AGREEMENT FOR REPAYMENT

110.61-21.326

Mr. B. W. Kopeskey
1310 W. Walnut
Bloomington, IL 61701

I understand that I was incorrectly paid relocation of $13,800.00. I agree to repay this amount to the Carrier as follows (select one):

____ By check for the full amount (enclose check and send via U.S. Mail)

____ Deduction of $575.00 per pay period for twelve months

____ Deduction of $383.00 per pay period for eighteen months

This deduction will commence at the first pay period following the date this Agreement is received by the Carrier.

_____
Employee's Signature

_____
Date

Send by fax to: Andrea Gansen
402/271-2463

or mail: 1416 Dodge Street
Room 332
Omaha, NE 68179

Upon receipt, copy to Georgia Marshall for processing to Banking Department.

W-2

ORGANIZATION EXHIBIT

X

C.J. SOSSO
JAN 11 2001
RECEIVED

REC'D
JAN 10 2001
Labor Relations

HUB RELOCATION BENEFITS APPLICATION

(Kansas City Hub)
(Applicant Insert Name of Appropriate Hub)

Please accept this as my application for relocation benefits as set forth in the above referenced Article VII (B) Merger Implementing Agreement. I understand that my election herein is in lieu of actual relocation benefits provided under New York Dock. This election must be exercised within two (2) years from the date of implementation of this Agreement. (Except that Option 3 shall expire within five (5) years from implementation). Please check one of the following three options:

☐ Option 1: I am a non-owner and accept a $10,000 allowance in lieu of New York Dock relocation benefits

☑ Option 2: I am a homeowner and accept a $20,000 allowance in lieu of New York Dock relocation benefits.

If I have accepted Option 1 or 2, I understand that I must submit "proof of actual relocation" in order to receive the "in lieu of" allowance.

☐ Option 3: I am a homeowner and having sold my home, accept a $10,000 allowance in addition to the $20,000 allowance I shall receive under Option 2, for a total of a $30,000 allowance.

If I have accepted Option 3, I understand that I must not only submit "proof of actual relocation" but in addition I must provide "proof of a bona fide sale" of my home at fair value in the form of sale documents, deeds, and filings of these documents with the appropriate agency in order to receive the "in lieu of" allowance.

In addition, I understand that in accepting any of the three options above, I will be required to remain at the new location, seniority permitting, for a period of two (2) years. Please fax or send this completed form to J. E. Cvetas, Manager-Labor Relations Program Administration, 1416 Dodge Street, Room 332, Omaha, NE 68179; fax (402)271-2463. Mr. Cvetas can also be reached by phone at (402)271-4577.

NAME Jason P. Sevart SSN 515-94-4026

SIGNATURE Jason P Sevart

CRAFT Engineer

DATE 12-08-2001

OLD WORK LOCATION MX 165 Jefferson City MO NEW WORK LOCATION MX 283 Kansas City MO

implementation 11/16/99

X-1

UNION PACIFIC RAILROAD COMPANY

March 4, 2001
File: 110.61-20-326

Mr. J.P. Sevart
112 West Laredo Trail
Raymore, MO 64083

Dear Sir:

This refers to your application for $20, 000 in lieu of relocation benefits as the result of the implementation of the Kansas City Hub on January 1, 1999.

Your work records indicate you are permanently assigned to the RE125 pool at Jefferson City. Notwithstanding the fact you were not required to relocate to Kansas City, the documents you provided indicate you are leasing from relatives in Raymore, MO for a period of three months ending February 28, 2001. In addition the "Deed of Trust" you provided for a lot in Jefferson City is not signed and is not sufficient evidence of home ownership.

Accordingly, your request for relocation benefits is denied. If you wish to pursue this further, please contact your General Chairman's office.

Sincere regards,

Catherine Sosso

Catherine Sosso
Director Labor Relations

Copy to: Mr. R.E. Karstetter
General Chairman UTU
4702 W. Commercial Dr., Suite A
No. Little Rock, AR 72116

X-2

Page: 1 Document Name: u[redacted]tled

PRS073 MSG 504 - PLEASE VERIFY ALL DATA BEFORE ACCEPTING

MISCELLANEOUS PAYMENT SCREEN - 65

SOC SEC NBR =====> 515944026 NAME(FML)=> J P SEVART

TRANSACTION TYPE=> TRF COST CENT=> 99677 COST CODE=> 2948

GROSS AMOUNT ====> 20,000.00 COMP CODE=> 01 PYRL NBR => 325

FEDERAL TABLE ===> X 29% EX PCT BAL SHEET=> TXBL YR=> 0501

TLC PRVD OVRD(X)=> WORK ORDR=> JOB NBR =>

E.E.O ATTORNEY ==> CONTROL NBR =>

********* TAXES TAKEN ********** ****** DEDUCTIONS TAKEN **********

CODE	DESC	AMOUNT	GROSS	OVRRD
024	MO	600.00	20,000.00	C
002	FED	5,600.00	20,000.00	N

CODE	AUTH	DESCRIPTION	AMOUNT

5/21/01

3229722

CHECK NET AMOUNT ==> 13,800.00

ACCEPT CORR(X) ====> x

( ) ENTER NEXT TOPIC ELSE 98 - MAIN MENU 99 - PRIMARY MENU

Paid for Cathy Sosa.

Date: 5/18/ 1 Time: 01:39:19 PM

X-3

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
OMAHA, NEBRASKA 68179

November 16, 2001
Files: 110.61-21-326
110.61-20-326
360-7

VIA U.S. Mail

MR C R RIGHTNOWAR
GENERAL CHAIRMAN BLE
320 BROOKES DR STE 115-118
HAZELWOOD MO 63042

Dear Sir:

This refers to our meeting in St. Louis on October 16, 2001, regarding applications for in lieu of relocation under various Hub agreements. The following is a recap of our discussions:

- J.P. Sevart – I provided documentation of payment for your information.
- D.E. Laudzers – You are to provide additional documentation as proof of his actual relocation to Kansas City during the hold down period for my further review.
- M.A. Katricia – This claim was originally filed by former General Chairman Thompson and subsequently appealed by UTU General Chairman Karstetter. Former Director Gansen requested additional documentation – none was forthcoming and the claim was denied
- S.O. Boykin – I am reviewing your position and will respond by December 15.
- S. M. Jungers – You are to provide documentation of home ownership/sale and proof of actual relocation to St. Louis during the two year hold down.
- T.E. Little – The Carrier will allow $10,000 without prejudice to it's position. Payment will be forthcoming.
- T.R. Brumme – Carrier records indicate he is living in Bloomington and has not relocated to Villa Grove.
- T.E. Bryan — The Parties have closed their files on this matter.
- M.O. Coats and C.W. Kerr – I advised I will review your position and respond in writing by December 15.

We discussed scheduling another meeting to review the open items listed. I suggest we jointly review any additional documentation when you are in Omaha for Section 6 meetings the week of December 4.

You also listed the names of several employees requesting adjustment of their TPAson your request for conference. I advised Director Protection, Marilyn Ahart, is the Carrier Officer responsible for grievances related to payment and computation of TPAs. Please contact her office to progress any such claims.

Sincere regards

Catherine Sosso

Catherine Sosso
Director Labor Relations

X-4

Relocation Benefits for the Hub Merger Implementing Agreement

The following information must be provided, depending upon which Option is selected.

Option 1: **Proof of actual relocation**. This may take the form of a home or apartment lease or contract to purchase a new home.

Option 2. **Proof of actual relocation** similar to that stated above for Option 1. In addition it will be necessary to provide proof of current home ownership in the form of a purchase contract, warranty deed, or mortgage papers. If these documents do not contain the property's address, i.e., most only contain a description of the property, also include the most recent tax statement which should have a street address to coincide with the description of the property.

Option 3: In addition to **proof of actual relocation**, it will also be necessary to provide a bona fide bill of sale of the old home.

X-5

Brotherhood of Locomotive Engineers
General Committee of Adjustment
Union Pacific Railroad Central Region

C.R. Rightmeier
GENERAL CHAIRMAN
R.E. Rhodes
1ST VICE-CHAIRMAN
T.H. Wells
2ND VICE-CHAIRMAN
C.R. Brand
SECRETARY-TREASURER

320 Brookes Dr., Suite 115 • Hazelwood, MO 63042 • (314) 895-5858 • Fax (314) 895-0104

October 10, 2001

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
 # 7000 1670 0005 1644 0283

Ms. Catherine Sosso
Director-Labor Relations
Union Pacific Railroad Company
1416 Dodge Street, Room # 332
Omaha, Nebraska 68179-0323

Dear Ms. Sosso:

This has reference to our discussions related to our upcoming meeting in St. Louis, Missouri at the UP Building during the week of October 15, 2001.

The Parties agreed to conference various issues including NYD Relocation Allowances for various engineers during our upcoming conference.

The NYD Relocation Allowance claims that the Organization desires to conference includes, but is not limited to, the following:

M.O. Coats	C.W. Kerr	S.O. Boykin
D.E. Laudzers	M.A. Katricka	J.P. Sevart

In addition, numerous individuals still do not have their TPA adjusted in accordance with the various Hub Agreements. The list of individuals requesting that their NYD TPA be adjusted include, but is not limited to, the following:

S.O. Boykin	E.D. Ivey	K.G. Timmons
L.S. Crafton, Jr.	R.W. Durkin	

X-6

In previous correspondence, the Parties agreed to arbitrate the undisturbed rest dispute. Specifically, the issue of whether or not an engineer assigned to the GXB loses his incentive day and guaranteed days when he avails himself to undisturbed rest pursuant to the System Agreement. Please advise as to when the Carrier will be able to arbitrate this dispute.

Another dispute that needs to be listed for arbitration is the issue of who qualifies for the $2.75 portion of the short crew allowance.

Please advise.

Yours truly,

Charles Rightnowar

Charles R. Rightnowar
General Chairman
Union Pacific – Central Region

X-7

TRANSMISSION VERIFICATION REPOR

TIME : 10/10/2001 13:33

DATE,TIME	10/10 13:31
FAX NO./NAME	14022712463
DURATION	00:02:00
PAGE(S)	03
RESULT	OK
MODE	STANDARD ECM

X-9

ORGANIZATION EXHIBIT

Y

TONY ZABAWA
General Director-
Timekeeping Operations

UNION PACIFIC RAILROAD COMPANY

1815 Capitol Avenue
Omaha, Nebraska 68102
Phone (402) 997-2000
Fax (402) 997-2385

October 11, 2000

Mr. Charles R. Rightnowar
General Chairman, BLE
320 Brookes Dr., Suite 115
Hazelwood, MO 63042

Dear Mr. Rightnowar:

This refers to your letter dated August 18, 2000, concerning held away from home terminal time and relocation allowances claimed for Zone 3 Kansas City Hub Engineers listed in your letter.

Currently Engineers L.D. Molloy, D. R. Snyder and A. L. Chachere are assigned to Kansas City turns and are receiving held away from home terminal time at Jefferson City. Engineers M. O. Coats and C. W. Kerr are assigned to Jefferson City turns and are receiving held away from home terminal time at Kansas City per instructions from Labor Relations dated June 02, 2000. They are currently not entitled to held away time at other locations and any claims for normal or reverse held away addressed in your letter for these individuals is declined.

All claims for relocation allowances are handled directly through the office of Labor Relations and those claims addressed in your letter are declined. Any future questions concerning this subject should be addressed directly to Catherine Sosso, Director Labor Relations.

Based on the above, any claim mentioned in your letter dated August 18, 2000, must be respectfully declined.

Sincerely,

Tony Zabawa

Tony Zabawa
General Director Timekeeping

Cc: Catherine Sosso – Director Labor Relations
Michael Stom – Director Timekeeping

4-1

ORGANIZATION EXHIBIT

Z

Brotherhood of Locomotive Engineers
General Committee of Adjustment
Union Pacific Railroad Central Region
320 Brookes Dr., Suite 115 • Hazelwood, MO 63042 • (314) 895-5858 • Fax (314) 895-0104

C.R. Rightnowar
GENERAL CHAIRMAN
R.E. Rhodes
1ST VICE-CHAIRMAN
T.H. Wells
2ND VICE-CHAIRMAN
C.R. Brand
SECRETARY-TREASURER

January 12, 2002

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
 # 7001 1140 0001 0835 1341

Ms. Catherine Sosso
Director-Labor Relations
Union Pacific Railroad Company
1416 Dodge Street, Room # 332
Omaha, Nebraska 68179-0323

Dear Ms Sosso:

This will acknowledge receipt of your letter dated December 28, 2001 **(Carrier File No. 110.61-21-326 and 110.61-20-326, 360-7) (Provided for your ready reference as Attachment "1")** referencing the Parties conference and subsequent discussions of the claims for the relocation allowance of Engineer M.O. Coats and Engineer C.W. Kerr as set forth in the Kansas City Hub Merger Implementing Agreement. Pursuant to the Kansas City Hub Merger Implementing Agreement, claim has also been made for payment of all held-away-from-home terminal payments, for both engineers, associated with the relocation from Jefferson City to Kansas City, as provided in the Kansas City Hub Merger Implementing Agreement.

The version of events stated in your December 28, 2001 letter are an inaccurate depiction of the conference of these claims and our subsequent meeting and discussion of the two (2) claims in your Omaha, Nebraska, office on December 07, 2001. When these two claims, and others relocation claims, were conferenced in St. Louis, Missouri, on October 15, 2001, the Organization provided all the documentation supporting the claims for your review and consideration. During our conference discussions, you advised that upon your return to Omaha you would discuss the claims with Mr. Meredith and make an offer the resolve the claims on property.

Our discussions on December 07, 2001, was to discuss a possible settlement offer for the claims, promised in St. Louis on October 15, and not for re-conferencing of the claims. You are

Z-1

correct when stating that during these discussions the Organization did not bring its entire file related to the claims to your Omaha office. During our discussions on December 07, 2001, you made no settlement offer and advised that you had yet to discuss a potential settlement offer with Mr. Meredith.

The Parties have discussed these two (2) claims, with numerous conferences, for more than a year. Each time the discussions were had, you advised that you were going to make a settlement offer. Subsequent to you statements that you were going to make a settlement offer, no offer was forthcoming. In order to achieve a resolution of the two (2) claims referenced above, and other NYD relocation allowance claims, and after the promised settlement offers had been made after almost a year of promises, the Organization properly filed for New York Dock arbitration seeking a final resolution of the claims. It appears that your office is determined to delay final resolution of this matter as long as possible. The Organization seeks resolution.

Further, the Carrier has refused to pay NYD protective benefits to Engineer M.O. Coats in its efforts to improperly seek restitution of the relocation allowance previously paid. After numerous requests, both by this office and Mr. Coats personally, for a current status report as to how much had been deducted, your office has yet to give this office, or Mr. Coats, a current accounting of how much money has been deducted from Mr. Coats entitled NYD protective payments. Identical requests, without a current account status provided, have been made for Engineer C.W. Kerr.

Additionally, this office has requested documentation as to how much HAHT has been declined for both engineers since the Carrier took the position that both engineers were not entitled to the relocation allowance and began their efforts at re-collection and began declining entitled HAHT payments at Jefferson City. Engineer Coats and Kerr are entitled to the payment of HAHT at Jefferson City pursuant to the Kansas City Hub Merger Implementing Agreement. Your office has provided no accounting, although requested on numerous occasions, for the HAHT declined for both engineers at Jefferson City.

Without waiver of the above and without waiver of any position set forth by the Organization related to these claims, and other disputed NYD relocation allowance claims, the following documentation is provided for your review.

A sampling of timeslips filed verifying how much HAHT Engineer M.O. Coats is entitled to at Jefferson City **(Provided for your ready reference as Attachment "2")**. The enclosed timeslips do not represent all the claims filed for HAHT at Jefferson City by Mr. Coats, as there are other claims for HAHT at Jefferson City that are not currently in the possession of the Organization. All claims for HAHT at Jefferson are incorporated by reference and made a part of the record as though fully set forth herein.

A sampling of timeslips filed verifying how much HAHT Engineer C.W. Kerr is entitled to at Jefferson City (**Provided for your ready reference as Attachment "3"**). The enclosed timeslips do not represent all the claims filed for HAHT at Jefferson City by Mr. Kerr, as there are other claims for HAHT at Jefferson City that are not currently in the possession of the

2-2

Organization. All claims for HAHT at Jefferson are incorporated by reference and made a part of the record as though fully set forth herein.

Carrier generated documents reveal that both Engineer M.O. Coats and Engineer C.W. Kerr were treated in a disparate manner from Engineer L.D. Molloy who also applied for and received the in lieu of relocation allowance as provided by the Kansas City Hub Merger Implementing Agreement **(Provided for your ready reference as Attachment "4")**.

Carrier generated documents reveal that both Engineer M.O. Coats and Engineer C.W. Kerr were treated in a disparate manner from Engineer J.P. Sevart who also applied for and received the in lieu of relocation allowance as provided by the Kansas City Hub Merger Implementing Agreement **(Provided for your ready reference as Attachment "5")**.

Carrier generated documents reveal that both Engineer M.O. Coats and Engineer C.W. Kerr were treated in a disparate manner from Engineer A.L. Chachere who also applied for and received the in lieu of relocation allowance as provided by the Kansas City Hub Merger Implementing Agreement **(Provided for your ready reference as Attachment "6")**.

Carrier generated documents reveal that both Engineer M.O. Coats and Engineer C.W. Kerr were treated in a disparate manner from Engineer D.R. Snyder who also applied for and received the in lieu of relocation allowance as provided by the Kansas City Hub Merger Implementing Agreement **(Provided for your ready reference as Attachment "7")**.

Carrier generated records related to this dispute for Engineer M.O. Coats that have previously been made a part of the records are enclosed **(Provided for your ready reference as Attachment "8")**.

Carrier generated records related to this dispute for Engineer C.W. Kerr that have previously been made a part of the records are enclosed **(Provided for your ready reference as Attachment "9")**.

Correspondence pertaining to this dispute previously made a part of the record in enclosed **(Provided for your ready reference as Attachment "10")**.

All other Carrier generated documents surrounding this dispute, not provided herein, are incorporated by reference into this document as though fully set forth herein.

All other correspondence between the Parties and documents provided to the Carrier by the Claimants, not provided herein, is incorporated by reference into this letter as though fully set forth herein.

All documents previously conferenced by the Parties related to the relocation allowance claim of Engineer S.M. Jungers are enclosed **(Provided for your ready reference as Attachment "11")**.

Z-3

All other Carrier generated documents surrounding this dispute, not provided herein, are incorporated by reference into this document as though fully set forth herein.

All other correspondence between the Parties and documents provided to the Carrier by the Claimants, not provided herein, is incorporated by reference into this letter as though fully set forth herein.

All documents previously conferenced by the Parties related to the relocation allowance claim of Engineer D.E. Luadzers are enclosed **(Provided for your ready reference as Attachment "12")**. At conference, you advised that the only remaining issue that would determine whether or not Engineer Luaders was entitled to the relocation allowance was whether or not his relocation left him farther away from his new work assignment or nearer his new work assignment. Documents provided herein establishes that Engineer Luaders is entitled to the payment of the relocation allowance as set forth in the Kansas City Hub Merger Implementing Agreement.

All other Carrier generated documents surrounding this dispute, not provided herein, are incorporated by reference into this document as though fully set forth herein.

All other correspondence between the Parties and documents provided to the Carrier by the Claimants, not provided herein, is incorporated by reference into this letter as though fully set forth herein.

All documents previously conferenced by the Parties related to the relocation allowance claim of Engineer D.E. M.A. Katricka are enclosed **(Provided for your ready reference as Attachment "13")**.

All other Carrier generated documents surrounding this dispute, not provided herein, are incorporated by reference into this document as though fully set forth herein.

All other correspondence between the Parties and documents provided to the Carrier by the Claimants, not provided herein, is incorporated by reference into this letter as though fully set forth herein.

All documents previously conferenced by the Parties related to the relocation allowance claim of Engineer S.O. Boykin are enclosed **(Provided for your ready reference as Attachment "14")**. As agreed to in conference, Engineer S.O. Boykin was treated in a disparate manner than Engineer E.K. Ivey who also left his position as a company manager during the same time frame as did Engineer Boykin. You advised that the decision not to pay Engineer Boykin the relocation allowance (E.K. Ivey was paid the NYD relocation allowance) might have been precipitated by internal company politics and further, that you felt that Engineer Boykin was entitled to the relocation allowance due to the fact that same had been paid to Engineer E.K. Ivey. You advised that you would confer with your superiors and try to pay the relocation allowance claim as you felt that Engineer Boykin was entitled to payment of the relocation allowance.

2-4

All other Carrier generated documents surrounding this dispute, not provided herein, are incorporated by reference into this document as though fully set forth herein.

All other correspondence between the Parties and documents provided to the Carrier by the Claimants, not provided herein, is incorporated by reference into this letter as though fully set forth herein.

At conference, you advised that all issues of adjustments of NYD protective payments should properly be referred to Ms. Marilyn Ahart of the Protection Bureau.

All claims for NYD relocation allowances are supported by the in lieu of arrangements negotiated in the St. Louis, Kansas City and North Little Rock/Pine Bluff Hub Merger Implementing Agreements.

If after a review of the documents provided herein, you are unable to pay the relocation allowance claims, stand advised that the Organization still requests NYD expedited arbitration to resolve the disputes.

As agreed to by the Parties previously, the Organization is agreeable to John B. LaRocco as the arbitrator.

The Carrier is advised that as of this date, your office has provided no documents to this office supporting the Carrier's position related to these in lieu of NYD relocation allowance claims. As such, based upon the position set forth in your December 28, 2001, letter, the Carrier is barred from using any document in arbitration not previously provided to the Organization.

Please advise.

Yours truly,

Charles Rightnowar

Charles R. Rightnowar
General Chairman
Union Pacific – Central Region

Z-5

ATTACHMENT "1"

Z-6

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
OMAHA, NEBRASKA 68179

December 28, 2001
Files: 110.61-21-326
110.61-20-326
360-7

MR C R RIGHTNOWAR
GENERAL CHAIRMAN BLE
320 BROOKES DR STE 115-118
HAZELWOOD MO 63042

RE: Relocation Claims

Dear Sir:

This refers to my letter dated November 16, 2001, and our discussion in my office on Friday, December 7, 2001, concerning the handling of the relocation disputes. On both occasions you did not come prepared with the your files and documentation concerning these claims. In order to fully address the issues associated with the Claimants you have identified, I asked you to provide copies of the documents you are relying on in support of your claims so I may fully respond to your requests for payment.

This request is to ensure we have complete exchange of information so I can make informed decisions regarding any potential on property resolution of these claims prior to proceeding to party-pay New York Dock arbitration. Once I receive this information, I will promptly respond in writing.

To date, I have not received any of the requested information. I do not consider these cases ripe for arbitration until we conclude the on property handling by fully documenting our respective positions.

As I advised, once we conclude the on property handling, I have committed to scheduling arbitration of any outstanding claims as expeditiously as possible.

Sincere regards,

Catherine Sosso

Catherine Sosso
Director Labor Relations

Z-7

Exhibit
AA

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
OMAHA, NEBRASKA 68179

March 5, 2002
Files: 110.61-10 (326)
110.61-10 (326)
110.61-10 (326)

VIA FACSIMILE & Overnight Mail

MR C R RIGHTNOWAR
GENERAL CHAIRMAN BLE
320 BROOKES DR STE 115-118
HAZELWOOD MO 63042

RE: Relocations
Dear Sir:

This acknowledges receipt of your letter dated January 12, 2002, in this office on January 22, 2002, concerning our meetings to discuss your appeal of various relocation allowance applications.

Once again, you mischaracterize the Carrier's handling and representations in conference. You presented your position without providing the supporting documentation when we met on October 10, 2001, and again on December 7, 2001. On November 16, 2001, I advised I would review the Carrier's files. The positions you took during our meeting were not documented in all cases and requested further exchange of documentation the week of December 4, 2001, when you were in Omaha. You did not bring any files resulting in my December 28, 2001, letter.

Although we discussed potential settlement of several cases, I never made any representations that I agreed with your positions or that settlement offers would be forthcoming. I listened to your verbal representations and responded by reiterating the record as it stands was void of any information to warrant any further payment but I would take into consideration any supplemental documentation of your positions. Your procedural gyrations and misrepresentations are offensive and contrary to fostering open discussions in efforts to resolve disputes on the property. You continue to torpedo the Carrier's good faith efforts to bring all issues to the table for open discussion and possible resolution on the property.

The following are my comments based on my review of the records I received from your office on January 22, 2002.

SM Jungers (Attachment "11"). You failed to provide any documentation or information to support your position Mr. Jungers alleged relocation from Jefferson City to St. Louis was a result of the merger and not a seniority move. His permanent address on file with the Carrier is Jefferson City and he is working in the RE05 pool out of Jefferson City. Enclosed is a copy of the certified receipt signed by Mr. Jungers at his Jefferson City home. The lease agreement you provided with your letter dated January 12, 2002, is for one year commencing 10/23/00 and the deadline for applying for the relocation expired October 31, 2000. Therefore, the claim is denied.

DE Luadzers (Attachment "12"). Based on the additional documentation provided to you by Local Chairman A.L. Tinney and forwarded with your January 12, 2002, letter, including evidence

AA-1

of current residency in Blue Springs, Missouri. I am agreeable to payment of the $20,000. 00 relocation allowance without prejudice. Please sign the attached settlement letter and return a copy to this office for processing.

MA Katricka (Attachment "13"). No additional documentation to support the claim was provided. Conductor Katricka is working in St. Louis and resides in the St. Louis area. Nothing was provided to warrant a reversal of the Carrier's position her assignment to Dexter was not a result of the merger. See Carrier's prior correspondence and letter dated November 16, 2001. Claim denied.

SO Boykin (Attachment "14"). I take serious exception to your characterization of our discussions and there is no basis in fact for any of your allegations. Based on the documents you provided, neither Mr. Boykin nor Mr. Ivey are entitled to the relocation benefits. I will investigate recollection of the payment to Mr. Ivey.

MO Coats (Attachment "2") and CW Kerr (Attachment "3"). I previously provided the current accounting of the recollection of the relocation allowances paid to Mr. Coats and Mr. Kerr for their alleged relocation to Kansas City from Jefferson City, Missouri. I am not agreeable to any proposed settlement in view of the fact both Mr. Coats and Mr. Kerr failed to comply with the conditions of the Merger Implementing Agreement by actually relocating and remaining in Kansas City. Both employees reside at Jefferson City and hold Jefferson City pool turns. There is no agreement provision providing for payment of HAHT at the employee's home terminal. Moreover, these engineers received HAHT and lodging at Kansas City based on their residency in Jefferson City and assignment to Jefferson City in the pool turns. Nevertheless, you progressed time claims for HAHT at Jefferson City. Any claims associated with these bogus claims for HAHT are the proper subject for handling with Mr. McBratney in the usual manner pursuant to the System Agreement – Claims Handling Process.

The issue properly before me is the recollection of relocation payments paid in error to Mr. Coats and Mr. Kerr. These employees fraudulently submitted claims for payment in violation of the Agreement and NYD conditions. They are subject to dismissal for dishonestly. As stated in previous correspondence, there is nothing to preclude this office from notifying the Service Unit to pursue this course of action. However, former Director Andrea Gansen elected to pursue recollection of relocation allowances due to Mr. Coats' and Mr. Kerr's refusal to sign recollection agreements. Moreover, you wrote to Assistant Director TM Stone on June 15, 2000, endorsing discipline as a proper method to handle such disputes. (copy attached). You claim disparate treatment citing the names of several employees who allegedly received relocation allowances under similar circumstances. You failed to provide any factual information regarding these allegations. You provided nothing in your January 12, 2002, Attachments 4-10, to support your position. I will advise the auditors to investigate the improper payment to the employees identified. The computer printouts you provided are meaningless. Finally, you provided no information warranting a change in the Carrier's position set forth in writing to your office prior to the time I replaced Ms. Gansen. Accordingly, all claims are denied.

Sincere regards,

Catherine Sosso

Catherine Sosso
Director Labor Relations

Attachments

Copy to: Rock
McBratney
Ahart

AA-2

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
OMAHA, NEBRASKA 68179

December 28, 2001
Files: 110.61-21-326
110.61-20-326
360-7

MR C R RIGHTNOWAR
GENERAL CHAIRMAN BLE
320 BROOKES DR STE 115-118
HAZELWOOD MO 63042

RE: Relocation Claims

Dear Sir:

This refers to my letter dated November 16, 2001, and our discussion in my office on Friday, December 7, 2001, concerning the handling of the relocation disputes. On both occasions you did not come prepared with the your files and documentation concerning these claims. In order to fully address the issues associated with the Claimants you have identified, I asked you to provide copies of the documents you are relying on in support of your claims so I may fully respond to your requests for payment.

This request is to ensure we have complete exchange of information so I can make informed decisions regarding any potential on property resolution of these claims prior to proceeding to party-pay New York Dock arbitration. Once I receive this information, I will promptly respond in writing.

To date, I have not received any of the requested information. I do not consider these cases ripe for arbitration until we conclude the on property handling by fully documenting our respective positions.

As I advised, once we conclude the on property handling, I have committed to scheduling arbitration of any outstanding claims as expeditiously as possible.

Sincere regards,

Catherine Sosso

Catherine Sosso
Director Labor Relations

AA-3

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
OMAHA, NEBRASKA 68179

November 16, 2001
Files: 110.61-21-326
110.61-20-326
360-7

VIA U.S. Mail

MR C R RIGHTNOWAR
GENERAL CHAIRMAN BLE
320 BROOKES DR STE 115-118
HAZELWOOD MO 63042

Dear Sir:

This refers to our meeting in St. Louis on October 16, 2001, regarding applications for in lieu of relocation under various Hub agreements. The following is a recap of our discussions:

- J.P. Sevart -- I provided documentation of payment for your information.
- D.E. Laudzers – You are to provide additional documentation as proof of his actual relocation to Kansas City during the hold down period for my further review.
- M.A. Katricia – This claim was originally filed by former General Chairman Thompson and subsequently appealed by UTU General Chairman Karstetter. Former Director Gansen requested additional documentation – none was forthcoming and the claim was denied
- S.O. Boykin – I am reviewing your position and will respond by December 15.
- S. M. Jungers – You are to provide documentation of home ownership/sale and proof of actual relocation to St. Louis during the two year hold down.
- T.E. Little – The Carrier will allow $10,000 without prejudice to it's position. Payment will be forthcoming.
- T.R. Brumme – Carrier records indicate he is living in Bloomington and has not relocated to Villa Grove.
- T.E. Bryan --- The Parties have closed their files on this matter.
- M.O. Coats and C.W. Kerr – I advised I will review your position and respond in writing by December 15.

We discussed scheduling another meeting to review the open items listed. I suggest we jointly review any additional documentation when you are in Omaha for Section 6 meetings the week of December 4.

You also listed the names of several employees requesting adjustment of their TPAson your request for conference. I advised Director Protection, Marilyn Ahart, is the Carrier Officer responsible for grievances related to payment and computation of TPAs. Please contact her office to progress any such claims.

Sincere regards,

Catherine Sosso

Catherine Sosso
Director Labor Relations

AA-4

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. S.M. Junger's
2418 Colonial Hills Rd
Jefferson City, MO
65109

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery
JAN 24 2011

C. Signature
X S.M. Junger ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)
7006 0600 0026 7174 6716

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

AA-5

Brotherhood of Locomotive Engineers
General Committee of Adjustment
Union Pacific Railroad - Eastern Region
Charles R. Rightnowar - General Chairman 300 Brookes Drive, Suites 115-118 Hazelwood, Missouri 63042 (314) 895-5858
Fax - (314) 895-0101

FAX - FAX - FAX - FAX - FAX - FAX - FAX

From: C R Rightnowar - BLE

To: C. Sosso - UP

No. of Pages: 1 of 3

X-8

Brotherhood of Locomotive Engineers
General Committee of Adjustment
Union Pacific Railroad Eastern Region
320 Brookes Dr., Suite 115 • Hazelwood, MO 63042 • (314) 895-5858 • Fax (314) 895-0104

1227344
1227344

June 15, 2000

CERTIFIED MAIL 7099 3400 0003 2972 2478
RETURN RECEIPT REQUESTED

Mr. Terry Stone
Assistant Director–Labor Relations
Union Pacific Railroad Company
1416 Dodge Street, Room #332
Omaha, Nebraska 68179-0323

RE: Discipline Appeal
Engineer: James R. Coleman
Discipline Notice No. 00LK040

Dear Sir:

This to appeal the decision of Superintendent Jerry Everett to assess permanent discharge against Engineer James R. Coleman (SS#432-90-2419), pursuant to Discipline Notice 00LK040, dated April 21, 2000, requesting immediate reinstatement, claiming full back pay (including time attending investigation), fringe benefits, vacation and seniority rights unimpaired, and the clearing of this notation of discipline from Engineer Coleman's record.

The Carrier's assessment of discipline is procedurally flawed in the failure to date the completion of the transcript within the Transcribers Certification; precedential, on-property Awards have held that it is improper to assess discipline prior to the completion of the transcript; by the deletion of the completion date from this transcript, the Carrier is concealing evidence that the decision to discipline the Claimant was made prior to the completion of the transcript. Concealment of material, relevant facts, related to procedural objections, does not prevent application of these facts by presumption. It is the Carrier's burden to show when the transcript was completed (as this information is exclusively within its control), and a failure to provide this information, raises the presumption against the Carrier.

AA-6

Manager of Train Operations, David Lancaster, testified that Superintendent Jerry Everett was involved in both the pre-investigation and decision to charge Engineer Coleman (Tr. at pp. 12, 16); as such, Superintendent Everett prejudged the guilt of Engineer Coleman, and improperly assessed the discipline of Level 5-permanent discharge. It is a practice on this property, to insure fairness and impartiality, that a Superintendent who was not involved in the pre-investigation and decision to charge an employee, be assigned to make a careful review of the record, and assess discipline, if just cause exists. Mr. Everett's "behind the scene" actions, prejudging the guilt of Engineer Coleman, deprives Engineer Coleman of any fairness or impartiality.

Engineer Coleman, a twenty-seven year employee (Tr. at pp. 7, 10), with an "excellent" record (Tr. at p. 31), did not intentionally falsify any documents; he clearly testified that it was his "understanding" that one switching move requires payment of a minimum of one hour arbitrary payment (Tr. at p. 79). The auditor, an employee with less than two years experience, interjected evidence unrelated to terminal switching, supplying data as to terminal delay times, outside the scope of the Notice of Charges (Tr. at pp. 22, 37), admitted that he only had a "general understanding" of the Collective Bargaining Agreement provisions as to terminal switching (Tr. at 46, 56), did not know the geographical terminal switching limits (Tr. at p. 50), and used "approximated," and "estimated" times to construct his evidence (Tr. at pp. 54, 55).

The Carrier, if it disagreed, *could decline* the claim submitted by Engineer Coleman, wherein the undersigned could appeal for payment through the normal time claim procedures. This was done as to the brakeman, Matthew Hare (Tr. at p. 41; see also, last entry, investigation Transcript Exhibit "D"), and could have just as easily been done as to Engineer Coleman's time claim. Moreover, it is disparate treatment to decline one employee's claim, and permanently discharge another employee *on the same crew* for his claim.

Were this not enough, Engineer Coleman *was never paid* for the terminal switching claim for which the Carrier has now permanently discharged him.

