLE/SSW Agreements. The SSW engineers were entitled to all provisions of the SP Line Generic Agreements and all provisions of the BLE/SSW General Committee Agreements including the annual $1950.00 compensation in any future on-property agreements unless it was mutually agreed to return to national handling, which would have included all provisions of the 1991 and 1996 BLE National Agreements.

The Vacation Agreement and Part 5 of the New York Dock protective benefits refer to compensation earned and received by the employee during the year. Given the facts that both SP and UP Labor Relations Officers have agreed that the $1950.00 is compensation earned for vacation pay, the employees fail to understand why the $1950.00 is anything other than compensation for protective benefits or why this issue is before this Board.

From this record, the Board will also learn that the increased compensation paid to the trainmen in the January 1, 1995 Agreement included the $12.50 enroute meals, 40/40 yard meal, and the $20.00/$24.00 that was rolled into the trainmen rate of pay, all of which was used in arriving at the TPA for each SSW trainman. The $1950.00 annual payment is the result of these payments paid to the trainmen. If the "increased compensation" paid to the trainmen is not in

dispute, how can this Carrier defend their position in their decision not to include the same "additional compensation" paid to the engineers in a different manner.

A cursory review of the BLE/SSW Agreement will reveal the absence of express language excluding the compensation in Article 1 from the calculation of vacation pay or from the calculation of protective benefits, as was done in numerous past agreements when the parties intended to exclude any payments from vacation or protective benefits.

The Board's attention is directed to the signatures on page 13 of the SP Lines Generic Agreement (BLE/SSW Exhibit 5) and the signature on page 7 of the BLE/SSW General Committee Agreement (BLE/SSW Exhibit 7). The Board will learn the same officers negotiated and signed both agreements. From page 8 and 9 of (BLE/SSW Exhibit 5), the Board will find gain sharing to be provided under certain conditions and to be paid in a lump sum. Under Article 11(B), the Board will find the following:

> *Section B. The following options are available to employees receiving the above lump sum payments (which are not to be offset against any guarantee).*

If these Carrier Officers had intended to exclude any such payments found in the above provisions of the agreements from any guarantee, vacation pay, or protective benefits, it would have been made a part of the agreements.

Absent the express language to exclude the Article 1 payment regardless of how or when paid, the BLE/SSW engineers and this Organization are of the opinion this Board does not have the authority to alter the provisions of the BLE/SSW Agreement by adding such an exclusion under the guise of interpretation.

Given the absence of the exclusion, plus the other facts in this submission, the BLE/SSW engineers would respectfully request this Board to respond to Question 4 in favor of the SSW engineers in keeping with the intent and precise language in the agreement.

As with Question No. 3, Question No. 4 should be answered in the affirmative and the Carrier should be directed to make the adjustment and any back pay due the affected engineers within sixty (60) days.

Respectfully submitted,

D. E. Thompson
BLE/UP/SSW General Chairman

EXHIBITS

MEMORANDUM OF AGREEMENT

BETWEEN

SOUTHERN PACIFIC TRANS. CO. (WESTERN LINES) (Including FORMER EP&SW)
SOUTHERN PACIFIC TRANSPORTATION COMPANY (EASTERN LINES)
SOUTHERN PACIFIC TRANSPORTATION COMPANY (FORMER PACIFIC ELECTRIC)
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
DENVER & RIO GRANDE WESTERN RAILROAD COMPANY

AND THEIR ENGINEERS REPRESENTED BY

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

* * * * * * * * * * *

IT IS AGREED:

ARTICLE 1

For purposes of this Agreement, the term "1991 National Agreement" shall mean the changes in rates of pay, rules and working conditions which result from the process involving Emergency Board 219 and the Special Board established pursuant to Public Law 102-29, either imposed and/or as agreed between the Brotherhood of Locomotive Engineers and the National Carriers' Conference Committee.

ARTICLE 2

The Gain-Sharing Agreement appearing as Side Letter #5 hereto shall become part of this Agreement subject to ratification.

ARTICLE 3

(a) The lump sum payments (including the $2,000 lump sum upon signing) and general wage increases specified for the period July 1, 1991 through January 1, 1995 in the 1991 National Agreement will not apply to engineers employed by a Carrier signatory to this Agreement. The parties recognize the restoration of rates of pay provided by Article II(a) of this Agreement.

(b) The changes in the miles encompassing the basic day in through freight and through passenger service and the threshold of overtime contained in the 1991 National Agreement will not apply to engineers employed by a Carrier signatory to this Agreement. The 108-mile basis of pay and overtime divisors for through freight and passenger service contained in Article IV, Section 2(a), of the May 19, 1986 Award of Arbitration Board No. 458

EXHIBIT 1
Page 1 of 7

shall continue to be applicable to engineers employed by a Carrier signatory to this Agreement. The two preceding sentences notwithstanding, the parties recognize the basis of pay and threshold of overtime contained in the 1991 National Agreement are subject to becoming applicable to engineers employed by a Carrier signatory to this Agreement pursuant to Article 11(a) of this Agreement.

ARTICLE 4

The parties hereby recognize the continuation of the Railroad Employes National Health and Welfare Plan ("The Plan") and the Early Retirement Major Medical Benefit Plan ("ERMA") as set forth in the 1991 National Agreement. The parties agree, however, that the provisions concerning the use of up to one-half of the lump sum payments to be paid employees in the years 1992, 1993, 1994 and on January 1, 1995 to pay up to one-quarter of any increase in the year-to-year costs of the health insurance plans will not be applicable to engineers covered by this Agreement.

ARTICLE 5

The cost-of-living adjustments beginning on July 1, 1995 shall apply to engineers employed by a Carrier signatory to this Agreement on the same basis as contained in the 1991 National Agreement.

ARTICLE 6

(a) Commencing with the effective date of this Agreement, engineers employed by a Carrier signatory to this Agreement and who meet one of the seniority qualifications set forth below will be paid $12.00 for each tour of duty worked. This $12.00 differential will not be paid for deadhead tours of duty unless deadheading is combined with service and paid for on a combination basis.

(i) Have established seniority as an engineer with a Carrier signatory to this Agreement as of the effective date of this Agreement, or

(ii) Establish seniority as an engineer with a Carrier signatory to this Agreement subsequent to the effective date of this Agreement, and is a "protected employee" under a crew consist agreement in effect with a Carrier signatory to this Agreement, or

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(iii) Is identified as a participant in a training program leading to seniority as a locomotive engineer with a Carrier signatory to this Agreement as of the effective date of this Agreement and who successfully completes such training program and acquires a seniority date as locomotive engineer.

(b) The $12.00 differential provided by this Article is not subject to wage and/or cost-of-living increases, but will increase to $15.00 effective January 1, 1995.

(c) The differential provided by this Article is in addition to the $6.00/6 cents "no-fireman" rate or crew consist "special allowance" as provided by Side Letter #20 to the May 19, 1986 Award of Arbitration Board No. 458.

ARTICLE 7

(a) Commencing with the effective date of this Agreement, engineers employed by a Carrier signatory to this Agreement will receive any additional compensation paid to other members of the operating crew with which the engineer works. This entitlement to receive any additional compensation paid to other members of the operating crew shall continue until the effective date of settlement of a Section 6 notice served to amend this Agreement to change "compensation" by either BLE or the Company on or after November 1, 1994.

(b) Additional "compensation" as used in Article 7(a) is defined as compensation (either additional compensation for time worked or pay for time not worked, e.g., additional vacation, personal leave days, holidays or sick leave, etc.) in excess of the compensation paid on the effective date of this Agreement, with the exception of any lump sum payments or general wage increases provided to another operating crew member as the result of the PEB 219/Special Board process. If such additional compensation to another member of the operating crew requires the performance of a specific task, such compensation will only be payable to the engineer if the engineer assists in the performance of the specific task. Such additional compensation shall be paid to the engineer on a comparable basis as paid to other members of the operating crew with which the engineer works. Compensation other than earnings for the tour of duty accruing to another member of the operating crew shall also apply to the engineer.

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(c) If additional compensation is paid to more than one other member of the operating crew with which the engineer works, it is not intended that the engineer receive multiple payments. For example, if the conductor and the brakeman on a crew with which the engineer works are each paid an additional $10.00 per tour of duty, the engineer would be entitled to an additional payment of $10.00 only, not the total of $20.00 received by other members of the operating crew.

(d) In the event other operating crew members become entitled to a voluntary separation or dismissal allowance, this Article 7 is not intended to apply.

(e) The provisions of this Article 7 apply only to engineers eligible to receive the $12/$15 differential payable pursuant to Article 6.

ARTICLE 8

The rule changes involving road/yard contained in the 1991 National Agreement will not apply to engineers employed by a Carrier signatory to this Agreement. The parties recognize the road/yard rules contained in the 1991 National Agreement are subject to becoming applicable to engineers employed by a Carrier signatory to this Agreement pursuant to Article 11(a) of this Agreement.

ARTICLE 9

The meal allowance provided in Article II, Section 2, of the June 25, 1964 National Agreement, as amended, will be increased from $4.15 to $6.00 on the effective date of this agreement. An engineer held at the away-from-home terminal will be entitled to the allowances after being held four, eight, and twelve hours. If not on continuous held-away-from-home-terminal pay, the cycle will repeat itself after the expiration of twenty-four (24) hours from the tie-up time. In all other regards, the allowance will be paid consistent with the manner in which this allowance has been paid in the past.

ARTICLE 10 - EXCLUSIVE REPRESENTATION

A General Chairman may, at his option, notify the Carrier of that Committee's desire to implement the exclusive representation provisions of the 1991 National Agreement.

BLE EXHIBIT 1
Page 4 of 7

ARTICLE 11

(a) Section 6 notices to change provisions of this Agreement or other Agreements governing engineers may be served in the future by either party in accordance with the moratorium provisions contained in Article 11(c) of this Agreement. In the event such notices are served, the parties agree that on the effective date of the settlement of such notices the rates of pay shall be restored to the level to which they would have risen under the 1991 National Agreement or as agreed between the parties. Such restoration of rates of pay will not include retroactive payment for the wage increases and lump sums provided in the National Agreement. At the same time the rates of pay are restored, all work rules changes set forth in the 1991 National Agreement, including interpretations thereto, will also become effective, with the exception of the special pay differential and meal allowance. The parties hereto intend Articles 6 and 9 of this Agreement to supersede any similar provision contained in the 1991 National Agreement.

Example: Assume the rate of pay prior to this next contract was $10. Also assume that the next contract provided four (4) pay increases of 25 cents per hour and that the amendable date of the next contract was 1/1/95. Based on an agreement to a wage freeze, employees would be receiving $10 an hour rather than the industry $11 an hour rate. Assume a new contract is negotiated to be effective 7/1/95, providing for a 3% increase in pay. Under this agreement, employees would receive $10 an hour for the period 1/1/95 - 6/30/95 (the "status quo" period), and effective 7/1/95 would receive $11.33 an hour ($11 x 1.03), in effect being brought back up to the industry rate.

(b) Unless set forth in this Agreement, none of the rule changes contained in the 1991 National Agreement shall apply to engineers employed by a Carrier signatory to this Agreement, except as set forth in Article 11(a).

(c) The parties to this Agreement shall not serve nor progress prior to November 1, 1994 (not to become effective before January 1, 1995) any notice or proposal for changing any matter contained in:

(i) this Agreement

(ii) the 1991 National Agreement

(iii) notices dated as follows:

	Notices Served by BLE	Notices Served by Carrier
SP (Western Lines)	1/25/84 (2 notices) 6/01/88 & 6/08/88	2/08/84 1/30/89
SP (Eastern Lines)	1/13/84 & 1/17/84 6/03/88 & 6/08/88	1/18/84 1/30/89
D&RGW	1/03/84 & 1/17/84 6/01/88 & 6/07/88	1/17/84 6/16/88
SSW	1/03/84 & 1/25/84 6/1/88 (2 notices)	1/18/84 1/30/89
SP-WL (former PE)	1/03/84 & 1/27/84 6/01/88 (2 notices)	12/21/84 1/30/89

(iv) Section 2(c)(3) of Article VIII of the Agreement of March 6, 1975,

and any pending notices which propose such matters are hereby withdrawn, except the notices listed in Attachment A shall not be considered withdrawn and may be progressed in accordance with the Railway Labor Act.

(d) No party to this Agreement shall serve nor progress, prior to November 1, 1994 (not to become effective before January 1, 1995), any notice or proposal which might properly have been served when the last moratorium ended on July 1, 1988.

(e) This Article shall not bar the parties from agreeing upon any subject of mutual interest.

ARTICLE 12

This Agreement, signed at Vancouver, Canada, on June 28, 1991, shall become effective on July 1, 1991.

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FOR THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS:

D. M. Hahs, General Chairman
SPT (Eastern Lines)

C. L. James, General Chairman
D&RGW

E. L. Pruitt, General Chairman
SPT (Western Lines)

H. F. Stewart, General Chairman
SPT (former Pacific Electric)

D.E. Thompson, General Chairman
SSW

J. L. Dayton, Vice President

E. E. Watson, Vice President

d3/blel/wel

FOR THE CARRIER:

R. D. Bredenberg
General Manager, Eastern Region

A. L. Marzano
General Manager, Central Region

L. L. Phipps
General Manager, Western Region

L. G. Simpson, Vice President
Transportation-Quality

C. R. Huntington
Director, Labor Relations
SPT/SSW

P. B. Kingsolver, Director
Personnel & Labor Relations
D&RGW

W. E. Loomis
Director, Labor Relations
SPT

T. J. Matthews
Vice President, Human Resources

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Page 7 of 7

SOUTHERN PACIFIC LINES

LABOR RELATIONS
One Market Plaza Room 304, San Francisco, California 94105

February 22, 2993

Mr. D. E. Thompson, General Chairman
Brotherhood of Locomotive Engineers
414 Missouri Boulevard
Scott City, Missouri 63780

E&F 188-138-Vancouver

Dear Mr. Thompson:

On February 17, 1993, Tom Matthews and Bill Loomis met with Don Hahs, General Chairman on the BLE - EL to discuss Article 7 of the July 1, 1991 agreement in light of the December 1, 1992 UTU agreements.

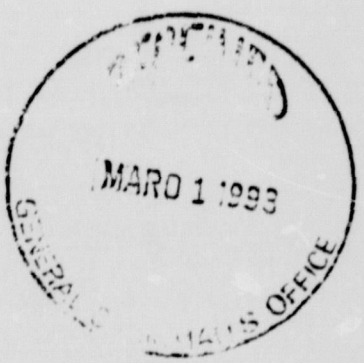
At that time, the Carrier offered to develop figures by March 2, 1993, indicating additional compensation that has actually been realized per trainman/switchman from November 1992 to January, 1993. These figures will be furnished to Mr. Hahs; similar information will also be furnished the General Chairman of the BLE - SSW.

Mr. Matthews and Mr. Loomis are willing to meet with General Chairman Hahs and General Chairman Thompson on March 15th and 16th at a location to be determined by the General Chairmen to work out an agreement.

