

STB

FD-32760 (SUB 41)

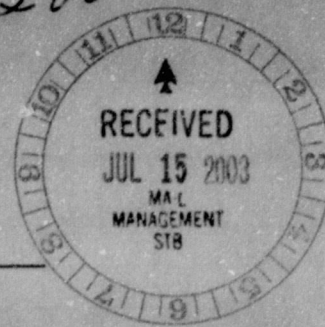
07/15/03

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208391

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BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 32760 (Sub-No-41)

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

(ARBITRATION REVIEW)

MOTION OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS
UNION PACIFIC RAILROAD – CENTRAL REGION
FOR PERMISSION TO FILE REBUTTAL TO UNION PACIFIC RAILROAD COMPANY'S
REPLY AND OPPOSITION TO PETITION FOR REVIEW OF AN ARBITRATION AWARD

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

General Chairman
Brotherhood of Locomotive Engineers
Union Pacific Railroad – Central Region

ENTERED
Office of Proceedings

JUL 15 2003

Part of
Public Record

**MOTION OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS
UNION PACIFIC RAILROAD – CENTRAL REGION
FOR PERMISSION TO FILE REBUTTAL TO UNION PACIFIC RAILROAD
COMPANY’S REPLY AND OPPOSITION TO PETITION FOR REVIEW OF AN
ARBITRATION AWARD**

Comes now the Brotherhood of Locomotive Engineers and moves to file this Rebuttal to the Union Pacific Railroad Company’s Reply and Opposition to Petition for Review of an Arbitration Award (“Reply”), in the interest of the more complete record. *Norfolk & W. Ry. Co. and New York, C & St. L. R. Co. Merger*, 9 I.C.C.2d 1021 n.1. (1993).

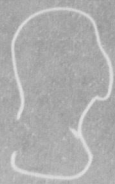
The Union Pacific Railroad Company (“Union Pacific”) raised a timeliness issue in its Reply at 3, 10-11. However, the Union Pacific’s position as to this issue was based upon speculation and conjecture, rather than fact. *Id.* As such, in the interest of a more complete record, the actual fact that the original filing of the Petition and Appendices was made through Airborne Express, picked up on June 6, 2003, in Hazelwood, Missouri, and delivered to J. Pearson, on June 10, 2003 at 9:48 A.M., in Washington, D.C., Shipment No. 31813769610 (Copy attached hereto as Exhibit A), also used as the Tracking Number in the “Signature Proof of Delivery: Detail” (Copy attached hereto as Exhibit B), should be accepted. Since June 6, 2003, is more than one day prior to the due date, the original filing of the Petition and Appendices was timely pursuant to 49 CFR § 1104.6:

§1104.6 Timely filing required.

Documents must be received for filing at the Board’s offices in Washington, DC within the time limits set for filing. At the Board’s offices in Washington, DC within the time limits set for filing. The date of receipt at the Board, and not the date of deposit in the mail, determines the timeliness of filing. However, if a document is mailed by United States express mail, postmarked at least one day prior to the due date, it will be accepted as timely. Other express mail, received by the private express mail carrier at least one day prior to the due date, also will be accepted as timely filed. The term express mail means that the carrier or delivery service offers next day delivery to Washington, DC.

(Emphasis original and added)

Although the undersigned has made subsequent inquiry with the customer service representative at Airborne Express as to why the original Petition and Appendices was not delivered on June 9, 2003, as intended, the customer service representative was unable to provide any explanation. Regardless, the filing was timely, pursuant to the express language of the above-quoted Section.



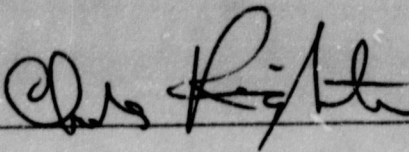
Respectfully submitted,

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

General Chairman
Brotherhood of Locomotive Engineers
Union Pacific Railroad – Central Region

CERTIFICATE OF SERVICE

I hereby certify that the foregoing MOTION OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS UNION PACIFIC RAILROAD – CENTRAL REGION FOR PERMISSION TO FILE REBUTTAL TO UNION PACIFIC RAILROAD COMPANY'S REPLY AND OPPOSITION TO PETITION FOR REVIEW OF AN ARBITRATION AWARD, by U. S. Postal Service Express Mail to Brenda J. Council, POLK WALDMAN WICKMAN & COUNCIL, PC, LLO, 1016 Leavenworth Street, Omaha, Nebraska 68102, Attorneys for Union Pacific Railroad Company, and John B. LaRocco, Arbitrator, 2001 H Street, Sacramento, California, 95814-3109, on this 14th day of July 2003.



**AIRBORNE
EXPRESS**

SHIPMENT NO.

SHIPMENT DATE

WEIGHT

3181 376 9610

6/6/63

FROM (COMPANY NAME)		
B.L.E.		
ADDRESS		
300 BROOKES DR. STE 115		
CITY	STATE	ZIP CODE (REQUIRED)
HAZELWOOD	MO	63042
SENT BY (NAME/DEPT)		PHONE
C.R. RIGHTMEYER		314 895-5858
TO (COMPANY NAME) AIRBORNE CANNOT DELIVER TO PO. BOX		
SURFACE TRANSPORTATION BOARD		
ADDRESS		
1925 K STREET N.W. - ROOM 715		
CITY	STATE	ZIP CODE (REQUIRED)
WASHINGTON	DC	20423
ATTN: (NAME/DEPT)		PHONE
VERNON A. WILLIAMS		202 565 1674

REMOVE SENDER'S COPY

EXHIBIT "A"

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BY NUMBER	BY REFERENCE	BY EMAIL	SIGNATURE P.O.D.	SKY COURIER SHIPMENTS		

SIGNATURE PROOF OF DELIVERY: DETAIL.

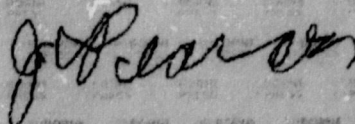
[Start a new search](#)

Tracking Number: 31813769610

Shipment Summary:

Shipped on: 6/9/03
 Delivered on: 6/10/03 9:48 am
 Delivered to: Receptionist
 Signed for by: J PEARSON
 Pieces: 1

Signature:



RECEIVED IN GOOD ORDER EXCEPT AS NOTED

Receiver:

AIRBORNE EXPRESS
 Flight Ready, DC 20423
 United States

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EXHIBIT "B"