It is shocking that the Carrier has discharged a twenty-seven year employee with an excellent record over a *disputed* claim of $31.11 (Tr. at p. 27), for which he was never paid, and which could have easily been declined. Instead of watching the crew, why didn't the auditors and/or MTO Lancaster *talk* to the crew, to clear up any misunderstandings, and to permit any disputed claims to be handled through the normal time claim procedures?

The disparate treatment accorded Engineer Coleman is further heightened by the fact that various Engineers have been accused (but not charged) with allegedly falsifying claims for lump sum allowances, where the Carrier instead of charging these employees, holding investigations, and disciplining these employees, *has offered* to allow these employees to repay the full amount of the lump sum allowances, either in one payment, or by payroll deduction either in a twelve month, eighteen month, or twenty-four month method (see Carrier file 110.61-21.326, involving Engineers T. E. Bryan, M. O. Coats, C.

W. Kerr, and B. W. Kopaskey). These Engineers are accused of allegedly taking relocation lump sum payments of $20,000 to $30,000, *far more than the $31.11 for which the Carrier has permanently discharged a twenty-seven year excellent employee, who, in fact, never received the $31.11.*

Please forward all records contained in Carrier file 110.61-21.326 involving the above named Engineers and any other employees contained in said file; further, I have been advised that the reverse heid-away-from-home allowances paid these Engineers have been "forgiven" as to each, and I hereby request the total amounts "forgiven" as to each of these employees.

Please advise.

Sincerely,

Charles Rightnowar

Charles R. Rightnowar

AA-8

RECOVERY	7/15/0			Under:	COATS
R/682					
		RELO		PROT. PYMNT	
NAME	SSN	RCVD.	MO/YR	DEDUCTED	BAL. DUE
COATS, M.O.	490-56-9764	$30,000.00	Jun-00	$1,754.60	$28,245.40
			Jul-00	$509.11	$27,736.29
			Aug-00	$2,225.59	$25,510.70
			Sep-00	$1,581.80	$23,928.90
			Oct-00	$1,060.58	$22,868.32
			Nov-00	$905.67	$21,962.65
			Dec-00	$983.28	$20,979.37
			Jan-01	$901.67	$20,077.70
			Feb-01	$2,494.60	$17,583.10
			Mar-01	$782.74	$16,800.36
			Apr-01	$837.63	$15,962.73
			May-01	$34.35	$15,928.38
			Jun-01	$1,493.58	$14,434.80
			Jul-01	NONE	$14,434.80
			Aug-01	$752.67	$13,682.13
			Sep-01	$237.03	$13,445.10
			Oct-01	$1,011.97	$12,433.13
			Nov-01	$746.46	$11,686.67
			Dec-01	$1,038.55	$10,648.12
			Jan-02	$1,222.99	$9,425.13
				$20,574.87	

AA-9

RECOVERY	7/15/0			Under:	KERR CW
R/682					
NAME	SSN	RELO RCVD.	MO/YR	PROT. PYMNT DEDUCTED	BAL. DUE
C. W. KERR	499-44-8247	$20,000.00	Jul-01	NONE	$20,000.00
			Aug-01	$61.64	$19,938.36
			Sep-01	$-	$19,938.36
			Oct-01	$-	$19,938.36
			Nov-01	$-	$19,938.36
			Dec-01	$458.16	$19,480.20
			Jan-02	$-	$19,480.20
			Feb-02		
			Mar-02		
			Apr-02		
			May-02		
			Jun-02		
			Jul-02		

AA-10

Exhibit
BB

Brotherhood of Locomotive Engineers
General Committee of Adjustment
Union Pacific Railroad Central Region

C.R. Rightnowar
GENERAL CHAIRMAN
R.E. Rhodes
1ST VICE-CHAIRMAN
T.H. Wells
2ND VICE-CHAIRMAN
C.R. Brand
SECRETARY-TREASURER

320 Brookes Dr., Suite 115 • Hazelwood, MO 63042 • (314) 895-5358 • Fax (314) 895-0104

April 02, 2002

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
 # 7000 1670 0005 1643 3605

Mr. R.D. Rock
Director-Labor Relations
Union Pacific Railroad Company
1416 Dodge Street, Room # 332
Omaha, Nebraska 68179-032

Dear Sir:

This has reference to a letter addressed to the undersigned dated March 05, 2002 **(Provided for your ready reference as Attachment "1")** from your predecessor, Ms. Catherine Sosso, wherein she discussed various claims for relocation allowances and associated claims for reverse HAHT, where applicable. This office has been advised that Ms. Sosso's duties have now been assigned to your office. If this is not correct, please advise to the contrary.

In her March 05, 2002 letter, Ms. Sosso made statements that are factually incorrect. At our October 10, 2001 meeting, in St. Louis, Missouri, with Vice-Chairman TH Wells present, the Organization was in possession of documentation supporting all of the claims addressed for payment of relocation allowances and reverse HAHT, for both Engineers MO Coats and CW Kerr. During conference, all documents were discussed and reviewed by the Organization and Ms. Sosso. Ms. Sosso made no request for copies of the supporting documents. Subsequent to our October 10, 2001, conference, all supporting documents were provided to Ms. Sosso's office and are now in your possession.

It was agreed at our October 10, 2001, conference that the Parties would discuss the relocation claims again during the week of December 04, 2001, in an attempt to reach resolution. Since all supporting documents were provided to Ms. Sosso during our October 10, 2001, conference, no need existed to provide them again during our December 04, 2001, meeting. Again, our discussions during the week of December 04,

BB-1

2001, meeting was for possible resolution and not discussion of documents previously discussed at conference.

I will respond to each case addressed in Ms. Sosso's letter of March 05, 2002.

SM Jungers:

Engineer SM Jungers properly relocated pursuant to the "in lieu of" conditions set forth in the St. Louis Hub Merger Implementing Agreement. In her letter of March 05, 2002, Ms. Sosso readily admits that Engineer Jungers relocation was within the time limits set forth in the St. Louis Hub Agreement. As such, Mr. Jungers is entitled to the payment of the $20,000 allowance as a homeowner. The Carrier has not successfully challenged Engineer Jungers' relocation to St. Louis. Arguments related to joint leasing of an apartment are insufficient to deny the claim. Upon proof of sale of his Jefferson City, Missouri property, he would be entitled to the payment of the additional $10,000 as set forth in the St. Louis Hub Merger Implementing Agreement.

As you are well aware, under the St. Louis Hub Merger Implementing Agreement engineers have two (2) years to apply for a relocation allowance. Even after application, until final sale of the property, nothing precludes an individual from keeping a residence at the previous location.

Without waiver of the above, Engineer SM Jungers would be is entitled to the payment of the additional $10,000 in view of the fact that he sold his home in accordance with Side Letter No. 5 of the St. Louis Hub Merger Implementing Agreement, after the Agreement had been signed but before implementation.

All positions taken and documents presented in the on-property handling of this claim are incorporated by reference as though fully set forth herein.

DE Luadzers:

The Organization has executed the agreement to pay Engineer DE Luadzers $20,000 with entitlement to the additional $10,000 upon proof of sale of his home. Please provide evidence of actual payment as promised by Ms. Sosso.

MA Katricka:

As set forth previously, the Organization stand on the record of the on-property handling.

All positions taken and documents provided in the on-property handling are incorporated by reference as though fully set forth herein.

SO Bovkin:

BB-2

As previously set forth, Engineer SO Boykin and Engineer ED Ivey are in an identical circumstance. In view of the fact that Engineer Ivey has been paid the relocation allowance, failure to pay the same relocation allowance to Engineer SO Boykin represents disparate treatment. During conference and in her letter of March 05, 2001, Ms. Sosso concedes that both engineers are in the identical circumstance. The Organization would strenuously object to a recollection of the relocation allowance paid to Engineer Ivey at this late date. As such, Engineer Boykin is entitled to the payment of the relocation allowance as has previously been paid to Engineer Ivey as their claims comport to the same factual circumstances.

All necessary supporting documentation has been provided to the Carrier in previous on-property handling on this claim and are incorporated by reference.

MO Coats and CW Kerr:

As to the Carrier's improper recollection of the relocation allowance paid to both Mr. Coats and Mr. Kerr, stand advised that Ms Gansen's original recollection letter set forth that Mr. Coats had improperly been paid a total of $20,700 in relocation benefits. Pursuant to Ms. Sosso's March 05, 2002, letter, the Carrier has, as of January of 2002, recollected $20,574.87. These deductions would leave a balance due of $125.13, and not $9,425.13 as contended by the Carrier, after January of 2002. Please provide this office with a current account balance for both Mr. Coats and Mr. Kerr.

It is the position of the Organization that both Mr. Coats and Mr. Kerr properly relocated to Kansas City in accordance with the "in lieu of" provisions of the Kansas City Hub Merger Implementing Agreement and, as such, would be entitled to the payment of reverse HAHT at Jefferson City as claimed **(See Side Letter No. 7 of the Kansas City Hub Merger Implementing Agreement)**. Ms. Sosso's argument that these claims for reverse HAHT should have been progressed to Mr. McBratney is a not so thinly veiled effort to engage in a "shell game" attempting to manufacture a procedural defect, when none exists.

Ms. Sosso's predecessor, Ms. Gansen, by letter dated August 15, 2000 **(Carrier File No. 110.61-20-326)(Provided for your ready reference as Attachment "2")**, advised that the claims filed to her by the undersigned dated August 10, 2000, had been denied confirming that the claims had been properly filed with her office and verifying that her office would handle the entire dispute of relocation allowance and reverse HAHT payments due to both Mr. Coats and Mr. Kerr.

In addition, General Director – Timekeeping Operations AA Zabawa advised by letter dated October 11, 2000 **(Provided for your ready reference as Attachment "3")**, that Ms. Sosso would handle this dispute. Still further, Mr. McBratney advised my representative, Mr. CR Brand, that Ms. Sosso's office would handle all claims for reverse HAHT filed by Mr. Kerr and/or Mr. Coats (Provided for your ready reference as **Attachment "4"**).

BB-3

Now, on March 05, 2002, and for the first time, Ms. Sosso takes the position that she is not the proper officer to handle the reverse HAHT claims associated with the relocation of Mr. Coats and Mr. Kerr to Kansas City from Jefferson City. In taking this new, frivolous position more than twenty (20) months after this dispute has been handled on the property, including many conferences, the Carrier is presenting an "eleventh-hour" bogus manufactured procedural argument completely devoid of merit that is symbolic of their "bad faith" dealings with the Organization related to these NYD claims.

All along the Carrier has contended that Engineer Coats and Kerr had not properly relocated to Kansas City based upon the fact that they had leased an apartment in Kansas City and still maintained an additional residence in the vicinity of Jefferson City. Other engineers who applied and received the relocation allowance, both before and after Engineer MO Coats and Engineer CW Kerr applied and received their relocation allowance, including, but not limited to, LD Moiloy, DR Snyder, and JP Sevart, also lived in apartments in Kansas City. All of these individuals were paid the relocation allowance, and have continued to draw reverse HAHT at Jefferson City, suffering no recollection effort.

Further, the Carrier took the position that since Mr. Coats and Mr. Kerr still maintained a 573 area code for their telephone number, this proved they did not actually relocate to Kansas City. As you are well aware, without waiver of the fact that nothing precludes an individual from having a telephone number with a 573 area code, cellular telephones work nationwide. As such, these arguments are without substance.

The computer printouts provided in my January 12, 2002, letter to Ms. Sosso supports the position of the Organization that Mr. Coats and Mr. Kerr have been singled out and treated differently from other engineers in identical circumstances and, thus, have been subjected to disparate treatment.

In the Kansas City Hub Merger Implementing Agreement, the Parties negotiated an "in lieu of" relocation allowance for engineers desiring to relocate. These "in lieu of" relocation provision supersede the normal application of New York Dock conditions. So long as an engineer complied with the express conditions of the "in lieu of" conditions set forth in the Kansas City hub Merger Implementing Agreement, he/she is entitled to the specific payments set forth in the Agreement.

Any argument that Engineer Coats and Engineer Kerr did not properly relocate pursuant to the "in lieu of" conditions set forth in the Kansas City Hub Merger Implementing Agreement is completely unsupported by the evidentiary record as set forth in the on-property handling. Relocation to Kansas City entitles both Engineer Coats and Kerr to the payment of reverse HAHT at Jefferson City as contended in the original claim dated August 10, 2000.

After relocation, both Mr. Coats and Mr. Kerr changed their home addresses in the company computer to verify that they had relocated to Kansas City. For unknown reasons, the Carrier unilaterally returned both engineers to Jefferson City. After a period

BB-4

of time, due to the Carrier's recollection efforts, both engineers involuntarily returned to Jefferson City, without waiver of their positions that they had properly relocated to Kansas City in accordance with the Kansas City Hub Merger Implementing Agreement and entitled to the payment of the relocation allowance and related reverse HAHT at Jefferson City.

Based upon all of the above, including all correspondence generated by the Parties in the on-property handling, which is incorporated by reference into this letter as thought fully set forth herein, Engineer MO Coats and Engineer CW Kerr are entitled to the payment of the relocation allowance as set forth in the Kansas City Hub Merger Implementing Agreement, and all reverse HAHT at Jefferson City, as originally claimed by the Organization.

All positions taken and documents presented in the on-property handling are incorporated by reference into this letter as though fully set forth herein.

In view of the fact that Ms. Sosso has clearly declined the claims listed herein, the Organization requests that all claims for relocation allowances and reverse HAHT, where applicable, listed above be submitted to expedited New York Dock arbitration.

As has previously been advised, the Organization would be agreeable to John B. LaRocco as the New York Dock arbitrator.

Please advise.

Yours truly,

Charles Rightnowar

Charles R. Rightnowar
General Chairman
Union Pacific – Central Region

cc: DM Hahs, President, BLE
MO Coats, Engineer, BLE
CW Kerr, Engineer, BLE
Harold A Ross, General Counsel, BLE ID

BB-5

ATTACHMENT
"1"

BB-6

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
OMAHA, NEBRASKA 68179

March 5, 2002
Files: 110.61-10 (326)
110.61-10 (326)
110.61-10 (326)

VIA FACSIMILE & Overnight Mail

MR C R RIGHTNOWAR
GENERAL CHAIRMAN BLE
320 BROOKES DR STE 115-118
HAZELWOOD MO 63042

RE: Relocations
Dear Sir:

This acknowledges receipt of your letter dated January 12, 2002, in this office on January 22, 2002, concerning our meetings to discuss your appeal of various relocation allowance applications.

Once again, you mischaracterize the Carrier's handling and representations in conference. You presented your position without providing the supporting documentation when we met on October 10, 2001, and again on December 7, 2001. On November 16, 2001, I advised I would review the Carrier's files. The positions you took during our meeting were not documented in all cases and requested further exchange of documentation the week of December 4, 2001, when you were in Omaha. You did not bring any files resulting in my December 28, 2001, letter.

Although we discussed potential settlement of several cases, I never made any representations that I agreed with your positions or that settlement offers would be forthcoming. I listened to your verbal representations and responded by reiterating the record as it stands was void of any information to warrant any further payment but I would take into consideration any supplemental documentation of your positions. Your procedural gyrations and misrepresentations are offensive and contrary to fostering open discussions in efforts to resolve disputes on the property. You continue to torpedo the Carrier's good faith efforts to bring all issues to the table for open discussion and possible resolution on the property.

The following are my comments based on my review of the records I received from your office on January 22, 2002.

SM Jungers (Attachment "11"). You failed to provide any documentation or information to support your position Mr. Jungers alleged relocation from Jefferson City to St. Louis was a result of the merger and not a seniority move. His permanent address on file with the Carrier is Jefferson City and he is working in the RE05 pool out of Jefferson City. Enclosed is a copy of the certified receipt signed by Mr. Jungers at his Jefferson City home. The lease agreement you provided with your letter dated January 12, 2002, is for one year commencing 10/23/00 and the deadline for applying for the relocation expired October 01, 2000. Therefore, the claim is denied.

DE Luadzers (Attachment "12"). Based on the additional documentation provided to you by Local Chairman A.L. Tinney and forwarded with your January 12, 2002, letter, including evidence

BB-7

of current residency in Blue Springs, Missouri. I am agreeable to payment of the $20,000.00 relocation allowance without prejudice. Please sign the attached settlement letter and return a copy to this office for processing.

MA Katricka (Attachment "13"). No additional documentation to support the claim was provided. Conductor Katricka is working in St. Louis and resides in the St. Louis area. Nothing was provided to warrant a reversal of the Carrier's position her assignment to Dexter was not a result of the merger. See Carrier's prior correspondence and letter dated November 16, 2001. Claim denied.

SC Boykin (Attachment "14"). I take serious exception to your characterization of our discussions and there is no basis in fact for any of your allegations. Based on the documents you provided, neither Mr. Boykin nor Mr. Ivey are entitled to the relocation benefits. I will investigate recollection of the payment to Mr. Ivey.

MO Coats (Attachment "2") and CW Kerr (Attachment "3"). I previously provided the current accounting of the recollection of the relocation allowances paid to Mr. Coats and Mr. Kerr for their alleged relocation to Kansas City from Jefferson City, Missouri. I am not agreeable to any proposed settlement in view of the fact both Mr. Coats and Mr. Kerr failed to comply with the conditions of the Merger Implementing Agreement by actually relocating and remaining in Kansas City. Both employees reside at Jefferson City and hold Jefferson City pool turns. There is no agreement provision providing for payment of HAHT at the employee's home terminal. Moreover, these engineers received HAHT and lodging at Kansas City based on their residency in Jefferson City and assignment to Jefferson City in the pool turns. Nevertheless, you progressed time claims for HAHT at Jefferson City. Any claims associated with these bogus claims for HAHT are the proper subject for handling with Mr. McBratney in the usual manner pursuant to the System Agreement – Claims Handling Process.

The issue properly before me is the recollection of relocation payments paid in error to Mr. Coats and Mr. Kerr. These employees fraudulently submitted claims for payment in violation of the Agreement and NYD conditions. They are subject to dismissal for dishonesty. As stated in previous correspondence, there is nothing to preclude this office from notifying the Service Unit to pursue this course of action. However, former Director Andrea Gansen elected to pursue recollection of relocation allowances due to Mr. Coats' and Mr. Kerr's refusal to sign recollection agreements. Moreover, you wrote to Assistant Director TM Stone on June 15, 2000, endorsing discipline as a proper method to handle such disputes. (copy attached). You claim disparate treatment citing the names of several employees who allegedly received relocation allowances under similar circumstances. You failed to provide any factual information regarding these allegations. You provided nothing in your January 12, 2002, Attachments 4-10, to support your position. I will advise the auditors to investigate the improper payment to the employees identified. The computer printouts you provided are meaningless. Finally, you provided no information warranting a change in the Carrier's position set forth in writing to your office prior to the time I replaced Ms. Gansen. Accordingly, all claims are denied.

Sincere regards,

Catherine Sosso

Catherine Sosso
Director Labor Relations

Attachments

Copy to: Rock
McBratney
Ahart

BB-8

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
OMAHA, NEBRASKA 68179

December 28, 2001
Files: 110.61-21-326
110.61-20-326
360-7

MR C R RIGHTNOWAR
GENERAL CHAIRMAN BLE
320 BROOKES DR STE 115-118
HAZELWOOD MO 63042

RE: Relocation Claims

Dear Sir:

This refers to my letter dated November 16, 2001, and our discussion in my office on Friday, December 7, 2001, concerning the handling of the relocation disputes. On both occasions you did not come prepared with the your files and documentation concerning these claims. In order to fully address the issues associated with the Claimants you have identified, I asked you to provide copies of the documents you are relying on in support of your claims so I may fully respond to your requests for payment.

This request is to ensure we have complete exchange of information so I can make informed decisions regarding any potential on property resolution of these claims prior to proceeding to party-pay New York Dock arbitration. Once I receive this information, I will promptly respond in writing.

To date, I have not received any of the requested information. I do not consider these cases ripe for arbitration until we conclude the on property handling by fully documenting our respective positions.

As I advised, once we conclude the on property handling, I have committed to scheduling arbitration of any outstanding claims as expeditiously as possible.

Sincere regards,

Catherine Sosso

Catherine Sosso
Director Labor Relations

BB-9

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
OMAHA, NEBRASKA 68179

November 16, 2001
Files: 110.61-21-326
110.61-20-325
360-7

VIA U.S. Mail

MR C R RIGHTNOWAR
GENERAL CHAIRMAN BLE
320 BROOKES DR STE 116-118
HAZELWOOD MO 63042

Dear Sir:

This refers to our meeting in St. Louis on October 16, 2001, regarding applications for in lieu of relocation under various Hub agreements. The following is a recap of our discussions:

- J.P. Sevart – I provided documentation of payment for your information.
- D.E. Laudzens – You are to provide additional documentation as proof of his actual relocation to Kansas City during the hold down period for my further review.
- M.A. Katricia – This claim was originally filed by former General Chairman Thompson and subsequently appealed by UTU General Chairman Karstetter. Former Director Gansen requested additional documentation – none was forthcoming and the claim was denied
- S.O. Boykin – I am reviewing your position and will respond by December 15.
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- T.E. Bryan — The Parties have closed their files on this matter.
- M.O. Coats and C.W. Kerr – I advised I will review your position and respond in writing by December 15.

We discussed scheduling another meeting to review the open items listed. I suggest we jointly review any additional documentation when you are in Omaha for Section 6 meetings the week of December 4.

You also listed the names of several employees requesting adjustment of their TPAs on your request for conference. I advised Director Protection, Marilyn Ahart, is the Carrier Officer responsible for grievances related to payment and computation of TPAs. Please contact her office to progress any such claims.

Sincere regards.

Catherine Sosso

Catherine Sosso
Director Labor Relations

BB-10

RECOVERY	7/16/0			Under:	COATS
R/682					
		RELO		PROT. PYMNT	
NAME	SSN	RCVD.	MO/YR	DEDUCTED	BAL. DUE
COATS, M.O.	490-56-9764	$30,000.00	Jun-00	$1,754.60	$28,245.40
			Jul-00	$509.11	$27,736.29
			Aug-00	$2,225.59	$25,510.70
			Sep-00	$1,581.80	$23,928.90
			Oct-00	$1,060.58	$22,868.32
			Nov-00	$905.67	$21,962.65
			Dec-00	$983.28	$20,979.37
			Jan-01	$901.67	$20,077.70
			Feb-01	$2,494.60	$17,583.10
			Mar-01	$782.74	$16,800.36
			Apr-01	$837.63	$15,962.73
			May-01	$34.35	$15,928.38
			Jun-01	$1,493.58	$14,434.80
			Jul-01	NONE	$14,434.80
			Aug-01	$752.67	$13,682.13
			Sep-01	$237.03	$13,445.10
			Oct-01	$1,011.97	$12,433.13
			Nov-01	$746.46	$11,686.67
			Dec-01	$1,038.55	$10,648.12
			Jan-02	$1,222.99	$9,425.13
				$20,574.87	

BB-11

RECOVERY	7/15/0			Under:	KERR CW
R/682					
		RELO		PROT. PYMNT	
NAME	SSN	RCVD	MO/YR	DEDUCTED	BAL. DUE
C. W. KERR	499-44-8247	$20,000.00	Jul-01	NONE	$20,000.00
			Aug-01	$61.64	$19,938.36
			Sep-01	$-	$19,938.36
			Oct-01	$-	$19,938.36
			Nov-01	$-	$19,938.36
			Dec-01	$458.16	$19,480.20
			Jan-02	$-	$19,480.20
			Feb-02		
			Mar-02		
			Apr-02		
			May-02		
			Jun-02		
			Jul-02		

BB-12

Brotherhood of Locomotive Engineers
General Committee of Adjustment
Union Pacific Railroad Eastern Region
320 Brookes Dr., Suite 115 • Hazelwood, MO 63042 • (314) 895-5858 • Fax (314) 895-0104

1227344
1227344

June 15, 2000

CERTIFIED MAIL 7099 3400 0003 2972 2473
RETURN RECEIPT REQUESTED

Mr. Terry Stone
Assistant Director–Labor Relations
Union Pacific Railroad Company
1416 Dodge Street, Room #332
Omaha, Nebraska 68179-0323

RE: Discipline Appeal
Engineer: James R. Coleman
Discipline Notice No. 00LX040

Dear Sir:

This to appeal the decision of Superintendent Jerry Everett to assess permanent discharge against Engineer James R. Coleman (SS#432-90-7419), pursuant to Discipline Notice 00LX040, dated April 21, 2000, requesting immediate reinstatement, claiming full back pay (including time attending investigation), fringe benefits, vacation and seniority rights unimpaired, and the clearing of this notation of discipline from Engineer Coleman's record.

The Carrier's assessment of discipline is procedurally flawed in the failure to date the completion of the transcript within the Transcribers Certification; precedential, on-property Awards have held that it is improper to assess discipline prior to the completion of the transcript; by the deletion of the completion date from this transcript, the Carrier is concealing evidence that the decision to discipline the Claimant was made prior to the completion of the transcript. Concealment of material, relevant facts, related to procedural objections, does not prevent application of these facts by presumption. It is the Carrier's burden to show when the transcript was completed (as this information is exclusively within its control), and a failure to provide this information, raises the presumption against the Carrier.

BB-13

Manager of Train Operations, David Lancaster, testified that Superintendent Jerry Everett was involved in both the pre-investigation and decision to charge Engineer Coleman (Tr. at pp. 12, 16); as such, Superintendent Everett prejudged the guilt of Engineer Coleman, and improperly assessed the discipline of Level 5-permanent discharge. It is a practice on this property, to insure fairness and impartiality, that a Superintendent who was not involved in the pre-investigation and decision to charge an employee, be assigned to make a careful review of the record, and assess discipline, if just cause exists. Mr. Everett's "behind the scene" actions, prejudging the guilt of Engineer Coleman, deprives Engineer Coleman of any fairness or impartiality.

Engineer Coleman, a twenty-seven year employee (Tr. at pp. 7, 10), with an "excellent" record (Tr. at p. 31), did not intentionally falsify any documents; he clearly testified that it was his "understanding" that one switching move requires payment of a minimum of one hour arbitrary payment (Tr. at p. 79). The auditor, an employee with less than two years experience, interjected evidence unrelated to terminal switching, supplying data as to terminal delay times, outside the scope of the Notice of Charges (Tr. at pp. 22, 37), admitted that he only had a "general understanding" of the Collective Bargaining Agreement provisions as to terminal switching (Tr. at 46, 56), did not know the geographical terminal switching limits (Tr. at p. 50), and used "approximated," and "estimated" times to construct his evidence (Tr. at pp. 54, 55).

The Carrier, if it disagreed, *could decline* the claim submitted by Engineer Coleman, wherein the undersigned could appeal for payment through the normal time claim procedures. This was done as to the brakeman, Matthew Hare (Tr. at p. 41; see also, last entry, investigation Transcript Exhibit "D"), and could have just as easily been done as to Engineer Coleman's time claim. Moreover, it is disparate treatment to decline one employee's claim, and permanently discharge another employee *on the same crew* for his claim.

Were this not enough, Engineer Coleman *was never paid* for the terminal switching claim for which the Carrier has now permanently discharged him.

It is shocking that the Carrier has discharged a twenty-seven year employee with an excellent record over a *disputed* claim of $31.11 (Tr. at p. 27), for which he was never paid, and which could have easily been declined. Instead of watching the crew, why didn't the auditors and/or MTO Lancaster *talk* to the crew, to clear up any misunderstandings, and to permit any disputed claims to be handled through the normal time claim procedures?

The disparate treatment accorded Engineer Coleman is further heightened by the fact that various Engineers have been accused (but not charged) with allegedly falsifying claims for lump sum allowances, where the Carrier instead of charging these employees, holding investigations, and disciplining these employees, *has offered* to allow these employees to repay the full amount of the lump sum allowances, either in one payment, or by payroll deduction either in a twelve month, eighteen month, or twenty-four month method (see Carrier file 110.61-21.326, involving Engineers T. E. Bryan, M. O. Coats, C.

BB-14

W. Kerr, and B. W. Kopaskey). These Engineers are accused of allegedly taking relocation lump sum payments of $20,000 to $30,000, *far more than the $31.11 for which the Carrier has permanently discharged a twenty-seven year excellent employee, who, in fact, never received the $31.11.*

Please forward all records contained in Carrier file 110.61-21.326 involving the above named Engineers and any other employees contained in said file; further, I have been advised that the reverse held-away-from-home allowances paid these Engineers have been "forgiven" as to each, and I hereby request the total amounts "forgiven" as to each of these employees.

Please advise.

Sincerely,

Charles R. Rightmowar

BB-15

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. S.M. Jungers
2418 Colonial Hills Rd
Jefferson City, MO
65109

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature

X S.M. Jungers ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)
7000 0600 0026 7174 6716

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

BB-12

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
OMAHA, NEBRASKA 68179

March 5, 2002
Files: 110.61-20 (326)

VIA FACSIMILE & U.S. Mail

MR C R RIGHTNOWAR
GENERAL CHAIRMAN BLE
320 BROOKES DR STE 115-118
HAZELWOOD MO 63042

RE: Relocation Allowance DE Luadzers

Dear Sir:

This refers to discussions concerning the relocation application of former Ft. Madison Engineer D.E. Luadzers. I take exception to the representations made in your letter dated January 12, 2002, received in this office on January 22, 2002, concerning previous handling in conference.

However, now that you have provided this office with the documentation to support your position and I have had an opportunity to review these documents, in particular the correspondence to your office from Local Chairman A.L. Tinney, I am agreeable to allowing payment without prejudice.

Please acknowledge your agreement by signing below and returning an original to this office no later than April 1, 2002, and I will authorize payment of the $20,000.00 relocation allowance and advise your office when payment has been processed. The deadline for eligibility for the $10,000.00 Option 3 sale of home remains be based on the five years from the date of the original application.

Sincere regards,

Catherine Sosso

Catherine Sosso
Director Labor Relations

AGREED:

_____
Charles Rightnowar
BLE General Chairman

BB-17

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
OMAHA, NEBRASKA 68179

March 5, 2002
Files: 110.61-20 (326)

VIA FACSIMILE & U.S. Mail

MR C R RIGHTNOWAR
GENERAL CHAIRMAN BLE
320 BROOKES DR STE 115-118
HAZELWOOD MO 63042

RE: Relocation Allowance DE Luadzers

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Sincere regards,

Catherine Sosso

Catherine Sosso
Director Labor Relations

AGREED:

_____
Charles Rightnowar
BLE General Chairman

BB-18

UNION PACIFIC RAILROAD COMPANY

FACSIMILE TRANSMISSION

March 5, 2002

DELIVER TO:	CRR	***FROM:***	Catherine Sosso
CO.: / DEPT.:	BLE		Labor Relations
FAX:	~~314/895-5858~~ 0104	***PHONE:***	402/271-6607

PAGES TRANSMITTED: 11 plus cover sheet

COMMENTS: Original in mail

Transmitting From Fax No. 402/271-4474

IF YOU DO NOT RECEIVE ALL PAGES
CALL AS SOON AS POSSIBLE
402/271-6607

BB-19

ATTACHMENT
"2"

BB-20

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
OMAHA, NEBRASKA 68179

August 15, 2000

110.61-20-326

Mr. C. R. Rightnowar
General Chairman BLE
320 Brookes Dr. Suite 115
Hazelwood, MO 63042

Dear Sir:

This letter refers to your letter dated August 10, 2000, regarding the Carrier's action to recollect the relocation allowance paid to Mr. M. O. Coats, as he failed to relocate pursuant to the agreement.

I have enclosed a copy of Mr. Coats letter for your review. While you state that only the General Chairman has authority to interpret the Collective Bargaining Agreement, you should recognize that this is an issue governed by the New York Dock Conditions. As such, an employee is certainly able to pursue his personal claims under New York Dock.

Furthermore, I cannot accept your conclusion that, since Mr. Coats has accepted the relocation allowance, his primary residence is now Kansas City. All other factors (mailing address, phone numbers, etc.) indicate that his primary residence is in New Bloomfield, not Kansas City. I agree that there is no prohibition against an employee having a place to stay at his away from home terminal, however, Mr. Coats instead has merely "a place to stay" at Kansas City, with his primary residence in New Bloomfield. Such a situation does not fall within the parameters of relocating under the hub agreement.

Your claim on behalf of M. O. Coats for "any monies improperly recouped from his relocation allowance, and for any monies improperly withheld from reverse held away from home terminal arbitrary payments due" is denied. Mr. Coats receives held away from home terminal at his *de facto* away from home terminal at Kansas City. The Carrier will not pay held away at Mr. Coats' *de facto* home terminal of Jefferson City. Furthermore, as I copy you on any correspondence dealing with relocation recollection on your territory, you are aware of any other engineers in the same circumstance as Mr. Coats.

Finally, your 'verbal notice' that the Carrier has waived its right to discipline has no binding effect on the Carrier. At such time as the Carrier forwards notice to the 'appropriate company officer' that the action to recollect

BB-21

the relocation money needs to be taken at the service unit level, then disciplinary action may be deemed warranted and timely. First Division Award 24851 does not have application in the case of Mr. Coats, as the facts of the two situations are not remotely similar.

In closing, when you review Mr. Coats letter, you will notice that Mr. Coats has requested to handle this matter on his own behalf. Please advise.

Sincerely,

Andrea Gansen
Director Labor Relations

Copy to: W. S. Hinckley

BB-22

ATTACHMENT

"3"

BB-23

TONY ZARAWA
General Director-
Timekeeping Operations

UNION PACIFIC RAILROAD COMPANY

1815 Capitol Avenue
Omaha, Nebraska 68102
Phone (402) 997-2000
Fax (402) 997-2365

October 11, 2000

Mr. Charles R. Rightnowar
General Chairman, BLE
320 Brookes Dr., Suite 115
Hazelwood, MO 63042

Dear Mr. Rightnowar:

This refers to your letter dated August 18, 2000, concerning held away from home terminal time and relocation allowances claimed for Zone 3 Kansas City Huo Engineers listed in your letter.

Currently Engineers L.D. Molloy, D. R. Snyder and A. L. Chachere are assigned to Kansas City turns and are receiving held away from home terminal time at Jefferson City. Engineers M. O. Coats and C. W. Kerr are assigned to Jefferson City turns and are receiving held away from home terminal time at Kansas City per instructions from Labor Relations dated June 02, 2000. They are currently not entitled to held away time at other locations and any claims for normal or reverse held away addressed in your letter for these individuals is declined.

All claims for relocation allowances are handled directly through the office of Labor Relations and those claims addressed in your letter are declined. Any future questions concerning this subject should be addressed directly to Catherine Sosso, Director Labor Relations.

Based on the above, any claim mentioned in your letter dated August 18, 2000, must be respectfully declined.

Sincerely,

Tony Zabawa

Tony Zabawa
General Director Timekeeping

Cc: Catherine Sosso – Director Labor Relations
Michael Stom – Director Timekeeping

BB-24

ATTACHMENT

"4"

BB-25

BROTHERHOOD OF LOCOMOTIVE ENGINEERS
GENERAL COMMITTEE OF ADJUSTMENT
UNION PACIFIC RAILROAD - CENTRAL REGION
CHARLES R. BRAND, SECRETARY - TREASURER
P. O. BOX 486, OSAWATOMIE, KANSAS 66064 913-256-6452 FAX 913-755-6929

July 17, 2001

TO: Ken McBratney
AD UPRR Labor Relations

RE: Claims Conference July 10 thru July 17, 2001 via phone

It is the position of the Organization that al penalty payments are to be paid in addition to other earnings and not to be offset by guarantee or protection paymnets.