Sincerely,

Jane E. Homsher

Jane E. Homsher
Senior Manager - Labor Relations



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SOUTHERN PACIFIC LINES
LABOR RELATIONS
One Market Plaza, Room 304, San Francisco, California 94105

May 6, 1993

Mr. D. E. Thompson, General Chairman
Brotherhood of Locomotive Engineers
414 Missouri Boulevard
Scott City, Missouri 63780

E&F 1-2312

Dear Mr. Thompson:

Following the end of the General Chairmen's meeting in Reno on April 23, 1993 I met with you and General Chairman Hahs to discuss the draft agreements which had been sent with my letter of April 12. BLE Vice Presidents Watson and Dean, as well as Director - Labor Relations Porter, were present at the meeting

After finishing the negotiations with Mr. Hahs we then addressed changes in the SSW draft. I asked you for a comprehensive list of changes which needed to be made in order to make the agreement complete. Based on your response, I compiled the following list:

1. You contended the numbers (i.e. Article II lump sums) are not accurate.

2. You wanted to include the $12.50 allowance in lieu of stopping to eat.

3. You mentioned "offset for extra board pay" based on Article IX of the UTU agreement - letter we agreed to remove this item from the list.

4. You wanted Article II., Section F of the agreement (future right to lump sums) the same as agreed with Mr. Hahs.

5. Article VI - You did not understand the first paragraph and wanted the local chairman to have the choice of auto mileage or airline ticket when traveling to Houston to conference claims.

The major item to be resolved centers around items 1 & 2 in the above list. When the parties met in Houston on March 15 we reviewed the Company's analysis of the additional cost it had incurred in SSW train/yard compensation as the result of the November 12, 1992 agreement with UTU. That analysis showed an annual added cost of $1,213,438. This number divided by 567 SSW trainmen/yardmen and then multiplied by 414 SSW engineers yields $886,002 as the "benchmark" number for added annual compensation to engineers.

BLE EXHIBIT 3
Page 1 of 4

After reviewing the Company's analysis, the parties caucused, during which each BLE General Chairmen prepared a list entitled INCREASED COMPENSATION setting forth items they would like to see in the agreement. A copy of the SSW list of desired INCREASED COMPENSATION is enclosed. There was considerable discussion about the various items, and additional items were "pencilled" in, such as a $12.50 allowance for SSW road freight engineers in lieu of stopping to eat en route. We did, however, discuss annual lump sums at the end of 1993 and 1994 in the amount of $1255 per engineer. The amount of these lump sums was determined by adding the indicated value for items #2 & #3 (a total of $519,719) and dividing by the 414 SSW engineers. I left the meeting on March 16 feeling that we had settled some items, among them the lump sum amounts.

On March 26, we met again, this time in Las Vegas, and discussed the draft agreement which had been prepared between March 16 and that date. While discussing the lump sums in Article II, we agreed to "round" them up to $1260.

On April 2, you wrote and stated you were "... of the opinion that we can reach agreement provided the following can be agreed to." Among the items listed in your letter were the lump sums at $1260 and the $12.50 allowance for not eating en route.

I replied by letter dated April 12, with enclosed copy of the revised agreement draft. The Company's position on the relationship between the lump sums and the $12.50 allowance in lieu of eating was expressed on the first page of the letter, as follows:

> "We are also not agreeable to the inclusion of a provisions for $12.50 in lieu of eating unless an offsetting change is made in the lump sums. You will recall, the $12.50 was not part of the UTU agreement on SSW so the cost of providing the same for SSW engineers was not included in the number of dollars to be spent on the 'me-too'. In the event we do go forward with a $12.50 provision for SSW engineers, it will be necessary to recalculate the number which will result in a change in, if not elimination of, the amounts payable as lump sums."

By profs note dated April 15, you contended that the numbers which had been used to date in the negotiations were inaccurate. As set forth in that note, your calculation is that the lump sums should have been $1622 prior to consideration of the $12.50 allowance in lieu of eating. With the $12.50 included (the annual value of which you calculate at $122,142) you think the lump sums should be $1327.

The preceding paragraphs are background to show what had taken place prior to the Reno meeting on April 23, 1993.

The Company is willing to accept the numbers shown on the 3/12/93 analysis and used thus far in negotiations, if you are also willing to accept these numbers.

BLE EXHIBIT 3
Page 2 of 4

However, the Company is not willing to accept your estimate of $122,142 as the cost of applying a $12.50 allowance in lieu of eating to SSW engineers in road freight service. It appears your estimate was calculated proportionately from the Eastern Lines number of $154,299, using 523 Eastern Lines and 414 SSW engineers. The additional annual cost to apply the $12.50 meal allowance on Eastern Lines was relatively low, because in many instances Eastern Lines engineers were already entitled to a sizeable meal allowance (i.e. the cost of the "new" allowance was mitigated by the savings as the result of eliminating the "old" allowances). The additional annual cost to apply the "new" $12.50 meal allowance on SSW will be higher than on Eastern Lines because of the lower level of "old" allowances which will disappear. We estimate the cost of applying the $12.50 meal allowance to engineers on SSW at $608,000 per year, as shown on the enclosed sheet, which will eliminate lump sum payments.

Tentative amount of lump sum money (414 times $1260)	= $521,640
Less - cost of $12.50 allowance in lieu of eating	= $608,000
Equals - revised amount available for lump sum	= $(86,360)
Revised lump sum	= $ (209)

On the other hand, if you desire to recalculate the numbers used in negotiation thus far, the Company will exercise the same privilege. In particular, we think the amount of $214, 285 shown on the INCREASED COMPENSATION list as the cost of rolling in the $12 is low. The analysis (the numbers reviewed in Houston on March 15 and 16) of the increased trainman cost as the result of rolling $20/$24 into their basis day is in excess of $1 Million:

Constructive Allowance - Brakeman	=	$ 135,792
Constructive Allowance - Conductors	=	$ 554,455
Constructive Allowance - Switchmen	=	$ 131,203
Overtime	=	$ 182,923
Total	=	$1,004,373

Your numbers indicate it would cost only $214,285 to roll $12 into the engineers rates of pay. This amount is only 21% of the cost of rolling the $20/$24 into the trainmen/switchmen rates of pay. Given that $12 is 60% of $20 and 50% of $24, it would seem the cost of rolling $12 into the engineers rates of pay would be somewhere between 50 and 60% of the cost of the trainmen/switchmen roll in. 55% of $1,004,373 is $552.405. That number divided by 567 SSW trainmen/switchmen and then multiplied by 414 SSW engineers yields $403,343 as the cost of rolling $12 into the rates of pay for 414 SSW engineers. From this point, the Company would calculate as follows:

Total dollars to be spent on SSW engineer "me-too" = $ 886,002

BLE EXHIBIT 3
Page 3 of 4

E&F 1-2312

AGREEMENT

between

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

and its ENGINEERS, FIREMEN AND HOSTLERS represented by

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

* * * * * * * *

Article 7 of the July 1, 1991 agreement between Southern Pacific Lines and Brotherhood of Locomotive Engineers provided for payment to locomotive engineers of any "additional compensation" paid to other members of the operating crew with which the engineers work. Agreements between St. Louis Southwestern Railway Company and the United Transportation Union representing trainmen and yardmen dated November 12, 1992 provided "additional compensation" to trainmen and yardmen on St. Louis Southwestern Railway. This agreement is in full and final settlement of Article 7 of the July 1, 1991 BLE Agreement as it relates to the November 12, 1992 UTU Agreements:

ARTICLE I

A. Effective July 1, 1993, the twelve dollar ($12.00) allowance provided engineers by Article 6 of the July 1, 1991 agreement will be rolled into the engineer's basic day. Thereafter, the $12.00 allowance specified in Article 6 of the July 1, 1991 Agreement will no longer be payable.

B. The basic day with the $12.00 allowance included will be applicable for engineers with a seniority date of July 1, 1991, or earlier, and for engineers who establish seniority subsequent to July 1, 1991, but who are "protected employees" under a crew consist in effect on the date of this agreement.

C. Effective January 1, 1994, the rate specified in Section B above will have an additional three dollars ($3.00) rolled in. This will be in lieu of the increase from $12.00 to $15.00 as specified in Article 6, Section (b) of the July 1, 1991 Agreement.

D. The existing basic daily rate (without the $12.00 allowance included) shall continue to be applicable for all engineers except those specified in Section B above.

E. The basic daily rates set forth in Sections B, C and D above will be used for all purposes for which the basic daily rate was used on March 16, 1993, such as, but not limited to, personal leave days, overtime,

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E&F 1-2312

AGREEMENT

between

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

and its ENGINEERS, FIREMEN AND HOSTLERS represented by

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

* * * * * * * *

Article 7 of the July 1, 1991 agreement between Southern Pacific Lines and Brotherhood of Locomotive Engineers provided for payment to locomotive engineers of any "additional compensation" paid to other members of the operating crew with which the engineers work. Agreements between St. Louis Southwestern Railway Company and the United Transportation Union representing trainmen and yardmen dated November 12, 1992 provided "additional compensation" to trainmen and yardmen on St. Louis Southwestern Railway. This agreement is in full and final settlement of Article 7 of the July 1, 1991 BLE Agreement as it relates to the November 12, 1992 UTU Agreements:

ARTICLE I

A. Effective July 1, 1993, the twelve dollar ($12.00) allowance provided engineers by Article 6 of the July 1, 1991 agreement will be rolled into the engineer's basic day. Thereafter, the $12.00 allowance specified in Article 6 of the July 1, 1991 Agreement will no longer be payable.

B. The basic day with the $12.00 allowance included will be applicable for engineers with a seniority date of July 1, 1991, or earlier, and for engineers who establish seniority subsequent to July 1, 1991, but who are "protected employees" under a crew consist in effect on the date of this agreement.

C. Effective January 1, 1994, the rate specified in Section B above will have an additional three dollars ($3.00) rolled in. This will be in lieu of the increase from $12.00 to $15.00 as specified in Article 6, Section (b) of the July 1, 1991 Agreement.

D. The existing basic daily rate (without the $12.00 allowance included) shall continue to be applicable for all engineers except those specified in Section B above.

E. The basic daily rates set forth in Sections B, C and D above will be used for all purposes for which the basic daily rate was used on March 16, 1993, such as, but not limited to, personal leave days, overtime,

BLE EXHIBIT 4

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E&F 188-145

MEMORANDUM OF AGREEMENT
BETWEEN
DENVER & RIO GRANDE WESTERN RAILROAD COMPANY
SOUTHERN PACIFIC TRANSPORTATION COMPANY (WESTERN LINES)
(including former EP&SW)
SOUTHERN PACIFIC TRANSPORTATION COMPANY (Former PACIFIC ELECTRIC)
SOUTHERN PACIFIC TRANSPORTATION COMPANY (EASTERN LINES)
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

AND THEIR ENGINEERS REPRESENTED BY

BROTHERHOOD OF LOCOMOTIVE ENGINEERS
Dated AUGUST 1, 1995

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AGREEMENT

BETWEEN

SOUTHERN PACIFIC LINES

DENVER & RIO GRANDE WESTERN RAILROAD COMPANY
SOUTHERN PACIFIC TRANSPORTATION COMPANY (WESTERN LINES)
(including former EP&SW)
SOUTHERN PACIFIC TRANSPORTATION COMPANY (Former PACIFIC ELECTRIC)
SOUTHERN PACIFIC TRANSPORTATION COMPANY (EASTERN LINES)
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

AND THEIR ENGINEERS REPRESENTED BY

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

* * * * * * * * * * *

IT IS AGREED:

ARTICLE 1

This agreement is the result of voluntary bargaining by all parties involved and is reached in lieu of bargaining as a result of Section 6 notices served by the parties on or after November 1, 1994, not to become effective prior to January 1, 1995. The term "1991 National Agreement" used in this Agreement refers to the BLE document dated July 29, 1991 which resulted from the process involving Emergency Board 219 and the Special Board established pursuant to Public Law 102-29.

ARTICLE 2 - SCOPE

Nothing in this Agreement or Article is intended to change, modify or alter the specific practices or agreement provisions between the parties regarding the scope of duties held by certified locomotive engineers represented by the Brotherhood of Locomotive Engineers. A certified locomotive engineer whose name appears on an engineer's seniority roster will be used to operate all sources of motive power operated by an employee of Southern Pacific Lines on any and all tracks of Southern Pacific Lines, with the exception of operation of motive power within engine service facility tracks, and operation of motive power by hostlers/hostler helpers in accordance with practice and/or applicable agreements. However, this exclusivity of operation will not apply to operation of motive power on SP Lines tracks under the control of another company with authority to operate on SP Lines trackage. It is understood that nothing in this article is intended to change past practice regarding the use of Road Foremen of Engines to handle engines.

ARTICLE 3 - RATE PROGRESSION

On the effective date of this agreement, Article IV, Section 6 of the May 19, 1986 Award of Arbitration Board No. 458 will be eliminated. On that date all engineers subject to rate progression will be brought up to full (100%) rates. Any engineer becoming certified as a locomotive engineer subsequent to the effective date of this agreement shall not be subject to rate progression.

ARTICLE 4 - ROLL IN OF $15 AND CERTIFICATION ALLOWANCE

Section A: On the effective date of this Agreement, the fifteen dollar ($15.00) differential paid to engineers pursuant to Article 6 of the July 1, 1991 Agreement will be rolled into the engineers' basic daily rates of pay where not already rolled in. Thereafter, the $15.00 differential specified in Article 6 of the July 1, 1991 Agreement will no longer be payable. This rate with the fifteen dollars rolled in shall be applicable to all engineers with seniority as of the effective date of this agreement, and to employees who:

(i) Establish seniority as an engineer subsequent to the effective date of this agreement, and is a system hostler or "protected employee" under a crew consist agreement in effect with a Carrier signatory to this Agreement, or

(ii) Have established seniority as a locomotive fireman as of the effective date of this agreement with a Carrier signatory to this Agreement.

Section B: Engineers who become certified as a Locomotive Engineer pursuant to 49 CFR part 240 after the effective date of this Agreement, and who are not identified in Section A (i) or (ii) above, will be paid a certification allowance as follows:

(i) Commencing with his/her date of certification, an engineer will be paid a certification allowance in the amount of $ 5.00 for each tour of duty worked. On the first anniversary of the engineer's certification, this allowance will increase to $ 10.00. On the second anniversary of the engineer's certification, payment of a separate certification allowance will cease and the engineer will become eligible for the rate specified in Section A above.

(ii) The certification allowance will not be paid for deadhead tours of duty unless deadheading is combined with service and paid for on a combination basis.

(iii) The $ 5.00 and $ 10.00 amounts of the certification allowance are not subject to future wage and/or cost-of-living increases.

Section C: On those portions of Southern Pacific Lines where the $6.00/6¢ "no-fireman" rate or crew consist "special allowance" is payable as set forth in Side Letter #20 of the May 19, 1986 Award of Arbitration Board No. 458, these allowances will be paid in addition to the basic daily rate in Sections A or B of this Article.

Section D: The basic daily rates referenced in Sections A & B of this Article will be used to calculate all compensation for which the basic daily rate was used immediately prior to the effective date of this Agreement, such as, but not limited to, overtime, deadhead, guarantees and vacation pay. No change in the application of Article IV, Section 5 or Article VI, Section 2(b) of the May 19, 1986 Award of Arbitration Board No. 458 is intended by this Agreement.