The Organization requested that the various issues listed below be held-in-abeyance until cases listed with First Division are heard. The outcome of these cases will rise or fall with the decision of the First Division. Both parties have submitted written positions on these various issues. Without waiver of cases already pending at First Division an additional pilot claim could be selected with time limits for all other claims of the same issues be held-in-abeyance.

HIB cases requested:	Correct N. Pool Mileage NLR	1239407 etal
	4 Mile claims Biddle to White Bluff	1242299 etal
	2' Transport Time NLR	1238694 etal
	DH/Sep. Apart NLR	1238689 etal
	Short Crew Allowance	1242312 etal
	Switching Dow Chemical	1242412 etal
	Gads Hill	1242425 etal
	Perform Service White Bluff	1242309 etal

Position papers to follow on: Chester Local miles - 1242830
Initial Terminal Switching - 1242831
Yard Service - 1243098 etal

CW Kerr Reverse HHAT 1235462 etal is issue to be handled by Catherine Sasso's office.

Sincerely,

Charles R. Brand

Charles R. Brand

BB-26

Master Fleet -

July 9, 2001 Phone conference w/ Ken Bradley — C&I Board

June 29, 2001 Time Claim Conference Docket Page 1

BB-27

L/R FILE NO.	CLAIMANT	CASE TYPE	LOCAL CHAIRMAN	STATUS
1232752	C. O. Groose	Mishandled By CMS	H. D. Downing	Pd. 129.33 to settle
1235373	D. W. Grimes	Mileage Regulation Vio.	G. B. Rice	HIB
1235374	D. W. Grimes	Mileage Regulation Vio.	G. B. Rice	HIB pending mediation
1235462	C. W. Kerr	HAHT	H. D. Downing	Issue listed w/ Sasso for mediation and
1235463	C. W. Kerr	HAHT	H. D. Downing	if not settled arbitration.
1235464	C. W. Kerr	HAHT	H. D. Downing	
1235465	C. W. Kerr	HAHT	H. D. Downing	
1235480	K. B. Lee	Perform 3rd DH	M. K. Porter	W/D Ft. Madison not included in 3rd DH
1236878	R. G. Emerson	In Lieu Of Lodging	G. B. Rice	Pd $2.00
1236879	R. G. Emerson	In Lieu Of Lodging	G. B. Rice	Pd $2.00
1236880	R. G. Emerson	In Lieu Of Lodging	G. B. Rice	Pd $2.00
1236881	R. G. Emerson	In Lieu Of Lodging	G. B. Rice	Pd $2.00
1236882	R. G. Emerson	DH	G. B. Rice	W/D Was not 1st or last Van split Was paid 1' @ OT rate to DH 30 miles.
1236883	M. S. Frey	Mishandled	G. B. Rice	Pd 77.56 to settle
1236884	M. S. Frey	Mishandled	G. B. Rice	Pd ~~$77.56~~ to settle $77.07
1236885	M. S. Frey	Inaccurate AVR	G. B. Rice	~~$0.00~~ W/D during moratorium
1236886	M. S. Frey	Inaccurate AVR	G. B. Rice	W/D during moratorium
1236887	D. E. Engle	FLD	G. B. Rice	Decl. FTD Should begin @ 0001 but @ Valley Jct 0001
1236888	D. E. Engle	Overtime	G. B. Rice	Pd. $140.09 to settle
1236890	D. E. Engle	Eating	G. B. Rice	

Exhibit
CC

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
OMAHA, NEBRASKA 68179

April 9, 2002

MR C R RIGHTNOWAR
GENERAL CHAIRMAN BLE
320 BROOKES DR STE 115-118
HAZELWOOD MO 63042

Dear Sir:

This is in reference to your letter of April 2, 2002, concerning relocation allowance and associated claims for reverse HAHT.

I am currently reviewing the files associated with the various relocation disputes. This is somewhat of a time-consuming process due to the volume of paper involved. After my review of the necessary documents pertaining to those issues involving New York Dock, an agreement will be prepared and forwarded to your office.

This letter will also serve to advise you that the Carrier is not agreeable to John B. LaRocco as the New York Dock arbitrator.

If you have any questions, please feel free to contact me.

Yours truly,

R. D. Rock

R D ROCK
DIRECTOR – LABOR RELATIONS

G:\LABOR\OPS\WPCDOCS\c040902a rdr doc (1)

CC-1

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
OMAHA, NEBRASKA 68179

April 12, 2002

MR C R RIGHTNOWAR
GENERAL CHAIRMAN BLE
320 BROOKES DR STE 115-118
HAZELWOOD MO 63042

Dear Sir:

This is in reference to my letter of April 9, 2002, concerning relocation allowances for M. A. Katricka, S. O. Boykin, M. O. Coats, and C. W. Kerr.

The files associated with the various relocation requests have been reviewed. All four (4) disputes mentioned above involve *"in-lieu-of"* allowances for alleged relocations. The respective agreements have been reviewed and it is obvious that these requests are not New York Dock related.

The language in each of the respective agreements reads as follows:

"Engineers required to relocate under this Agreement will be governed by the relocation provisions of New York Dock in-lieu-of New York Dock provisions, an employee required to relocate may elect one of the following options:..."

Based on the clear language of the Agreement, the Claimants forfeited the provisions of New York Dock when they requested the *"in-lieu-of"* allowance.

The Claimants did not request relocation under the provision of New York Dock. Instead, the Claimants requested an *"in-lieu-of"* allowance. Since the Claimants rejected New York Dock, it cannot now be argued that New York Dock arbitration applies.

The claims for Messrs. Katricka, Boykin, Coats, and Kerr are merely Section 3 claims under the provisions of the Railway Labor Act. Therefore, the Carrier is not agreeable to New York Dock arbitration. If the Organization wishes to pursue these claims, it should submit them to the First Division of the National Railroad Adjustment Board for final adjudication.

Furthermore, the claims are procedurally defective since they have not been handled in accordance with the System Agreement – Claim Handling Process.

Yours truly,

R. D. Rock

R D ROCK
DIRECTOR – LABOR RELATIONS

G:\LABOR\OPS\WPCDOCS\c401202a.rdr.doc (1)

CC-2

Exhibit
DD

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
OMAHA, NEBRASKA 68179

July 8, 2002

(SUBMISSION VIA FACSIMILE
TO NATIONAL MEDIATION BOARD
(202) 692-5086)

MR ROLAND WATKINS
DIR OF ARB SVCS
NATIONAL MEDIATION BOARD
1031 "K" ST NW STE 250 EAST
WASHINGTON DC 20572

Dear Sir:

This is in reference to your letter of June 24, 2002, concerning the request for the National Mediation Board to provide a list of arbitrators for alleged New York Dock protective conditions.

Without waiving the Carrier's position that these issues are not New York Dock related and the fact the National Mediation Board exceeded its authority, including Section 11, Appendix III, the parties have agreed to the selection of Mr. John B. LaRocco.

Yours truly,

R D ROCK
DIRECTOR – LABOR RELATIONS

CC: C. R. Rightnowar

G:\LABOR\CPS\WPCDOCS\c070802a.rdr.doc (1)

DD-1

Exhibit
EE

REVERSE LODGING BENEFITS NOT PAID FOR C.W. KERR YEAR 2000

DATE	SLIP#	ALLOW	HRS	MINS
6/21/00	621		16	16
6/25/01	625		7	40
6/27/01	627		11	10
6/30/01	630		17	11
7/5/00	705		29	16
7/7/00	707		14	41
7/10/00	710		12	45
7/12/00	712		17	10
7/15/00	715		8	45
7/17/00	717		18	18
7/20/00	720		9	20
7/24/00	724		13	55
8/3/00	803		6	20
8/5/00	805		5	40
8/7/00	807		1	
8/10/00	810		14	
8/18/00	818		20	35
8/19/00	819		11	5
8/21/00	821		13	49
8/24/00	824		15	25
8/26/00	826		9	15
8/29/00	829		12	50
8/31/00	831		3	
9/27/00	927		8	50
9/29/00	929		4	10
10/2/00	1002		15	11
10/4/00	1004		20	
10/7/00	1007		17	30
10/9/00	1009		8	
10/11/00	1012		5	35
10/19/00	1019		14	35
10/22/00	1022		12	15
10/24/00	1024		13	28
11/1/00	1101		18	35
11/3/00	1103		19	50
11/6/00	1106		17	20
11/8/00	1108		10	50
11/13/00	1113		22	25
11/16/00	1116		20	35
11/18/00	1118		3	
11/21/00	1121		19	50
11/23/00	1123		5	35
11/26/00	1126		16	15
11/28/00	1128		11	40
11/30/00	1130		11	45
12/3/00	1203		11	10
12/5/00	1205		18	25
12/8/00	1208		14	5
12/15/00	1215		10	
12/18/00	1218		11	50
12/21/00	1221		12	10
12/28/00	1228		1	50
			666	10

EE-1

TOTAL

REVERSE LODGING BENEFITS FOR C W KERR NOT PAID YR 2001

DATE	SLIP#	ALLOW	HRS	MINS
1/1/01	101		35	5
1/4/01	104		24	10
1/6/01	106		8	
1/8/01	108		9	5
1/11/01	111		17	20
1/18/01	118		13	
1/21/01	121		13	50
1/23/01	123		10	20
1/26/01	26		13	20
1/28/01	27		18	40
1/31/01	131		12	50
2/2/01	203		7	10
2/6/01	135		12	30
2/5/01	205		24	45
2/10/01	210		21	50
2/13/01	213		23	25
2/16/01	216		17	5
2/18/01	218		11	15
2/21/01	221		15	30
2/23/01	223		16	30
2/26/01	226		16	45
2/28/01	228		18	15
3/2/01	302		11	45
3/5/01	305		16	20
3/8/01	308		20	45
3/10/01	310		12	
3/12/01	312		23	15
3/15/01	315		5	55
3/21/01	322		14	
3/24/01	324		9	5
3/27/01	327		12	10
3/29/01	329		11	10
4/2/01	402		4	40
4/10/01	410		11	15
4/13/01	413		23	11
5/3/01	503		10	20
5/5/01	505		16	20
5/8/01	508		11	
5/10/01	510		1	30
5/12/01	512		3	15
5/15/01	515		3	56
5/21/01	521		7	20
6/1/01	601		28	25
6/3/01	603		2	30
6/5/01	606		13	
6/9/01	609		39	15
6/12/01	612		13	7
6/21/01	621		13	25
6/23/01	624		2	50
6/26/01	626		4	50
6/30/01	630			50

EE-2

7/2/01	702	8	30
7/11/01	711	20	
7/16/01	716	20	40
7/17/01	717	1	25
7/20/01	720	17	30
7/22/01	722	7	55
7/30/01	730	10	45
8/1/01	801	24	
8/4/01	804	15	25
8/6/01	806	11	
8/9/01	809	16	35
8/12/01	812	17	5
8/14/01	814	11	40
8/17/01	817	10	10
8/19/01	819	2	10
8/20/01	821	22	50
8/23/01	823	5	40
8/27/01	827	53	23
9/19/01	919	16	45
9/21/01	921	1	25
9/29/01	929	4	20
10/2/01	1002	13	20
10/4/01	1004	19	25
10/7/01	1007	19	
10/9/01	109	16	40
10/12/01	112	16	55
10/15/01	1015	12	5
10/17/01	1017	6	55
10/20/01	1020	5	40
10/21/01	1021		35
10/24/01	1024	15	15
TOTALS FOR 2001 AS OF 10/24/01		1132	57

$ [illegible] For 2001

10-26-01	1026	6	45
10-29-01	1029	8	40
10-31-01	1031	6	55
		22	20

TOTAL For 2001
AS OF 10-31-01

1155 17

EE-3

23013.24 For 2001

$ 36283.27

Exhibit
FF

Award No. 6334
Docket No. 5559

NATIONAL RAILROAD ADJUSTMENT BOARD

FIRST DIVISION

The First Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS

BROTHERHOOD OF RAILROAD TRAINMEN

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

(Lines West of Mobridge)

STATEMENT OF CLAIM: Order of Railway Conductors and Brotherhood of Railroad Trainmen claim one conductor, baggageman, and brakeman should be reimbursed for monetary loss resulting from passenger train discontinued on the Metaline Falls Line effective November 29, 1930, until restored February 16, 1937.

JOINT STATEMENT OF FACTS: National Railroad Adjustment Board, First Division, Award No. 1659 sustains

> "Protest of conductors and trainmen account cancelling the passenger assignment between Spokane and Metaline Falls, effective November 29, 1930."

without prejudice to rules involved.

The Organizations and the carrier request the privilege of oral and other proper presentation at time hearing is held.

POSITION OF EMPLOYES: Following cancellation of this assignment Conductor L. F. Graham presented claim for time lost and the claim was properly handled, being presented to the General Manager by the General Chairman of the O. R. C. in the following language; dated March 23, 1931:

> This will present claim of Conductor L. F. Graham, Idaho Division, for the mileage of his assignment on November 30, December 2, 4, and 6th, 1930, and all subsequent dates, claim based on Rule 1-b, and 2-b, Article 1.

There was never any question in the minds of the Chairman but what the Carrier would allow the time as claimed if the protest was sustained and, inasmuch as by an agreement between the Carrier and the Committees when one member of a crew makes claim which is allowed all members are given the same consideration.

The Organizations held that the Carrier should reimburse all men for monetary losses suffered because of the cancellation of this assignment.

FF-1

POSITION OF CARRIER: Compliance with Award No. 1659 on the part of the carrier was effected February 15, 1937, by restoring passenger assignment in effect prior to November 29, 1930.

General Chairman Robison of the Order of Railway Conductors under date of January 25, 1937, and General Chairman Borden of the Brotherhood of Railroad Trainmen under date of January 29, 1937, referred to Award No. 1659 of the National Railroad Adjustment Board, and in Chairman Robison's letter he requested that the claim of Conductor L. F. Graham, as set forth in the Position of the Committee, be adjusted. In Chairman Borden's letter, he requested proper adjustment. Reply was made that the Award sustained the protest but that there was nothing in either the Statement of Facts or the Award that would involve money payments.

The conductors and trainmen referred to by the Committee are not entitled to the money payments claimed for the reasons:

(1) The question presented by this submission was raised in the submission heretofore filed by the Committee in Docket 1901 as shown by their statement, that part reading:

"in view of which the protest and time claimed is justified"

Award No. 1659, Docket No. 1901, does not contain a money award, and it is clear, therefore, that the question of payment was decided adversely to the employes.

The filing of the present submission is an attempt to reopen the case settled by the entry of the prior award. Section 3 (m) of the Railway Labor Act provides that—

"awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award."

This language of the Act is meaningless if parties are allowed to divide each case into as many parts as suits their convenience and accept awards only so far as they are favorable.

There is neither reason nor justice in a rule which permits a party to divide a question into as many parts as suits his convenience without regard to the convenience, hardship, or expense of his opponent.

(2) The carrier made Award No. 1659 effective by restoring the same number of conductors and trainmen as were employed on the Spokane-Metaline Falls passenger assignment prior to November 29, 1930. In the absence of a money award, the question decided was of importance to the two organizations of the employes, but sustained the carrier insofar as retroactive money payments were involved.

(3) The carrier holds that failure on the part of the organizations to obtain recognition of that part of their claim submitted by the Committee involving money payment in Award 1659 precludes opportunity of securing a reopening of Award 1659 (Docket 1901).

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

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

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

The parties to said dispute waived hearing thereon.

FF-2

This claim, Docket No. 5559, results from the same controversy and involves the same persons as the protest made in Docket No. 1901, Award No. 1659.

With reference to Award No. 1659 this Division has stated:

> "In reaching its award the Division, under the protest cited was not called upon to consider whether or not the protesting conductors and trainmen had been damaged in a monetary sense, and only passed upon the protest cited."

The question is whether the same controversy may be brought to this Division piecemeal, a practice which would seem not to be contemplated by the provision of Section 3 (m) of the Railway Labor Act, and which is neither fair to the parties nor proper practice if the Division is to function efficiently.

Heretofore this Division has not adopted a definite rule as to the divisibility or indivisibility of a controversy by the initial submission of a protest and by a later claim for monetary compensation for the persons directly involved in the protest. For instance, in Award No. 1956, Docket No. 1209, this Division, without a referee, denied a money claim because "The controversy that formed a basis of this claim was disposed of by this Division's Award No. 52"; while in Award No. 5837, with a referee, expressly invited subsequent money claims by sustaining the protest "without prejudice to subsequent handling of claims for compensation subject to proper deductions of earnings received from the carrier."

This Division hereby definitely adopts the rule that controversies are not divisible and may not be brought to it separately as protest and as claim for compensation.

However, in view of the prior lack of a definite rule to that effect and since the record of Docket 1901 shows some reference in the statement of Position of Committee to "time claimed," though no such claim was included with the protest, the Division considers that the application of the rule to the present claim would be unduly harsh and prefers merely to announce it for application to claims hereafter finally submitted for decision.

The evidence of record warrants an affirmative award.

AWARD

Claim sustained for compensation, subject to proper deductions of earnings received from the carrier.

BY ORDER OF FIRST DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD

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

Dated at Chicago, Illinois, this 13th day of January, 1942.

FF-3

Exhibit

GG

Docket No. _____
Case No. 00-1-2209

Before The

NATIONAL RAILROAD ADJUSTMENT BOARD

FIRST DIVISION

******

IN THE MATTER OF

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

VS.

UNION PACIFIC RAILROAD COMPANY

*****

CARRIER'S SUBMISSION
RESPONDING TO NOTICE OF
EX PARTE SUBMISSION

*****

STATEMENT OF CLAIM:

The claim, as described by the Petitioner, reads as follows:

"Claim of former SSW engineer D. E. Thompson for the "in lieu of" relocation allowance as provided for in Article VII of the St. Louis Hub Agreement."

The foregoing statement of claim is quoted from a letter dated August 30, 2000 from Mr. D. E. Thompson, a former SSW engineer, to Arbitration Assistant Linda Woods of the National Railroad Adjustment board, advising of intention to file an ex parte submission in the above-quoted claim.[1] It is used in this submission solely for identification purposes and its quotation does not constitute an adoption thereof by the Union Pacific Railroad Company.

[1] The Organization's letter docketing this claim to the NRAB First Division is included as Carrier's Exhibit A.

GG-1

The Union Pacific Railroad Company, hereinafter referred to as the 'Carrier' has not been furnished an advance copy of the Petitioner's Ex Parte Submission. In response to notice from the Executive Secretary of the First Division, NRAB, of a declaration by the claimant to file an ex parte submission in the above-quoted claim and requesting that the Carrier file its response thereto, the Carrier respectfully submits the following setting forth the facts involved as well as the Carrier's position in these disputes.

CARRIER'S STATEMENT OF FACTS:

In 1996 the STB approved the merger between the SP/UP railroads. The Union Pacific served a Section Four notice in accordance with New York Dock conditions as required by the STB upon the Brotherhood of Locomotive Engineers to merge the Union Pacific, SSW and SPCSL railroads in the St. Louis area. At the time, Mr. Thompson was the full time General Chairman for the SSW engineers.

During the negotiations the parties agreed to rearrange forces and relocate some forces to coordinate the work of the merged properties. The parties reached and ratified a merger agreement that included certain relocation provisions.[2] Some of those provisions were further explained in Side Letter No. 11. Those provisions provided a relocation allowance for certain SSW engineers at Illmo, Missouri. Mr. Thompson signed that New York Dock merger agreement including the Side Letter.

The following is a list of the letters outlining the handling of this issue:

1. July 21, 1999 – Mr. Thompson sent to the Carrier a letter advising that he had sent in a form to cover his relocation expense and had not been paid. In that letter he advised, "If necessary, I can and will place myself as an engineer at Dexter, Missouri

66-2

and make a decision as to accept the in lieu of benefits or the benefits as provided in New York Dock as per the agreement."[3]

2. August 4, 1999 letter to Mr. Thompson advising that since he was not an active employee he was not entitled to the relocation benefits. Further, if he returned to active service, his request would be reconsidered.[4]

3. August 11, 1999 letter from Mr. Thompson advising that this was a New York Dock issue and advising that he requested arbitration.[5]

4. August 16, 1999 letter from the Carrier advising that he had written an administrative office and suggested that Mr. Thompson contact the office designated to handle disputes under the Railway Labor Act.[6]

5. August 22, 1999 letter from Mr. Thompson advising that the claim was a claim under New York Dock and further stating "...and any such claim progressed to the First Division or Public Law Board would be dismissed for lack of jurisdiction."[7]

6. September 7, 1999 letter from the Carrier advising who would be handling relocation disputes and reaffirming the position that he was not an active engineer and thus not eligible.[8]

7. October 18, 1999 and November 4, 1999 letters to several General Chairmen attaching a list of cases to be heard in New York Dock arbitration. Case No. 2 on that

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[2] Copy of the St. Louis Hub merger agreement Article VII and Side Letter No. 11 included as Carrier Exhibit B.
[3] Carrier Exhibit C.
[4] Carrier Exhibit D.
[5] Carrier Exhibit E.
[6] Carrier Exhibit F.
[7] Carrier Exhibit G.
[8] Carrier Exhibit H.

GG-3

list states, "Is engineer D. E. Thompson entitled to the 'in lieu of' relocation provisions of the Hub Agreement?"[9]

8. November 11, 1999 letter from Mr. Thompson responding to the last Carrier letter and discussions held between the party. This letter agrees to remove the case from the docket based on an agreement that if he performs "compensated service" he will be allowed the money.[10]

9. December 2, 1999 letter to several General Chairmen advising them that Case two had been resolved and including a new attachment showing that case removed.[11]

Mr. Thompson continued to function as a BLE General Chairman for the SSW engineers throughout the remainder of merger negotiations. In early July 2000 the BLE held elections to see who would be the remaining General Chairmen since many of the CBA's had been eliminated. Mr. Thompson did not win the election. In early September General Chairman Rightnowar inquired as to the status of Mr. Thompson. He did not show on the BLE's working list and he asked if he had a leave of absence. The Carrier made inquires and was advised that Mr. Thompson had retired direct with the Railroad Retirement Board, had not given the Carrier any notice of his retirement and had never marked up with the Carrier and performed compensated service.

On September 14, 2000 the Carrier received a copy of the notice Mr. Thompson filed with the First Division alleging that there was an unadjusted dispute between the railroad and himself.

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[9] Carrier Exhibit I.
[10] Carrier Exhibit J.

GG-4

CARRIER'S POSITION:

The Carrier's position is that this is a New York Dock issue and should not be before this Board, that the claimant is not and was not an active employee of the Carrier between the time of the STB merger approval and his retirement and that there is no unadjusted dispute.

New York Dock conditions provide for arbitration of disputes arising under New York Dock negotiations.[12] The NRAB has recognized the jurisdictional differences between New York Dock disputes and Railway Labor Act disputes. In Second Division Award No. 13265 the Division was also presented with a lump sum in lieu of relocation claim involving a New York Dock implementing agreement.[13] In that case the Board held:

> "This board lacks jurisdiction to resolve disputes arising under the New York Dock conditions, because New York Dock contains its own arbitration provision. This same issue has been addressed and resolved, as here, on many occasions in the past. See for example, Fourth Division Awards 4293, 4912, 4667, 3353, and 2095."

This lack of jurisdiction is recognized by the claimant as stated in his August 22, 1999 letter when he stated; "...and any such claim progressed to the First Division or Public Law Board would be dismissed for lack of jurisdiction." Further evidence of this is the placement of this question on the New York Dock docket attached to the October and November letters. Based on this evidence before the Board they should dismiss the case.

The NRAB is available to employees to progress unadjusted disputes. To come before the Board with a personal claim, one must show they are an employee of the

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[11] Carrier Exhibit K.
[12] New York Dock conditions included as Carrier Exhibit L.

GG-5

Carrier. Mr. Thompson took a leave of absence in 1984 as a full time General Chairman. He was one at the time of the STB approval of the merger and continued as one until he retired. At no time did he perform compensated service for the Carrier since the acquisition of the SP by the UP. At the time he lost his reelection he had the opportunity to return to his craft and work for Union Pacific, however he chose not to. He does not meet the status of an employee and thus cannot progress his claim. He recognized this when he wrote the Carrier (exhibit C) and advised: "If necessary, I can and will place myself as an engineer at Dexter, Missouri and make a decision as to accept the in lieu of benefits or the benefits as provided in New York Dock as per the agreement." Both parties understood that the claimant needed to be an active engineer to be covered under the relocation provisions.

Finally, there is no dispute. The Carrier, in its statement of fact, detailed the handling of the issue. The November 11, 1999 letter shows that a settlement was reached on the case. In that letter, he wrote:

> "Case No. 2 – The Carrier has agreed that engineer D. E. Thompson is entitled to the Protective Benefits as provided in Article VII of the St. Louis Hub Agreement and will be paid correct claim with first date of compensated service in the Hub of choice. (emphasis added)
>
> The case can be removed from attachment "A" if the Carrier provides written acknowledgment as stated above."

The Carrier did promptly write the claimant and acknowledged the settlement of the issue. Since this case has been resolved, and no other case has been brought forward by the claimant, the Carrier has no knowledge of a dispute. If Mr. Thompson had marked up for service he would then have been impacted by the merger agreement and the Carrier would have paid any benefits he was entitled to. Since he did not mark

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[13] Carrier Exhibit M.

GG-6

up the issue became moot. This evidence shows that there is not a claim or controversy that meets the requirements of the RLA and the provisions for handling disputes at the First Division. As such the Carrier requests a dismissal of the claim or a denial of the claim.

Respectfully submitted

W. S. Hinckley

W. S. Hinckley
Labor Relations
Union Pacific Railroad
1416 Dodge St.
Omaha NE 68179

November 2, 2000

GG-7

RECEIVED

SEP - 1 2000

National Railroad Adjustment Board
First Division

REC'D SCANNED

SEP 14 2000

Labor Relations

August 30, 2000

00-1-4-2209

Miss Linda Woods, Arbitration Assistant
National Railroad Adjustment Board
First Division
844 North Rush, Room 944
Chicago, IL 60611-2092

DATE ACKNOWLEDGED 9-1-00 NRAB CASE 00-1-4-2209
DUE DATE FOR FILING FOUR COPIES OF SUBMISSIONS
WITH THE NRAB 11-15-00
NO EXTENSIONS GRANTED
BY ORDER OF FIRST DIVISION

Dear Miss Woods:

This is to serve notice, as required by the Uniform Rules of Procedure of the National Railroad Adjustment Board effective May 16, 1994, of my intention to file an Ex Parte Submission within seventy-five (75) days covering an unadjusted dispute between the Union Pacific Railroad Company and I involving the following:

"Claim of former SSW engineer D. E. Thompson for the "in lieu of" relocation allowance as provided for in Article VII of the St. Louis Hub Agreement."

Respectfully yours,

D. E. Thompson
818 Seventh Street East
Scott City, MO 63780

cc: Andrea Gansen

CARRIER'S EXHIBIT A-1
PAGE ____ OF ____

G6-8

MERGER
IMPLEMENTING AGREEMENT
(St. Louis Hub)

between the

UNION PACIFIC RAILROAD COMPANY
Southern Pacific Transportation Company
and the

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

PREAMBLE

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

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

On October 10, 1997, the Carriers served notice of their intent to merge and consolidate operations generally in the following territories:

Union Pacific: St. Louis/Dupo to Dexter via Chester Sub

Dexter to Memphis

St. Louis/Dupo to Poplar Bluff/Dexter via DeSoto Sub

Salem to Dexter

CARRIER'S EXHIBIT 13-1
PAGE ____ OF ____
66-9

Agreement. Engineers will be given ten (10) days notice of when their specific relocation/reassignment is to occur.

ARTICLE VII - PROTECTIVE BENEFITS AND OBLIGATIONS

A. All engineers who are listed on the prior rights St. Louis Hub (Zones 1 and 2) merged rosters shall be considered adversely affected by this transaction and consolidation and will be subject to the New York Dock protective conditions which were imposed by the STB. It is understood there shall not be any duplication or compounding of benefits under this Agreement and/or any other agreement or protective arrangement.

1. Carrier will calculate and furnish TPA's for such engineers to the Organization as soon as possible after implementation of the terms of this Agreement. The time frame used for calculating the TPA's in accordance with New York Dock will be August 1, 1996 through and including July 31, 1997.

2. In consideration of blanket certification of all engineers covered by this Agreement for wage protection, the provisions of New York Dock protective conditions relating to "average monthly time paid for" are waived under this Implementing Agreement.

3. Test period averages for designated union officers will be adjusted to reflect lost earnings while conducting business with the Carrier.

4. National Termination of Seniority provisions shall not be applicable to engineers hired prior to the effective date of this Agreement.

B. Engineers required to relocate under this Agreement will be governed by the relocation provisions of New York Dock. In lieu of New York Dock provisions, an employee required to relocate may elect one of the following options:

1. Non-homeowners may elect to receive an "in lieu of" allowance in the amount of $10,000 upon providing proof of actual relocation.

2. Homeowners may elect to receive an "in lieu of" allowance in the amount of $20,000 upon providing proof of actual relocation.

3. Homeowners in item 2 above who provide proof of a bona fide sale of their home at fair value at the location from which relocated shall be eligible to receive an additional allowance of $10,000.

CARRIER'S EXHIBIT B-2

PAGE _____ OF _____

66-10

a) This option shall expire within five (5) years from date of application for the allowance under Item 2 above.

b) Proof of sale must be in the form of sale documents, deeds, and filings of these documents with the appropriate agency.

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

4. With the exception of Item 3 above, no claim for an "in lieu of" relocation allowance will be accepted after two (2) years from date of implementation of this Agreement.

5. Under no circumstances shall an engineer be permitted to receive more than one (1) "in lieu of" relocation allowance under this Implementing Agreement.

6. Engineers receiving an "in lieu of" relocation allowance pursuant to this Implementing Agreement will be required to remain at the new location, seniority permitting, for a period of two (2) years.

ARTICLE VIII - SAVINGS CLAUSES

A. The provisions of the applicable Schedule Agreement will apply unless specifically modified herein.

B. It is the Carrier's intent to execute a standby agreement with the Organization which represents engineers on the former Missouri and Illinois. Upon execution of that Agreement, said engineers will be fully covered by this Implementing Agreement as though the Organization representing them had been signatory hereto.

C. Nothing in this Agreement will preclude the use of any engineers to perform work permitted by other applicable agreements within the new seniority districts described herein, i.e., engineers performing Hours of Service Law relief within the road/yard zone, ID engineers performing service and deadheads between terminals, road switchers handling trains within their zones, etc.

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

CARRIER'S EXHIBIT B-3

PAGE _____ OF _____

6-6-11

FOR THE BROTHERHOOD
LOCOMOTIVE ENGINEERS:

D. E. Penning
General Chairman, BLE

D. E. Thompson
General Chairman, BLE

J. R. Koonce
General Chairman, BLE

APPROVED:

J. L. McCoy
Vice President, BLE

D. M. Hahs
Vice President, BLE

FOR THE CARRIERS:

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

J. M. Raaz
Assistant Vice President - LR
Union Pacific Railroad Co.

CARRIER'S EXHIBIT B-4
PAGE ____ OF ____
66-12

Side Letter No. 11

April 15, 1998

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

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

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

Gentlemen:

This refers to the Merger Implementing Agreement for the St. Louis Hub entered into this date.

In Side Letter No. 21 of the Merger Implementing Agreement for the North Little Rock/Pine Bluff Hub entered into on October 9, 1997, Carrier made certain written commitments regarding engineers residing at Illmo and Poplar Bluff. The purpose of this Side Letter is to more specifically define the rights and responsibilities of said engineers at Poplar Bluff and Illmo in line with the Merger Implementing Agreement for the St. Louis Hub and said Side Letter No. 21.

This Side Letter addresses three (3) specific groups of engineers:

A. Former UP engineers assigned to the UP Dupo - Poplar Bluff freight pool (home terminal St. Louis) who have continued to reside at Poplar Bluff under a "reverse lodging" arrangement.

B. Former UP engineers assigned to the UP Salem - Poplar Bluff freight pool (home terminal Salem/Poplar Bluff) who have continued to reside at Poplar Bluff under a "reverse lodging" arrangement.

C. Former SSW and UP engineers at Illmo and Poplar Bluff who, as a result of the Implementing Agreement, will have their home terminal changed to St. Louis.

Pursuant to the terms of Articles I.A.2. and I.A.5. of the Implementing Agreement covering the St. Louis Hub, the consolidated pool operating between St. Louis and Dexter will be home terminaled at St. Louis, and the pool operating between Salem and Dexter will likewise be home terminaled at Salem. It is the intent and desire of the Carrier that all engineers assigned to this pool who presently reside in Illmo and Poplar Bluff be relocated to St. Louis and Salem. However, considering the large number of engineers who reside at these locations who are reasonably close to retirement age, the Carrier has expressed its willingness to enter into an attrition arrangement for a fixed period of time in order to permit engineers to maintain their residences in the Poplar Bluff and Illmo areas for said period of time while protecting these pools. The terms and conditions of this interim arrangement are as follows:

CARRIER'S EXHIBIT B-5
PAGE _____ OF _____

A:\STLHUBJA.DOC(45)

66-13

1. Former SSW and UP engineers who are required to relocate to St. Louis or Salem shall be considered eligible for the relocation benefits set forth in Article VII.B. of this Implementing Agreement.

2. Former SSW engineers who are assigned to either of these pools who decline to relocate to St. Louis or Salem and exercise the "reverse lodging" option provided in Article I.A.2.g. of the Implementing Agreement shall be considered eligible for the relocation benefits under Article VII.B. of this Implementing Agreement. If such engineers should subsequently relocate to St. Louis under the provisions of this Side Letter or otherwise, such relocation shall be considered to be a seniority move and shall not trigger any further relocation benefits under this Implementing Agreement.

3. Those former UP engineers assigned to the UP Dupo - Poplar Bluff and Salem - Poplar Bluff freight pools who have continued to reside at Poplar Bluff under a "reverse lodging" attrition arrangement may elect to relocate to St. Louis or Salem, and if so relocated, shall be considered eligible for the relocation benefits set forth in Article VII.B. of this Implementing Agreement. If such employees decline to relocate and elect to exercise the "reverse lodging" option provided in this Agreement, they shall become subject to the provisions of the immediately preceding Section 2 hereof. As agreed in Item 2 of Side Letter No. 21 to the NLR/PB Merger Implementing Agreement, it is undisputed that the distance between Poplar Bluff and Dexter shall not be an issue regarding entitlement of such engineers to such relocation benefits.

4. Those engineers described in Sections 2 and 3 above who decline to relocate to St. Louis or Salem and are subsequently forced to relocate because they are unable to hold a regular assignment at Dexter/Poplar Bluff, such relocation shall be considered to be a seniority move and shall not trigger any further relocation benefits under this Implementation Agreement.

5. Effective upon service of a notice by the Carrier, which cannot be served any sooner than April 1, 2005, the "reverse lodging" attrition arrangements set forth in this Implementing Agreement shall become null and void. On and after that date, all engineers described in Sections 1, 2 and 3 above shall be required to protect their respective freight pools at the designated home terminal locations if they choose to continue to occupy such assignments. This change shall be effected by the service of a thirty (30) day notice by the Carrier of its intent to do so.

6. The provisions of this Side Letter No. 11 shall only apply to engineers residing in Poplar Bluff or Illmo or vicinity, and protecting service at such location or vicinity, on October 10, 1997 (date of Carrier's St. Louis Hub Notice).

7. It is understood this Agreement does not operate to preclude an engineer from receiving full relocation benefits under Article VII.B. when required to relocate to Dexter to protect the Dexter-Memphis pool, extra board, or any other assignments established at that location.

8. Under the unique circumstances surrounding this Side Letter, engineers at Poplar Bluff and Illmo and vicinity will not be required to provide proof of relocation to Dexter in order to receive the relocation benefits under Article VII.B.1. and 2., but must do so to receive the additional benefit under Article VII.B.3.

The above-described arrangements are designed to deal with a peculiar situation under specific circumstances, and shall not be referred to by either party in any other proceeding or negotiations.

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

Yours truly,

M. A. Hartman
General Director - Labor Relations

AGREED:

D. E. Penning
General Chairman, BLE

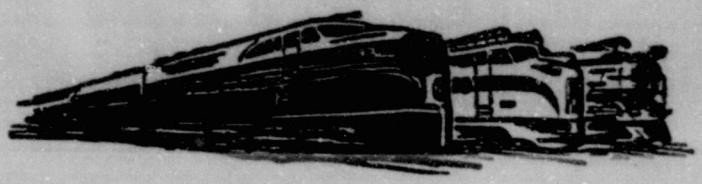
D. E. Thompson
General Chairman, BLE

J. R. Koonce
General Chairman, BLE

cc: D. M. Hahs
Vice President BLE

J. L. McCoy
Vice President BLE

CARRIER'S EXHIBIT B-7
PAGE ____ OF GG-15



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 21, 1999

J. Cvetas
Manager, Labor Relations
Union Pacific Railroad
1416 Dodge Street
Omaha, NE 68179

Labor Relations

CERTIFIED LETTER: Z 042 456 572

Dear Mr. Cvetas

Enclosed for your ready reference is copy of my claim for St. Louis Hub relocation allowance under the option to New York Dock Conditions as per Article VII and Side Letter No. 11 of the St. Louis Hub Agreement.

This is my third copy that I have sent without any payments being received or any written notice as to why the application for the relocation benefits is not payable.

The Carrier has eliminated every engineer assignment at Illmo leaving no positions for any engineer. In addition, the Carrier's decision to eliminate every engineer and every trainman position at Illmo has severely impacted this small town. There is not a city block in the town that does not have houses for sale. The Carrier's decision has affected the price of housing at least twenty-five percent (25%). My home, prior to the Carrier's decision, was appraised at $87,500.00. At the present time, I do not believe I could sell my house and if it did sell, it would not sell for more than $50,000.00.

I have provided Mr. Weiss with a copy of recent SSW Awards for employees serving as General Chairman and Vice President who made similar claim, denied by the Carrier and sustained by the Board.

CARRIER'S EXHIBIT C-1
PAGE ____ OF 66-16

If necessary, I can and will place myself as an engineer at Dexter, Missouri and make a decision as to accept the in lieu of benefits or the benefits as provided in New York Docket as per the agreement.

There is no windfall in this claim. I have been monetarily impacted by the Carrier's decision and I will do whatever is necessary to assure that I am treated equal to all other employees affected with the elimination of Illmo as a terminal.

Please pay the claim or advise written decision as to why the claim will not be paid as per the agreements.

Respectfully,

D E Thompson

D. E. Thompson

Enclosures

cc: Randy Weiss
Robin Rock

G6-17

CARRIER'S EXHIBIT C-2
PAGE ____ OF ____

HUB RELOCATION BENEFITS APPLICATION

(ST. LOUIS Hub)

(Applicant Insert Name of Appropriate Hub)

Please accept this as my application for relocation benefits as set forth in the above referenced Article VII (B) Merger Implementing Agreement. I understand that my election herein is in lieu of actual relocation benefits provided under New York Dock. This election must be exercised within two (2) years from the date of implementation of this Agreement. (Except that Option 3 shall expire within five (5) years from implementation). Please check one of the following three options:

☐ Option 1: I am a non-owner and accept a $10,000 allowance in lieu of New York Dock relocation benefits

☒ Option 2: I am a homeowner and accept a $20,000 allowance in lieu of New York Dock relocation benefits.

If I have accepted Option 1 or 2, I understand that I must submit "proof of actual relocation" in order to receive the "in lieu of" allowance.

☐ Option 3: I am a homeowner and having sold my home, accept a $10,000 allowance in addition to the $20,000 allowance I shall receive under Option 2, for a total of a $30,000 allowance.

If I have accepted Option 3, I understand that I must not only submit "proof of actual relocation" but in addition I must provide "proof of a bona fide sale" of my home at fair value in the form of sale documents, deeds, and filings of these documents with the appropriate agency in order to receive the "in lieu of" allowance.

In addition, I understand that in accepting any of the three options above, I will be required to remain at the new location, seniority permitting, for a period of two (2) years. Please fax or send this completed form to J. E. Cvetas, Manager-Labor Relations Program Administration, 1416 Dodge Street, Room 332, Omaha, NE 68179; fax (402)271-2463. Mr. Cvetas can also be reached by phone at (402)271-4577.

NAME DAVID E. THOMPSON **SSN** 499-38-2086

SIGNATURE David E. Thompson

CRAFT LOCOMOTIVE ENGINEER

DATE JANUARY 21, 1999

OLD WORK LOCATION ILLMO, MO **NEW WORK LOCATION** UNDETERMINED AT THIS TIME

CARRIER'S EXHIBIT ____ DE ____ OF ____

FILE COPY

August 4, 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 July 21, 1999 concerning your claim for St. Louis Hub relocation.

I have again reviewed your file and it remains my position that you are not currently eligible for relocation benefits. Prior to the merger and the implementing agreement you were a full-time General Chairman for the BLE. Records indicate that you are still a full-time General Chairman for the BLE. As such, you were not affected by the implementation of the St. Louis Hub Agreement. If you relinquish your position as a General Chairman and return to full-time service as an engineer, the Carrier will consider your relocation allowance at that time.

Furthermore, the Awards you supplied Mr. Weiss do not support your position. Those Awards only applied to individuals who had returned to active service with the Carrier. They were not active union officials.

Your request for relocation benefits is respectively denied.

Yours truly,

J. E. CVETAS
ASST DIR PROG ADM

cc: M. A. Peak

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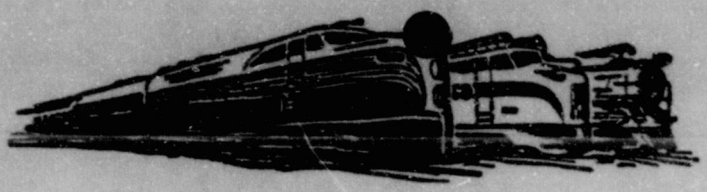
66-19

CARRIER'S EXHIBIT D-1
PAGE _____ OF _____



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

August 11, 1999

ICC-307-26

J. E. Cvetas
Manager, Labor Relations
Union Pacific Railroad
1416 Dodge Street
Omaha, NE 68179

CERTIFIED LETTER: Z 047 247 492

Reference: Your letter of August 4, 1999 denying the claim for relocation benefits as per the St. Louis Hub Agreement - Claimant, David E. Thompson

Dear Mr. Cvetas:

Please be advised that your decision to deny the claim for relocation benefits is in violation of the St. Louis Hub Agreement and is not acceptable.

As per the provision of Part II of the New York Dock protective conditions which were imposed by the Surface Transportation, this is our notice to refer this dispute to an Arbitration Committee.

I, David E. Thompson will be the Organization member of the Committee. I would suggest that the Neutral Member of the Committee be Mr. John C. Fletcher. If you are not agreeable, we can allow the National Mediation Board to designate the Neutral Member.

Please be advised that the claim for Option 2 is to be changed to the actual provisions of the New York Dock Conditions and/or as provided in Article VII of the St. Louis Hub Agreement.

Please advise the Carrier Member of the Committee and your decision as to the selection of the Neutral Member.

Respectfully,

D E Thompson

D. E. Thompson

CARRIER'S EXHIBIT E-1

6620

FILE COPY

August 16, 1999

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

Dear Sir:

Reference your letter of August 11, 1999 concerning the claim for relocation benefits for Claimant David E. Thompson.

It should be pointed out that this office is an administrative office which handles relocation request, among other duties, for various agreements throughout the system. This office is not the designated office, under the Railway Labor Act, to handle time claims and grievances.

If it is your contention that you are entitled to relocation benefits under the provisions of the St. Louis Hub Agreement, the matter should be referred to your Local Chairman and handled in accordance with the Schedule Agreement and the Railway Labor Act. If you desire to circumvent the procedures, you should contact the highest designated officer to handle time claims and grievances on your territory.

Yours truly,

J. E. CVETAS
ASST DIR PROGRAM ADM

cc: P. J. Waldmann
C. R. Wise

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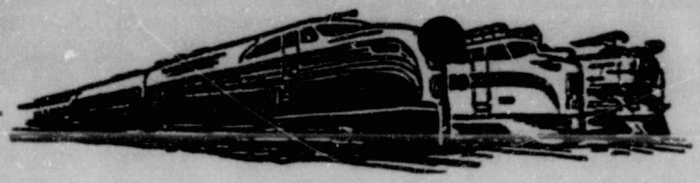
66-2 CARRIER'S EXHIBIT F-1
PAGE ____ OF ____



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

August 22, 1999

ICC-307-26

J. Cvetas
Manager, Labor Relations
Union Pacific Railroad
1416 Dodge Street
Omaha, NE 68179

Reference: Your letter of August 16, 1999 in response to my letter of August 11, 1999 for relocation benefits.

Dear Mr. Cvetas:

The claim for relocation benefits is not a Railway Labor Act issue. The claim is filed under the provision of the New York Dock conditions and any such claim progressed to the First Division or Public Law Board would be dismissed for lack of jurisdiction.

The documentation I have from Union Pacific regarding relocation benefits states that you are the officer of Union Pacific to handle such matters. If you are not the highest officer that would be the Carrier Member of the Arbitration Committee, you need to do one of two things, either give this letter to the appropriate officer of Union Pacific or advise the name and address of said officer.

There are additional claims that are still to be resolved and we may also list these claims to the Arbitration Committee.

In regards to the claim for David E. Thompson, I would suggest you or the appropriate officer read the provisions of the St. Louis Hub Agreement before making a decision to refer the issue to an Arbitration Committee.

Please do not further delay this request to refer this dispute to the Arbitration Committee.

Respectfully,

D. E. Thompson

CARRIER'S EXHIBIT G-1
66-22 PAGE _____ OF _____

September 7, 1999

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

Dear Sir:

Reference your letters of August 11 and 22, 1999 concerning the St. Louis Hub Agreement. I am currently the Carrier's highest officer of appeal to handle relocation disputes under the Hub agreement and the letters have been forwarded to me for further handling.

I referred your question to Director Labor Relations M. A. Hartman who was signatory to the Hub Agreement. He affirmed the position previously taken by the Carrier that since you are not an active engineer at any location the relocatiion provisions are not applicable at this time.

I will be calling you concerning the selection of a NYD arbitrator.

Yours truly,

WSH

W. S. Hinckley

Bcc: Michelle Peak – I would like you to research and write this case.

GG-23

CARRIER'S EXHIBIT H-1
PAGE _____ OF _____

fole

UNION PACIFIC RAILROAD COMPANY

W. S. HINCKLEY
GENERAL DIRECTOR-
LABOR RELATIONS-OPERATING-SOUTH

1416 DODGE STREET
OMAHA, NEBRASKA 68179
(402) 271-3689

October 18, 1999

Mr. C.R. Rightnower
General Chairman BLE
320 Brookes Dr. Suite 115
Hazelwood, Mo 63042

Mr. R. A. Poe
General Chairman BLE
6240 Tarascas
El Paso, TX 79912

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

Mr. D. M. Hahs
Vice President BLE
1011 St. Andrews
Kingwood, TX 77339

Mr. W. R. Sione
General Chairman BLE
6207 Airport Freeway
Ft. Worth, TX 76117-5321

Mr. M. A. Young
General Chairman BLE
1620 Central Ave. #201
Cheyenne WY 82001

Gentlemen:

During our recent conferences several items were scheduled for NYD arbitration. Attached please find an attachment "A" listing six cases. Please review the cases and advise of any changes, additions or deletions to this attachment. I will contact VP Don Hahs concerning the selection of a Neutral.

Yours truly,

WSH

W. S. Hinckley

I-1

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NEW YORK DOCK ARBITRATION

ATTACHMENT "A"

Case No. 1

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

Case No. 2

Is engineer D. E. Thompson entitled to the "in lieu of" relocation provisions of the Hub Agreement?

Case No. 3

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

Case No. 4

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

Case No. 5

O.K. resolved

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

Case No. 6

O.K. resolved

Is the agreed to template (82/12/6%) to be applied to that group of engineers in the DFW Hub above the pre-merger numbers (310 UP, 42 SP, and 23 SSW)? If so, the SSW would be entitled to two additional slots. Do the Prior rights stop at this same number? After the prior rights number is finalized, how are slots above that number filled?

I-2

GG-25

UNION PACIFIC RAILROAD COMPANY

W.S. HINCKLEY
GENERAL DIRECTOR-
LABOR RELATIONS-OPERATING-SOUTH

1416 DODGE STREET
OMAHA, NEBRASKA 68179
(402) 271-3680

November 4, 1999

Mr. C.R. Rightnower
General Chairman BLE
320 Brookes Dr. Suite 115
Hazelwood, Mo 63042

Mr. D. M. Hahs
Vice President BLE
1011 St. Andrews
Kingwood, TX 77339

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

Mr. R. A. Poe
General Chairman BLE
6240 Tarascas
El Paso, TX 79912

Mr. M. A. Young
General Chairman BLE
1620 Central Ave. #201
Cheyenne WY 82001

Mr. W. R. Slone
General Chairman BLE
6207 Airport Freeway
Ft. Worth TX 76117-5321

Gentlemen:

This is to confirm that the New York Dock arbitration is scheduled for January 18, 2000 at the Carrier's office in Spring Texas. I recently sent out an attachment "A" with six questions and while some of you have discussed these questions with me by telephone I have not received anything in writing suggesting alternate language. I am sending each of you a new attachment "A" that has a seventh question added after a meeting with General Chairman C.R. Rightnower. There is a similiarity between question 7 and question 1.

Yours truly,

W. S. Hinckley

Mr. Eckehard Muessig
Arbitrator
3450 No. Venice Street
Arlington, VA 22207

Note to Eck and Don: Spring is about 10 miles north of the Houston International airport. I usually say near the airport and when I get my hotel reservations I will call you and let you know where I will be staying the night of the 17th. We can pick you up at the airport and maybe Don Hahs and I can take you to dinner that night and have an informal executive session.

GG-26 I-3

PAGE _____ OF _____

NEW YORK DOCK ARBITRATION

ATTACHMENT "A"

Case No. 1

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

Case No. 2

Is engineer D. E. Thompson entitled to the "in lieu of" relocation provisions of the Hub Agreement?

Case No. 3

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

Case No. 4

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

Case No. 5

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

Case No. 6

Is the agreed to template (82/12/6%) to be applied to that group of engineers in the DFW Hub above the pre-merger numbers (310 UP, 42 SP, and 23 SSW)? If so, the SSW would be entitled to two additional slots. Do the Prior rights stop at this same number? After the prior rights number is finalized, how are slots above that number filled?

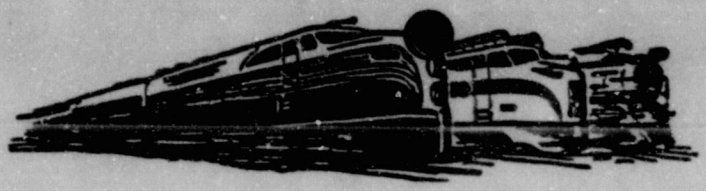
Case No. 7

Are the twelve engineers who responded to the October 10, 1998 at Kansas City entitled to prior rights in Zone 2 of the Kansas City Hub.

GG-27

CARRIER'S EXHIBIT I-4

BY _____ OF _____



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

November 11, 1999

ICC-307-18
ICC-307-21
ICC-307-30

W. S. Hinckley
General Director, Labor Relations
Union Pacific Railroad Company
1416 Dodge Street
Omaha, NE 68179

Reference: Your letter of November 4, 1999 with attachment "A" listing seven (7) questions.

Dear Sir:

From my notes and correspondence, there are additional questions that must be added to the list and additional questions in some of the cases shown on attachment "A".

Case No. 1 - Salina Hub - What is the correct seniority date for the former SSW engineers that entered training November 16, 1998 and November 29, 1998? Who was selected to Zone 2, Salina Hub when canvassed as a trainman and engineer?

What is the correct implementation date for the Expanded Salina Hub?

What is the correct number of slotted prior rights SSW positions in the Herington/Kansas City and Herington/Pratt freight pools as per Article 1, B1 and B2?

What is the correct date for Zone 1 engineers being placed at the bottom of Zone 2 engineers and the correct date for Zone 2 engineers being placed at the bottom of Zone 1, Salina Hub?

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CARRIER'S EXHIBIT J-1
PAGE _____ OF _____

In regards to the third issue, data was provided by Carrier Officer Cooley and Weiss. Using the data, the Local Chairmen agreed to thirty-eight (38) Herington/Kansas City and eighteen (18) Herington/Pratt. If Mr. Young is not agreeable, we will expect the same data being made a part of the Carrier's submission whereby the Neutral can assign the numbers based upon the data.

Case No. 2 - The Carrier has agreed that engineer D. E. Thompson is entitled to the Protective Benefits as provided in Article VII of the St. Louis Hub Agreement and will be paid correct claim with first date of compensated service in the Hub of choice.

The case can be removed from attachment "A" if the Carrier provides written acknowledgment as stated above.

Case No. 5 - Case No. 6 - It is my understanding that Mr. Slone has agreed that the correct seniority date for former SSW Engineer D. O. Kern is his date as an engineer (6-12-78) and as per his letter of October 8, 1999, he is in agreement that three (3) additional former SSW engineer's seniority date prior to 03-03-99 will have the right to be assigned to the Dallas/Fort Worth Hub Roster using their date as an engineer with prior rights.

This office is in agreement with his letter, and if nothing has changed, Case No. 5 and Case No. 6 has been resolved.

Case No. 7 - I am not certain what this issue pertains to. I do not know what my position would be on this issue given the lack of knowledge. If what little information I have is correct. I may not be opposed.

The following are cases that involve the NLR/PB Hub:

Case No. 8 - What is the correct pay for engineers under Article I, A part 21, page 10?

Case No. 9 - What is the correct pay for engineers under Article I, part 24, page 11; Article I B, part 4, page 12-13; and Article I C, part 5, page 14-15.

Case No. 10 - What is the correct pay for engineers in Zone 2 who run through the terminal and deliver the loaded coal trains to White Bluff or is transported to get the empties and run through the terminal as per Article I B 6, page 13?

Case No. 11 - What is the correct pay for engineers transported between North Little Rock and Pine Bluff or vice versa as per Side Letter No. 11 of the NLR/PB Hub?

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CARRIER'S EXHIBIT J-2

I am enclosing copies of Mr. Hinckley's letters dated September 23, 1999 and October 5, 1999 regarding open issues discussed in the September conferences.

If the other issues have not been resolved, they should be listed by the involved General Chairmen.

Please advise.

Respectfully,

D. E. Thompson

cc: D. M. Hahs, VP
M. A. Young, GC
C. R. Rightnowar, GC
R. A. Poe, GC
W. R. Slone, GC
BLE/SSW Divisions

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CARRIER'S EXHIBIT J-3
PAGE _____ OF _____

December 2, 1999
NYD 331 cases 1-7

Mr. C.R. Rightnower
General Chairman BLE
320 Brookes Dr. Suite 115
Hazelwood, Mo 63042

Mr. D. M. Hahs
Vice President BLE
1011 St. Andrews
Kingwood, TX 77339

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

Mr. R. A. Poe
General Chairman BLE
6240 Tarascas
El Paso, TX 79912

Mr. M. A. Young
General Chairman BLE
1620 Central Ave. #201
Cheyenne WY 82001

Mr. W. R. Slone
General Chairman BLE
6207 Airport Freeway
Ft. Worth TX 76117-5321

Gentlemen:

Reference my November 4, 1999 letter with an Attachment A concerning 7 NYD cases to be heard on January 18, 1999 at Spring, Texas. I have heard from all of you, either in writing or verbally. Of the original 7 cases only one has been resolved which was old case two involving a relocation allowance. In its place I have added a new case two which involves the proper roster ratcheting to be used for Longview.

This question was added after I received different proposals from the General Chairmen involved in that case and after talking with them believed that it was best to add that case to the docket. A revised attachment "A" is enclosed with this letter.

Your responses to my earlier letter raised a couple of procedural issues. First, some of you wanted to expand upon the question at issue and either make it more detailed or add sub questions. Since there is not agreement on how the questions should be worded, I will retain my basic questions and each of you are free to word the questions in your submission in whatever detail you wish as long as they are concerned with the basic question.

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CARRIER'S EXHIBIT K-1
PAGE _____ OF _____

Second, there has been some discussion about oral commitments and agreements that seem to melt away when it comes to putting them in writing. If by chance parties in dispute do reach a written agreement I believe that it should have the signatures of the General Chairmen involved and the Carriers with wording that it resolves Case ___ of the NYD docket number 331. At that time we can remove it from the docket but not before.

Third, some of you have asked about retaining Mr. Muessig as a NYD neutral. I am agreeable to this and in talking with Mr. Muessig he is also agreeable. He has kindly set aside March 29, 2000 as a future hearing date. My condition is that individual New York Dock cases between each of your offices and the Carrier should have a separate NYD docket for handling. The current docket is unique in the number of General Chairmen involved and future NYD cases will most likely be based on non seniority issues such as relocation eligibility etc which will need their own dockets. We will start preparing those dockets for those who have already contacted this office to do so.

Yours truly,

W. S. Hinckley

Mr. Eckehard Muessig
Arbitrator
3450 No. Venice Street
Arlington, VA 22207

Bc: Andrea and Catherine -- we need to meet on these to decide the approach we want to take in the hearing.

GG-32 CARRIER'S EXHIBIT K-2
CASE ____ OF ____

NEW YORK DOCK ARBITRATION

ATTACHMENT "A"
(December 2, 1999)

Case No. 1

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

Case No. 2

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

Case No. 3

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

Case No. 4

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

Case No. 5

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

Case No. 6

Is the agreed to template (82/12/6%) to be applied to that group of engineers in the DFW Hub above the pre-merger numbers (310 UP, 42 SP, and 23 SSW)? If so, the SSW would be entitled to two additional slots. Do the Prior rights stop at this same number? After the prior rights number is finalized, how are slots above that number filled?

Case No. 7

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

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CARRIER'S EXHIBIT K-3.
PAGE ____ OF ____

APPENDIX ---

Labor protective conditions to be imposed in railroad transactions pursuant to 49 U.S.C. 11343 et seq. [formerly sections 5(2) and 5(3) of the Interstate Commerce Act], except for trackage rights and lease proposals which are being considered elsewhere, are as follows:

1. Definitions.--(a) 'Transaction' means any action taken pursuant to authorizations of this Commission on which these provisions have been imposed.

(b) 'Displaced employee' means an employee of the railroad who, as a result of a transaction is placed in a worse position with respect to his compensation and rules governing his working conditions.

(c) 'Dismissed employee' means an employee of the railroad who, as a result of a transaction is deprived of employment with the railroad because of the abolition of his position or the loss thereof as the result of the exercise of seniority rights by an employee whose position is abolished as a result of a transaction.

(d) 'Protective period' means the period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of 6 years therefrom, provided, however, that the protective period for any particular employee shall not continue for a longer period following the date he was displaced or dismissed than the period during which such employee was in the employ of the railroad prior to the date of his displacement or his dismissal. For purposes of this appendix, an employee's length of service shall be determined in accordance with the provisions of section 7(b) of the Washington Job Protection Agreement of May 1936.

2. The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges and benefits (including continuation of pension rights and benefits) of the railroad's employees under applicable laws and/or existing collective bargaining agreements or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes.

3. Nothing in this appendix shall be construed as depriving any employee of any rights or benefits or eliminating any obligations which such employee may have under any existing job security or other protective conditions or arrangements; provided, that if an employee otherwise is eligible for protection under both this appendix and some other job security or other protective conditions or arrangements, he shall elect between the benefits under this appendix and similar benefits under such other arrangement and, for so long as he continues to receive such benefits under the provisions which he so elects, he shall not be entitled to the same type of benefit under the provisions which he does not so elect; provided further, that the benefits under this appendix, or any other arrangement, shall be construed to include the conditions,

GG-34

CARRIER'S EXHIBIT L-1

responsibilities and obligations accompanying such benefits; and, provided, further, that after expiration of the period for which such employee is entitled to protection under the arrangement which he so elects, he may then be entitled to protection under the other arrangement for the remainder, if any, of this protective period under that arrangement.

4. Notice and Agreement or Decision - (a) Each railroad contemplating a transaction which is subject to these conditions and may cause the dismissal or displacement of any employees, or rearrangement of forces, shall give at least ninety (90) days written notice of such intended transaction by posting a notice on bulletin boards convenient to the interested employees of the railroad and by sending registered mail notice to the representatives of such interested employees. Such notice shall contain a full and adequate statement of the proposed changes to be effected by such transaction, including an estimate of the number of employees of each class affected by the intended changes. Prior to consummation the parties shall negotiate in the following manner.

Within five (5) days from the date of receipt of notice, at the request of either the railroad or representatives of such interested employees, a place shall be selected to hold negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this Appendix, and these negotiations shall commence immediately thereafter and continue for at least thirty (30) days. Each transaction which may result in a dismissal or displacement of employees or rearrangement of forces, shall provide for the selection of forces from all employees involved on a basis accepted as appropriate for application in the particular case and any assignment of employees made necessary by the transaction shall be made on the basis of an agreement or decision under this section 4. If at the end of thirty (30) days there is a failure to agree, either party to the dispute may submit it for adjustment in accordance with the following procedures:

(1) Within five (5) days from the request for arbitration the parties shall select a neutral referee and in the event they are unable to agree within said five (5) days upon the selection of said referee then the National Mediation Board shall immediately appoint a referee.

(2) No later than twenty (20) days after a referee has been designated a hearing of the dispute shall commence.

(3) The decision of the referee shall be final, binding and conclusive and shall be rendered within thirty (30) days from the commencement of the hearing of the dispute.

(4) The salary and expenses of the referee shall be borne equally by the parties to the proceeding; all other expenses shall be paid by the party incurring them.

(5) No change in operations, services, facilities, or equipment shall occur until after an agreement is reached or the decision of a referee has been rendered.

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.

(b) If a displaced employee fails to exercise his seniority rights to secure another position available to him which does not require a change in his place of residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position he elects to decline.

(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for justifiable cause.

6. Dismissal allowances. - (a) A dismissed employee shall be paid a monthly dismissal allowance, from the date he is deprived of employment and continuing during his protective period, equivalent to one-twelfth of the compensation received by him in the last 12 months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the transaction. Such allowance shall also be adjusted to reflect subsequent general wage increases.

(b) The dismissal allowance of any dismissed employee who returns to service with the railroad shall cease while he is so reemployed. During the time of such reemployment, he shall be entitled to protection in accordance with the provisions of section 5.

(c) The dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his representative, and the railroad shall agree upon a procedure by which the railroad shall be currently informed of the earnings of such employee in employment other than with the railroad, and the benefits received.

(d) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the employee's resignation, death, retirement, dismissal for justifiable cause under existing agreements, failure to return to service after being notified in accordance with the working agreement, failure without good cause to accept a comparable position which does not require a change in his place of residence for which he is qualified and eligible after appropriate notification, if his return does not infringe upon the employment rights of other employees under a working agreement.

7. Separation allowance.- A dismissed employee entitled to protection under this appendix, may, at his option within 7 days of his dismissal, resign and (in lieu of all other benefits and protections provided in this appendix) accept a lump sum payment computed in accordance with section 9 of the Washington Job Protection Agreement of May 1936.

8. Fringe benefits.- No employee of the railroad who is affected by a transaction shall be deprived, during his protection period, of benefits attached to his previous employment, such as free transportation, hospitalization, pensions, reliefs, et cetera, under the same conditions and so long as such benefits continue to be accorded to other employees of the railroad, in active or on furlough as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained.

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9. Moving expenses.--Any employee retained in the service of the railroad or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment as a result of the transaction, and who within his protective period is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects for the traveling expenses of himself and members of his family, including living expenses for himself and his family and for his own actual wage loss, not exceed 3 working days, the exact extent of the responsibility of the railroad during the time necessary for such transfer and for reasonable time thereafter and the ways and means of transportation to be agreed upon in advance by the railroad and the affected employee or his representatives; provided, however, that changes in place of residence which are not a result of the transaction, shall not be considered to be within the purview of this section: provided further, that the railroad shall, to the same extent provided above, assume the expenses, at actual, for any employee furloughed within three (3) years after changing his point of employment as a result of a transaction, who elects to move his place of residence back to his original point of employment. No claim for reimbursement shall be paid under the provisions of this section unless such claim is presented to railroad within 90 days after the date on which the expenses were incurred.

10. Should the railroad rearrange or adjust its forces in anticipation of a transaction with the purpose or effect of depriving an employee of benefits to which he otherwise would have become entitled under this appendix, this appendix will apply to such employee.

11. Arbitration of disputes.- (a) In the event the railroad and its employees or their authorized representatives cannot settle any dispute or controversy with respect to the interpretation, application or enforcement of any provision of this appendix, except section 4 and 12 of this article I, within 20 days after the dispute arises, it may be referred by either party to an arbitration committee. Upon notice in writing served by one party on the other of intent by that party to refer a dispute or controversy to an arbitration committee, each party shall, within 10 days, select one member of the committee and the members thus chosen shall select a neutral member who shall serve as chairman. If any party fails to select its member of the arbitration committee within the prescribed time limit, the general chairman of the involved labor organization or the highest officer designated by the railroads, as the case may be, shall be deemed the selected member and the committee shall then function and its decision shall have the same force and effect as though all parties had selected their members. Should the members be unable to agree upon the appointment of the neutral member within 10 days, the parties shall then within an additional 10 days endeavor to agree to a method by which a neutral member shall be appointed, and, failing such agreement, either party may request the National Mediation Board to designate within 10 days the neutral member whose designation will be binding upon the parties.

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(b) In the event a dispute involves more than one labor organization, each will be entitled to a representative on the arbitration committee, in which event the railroad will entitled to appoint additional representatives so as to equal the number of labor organization representatives.

(c) The decision, by majority vote, of the arbitration committee shall be final, binding, and conclusive and shall be rendered within 45 days after the hearing of the dispute or controversy has been concluded and the record closed.

(d) The salaries and expenses of the neutral member shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them.

(e) In the event of any dispute as to whether or not a particular employee was affected by a transaction, it shall be his obligation to identify the transaction and specify the pertinent facts of that transaction relied upon. It shall then be the railroad's burden to prove that factors other than a transaction affected the employee.

12. Losses from home removal.- (a) The following conditions shall apply to the extent they are applicable in each instance to any employee who is entitled in the service of the railroad (or who is later restored to service after being entitled to receive a dismissal allowance) who is required to change the point of his employment within his protective period as a result of the transaction and is thereafter required to move his place of residence:

(i) If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by the railroad for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the date of the transaction so as to be unaffected thereby. The railroad shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other person.

(ii) If the employee is under a contract to purchase his home, the railroad shall protect him against loss to the extent of the fair value of equity he may have in the home and in addition shall relieve him from any further obligation under his contract.

(iii) If the employee holds an unexpired lease of a dwelling occupied by him as his home, the railroad shall protect him from all loss and cost in securing the cancellation of said lease.

(b) Changes in place of residence which are not the result of a transaction shall not be considered to be within the purview of this section.

(c) No claim for loss shall be paid under the provisions of this section unless such claim is presented to the railroad within 1 year after the date the employee is required to move.

(d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through joint conference between the employee, or their representatives and the railroad. In the event they are unable to agree, the dispute or controversy may be referred by either party to a board of competent real estate appraisers, selected in the following manner. One to be selected by the representatives of the employees and one by the railroad, and these two, if unable to agree within 30 days upon a valuation, shall endeavor by agreement within 10 days thereafter to select a third appraiser, or to agree to a method by which a third appraiser shall selected, and failing such agreement, either party may request the National Mediation Board to designate within 10 days a third appraiser whose designation will be binding upon the parties. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

ARTICLE II

1. Any employee who is terminated or furloughed as a result of a transaction shall, if he so requests, be granted priority of employment or reemployment to fill a position comparable to that which he held when his employment was terminated or he was furloughed, even though in a different craft or class, on the railroad which he is, or by training or retraining physically and mentally can become, qualified, not, however, in contravention of collective bargaining agreements relating thereto.

2. In the event such training or retraining is requested by such employee, the railroad shall provide for such training or retraining at no cost to the employee.

3. If such a terminated or furloughed employee who had made a request under section 1 or 2 of this article II fails without good cause within 10 calendar days to accept an offer of a position comparable to that which he held when terminated or furloughed for which he is qualified, or for which he has satisfactorily completed such training, he shall, effective at the expiration of such 10-day period, forfeit all rights and benefits under this appendix.

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ARTICLE III

Subject to this appendix, as if employees of railroad, shall be employees, if affected by a transaction, of separately incorporated terminal companies which are owned (in whole or in part) or used by railroad and employees of any other enterprise within the definition of common carrier by railroad in section 1(3) of part I of the Interstate Commerce Act, as amended, in which railroad has an interest, to which railroad provides facilities, or with which railroad contracts for use of facilities, or the facilities of which railroad otherwise uses; except that the provisions of this appendix shall be suspended with respect to each such employee until and unless he applies for employment with each owning carrier and each using carrier; provided that said carriers shall establish one convenient central location for each terminal or other enterprise for receipt of one such application which will be effective as to all said carriers and railroad shall notify such employees of this requirement and of the location for receipt of the application. Such employees shall not be entitled to any of the benefits of this appendix in the case of failure, without good cause, to accept comparable employment, which does not require a change in place of residence, under the same conditions as apply to other employees under this appendix, with any carrier for which application for employment has been made in accordance with this section.

ARTICLE IV

Employees of the railroad who are not represented by a labor organization shall be afforded substantially the same levels of protection as are afforded to members of labor organizations under these terms and conditions.

In the event any dispute or controversy arises between the railroad and an employee not represented by a labor organization with respect to the interpretation, application or enforcement of any provision hereof which cannot be settled by the parties within 30 days after the dispute arises, either party may refer the dispute to arbitration.

ARTICLE V

1. It is the intent of this appendix to provide employee protections which are not less than the benefits established under 49 USC 11347 before February 5, 1976, and under section 565 of title 45. In so doing, changes in wording and organization from arrangements earlier developed under those sections have been necessary to make such benefits applicable to transactions as defined in article 1 of this appendix. In making such changes, it is not the intent of this appendix to diminish such benefits. Thus, the terms of this appendix are to be resolved in favor of this intent to provide employee protections and benefits no less than those established under 49 USC 11347 before February 5, 1976 and under section 565 of title 45.

2. In the event any provision of this appendix is held to be invalid or otherwise unenforceable under applicable law, the remaining provisions of this appendix shall not be affected.