ARTICLE 5 - HIGHEST PAID MEMBER OF THE CREW

Section A. During Presidential Emergency Board No. 219 the BLE argued that the historical pay relationship between engineers and other members of the crew had been changed to the extent that the engineer was no longer the highest paid member of the crew. PEB 219 recommended as follows:

> "The Board does not believe that a practice which has taken a number of years to evolve should be changed all at once. Accordingly, while recognizing that an initial acknowledgement of the locomotive engineer's problems must be made, the Board will not attempt to write the last word on this subject. Rather, we recommend that the carriers make a payment of $12.00 a trip effective immediately to each engineers who operates a train without a fireman, which train crew has any member receiving 'productivity fund' payments. The payment should be increased to $15.00 per trip on January 1, 1995."

Section B. Subsequent to the recommendation of PEB 219 the BLE and the Company entered into an agreement incorporating the recommendations of PEB 219 in a way the parties felt best fit the situation at S.P. The parties to this Agreement reaffirm their continuing belief in the validity of the recommendations of PEB 219. In recognition of the possibility that other railroads may enter into agreements that respond affirmatively to this "highest paid member of the crew" issue, e.g. increase the $15.00, the Company agrees to the following:

1. If such provisions exist at 1 of the 3 western (BN, ATSF or UP) railroads, BLE shall have the right to initiate non Section 6 negotiations with the Company in order to seek commensurate additional compensation.

2. If such provisions exist at 2 of the 3 railroads listed above (1 of the 2 in the event BN & ATSF merge), such additional compensation will be granted to engineers represented by the committees signatory to this agreement.

3. If the parties are unable to agree on the future application of Section B. 2. of this article, this issue shall be progressed to expedited final and binding arbitration. The arbitrator has the authority and discretion to issue any decision which the arbitrator deems fair and reasonable taking into consideration all of the relevant circumstances. The Carrier will not argue financial hardship as a basis for an arbitration decision.

ARTICLE 6 - LIFE INSURANCE

Section A. The Company will provide life insurance to supplement that provided as part of the Railroad Employees National Health & Welfare Plan ("The Plan") so that the total benefit payable to the employee's estate will equal fifty thousand dollars ($50,000). In the event the IRS limit on imputed income to the employee is increased (currently $ 50,000), the Company agrees to increase the death benefit so that the total benefit payable is increased to the new IRS limit.

Section B. In the event of accidental death of an employee, the total benefit payable shall be twice that stated in Section A above.

Section C. The Company will work with BLE to establish a payroll deduction program for those employees who desire to purchase additional life insurance coverage.

Section D. This Article will become effective sixty (60) days following the effective date of this agreement.

ARTICLE 7 - VACATION

Section A. Insofar as applicable to employees represented by the Brotherhood of Locomotive Engineers, the Vacation Agreement dated April 29, 1949, as amended, is further amended effective January 1, 1996 by substituting the following paragraphs for the corresponding provisions contained in Sections 1(a), 1(b), 1(c), 1(d) and 1(e):

(a) Effective January 1, 1996, each employee, subject to the scope of schedule agreements held by organizations signatory to the April 29, 1949 Vacation Agreement, will be qualified for an annual vacation of two weeks with pay, or pay in lieu thereof, if during the preceding calendar year the employee renders service under schedule agreements held by the organizations signatory to the April 29, 1949 Vacation Agreement amounting to one hundred sixty (160) basic days in miles or hours paid for, as provided in individual schedules.

(b) Effective January 1, 1996, each employee, subject to the scope of schedule agreements held by organizations signatory to the April 29, 1949 Vacation Agreement, having two or more years of continuous service with employing carrier will be qualified for an annual vacation of three weeks with pay, or pay in lieu thereof, if during the preceding calendar year the employee renders service under schedule agreements held by the organizations signatory to the April 29, 1949 Vacation Agreement amounting to one hundred sixty (160) basic days in miles or hours paid for, as provided in individual schedules and during the said two or more years of continuous service renders service of not less than three hundred twenty (320) basic days in miles or hours paid for as provided in individual schedules.

(c) Effective January 1, 1996, each employee, subject to the scope of schedule agreements held by organizations signatory to the April 29, 1949 Vacation Agreement, having eight or more years of continuous service with employing carrier will be qualified for an annual vacation of four weeks with pay, or pay in lieu thereof, if during the preceding calendar year the employee renders service under schedule agreements held by the organizations signatory to the April 29, 1949 Vacation Agreement amounting to one hundred sixty (160) basic days in miles or hours paid for, as provided in individual schedules and during the said eight or more years of continuous service renders service of not less than one thousand two hundred and eighty (1280) basic days in miles or hours paid for as provided in individual schedules.

(d) Effective January 1, 1996, each employee, subject to the scope of schedule agreements held by organizations signatory to the April 29, 1949 Vacation Agreement, having seventeen or more years of continuous service with employing carrier will be qualified for an annual vacation of five weeks with pay, or pay in lieu thereof, if during the preceding calendar year the employee renders service under schedule agreements held by the organizations signatory to the April 29, 1949 Vacation Agreement amounting to one hundred sixty (160) basic days in miles or hours paid for, as provided in individual schedules and during the said seventeen or more years of continuous service renders service of not less than two thousand seven hundred and twenty (2720) basic days in miles or hours paid for as provided in individual schedules.

(e) Effective January 1, 1996, each employee, subject to the scope of schedule agreements held by organizations signatory to the April 29, 1949 Vacation Agreement, having twenty five or more years of continuous service with employing carrier will be qualified for an annual vacation of six weeks with pay, or pay in lieu thereof, if during the preceding calendar year the employee renders service under schedule agreements held by the organizations signatory to the April 29, 1949 Vacation Agreement amounting to one hundred sixty (160) basic days in miles or hours paid for, as provided in individual schedules and during the said twenty five or more years of continuous service renders service of not less than four thousand (4,000) basic days in miles or hours paid for as provided in individual schedules.

Section B. This Article is not intended to change past practices relating to applications of the vacation agreements, but is only intended to add one additional week of vacation to each qualifying period.

ARTICLE 8 - HEALTH AND WELFARE

The parties hereby recognize the applicability of Article III of the 1991 National Agreement concerning the Railroad Employees National Health and Welfare Plan ("The Plan") and the Early Retirement Major Medical Benefit Plan ("ERMA"). In the event legislation/regulations are passed which modify Article III of the 1991 National Agreement concerning health and welfare and early retirement/major medical, such modifications will be applicable to engineers employed by Southern

Pacific Lines. It is understood that engineers employed by Southern Pacific Lines will not be required to pay any health and welfare and early retirement/major medical costs except customary deductibles, co-payments, etc. required under the Plan or unless modified as set forth in the second sentence hereof.

If there are major benefit changes in the National Health and Welfare Plan the parties will meet to explore other alternatives and/or options available.

ARTICLE 9 - DISABILITY INSURANCE

The Company's contribution per engineer for disability insurance shall be increased from thirty five dollars ($ 35.00) to sixty three dollars and ten cents ($ 63.10) per month effective January 1, 1995. If the monthly contribution necessary to maintain the current level of benefits changes after December 31, 1997, the Company will pay the new amount, however, the Company reserves the right to revert to paying $ 63.10 per month upon ninety (90) day's advance notice given on or after January 1, 1998. This Article 9 supersedes Side Letter #4 of the July 1, 1991 Agreement.

ARTICLE 10 - COMPETITIVE ADJUSTMENT

Article 7 of the July 1, 1991 Agreement is superseded and replaced with the following:

Section A. Should another member of the operating crew with whom an engineer works receive additional compensation, in excess of what was provided by agreement on the effective date of this Agreement, engineers will also receive such additional compensation.

Section B. This entitlement to initiate a demand for equivalent additional compensation shall continue until the effective date of settlement of a Section 6 notice served in accordance with Article 22 of this Agreement.

Section C. Additional "compensation" as used in this Article 10 is defined as compensation (either additional compensation for time worked or pay for time not worked, e.g. additional vacation, personal leave days, holidays or sick leave, etc.) in excess of the compensation paid on the effective date of this Agreement, with exceptions as listed in Section D below. If such additional compensation to another member of the operating crew requires the performance of a specific task, such compensation will only be payable to the engineer if the engineer assists in the performance of the specific task. Such additional compensation shall be paid to the engineer on a comparable, or essentially matching, basis as paid to other members of the operating crew with whom the engineer works unless, as negotiated in the past, the parties mutually agree to a different form of compensation. Compensation other than earnings for the tour of duty accruing to another member of the operating crew shall also apply to the engineer.

Section D - Exceptions

1. Lump sum payments, general wage increases or cost-of-living allowances provided to another operating crew member as the result of the PEB 219/Special Board process.

2. Compensation to another operating crew member identical to, or essentially matching, compensation provided to engineers in this agreement or in companion local issues agreements.

3. Voluntary separation or dismissal allowances, or payments under a labor protective condition, either imposed or agreed between the parties.

4. If additional compensation is paid to more than one other member of the operating crew with whom the engineer works, it is not intended that the engineer receive multiple payments. For example, if the conductor and brakeman on a crew with whom the engineer works are each paid an additional $ 10.00 per tour of duty, the engineer would be entitled to an additional payment of $ 10.00 only, not the total of $ 20.00 received by other members of the operating crew.

ARTICLE 11 - GAINSHARING

Section A. Engineers will be entitled to a gainsharing lump sum payment if Southern Pacific Lines (the combined carriers) meets or exceeds the operating ratio targets set forth in the Executive Stock Grant Plan:

(i) Engineers will be entitled to a 3% lump-sum payment based on the individual's W-2 earnings as an engineer (including 401-k contributions) if the operating ratio for 1995 is at or lower than the operating ratio goal established in the Executive Stock Grant Plan (currently 88.0). The lump-sum to be paid by the end of the first quarter of 1996.

(ii) Engineers will be entitled to a 3% lump-sum payment based on the individual's W-2 earnings as an engineer (including 401-k contributions) if the operating ratio for 1996 is at or lower than the operating ratio goal established in the Executive Stock Grant Plan (currently 85.0). The lump-sum to be paid by the end of the first quarter of 1997.

(iii) Engineers will be entitled to a 3% lump-sum payment based on the individual's W-2 earnings as an engineer (including 401-k contributions, if the operating ratio for 1997 is at or lower than the operating ratio goal established in the Executive Stock Grant Plan (currently 83.0). The lump-sum to be paid by the end of the first quarter of 1998.

Section B. The following options are available to employees receiving the above lump sum payments (which are not to be offset against any guarantee):

(i) Accept payment of dollar amount by separate check.

(ii) Accept Company stock in an amount equal to the lump sum payment based on the dollar value of the stock on the open market as of close of trading December 31 of the operating ratio qualifying year.

(iii) Accept as payment a transfer into the employee's respective 401K Plan, subject to applicable IRS regulations and limitations.

(iv) Accept payment in the form of Company stock in an amount equal to the lump sum payment based on the dollar value of the stock on the open market as of close of trading December 31 of the operating ratio qualifying year, transferred into the employee's respective 401K Plan, subject to IRS regulations and limitations.

The Company reserves the right to make any lump sum payments due under this Article 11 pursuant to items (i) or (iii) above in cash instead of stock.

Section C. In the event the operating ratio for a particular year is not achieved but the Compensation Committee, as noted on page 66 of the Southern Pacific Corporation Common Stock Prospectus dated February 23, 1994, awards all or a portion of the number of bonus shares, or cash in lieu of, to any officer of Southern Pacific Lines, employees covered by this Agreement will be paid a fraction of the 3% lump sum corresponding to the portion of the bonus or, the 3% lump sum payment as provided above if all of the bonus is awarded.

Section D. There shall be no duplication of lump sum payments by virtue of employment under an agreement with another organization.

Section E. In the event the Executive Stock Grant Option plan is eliminated (or modified in a manner that adversely affects the ability of engineers to earn the gainsharing payment) during the life of this Agreement, the parties may thereafter commence negotiations pursuant to Section 6 of the Railway Labor Act regarding a wage increase which, if adopted, would be effective July 1, 1996.

Section F. In the event gainsharing agreements are reached with other organizations, which differ from the terms of this understanding, the BLE may, at its option, reopen negotiations on the subject of gainsharing for the purpose of reaching an agreement of the same value and type reached with such other organizations.

ARTICLE 12 - BEREAVEMENT LEAVE

Section A. The application of Bereavement Leave as set forth in Article XI of the June 26, 1978 National BLE Agreement shall be modified to permit payment of 3 minimum day's pay at the rate of the last service rendered for Bereavement Leave without regard to whether the employee stood to perform service on any of the three days.

Section B. Bereavement Leave will be allowed in the case of death of any engineer's following relatives:

Brother
Sister
Parent
Child
Spouse
Spouse's Parent
Half-brother
Half-sister

ARTICLE 13 - WEIGHT ON DRIVERS

Section A. In order to apply a uniform method of paying engineers based on the number of units in the consist instead of the weight on drivers, the existing agreement provisions relating to pay based on weight on drivers (such as Rule 1 A on D&RGW; Article 33 on Western Lines; Article 27, Sections 11(a) and (b) on former EP&SW; Article 28, Section 7 on Eastern Lines and Article 34 on SSW) are cancelled and replaced with the following system.

Section B. The parties have agreed upon an average weight for a three-unit pool (through) freight consist as 1,200,000 to 1,250,000 pounds. Therefore, pool (through) freight engineers shall be paid based on the existing rates for 1,200,000 to 1,250,000 pounds with $ 1.44 per unit per basic day and 1.44¢ per unit per overmile in excess of three.

Section C. The parties have agreed upon an average weight for a two-unit consist in local freight/road switcher/yard/other service as 700,000 to 750,000 pounds. Therefore, local freight/road switcher/yard/other engineers shall be paid based on the existing rates for 700,000 to 750,000 pounds with $1.26 per unit per basic day and 1.26¢ per unit per overmile for each unit in excess of two.

Section D. The 1,200,000 to 1,250,000 pounds rate for pool (through) freight service and the 700,000 to 750,000 pound rates for local/road switcher/yard and other service which existed on the day immediately prior to the effective date of this agreement shall be used for all purposes for which a minimum basic day is specified in the agreement except for extra board guarantees. Extra board guarantees which are stated as a specified number of basic days per period will be calculated using the lowest (least amount of weight) rate which existed prior to the effective date of this agreement. No change to Article 4 of the May 19, 1986 Award of Arbitration Board No. 458 is intended by this Article 13.

ARTICLE 14 - CLAIMS CONFERENCES

Section A. Claims conferences requiring access to centralized crew records will be scheduled as needed at the Company's centralized timekeeping office. Local Chairmen attending will be allowed auto mileage or be provided airline tickets, meal allowance, lodging if overnight stay is required, and will be allowed all necessary and reasonable expenses in addition to 175 miles at the five day yard rate of pay for each day.

Section B. Local Chairmen will be reimbursed if they obtain their own airline ticket, provided such ticket involves a fare reasonably comparable to the ticket which would be furnished by the Company.

ARTICLE 15 - REST RULE

Section A. No engineer shall be required to be on duty when he/she needs rest, nor shall any engineer be permitted to run on the road when his/her physical ability has been fairly taxed by previous service before he/she has had needed rest.

Section B. When an engineer feels he/she needs rest, he/she must indicate at the time tying up the number of hours required from time of tying up until time called. The number of hours of rest indicated, if any, at the time of tying up will not be changed. The number of hours of rest at the away-from-home-terminal may be either eight (8), ten (10) or twelve (12) hours undisturbed. The number of hours at the home terminal may be eight (8), ten (10), twelve (12) or eighteen (18) hours undisturbed.