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Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13265
Docket No. 13112
98-2-96-2-12

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (Jimmy D. Burnett
(Norfolk Southern Railway Company

STATEMENT OF CLAIM:

"The closing of the Hayne Shop in Spartanburg, South Carolina has adversely affected me. I have been forced to take a job in Linwood, North Carolina which is over 120 miles away. I did not get to bid on the job's at Linwood. I was able to bid *only* on shifts and days off. They rearranged forces before July 3, 1995 in anticipation of us accepting jobs at Linwood.

I am not doing the same type work that I was doing at Hayne Shop. They told me that I would be doing door work. Norfolk Southern is sending cars to Contract Shops for work that we could still be doing at Hayne Shop. I do not receive the 25 cents per hour welding rate, because it is not offered as it was at the Hayne Shop."

FINDINGS:

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

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

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

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Parties to said dispute were given due notice of hearing thereon.

The significant events leading to this claim arose on April 3, 1995 when the Carrier provided notice that certain mechanical work performed at Hayne Car Shop, Spartanburg, South Carolina, would be transferred to other locations on the Carrier's rail system. The Carrier's notice provided, in part, that any employee adversely affected within the meaning of the New York Dock conditions would be allowed the benefits provided therein. Because the Carrier and the Organization were unable to reach an Implementing Agreement, the disagreement was submitted for arbitration. The arbitration resulted in an Award finding that the Implementing Agreement submitted by the Carrier would be imposed.

Pursuant to the Imposed Implementing Agreement, the Claimant bid on and was awarded a Carman position. In lieu of moving benefits to which the Claimant was entitled under New York Dock, he chose to receive a $10,000.00 lump sum relocation allowance. Subsequent to his transfer, the Claimant asked to receive the monthly protective allowance provided under New York Dock protective conditions. The Claimant believed that he was entitled to an allowance because he moved in excess of 120 miles and he would be forced to work different shifts.

The Carrier denied the Claimant's request because he had obtained a position through the normal exercise of his seniority and because he was not placed in a worse position.

This Board lacks jurisdiction to resolve disputes arising under the New York Dock conditions, because New York Dock contains its own arbitration provision. This same issue has been addressed and resolved, as here, on many occasions in the past. See, for example, Fourth Division Awards 4293, 4912, 4667, 3353, and 2095.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 18th day of May 1998.

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Exhibit
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ARBITRATION COMMITTEE

In the Matter of Grievance Between Transportation - Communications International Union And Kansas City Southern Railway Company	**OPINION AND AWARD** Pursuant to Article I, Section II, of New York Dock Conditions ICC Finance Docket No. 32167 Case 3

Hearing Date: October 20, 1999

Place of Hearing: Kansas City, Missouri

Members of the Committee:

Carrier Member: John S. Morse

Organization Member: Phillip T. Trittel

Neutral Member: Eckehard Muessig

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BACKGROUND

In November 1992, an application was filed with the Interstate Commerce Commission ("ICC") by the Kansas City Southern ("KCS" or "Carrier") railroad for control of MidSouth Rail Corporation ("MSRC"). The acquisition was approved in June 1993 (Finance Docket #32167) and, under the terms of the acquisition, New York Protective Conditions ("New York Dock") were imposed.

Pursuant to Article 1, Section 4 of the New York Dock Conditions, an Implementing Agreement ("Agreement") was consummated between the Carrier and the Transportation - Communications Union - Allied Services Division/155 ("TCU" or "Organization) on March 20, 1998. The Agreement was made to cover the transfer of work from the MSRC at Bossier City, Louisiana, to the KCS facilities at Shreveport, Louisiana.

STATEMENT OF THE CASE

There are eight claims before the Board. The Organization contends that the Carrier's refusal to pay Lump Sum monetary benefits to the Claimants violated Section II of the Agreement.

ISSUE TO BE DECIDED

The Organization, in its submission to the Arbitration Committee, stated the "Question at Issue" as follows:

(1) Did the Carrier violate the terms of the March 20, 1998 New York Dock Implementing Agreement when it refused to compensate Claimants B. S. Boyette, J. W. Hennen, A. D. Johnston, H. H. Jones, D. J. Riddle, H. D. Rubio, S. H. Wilson and P. E. Webb their LUMP

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SUM moving benefits outlined in Section II(e) (3) NOTE and (4) NOTE of the Agreement?

(2) If the answer to question No. 1 is in the affirmative, shall the Carrier now be required to pay the Claimants listed above their LUMP SUM Moving Benefits claimed?

The Carrier, in its submission, provided a Statement of Claim which reads as follows:

March 20, 1998 - New York Dock Implementing Agreement - moving expense benefits, Section II(e)(3) and (4) - MidSouth Employees- Bossier City, List of Claimants:

1. B. S. Boyette, Sr.
2. A. D. Johnston
3. J. W. Hennen, Jr.
4. H. H. Jones
5. D. J. Riddle
6. M. D. Rudio
7. S. H. Wilson
8. P. E. Webb

Thus, simply stated, the question is whether the Carrier properly applied Section II(e)(3) Note and (4) Note of the Agreement to the facts and circumstances of these eight (8) claims.

IMPLEMENTING AGREEMENT PROVISIONS MAINLY APPLICABLE

Section II of the Agreement provides as follows:

(e)(1) A MRC Clerk who is required to transfer to another location, which requires a change of residence, as a result of this transaction shall be reimbursed for all expenses of moving his household goods and other effects and for traveling expenses of himself and members of his family, including living expenses far (sic) himself and his family and his own actual wage loss during the time reasonably necessary for such transfer and for a reasonable time thereafter, (not to exceed seven (7) working days), used in securing a place of residence in his new location.

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Movement of household goods and other personal effects shall not be undertaken prior to the time the Carrier involved shall have had the opportunity to review the manner in which the employee intends to accomplish such movement and in no event shall the Carrier assume any liability for such movement prior to the time the Carrier has approved the methods or means of accomplishing the movement. Charges for warehousing of any household goods or personal effects while such household goods and personal effects are in transit or otherwise will be borne by the Carrier for a period not exceeding thirty (30) consecutive days, or thirty (30) days in the aggregate, provided such warehousing is necessary in the circumstances.

(2) In addition to such benefits, the employee shall receive a transfer allowance of one thousand dollars ($1,000.00). Arrangements will be made for advance of this sum upon request of the employee after arrangements have been completed for movement of household goods or personal effects pursuant to this subsection.

(3) In the event the employee elects to drive his own personal automobile, not in excess of two (2) automobiles, when making such transfer from his former residence to his new residence, he will be paid the actual mileage between such points at thirty-two and one-half cents ($.325) per mile for use of his personal automobile. Advance arrangements shall be made by the employee with his employing officer before other transportation is used. In determining the mileage to be compensated for, the most direct and practicable highway route will be used as the basis.

NOTE: The employee may, in lieu of all benefits contained in Section II(e)(1), II(e)(2), and II(e)(3), accept a lump sum payment of seven thousand dollars ($7,000.00) if the employee does not own a home or twelve thousand dollars ($12,000.00) if the employee owns a home.

(4) In addition to the above relocation benefits, an employee who is required to change his place of residence as a result of this transaction shall be entitled to the benefits provided in Article 1, Section 12, of NYD (Attachment C).

NOTE: An employee who owns his home (primary residence), or was purchasing it prior to December 30, 1997, may, in lieu of the benefits specified in Article I, Section 12, of NYD (Attachment C), accept a lump sum payment of fifteen

thousand dollars ($15,000.00). It is understood that an employee electing this lump sum payment must actually move his primary residence to be eligible for this lump sum.

(5) If the employee voluntarily exercises seniority to a position outside District No. 3 prior to the expiration of a twelve (12) month period, he will be required to repay any lump sum payments received under this Agreement.

POSITION OF THE PARTIES

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

THE ORGANIZATION'S POSITION

As noted above, the Organization contended that the Carrier violated the cited provisions of the Agreement when it failed to pay the moving expense options of the named Claimants. It pointed out that it is undisputed that the Claimants were affected by a New York Dock transaction and were required to change their place of residence.

Moreover, the Organization contended that the Carrier now has changed its position as to what evidence was required when employees, who took a Lump Sum payment, changed residences from various locations in Mississippi to the Shreveport, Louisiana, area. In the past, all that the Carrier required from an employee was proof of home ownership. The only other requirement, at that time, was that the employee not voluntarily exercise seniority to another position outside the district to which he or

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she transferred for a period of twelve (12) months. If seniority was voluntarily exercised within the twelve (12) months, the Lump Sum payment had to be returned to the Carrier.

The Organization further contended, with respect to the previous point, that the language of Section II(e)(5) of the Agreement is the same as the language used in previous Agreements. It submitted that in the past, both parties agreed that they did not want to be "bothered with the hassle of moving receipts," monetary loss in the sale of home issues, disputes over fair market value of property, etc. It was for this reason that the "Lump Sum" provisions were added to the Agreement, in the hope that the employees would take them.

The Organization, in further support of its basic contention, relies on a taped conversation with certain Claimants and Carrier officials on April 20, 1998, at which time a canvass was taken to determine which employees intended to transfer with their work to Shreveport, and which ones intended to be separated. In response to a question from an employee who asked what needed to be done to receive the $12,000 and $15,000 Lump Sum payments, a Carrier official responded that he would have to move from his permanent residence, move his household goods to Shreveport "or somewhere in Louisiana to receive the transfer allowance and then the sale of your house or loss of your home is the $15,000." Upon a further question, whether the home had to be sold "to get the $15,000?", a Union official responded, "You don't have to sell your home, you just have to move your place of residence and your furniture to Louisiana." This comment by the Union official was not refuted or corrected by the Carrier at the time.

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Therefore, the Organization contends this exchange provided further support to its position that the Carrier had expanded its criteria.

The Organization now argues the Carrier is demanding all types of records in an effort to force the Claimants to show they changed their residence. In its submission, it discussed the details of each claim and the proof submitted by the Claimant. For example, it referred to tax returns, deeds, W-4 certificates, drivers' licenses, voter registration cards. It also provided examples in its submission to support its claim that, in many instances, the Carrier required new and additional information on a day-to-day basis.

Moreover, the Organization argued and provided examples of what it claims are inconsistencies in how the Carrier applied its criteria to the various Claimants, when it required them to show a change of residence. In other words, evidence required of one Claimant was not required of another.

The Organization also contended that, even if a Claimant did not own a home, there would be an entitlement to the $7,000 Lump Sum payment pursuant to the provisions of the Note to Section II(e)(3) because the employees were required to transfer to the KCS in Shreveport, LA and change their residences. This Lump Sum was payble in lieu of all other expenses, e.g., mileage, time off, storage of furniture, movement of household goods, etc. Thus, the Organization argued, even if the Carrier showed that the Claimant did not change his or her "primary residence," in accordance with the Note to Section II(e)(4), the Claimant would be entitled to the $7,000 under the Note for Section II(e)(3).

Lastly, the Organization provided a rationale to support its claim that the Arbitral holdings relied upon by the Carrier are not on point to the facts and circumstances of these claims.. Moreover, the Organization has also provided an analysis to support its claim that Award No. 6 of Public Law Board 4848 is on point and supports its position in this case.

In summary, the Organization contended that it has conclusively shown that each of the Claimants has changed their "primary" place of residence to the Shreveport, LA area and, therefore, the claims must be sustained. The Organization stated that its position is supported by the meaning and application which has been given to similar language in the past when changes of residence were required.

THE CARRIER'S POSITION

The Carrier's position is well summarized in its letter to the Organization dated August 11, 1999. That letter, in pertinent part, stated:

> Section II.E(3) and (4) of the March 20, 1998 Implementing Agreement requires more than "a change in place of residence." The agreement requires an employee to actually move his primary residence to be eligible for the lump sum payments. This issue was one of the topics discussed during the parties' initial meeting on January 27, 1998. We discussed how some of the BOC clerks were living in temporary living quarters because they were not allowed moving allowances in 1995. The Organization specifically asked if these employees would receive benefits under the BOC Implementing Agreement. The KCS's positionn was that if the employee, after the date of the Agreement, goes back and actually moves his family to the Shreveport area establishing a permanent and primary residence they would be entitled to the moving allowances.

> A genuine change in residence means that the employee must follow a course of conduct that demonstrates that the employee not only intends but also actually does take up permanent residence with their family at the new work location. ...

The Carrier pointed out that the basic purpose of the Agreement's provisions was to motivate employees to relocate permanently. It is to the Carrier's advantage, as well as the employees', to spend time off close to their work area, in this case, Shreveport, rather than driving time-consuming and long distances, often on rural, country roads, to get to and from work.

The Carrier contended that the cases here involve employees living in a rural environment who are willing to commute long distances to preserve their long-time, primary residences. The Carrier maintained that the Claimants have set up "fictional" residences in Louisiana, electing to commute to their primary residences in Mississippi on their off days and on holidays. It argued that maintaining an apartment or trailer for part-time living is not an actual change in residence as contemplated by the provisions of the Agreement.

To support its position, the Carrier has provided a number of Arbitral Awards which, it submits, are on point with the facts and circumstances of this case. In addition, it has provided its analysis of each of the claims before the Board and a rationale as to why they should not be sustained.

In summary, the Carrier claims that the Organization has not met its burden of proof. It requests the Board to deny the claims because the Claimants have not

moved their families and "actually" established their primary residences in the Shreveport area.

FINDINGS AND OPINION

The issue in this case is whether the eight (8) Claimants "actually" moved their "primary residence" within the meaning of Section II of the Implementing Agreement.

The Carrier, in its brief, and in much of its correspondence, has inserted the word "permanent" before the word "primary." This linkage, which goes to "domicile," is not supported by the record. As properly noted by the Organization, Section II(e)(3) Note and (4) Note do not refer to the term "permanent". These sections only refer to "primary residence." According to the ordinary dictionary meaning,, the word "primary" means occurring first in time or sequence, first in order, or chief. In turn, this means that the Claimants do not have to sell their home, and that they can have two "residences" and still be eligible for the Lump Sum payments at issue here.

Obviously, reasonable people may disagree on how the word "primary" should be understood in the context of this particular Agreement and the facts and circumstances of the eight cases now before the Board. The Awards cited by the Organization and by the Carrier to support their respective positions, while helpful, do not interpret the specific language contained in the Agreement before us which must be applied to the claims here. However, they do address the process of a "change of residence" and the evidence considered by past Arbitral bodies to show whether a change of residence has been "temporary" or "permanent" in nature.

Nonetheless, it is also instructive, indeed necessary, to examine why the parties agreed to the Agreement of March 20, 1998. Clearly, as is the norm when New York Dock labor protective conditions have been imposed, the parties agree to a procedure on how to handle the sale of homes (if applicable), moving expenses, the transfer of actual work, positions and employees who wish to follow the work. These kinds of negotiations result in Implementing Agreements. Obviously, a major element of these Implementing Agreements focuses on personal matters associated with movement of employees to a new geographic work location. In this dispute, Section II of the Implementing Agreement was developed to deal with those personal issues.

The Carrier and Organization, when each signed the Agreement, agreed that Lump Sum payments could be taken in lieu of reimbursement for individual expenses, such as selling of home, movement of household goods, etc., associated with a change of residence. The purpose of the Lump Sum option was to simplify the administrative steps and paperwork needed when New York Dock benefits had been applied. However, if an employee elects to take the Lump Sum payment, this does not mean that the Carrier may not require satisfactory evidence, as applicable, to show that the actual primary residence has been changed.

What has unnecessarily complicated the eight cases before the Board is that the Carrier did not have specific guidelines as to what kind of evidence the employees needed to show a change of their primary residence. Indeed, the Organization had every right to object on how these recent cases were handled initially by the Director of Transportation Service, when he approved Lump Sum payments on the same basis as

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in the past, i.e., upon providing evidence that the employee had a new address, owned a home, that household goods had been transferred to the new address, a rental or lease agreement, and a W-4, etc. It appears that five (5) employees were paid Lump Sums generally on the basis of providing this kind of information. However, when information surfaced which suggested that some of the Claimants did not actually change their primary residence, the Carrier initiated a more extensive review of each of the subsequent claims. For example, it was found that two employees shared an apartment and their spouses remained in Mississippi.

We have carefully considered the Carrier's procedures. We find that the Carrier had a proper basis to begin a more detailed review process of each of the claims, even though it was not done in a particularly sound manner. The thrust of the option for Lump Sum payments was to make it easier and faster for all parties to conclude the reimbursement process. However, that reduction in paperwork does not mean that the Carrier cannot require submission of credible proof of change in primary residence..

Turning then to the criteria that should be applied in evaluating each of the claims, the Board is guided by the Awards cited by the parties. Clearly, the basic notion of "what" is right, not "who" is right, should underlie any award in these cases. What is fair and comports with the intent of New York Dock requires that employees should not suffer a financial loss for job events not under their control. This basic concept is critical to any resolution of this case. And, lastly, the reasons underlying the

formulation of Section II of the Implementing Agreement must be considered in this matter.

Accordingly, the facts and circumstances of each of the eight Claimants must be examined in the context of the elements noted above. When the parties signed off on the Agreement which stated that, "It is understood [the employee] must actually move his primary residence to be eligible for [benefits]," there is strong, perhaps even compelling, evidence that the parties meant that the substantive elements that make up a primary residence would be present in the new residential location.

The stated language does not require a sale of a home or the purchase of another home at the new location. If this were so, the parties would have stated it in the Agreement. On the other hand, it is not reasonable to construe the language of the Implementing Agreement in a fashion that the intent of the parties would result in an absurdity. It clearly makes no sense for the Carrier to agree to Lump Sum payments when a Claimant has not qualified for such payment by moving his or her primary residence.

Moreover, one action, standing alone, normally may not constitute proof of an actual change of primary residence. For example, merely obtaining a new post office box address is not proof of change of primary residence. Each case must be examined in terms of the people occupying the current primary residence in Mississippi and their relationship to each other. The notion that the newly claimed primary residence in Louisiana must adequately mirror the circumstances of the former primary residence or, stated differently, the evidence that the family members now live in the new residence

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normally would be one major indication that the primary residence has been changed. This normally would mean that spouses continue to live together, with their children; that the children now attend school near the primary residence; that correspondence and bills are sent to the new primary residence, etc.

If the only change for a married Claimant is that he or she now lives in Shreveport, has a Louisiana driver's license, voting registration, etc., while his or her family remains in a Mississippi residence, while the children attend school there, while the bills and correspondence continue to be sent there, then there is little or no proof that the primary residence has actually changed.

The Organization argues that in many families both husband and wife work, and it is not illogical for the one to remain at the original residence. However, this misses the point. No more relevant or true words were ever spoken than, "Home is where the heart is." Thus, as a general rule of thumb, the chief characteristic of a "primary residence" is the presence of the family and its possessions, including the pots, pans, clothing, recreational and sports paraphernalia, household tools and other goods all too numerous to specifically identify here. Good evidence of a change of "primary residence," therefore, ordinarily would include a bill of lading from a moving company to show that an employee's household chattel had been removed from one place and taken to another.

Depending on the circumstances of each case and, perhaps more importantly, in the exercise of sound managerial judgment, other kinds of satisfactory evidence

might include evidence that children followed their parents (rather than, perhaps, staying in the former home under the care of a relative), changed schools and had new pediatricians; that an employee became a registered voter in the new community (rather than voting by absentee ballot from the old place of voting); that the family dog had a new license and a new veterinarian; that the automobile registrations and insurance were changed; that the Postal Service was advised of a change of address and forwarded the employee's mail to the new location; that the employee had the new address on his or her new driver's license, library card, check cashing card, credit cards and other financial records; that the family boat had a new registration, and, for example, that life, dental, health and other insurance used the new address. These examples are not intended to be exhaustive. They are intended merely to illustrate the kinds of evidence that a reasonable mind would accept as proof of a change in an employee's "primary residence." Other cases might include other kinds of evidence, but each case must be judged on the basis of the relevant evidence and the consistency of that evidence. In every case, evidence establishing "intimate local ties" must be carefully weighed before making a determination adverse to an employee.

As to the question of consistency, a major criticism of the approach taken here might lie along the line that some employees, even though they may have moved their families and chattel to the new location, nevertheless did not sell their old houses at the prior location and may even intend to retire there at some unspecified future time. However, nothing in the Agreement precludes this arrangement, as we noted

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earlier, provided that the employee actually moved his "primary residence" as evidenced by the establishment of "intimate local ties" at the new location. As we noted at the outset of this discussion: "Home is where the heart is." And, on a day-to-day basis, an employee's "primary residence" is that place where his or her life is focused, rather than some temporary, makeshift place of mere convenience, devoid of "intimate local ties."

Turning now to each of the Claimants, the Board, after a careful review of the evidence provided, holds as follows:

1. B. S. Boyette, Sr.	Claim Sustained
2. H. H. Jones	Claim Sustained
3. J. W. Hennen, Jr.	Claim Sustained
4. A. D. Johnston	Claim Sustained
5. D. J. Riddle	Claim Sustained
6. H. D. Rubio	Claim Denied
7. P. E. Webb	Claim Sustained
8. S. H. Wilson	Claim Denied

AWARD

The claims are resolved as stated above.

John S. Morse	Eckehard Muessig	Phillip T. Trittel
Carrier Member	Neutral Member	Organization Member

Dated: 1-26-2000

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THE KANSAS CITY SOUTHERN RAILWAY COMPANY

Emerson Bouchard
Vice President - Labor Relations

114 West Eleventh Street
Kansas City, Missouri 64105-1804

Fax: (816) 983-1686
Phone: (816) 983-1294

John S. Morse
Director of Labor Relations

Kathleen A. Alexander
Director of Labor Relations

January 7, 2000

Mr. Eckehard Muessig
Neutral Member
3450 N. Venica Street
Arlington, VA 22207

Dear Mr. Muessig:

This will confirm our telephone conversations and my request for an executive session to discuss the Arbitration Committee's proposed opinion and award, which was issued following the hearing on October 20, 1999. You requested that I submit a written summary of my views before we have our discussion. While I will be candid in expressing my views, I emphasize that we want a final, fair and equitable resolution of the case and we want the Committee to pay our employees what the agreements intended to provide for them. We intend our comments to be constructive and helpful to the Arbitration Committee. We share a common purpose of correcting potential problems that could cause the dispute to live on beyond the final award.

The statement of the case, which appears on pages 1–4, seems quite on target. None of the claimants are claiming actual moving expenses or loss in the sale of their homes. However, the statement does not distinguish the two lump sum payments that are at issue. The first is stated in Section II (e)(3) Note:

> *The employee may, in lieu of all benefits ["...expense of moving his household goods..."] accept a lump sum payment of seven thousand dollars ($7,000.00) if the employee does not own a home or twelve thousand dollars ($12,000.00) if the employee owns a home.*

The second lump sum payment, Section II (e)(4) Note, applies only to homeowners who move their primary residence and elect to retain responsibility and ownership of their original homes. It contains key qualifying language, which is critically important to the outcome of this case:

> *... It is understood that an employee electing this lump sum payment must actually move his **primary residence** to be eligible for this lump sum. (Emphasis added, underline in the original)*

In its summary of the Organization's position, the Board portrays the union's claim as contesting the Carrier's refusal to pay "moving expense options" but it does not mention New

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York Dock Article 1, Section 12 loss in the sale of home benefits or the lump sum in lieu spelled out in the note under (4). Most of the language in the summary concerns moving expense lump sum benefits, as expressed in the last paragraph of page 6 of the proposed award.

The first mention of the key language impacting on the second half of the claim seems to be in the summary paragraph on page 7:

> *In summary, the Organization contended that it has conclusively shown that each of the Claimants has changed their "primary" place of residence to the Shreveport, LA area and, therefore, the claims must be sustained.*

As the neutral states in its summary of the Carrier's submission, the Carrier drew no distinction between the threshold requirements to receive payments under the notes to (3) and (4). The Board ends its statement of the Carrier's position as follows:

> *In Summary, the Carrier claims that the Organization has not met its burden of proof. It requests the Board to deny the claims because the Claimants have not moved their families and "actually" established their primary residences in the Shreveport area.*

The focus of the union's case was to seek two lump sums totaling $27,000 because claimants "incurred" moving expenses. The carrier focused on the lack of evidence to justify a conclusion that claimants changed primary residences. In the findings and opinion, the Arbitration Committee states the issue is whether the eight claimants "actually" moved their "primary residence" within the meaning of Section II of the Implementing Agreement.

A key finding appears on page 11:

> *... We find that the Carrier had a proper basis to begin a more detailed review process of each of the claims, even though it was not done in a particularly sound manner. ... However that reduction in paperwork does not mean that the Carrier cannot require submission of* ***credible proof of change in primary residence.*** *(Emphasis added)*

Another key finding appears on page 12:

> *Accordingly, the facts and circumstances of each of the eight Claimants must be examined in the context of the elements noted above. When the parties signed off on the Agreement which stated that, "It is understood [the employee] must actually move his primary residence to be eligible for [benefits]," there is strong, perhaps even compelling evidence that the parties meant that the substantive elements that make up a primary evidence would be present in the new residential location.*

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What is puzzling about this quote are the substitutions in brackets, which seem to alter the actual language of the agreement. The language, "actually move his primary residence" appears in (4) note only. It actually states:

> *It is understood that* ***an employee electing this*** *lump sum payment must actually move his primary residence* ***for this lump sum.*** *(Emphasis added)*

The point is employees must clearly establish that they changed their residences to qualify for either benefit, but there is a much more stringent requirement to qualify for the $15,000 benefit as the actual quoted portion of the agreement demonstrates.

The Board correctly states thereafter on page 12 that:

> *... It clearly makes no sense for the Carrier to agree to Lump Sum payments when a Claimant has not qualified for such payment by moving his or her primary residence.*

The Board then lists what it finds to be the key criteria in evaluating each of the claims, *i.e.* whether the employee "actually" moved their "primary residence" [Statement of Issue, page 3].

What stands out to us are the following two points: (1) "One action, standing alone, normally may not constitute proof of an actual change of primary residence." (2) "... as we noted earlier, provided that the employee actually moved his "primary residence" ***as evidenced by the establishment of "intimate local ties" at the new location.*** As we noted at the outset of this discussion: "Home is where the heart is" And, on a day-to-day basis, an employee's "primary residence" is that place where his or her life is focused, rather than some temporary, makeshift place of mere convenience, ***devoid of intimate ties.***" (Emphasis added)

Clearly, the bottom line is that the neutral rejected the union's argument and strongly upheld the carrier. What concerns us is that the Arbitration Committee sustained and denied individual claims without any explanation. As the case now stands, the award appears incomplete. The primary question is whether the Committee held, as it should, that the union has the burden of proof that the claimants met the neutral's criteria. Second, in what way did the individual claimants meet the Committee's insistence that a primary residence "is that place where his or her life is focused, rather than some temporary, makeshift place of mere convenience, devoid of "intimate local ties". Frankly, looking at the record and the union's obligation to prove its case, we cannot see how the Board can distinguish the two it denied from the six it sustained unless it intended to award each claimant $12,000 instead of $27,000.

While the Board states that there has been a careful review of the evidence provided, we do not think the union provided any evidence in the record that any spouses lived with any of the claimants. On the contrary, the union relied solely on its argument that spouses need not live with the claimants who were domiciled in makeshift temporary places of mere convenience. The Board rejected that argument:

> *The Organization argues that in many families both husband and wife work, and it is not illogical for the one to remain at the original residence.*

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However, this misses the point. No more relevant or true words were ever spoken than, "Home is where the heart is" (Emphasis added)

We have no quarrel with the guiding principles set forth at the bottom of page 11: (1) "Home is where the heart is" [the reasons underlying the formulation of Section II of the Implementing Agreement must be considered]. (2) The "basic notion of "what" is right is the underlying principle of this award" and (3) "What" is fair and comports with the intent of New York Dock requires that employees should not suffer a financial loss for job events not under their control. The union should be required to produce evidence to show that each spouse/family has been, in fact, living with each claimant in a new primary residence. The Board should also identify the criteria that each claimant has met from the evidence in the record. Clearly, each incurred some expense in moving or commuting, but the agreement clearly does not support a finding that each person should receive a full $27,000 unless there is clear evidence that the stringent requirement in (4) Note has been met.

In our review of the record, we see some cases where there is uncontested data suggesting claimants "incurred" some moving expenses, but we see nothing to justify a finding that anyone changed their primary residence. Thus, the Board should specifically deny the $15,000 lump sum in all the cases. However, since this is not a Railway Labor Act arbitration, where the Board functions solely as an appellate body confined to the record, the Committee has another option. This is a *de novo* proceeding and this Arbitration Committee has full powers to hear all relevant evidence and to seek additional evidence if there is not sufficient evidence available to render a fair decision. In fairness to the union and the claimants, the Carrier will not offer objection if the Arbitration Committee finds it is necessary to order a hearing to obtain all relevant evidence of an "actual move", based on the criteria the neutral has established in the proposed award. Such action is consistent with a longstanding judicial practice of having two proceedings, one to resolve questions of law and one to establish the facts in light of the findings of law. It is far better to have a sound record to support sound conclusions than to leave an incomplete record subject to collateral attack.

We ask the Arbitration Committee to either hold that claimants have not proven that they are due the $15,000 under (4) Note or order a hearing to determine their eligibility on the basis of the criteria the Committee has established.

We request an executive session to discuss these ideas as soon as possible.

Yours very truly,

John S. Morse

John S. Morse
Director of Labor Relations

CC: Philip T. Tritel

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ARBITRATION COMMITTEE

In the Matter of Grievance Between Transportation - Communication International Union And Kansas City Southern Railway Company	INTERPRETATION

BACKGROUND

On October 20, 1999, an Arbitration Committee composed of:

Carrier Member:	John S. Morse
Organization Member:	Phillip T. Trittel
Neutral Member	Eckehard Muessig

met to adjudicate eight (8) claims for lump sum moving benefits of Carrier's Bossier City Clerks.

Pursuant to Article 1, Section 4 of the New York Dock Conditions, an Implementing Agreement ("Agreement") had been consummated between the Carrier and the Transportation-Communications Union - Allied Services Division/155 ("TCU" or "Organization") on March 20, 1998. The Agreement was made to cover the transfer of work from the MSRC at Bossier City, Louisiana, to the KCS facilities at Shreveport, Louisiana.

The majority, following the hearing, sustained six (6) of the eight claims. The Carrier member, simply stated, has asked for greater specificity as to the evidence used to support a sustaining award for the six (6) Claimants.

INTERPRETATION

Certain observations are in order with respect to the factors and events that influenced the final Award. After the parties had agreed to an Implementing Agreement, a canvas was taken on April 21, 1998 to determine which employees wanted to separate from the service

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or transfer with their work to Shreveport. Mr. Donald Johnston, Organization Representative, and Mr. Marcus Burns, Carrier Representative, both were at Bossier City, LA to handle the canvas. Mr. John Morse ("Morse"), Carrier Representative, and Mr. Phillip Trittel ("Trittel"), Organization Representative, were in communication with Johnson and Burns via a conference call to answer questions. The calls were tape recorded. Relevant to the final decision in this matter was a question asked by employee B. D. Mangum. He asked: "What I was wanting to know was, first thing was what are the provisions to get the $12,000 and $15,000?" "Have they set an definite guidelines what we must do to receive them?" Morse was asked to answer the questions. Morse asked Mangum where his home was at that time. Mangum told him it was in Vicksburg, Mississippi. Morse asked if that was the address he used to file his 1040 tax return. Mangum responded: "Yes sir, that is my permanent address." Morse then said: "Okay, you will have to move from that permanent address. Move your household goods to Shreveport or somewhere in Louisiana to receive the transfer allowance and then the sale of your house or loss of your home is the $15,000." Mangum then asked: "Are we required to sell our home to get the $15,000?" Trittel responded: "You don't have to sell your home, you just have to move your place of residence and your furniture to Louisiana." The Carrier representatives did not dispute Trittel's answer.

Subsequently, Mangum furnished an apartment lease agreement, a W-4 form changing his address and a U-Haul Truck Rental Agreement to show he moved some belongings. He was paid $27,000. The Carrier subsequently also approved the payment of $27,000 to Messrs. W. H. Andrews, Guy Creekmore and Joe Dan Rushing. These persons essentially provided little more evidence than that which was used for the Mangum approval. The Carrier early on did not have printed detailed criteria that it would use. Indeed, the record shows that Burns, as the Director of Transportation Service, accepted basic statements as to the change of primary residence, i.e., lease agreements, mobil home leases, and similar documentation. The Carrier's action established, as well as our Award, that it was not necessary to sell a home to show that an employee moved his primary residence from Mississippi.

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I also must note that the Carrier, on July 21, 1999, offered to pay the following Claimants, B. S. Boyette, A. D. Johnston, H. H. Jones, D. J. Riddle and P. E. Webb, if the Organization would withdraw the remaining claims. The Organization did not accept the offer. I gave no weight to this offer because it was made without prejudice to the Carrier's position. However, since greater specificity has been requested, the Carrier, by making this offer, also recognized that the Claimants had a supportable basis for their claims.

With respect to each of the Claimants whose claim was sustained, I found that the evidence submitted by the Organization in Exhibits H, (Boyette), I, (Hennen), J, (A. D. Johnston), K, (H. H. Jones), M, (H. D. Rubio) and O, (P.E. Webb) was credible. I found that the information provided by each of these employees met or exceeded the level of proof or documentation which had been supplied by the Claimant whose claims already had been approved by the Carrier.

In retrospect, we should point out that the Award merely provided examples of the many kinds of factors, documents or other materials which would establish a change in an employee's permanent residence. It was not the intent of the Award to suggest that each kind of proof we mentioned need be applied. We furnished "examples" of the kinds of documents a reasonable mind would accept as credible and adequate.

The Chairman found himself in agreement with the Organization when it objected to the "shifting criteria" used to decide the claims as they were being processed by the Carrier. The problem which arose were primarily created by the Carrier which did not set at the outset clear and unambiguous standards by which it would make its decisions. Had the Carrier established clear standards in the beginning, based on the kinds of examples set forth in the Award, and had the Carrier applied these standards in a consistant manner, the issues would have been settled early on.

In summary, I found the evidence submitted by the Organization for six (6) of the Claimants to be credible and consistent with the examples in the Award.

Eckehard Muessig
Neutral Member

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Exhibit
II

AGREEMENT BETWEEN UNION PACIFIC RAILROAD (UP)
AND THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS (BLE)

Whereas the BLE and various Carriers represented by the National Railway Labor Conference (NRLC) (including UP) have entered into a tentative agreement;

Whereas the aforementioned tentative agreement is presently subject to ratification by the BLE before it can become effective;

Whereas the BLE and UP have also reached certain other tentative agreements, listed below and attached hereto;

Whereas it is the intention of the parties that such other agreements, listed below and attached hereto, only become effective if and when the agreement between the BLE and those Carriers represented by the NRLC is ratified and becomes effective;

It is agreed:

1. The BLE and UP have reached tentative agreement on the following agreements, copies of which are attached hereto:

   (a) System Agreement - Discipline Rule

   (b) System Agreement - Claim Handling Process

   (c) System Agreement - Instructor Engineers

   (d) System Agreement - Peer Training

   (e) System Agreement - Weight on Drivers

   (f) System Agreement - Extra (Undisturbed) Rest

   (g) System Agreement - Without Fireman Payment

   (h) System Agreement - Compensation Delivery

2. The above-listed agreements will become effective only if and when the agreement between the BLE and the various Carriers represented by the NRLC is ratified and becomes effective. In that event, the above listed agreements will become effective on the same date as the BLE/NRLC Agreement.

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Signed this 21 day of March, 1996

B. D. MacArthur - BLE

L. A. Lambert - UP

D. E. Penning - BLE

A. T. Olin - UP

M. L. Royal, Jr. - BLE

J. M. Raaz - UP

D. L. Stewart - BLE

Approved:

M. A. Young - BLE

J. J. Marchant - Sr. AVP - UPRR

Approved:

R. Dean - VP - BLE

II-2

SYSTEM AGREEMENT - CLAIM HANDLING PROCESS

In an effort to provide a method for a condensed and more expedited process of handling time claims, it is agreed that all time claims after ratification of this Agreement shall be handled as follows:

1. All time claims must be presented in writing by or on behalf of the employee involved, to the officer of the Company authorized to receive same, within sixty (60) days of the date of the occurrence on which the claim is based.

2. Should any time claim be disallowed, the Carrier, within sixty (60) days from the date same was filed, must notify the employee or his representative in writing of the reason(s) for such disallowance.

3. If a disallowed claim is to be appealed on behalf of the employee, such appeal must be in writing within sixty (60) days from receipt of the notice of disallowance.

4. Within sixty (60) days of the date of the appeal, the highest Labor Relations Officer authorized to handle such claim must notify the employee's representative in writing of his/her decision to reject this appeal.

5. Within one-hundred-eighty (180) days of the date of the rejection of the appeal, the B.L.E. 's highest designated officer to handle such claims must list this claim, in writing, for conference with Labor Relations.

6. Within sixty (60) days of the Time Claim Conference, Labor Relations must send a final rejection letter of such claim to the B.L.E.'s highest designated officer to handle such claim.

7. Within one-hundred-eighty (180) days of the date of the final rejection letter after Conference, the highest B.L.E. officer designated to handle such time claims must list the claim before a tribunal having jurisdiction pursuant to the law or agreement.

8. If either party fails to comply with a time limit contained in this agreement, the claim shall be allowed (if the carrier's failure) or withdrawn (if the organization's failure). Claims so disposed of shall not be considered as a precedent or a waiver of the contentions of either party as to other similar claims.

9 All rights of the Claimant involved in continuing alleged violations of the Agreement shall, under this rule, be fully protected by continuing to file a claim for each occurrence (or tour of duty).

10. This rule recognizes the right of the representatives of the Organization party hereto to file and prosecute claims for and on behalf of the employees they represent.

Note 1: It is understood the time limits set forth in this Rule may be extended by mutual agreement of the parties.

Note 2: The use of the term "in writing" in this Rule includes the use of electronic or computer-based delivery or transmission methods.

Note 3: The parties agree all claims submitted prior to the effective date of this Rule will continue to be handled in accordance with applicable rules or procedures previously in effect. All claims submitted on or after the effective date of this Rule will be handled in accordance with this Rule.

Q-1: What does the term "list the claim" in Section 7 mean?

A-1: In "list(ing) the claim", the Organization must either docket the claim to a Public Law Board in accordance with applicable National Mediation Board rules and procedures or file an ex parte notice of intent with the First Division, NRAB.

Q-2: Does this rule apply to claims under Labor Protective conditions?

A-2: Yes, unless the labor protective conditions provide for different time limits or procedures.

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Exhibit

JJ

Award 15678

Docket 27574

NATIONAL RAILROAD ADJUSTMENT BOARD

FIRST DIVISION

39 South La Salle Street, Chicago 3, Illinois

Conductors-Trainmen Supplemental Board, with Referee Mart J. O'Malley

---

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY—
(Eastern Lines)

STATEMENT OF CLAIM: "Claim that Engine Foreman E. C. Utz should be reimbursed in the amount of 378 miles, same being the amount deducted from his pay check covering the period July 29 to October 22, inclusive, 1946."

JOINT STATEMENT OF FACTS: Yardman E. C. Utz, Middle Division, on dates of claim held assignment as pilot on burro crane operating in the Newton, Kansas, yard. The character of this work required that the pilot prepare a daily work train report. A comparison of trip tickets submitted by Yardman Utz developed that he was claiming, and had been paid for 20 minutes more time daily, at the end of his tour of duty, than the yard engineer assigned to the same burro crane. Investigation with Yardman Utz developed this 20 minutes represented time consumed by him walking from point where he went off duty to the switch shanty where yardmen register on and off duty, and making out time slip and work train report. Deduction of the payments made for this 20 minutes additional time was made from Yardman Utz' pay on the first half November 1946 pay roll.

POSITION OF EMPLOYES: It is the position of the Committee that the Carrier is obligated under Schedule Rules to pay for all time consumed in the performance of work required of an engine foreman at the rate specified for a minimum day's work and punitive rate at time and one-half for all time worked in excess of eight hours as indicated in Articles VIII and IX of the Yardmen's Agreement, which read:

"Article VIII.

Except when changing off where it is the practice to work alternately days and nights for certain periods, working through two shifts to change off; or where exercising seniority rights from one assignment to another; or when extra men are required by schedule rules to be used, all time worked in excess of 8 hours continuous service in a 24 hour period shall be paid for as overtime, on the minute basis, at one and one-half times the hourly rate. This rule applies only to service paid on an hourly or daily basis and not to service paid on mileage or road basis.

This rule is effective April 10, 1919."

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"Article IX.

Eight hours or less shall constitute a day.

Yardmen shall be assigned for a fixed period of time which shall be for the same hours daily for all regular members of a crew. So far as it is practicable assignments shall be restricted to eight hours work."

You will note according to the Statement of Facts Yardman Utz made claim on his time tickets for all time worked in excess of eight hours from July 29 to October 22, inclusive, 1946 and it was not until November 12, 1946 that the superintendent notified Mr. Utz that there would be a deduction of 378 miles from his pay check the last half November, 1946. This act, on the part of the Carrier's representative, is an injustice to employes and violates the provisions of the Yard contract, Article XXVII, which reads:

"When for any reason the time claimed by time slips is not allowed, or if the time slip is not made out correctly they will be returned within ten (10) days and the reason given therefor.

If a pay check is short eight hours or more, a discharge check will be issued covering the shortage, on request."

The Carrier will no doubt attempt to rely on the case covered by Western Train Service Board's decision Number 2991. The case originated on this property but, in our opinion, the facts in this case, which resulted in decision Number 2991 are not analogous to the instant claim. We say this for the reason that in the instant case the work performed by Yardman Utz was a regular daily routine and a portion of the duties assigned to him daily, whereas in the case resulting in Award 2991 the claimant claimed additional pay when required to make out a personal injury report.

We feel that this case deserves an affirmative award.

All facts and supporting data have been handled in correspondence and were discussed in conference March 11, 1949 between the Carrier and the employes' representative.

Oral hearing is not desired unless requested by the Carrier.

POSITION OF CARRIER: As will be noted from the Joint Statement of Facts it was discovered when comparing the trip tickets turned in by Yardman Utz with those submitted by the yard engineer, both of whom were assigned in work service with the burro crane working in the Newton yard, that Yardman Utz claimed and had been paid twenty minutes more time daily than the yard engineer. Yardman Utz was requested to explain this apparent discrepancy, which he did in letter addressed to Division Superintendent H. G. Arnold under date of October 30, 1946, copy of which is attached and identified as Carrier's Exhibit "A". The additional time claimed was, in his own language, for "walking to switch shanty making out time slip & making out work train reports."

Yardman Utz went off duty on each of the dates of the claims at First Street, where the burro crane was stored, then walked to the switch shanty where he registered off duty and made out his time slip and Work Train Report, Form 957-Std. A typical work train report filled out by Yardman Utz is attached and identified as Carrier's Exhibit "B", from which it will be obvious that the rendition of the report would require only a negligible amount of time to complete, even if all of it were made out after completion of work.

The major portion of the additional twenty minutes' time claimed daily by Yardman Utz was consumed in walking from the point where he went off duty, at First Street, to the switch shanty where the yardmen's register book

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is located, a distance of approximately 1400 feet. No compensation can properly be claimed for this as Article VI(g) of the Yardmen's Schedule reading as follows:

> "Yard crews shall have a designated point for going on duty and a designated point for going off duty, and they will not be required to walk farther than one-half mile to get to and from such designated points where register, bulletins and lockers are maintained.
>
> NOTE:—This rule does not apply to an extra man until he has started to perform service with the crew to which assigned."

provides that the off-duty point may be a maximum of one-half mile from the point where register book, bulletins and lockers are maintained.

The question of additional compensation for time consumed by yardmen rendering work train reports following completion of tours of duty has been disposed of on this property by Decision No. 1164 of the Train Service Board of Adjustment for the Western Region, the decision being that:

> "This is in effect a request for a new rule and the case is, therefore, dismissed for lack of jurisdiction."

This case covered claims of an engine foreman for time consumed in making out work train reports after his crew was tied up. The same principle is affirmed in Train Service Board Decisions Nos. 393, 1163, 2094, 2203, 2991 and 5750. Attention also is directed to Awards Nos. 8007, 8100 and 10784 of the First Division, National Railroad Adjustment Board, which denied the claims of engine foremen for additional compensation for performing clerical work, and particularly to Award No. 256 wherein the Board, in a case arising on this property, ruled:

> "This Division is without authority to change rules or practice as to relief at end of service period."

The rendition of work train reports when work service is performed is as much a part of the duties of the yard pilot or engine foreman as registering on and off duty and the filling out of trip tickets. There is and always has been a certain amount of clerical work attached to the positions of engine foremen and yard pilots, and this work has always been done by these employes as an ordinary part of their regular duties without payment of additional compensation therefor.

In respect to Article XXVII of the Schedule, cited by the Employes, it is only necessary to call attention to the fact that it is a long-established practice to make adjustments of under and overpayments in allowances, regardless of the elapsed time, when such errors are discovered or called to attention and, throughout the years, innumerable adjustments in favor of yardmen have been made under such circumstances. Article XXVII refers to "when for any reason the time claimed by time slips is not allowed." In this case the time claimed on the time slips was allowed, the timekeeper in making the original payments to Yardman Utz doing so on the basis that the trip tickets were made out correctly and that the time as claimed was valid, there being nothing on the trip tickets to indicate that additional time was claimed beyond the time Yardman Utz went off duty at the regular off-duty point. When it was discovered that Utz had included on his trip tickets the time consumed in walking from the point where he went off duty to the switch shanty, in direct violation of Article VI(g) of the Schedule, heretofore quoted, and also time spent in making out work train report, time slip and registering off duty, he was immediately notified that deduction of the obvious overpayment would be made from his earnings on the November 1946 payroll.

Since the Employes have now injected Article XXVII of the Yardmen's Schedule into this dispute, the case presents two questions: (1) Was Yard-

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man Utz entitled to the 20" additional time claimed daily at the end of his tour of duty, and (2), After this obviously improper allowance had been discovered was it proper for the Carrier to deduct the overpayment from his wages. Without receding whatsoever from its position that the additional time claimed was improper and when discovered that it was properly deductible, the Carrier nevertheless requests that the Board treat on each of these questions in its consideration of the case.

There being no rule, agreement, understanding or past practice that would call for or justify the payment of the additional compensation claimed in this case, the claims of Yardman Utz can only be considered as constituting a request for a new rule, and as such should be denied.

All data in support of the Carrier's position has been made available to the Organization.

Oral hearing is waived.

(Exhibits not reproduced.)

FINDINGS: The First Division of the National Railroad Adjustment Board, upon the whole record and all the evidence, finds that the parties herein are carrier and employe within the meaning of the Railway Labor Act, as amended, and that this Division has jurisdiction.

Hearing was waived.

This claim involves twenty minutes a day for sufficient time to equal, in effect, 378 miles. The period was from July 29, 1946 to October 22, 1946.

Whether or not an employe must be paid for the incidental work of making reports and walking to the point where such report must be delivered is a question that has been decided both ways. The circumstances attending the particular service may have had some effect as a cause of divergent decisions. This referee has on at least one occasion determined that making reports is a part of the duties of some individuals and if it is necessary to make such reports after the end of the shift, the employe must include the necessary time as a part of that shift and be paid on a continuous basis.

Here, there is an additional factor. The pertinent rule is to the effect that timeslips, not approved or incorrect, must be returned in ten days. In this case, the timeslips were first approved and then returned after the ten day limit and a refund taken for their allowance. If the carrier wanted to contest the claim for making reports and walking to the reporting office, its employes who passed on these timeslips should have obeyed the purpose and intent of the rule.

We believe that the return of the slips and the deduction made, were improper because it was too late under the rule.

AWARD: Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FIRST DIVISION

ATTEST: (Signed) J. M. MacLeod
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of September, 1952.

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Exhibit

KK

Edward K. Ivey
210-679-7062

11527 Windtree
San Antonio, Texas 78253

April 3, 2000

Mr. W. S. Hinckley
Union Pacific Railroad
1416 Dodge St. Rm 332
Omaha, NE 68179

Dear Mr. Hinckley,

As discussed in our phone conversation of March 13th, I am submitting the following documents and information to request relocation benefits as prescribed in the North Little Rock / Pine Bluff HUB and merger implementing agreement. I understand that my election herein is in lieu of actual relocation benefits provided under New York Dock.

I accepted a non-agreement position with the Company in August of 1991 and relocated to Omaha, NE. At that time I lived at; 51 Dogwood Park, Jefferson, TX, and worked in the Mineola area. I was transferred to Salt Lake City as Mgr. Oper. Prac. in April 1993, then later transferred to San Antonio, TX as MOP in Nov 1995.

I hold seniority as a locomotive engineer on the Merged TP roster #7. On February 3, 2000 I left the non-agreement position and exercised my seniority in the North Little Rock / Pine Bluff HUB on a prior rights TP position. I am a homeowner that is required to relocate in order to protect my seniority under the HUB agreement and therefore make request for relocation benefits.

I have relocated to Pine Bluff, AR and am presently familiarizing on the territory between Pine Bluff / Big Sandy, and Longview / North Little Rock. I have secured a lease on an apartment in Pine Bluff and am enclosing a copy of the lease document. My home in San Antonio is currently listed with Bradfield Properties, a local realtor. I will forward the sale documents on the home once that transaction is complete. At this time I am enclosing a certified copy of the Warranty Deed and a copy of the Deed in Trust to verify my home ownership.

My new address in Pine Bluff is 6401 South Hazel, Apt. 506, Pine Bluff, AR 71603. New phone number is (870) 536-6632. You may forward the relocation benefits via electronic deposit which is the normal routing for my paychecks. If you have any questions or require additional information, please contact me at the numbers listed above, or my cell phone (870) 692-8390. All numbers have voice mail.

Sincerely,

E. K. Ivey

E. K. Ivey

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NORTH LITTLE ROCK/PINE BLUFF HUB
RELOCATION BENEFITS LOCATION

Please accept this as my application for relocation benefits as set forth in Article VII (B) of this Merger Implementing Agreement. I understand that my election herein is in lieu of actual relocation benefits provided under New York Dock. This election must be exercised within three (3) years from the date of implementation of this Agreement. (Except that Option 3 shall expire within five (5) years from implementation). Please check one of the following three options:

☐ Option 1: I am a non-owner and accept a $10,000 allowance in lieu of New York Dock relocation benefits

☑ Option 2: I am a homeowner and accept a $20,000 allowance in lieu of New York Dock relocation benefits.

If I have accepted Option 1 or 2, I understand that I must submit "proof of actual relocation" in order to receive the "in lieu of" allowance.

☐ Option 3: I am a homeowner and having sold my home, accept a $10,000 allowance in addition to the $20,000 allowance I shall receive under Option 2, for a total of a $30,000 allowance.

If I have accepted Option 3, I understand that I must not only submit "proof of actual relocation" but in addition I must provide "proof of a bona fide sale" of my home at fair value in the form of sale documents, deeds, and filings of these documents with the appropriate agency in order to receive the "in lieu of" allowance.

In addition, I understand that in accepting any of the three options above, I will be required to remain at the new location, seniority permitting, for a period of two (2) years. Please fax or send this completed form to W. S. Hinckley, General Director Labor Relations, 1416 Dodge Street, Room 332, Omaha, NE 68179, fax (402)271-2463.

NAME_____ Edward K. Ivey _____ **SSN**_____ 444-48-9700 _____

SIGNATURE Edward K. Ivey

CRAFT_____ Locomotive Engineer _____

DATE_____ April 3, 2000 _____

OLD WORK LOCATION San Antonio, TX **NEW WORK LOCATION** Pine Bluff, AR

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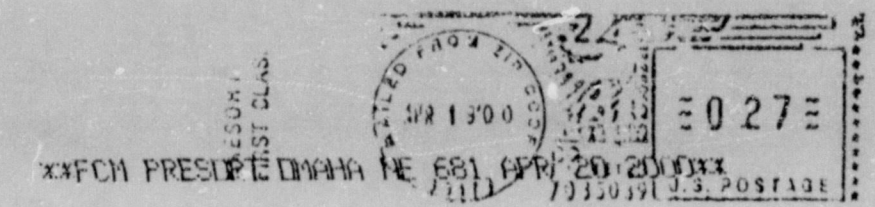
PERIOD	FEDERAL GROSS	NON TAX ALLOWANCE	NET	FIT	RR TIER I	RR TIER II	STATE - LOCAL TAXES
CURRENT	20000.00	14400.00		5600.00			
YTD	41075.66			9668.22	1668.21	1068.53	

2338145

CURRENT COMPENSATION			PREV PERIOD	CURRENT MISC DEDUCTIONS			
HRS NBR	TYPE	AMOUNT	ADJUSTMENT	TYPE	AMOUNT	TYPE	AMOUNT
	TRANSFER ALLW	20000.00					
	TOTAL	20000.00					

IMPORTANT:
EMPLOYEE SHOULD DETACH AND
KEEP THIS STUB FOR RECORD

UNION PACIFIC RAILROAD
LABOR RELATIONS
PROGRAM ADMINISTRATION
1416 DODGE STREET, ROOM 332
OMAHA, NE 68179



E Ivey
11527 Windtree
San Antonio TX
78253

6UMB

WARRANTY DEED WITH VENDOR'S LIEN

96- 0023408

Date: February 16, 1996

Grantor: CENTEX REAL ESTATE CORPORATION, A Nevada Corporation

Grantor's Mailing Address (including county):

16500 San Pedro, Suite 402
San Antonio, Texas 78232
Bexar County

Grantee: EDWARD K. IVEY and CYNTHIA A. IVEY

Grantee's Mailing Address (including County):

11527 Windtree
San Antonio, Texas 78253
Bexar County

CERTIFICATE
The page to which this certificate is affixed is a full, true and correct copy of the original on file and of record in my office. ATTESTED:
GERRY RICKHOFF
COUNTY CLERK
BEXAR COUNTY, TEXAS
Deputy

Consideration: TEN AND NO/100 DOLLARS and other good and valuable consideration and the further consideration of a note of even date that is in the principal amount of $120,000.00 and is executed by Grantee, payable to the order of RELOCATION FINANCIAL SERVICES, INC.. The note is secured by a vendor's lien retained in favor of RELOCATION FINANCIAL SERVICES, INC. in this deed and by a deed of trust of even date, from Grantee to JOSEPH V. BENEVIDES, JR., Trustee.

RELOCATION FINANCIAL SERVICES, INC., at Grantee's request, having paid in cash to Grantor that portion of the purchase price of the property that is evidenced by the note described, the vendor's lien and superior title to the property are retained for the benefit of RELOCATION FINANCIAL SERVICES, INC. and are transferred to RELOCATION FINANCIAL SERVICES, INC. without recourse on Grantor.

Property (including any improvements):

Lot 20, Block 1, THE BLUFFS OF WESTCREEK UNIT 1, situated in Bexar County, Texas, according to plat thereof recorded in Volume 9529, Pages 148-149, Deed and Plat Records of Bexar County, Texas.

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Reservations From and Exceptions to Conveyance and Warranty:

Easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded instruments, other than liens and conveyances, that affect the property; taxes for the current year, the payment of which Grantee assumes.

Grantor, for the consideration, receipt of which is acknowledged, and subject to the reservations from and exceptions to conveyance and warranty, grants, sells and conveys to Grantee the property, together with all and singular the rights and

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appurtenances thereto or any wise belonging, to have and hold it to Grantee, Grantee's heirs, executor, administrators, successors or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators and successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty.

The vendor's lien against and superior title to the property are retained until each note described is fully paid according to its terms, at which time this deed shall become absolute.

When the context requires, singular nouns and pronouns include the plural.

CENTEX REAL ESTATE CORPORATION, A
Nevada Corporation

BY: _____
PATRICK BIBB
Division Controller

CERTIFICATE
The page to which this certificate is affixed is a full, true and correct copy of the original on file and of record in my office. ATTESTED: 4-3-96
GERRY RICKHOFF
COUNTY CLERK
BEXAR COUNTY, TEXAS
By _____ Deputy

ACKNOWLEDGMENT

STATE OF TEXAS §
COUNTY OF BEXAR §

This instrument was acknowledged before me on February 16th, 1996, by PATRICK BIBB, Division Controller of CENTEX REAL ESTATE CORPORATION, A Nevada Corporation, on behalf of said corporation.

DAVID D. MIRMELLI
Notary Public, State of Texas
My Commission Expires
NOV. 29, 1998

_____
Notary Public, State of Texas

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PREPARED IN THE OFFICE OF:

David L. Ricker
114 W. Glenview, Suite 205
San Antonio, Texas 78228

AFTER RECORDING RETURN TO:

Edward and Cynthia Ivey
11527 ~~WINDTREE~~ WIND TREE
San Antonio, Texas 78253

INDEXING HERE

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Any provision herein which restricts the sale, rental, or use of the described real property because of race is invalid and unenforceable under Federal law.

STATE OF TEXAS, COUNTY OF BEXAR

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me and was duly RECORDED in the Official Public Records of Real Property of Bexar County, Texas on:

FEB 21 1996

COUNTY CLERK BEXAR COUNTY, TEXAS

Filed for Record in:
BEXAR COUNTY, TX
GERRY RICKHOFF, COUNTY CLERK

On Feb 20 1996

At 2:40pm

Receipt #: 200375
Recording: 5.00
Doc/Mgmt : 6.00

Doc/Num : 96- 0023408

Deputy -Catherine Revilla

VOL 6671 PG0496

CERTIFICATE
The page to which this certificate is affixed is a full, true and correct copy of the original on file and of record in my office. ATTESTED:

GERRY RICKHOFF
COUNTY CLERK
BEXAR COUNTY, TEXAS
BY _____ Deputy

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Gerry Rickhoff

COUNTY CLERK — BEXAR COUNTY

BEXAR COUNTY COURT HOUSE
SAN ANTONIO, TEXAS 78205

C E R T I F I C A T E

STATE OF TEXAS §

COUNTY OF BEXAR §

I, GERRY RICKHOFF, COUNTY CLERK OF BEXAR COUNTY, TEXAS, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF BEXAR COUNTY, TEXAS, NOW IN MY LAWFUL CUSTODY AND POSSESSION AS SAME APPEARS OF RECORD FILED IN:

VOLUME 6671 PAGE 0494-0496

IN TESTIMONY WHEREOF, WITNESS MY HAND AND OFFICIAL SEAL OF OFFICE GIVEN IN THE CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS, ON THIS 3 DAY OF April A.D., 2002

GERRY RICKHOFF
COUNTY CLERK
BEXAR COUNTY, TEXAS
BY Lilah Donalez
Deputy County Clerk

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS OR NATIONAL ORIGIN IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.

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AFTER RECORDING MAIL TO

Relocation Financial Serv[redacted], Inc.
120 Longwater Drive
Norwell, MA 02061

LOAN NO. 641301

[Space Above This Line For Recording Data]

DEED OF TRUST

THIS DEED OF TRUST ("Security Instrument") is made on February 16, 1996. The grantor is Edward K. Ivey and Cynthia A. Ivey

("Borrower").

The trustee is Joseph V. Benevides, Jr.
whose address is 120 Longwater Drive, Norwell, MA 02061 ("Trustee").
The beneficiary is Relocation Financial Services, Inc., mortgage banker,
which is organized and existing under the laws of the Commonwealth of Massachusetts, and whose address is
120 Longwater Drive, Norwell, MA 02061 ("Lender").
Borrower owes Lender the principal sum of One Hundred Twenty Thousand Dollars and no/100 Dollars (U.S. $ 120,000.00). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on March 1, 2026. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in Bexar County, Texas:

Lot 20, Block 1, THE BLUFFS OF WESTCREEK UNIT 1, situated in Bexar County, Texas, according to plat thereof recorded in Volume 9523, Pages 148-149, Deed and Plat Records of Bexar County, Texas.

which has the address of 11527 WIND TREE [Street] San Antonio [City],
Texas 78253 [Zip Code] ("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

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RESIDENTIAL RENTAL AGREEMENT

THIS AGREEMENT is made this 28 day of March, 00 by and between Hazel Ridge Apartments, L.L.C., acting as agent for the owners of Hazel Ridge Apartments (hereinafter referred to as "Lessor"), and _____ (hereinafter referred to as "Lessee") For and in consideration of the covenants herein contained, and the rental herein set forth, Lessor, hereby leases and lets to Lessee on the terms and conditions hereinafter set forth the following property:

APARTMENT NO. 506, located at Hazel Ridge Apartments (hereinafter referred to the "Property"), Pine Bluff, Arkansas 71603, for a term beginning on the 4th day of April, 2000, and ending on the 31 day of March, 2001.

$541.58 April Prorated

THIS RESIDENTIAL RENTAL AGREEMENT SHALL HEREINAFTER BE REFERRED TO AS THE "LEASE", AND THE APARTMENT AND ALL AREAS THEREOF RESERVED TO THE USE OF LESSEE MAY BE REFERRED TO AS THE "DEMISED PREMISES."

OCCUPANTS: 1. It is agreed that the following parties and *no others*, shall live in the demised premises during the term of this Lease: Ed K Tvey _____ Lessor may permit, entirely at Lessor's option, by supplemental written agreement, the addition of the name(s) of other persons or the substitution of names for any set forth in this paragraph. Applicable law shall govern this permission and all persons whose names are substituted or added shall be deemed thereby to be in full agreement with all of the terms of this Lease as provided herein. Lessee agrees that no occupancy restrictions or other regulations concerning persons in the demised premises shall be exceeded or violated at any time, and it shall be Lessee's full and sole responsibility to assure compliance in this respect.

RENT: 2. Lessee agrees to pay to Lessor a monthly Rental Amount ("rent") consisting of $ 625.00 per month plus all applicable charges, fees, and penalties, in advance on or before the first day of each calendar month, during the term of this Lease and all extensions thereof. Lessor may deem the rent unpaid, for any purpose permitted to Lessor, if the rent is not paid in full before the second (2nd) of the calendar month. All sums payable by Lessee under the terms of this Lease shall be payable to Lessor at the office of Lessor, or at such other location as may be designated by Lessor. No partial payment of rent or charges shall be accepted and no cash payment is permissible at any time. If the Rental Amount has not been paid in full by the fifth (5th) day of the month, Lessee agreed to pay a twenty dollar ($20.00) late charge on the sixth (6th) day, plus an additional two dollars ($2.00) for each successive day thereafter until the full Rental Amount has been paid, including all accrued charges and penalties. Effectively, there is no proration: if Lessee remains in the demised premises after the 5th of the month, for any reason, Lessee will be held responsible for the amount of that full month's rent. This is an administrative charge and does not constitute double rent or interest. Lessor assumes no responsibility for notifying or reminding Lessee that a rent payment is due, and full and unlimited responsibility for making and confirming payment shall be Lessee's. Should two (2) rent payments be received later than the fifth (5th) day of the month within any running 12-month period, a 5-day Notice to Vacate may be issued immediately and eviction proceedings shall then begin, subject to the provisions hereinbelow, regardless of any other policy Lessor may apply concerning late payment. This strict policy shall be continued until twelve (12) full months shall have elapsed without late payment.

In the event Lessee's check for rent payment is not honored *for any reason* on presentation to the bank, or upon investigation, it is determined that insufficient funds exist to cover the amount of the payment, no further personal checks shall be accepted from Lessee. The fee for a returned check will be twenty dollars ($20.00) which will be in addition to the rent and all other applicable charges, and this and other fees shall be deemed unpaid in all respects until the full amount of the payment shall have been deposited successfully to Lessor's account.

GENERAL: 3. Lessee shall not assign this Lease to any party, or sublet the demised premises in whole or in part. Lessee shall use the demised premises for private residential use only. Lessee shall maintain the demised premises in good order and shall not engage in or permit any unlawful activity therein, or on any part of the Property.

4. Lessee shall not store flammable or dangerous materials or allow such material, anywhere on the Property, nor, while anywhere in or on the Property, do, perform, or suffer any act or thing deemed hazardous on account of fire or accident, or any act which might result in any forfeiture or cancellation of insurance coverage. Grilling on porches and patios is prohibited. Lessee shall not do, or permit to be done, anything on the premises which obstructs or interferes in any way with the rights of other residents or in any way injures or annoys them in a way not explicitly protected by applicable law, or which conflicts with any applicable rules and ordinances of any governmental agency.

5. Lessee shall take active good care of the demised premises and all furnishings and fixtures and permit no abuse thereof, and shall promptly report by telephone and in writing to the manager or other agent of Lessor whenever any equipment, fixture, or portion of the demised premises is out of repair. Upon demand, Lessee shall promptly reimburse Lessor for any and all damages due to negligence or misuse on the part of Lessee, or his or her family, servants, agents, guests, or other persons whom Lessee has permitted to be in or about the demised premises (hereinafter jointly and severally described as "Assigns"), during the term of this Lease. Upon termination of this Lease, Lessee shall deliver up the demised premises to Lessor in good condition, excepting only natural deterioration from reasonable use thereof. Lessee specifically accepts the conditions of the demised premises at the commencement of this Lease as satisfactory for all purposes of Lessee. The signed Move-in/Move-Out Form shall serve as the basis for the determination of the condition. Lessee accepts the demised premises in "as-is" condition without warranties.

6. Lessee shall make no alterations, additions, improvements, or repairs to the demised premises without prior written consent of Lessor (except that written consent may be waived for repairs in emergency situations, as determined by Lessor and at Lessor's option.) If such consent is given, all work shall be done in a satisfactory and workmanlike manner by licensed contractors, specifically approved by Lessor in writing, using first-grade materials, and the work may be subject to inspection, approval, or termination by Lessor at any stage of its progress. All alterations, additions, and improvements shall become and remain the property of the Lessor, without any payment of any kind to Lessee, and shall remain upon and be surrendered with the premises at the termination of this Lease. Lessee agrees not to drive any nails or screws into, paint,

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or otherwise alter, deface or damage in any way the walls, woodwork, floors, ceiling, plastering or other part of the demised premises or Property. Lessee expressly agrees that no air-cooling or circulation device shall be installed or placed in any window or other external area of the demised premises. Lessee shall erect no external or visible antenna of any type. No exterior decorations or ornaments shall be permitted.

7. If the furnishing of any service, such as heat, hot water, or television, shall cease by reason of accident, labor strike, necessary repairs, or improvement or alteration of any part of the physical plant or structures, or by reason of any cause beyond the control of Lessor, the obligations of Lessee under this Lease shall not be affected thereby, nor shall any claim accrue to Lessee by reason thereof. Lessee shall be responsible for and shall make timely payment of any and all charges incurred for the providing of water, sewer, electricity, cable television, telephone and alarm system services. Lessee shall be required to make any deposits that shall be required by any utility provider and shall pay in a timely fashion all charges incurred for the utility services.

8. Should Lessee or Assigns use any storage area, laundry, swimming or recreational area, parking area or any other facility of the Property in addition to the demised premises, with or without the permission of Lessor, such use shall be entirely gratuitous and entirely at the risk of Lessee and/or Lessee's Assigns. Lessor *shall not be liable in any way* for any injury, loss or damage resulting from such use or activity.

9. Drapes. All drapes installed by Lessee must be lined in white or present a uniform exterior appearance. Existing window blinds shall remain in place.

LIABILITY: 10. Lessor shall not be liable to Lessee or Lessee's Assigns for any damages to person or property caused by the act or negligence of any other Lessee or Assigns. Lessor shall not be responsible for any loss or damage to any property of Lessee or Lessee's Assigns which is at any time located on the Property or in the demised premises, whether due to theft or suffered by reason of fire, water damage, natural causes such as rain or lightning, explosion, or any other cause whatsoever, specifically including, Lessor's negligence. All property of Lessee shall be kept on the property entirely at Lessee's risk, *and it is recommended that Lessee acquire renter's insurance to protect against personal loss.* No water-filled furniture, including waterbeds, shall be permitted.

LOCKS: 11. No security devices or lock shall be installed or modified without the specific written consent of Lessor, and property keys for any and all such devices must be provided to Lessor or Lessor's agent. Any such installation or modification shall be at lessee's expense and keyed to master locks. Lessor shall be provided a key for emergency use. A $15.00 lockout fee will be due to Lessor at the time of the completion of locksmith services. Should an outside contractor be called, the contractor performing the service will determine the cost. Lessee shall be responsible for any charges of whatever type, kind or nature, as are occasioned by the loss by Lessee of any keys furnished to lessee including lockout fees, locksmith fees, key replacement or changes that are required to be made in master locks. No internal bolts or locking devices are permitted, although a breakable safety chain may be used to ensure privacy. If at any time Lessor deems it necessary to enter the demised premises for purposes of inspection, protection, repair, or enforcement of the provisions of this Lease, and Lessee is not known to be present, the officers, managers or agents of Lessor may enter into or upon the demised premises by use of a master key or other means without being liable to prosecution, claim, or cause of action for damages by reason thereof. Lessee shall be responsible for any and all damages that may result under any circumstances because of Lessee's violation of any provision of this section.

12. If any employee or agent of Lessor renders any service, such as moving automobiles, handling furniture or other property or articles, cleaning, or package delivery, or does any other act or thing whatsoever at the written or oral request of Lessee, whether or not payment is arranged for such service, Lessee agrees to relieve Lessor and hold Lessor harmless in all respects from any and all liability in connection with such service.

BASIC COMMUNITY POLICIES 13. Lessor reserves the sole right to control the method, manner and time of parking anywhere on the Property and to control and limit entry and behavior upon the Property and demised premises by agents, messengers, delivery-men, solicitors, salesmen, or any person not a resident or one of his or her Assigns, to the end that there be a minimum of traffic and confusion on the Property and the rights and privacy of all residents shall be preserved.

14. Parking. No boat, trailer, motorcycle, camper, van or truck larger than 1 ½ ton pick up, or inoperable vehicle of any description, may be parked or left on the premises without the prior written consent of Lessor. All automobiles owned by Lessee must be registered with the Lessor. These automobiles must have a current state motor vehicle license plate. All unauthorized vehicles will be towed away at owner's expense. Further, there shall be a two vehicle limit per unit.

15. Sidewalks, steps, entrances, halls, stairways, traffic areas and other public passages shall not be obstructed, or used for any purpose other than ingress and egress. This specifically applies to loitering and other gatherings.

16. Lessee agrees that the water closet and all other equipment in the bathroom and kitchen shall not be used for any purpose other than that for which they were constructed, and that no obstructive or harmful substances shall be thrown or used therein. Lessee shall be held responsible for the cost of any and all repair of damage resulting from the misuse or neglect of said equipment or from stoppage of any plumbing as a result thereof. Lessee agrees to reimburse Lessor promptly for the full amount of such repair and such reimbursement shall be considered as rent for purposes of billing, payment and continue residence under the terms of this Lease.