Section C. This article is not intended to change past practices relating to application of the rest rule as to, but not limited to, runarounds and entitlement to compensation.

ARTICLE 16 - YARD ENGINEERS

On the effective date of this agreement, Article 16 will become effective except at locations on the system where regularly assigned relief yard jobs currently exist. At these locations on a yard-by-yard basis the BLE membership will have a one-time opportunity to accept the provisions of this Article 16 on an experimental basis for 180 days. At locations where accepted, all regularly assigned relief yard jobs will be abolished. At the end of the 180 day period, each yard will have a one-time opportunity to retain this Article 16 or opt out permanently.

Section A. If service is required by Carrier, regularly assigned yard engineers, at their option, will be allowed to work one or both their regularly assigned days off ahead of engineers requesting to make up days and the engineers' extra board provided they have worked five (5) shifts (either straight time or overtime) in yard service in the work week previous to their regularly assigned

days off. A regularly assigned yard engineer working his/her days off, under this agreement, will be paid at the applicable overtime five-day yard rate for the first eight hours. Hours in excess of eight shall be paid at the double time rate if the regularly assigned yard engineer works on the sixth and seventh day of his/her assignment.

Note: If the regularly-assigned job is blanked by the Carrier, the day(s) on which the job is blanked and days on which the regularly assigned engineer does not perform service on his/her regularly assigned job at the instance of the Company, union business, vacation, jury duty, bereavement leave or personal leave days will be counted toward the five shift requirement.

Section B. If service is required by Carrier, an engineer regularly assigned to a five (5) day yard assignment that is not relieved on its rest days and who has worked five shifts during the week as set forth in Section 1 above, may, at his/her option, request to be placed on the makeup board. Service performed by makeup board engineers on their rest days shall be paid at the applicable overtime five-day yard rate for the first eight hours, with hours in excess of eight at the double time rate

Section C. Engineers on the makeup board stand for service after engineers contemplated by Section 1 above and ahead of the engineers' extra list in seniority order among those on the makeup board who are rested and whose use would not cause them to be not rested for their own assignments.

Section D. Regularly assigned yard engineers desiring to work their days off or engineers desiring to work the makeup board must notify the crew dispatcher not later than one hour following completion of their last yard shift prior to their rest days. Regularly assigned engineers who have notified the crew dispatcher of their desire to work the rest days of their assignment will be expected to report for such work without benefit of call.

Section E. All agreements, rules and practices relating to yard service not specifically modified herein remain in full force and effect.

ARTICLE 17 - LUMP SUM PAYMENTS

All lump sum payments, other than those which may be paid due to a shortage in the engineers regular pay, received may be placed into the engineer's 401-K plan to the extent that the laws/regulations at the time of payment allows.

ARTICLE 18 - EXPUNGE DISCIPLINE RECORD

Information concerning discipline more than five (5) years old contained in personal records will be expunged with the exception of suspension or dismissal involving violations of FRA regulations or Safety Rules, which were upheld in arbitration.

ARTICLE 19 - COST OF LIVING ALLOWANCES AND ADJUSTMENTS

The effective date of the first cost of living allowance pursuant to Article 5 of the July 1, 1991 Agreement shall be deferred from July 1, 1995 until July 1, 1998. Accordingly, the measurement period for the first allowance shall compare March 1998 with September 1997.

ARTICLE 20 - MANDATORY CLASSES

Carrier will provide mandatory classes in response to FRA requirements. When engineers are required to attend mandatory classes, they will be compensated in accordance with current agreement provisions. In addition, Carrier will provide educational materials to engineers to cover new technology and equipment that engineers are required to operate or which changes the environment in which the engineer is required to operate.

ARTICLE 21 - VISION CARE

The Company will establish a payroll deduction program for those employees who desire to purchase vision care.

ARTICLE 22 - GENERAL AND MORATORIUM

Section A. This Agreement and the companion local issue agreements supersede all portions of existing agreements with which they conflict and replace specific agreement provisions as designated herein. Unless set forth in this Agreement, none of the provisions contained in the 1991 National Agreement shall apply to engineers employed by Southern Pacific Lines.

Section B. Neither Southern Pacific Lines nor BLE (one or more of the General Committees of Adjustment participating in this agreement) shall participate in future national handling of rates of pay, rules and working conditions without agreement in advance on which provisions of the then existing collective bargaining agreements (in effect on the Committee(s) which will participate in national handling) will not be subject to change as the result of national handling.

Section C. The parties to this Agreement shall not serve nor progress prior to January 1, 1997 (not to become effective before January 1, 1998) any notice or proposal for changing any matter contained in this Agreement or the companion local issue agreements or any notice or proposal which might properly have been served when the last moratorium ended on November 1, 1994. This moratorium shall not bar the parties from agreeing upon any subject of mutual interest.

This Agreement shall become effective on August 1, 1995.

FOR THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS:

D. M. Hans, General Chairman
SPT (Eastern Lines)

C. L. James, General Chairman
D&RGW

E. L. Pruitt, General Chairman
SPT (Western Lines)

H. F. Stewart, General Chairman
former Pacific Electric

D. E. Thompson, General Chairman
SSW

R. E. Dean, Vice President-BLE

FOR THE CARRIER:

E. A. Christie
Manager, Labor Relations

K. E. Johnson
Manager, Labor Relations

C. M. Senter
Manager, Labor Relations

W. E. Loomis
Director, Labor Relations

T. J. Matthews
Chief Administrative Officer

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SOUTHERN PACIFIC LINES

Labor Relations Department • One Market Plaza, Room 304 • San Francisco, California 94105 • Fax 415-541-1087

CHIEF ADMINISTRATIVE OFFICER
T. J. MATTHEWS

August 1, 1995

E&F 188-145
Side Letter #3
Competitive Adjustment

Mr. D. M. Hahs, General Chairman
Brotherhood of Locomotive Engineers
515 Northbelt, Suite 120
Houston, Texas 77060

Mr. E. L. Pruitt, General Chairman
Brotherhood of Locomotive Engineers
38750 Paseo Padre Parkway, Suite A-7
Fremont, California 94536

Mr. D. E. Thompson, General Chairman
Brotherhood of Locomotive Engineers
414 Missouri Boulevard
Scott City, MO 63780

Mr. C. L. James, General Chairman
Brotherhood of Locomotive Engineers
P. O. Box 7443
Pueblo West, Colorado 81007

Mr. H. F. Stewart, General Chairman
Brotherhood of Locomotive Engineers
335 N. Arroyo Drive
San Gabriel, CA 91775

Gentlemen:

This is to confirm our discussion in connection with Article 10, Section D. 2. of the agreement dated August 1, 1995. The parties recognize that Article 6 - Life Insurance; Article 7 - Vacations and Article 9 - Disability Insurance of the agreement dated August 1, 1995 represent changes in compensation. However, these changes were in lieu of cost-of-living increases every six months effective 7/1/95, three personal leave days annually negotiated in the 1991 agreement and the 15 cent (15¢) increase in overmiles provided on page 79 of Presidential Emergency Board 219. Therefore, if additional compensation of an identical or essentially matching nature is granted to another member of the crew without an identical or comparable offset, then the additional compensation will be subject to the provisions of this article.

Respectfully,

Thomas J Matthews

T. J. Matthews

Concurrence:

D. M. Hahs

D. M. Hahs, General Chairman

Earl L. James

E. L. James, General Chairman

BLE EXHIBIT 5a
Page 1 of 3

Earl L. James
C. L. James, General Chairman

E. L. Pruitt
E. L. Pruitt, General Chairman

H. F. Stewart
H. F. Stewart, General Chairman

D. E. Thompson
D. E. Thompson, General Chairman

BLE EXHIBIT 50
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11/18/94

SSW BLE - LOCAL ISSUES

Basic Rates and Pay/Job

Service	Basic Day	August '94 Avg Actual Pay/Job*	August '94 # Events	Approx Emplys
Thru/pool	$137.10	$251	4,615	300
Road/Loc	$137.66	$236	524	20
Yard	$145.31	$179	1,493	71

* Excludes guarantees, runarounds, held days, jury duty, bereavement leave, etc.

D. **Personal Leave Days**

# Emplys	Basic Thru frt Rate	Annual Cost Per PL Day
391	$137.10	$53,606

Add to this any cost of training an benefits of new hires required by shortages created by PL days.

E. **Increase Compensation Due from $12.50 and 40/40...**

$608,000

F. **Overtime After 12 hours.**

Service	Jan '94 Thru Sept '94 # Events Affected*	Jan '94 Thru Sept '94 Add'l OT Hours	Annualized Add'l OT Hours	OT Rate	Annual Cost
Thru/pool	642	561.3	748	$25.71	$19,239
Road/Loc	128	118.5	158	$25.81	$4,078
				Total	$23,317

* Where ST pay > 0, OT pay = 0, and time worked > 12 hrs

M. **100% Entry Rate @ Promotion**

The 100% rate upon promotion represents a cash stream paid by the Company.

Assume the 100% salary is $60,000. The cost per year per new hire is as follows:

Year 1	Year 2	Year 3	Year 4	Year 5
$15,000	$12,000	$9,000	$6,000	$3,000

BLE EXHIBIT 6
Page 1 of 3

11/18/94

SSW BLE - LOCAL ISSUES

P. Shortage of Engineers

Annual # trips by Company Officials	Approx Penalty per Trip	Annual Cost
365	$377.11	$137,645

Q. Additional 3% Lump Sum

1993 BLE Payroll	3% Lump Sum
$24.0 million	$720,000

BLE EXHIBIT 6
Page 2 of 3

SSW BLE - LOCAL ISSUES

B. Continuous HAHT

The data below applies to the following pools

Pool Code	Description
DC	Dalhart - Tucumcari
PR	Pratt - Herrington
HN	Herrington - Kansas City
JC	Jefferson City - Kansas City
JS	Jefferson City - E. St. Louis
SN	Illmo - E. St. Louis
PS	Pine Bluff - Shreveport

Minimum Additional Cost

Interval for HAHT Hours Paid	Minimum Duration @ Away Terminal	Minimum Add'l HAHT Hrs. Paid Per Trip (contin.)	Jan. '94 Thru Sept. '94 Affected Trips	Jan. '94 Thru Sept. '94 CA Hrs.	Jan. '94 Thru Sept. '94 CA Pay	Minimum Add'l CA Hrs. (contin.)	Minimum Add'l CA Pay (contin.)
0 < x <= 8	16	0	3,144	11,196	$200,122	0.0	$0
8 < x <= 16	32	16	5	58	$1,040	80.0	$1,435
						Total:	$1,435
						Minimum Annual Cost:	**$1,914**

Potential Costs Above the Minimum

The minimum annual cost shown is minimum because it does not capture all the additional HAHT hours that would be paid under the proposed rule. The reason is that only HAHT hours PAID were available, hours spent at the away terminal were not available.

For example, assume that under the current rule an individual was paid 16 hours HAHT for spending 47 hours at the away termainal. If it is known only that 16 hours were paid, and the actual time at the away terminal is not known, it can only be known for certain that a minimum of 32 hours were spent at the away terminal. The continuous rule cost of the additional hours beyond the 32 would be known. However, a maximum POTENTIAL cost above the minimum cost could be investigated by figuring the cost of an additional 15 hours. This is calculated below for each interval.

Interval for HAHT Hours Paid	Assumed Maximum Duration @ Away Terminal	Assumed Maximum HAHT Hrs. Paid Per Trip Above Minimum	Jan. '94 Thru Sept. '94 Trips	Jan. '94 Thru Sept. '94 CA Hrs.	Jan. '94 Thru Sept. '94 CA Pay	Maximum CA Hrs. Above Minimum	Maximum CA Pay Above Minimum
= 8	16 + 15	15	433	3,464	$61,849	6,495	$115,966
= 16	32 + 15	15	0	0	$0	0	$0
						Total:	$115,966
						Potential Annual Cost Above Minimum:	**$155,000**

BLE EXHIBIT 6
Page 3 of 3

SOUTHERN PACIFIC LINES

Labor Relations Department • One Market Plaza, Room 304 • San Francisco, California 94105 • Fax 415-541-1087

CHIEF ADMINISTRATIVE OFFICER
T. J. MATTHEWS

August 1, 1995

E&F 188-145
Side Letter #3
Competitive Adjustment

Mr. D. M. Hahs, General Chairman
Brotherhood of Locomotive Engineers
515 Northbelt, Suite 120
Houston, Texas 77060

Mr. E. L. Pruitt, General Chairman
Brotherhood of Locomotive Engineers
38750 Paseo Padre Parkway, Suite A-7
Fremont, California 94536

Mr. D. E. Thompson, General Chairman
Brotherhood of Locomotive Engineers
414 Missouri Boulevard
Scott City, MO 63780

Mr. C. L. James, General Chairman
Brotherhood of Locomotive Engineers
P. O. Box 7443
Pueblo West, Colorado 81007

Mr. H. F. Stewart, General Chairman
Brotherhood of Locomotive Engineers
335 N. Arroyo Drive
San Gabriel, CA 91775

Gentlemen:

This is to confirm our discussion in connection with Article 10, Section D. 2. of the agreement dated August 1, 1995. The parties recognize that Article 6 - Life Insurance; Article 7 - Vacations and Article 9 - Disability Insurance of the agreement dated August 1, 1995 represent changes in compensation. However, these changes were in lieu of cost-of-living increases every six months effective 7/1/95, three personal leave days annually negotiated in the 1991 agreement and the 15 cent (15¢) increase in overmiles provided on page 79 of Presidential Emergency Board 219. Therefore, if additional compensation of an identical or essentially matching nature is granted to another member of the crew without an identical or comparable offset, then the additional compensation will be subject to the provisions of this article.

Respectfully,

Thomas J Matthews

T. J. Matthews

Concurrence:

D. M. Hahs

D. M. Hahs, General Chairman

Carl L. James

C. L. James, General Chairman

BLE EXHIBIT 7
Page 1 of 9

E&F 188-145

MEMORANDUM OF AGREEMENT
BETWEEN
ST. LOUIS SOUTHWESTERN RAILWAY
AND THE
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
Dated AUGUST 1, 1995

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E&F 188-145

MEMORANDUM OF AGREEMENT

BETWEEN

ST. LOUIS SOUTHWESTERN RAILWAY

AND

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

* * * * * * * * *

ARTICLE 1: ADDITIONAL COMPENSATION

Article 7 of the July 1, 1991 agreement between Southern Pacific Lines and Brotherhood of Locomotive Engineers provided for payment to locomotive engineers of any "additional compensation" paid to other members of the operating crew with which the engineers work. Agreements between St. Louis Southwestern Railway Company and the United Transportation Union representing trainmen and yardmen effective January 1, 1995 provided "additional compensation" to trainmen and yardmen on St. Louis Southwestern Railway. The provisions in this Article are in full and final settlement of Article 7 of the July 1, 1991 BLE Agreement as it relates to the January 1, 1995 UTU Agreement:

(A) Engineers who perform sufficient service during 1995 on the St. Louis Southwestern Railway to qualify for vacation pay in 1996 will receive a lump sum payment of $1950.00. This payment is to be included with pay for the second period of November, 1995.

(B) Engineers who perform sufficient service during 1996 on the St. Louis Southwestern Railway to qualify for vacation pay in 1997 will receive a lump sum payment of $1950.00. This payment is to be included with pay for the second period of November, 1996.

(C) Engineers who perform sufficient service during 1997 on the St. Louis Southwestern Railway to qualify for vacation pay in 1998 will receive a lump sum payment of $1950.00. This payment is to be included with pay for the second period of November, 1997.

(D) The parties agree that the entitlement set forth in Article 7 of the July 1, 1991 Agreement (superseded by Article 10 of the August 1, 1995 Agreement) continues to exist after January 1, 1998 unless there have been changes in the agreement affecting Article 7 (superseded by Article 10 of the August 1, 1995 Agreement) or changes in the underlying conditions which gave rise to additional compensation. In the event of such changes, the parties will meet and determine the changes needed in this Article 1.

ARTICLE 2: EXTRA BOARD GUARANTEE

Article II, Section 1 of Addendum No. 7 dated September 11, 1991 and Article I of the July 1, 1991 Agreement between the St. Louis Southwestern Railway and the Brotherhood of Locomotive Engineers are cancelled and replaced with the following:

Section 1: The existing extra boards referred to in Article 65-5 shall become guaranteed pursuant to the provisions of Side Letter No. 20 of the May 19, 1986 Award of Arbitration Board No. 458 and the following:

(A)(1) Engineers assigned to guaranteed road extra boards or auxiliary extra boards shall be guaranteed fifteen (15) days per pay period provided they remain marked up and available for service the entire pay period.

(2) The daily rate of pay shall be the basic through freight rate plus $15.00 per day.

(3) For each calendar day or portion thereof an engineer is unavailable for service, the total daily rate of pay as noted in (2) immediately above shall be deducted from the semi-monthly guarantee in accordance with Addendum No. 7 - Questions and Answers dated January 16, 1992.

(B)(1) Engineers assigned to guaranteed yard extra boards shall be guaranteed twelve (12) days per pay period provided they remain marked up and available for service the entire pay period.

(2) The daily rate of pay shall be the basic yard rate plus $15.00 per day.

(3) For each calendar day or portion thereof an engineer is unavailable for service, the total daily rate of pay as noted in (2) immediately above shall be deducted from the semi-monthly guarantee in accordance with Addendum No. 7 - Questions and Answers dated January 16, 1992.

(C) Should there be any change in the basic through freight rates and/or the basic yard rate, the guarantees shall be changed proportionately and the daily deduction shall also change proportionately.

ARTICLE 3: PERSONAL LEAVE DAYS

Section A: On a calendar year basis, engineers (i.e. engineers permanently assigned to a position that observes the holiday rule) shall have the option of electing to take personal leave days in lieu of holidays. Engineers may not change their election during the calendar year.

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Section B: Should the engineer elect personal leave days, the engineer shall be required to provide written notice to the designated Carrier Officer and the BLE Local Chairperson with their vacation requests for the subsequent year.

Section C: An engineer who has elected personal leave days in lieu of holidays shall be paid one basic day at the rate of the last service performed for each personal leave day taken. Any such engineer performing service on a holiday will be paid at the applicable time-and-one half rate of pay but will not be entitled to holiday pay (the basic day's pay).

Section D: An engineer must be continuously assigned to a position that observes the holiday rule for ninety (90) days prior to requesting personal leave days. Personal leave days may only be taken when an engineer is assigned to a position that observes the holiday rule.

Section E:

(1) A request for a personal leave day by an engineer must be made and promptly confirmed in writing by the employee to the appropriate Company representative upon being relieved on the preceding work day to fill the position on the day or days to be taken and shall be granted to the extent permitted by the requirements of the service. Requests for personal leave days must be timely made in order to schedule all approved requests prior to the expiration of the calendar year.

(2) If the requirements of the service do not permit the engineer to take the requested personal leave days, and the Company representative refuses to grant the request, the number of personal leave days so requested and not granted may be carried over, but requests must be confirmed in writing and granted prior to May 1 of the following year.

ARTICLE 4: FLAT RATE RUNS

An experiment will be conducted on the Jefferson City to Kansas City pool and the Jefferson City to E. St. Louis pool to determine the feasibility of establishing run specific rates on all pool freight assignments. In conducting this experiment, earnings from the period January 1, 1994 through December 31, 1994 will be used. The details of implementation of the experiment will be worked out by a team consisting of at least one member representing SSW and at least one member representing the BLE. Carrier will pay reasonable expenses and lost earnings of a maximum of two (2) BLE representatives for not more than seven (7) days per month.

ARTICLE 5: EMPLOYEE INVOLVEMENT

Section A - Selection of Participants. The Company's General Manager, or designate, and the Local Chairperson of the BLE will select employees for participation in Employee Involvement Programs. Every effort will be made to offer participation in employee involvement to as many employees as possible. An employee's participation in multiple projects at the same time should be avoided.

Section B - Review and Veto Rights.

1. All projects, subjects and topics of consideration of the Employee Involvement Program will be available for review by the General Chairperson. When the General Chairperson determines that a project is subject to or is in conflict with the terms and conditions of the collective bargaining agreement, the General Chairperson shall have the absolute right to review and/or terminate the project, subject and/or topic of consideration.

2. The work force needs of the service will be considered when scheduling employee participation. If the needs of the service are not being met, the General Chairperson, after conference with the General Manager, shall have the right to temporarily suspend a project until such time as a sufficient work force is available to provide for the needs of the service.

Section C - Compensation. Employees will be compensated for a day's attendance in involvement programs in the following manner:

1. If the employee does not lose a work opportunity, the employee will be compensated a minimum basic day at the applicable straight time rate of pay.

2. If the employee loses a work opportunity, the employee will be compensated for all lost wages as if the employee had worked his/her lost work opportunity.

Section D - Training. Employees participating in Employee Involvement Programs will be jointly selected for corporate education programs by the General Manager, or designate, and the Local Chairperson.

ARTICLE 6: HOSTLERS AND HOSTLER HELPERS

All employees assigned to hostler and hostler helper positions and who are not entitled to the compensation allowed in Article IV of the July 1, 1993 Agreement between the St. Louis Southwestern Railway Company and the Brotherhood of Locomotive Engineers will be allowed the National Five Day Outside Hostler Rate of Pay (currently $125.74).

ARTICLE 7: DETOURING TRAINS

If the supply of engineers permits, St. Louis Southwestern Railway engineers will be used to operate St. Louis Southwestern trains detoured over other railroads.

ARTICLE 8: MEDICAL EVALUATION

Section A: Article 50-3(2) of the agreement between St. Louis Southwestern Railway and the Brotherhood of Locomotive Engineers is cancelled and replaced with the following:

"2. When in the opinion of a Carrier Officer, an employee's physical condition is such that he might be a hazard to himself/herself or others, the employee will be held out of service pending a medical release on Carrier's designated form which will be forwarded to the Medical Department by the physician selected to perform the examination. Carrier will designate the physician who will perform the examination and promptly notify the employee of physician to be seen and date and time of appointment. Carrier will pay for employee's doctor visit and physical examination.

The engineer is under no obligation to receive any subsequent treatment from a physician selected by the Carrier to perform the initial physical examination.

If the employee is found to be in satisfactory physical condition which would have enabled him/her to continue in service without interruption, such employee shall be compensated for not less than he/she would have earned had he/she not been held out of service.

ARTICLE 9: RULES RECERTIFICATION CLASSES, SAFETY MEETINGS PHYSICAL EXAMINATIONS, ETC.

Section A:

(1) An engineer ordered or required by Carrier to attend safety meetings, mandatory classes, periodic physical examinations pursuant to Article 50 of the agreement between SSW and the BLE, and FRA physical examinations shall be compensated as hereinafter provided.

(2) If time is lost an engineer shall be paid not less than he/she would have earned had he/she not been used for any of such services. An engineer performing any of the services, as set forth herein, during off-duty periods at a terminal will be allowed compensation at one-eighth (1/8) of the basic daily rate for the actual time consumed, including fifteen (15) minutes travel time prior to the time that he/she is required to report and fifteen minutes (15) travel time after he/she is released, with a minimum of two (2) hours.

Section B:

(1) Regular engineers: Regular engineers will be called, when rested, from the bottom of the list and when the class is finished will be returned to their assignment and called for their assignment when legally rested. Should their assignment rotate and be called prior to the time they are rested, they will be paid in accordance with the provisions of Section 1 of this Article.

(2) Extra engineers: Extra engineers will be called from the bottom of the list when rested. They will retain their standing on the Extra Board and will be placed back on the board in their proper turn when the class is completed and stand for service when they are legally rested. Should their place on the board have rotated to where they would have departed prior to completing the class, they will be placed back on the Extra Board first out until rested and stand for service thereafter.

(a) It is understood that if one or more extra engineers are called to attend a class, and they are placed back of the extra list, they will go back in the order in which they originally stood in rotation on the list prior to attending the class.

(b) Payment for attending class will not be counted against Extra Board guarantee.

(c) It is understood there will be no runarounds of any nature recognized. Also, there will be no breaking of the guarantee provisions applicable to the Engineer's Extra List because of attending classes.

(d) It is understood in conjunction with both regular and extra engineers that they are subject to call when rested and will attend the Rules Classes and that should they miss a call for class, they will not be held off the board.

ARTICLE 10: LODGING

The following is added to the current provisions of BLE Article 63 as 63-1(5):

"In compliance with Carrier's Smoking Policy, engineers entitled to lodging paid for by Carrier will be assigned to a room designated as a non-smoking room if such is available at the time of check-in. If a non-smoking room is not available at the time of check-in, the engineer may request to be transferred to a non-smoking room when one becomes available."

ARTICLE 11: GENERAL AND MORATORIUM

Section A: This Agreement supersedes all portions of existing agreements with which it conflicts, and replaces specific agreement provisions, as designated herein.

Section B: The parties to this Agreement shall neither serve nor progress, prior to January 1, 1997 (not to become effective until January 1, 1998), a notice or proposal to change any matter contained in this Agreement, or, a notice or proposal that might have been properly served when the last moratorium ended on December 31, 1994. This moratorium shall not bar the parties from agreeing upon any subject matter of mutual interest.

This Agreement shall become effective August 1, 1995.

FOR THE BLE:

D. E. Thompson
General Chairman

FOR THE CARRIER:

C. M. Senter
Manager, Labor Relations

W. E. Loomis
Director, Labor Relations

T. J. Matthews
Chief Administrative Officer

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Page 9 of 9

Southern Pacific Lines

Southern Pacific Building • One Market Plaza • San Francisco, California 94105

T. J. Matthews
Chief Administrative Officer
Member Board of Directors

November 5, 1993

Mr. D. E. Thompson, General Chairman
Brotherhood of Locomotive Engineers
414 Missouri Boulevard
Scott City, Missouri 63780

E&F 188-145

Dear Mr. Thompson:

The history of railroad labor negotiations has been long delays between the amendable date of one agreement and the effective date of the next. Such delays are not understood by individual engineers and introduce unneeded frustration into the collective bargaining process. The enclosed proposed agreement is submitted as a suggested approach to the "next round" of negotiations which would ordinarily begin with a Section 6 notice served on or after 11/1/94 with a contract amendable date of 1/1/95. Based on the unique financial condition at Southern Pacific Lines, our suggested approach provides for voluntary non Section 6 negotiations during the period 1/1/94-9/30/94 in an effort to negotiate a new agreement. SP's goal is to reach a new agreement prior to September 30, 1994.

If such a goal is acceptable to BLE, SP will commence earnest negotiations on a voluntary, non Section 6 basis immediately following January 1, 1994. The parties would agree that if these negotiations do not result in a new agreement by 9/30/94, the 11/1/94 date on which a Section 6 notice may be served would be extended by mutual agreement until 90 days following the effective date of a new BLE national agreement.

The purpose of this delay is to provide time for SP to solve its financial problem while permitting BLE time to complete its negotiations with other railroads before attempting to address the unique situation at SP. You should be aware that SP Lines does not intend to participate in "national handling" for the next round of negotiations.

Please let us know if you wish to discuss this suggestion further.

Sincerely,

Thomas J Matthews

Enclosure

cc: Mr. R. Dean, Vice President BLE

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The following is a brief explanation of the August 1, 1995 BLE/SSW On-Property Agreement article by article:

ARTICLE 1 - ADDITIONAL COMPENSATION: Engineers who perform sufficient service during 1995 on the St. Louis Southwestern Railway to qualify for vacation pay in 1996 will receive a lump sum payment $1950.00. This payment is to be included with pay for the second period November 1995.

Same payment same conditions for 1996 and 1997.

This payment will continue beyond 1997 unless there is a change in the UTU Agreement which produced this amount.

ARTICLE 2 - EXTRA BOARD GUARANTEES: Yard boards - extra and auxiliary - 12 days per pay period at the daily yard rate plus $15.00 per day.

ARTICLE 3 - PERSONAL LEAVE DAY: All engineers assigned to a position that observes the Holiday Rule shall have the option of changing the Holiday to personal leave days as per the agreement.

ARTICLE 4 - FLAT RATE RUNS: Carrier and the BLE will work out agreement for paying engineer set amount each trip between Jefferson City and Kansas City and Jefferson City to E. St. Louis on an experimental basis to determine the feasibility of establishing such rates on all SSW pool freight assignments.

ARTICLE 5 - EMPLOYEE INVOLVEMENT: Establishes an agreement to cover such projects and spells out compensation.

ARTICLE 6 - HOSTLERS AND HOSTLER HELPERS: All employees assigned to hostler and hostler helper positions and who are not entitled to the compensation allowed in Article IV of the July 1, 1993 Agreement between the St. Louis Southwestern Railway Company and the Brotherhood of Locomotive Engineers will be allowed the National Five Day Outside Hostler Rate of Pay (currently $125.74).

ARTICLE 7 - DETOURING TRAINS: If the supply of engineers permits, St. Louis Southwestern Railway engineers will be used to operate St. Louis Southwestern trains detoured over other railroads.

ARTICLE 8 - MEDICAL EVALUATION: If the Carrier removes an engineer from service for medical reasons, the change in the agreement (Article 50-3 (2)) requires the Carrier to make the doctor appointment, pay for the doctor visit and physical examination. Also provides for payment of all lost wages in the event the physical examination proves the engineer should not have been removed from service.

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ARTICLE 9 - RULES RECERTIFICATION CLASSES, SAFETY MEETINGS, PHYSICAL EXAMINATIONS, ETC.: The provisions of this article provides for payment to the engineer when ordered or required to attend safety meetings, mandatory classes, physical and/or FRA physical examinations.

If time is lost the engineer to be compensated not less than he/she would have earned.

If not time lost, the engineer will be allowed actual time consumed, including 15 minutes travel time prior to reporting and after released with minimum of two (2) hours. Payments will not be counted against extra board guarantees.

The agreement also provides order of call when possible and how the engineer, regular or extra, will be marked up.

ARTICLE 10 - LODGING: In compliance with Carrier's Smoking Policy, engineers entitled to lodging paid for by Carrier will be assigned to a room designated as a non-smoking room is such is available at the time of check-in. If a non-smoking room is not available at the time of check-in, the engineer may request to be transferred to a non-smoking room when one becomes available.