17. Lessee shall not install signs, fixtures, antennas, satellite dishes or similar devices on the exterior of the building. Lessee or Lessee's Assigns shall not throw any objects or substances out of the windows or doors, into the hallway or stairwells, into the ventilation system, or anywhere else on the Property; shall not place any object on the outside of the sills of the windows or any other place where said objects may, in the estimation of the Manager, pose a risk to the safety of others in the community or may fall and cause injury or damage; and shall not hang or shake any clothing, curtains, rugs, mops, or like implements, furnishings, or fabric from the windows, doors, balconies, patio fences or

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other external areas of the Property or demised premises. Only designated storage areas shall be used for storage of items. The patio and common areas are not to be considered storage areas.

18. Lessor shall provide receptacles (dumpsters) for garbage and for trash, and Lessee is to take all such material to those receptacles. Lessee shall comply with all Community Policies and Notices established by Lessor as to the time and manner of handling such receptacles, garbage and trash. To reduce the likelihood of annoyance and disease, all garbage shall be tightly enclosed in non-leaking plastic bags or containers before disposal.

19. Lessee shall ensure that all windows, doors and openings to the demised premises are closed tightly against inclement weather, and shall reimburse Lessor promptly for any and all painting and other repair expense which may result from neglect or carelessness in this respect.

20. Lessee and Lessee's Assigns shall maintain order at all times in the demised premises and elsewhere on the Property. Sociable and friendly gatherings are welcome, provided that such gatherings are not boisterous, obscene or objectionable to other residents of the Property. Television, stereo equipment, radios and musical instruments are not to be played at a volume, or time, or in any manner, which is objectionable to any resident or which does not conform to the Community Policies incorporated herein or appended hereto, as may be amended from time to time. Time restrictions on activities which may bother other residents, such as vacuuming, operating washers and dryers, loud conversations, and closing apartment and entry doors loudly shall be made by Lessor, and Lessee agrees to observe these restrictions when made herein when informed by an agent of Lessor. It is understood that any action by Lessee or Lessee's Assigns requiring intervention by Lessor's personnel or by outside agencies including law enforcement shall constitute specific grounds for termination of this Lease. Lessee shall be accorded and provided use of the community club room and exercise room and any other facilities as provided by Lessor subject to the terms and conditions as shall be posted in the areas which terms and conditions may change from period to period and which terms and conditions are incorporated herein and which lessee specifically agrees to abide by as a condition to use and occupancy of the property.

21. Guests. Lessee shall be responsible and liable for the conduct of Lessors or Lessees' Assigns' guests. Acts of guests in violation of this Agreement or Lessor's rules and regulations may be deemed by Lessor to be a breach by Lessee.

22. Lessee shall accept responsibility for the smoke detector and other safety or special equipment provided in the demised premises. If any such equipment is damaged or missing upon inspection subsequent to that conducted at move-in, Lessee shall pay to Lessor a minimum of twenty-five dollar ($25.00) fee for replacement costs or ensure that the damaged or missing equipment is promptly restored or repaired to Lessor's full satisfaction at Lessee's sole expense. Lessor will inspect and maintain these items on a periodic basis, but Lessee is responsible for checking the condition of this equipment regularly and informing Lessor *promptly* if there is any problem or if any maintenance or normal repair is required.

23. Lessor shall have the right to make such reasonable rules and policies in addition to amendment to those stated herein as, in Lessor's sole judgment, may be needed to enhance the cleanliness and orderliness of the Property and the safety and comfort of its residents, or as may be required by outside agencies (including insurance carriers). Lessee hereby agrees to abide by such added or amended rules and policies when notified by Lessor.

PETS 24. No animal or pet of any kind shall be kept in, taken into, or allowed in the demised premises without the prior written consent of Lessor, which may be withheld for any reason except when specifically mandated by the Americans with Disabilities Act (ADA) or other applicable statute(s), and without the signing of a Pet Agreement Form (PAF) which shall act as an addendum to this Lease. All terms and conditions contained in the PAF shall be strictly respected, and any breach thereof may serve as grounds for termination of this Lease. Failure to acknowledge a pet may automatically forfeit all deposits, including the security deposit and summarily terminate this Lease; alternatively Lessor may take any legal actions available to it to summarily remove the pet, at no risk to Lessor, and Lessee shall bear the full cost and responsibility for such removal, including that for injury to personnel. Subject only to the requirements of the Americans with Disabilities Act, no pet of any type shall exceed the weight of 20 lbs. at the time during the term of this lease agreement.

25. All notices and demands authorized or required to be given to Lessee, or which may be necessary hereunder, may be served upon Lessee in person, or by mail addressed to the demised premises, or by notice served by being affixed to or placed at the entry door of the demised premises. The effective date of notification shall be deemed the date the notice is postmarked, or is dated if no postmark is available, or is served.

SECURITY DEPOSIT 26. Lessee has this day made a security deposit with Lessor in the amount of $_____, which shall be used by Lessor, in accordance with and as provided by the provisions of this Lease and, if present, an attached Security Deposit Agreement to, in whole or in part, cover any damages caused by Lessee or Lessee's Assigns. Lessee agrees to maintain the Security Deposit at this level, should it become depleted for any reason. Should Lessee leave the demised premises in such condition that Lessor must incur cleaning and/or repair expenses, the amount of such expenses shall be deducted from the amount of this Security Deposit. The amount of the Security Deposit shall not be deemed the maximum liability of Lessee for damages and/or cleaning expenses, and Lessee shall be responsible for any and all additional amounts required to make the demised premises ready for re-leasing, including the amount of expenses or concessions which must be made to incoming or other residents should the demised premises be unsuitable for prompt habitation. Upon voluntary termination, of this Lease, Lessor shall refund any unused portion of the Security Deposit within thirty (30) days, in accordance with the terms of the Security Deposit Agreement. However, in the event Lessee quits the demised premises during the initial term of this Lease, or in any manner contrary to the terms of this Lease, or fails to give a proper Thirty (30) Day Notice of Intent to Vacate on the conditions noted hereinbelow, or violates any applicable provision of this Lease and/or its addenda and attachments, all deposits, including the Security Deposit, will be forfeit to the Lessor. In all instances, Lessee shall be charged a fee of $50.00 which shall be charged against the Security Deposit, which fee shall be for expenses associated with final inspection of the Premises.

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VOLUNTARY TERMINATION OF LEASE; AUTOMATIC RENEWAL

27. If Lessee desires that this Lease terminate on the ending date above listed, written notice must be given at least thirty (30) days before that date; otherwise, this Lease will automatically be renewed on a month-to-month basis. Said written notice shall be given in the form of a Thirty (30) Day Notice of Intent To Vacate, which will be effective on the first (1st) of the month, and must therefore be filed no later than the first of the month *preceding* the month in which the resident desires to leave. Failure to provide written notice on these terms will result in forfeiture of all deposits. *Cancellation of a Notice of Intent to Vacate, once filed may be made only with the specific and written approval of Lessor.* Should Lessee not have moved fully out of the demised premises by the fifth (5th) of the effective month for which he or she has given notice, and no written permission to cancel has been granted and filed by Lessor by that date, a full month's rent shall be charged and be payable by Lessee under the no-proration charge provision of Section 2 above. Lessor may require Lessee to sign a new Lease at the beginning of any given month, or such other time as Lessor shall direct.

28. If Lessor deems it necessary to increase the rent, Lessor may increase the Rental Amount by giving written notice to Lessee at least thirty (30) days in advance. At that time, Lessee may terminate the Lease, if desired, with the filing of a Thirty-Day Notice of Intent to Vacate, as provided above, or the situation may be discussed with Lessor. After the thirty days of notice have elapsed, the rent increase shall automatically take effect and be binding, unless Lessor shall have taken alternative action and confirm that action in writing. Rent increases shall be made on no terms that violate government regulations.

29. It is the intention of all parties to this Lease to conform to all governmental laws and regulations. All provisions herein, which prove inconsistent with valid laws and regulations at the time any controversy may arise, shall be deemed to provide as required by such laws and regulations. If, for any reason, any provision of this Lease is considered invalid, that provision shall be considered severable from all remaining parts hereof, which shall continue in full force and effect.

30. Failure of any party hereto to exercise any right given by this Lease shall not constitute a waiver of any future exercise of said right.

31. This Lease, whether or not recorded, shall be junior and subordinate to any mortgage hereafter placed by Lessor or other parties on the Property of which the demised premises form a part.

32. It is understood that the term "Lessee" in this Agreement shall include the plural, and shall apply to persons both male and female. All obligations of Lessee are several and personal.

33. Failure of Lessee to pay the Rental Amount or any other charges under this Lease, when due, or failure of Lessee to perform or conform to, by deed or omission, any other covenant or obligation of this Lease, shall give Lessor the explicit right to terminate this Lease summarily, collect all rents and charges accrued to the date of such termination, plus all fees and damages sustained, and immediately institute legal eviction proceedings. Should it be necessary for Lessor to employ an attorney or other counsel or agent to enforce or defend Lessor's rights and remedies hereunder, regardless of which party institutes suit, Lessee agrees to pay Lessor a stipulated attorney's fee in the amount of twenty-five percent (25%) of the amount due by Lessee, with a fixed minimum of one hundred dollars ($100.00) together with all other costs of collection. These conditions specifically apply to the month's rent for which Lessee has given Notice of Intent to Vacate as provided hereinabove. In addition, during any time during which Lessee or any of Lessees' Assigns fails to vacate the demised premises completely, after a time or date Lessee is required to quit and deliver up the premises as provided herein, a daily prorated rental equal to twice the highest current rental for a comparable unit shall be charged until the eviction order is granted and upheld and the demised premises shall have been full vacated and collection therefor shall be included in all legal judgments. Should an eviction order be overturned or stopped for any reason, the highest current rental shall be charged, as if a new Lease had been signed at the rate as of the date required for Lessee to quit and deliver up the demised premises, for all months of the eviction process during which Lessee continues in residency of the demised premises, and this higher rate shall apply in all subsequent months of residency until otherwise adjusted by Lessor. Lessor, upon involuntary termination of this Residential Rental Agreement agrees that it will use due diligence to rent the demised premises for the remainder of the unexpired lease term. However, should Lessor, even after exercising due diligence be unable to secure a replacement tenant for all or any portion of the remaining lease term, then and in that event, Lessee shall be responsible for the monthly rental for any such month or part thereof for which Lessor is unable to rent the demised premises.

It is mutually understood between Lessor and Lessee that all the Community Policies attached to or printed upon this instrument, or provided on any signed addendum or other documents applying thereto, shall be, and are hereby made, a part of this Lease, and that Lessee further covenants and agrees that Lessee and Lessee's Assigns shall at all times observe, perform and abide by said Community Policies, and that it is specifically understood that any violation thereof by Lessee or Lessee's Assigns shall be termed and deemed a breach of this Lease.

34. The written terms of this Lease and any addenda thereto constitute the sole and entire agreement between the parties. No oral agreement shall be deemed binding under any circumstances. Only the General Property Manager (GPM) of Lessor has the legal authority to make changes to the terms of this Lease, and any such change applied to the present instrument must be documented fully in writing and signed by the GPM. No representative or agents of Lessor, including but not limited to management and service personnel and employees, may, independent of direction by the GPM modify, waive, or terminate any provision of this Lease without the specific written authorization and approval of the GPM, and such independent modification, waiver, or termination shall then be made in writing, signed by all parties and attached to this instrument to be valid. No representative or agents of Lessor have the authority to make any promise, representation, or agreement which might impose or tend to impose any obligation upon Lessor, the Owner of the Property, or upon Lessor's or Owner's representatives, unless such promise, representation or agreement is made specifically, in writing, and bears the approval, including a valid and original signature of GPM or other competent and empowered senior official of Lessor. No modification contrary to applicable law shall knowingly be made. Lessor may require signing of a new lease, on amended terms, at Lessor's option, at any time, subject only to the provision that such new lease shall bear the ending date of this Lease as its ending date if said new lease is signed on or before the ending date of this Lease as its ending date if said new lease is signed on or before the ending date of this Lease.

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35. Lessee acknowledges by signing this instrument that, in conjunction with the execution hereof, Lessee has paid the Security Deposit and any other deposits and fees required and received a satisfactory receipt therefor; that Lessee has received the necessary information to operate all equipment furnished in the demised premises or otherwise accepts full responsibility for their care and use; and that Lessee has fully read and understood the full text of this Lease, the nature of all details, provisions and covenants herein, and the Community Policies and agrees to comply with the terms of this Lease in every respect.

36. Credit Cards. Lessee authorizes Lessor to charge Lessee's credit card described below for: (a) one month's rent during each 12 month term hereof upon Lessee's direction and (b) without any further direction from or consent of Lessee, all amounts owed by Lessee under this Agreement at the termination of Lessee's occupancy of the demised premises, including rent, late charges, bad check charges, cancellation fees, charges for damage to the demised premises, and re-keying charges.

Credit Card Type: _____ Number: _____
Expiration Date: _____ Name on Card: _____
Resident's Initials: _____

37. Special Stipulations. The following special stipulations shall control in the event of conflict with any of the foregoing:

E. K. Ivey
_____ 3-28-2000
SIGNATURE(S) OF LESSEE(S) DATE

_____ _____
SIGNATURE(S) OF LESSEE(S) DATE

HAZEL RIDGE APARTMENTS

_____ 3.28.2000
AGENT FOR LESSOR DATE

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Relocation Benefits for the Hub Merger Implementing Agreement

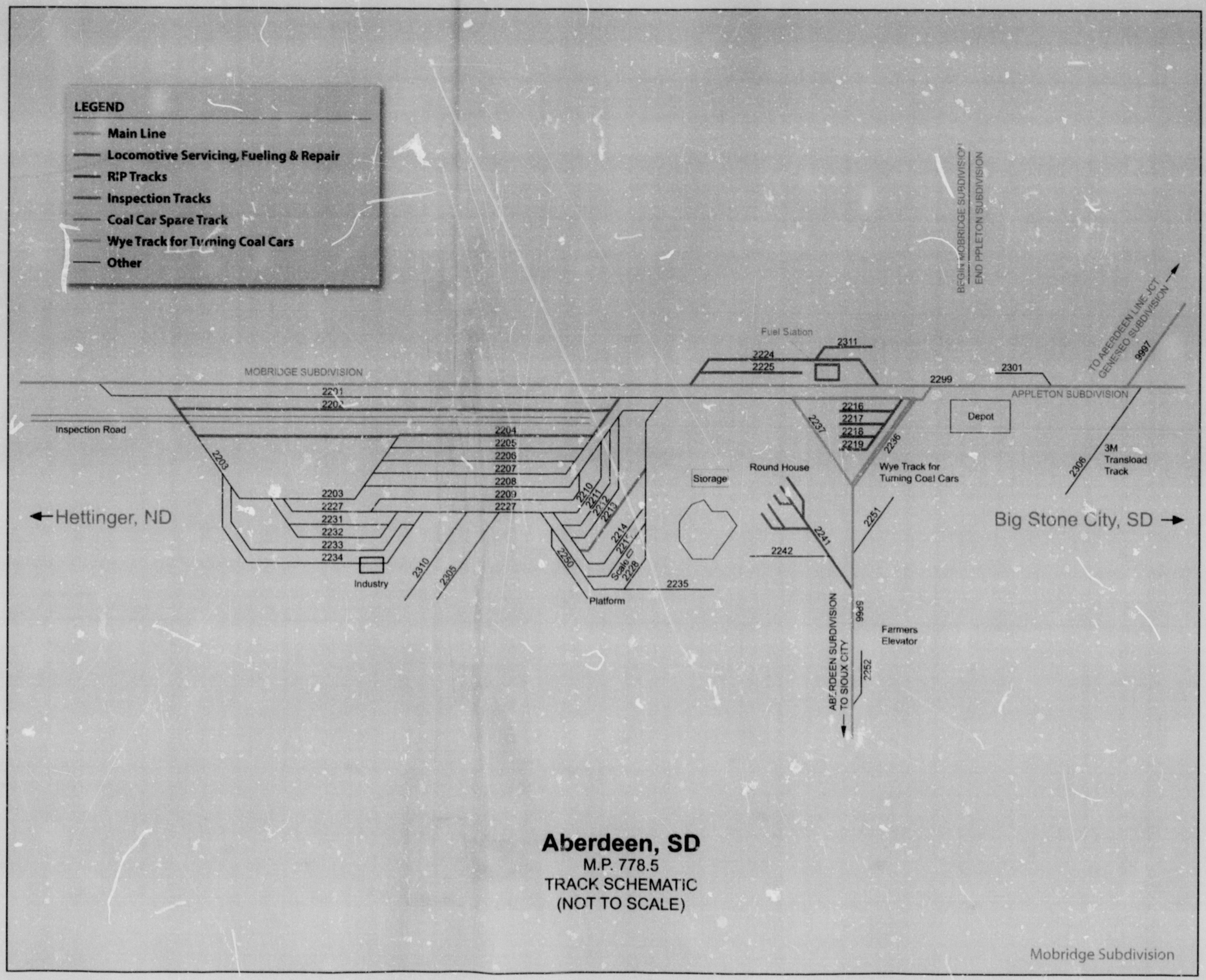
The following information must be provided, depending upon which Option is selected.

Option 1: Proof of actual relocation. This may take the form of a home or apartment lease or contract to purchase a new home.

Option 2: Proof of actual relocation similar to that stated above for Option 1. In addition it will be necessary to provide proof of current home ownership in the form of a purchase contract, warranty deed, or mortgage papers. If these documents do not contain the property's address, i.e., most only contain a description of the property, also include the most recent tax statement which should have a street address to coincide with the description of the property.

Option 3: In addition to proof of actual relocation, it will also be necessary to provide a bona fide bill of sale of the old home.

Aberdeen, SD



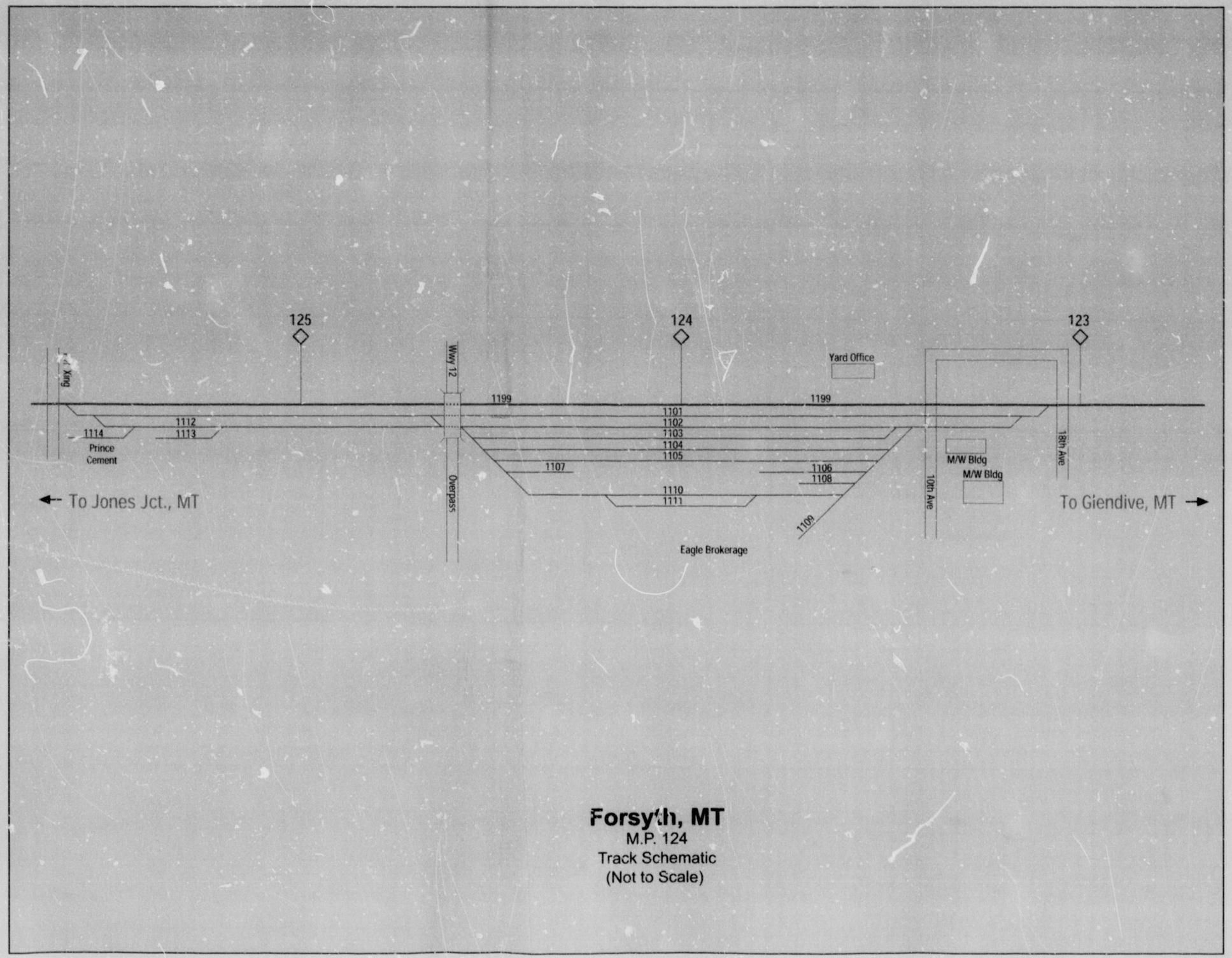
Aberdeen, SD
M.P. 778.5
TRACK SCHEMATIC
(NOT TO SCALE)

Mobridge Subdivision

BNSF
Burlington Northern Santa Fe Railway

Exhibit II A-2 2 of 3

Forsyth, MT



Forsyth, MT
M.P. 124
Track Schematic
(Not to Scale)

BNSF

Burlington Northern Santa Fe Railway

Exhibit II.A-2 3 of 3

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 86970

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

RAILCO, INC.'S SUPPLEMENT TO ITS REQUEST FOR CLARIFICATION OR MODIFICATION

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Attorneys for Railco, Inc.

October 9, 1996

At the request of UP/SP, Railco wishes to clarify one of its contentions. On page 5 of its September 20, 1996 "Reply in Support of its Request for Clarification or Modification," Railco informed the Board of false testimony that Savage was the only non-captive truck-serviced train loading facility in the area. Railco did not then have the relevant citation to the record. Railco has since learned the statement was made in the Verified Statement of Dr. Colin Blaydon, in which he stated Savage Industries is the only public [i.e., non-captive] truck transfer unit train facility in the area. His Statement was submitted on April 29, 1996 by Utah Railway as document no. Utah-5, not by UP/SP as Railco previously understood. Railco apologizes for the error.

Although it was Utah Railway who directly submitted the statement, the statement was given in support of UP/SP's Rebuttal filed the same day. UP/SP knew the statement was made in its behalf and was false, but took no action to inform the Board of its falsity. By its silence UP/SP

acceded in the statement, and misled the Board into relying on the false statement when incorporating the Settlement Agreement as a condition to the Board's Decision.

DATED October 9, 1996.

Attorneys for Railco, Inc.

CERTIFICATE OF SERVICE

I certify on October 9, 1996, true and correct copies of the above document were served by first class mail to:

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STB FD 32760 9-10-96 85952

85952

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JAUREGUI, NAVARRETE, NADER Y ROJAS

KELLEY E. O'BRIEN
MEMBER OF THE VIRGINIA BAR
NOT ADMITTED IN THE
DISTRICT OF COLUMBIA
202-778-0607

September 10, 1996

VIA HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th Street & Constitution Ave., NW
Room 2215
Washington, DC 20423

Re: Finance Docket No. 32760, Union Pacific Corp., et al.. --
Control & Merger -- Southern Pacific Rail Corp., et al.

Dear Secretary Williams:

On Monday, September 9, 1996, Burlington Northern Railroad Company ("BN") and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") filed BNSF's Reply to Applicants' Motion For Leave to File Reply (BN/SF-66). BN/Santa Fe's September 9 filing contained a facsimile copy of the verification of Frank D. Clifton. Enclosed please find the original verification of Frank D. Clifton.

Please date-stamp the enclosed extra copy of this letter and return it to the messenger for our files. Thank you for your time and attention to this matter. Please call me if you have any questions.

Sincerely,

Kelley E. O'Brien

Kelley E. O'Brien

Enclosure

VERIFICATION

THE STATE OF TEXAS)
)
COUNTY OF TARRANT)

Frank D. Clifton, being duly sworn, deposes and says that he has read the foregoing statement, and that the contents thereof are true and correct to the best of his knowledge and belief.

Frank D. Clifton

Subscribed and sworn to before me on this 9th day of September, 1996

Notary Public

My commission expires: 09/30/96

STB FD 32760 7-10-96 84702

Item No. _____

Page Count 4

July, 1996 #15

84702

WPTSP-268

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

ERRATA TO REBUTTAL NARRATIVE AND BRIEF

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July 10, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

ERRATA TO REBUTTAL NARRATIVE AND BRIEF

Applicants UPC, UPRR, MPRR, SPR, SPT, SSW, SPCSL and DRGW submit the following errata to the narrative section of their April 29 Rebuttal filing (UP/SP-230) and their Brief (UP/SP-260):

REBUTTAL (UP/SP-230)

Page	Line	Change
224	n.88, line 3	Change "KCS-33, Vol 1" to "TM-23"

BRIEF (UP/SP-260)

48	5	Change "Id." to "UP/SP-230"
48	9	Change "id." to "UP/SP-230"
App. C	Chart # 3	Bars should begin at "0," not "1"

Respectfully submitted,

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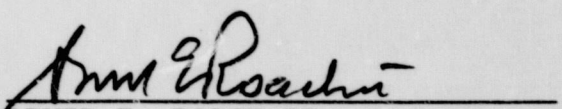

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July 10, 1996

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 10th day of July, 1996, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties of record in Finance Docket No. 32760, and on

Director of Operations
Antitrust Division
Suite 500
Department of Justice
Washington, D.C. 20530

Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580

Michael L. Rosenthal

STB FD 32760 7-2-96 84608

84608

UP/SP-267

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

ERRATA TO ABANDONMENT REBUTTAL

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Item No. _____

Page Count 4

July, 1996 # 9

July 2, 1996

UP/SP-267

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

ERRATA TO ABANDONMENT REBUTTAL

Applicants UPC, UPRR, MPRR, SPR, SPT, SSW, SPCSL and DRGW submit the following errata to the merger-related abandonments section of their April 29 Rebuttal filing (UP/SP-232, Tab G):

Page	Line	Change
10	15	Change "477.4" to "177.4". The correct number is reported in the rebuttal verified statement of Daniel J. McGregor (UP/SP-232, Tab G, McGregor RVS, p. 2).

Respectfully submitted,

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July 2, 1996

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Antitrust Division
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Washington, D.C. 20530

Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580

Michael L. Rosenthal

STB FD 32760 6-13-96 84270

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WRITER'S DIRECT DIAL:

June 13, 1996

HAND DELIVERED

Mr. Vernon A. Williams
Interstate Commerce Commission
Case Control Branch
Room 1324
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

Item No. _____
Page Count 7
JUNE, 1996 #141

Re: Finance Docket No. 32760, *Union Pacific Corporation, et al. -- Control & Merger -- Southern Pacific Rail Corporation, et al.*

Dear Secretary Williams:

Enclosed for filing in the above-captioned case are the original and twenty copies of The Kansas City Southern Railway Company's Reply to Applicants' Motion to Strike or for Sanctions (KCS-63).

Also enclosed is a 3.5 inch Word Perfect diskette containing the text of KCS-63.

RECEIVED
SURFACE TRANSPORTATION BOARD
JUN 13 4 50 PM '96
ICC
OFFICE OF SECRETARY

ENTERED
Office of the Secretary
JUN 14 1996
Part of
Public Record

Sincerely yours,

Alan Lubel

Alan E. Lubel
Attorney for Kansas City Southern
Railway Company

Enclosures

cc: The Honorable Jerome Nelson
Restricted Service List

KCS-63

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL 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

KANSAS CITY SOUTHERN RAILWAY COMPANY'S
REPLY TO APPLICANTS'
MOTION TO STRIKE OR FOR SANCTIONS

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June 13, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

KANSAS CITY SOUTHERN RAILWAY COMPANY'S
REPLY TO APPLICANTS'
MOTION TO STRIKE OR FOR SANCTIONS

Through their Motion to Strike (UP/SP-262), Applicants seek to shield from the Board information from the workpapers of one of Applicants' rebuttal witnesses, Dr. Bernheim. Dr. Bernheim sought to challenge the evidence of Southern Pacific's aggressiveness as a bidder for Department of Defense contracts, as revealed in the DOD data presented in the statements of Kansas City Southern Railway Company's ("KCS") witnesses Mr. William Ploth and Ms. Nell Nunn. The information is of especial pertinence because the workpaper contradicts his testimony in his deposition.[1] Hence, KCS was not seeking to introduce "new matter," but rather to correct a misstatement made by the witness. The reference to the workpapers is not "inappropriate evidentiary material;" and it certainly should be within the

---

[1] Thus, in his deposition he said that he used "revenue per car" whereas the worksheet shows that, in fact, he used "revenue per ton mile."

discretion of this Board to consider the document for whatever value it is worth. These portions of Dr. Bernheim's workpapers were included in the evidentiary appendix submitted with KCS' Brief of June 3, 1996. (KCS-60A, Excerpts of Depositions and Workpapers Cited in KCS' Brief, Tab 14.)

Neither will Applicants be prejudiced by the Board's acceptance of this evidence which directly refutes Dr. Bernheim's testimony. Applicants' ability to attempt to explain the evidence away is rendered ludicrous by the fact that this evidence directly contradicts Dr. Bernheim's testimony. Any claimed prejudice presumes Dr. Bernheim's ability to explain how black can be white. Dr. Bernheim was given the opportunity at his deposition to explain whether he utilized "revenue per car" or "revenue per ton mile" in his analysis. He stated "we used revenue per car *and not revenue per ton-mile*" (UP/SP - 262, p. 15, n. 17, emphasis supplied). The document about which Applicants complain shows that Dr. Bernheim misspoke himself and in fact did use revenue per ton-mile. Applicants' instant motion does not represent an attempt by them to preserve their right to due process but rather is an effort to "bury" proof that Dr. Bernheim has misstated for the record the true character of his analysis.

Applicants' attitude would treat this Commission's evidentiary record as a game of hide and seek rather than an exploration of the facts underlying their Application and their witnesses' rebuttal testimony.

In the Board's Decision No. 37, decided May 21, 1996, the Board specifically said that KCS could take depositions of the rebuttal witnesses and refer to the information gathered in those depositions in its closing brief.[2] The workpapers are directly related to the testimony of the witness and there is sufficient nexus to allow the workpaper to be considered by the Board.

It ill behooves the Applicants, who are seeking the approval of the largest railroad merger in history, to create the largest railroad in the country, to object to references to workpapers of Applicants' own rebuttal witness. These workpapers were made available belatedly; and in the Board's Order of May 21, 1996 (Decision No. 37 at p. 5), while refusing to strike Professor Bernheim's testimony, the Board specifically authorized KCS to take the deposition of Mr. Bernheim and other rebuttal witnesses and to refer to that information in its brief. In its brief, KCS has merely brought this information to the attention of the Board.

Moreover, Applicants' Motion to Strike is highly hypocritical, in light of Applicants' own evidentiary filing of June 11, 1996 (UP/SP - 263, Applicants' Submission of Verified Statement Concerning Modification of Settlement Agreement with CMA) which included the Verified Statement of Richard Peterson.

---

[2] Finally, we note that KCS, and all other parties, have the opportunity to depose applicants' rebuttal witnesses...Information gained in such depositions may be included in the briefs, which are due on June 3, 1996.

(Decision No. 37, p. 5, Decided May 21, 1996.)

Applicants speak out of both sides of their mouth and seek to apply a double standard. They seek to strike reference to workpapers as "new evidentiary material," while at the same time themselves offering the Board "new evidence" after the filing of the June 3, 1996 briefs.

In regard to Applicants' request for sanctions, even if KCS had somehow technically stepped across some time line regarding the evidentiary record, the fact that it is merely bringing to the Board's attention factual information to assist the Board in its decision is not the type of egregious behavior that would warrant any sanctions. Thus, Applicants' Motion should be denied.

This 13th day of June, 1996.

Alan Lubel [illegible]

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Attorneys for The Kansas City Southern Railway Company

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "KCS' REPLY TO APPLICANTS' MOTION TO STRIKE OR FOR SANCTIONS" was served this 13th day of June, 1996, by hand delivery to attorneys for Applicants and by depositing a copy in the United States mail in a properly addressed envelope with adequate postage thereon addressed to each other party on the restricted service list.

Alan Lubel /MTS

Attorney for The Kansas City Southern Railway Company

STB FD 32760 6-7-96 84128

84128

Item No. _____
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Jun II 125

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CR-42 DOW-26 ESI-26 FARM-3
IP-17 KCS-62 MONT-10 MPCSC-4
MRL-27 NITL- 20 RCT-8 RENO-5
SP-17 SPI-23 STRC-12 TM-40
TUE-18 UCC-15 WCTL-23 WEP-4
WPL-13 WPS-13

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

SUPPLEMENTAL RESPONSE OF INTERESTED PARTIES TO MOTION OF WESTERN SHIPPERS' COALITION FOR CLARIFICATION OR RECONSIDERATION OF DECISION NO. 36

Allied Rail Unions/Transp. Comm. Union
City Public Service Board of San Antonio
Consolidated Rail Corporation
Farmland Industries, Inc.
Montana Rail Link, Inc.
Mountain-Plains Communities & Shippers Coalition
Sierra Pacific Power Co./Idaho Power Co.
Texas Utilities Electric, Inc.
The Kansas City Southern Railway Company
The Railroad Commission of Texas
Union Carbide Company
Wisconsin Electric Power Co.
Wisconsin Public Service Corporation
City of Reno
Coalition for Competitive Rail Transportation
Entergy Services, Inc..
International Paper Company
Montell USA, Inc.
Save the Rock Island Committee, Inc.
Texas Mexican Railway Company
The Dow Chemical Company
The National Industrial Transportation League
The Society of the Plastics Industry, Inc.
Western Coal Traffic League
Wisconsin Power and Light Company

June 7, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

SUPPLEMENTAL RESPONSE OF INTERESTED PARTIES
TO
MOTION OF WESTERN SHIPPERS' COALITION FOR
CLARIFICATION OR RECONSIDERATION OF DECISION NO. 36

The parties whose names appear on the cover of this filing ("Interested Parties"), by their attorneys (whose names appear on the signature page of this filing), submit this Supplemental Response to the Motion of Western Shippers' Coalition ("WSC") for Clarification or Reconsideration of Decision No. 36 ("WSC Motion").

In their original Response to the WSC Motion filed on May 21, 1996, Interested Parties requested the Board to delay the allocation of oral argument time until (1) all parties have filed their statements regarding oral argument; and (2) these Interested Parties can report to the Board on efforts to develop an agreed allocation of oral argument time by the opponents of the primary Application ("Application"). Interested Parties represented that such a report would be filed on or before June 7, 1996.