Southern Pacific Lines
Labor Relations Department • Southern Pacific Building • One Market Street • San Francisco, CA 94105 •
Fax 415-541-1087

SENIOR MANAGER
Jane H. Baynes

WHEN REPLYING REFER TO FILE: E&F 188-145

February 29, 1996

Mr. D. E. Thompson, General Chairman
Brotherhood of Locomotive Engineers
414 Missouri Boulevard
Scott City, Missouri 63780

Dear Mr. Thompson:

This is in response to your letter, dated November 27, 1995, contesting our interpretation of Article 1 of the August 1, 1995 agreement that engineers must have performed sufficient service during 1995 as an engineer to qualify for the lump sum payment of $1950.

You argue our position is not consistent with the language of Article 1 of the August 1, 1995 agreement. The language, however, is extremely clear:

> "Engineers who perform sufficient service during 1995 on the St. Louis Southwestern Railway to qualify for vacation pay in 1996 will receive a lump sum payment of $1950.00..."

This provision does not include service performed in the crafts of trainmen or firemen.

The $1950 lump sum is paid to engineers pursuant to Article 7 of the July 1, 1991 agreement between Southern Pacific Lines and Brotherhood of Locomotive Engineers as a "me too" lump sum in consideration of additional compensation paid to trainmen and yardmen provided by their January 1, 1995 UTU agreement. Firemen were expressly excluded from the Article 7 additional compensation allowed engineers in Side Letter No. 1, dated June 28, 1991. The firemer were again excluded from competitive adjustment payments by Side Letter #1 of the August 1, 1995 agreement.

While employees are working in other crafts and under other agreements, they are governed by the wage and work rules of those agreements. It was never the intention of the Company that an employee could take advantage of both the additional compensation under the UTU agreement and the "me too" payment as an engineer.

Your letter also argues that our treatment of Article 1 of the August 1, 1995 agreement was not consistent with a similar provision in the 1993 agreement. In 1993 and 1994, however, the distributions were handled by the Timekeeping

BLE EXHIBIT 10
Page 1 of 2

Department. They requested a list of eligible engineers based on the same criteria as Labor Relations requested this year. What they got from Information Services, however, was a "snap shot" of all employees who were engineers at that particular time and qualified for vacation. Because the process was automated this year to allow for contribution of lump sums to the employee 401(k) plan, programming underwent closer scrutiny and those vacation credits earned in other than engineer service were eliminated.

Your letter mentions that the history on this property has always been to assign engineers vacation based on their years of service with the Company, regardless of their craft prior to becoming an engineer. This point is not relevant to the current dispute because the Company is not disputing the method of calculating vacations. The criteria used to determine eligibility for the $1950 lump sum differs from the criteria used to calculate vacation time. No employee has been denied vacation because they were not eligible for the $1950 lump sum.

Personal leave days are not relevant to the lump sum payment issue. When the engineer trainees become firemen, they are no longer working under the trainman's agreement, and therefore, are no longer eligible for trainman personal leave days. The firemen are governed by the BLE agreement. The provision we are interpreting, however, refers to service performed as an engineer and does not apply to service performed as a firemen.

It is the Company's position that 1) Article I of the August 1, 1995 agreement establishes eligibility for the $1950 lump sum based on service performed as an engineer, 2) prior payment to trainees was an oversight, which does not establish a practice, and 3) firemen were expressly excluded in Side Letter No. 1, dated June 28, 1991, from the Article 7 additional compensation allowed engineers. The firemen were again excluded from competitive adjustment payments by Side Letter #1 of the August 1, 1995 agreement.

I suggest March 15, 1996 for a phone conference. At that time we may arrange for a Neutral decision.

Sincerely,

Jane H. Baynes

Jane H. Baynes
Sr. Manager Labor Relations

cc: T. J. Matthews
L. R. Parsons
C. W. Calder
J. C. Klaus
W. E. Loomis
C. M. Senter
bcc: P. A. Vitulli

BLE EXHIBIT 10
Page 2 of 2

SOUTHERN PACIFIC LINES

Labor Relations Department • One Market Plaza Room 304 • San Francisco, California 94105 • Fax 415-541-1087

MANAGER
K. P. SHERIDAN
(415) 541-2787

ASST. MANAGER
S. SPADARO
(415) 541-2362

October 3, 1996

File: E&F 188-147

Mr. D. E. Thompson
General Chairman
Brotherhood of Locomotive Engineers
414 Missouri Boulevard
Scott City, MO 63780

RE: LETTER OF UNDERSTANDING CONCERNING ARTICLE 1 OF THE AUGUST 1, 1995 LOCAL ISSUES AGREEMENT

Dear Mr. Thompson:

This refers to Article 1 (Additional Compensation) of the August 1, 1995 SSW/BLE Local Issues Agreement. Article 1 gives additional compensation in the form of lump sum payments to qualifying engineers on the Cotton Belt. For purposes of Article 1, it was agreed that time spent working as a student engineer under the SSW/BLE Agreement governing rates of pay, rules and working conditions shall be considered as time spent working as an engineer. Therefore, such vacation credits earned as a student engineer will be calculated in determining eligibility for the lump sum payment set forth in Article 1.

If you concur with the foregoing, please sign in the designated space below.

Sincerely,

Kelly Sheridan

Kelly Sheridan
Manager, Labor Relations

CONCUR:

D. E. Thompson, BLE
General Chairman

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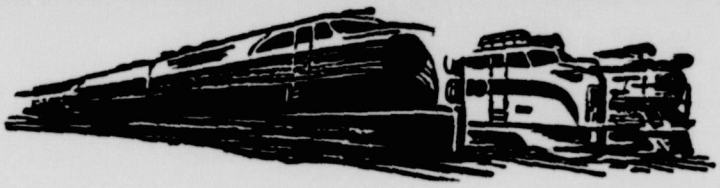
Page 1 of 1



BROTHERHOOD OF LOCOMOTIVE ENGINEER

GENERAL COMMITTEE OF ADJUSTMENT
ST. LOUIS SOUTHWESTERN RAILWAY LINES
D. E. THOMPSON, CHAIRMAN
414 MISSOURI BOULEVARD
SCOTT CITY, MO 63780
PHONE (573) 264-3232
FAX (573) 264-3735

M.R. STEPHENS, SEC'Y TREAS
ROUTE 2 BOX 2250
SCOTT CITY, MO 63780

November 25, 1998

WR-189-6-A

Mr. L. A. Lambert
General Director, Labor Relations
Union Pacific Railroad
1416 Dodge Street
Omaha, NE 68179

CERTIFIED LETTER: Z 042 456 562

Reference: Article 10, BLE Generic Memorandum of Agreement dated August 1, 1995 and Article I, BLE/SSW Memorandum of Agreement dated August 1, 1995.

Dear Sir:

I have been informed by Director Labor Relations, Robin Rock that Union Pacific has made a decision not to pay the lump sum payment ($1950.00) due each SSW Engineer as per the provisions of Article I of the BLE/SSW August 1, 1995 Agreement.

The $1950.00 was one part of the settlement that the parties agreed to in compliance with Article 7 of the July 1, 1991 Agreement given the additional compensation the UTU received in agreements signed after July 1, 1991. The figures used to determine the amount due the various BLE Committees were provided by Mr. Bill Loomis and other Carrier officers who negotiated and signed the agreements for the Carrier.

As per the Moratorium, the parties to the agreement could not serve or progress any notice to change the agreements prior to January 1, 1997 and not be effective until January 1, 1998. Given the Moratorium and knowledge of length of negotiation, the parties agreed to Article I (D) which clearly states that the settlements resulting from Article 7 of the July 1, 1991 Agreement would continue

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Page 1 of 2

to exist after January 1, 1998 unless there was changes in future agreements that would affect the Article 7 settlement which gave rise to the settlement and additional compensation.

Article I (D) provides for the parties to meet to determine the changes needed in this Article provided there are changes in the underlying conditions which gave rise to the additional compensation. Until such time as the Carrier can provide proof of changes that would affect the additional compensation, the Carrier does not have the right to discontinue or change any provision of the agreement which includes the $1950.00.

The provisions of Article 10, COMPETITIVE ADJUSTMENT clearly provides that the SSW Engineer shall receive any additional compensation that is in excess of what was provided by agreement to any member of the operating crews on the effective date of this agreement. Section (C) defines additional compensation.

Given the UTU Agreements signed post August 1, 1995 and the additional compensation therein as defined by Article 10 (c) of the BLE Agreement, there is nothing that would eliminate or reduce the $1950.00 due each SSW Engineer to be included with pay for the second pay period November 1998.

The documentation regarding any such changes are undeniable and indisputable. One only need review the agreements signed with the UTU post August 1, 1995. The SSW Engineers are entitled to compensation for greater that the $1950.00.

We would respectfully request that you comply with the agreements and make the payment to the SSW Engineers as provided. If you are not agreeable, please advise date and time for conference to discuss the requirement of Article I.

Yours truly,

D. E. Thompson

cc: D. M. Hahs, VP BLE
J. L. McCoy, VP BLE
R. A. Poe, GC BLE
All BLE/SSW Divisions

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Page 2 of 2

L A LAMBERT
General Director
Labor Relations-Operating
Southern Region

UNION PACIFIC RAILROAD COMPANY

JAN 25 1999

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

January 20, 1999

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

Dear Sir:

This is in reference to your letter of November 25, 1998, and our discussion in Kansas City the week of December 28, 1998, concerning Article 10, BLE Generic Memorandum of Agreement dated August 1, 1995 and Article 1, BLE/SSW Memorandum of Agreement dated August 1, 1995.

Initially, it is the position of the Carrier that the Organization has failed to meet the burden of proof. The Organization has failed to provide any specifics in support of its claim. In proceedings of this nature, the burden of proving all essential elements of a claim rests on the Petitioner, and it is well settled that mere assertions are not proof. To date the Organization has not presented sufficient probative evidence to support its position. Article 1 (D) of the August 1, 1995 Agreement did not automatically provide for a lump sum payment for the engineers who qualified for vacation, as was set forth in Article 1 (A), (B) and (C). Article 1 (D) states that entitlement continues unless there have been changes in the Agreement or changes in the underlining conditions which gave rise to additional compensation. There is nothing in Article 1 (D) that requires the Carrier to provide proof of changes that would affect the additional compensation.

It is your contention that the UTU Agreements signed post August 1, 1995 contained additional compensation, as defined in Article 10 (C) of the BLE Agreement. It is interesting to note that you fail to identify the UTU Agreement that allegedly supports your position.

The only Agreement that the UTU signed on the SSW after 1995 was the April 16, 1996 Agreement. However, that Agreement does not support the BLE's position. The BLE would be entitled to receive additional compensation unless the UTU "paid for" those items received in the April 16, 1996 Agreement by giving up other provisions of equal or greater value. A review of the April 16, 1996 Agreement clearly indicates the UTU gave up items of equal or greater value.

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Page 1 of 2

It is, therefore, the Carrier's position that the BLE is not entitled to the $1,950.00 on account the value of the items the UTU gave up exceeds the value of the items they received. UTU gave up the 7/1/95 and 7/1/96 COLA adjustments. UTU also agreed to extend the effective date for amending the contract (the moratorium) from 1/1/98 until 1/1/2000. Without the extension, UTU would have been able to serve notice seeking lump sums, general wage increases and/or COLAs during the period commencing 1/1/98. A reasonable measure of what the UTU gave up during this period can be determined by what the UTU National Agreement (Arbitration Board No. 559) provides during the same time frame. This is a 3-1/2 percent lump sum on 7/1/98, a 3-1/2 percent G.W.I. on 7/1/98 and a COLA (which is immediately rolled-in, so is actually a G.W.I.) on 12/31/99.

4 - A summary of the cost of items obtained and given up by UTU in the 4/16/96 agreement is as follows, stated in terms of annual recurring dollars:

Cost of added week of vacation =	$ 507,737
Cost of increase disability premium =	184,786
Cost of life insurance =	105,216
Savings from 7/1/95 and 7/1/96 COLA =	(307,976)
Savings from 12/31/99 lump sum =	(2,069,796)
Savings from 3-1/2 percent G.W.I. on 7/1/99 =	(923,928)
NET SAVINGS TO THE COMPANY =	$ 2,503,961

Note that the 3-1/2 percent lump sum payable on 7/1/98 is not even included in the above calculations.

Based on the foregoing, your request for payment is without merit or Agreement support and is therefore denied in its entirety.

Yours truly,

L. A. LAMBERT

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Page 2 of 2

UNITED TRANSPORTATION UNION

GENERAL COMMITTEE OF ADJUSTMENT GO-843 CT&Y
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
401 E. FRONT STREET- SUITE 140 - TYLER, TEXAS 75702
PHONE 903-593-8355 - FAX 903-593-8047

DON L. HOLLIS, GENERAL CHAIRPERSON

R. D. HAHN
1) VICE GENERAL CHAIRPERSON

J. L. WILLIAMS
2) VICE GENERAL CHAIRPERSON

H. A. RIGG
GENERAL SECRETARY

March 15, 1996

ALL MEMBERS
UNITED TRANSPORTATION UNION
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

Dear Brothers and Sisters:

Enclosed for your review is copy of settlement concerning Side Letter No. 1 of the January 1, 1995 Agreement, which represents many new benefits for us, i.e., one extra week's vacation, increased life insurance, increased disability insurance payments, and several other benefits. In exchange for these added benefits, you will notice that our cost of living allowances is deferred until 1999, and the moratorium on our agreement is extended to the year 2000. This a small trade-off for the benefits we will be gaining.

Please review the material carefully. Your ballot is to be marked for or against the proposal, and returned to this office in the enclosed return-addressed, and stamped envelope. This ballot must be received in this office on or before **Monday, April 15, 1996**, in order to be counted. There will be no exceptions to these instructions. **PLEASE PLACE YOUR NAME, ADDRESS, AND LOCAL NO. IN THE UPPER LEFT-HAND CORNER OF THE RETURN ENVELOPE.**

Fraternally yours,

Don L. Hollis

DON L. HOLLIS
General Chairman
United Transportation Union

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Page 1 of 5

MEMORANDUM OF AGREEMENT

BETWEEN

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY (SSW)

AND

THEIR TRAINMEN/YARDMEN REPRESENTED BY

UNITED TRANSPORTATION UNION (C,T,Y)

• • • • • • • • • •

The parties to this Agreement understand that the following settlement completely satisfies the provisions of Side Letter No. 1 of the January 1, 1995 Agreement. Side Letter No. 1 of the January 1, 1995 Agreement is therefore canceled in its entirety.

ARTICLE 1: ELIMINATION OF COST OF LIVING ADJUSTMENTS

The Organization will forgo their entitlement to Cost of Living Adjustments on July 1, 1995 and July 1, 1996 as set forth in Article 3 of the January 1, 1995 Agreement. The effective date of the next Cost of Living Adjustment, pursuant to Article 1(b) of the November 1, 1991 UTU National Agreement, shall be deferred until July 1, 1999. Accordingly, the measurement period for the Cost of Living Adjustment will compare September 1998 (base month) and March 1999 (measurement month).

ARTICLE 2: DISABILITY INSURANCE

When the Disability Insurance Plan (Article 20 of the January 1, 1995 Agreement and Article VIII of the December 1, 1992 Agreement) comes up for renewal in April of 1996, the Carrier will pay additional premiums to maintain the current level of benefit coverage, but the total cost to the Carrier will not exceed $63.10 per active employee per month. This Agreement satisfies the provisions of Article 20 of the January 1, 1995 Agreement.

ARTICLE 3: DETOURING TRAINS

If the supply of trainmen permits, St. Louis Southwestern Railway trainmen will be used to operate St. Louis Southwestern trains detoured over other railroads.

ARTICLE 4: EXPUNGE DISCIPLINE RECORD

Information concerning discipline more than five (5) years old contained in personal records will be expunged with the exception of suspension or dismissal involving violations of FRA regulations or Safety Rules, which were upheld in arbitration.

ARTICLE 5: VISION CARE

The Company will establish a payroll deduction program for those employees who desire to purchase vision care.

ARTICLE 6: VACATION

Section A Insofar as applicable to employees governed by the United Transportation Union, the Vacation Agreement dated April 29, 1949, as amended, is further amended effective July 1, 1996 by substituting the following paragraphs for the corresponding provisions contained in Sections 1(a), 1(b), 1(c), 1(d) and 1(e) of Article 77 of the Conductor's Agreement, Article 76 of the Brakemen's Agreement and Article 35 of the Yardmen's Agreement:

(a) Effective July 1, 1996, each employee, will be qualified for an annual vacation of two weeks with pay, or pay in lieu thereof, if during the preceding calendar year the employee renders service under schedule agreements amounting to one hundred sixty (160) basic days in miles or hour paid for, as provided in individual schedules.

(b) Effective July 1, 1996, each employee, having two or more years of continuous service with employing carrier will be qualified for an annual vacation of three weeks with pay, or pay in lieu thereof, if during the preceding calendar year the employee renders service under schedule agreements held by the organizations signatory to the April 29, 1949 Vacation Agreement amounting to one hundred sixty (160) basic days in miles or hours paid for as provided in individual schedules and during the said two or more years of continuous service renders service of not less than three hundred twenty (320) basic days in miles or hours paid for as provided in individual schedules.

(c) Effective July 1, 1996, each employee, having eight or more years of continuous service with employing carrier will be qualified for an annual vacation of four weeks with pay, or pay in lieu thereof, if during the preceding calendar year the employee renders service under schedule agreements amounting to one hundred sixty (160) basic days in miles or hours paid for as provided in individual schedules and during the said eight or more years of continuous service renders service of not less than twelve hundred eighty (1280) basic days in miles or hours paid for as provided in individual schedules.

(d) Effective July 1, 1996, each employee, having seventeen or more years of continuous service with employing carrier will be qualified for an annual vacation of five weeks with pay, or pay in lieu thereof, if during the preceding calendar year the employee renders service under schedule agreements amounting to one hundred sixty (160) basic days in miles or hours paid for as provided in individual schedules and during the said seventeen or more years of continuous service renders service of not less than twenty-seven hundred twenty (2720) basic days in miles or hours paid for as provided in individual schedules.

(e) Effective July 1, 1996, each employee, having twenty-five or more years of continuous service with employing carrier will be qualified for an annual vacation of

BLE EXHIBIT 14
Page 3 of 5

six weeks with pay, or pay in lieu thereof, if during the preceding calendar year the employee renders service under schedule agreements amounting to one hundred sixty (160) basic days in miles or hours paid for as provided in individual schedules and during the said twenty-five or more years of continuous service renders service of not less than four thousand (4000) basic days in miles or hours paid for as provided in individual schedules.

NOTE: The extra week of vacation will be added to vacation accruals for the year 1996 but may not be used until July 1, 1996.

Section B: Addendum No. 47, Section 1, of the current agreement between the parties will be canceled and replaced with the following:

"1. The total number of person weeks of vacation for each source of supply will be divided by the total number of weeks in a year (52) to determine the maximum number of employees who will be allowed to take their vacation on any given week. After vacation periods are assigned in this manner they will not be changed except for good and sufficient reason, and then only by mutual agreement between representatives of the Carrier and the Organization. Employees desiring to make a change in their scheduled vacation period will handle their request in writing with their Local Chairman, who will, if he approves, handle with the representative of the Carrier, whereupon the change may be made, provided the representative of the Carrier is also agreeable. In no case shall the number of trainmen on vacation on any given week exceed the maximum as defined above.

NOTE: Due regard, consistent with requirements of the service, shall be given to the preference of the employee in his seniority order in the class of service in which engaged when granting vacation means that if an employee is working as a conductor at the time vacations are granted (assigned a vacation period), he will be assigned a vacation in his seniority order as conductor and not as a brakeman or in accordance with preponderance of service he might have performed in some other class of service."

Section C: For purposes of vacation qualification, employees will be credited with 160 basic days each year for time spent as a full-time UTU representative, with proration for periods of less than one year. The intention is that employees returning from a position as a full-time UTU representative will not lose entitlement to vacation because of their time spent with the UTU. These employees will not, however, be entitled to paid vacation from SP during any year the employee is entitled to paid vacation from UTU.

ARTICLE 7: BUY BACK OF PERSONAL LEAVE DAYS

At the end of a calendar year, a trainman/yardman may individually elect to exchange any unused personal leave days for a lump sum payment from the Company. A trainman/yardman desiring to exchange his/her unused personal leave days must exchange all of the days to which he/she is entitled. The number of days entitled shall be the total to which the trainman/yardman was entitled during the year, less personal leave days taken and paid holidays received under any collective bargaining agreement with SP. Personal leave days taken in a lump sum at the end of the calendar

BLE EXHIBIT 14
Page 4 of 5

year will not be used to offset guarantees. For each personal leave day exchanged, an employee will be paid one basic day at the rate of the last service performed.

ARTICLE 8: LIFE INSURANCE

Section A: The Company will provide life insurance to supplement that provided as part of the Railroad Employees National Health and Welfare Plan ("The Plan") so that the total benefit payable to the employee's estate will equal fifty thousand dollars ($50,000). In the event the IRS limit on imputed income to the employee is increased (currently $50,000), the Company agrees to increase the death benefit so that the total benefit payable is increased to the new IRS limit.

Section B: In the event of accidental death of an employee, the total benefit payable shall be twice that stated in Section A above.

Section C: The Company will work with UTU to establish a payroll deduction program for those employees who desire to purchase additional life insurance coverage.

Section D: This Article will become effective July 1, 1996.

ARTICLE 9: MORATORIUM

The current moratorium in effect between the UTU and Southern Pacific Lines (SSW) Article 21 of the Agreement dated January 1, 1995, is superseded by the following:

> The parties to this Agreement shall not serve nor progress prior to January 1, 1999 (not to become effective before January 1, 2000) any notice or proposal for changing any matter contained in this agreement or any notice or proposal which might properly have been served on or after November 1, 1994. This Article shall not bar the parties from agreeing upon any subject of mutual interest.

FOR THE SOUTHERN PACIFIC LINES (SSW):

S. L. Doolittle
Manager Labor Relations

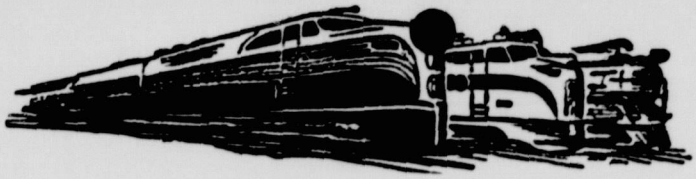
FOR THE UNITED TRANSPORTATION UNION (C,T,Y):

D. L. Hollis
General Chairman (C,T,Y)

T. J. Matthews
Chief Administrative Officer

eld:\ur\ssw agm\metoo.agt

EXHIBIT 14
5 of 5



BROTHERHOOD OF LOCOMOTIVE ENGINEERS

GENERAL COMMITTEE OF ADJUSTMENT
ST. LOUIS SOUTHWESTERN RAILWAY LINES
D. E. THOMPSON, CHAIRMAN
414 MISSOURI BOULEVARD
SCOTT CITY, MO 63780
PHONE (573) 264-3232
FAX (573) 264-3735

M.R. STEPHENS, SEC'Y TREAS
ROUTE 2 BOX 2250
SCOTT CITY, MO 63780

July 27, 1999

WR-189-6-A

Mr. L. A. Lambert
General Director, Labor Relations
Union Pacific Railroad
1416 Dodge Street
Omaha, NE 68179

CERTIFIED LETTER: Z 047 247 503

Reference: Your letter of January 20, 1999 and conference held with Mr. Rock on July 22, 1999 in regards to the annual $1950.00 additional compensation under Article I of the August 1, 1995 On- Property Agreement.

Dear Sir:

In your response, it would appear that you do not understand or you attempt to confuse the provisions of Article I, **ADDITIONAL COMPENSATION** with Article 10, **COMPETITIVE ADJUSTMENT** of the BLE/SP Lines Generic Agreement also singed August 1, 1995.

Various provisions of both agreements were in settlement of Article 7 of the July 1, 1991 Generic Agreement and in lieu of the 1995 BLE National Agreement.

In the negotiations with the SP Labor Relations Officers, there were some differences between the parties as to the compensation due the SP/SSW Engineers. I do not intend to provide or re-argue the figure. The signature of the Carrier Officers provide all agreed to provisions of the agreements making the figures a moot issue.

The provisions of Article I is clear. The agreed to figure was in settlement of what transpired prior to August 1, 1995 and due under Article 7 of the 1991 BLE/SP Agreement. Section D states, "the entitlement set forth in Article 7 of the

BLE EXHIBIT 15
Page 1 of 2

July 1, 1991 continues to exist after January 1, 1998." The opening paragraph of Article I fully explains the "additional compensation" due the SSW Engineers. The Article I, "additional compensation" annual payment would continue after January 1, 1998 as would all other provisions of both agreements until such time as new agreements could be reached or there were changes in the conditions of the UTU Agreement which provided the agreed to additional compensation.

In your letter of January 20, 1999, you make reference to the provisions of the SSW/UTU Agreement of April 16, 1996. It should be July 1, 1996. You also provide figures as to what the UTU agreed to give up to pay for the provisions of the July 1, 1996 Agreement. You failed to provide the figures for the items the BLE also gave up to get the August 1, 1995 Generic Agreement. Even if your figures were correct, they have nothing to do with the "additional compensation" until Article I. The figures you provided, if correct, would be an Article 10 issue.

Before continuing with the erroneous position you have taken, I would suggest you review the data used in settlement of Article I and explain the changes in the agreement affecting the additional compensation as required by Section D which would allow you to discontinue the annual payment.

If you are not agreeable to complying with Article I, please advise so we can get this issue listed to the agreed to on-property Public Law Board for decision.

Yours truly,

D. E. Thompson

cc: R. D. Rock
D. M. Hahs
J. L. McCoy
R. A. Poe
All BLE/SSW Divisions

BLE EXHIBIT 15
Page 2 of 2

TONY ZABAWA
DIRECTOR TIMEKEEPING OPERATIONS

UNION PACIFIC RAILROAD COMPANY

MAR 13 199

1416 DODGE STREET
MC PNG06
OMAHA, NEBRASKA 68179

Mr. David E. Thompson
General Chairman, BLE
414 Missouri Boulevard
Scott City, MO 63780

March 5, 1998

Dear Mr. Thompson,

Reference your FAX to Mr. R. D. Rock on February 4, 1998, concerning Vacation Rates for G. T. Roark and J. P. Dunger.

Below is how the vacation rates for both the above mention Engineers were figured.

G. T. Roark, 431-78-0315

Gross earnings for 1997 $98,827.67

less	$866.91	Protection Guarantee
less	$1950.00	Productivity Fund
balance	$96,010.76	
1/52nd	$1846.36	

J. P. Dunger, 495-52-2141

Gross earnings for 1997 $68,855.30

less	$300.00	Mark Up Bonus
less	$4757.89	Protection Guarantee
less	$1,950.00	Productivity Fund
balance	$61,847.41	
1/52nd	$1189.37	

Since these figures were first computed, it has been decided to allow the Productivity Fund of $1,950.00. Programming changes are in the process to adjust vacation pay to reflect the additional amount. As soon as this process has been completed, the adjustments will also be made for any employees who have previously taken vacation this year.

Sincerely,

Michael D. Stom

Michael D. Stom
Assistant Director Timekeeping

CC: Tony Zabawa
Robin Rock

File:pss/det0305

BLE EXHIBIT 16
Page 1 of 1

*** Forwarding note fro[redacted]INDRWF --SPTSVM02 03/11/96 09:43 ***
To: OPURES --SPTSVM02 Stone, R. E.

From: _R.W.FOREMAN TMKPR MONT. PK. 980-7427
Subject: Lump Sum As Part of Vacation Base
paul jones said that san frisco will go in and pay all those who have been short account of the 1950.00 lum some so i need not reenter them.

R.W. FOREMAN,TIMEKEEPER SP LINES
1200 CORP.CENTER DRIVE 2nd FLR. MONTEREY PARK 91754
PUBLIC NETWORK 800-443-0687 ext. 7427
INTERCOMPANY NETWORK: 8-980-7427
*** Forwarding note from OPURES --SPTSVM02 03/03/96 10:52 ***
To: INDRWF --SPTSVM02 Foreman, Robert W.

From: OPURES
Subject: Lump Sum As Part of Vacation Base
Robert....Please make this adjustment to retired enrg. J.E.Bearden 431/52/5746 six weeks vacation pay that was paid to him. PLEASE ADVISE ME ....THANKS
RONNY STONE (OPURES).

*** Forwarding note from OPUDET --SPTSVM02 02/29/96 07:45 ***
To: OPUMOC --SPTSVM02 Coats, Michael O. OPURES --SPTSVM02 Stone, R. E.
OPUABB --SPTSVM02 Bynum, Bob OPUJCM --SPTSVM02 McChristy, John C.
OPUMRS --SPTSVM02 Mike Stephens OPUEXO --SPTSVM02 Ochoa, Al
OPUHLF --SPTSVM02 Fergusson, Harold OPUDBJ --SPTSVM02 Johnson, Don Brent
OPUPSR --SPTSVM02 Roe, Steve

From: opudet
Subject: Lump Sum As Part of Vacation Base
Get this information to your member wherby they can check their vacation pay on vacation already taken and will take...Gene

D. E. Thompson, General Chairman
Brotherhood of Locomotive Engineers (SSW)
414 Missouri Blvd
Scott City, Missouri 63780 (314-264-3232) Fax (314-264-3735)
*** Forwarding note from INDPAV --SPTSVM02 02/28/96 15:51 ***
To: OPUDMH --SPTSVM02 Hahs, Don M. OPUDET --SPTSVM02 Thompson, David
cc: INDCMS --SPTSVM02 Senter, Cheryl M. INDJHB --SPTSVM02 Baynes, Jane Homsh

From: Paul Vitulli
Subject: Lump Sum As Part of Vacation Base

Gentlemen:

This confirms my conversation with Don Hahs concerning the referenced matter. A request has been made with ISSC whereby the $1950.00 lump sum earned by EL and SSW Engineers in 1995 will be part of the 1995 base used to determine vacation compensation for 1996. Those engineers who have already used vacation this year and were compensated based on earnings which did not include the $1950 will be made whole once the 1950 is added into the 1995 base.

P.A. "Paul" Vitulli, Manager Labor Relations, SP Lines
One Market Plaza, Room 304
San Francisco, CA 94105
Phone: 415-541-2011 Fax: 415-541-1087

BLE EXHIBIT 17
Page 1 of 2

From: INDPFJ --SPTSVM02
To: OPUDET --SPTSVM02 Thompson, David
cc: INDBEB --SPTSVM02 Bussey, Brian
INDDET --SPTSVM02 Torrey, Dan

Date and time 03/28/96 07:34:39

INDERB --SPTSVM02 Barnes, Edward
MSPBRS --SPTSVM02 Slaton, Betty

From: Paul F. Jones
Subject: Lump Sum As Part of Vacation Base

Gene,

This was to be correct by programming.

The manual entry of vacation has been correctes as of March 1, 1996. The adjustments for entries of January and February are to be made by a computer program. I spoke to the programmer this week and he is in the process of testing the program. Will advise once this has been accomplished and corrections are ready for issuance.

Paul F. Jones
Manager Timekeeping
Monterey Park, Ca
(213) 980-6703

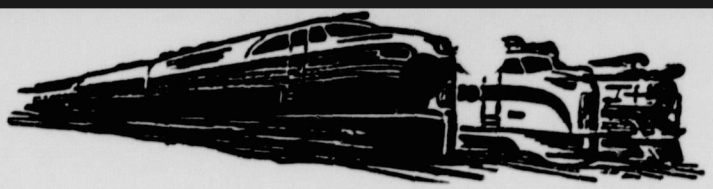
*** Forwarding note from INDERB --SPTSVM02 03/27/96 08:55 ***
To: OPUDET --SPTSVM02 Thompson, David
cc: INDPFJ --SPTSVM02 Jones, Paul
INDBEB --SPTSVM02 Bussey, Brian

From: E. R. "Ed" Barnes, Asst Dir TEY Timekeeping, 8-980-7402
Subject: Lump Sum As Part of Vacation Base

Gene, by copy of this note I am asking Paul Jones to reply on this. He is aware of what is happening here and the current status of the project. ED.

E. R. "Ed" Barnes, Asst Director TEY Timekeeping, SP Lines
1200 Corporate Center Dr., 2nd flr,Monterey Park, CA 91754
Public Network: 800-443-0687, Ext 7400
Intercompany Network: 8-980-7402

BLE EXHIBIT 17
Page 2 of 2



BROTHERHOOD OF LOCOMOTIVE ENGINEERS

M.R. STEPHENS, SEC'Y TREAS
ROUTE 2 BOX 2250
SCOTT CITY, MO 63780

GENERAL COMMITTEE OF ADJUSTMENT
ST. LOUIS SOUTHWESTERN RAILWAY LINES
D. E. THOMPSON, CHAIRMAN
414 MISSOURI BOULEVARD
SCOTT CITY, MO 63780
PHONE (573) 264-3232
FAX (573) 264-3735

July 26, 1999

AD1-94-1

R. D. Rock, Director
Labor Relations - UP
1416 Dodge Street
Omaha, Nebraska 68179

Reference: Vacation pay due SSW Engineer for 1998

Dear Mr. Rock:

Enclosed is letter dated March 5, 1998 over the signature of Michael D. Stom, Assistant Director Timekeeping in response to fax sent to you on February 4, 1998 regarding vacation pay for SSW Engineers.

As you can see from this letter, the Union Pacific Timekeeping Department did not include the Article I $1950.00 paid to SSW Engineers in 1997 when figuring vacation pay due per week in 1998.

Also enclosed you will find profs notes from various former SSW Labor Relations Officers and Timekeeping Managers which need no further explanation. These officers agreed that the $1950.00 paid to the SSW Engineers in 1995 was contractual earnings and compensation to be used in paying correct vacation pay for calendar year 1996. The $1950.00 was also used in the 1996 earnings for vacation pay in 1997.

I believe this is the letter I made reference to in the conference as I have not been able to find any letter regarding the three and one half percent (3½ %) and the $1950.00.

Given these rulings by the officers who were officers when the agreement was signed and put into effect, we would respectfully request that you instruct timekeeping to adjust every SSW Engineer's vacation pay for year 1998.

DLE EXHIBIT 18
Page 1 of 2

Please advise your decision.

Respectfully,

D. E. Thompson

Enclosures

cc: All BLE/SSW Divisions

BLE EXHIBIT 18
Page 2 of 2

UNION PACIFIC RAILROAD CO[illegible]. NY

OCT 0 1 199

1416 DODGE STREET
OMAHA NEBRASKA 68179

September 17, 1999

File: U-2210.20-1

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

Dear Sir:

This is in reference to your letter of July 26, 1999 concerning Article 1 $1.950.00 not being included when figuring vacation pay in 1998.

This has been fully investigated with Timekeeping and the Accounting Department and Labor Relations has been advised that the $1.950.00 has been included when figuring vacation pay for SSW engineers.

Since your letter is generic in nature the Carrier did not research specifics. however. if there are specific engineers who feel they have not been properly compensated. please advise and I will research the matter further.

Yours truly,

C. R. WISE
DIRECTOR LABOR RELATIONS

G:\LABOR OPS\WPCDOCS\m091799a.rgr.doc(1)

BLE EXHIBIT 19
Page 1 of 1

UNION PACIFIC RAILROAD COMPANY

APR 05 1999

1416 DODGE STREET
OMAHA, NEBRASKA 68179

March 12, 1999

L/R File
1164386/et al

L/C File
WO1016789/et al
(see attached)

MR RONNIE E STONE
LOCAL CHAIRMAN BLE
2100 WELLINGTON
PINE BLUFF AR 71603

Dear Sir:

This refers to your letters received January 19, 1999 appealing claims on behalf of various Engineers on various dates for ½ day's pay, each claim, account being runaround.

This is to advise you that these claims are under research to determine the validity thereof. Pending the results of that research, these claims must remain denied in their entirety.

All future correspondence should refer to the above-listed Labor Relations file numbers.

Sincerely,

Paul Waldmann

P. J. Waldmann
Asst. Director - Labor Relations

Att.

J031299A DRT(3)

BLE EXHIBIT 20
Page 1 of 1

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 452

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY -and- BROTHERHOOD OF LOCOMOTIVE ENGINEERS	CASE NO. 91 AWARD NO. 91

Public Law Board No. 452 was established pursuant to the provisions of Section 3, Second (Public Law 89-456) of the Railway Labor Act and the applicable rules of the National Mediation Board.

The parties, the St. Louis Southwestern Railway Company (hereinafter the Carrier) and the Brotherhood of Locomotive Engineers (hereinafter the Organization), are duly constituted carrier and labor organization representatives as those terms are defined in Sections 1 and 3 of the Railway Labor Act.

After hearing and upon the record, this Board finds that it has jurisdiction to resolve the following claim:

"Claims of Engineers and Firemen, Pine Bluff, for one (1) hour F.T.D., or 13 miles on various dates as shown below:

No.	Name	Date	T.S. NO.	TIME CORRECTION NOTICE DATE
1.	Hendrix, W.R.	10-29-73	17	11- 7-73
2.	Parker, B.R.	10-29-73	20	"
3.	Hankins, J.H. (Frmn.)	"	"	"
4.	Parker, B.R.	11-23-73	20	11-28-73
5.	Clague, D.L. (Frmn.)	"	"	"
6.	Parker, B.R.	11-25-73	22	11-30-73
7.	Clague, D.L. (Frmn.)	"	"	"

The Claimants are engineers who submitted claims for

BLE EXHIBIT 21
Page 1 of 7

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 452

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

-and-

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

CASE NO. 91

AWARD NO. 91

Public Law Board No. 452 was established pursuant to the provisions of Section 3, Second (Public Law 89-456) of the Railway Labor Act and the applicable rules of the National Mediation Board.

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3.	Hankins, J.H. (Frmn.)	"	"	"
4.	Parker, B.R.	11-23-73	20	11-28-73
5.	Clague, D.L. (Frmn.)	"	"	"
6.	Parker, B.R.	11-25-73	22	11-30-73
7.	Clague, D.L. (Frmn.)	"	"	"

The Claimants are engineers who submitted claims for

BLE EXHIBIT 21
Page 1 of 7

management may designate the time for reporting for duty."

Article 41-1 states:

"41-1. Engineers will be notified in writing when time claimed is not allowed. Engineers' time will be computed from roundhouse register or engineers' time slip."

In the latter part of 1973, the Carrier concluded that certain engineers were claiming excessive pay for FTD. In response to this perceived abuse, the Carrier issued General Order No. 112, dated October 5, 1973, which stated in relevant part:

"Effective immediately, General Order No. 107 dated October 1, 1973 and any other instructions concerning recording final terminal delay are cancelled. The following procedures are to be followed in computing and recording final terminal delay:

(1) All information required on Time Return and Delay Report, except for those entries dealing with arrival and tie-up time and total time on duty, should be filled in prior to arrival at terminal.

(2) Ten (10) minutes after arrival at tie-up point is considered to be ample time for conductor and engineer to perform the ordinary miscellaneous duties required of them at the end of trip. Where time in excess of ten minutes is consumed and results in claim for final terminal delay payment, such excess time must be supported by proper explanation on Time Return."

After promulgation of Rule No. 112, clerical employees transporting engineers from arriving trains to the tie-up point were furnished forms and required to record the time the engineers arrived at the tie-up point from a standard

management may designate the time for reporting for duty."

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"41-1. Engineers will be notified in writing when time claimed is not allowed. Engineers' time will be computed from roundhouse register or engineers' time slip."

In the latter part of 1973, the Carrier concluded that certain engineers were claiming excessive pay for FTD. In response to this perceived abuse, the Carrier issued General Order No. 112, dated October 5, 1973, which stated in relevant part:

"Effective immediately, General Order No. 107 dated October 1, 1973 and any other instructions concerning recording final terminal delay are cancelled. The following procedures are to be followed in computing and recording final terminal delay:

(1) All information required on Time Return and Delay Report, except for those entries dealing with arrival and tie-up time and total time on duty, should be filled in prior to arrival at terminal.

(2) Ten (10) minutes after arrival at tie-up point is considered to be ample time for conductor and engineer to perform the ordinary miscellaneous duties required of them at the end of trip. Where time in excess of ten minutes is consumed and results in claim for final terminal delay payment, such excess time must be supported by proper explanation on Time Return."

After promulgation of Rule No. 112, clerical employees transporting engineers from arriving trains to the tie-up point were furnished forms and required to record the time the engineers arrived at the tie-up point from a standard

clock at that location. The clerks forwarded these forms to the Auditor's office for use by timekeepers in computing FTD payments. In accordance with General Order No. 112, the Carrier denied a claim for FTD pay in excess of ten (10) minutes unless the extra time was explained thoroughly and completely on the time return form submitted by the engineer. In accordance with this policy, the Carrier denied portions of the FTD pay claimed by the Claimants.

The Organization maintains that the Claimants are entitled to full FTD pay for the time they submitted on their time return forms. The Organization contends that Rules 10, 11 and 41 clearly provide that Engineers are entitled to such payments and the amount of time paid is to be computed from forms submitted by the engineers. The Organization argues that the Carrier has failed to establish that the time return forms submitted by the Claimants were inaccurate in any way. The Organization further contends that the FTD payments requested by the Claimants are all for time spent performing legitimately compensable activities. These compensable activities include time for washing up and using bathroom facilities, as such facilities are not available in the engines.

The Carrier maintains that it in no way violated any operative rules when it promulgated General Order No. 112 and under this Rule's provisions denied portions of FTD

claims made by the Claimants. The Carrier maintains that while engineers have a right to be compensated for legitimate FTD, the Carrier has the right to take steps to insure the amount of time claimed is not excessive. The Carrier argues that Rule No. 112 establishes a legitimate system for controlling engineers' request for excessive FTD pay. The Carrier argues that ten (10) minutes is more than sufficient time for engineers to normally perform FTD compensable duties. In addition, the Carrier notes that Rule No. 112 does not bar engineers from claiming additional FTD time as long as they thoroughly document the claims. For this reason, the Carrier maintains that General Order No. 112 does not involve the interpretation of any operative Rule and this Board lacks jurisdiction to revoke the General Order.

In this case, the Carrier does not directly dispute the accuracy of the time return forms submitted by the Claimants. The Carrier does maintain that the Claimants did not justify, as requird by General Order No. 112, the need for FTD time in excess of ten (10) minutes. In addition, the time return forms submitted by the Claimants claim compensation for personal activities such as time for washing up and using the bathroom, which are not intended to be compensated under Article 10 or 11. Accordingly, the Carrier requests that the Board deny the claim in its entirety.

This Board has determined to sustain the claim of all the Claimants. Rule 41-1 explicitly states that compensable time shall be computed from the roundhouse register or engineer's slip. The Carrier cannot avoid the clear language of this Rule by unilaterally implementing a system that computes time by a different method. While the Carrier certainly is not obligated to automatically pay for any time submitted by the engineers, in this case it has the burden of establishing that the time claimed was improper. The Carrier cannot shift to the employees the burden of establishing that the time claimed is legitimate when it is so on its face.

In this case, the Carrier has failed to present evidence establishing the time claimed by the Claimants was improper. The time return forms submitted by the Claimants on their face present claims for legitimately compensable time. The engineers are obligated to accurately complete the time return forms and are subject to penalties if they deliberately fail to do so. In the absence of proof from the Carrier establishing otherwise, we find that the time return forms submitted by the Claimants are accurate. Accordingly, the claims are sustained in their entirety.

BLE EXHIBIT 21
Page 6 of 7

AWARD: Claims sustained. The Carrier shall pay the Claimants for all times submitted by the Claimants for FTD pay on the time return forms. These claims are to be paid in thirty (30) days from the date of this Award.

E. T. Koenig, Carrier Member
Written Dissent to follow

E. E. Watson, Organization Member

Richard R. Kasher
Richard R. Kasher, Chairman
and Neutral Member

December 18, 1984
Bryn Mawr, PA

BLE EXHIBIT 21
Page 7 of 7

UNION PACIFIC RAILROAD COMPANY

NOV 3 0 1998

Marilyn J. Ahart
Director Protection Management
(402) 997-2014

1416 DODGE STREET
OMAHA, NEBRASKA 68179

November 23, 1998

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

Dear Mr. Thompson:

This is to acknowledge receipt of your letter dated October 23, 1998, File No. ICC-307-23, concerning TPA calculation for SSW engineers.

I have discussed the facts of this case with Mr. Rock and Mr. Raaz. I have also reviewed New York Dock case history, and awards that support the exclusion of lump sum payments from the calculation of test period averages. Based on this review of the facts surrounding this case, I find no basis to support your request to include the November, 1995 $1,950.00 lump sum payment into the TPA calculations of your members.

Since you have requested that this dispute be referred to an arbitration committee, please be advised that I will be the carrier member on the Committee. Prior to scheduling the proceedings I would like to discuss the selection of the third and neutral member of the committee with you. Possible candidates that the carrier would suggest are: W. F. Euker, L. E. Stallworth, J. B. LaRocco or E. Muessig.

Please call me at you convenience to discuss the selection of the neutral, and any other issues you would like to review.

Sincerely,

Marilyn J. Ahart

cc: R. D. Meredith
L. A. Lambert

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