In the interim, numerous parties have submitted requests for oral argument. Insofar as Interested Parties have been able to determine, a total of five parties seek oral argument time in support of the Application or related settlement agreements,[1] and the

---

[1] In addition to the Applicants, these parties include BNSF, Utah Railway Company, the California Public Utilities Commission, and the United Transportation Union. Interested Parties strongly support the suggestion by Utah Railway Co. that thes parties supporting the applicants or

total argument time requested by these parties is 145 minutes. This exceeds the 120 minutes of argument time allocated to parties who support the merger by 25 minutes, or 20%. On the other hand, a total of at least 33 parties who either oppose the merger (in whole or in part) or seek additional conditions on approval of the merger have requested oral argument time, and the total argument time requested by these parties is 382 minutes.[2] This exceeds the 120 minutes of argument time allocated to parties who oppose the merger by 262 minutes, or 218%.

Counsel for Interested Parties have engaged in extensive discussions in an attempt to develop an agreed allocation of argument time by the opponents of the Application. They have made considerable progress, but have been unable to come to an agreement. The reason is simply that -- assuming 120 minutes of argument time are available for opponents of the merger under Decision No. 36 -- not enough time is available given the large number of opposing parties who seek argument time.

Accordingly, Interested Parties hereby respectfully request the Board to increase the time allocated for oral argument by opponents of the merger by 35 minutes, from 120 to 155 minutes. If an additional 35 minutes are granted, Interested Parties represent that, after extensive discussions, they have agreed on the following as a satisfactory allocation of argument time. If the additional time is allowed, implementation of this proposal will avoid the necessity for the Board to allocate the time. Implementation of this agreement will also enable Interested Parties to coordinate their arguments so as to

---

their settlement agreement should be allocated argument time from the time assigned to the applicants.

[2] It is likely that some parties will withdraw or modify their requests for argument time. For example, Kennecott Energy Company, which requested 12 minutes, subsequently reached a settlement with Applicants and withdrew its opposition to the merger. WSC no longer requests oral argument time for the Coalition, but WSC member, Farmland Industries, Inc. is represented by the same counsel and asks to participate in the argument on its behalf and on behalf of Mountain-Plains Communities & Shippers Coalition.

minimize overlap and repetition, which will help sharpen the issues and materially assist the Board in reaching its decision in this epic case.[3]

Category	Group/Party	Time	Category Time
Government Parties	Dep't of Justice	15	
	Dep't of Transportation	10	
	Railroad Comm. of Texas	5	
	Attorney General of State of Texas	5	
	City of Reno	2	
	Sedgwick Co. KS/City of Wichita	2	
	Capital Metro Transportation Authority	4	43
Shipper Parties	The National Industrial Transp. League	10	10
Gulf Coast	SPI/Union Carbide/Montell	9	
	Dow Chemical Company	4	
	GEON	3	
	International Paper Company	4	20
Coal	Western Coal Traffic League/Wisc. P&L/Wisc. Pub. Service	5	
	Entergy Services	4	
	Texas Utilities Electric	4	
	CPSB of San Antonio	3	
	Sierra Pacific Power/Idaho Power	3	
	Wisconsin Electric Power	3	22
Grain	Farmland Industries/Mountain-Plains Coalition	8	8
Other	Coalition for Competitive Rail Transportation	3	3
Rail Parties	Consolidated Rail Corp.	10	
	Kansas City Southern Ry. Co.	10	
	Montana Rail Link, Inc.	9	
	Texas Mexican Ry. Co.	8	
	STRIC	4	41
Labor Parties	Allied Rail Unions	8	8
		Total	155

Given the scope and complexity of this case, as well as the large number of parties actively participating in opposition or seeking additional conditions to the Application

---

[3] Interested Parties also believe that, after further consultation, they may be able to agree to a specific order of presentation. With that in mind, Interested Parties would like to reserve the right to notify the Board not later than 7 days prior to the oral argument of a proposed order of appearance and/or consolidation of arguments within this proposed allocation.

and the total argument time requested (both far more than were involved in the BN/Santa Fe case), we submit that extending the oral argument by an additional 35 minutes is appropriate. The additional time will facilitate orderly presentations rather than the fragmented approach that would necessarily result if the Board were to limit the opponents' time to 120 minutes and allocate the time in a different manner. The result would be total argument time of only four and one-half hours, which is not great for a case of this magnitude.[4]

CONCLUSION

For the foregoing reasons, Interested Parties respectfully request the Board to modify Decision No. 36 by granting a total of 155 minutes of oral argument time to all parties opposing (in whole or in part), or seeking additional conditions on the approval of the Application. If the Board grants this request, Interested Parties request the Board to establish the agreed schedule for presentation of arguments by such parties. If the Board does not grant the request for additional argument time, Interested Parties request an opportunity to submit a revised schedule within three business days after service of the decision denying the request as to the agreed allocation time and possible order of presentation by such parties.

---

[4] While the Department of Justice is not joining in this response, it has authorized us to state that they have no objection to this request and the proposed allocation of time.

Respectfully submitted,

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Attorney for Save the Rock Island Committee, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of June, 1996, served a copy of the foregoing response on all parties of record, by first-class mail, postage prepaid, in accordance with the Rules of Practice.

FREDERIC L. WOOD

8 4057

STATE OF OKLAHOMA
OFFICE OF THE GOVERNOR

April 25, 1996

ICC

Item No. _____

Page Count 2

JUNE 1996 #91

The Honorable Vernon A. Williams, Secretary
Surface Transportation Board
Twelfth and Constitution Avenue Northwest
Washington, DC 20423

SUPPLEMENTAL VERIFIED STATEMENT
OF
FRANK KEATING
GOVERNOR OF OKLAHOMA

I am Frank Keating, Governor of the State of Oklahoma. I previously filed a verified statement in support of the merger between the Union Pacific and Southern Pacific railroads which is before your Board in Finance Docket No. 32760. It is my understanding that on April 29, 1996, one may respond to comments, protests, requested conditions and other opposition due. It is also my understanding that our Enid Board of Trade has opposed the merger because of the reduction in competition which has resulted from previous mergers. It is my understanding that the KCS Railway is interested in serving the states of Oklahoma, Kansas and Texas, thereby providing a third competitor to this market.

It has also come to my attention that the Union Pacific Railroad has allowed shippers in Kansas and Colorado access to unit trains termed "efficiency trains" while our Oklahoma shippers are denied the same treatment. The UP is canceling 25 car rates on wheat to the Gulf and will increase the minimum requirements to (92-100) carloads. This was announced on April 15, 1996. A revision will be made to UP 4050 Items 1580, 1581 and 1581.00.

It has also come to my attention that Farmland Industries has opposed this merger. Vice President of Transportation Frederick E. Schrodt filed a verified statement on behalf of the Oklahoma, Kansas and other state shippers. His statement may be found in the comments of the Western Shippers' Coalition as W.S.C. Ex 4.

Farmland and the Cooperative elevators in this state have to compete for grains and sales with other surrounding states.

Vice President Schrodt, in his summation page, has given me an insight as to the merger which was not previously available to me.

Our largest independent grain operator in this state has opposed the merger. That company is W.B. Johnston Grain Company. It has been made known to me that the Enid Board of Trade, the Oklahoma Grain and Feed Association and other shippers have reservations concerning the merger and the reduction of competition from the previous BN-SF merger.

Suite 212 • State Capitol Building • Oklahoma City, Oklahoma • 73105 • 405/521-2342

With the BN-SF merger, the Enid market has lost a third Class I carrier, and it would be helpful that the Surface Transportation Board give serious consideration to Oklahoma's need for a third carrier.

In the interest of providing competitive rail freight rates and service consistent with that available to grain shippers in neighboring states, I request the Surface Transportation Board give serious consideration to the following needs of Oklahoma:

1. Full usage rights or the right to purchase by the Kansas City Southern railroad or other interested Class I railroad, the old north-south Rock Island line from Herrington, KS. to Fort Worth, TX, now operated by the UP. The Oklahoma segment of this route is owned by the State of Oklahoma and leased to the UP.

2. Enid be allowed to load "efficiency trains" at the same rate as Kansas terminals.

3. MKT car loading history be included in the UP car ordering system.

Agriculture is an important business in our state and, with the passage of GATT and NAFTA, agricultural interests will be moving commodities in increasing volume both for domestic consumption and export movements. Mexico may become an increasing importer of Oklahoma products.

Since my early filing with the Interstate Commerce Commission, all of the above information has been received in my office as well as the office of Oklahoma Secretary of Transportation Neal A. McCaleb.

The Union Pacific railroad has been a good transportation partner in our state for a number of years, and we sincerely desire their accommodation on the above points.

Frank Keating
Governor of Oklahoma

STB FD 32760 83774 5-24-96

Item No. _____

Page Count 1

May, 1996 # 149

83774

DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW
SUITE 750
1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500

TELECOPIER: (202) 371-0900

May 24, 1996

VIA HAND DELIVERY

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Branch, Room 1324
12th St and Constitution Ave. N.W.
Washington, D.C. 20423

Re: Finance Docket No. 32760, *Union Pacific Corporation, et al. -- Control & Merger -- Southern Pacific Rail Corporation, et al.*

Dear Secretary Williams:

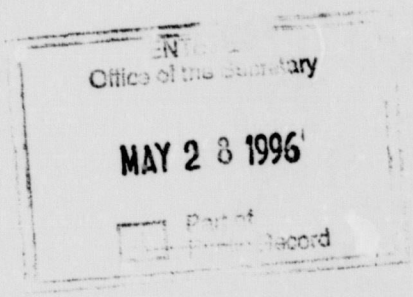
This is to inform the Board that in the Response of Interested Parties to Motion of Western Shippers' Coaltion for Clarification or Reconsideration of Decision No. 36, filed May 21, 1996, the Save the Rock Island Committee, Inc., should have been listed on the front cover. The Committee was listed on the signature page, but was inadvertantly omitted from the names of the parties listed on the front cover.

We sincerely regret the error, and hope that this matter does not inconvenience the Board.

Sincerely,

Nicholas J. DiMichael

Nicholas J. DiMichael



tem No. _____

age Count _____

May, 1996 # 157

83284

COVINGTON & BURLING
1201 PENNSYLVANIA AVENUE, N. W.
P.O. BOX 7566
WASHINGTON, D.C. 20044-7566
(202) 662-6000

TELEFAX: (202) 662-6291
TELEX: 89-593 (COVLING WSH)
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LECONFIELD HOUSE
CURZON STREET
LONDON W1Y 8AS
ENGLAND
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TELEFAX: 44-171-495-3101

BRUSSELS CORRESPONDENT OFFICE
44 AVENUE DES ARTS
BRUSSELS 1040 BELGIUM
TELEPHONE: 32-2 512-9890
TELEFAX: 32-2-502-1598

ARVID E. ROACH II
DIRECT DIAL NUMBER
(202) 662-5388
DIRECT TELEFAX NUMBER
(202) 778-5388

May 24, 1996

BY HAND

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Twelfth Street and Constitution Avenue, N.W.
Room 2215
Washington, D.C. 20423

Re: Finance Docket No. 32760, Union Pacific Corp., et al. -- Control & Merger -- Southern Pacific Rail Corp., et al.

Dear Secretary Williams:

Enclosed for filing in the above-captioned docket are the original and 20 copies of UP/SP-255, titled "Errata to Yarberry Verified Statement." Please note that this Errata contains "Highly Confidential" information for filing under seal. Changes have been made to lines 3, and 5-6 of Lawrence C. Yarberry's Rebuttal Verified Statement. The Board is being provided with 20 copies. Also enclosed is a copy of the filing on diskette.

We also have included an original and 20 copies of UP/SP-254, titled "Applicants' Reply to KCS' 'Supplement' to Motion to Strike." A copy of this filing is included on the diskette.

Applicants have served the Errata on parties who are represented by outside counsel and have advised that they have complied with the terms of the protective order entered in Decision No. 2, served September 1, 1995.

Applicants will promptly provide the Errata on request to those individuals who qualify under the terms of the protective order. The Errata can be obtained by contacting Karen Kramer at Covington & Burling, (202) 662-5167.

Sincerely,

Arvid E. Roach II

cc: All Parties of Record

Enclosures

STB FD 32760 5-24-96 83782

83782

LAW OFFICES
ZUCKERT, SCOUTT & RASENBERGER, L.L.P.
888 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20006-3939
TELEPHONE : (202) 298-8660
FACSIMILES: (202) 342-0683
(202) 342-1316

TM-38

May 24, 1996

Item No._____

Page Count_____

May 1996 # 147

Vernon A. Williams
Secretary
Surface Transportation Board
Room 2215
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Finance Docket No. 32760 Oral Argument

Dear Secretary Williams:

The Texas Mexican Railway Company ("Tex Mex") hereby requests that it be permitted to participate in the oral argument scheduled for July 1, 1996. Tex Mex has submitted a responsive application and an application for terminal trackage rights in this proceeding.

Tex Mex believes that the UP/SP merger should not be approved unless it is conditioned on the granting of certain trackage rights to Tex Mex which are described in Tex Mex's responsive application and application for terminal trackage rights and which are necessary to ameliorate the substantial anticompetitive effects of the merger as proposed by the applicants.

The issues Tex Mex would address are (1) whether the merger as proposed by the applicants will, as Tex Mex contends, substantially reduce rail competition in the markets served by Tex Mex, particularly the market for rail transportation between the United States and Mexico, and (2) whether, as Tex Mex contends, the merger is likely to result in the loss of essential rail services to shippers served by Tex Mex. Although Tex Mex and other parties will have filed extensive written submissions on these issues, I believe that oral argument by Tex Mex will serve to focus the most important facts and issues and will substantially help the Board to understand and properly resolve the issues.

Tex Mex requests 15 minutes for oral argument. I anticipate that I will present the argument for Tex Mex.

Sincerely,

Richard A. Allen

cc: Official Service List

Item No. 82807

Page Count Apr # 366

U. S. Department of Justice
Antitrust Division

325 7th Street, N.W.
Washington, DC 20530

April 26, 1996

BY HAND
Mr. Vernon A. Williams
Secretary
Surface Transportation Board
12th and Constitution Avenue, N.W.
Room 2215
Washington, D.C. 20423

Re: Union Pacific Corp., et al. -- Control and Merger-- Southern Pacific Rail Corp., et al.
Finance Docket No. 32760

Dear Secretary Williams:

Pursuant to Judge Nelson's Order Concerning Deposition Transcripts, served April 22, 1996, I am enclosing for filing an original and five copies of a Supplement to Comments of the United States Department of Justice (DOJ-12), which contains copies of deposition transcript pages cited in the Comments of the United States Department of Justice (DOJ-8). This filing contains material that has been designated as highly confidential, and is to be filed under seal.

Please call me if you have any questions about this filing at (202) 307-6666.

Sincerely yours,

Michael D. Billiel
Attorney
Antitrust Division

Enclosures

Item No. _____ 82800

Page Count 5

Dgi #360

LAW OFFICES
COUTT & RASENBERGER, L.L.P.
18 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20006-3939
TELEPHONE : (202) 298-8660
FACSIMILES: (202) 342-0683
(202) 342-1316

April 26, 1996

Via Hand Delivery

Vernon A. Williams
Secretary
Surface Transportation Board
Room 2215
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Union Pacific Corp., Union Pacific RR. Co. and Missouri Pacific RR Co. -- Control and Merger -- Southern Pacific Rail Corp., Southern Pacific Transp. Co., St. Louis Southwestern Rw. Co., SPCSL Corp. and The Denver and Rio Grande Western RR Co., Finance Docket No. 32760

Dear Secretary Williams:

Enclosed for filing are an original and twenty copies of TM-31, Supplemental Errata to Certain Verified Statements Contained in the Responsive Application of The Texas Mexican Railway Company. Also enclosed is a 3.5" floppy computer disc containing a copy of each of the filings in Wordperfect 5.1 format.

Sincerely,

John V. Edwards

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

Union Pacific Corp., Union Pacific RR. Co. and Missouri Pacific RR Co. -- Control and Merger -- Southern Pacific Rail Corp., Southern Pacific Trans. Co., St. Louis Southwestern Rw. Co., SPCSL Corp. and The Denver and Rio Grande Western Corp.	**Finance Docket No. 32760**

SUPPLEMENTAL ERRATA TO
CERTAIN VERIFIED STATEMENTS
CONTAINED IN
THE RESPONSIVE APPLICATION OF
THE TEXAS MEXICAN RAILWAY COMPANY

Richard A. Allen
Andrew R. Plump
John V. Edwards
Zuckert, Scoutt & Rasenberger, LLP
Brawner Building
888 17th Street, N.W.
Washington, D.C. 20006-3939
(202) 298-8660

Attorneys for The Texas
Mexican Railway Company

April 26, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Union Pacific Corp., Union Pacific RR. Co. and Missouri Pacific RR Co. -- Control and Merger -- Southern Pacific Rail Corp., Southern Pacific Trans. Co., St. Louis Southwestern Rw. Co., SPCSL Corp. and The Denver and Rio Grande Western Corp.	**Finance Docket No. 32760**

SUPPLEMENTAL ERRATA TO
CERTAIN VERIFIED STATEMENTS
CONTAINED IN
THE RESPONSIVE APPLICATION OF
THE TEXAS MEXICAN RAILWAY COMPANY

Verified Statement of Joseph F. Ellebracht:

Tex Mex hereby submits the following supplemental errata to the verified statement of Joseph F. Ellebracht which was contained in Tex Mex's Responsive Application (TM-25):

Page	Line	Change
70	18	Change "10,534" to "10,354"
76	18	Change "discourage traffic" to "discourage grain traffic"
87	table	Replace the two occurrences of the number "353" in the row labeled "Wichita, KS" with "808"
87	table	Replace the two occurrences of the number "279" in the row labeled "Ft. Worth, TX" with "434"

87	table	Replace the two occurrences of the number "813" in the row labeled "Kansas City" with "968"

Respectfully submitted,

Richard A. Allen
Andrew R. Plump
John V. Edwards
ZUCKERT, SCOUTT & RASENBERGER, LLP
888 Seventeenth St., NW, Suite 600
Washington, DC 20006-3939

Attorneys for Texas Mexican Railway

Dated: April 26, 1996

CERTIFICATE OF SERVICE

I hereby certify that, on this 26th day of April, I have caused to be served TM-31, the Supplemental Errata to Certain Verified Statements Contained in the Responsive Application of the Texas Mexican Railway Company, by hand delivery upon the following persons:

Arvid E. Roach II
J. Michael Hemmer
Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044-7566

Paul A. Cunningham
Richard B. Herzog
James M. Guinivan
Harkins, Cunningham
Suite 600
1300 Nineteenth Street, N.W.
Washington, D.C. 20036

I have also caused the foregoing to be served by first-class mail, postage pre-paid, or by a more expeditious manner of delivery, on all parties of record in Finance Docket No. 32760.

John V. Edwards
Zuckert, Scoutt
& Rasenberger, L.L.P.
Brawner Building
888 17th Street, N.W.
Washington, D.C. 20006-3959
(202) 298-8660

Dated: April 26, 1996

82775

Item No.

Page Count Apr #354

WEINER, I
ATTORNEYS AT LAW ER
RATION

1350 NEW YORK AVENUE, N.W., SUITE 800
WASHINGTON, D.C. 20005-4797
(202) 628-2000
TELECOPIER (202) 628-2011

Confidential

April 25, 1996

RICHARD J. ANDREANO, JR.
JAMES A. BRODSKY
JO A. DeROCHE
CYNTHIA L. GILMAN
ELLEN A. GOLDSTEIN*
DON J. HALPERN
CHRISTOPHER E. KACZMAREK*
MITCHEL H. KIDER
SHERRI L. LEDNER
PAUL C. OAKLEY*
BRUCE E. PRIDDY*
MARK H. SIDMAN
RUGENIA SILVER
HARVEY E. WEINER
JOSEPH F. YENOUSKAS

*NOT ADMITTED IN D.C.

BY HAND DELIVERY

MRL-1

Vernon A. Williams
Secretary
Surface Transportation Board
12th and Constitution Avenue, N.W.
Washington, D.C. 20423

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 Grande Western Railroad Company

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and 20 copies of Supplemental Response of MRL to Applicants' Eighth Set of Interrogatories and Request for Production of Documents.

Please acknowledge receipt of this letter and filing by date-stamping the enclosed acknowledgment copy and returning it to our messenger.

Very truly yours,

Jo A. DeRoche

Jo A. DeRoche

Enclosure

82770

Item No.

Page Count 3

Apr #346

fore the

RCT-6

SPORTATION BOARD

Finance Docket No. 32760

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

SUPPLEMENTAL RESPONSE OF THE RAILROAD COMMISSION OF TEXAS ON BEHALF OF THE STATE OF TEXAS TO APPLICANTS' THIRD SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

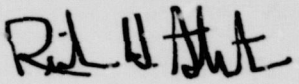
Pursuant to 49 C.F.R. §§ 1114.26 and 1114.30, the Railroad Commission of Texas ("Commission") hereby responds to Applicants' Third Set of Interrogatories and Requests for Production of Documents.

52. To the extent not done as part of your prior discovery responses or March 29 filings, produce any studies, analyses or reports supporting or discussing the feasibility, cost, or any other aspect of the proposal for "neutral terminal railroads" set forth in RCT-4, e.g., pp. 19-29.

See general objections set forth in the Commission's initial response to Applicants' Third Set of Interrogatories (RCT-5). Without waiving those objections, the Commission states that it is in the process of fully developing the proposal for neutral terminal railroads. It further states that the basic concept is patterned after the existing operations of the Houston Port Terminal Railroad. Furthermore, individual members of the Commission have met with various groups throughout the State of Texas to discuss the feasibility of the

concept and to confirm that the shipping public supports the neutral terminal railroad concept which the Commission has been proposed as a means to offset and ameliorate certain of the anticompetitive aspects of the proposed merger, if it is approved. It is further noted that the basic concept is not new, and that terminal railroads exist in several areas of the United States.

Respectfully submitted,



Richard H. Streeter
BARNES & THORNBURG
1401 Eye Street, N.W.
Suite 500
Washington, D.C. 20005
(202) 408-6933

Counsel for the
RAILROAD COMMISSION OF TEXAS

Dated: April 24, 1996

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of April, 1996, I caused a copy of the foregoing Supplemental Response of the Railroad Commission of Texas to Applicants' Third Set of Interrogatories and Requests for Production of Documents to be served by hand upon:

Arvid E. Roach II, Esq.
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044

Gerald Norton, Esq.
Harkins Cunningham
1300 Nineteenth Street, N.w.
Washington, D.C. 20036

and by first class mail, postage prepaid, on all other persons on the Restricted Service List in this proceeding.

Richard H. Streeter

RHS 10904

Item No. 82764

Page Count 4

Appl #348

MAN SANDERS LLP

ATTORNEYS AT LAW

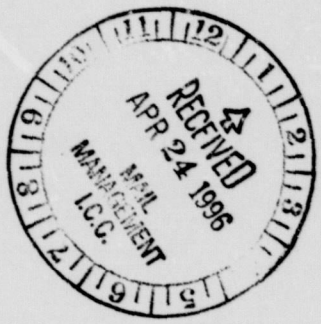
A LIMITED LIABILITY PARTNERSHIP

1300 I STREET, N.W.
SUITE 500 EAST
WASHINGTON, D.C. 20005-3314
TELEPHONE: 202-274-2950
FACSIMILE: 202-274-2994

WILLIAM A. MULLINS

DIRECT: 202-274-2953

April 24, 1996



HAND DELIVERED

Mr. Vernon A. Williams
Surface Transportation Board
Case Control Branch
Room 2215
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Finance Docket No. 32760, *Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company -- Control & 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*

Dear Secretary Williams:

Enclosed please find an original and twenty copies of (1) The Kansas City Southern Railway Company Inc.'s Supplemental Response to Interrogatory No. 1 and Request No. 1 of Applicants' Tenth Set of Interrogatories and Request for Production of Documents ("KCS-47") and (2) The Kansas City Southern Railway Company's Responses to Applicants' Fourteenth Discovery Requests ("KCS-48").

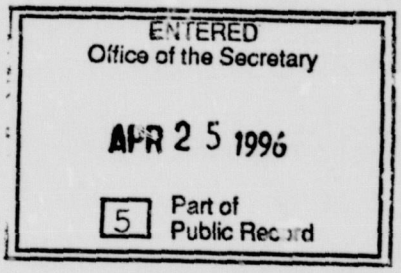
Also enclosed is a 3.5 inch disk containing the text of both KCS-47 and KCS-48.

Sincerely yours,

William A. Mullins

Enclosures

cc: The Honorable Jerome Nelson
Restricted Service List



KCS-48

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S
RESPONSES TO APPLICANTS' FOURTEENTH DISCOVERY REQUESTS

Richard P. Bruening
Robert K. Dreiling
The Kansas City Southern
Railway Company
114 West 11th Street
Kansas City, Missouri 64105
Tel: (816)556-0392
Fax: (816)556-0227

John R. Molm
Alan E. Lubel
William A. Mullins
Troutman Sanders LLP
1300 I Street, N.W.
Suite 500 - East Tower
Washington, D.C. 20005
Tel: (202)274-2950
Fax: (202)274-2994

James F. Rill
Sean F.X. Boland
Virginia R. Mettallo
Collier, Shannon, Rill & Scott
3050 K Street, N.W.
Suite 400
Washington, D.C. 20007
Tel: (202)342-8400
Fax: (202)338-5534

April 24, 1996

Attorneys for The Kansas City
Southern Railway Company

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S
RESPONSES TO APPLICANTS' FOURTEENTH DISCOVERY REQUESTS

The Kansas City Southern Railway Company ("KCS") responds to Applicants' Fourteenth Discovery Requests as enumerated below.

KCS reasserts and incorporates by reference, its General Objections to Applicants' discovery requests as set forth in KCS-28, paragraphs 3 through 13. Subject to these objections and to prior rulings by Administrative Law Judge Nelson, KCS responds to Applicants' individual interrogatories as follows:

INTERROGATORY

1. State the approximate number of shippers you contacted about providing a statement opposing the UP/SP merger in whole or in part or supporting the position you have stated. **[CR, KCS, MRL, Tex-Mex]**

RESPONSE: KCS is producing documents sufficient to identify the shippers contacted.

DOCUMENT REQUEST

1. Produce documents sufficient to identify the shippers you contacted about providing a statement opposing the UP/SP merger in whole or in part or supporting the position you have stated. **[CR, KCS, MRL, Tex-Mex]**

RESPONSE: KCS is producing documents sufficient to identify the shippers contacted.

This 24th day of April, 1996.

Richard P. Bruening
Robert K. Dreiling
The Kansas City Southern
Railway Company
114 West 11th Street
Kansas City, Missouri 64105
Tel: (816) 556-0392
Fax: (816) 556-0227

James F. Rill
Sean F.X. Boland
Virginia R. Mettallo
Collier, Shannon, Rill & Scott
3050 K Street, N.W., Suite 400
Washington, D.C. 20007
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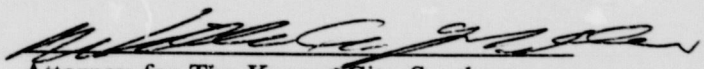
John R. Molm
Alan E. Lubel
William A. Mullins
David B. Foshee
Troutman Sanders LLP
1300 I Street, N.W.
Suite 500 - East Tower
Washington, D.C. 20005
Tel: (202) 274-2950
Fax: (202) 274-2994

Attorneys for The Kansas City
Southern Railway Company

April 24, 1996

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "The Kansas City Southern Railway Company's Responses to Applicants' Fourteenth Discovery Requests" was served this 24th day of April, 1996, by hand delivery to counsel for Applicants and by hand delivering or depositing a copy in the United States mail in a properly addressed envelope with adequate postage thereon addressed to each other party of record.



Attorney for The Kansas City Southern Railway Company

(carrolbh)wpdocs\molmhc\kcs\upsp\kcs48

Item No. _____

Page Count 6

APR #339

82754

U. S. Department of Justice

Antitrust Division

325 7th Street, N.W., Suite 500
Washington, DC 20530

April 23, 1996

BY HAND

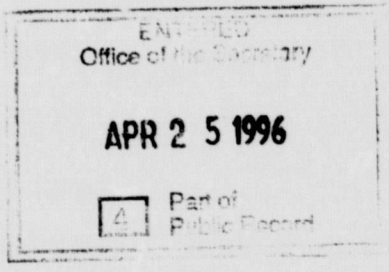
Mr. Vernon A. Williams
Secretary
Surface Transportation Board
12th and Constitution Avenue, N.W.
Room 2215
Washington, D.C. 20423

Re: Union Pacific Corp., et al. -- Control and Merger-- Southern Pacific Rail Corp., et al.
Finance Docket No. 32760

Dear Secretary Williams:

Enclosed for filing are an original and twenty copies of the Errata to Comments of the United States Department of Justice (DOJ-10). This contains highly confidential material and is to be filed under seal. I am also enclosing twenty copies of a public (redacted) version of DOJ-10. Finally, I am enclosing a 3.5 inch disk containing each of the filings in Word Perfect 5.1 format.

Please call me if you have any questions about this filing at (202) 307-0666.



Sincerely yours,

Michael D. Billiel
Attorney
Antitrust Division

Enclosures

cc: Parties of Record

PUBLIC (REDACTED) VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

UNION PACIFIC CORP., UNION PACIFIC RAILROAD CO. AND MISSOURI PACIFIC RAILROAD CO.-- CONTROL AND MERGER -- SOUTHERN PACIFIC RAIL CORP.,SOUTHERN PACIFIC TRANSPORTATION CO., ST.LOUIS SOUTHWESTERN RAILWAY CO., SPCSL CORP.) AND THE DENVER AND RIO GRANDE WESTERN) RAILROAD CO.	)	FINANCE DOCKET NO. 32760

ERRATA TO
COMMENTS OF THE UNITED STATES
DEPARTMENT OF JUSTICE

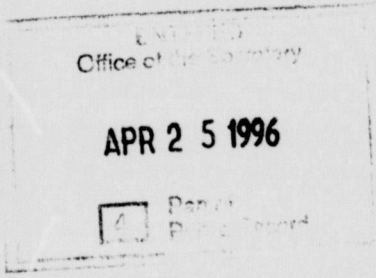
Communications with respect to this document should be addressed to:

Roger W. Fones, Chief
Donna N. Kooperstein, Assistant Chief

Michael D. Billiel
Joan S. Huggler
Robert L. McGeorge
Angela L. Hughes
Michele B. Felasco
Attorneys

Transportation, Energy &
Agriculture Section
Antitrust Division
U.S. Department of Justice
325 Seventh Street,N.W.
Washington, D. C. 20530

202-307-6666



April 23, 1996

DOJ-10

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

UNION PACIFIC CORP., UNION PACIFIC RAILROAD CO. AND MISSOURI PACIFIC RAILROAD CO.-- CONTROL AND MERGER -- SOUTHERN PACIFIC RAIL CORP.,SOUTHERN PACIFIC TRANSPORTATION CO., ST.LOUIS SOUTHWESTERN RAILWAY CO., SPCSL CORP.) AND THE DENVER AND RIO GRANDE WESTERN) RAILROAD CO.	FINANCE DOCKET NO. 32760

ERRATA TO
COMMENTS OF THE UNITED STATES
DEPARTMENT OF JUSTICE

The Department of Justice hereby submits the following errata to the verified statements of W. Robert Majure and Eileen Zimmer which were contained in the Comments of the United States Department of Justice (DOJ-8):

Verified Statement of W. Robert Majure:

Page	Line	Change
3	4	"over" to "about"
3	5	"over" to "about"
18	fn.17	
22	13	
22	14	
22	15	
23	1	
23	2	
23	7	

27	6	
27	6	
27	8	
27	18	"dupopoly" to "duopoly"
30	12	Table 4 title - "Two-to-One" to "Three-to-Two"
34	11	"4-digit" to "6-digit"
36	5	Add footnote 36a: "Reproducing the base study using the 4-digit SPLC for the geographic markets predicts a price effect of going from three railroads to an equivalent market with only two railroads of 8.84%, and 15.6% for two to one. Using the BEA predicts price effects of 13.8% and 24.7% respectively. Consequently, the estimated harm to shippers and consumers ranges from $650 million to over $1 billion. The robustness tests produce the same conclusions for 4-digit SPLCs and BEAs as for 6-digit SPLCs. Although I believe BEAs are the best approximation of the true geographic market, as mentioned above, the robustness tests based on BEAs may be unreliable due to the limited amount of data available."

Verified Statement of Eileen Zimmer

Exhibit 2, page 2 Add footnote after "*": "The 1995 figures are for the first nine months of the year."

Respectfully submitted,

Michael D. Billiel
Joan S. Huggler
Robert L. McGeorge
Angela L. Hughes
Michele B. Felasco

Attorneys
Antitrust Division
U.S. Department of Justice
325 Seventh Street, N.W.
Suite 500
Washington, D.C. 20530
(202) 307-6666

April 23, 1996

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the ERRATA TO THE COMMENTS OF THE UNITED STATES DEPARTMENT OF JUSTICE (DOJ-10) to be served on counsel for the Applicants, Arvid E. Roach II (Covington & Burling, 1201 Pennsylvania Ave., N.W., Washington, D.C. 20044) and Paul A. Cunningham (Harkins Cunningham, 1300 Nineteenth St., N.W., Washington, D.C. 20036), by hand, and on all other parties of record in this proceeding by first class mail or more expeditious means, this 23rd day of April, 1996.

April 23, 1996

Michael D. Billiel

Item No. 82734

Page Count Apr #340

MAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

1300 I STREET, N.W.
SUITE 500 EAST
WASHINGTON, D.C. 20005-3314
TELEPHONE: 202-274-2950
FACSIMILE: 202-274-2994

WRITER'S DIRECT DIAL:

April 23, 1996

HAND DELIVERED

Mr. Vernon A. Williams
Surface Transportation Board
Case Control Branch
Room 2215
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Finance Docket No. 32760, *Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company -- Control & 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*

Dear Secretary Williams:

Enclosed please find an original and twenty copies of The Kansas City Southern Railway Company's Supplemental Response to Interrogatory No. 1 of Applicants' Fifth Set of Interrogatories and Document Requests ("KCS-46").

Also enclosed is a 3.5 inch disk containing the text of KCS-46.

Sincerely yours,

William A. Mullins

Enclosures

cc: The Honorable Jerome Nelson
Restricted Service List

ORIGINAL

KCS-46

BEFORE THE
ACE TRANSPORTATION BOARD

Finance Docket No. 32760

UP PORATION, UNION PACIFIC RAILROAD COMPANY
SOURI 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

THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S
SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 1 OF
APPLICANTS' FIFTH SET OF INTERROGATORIES AND DOCUMENT REQUESTS

Richard P. Bruening
Robert K. Dreiling
The Kansas City Southern
Railway Company
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Alan E. Lubel
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Suite 640-North Building
Washington, D.C. 20004-2609
Tel: (202)274-2950
Fax: (202)274-2994

James F. Rill
Sean F.X. Boland
Virginia R. Mettallo
Collier, Shannon, Rill & Scott
3050 K Street, N.W.
Suite 400
Washington, D.C. 20007
Tel: (202)342-8400
Fax: (202)338-5534

Attorneys for The Kansas City
Southern Railway Company

April 23, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S
SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 1 OF
APPLICANTS' FIFTH SET OF INTERROGATORIES AND DOCUMENT REQUESTS

The Kansas City Southern Railway Company, Inc. ("KCS") hereby serves its Supplemental Response to Interrogatory No. 1 of Applicants' Fifth Set of Interrogatories and Document Requests:

1. Yes. KCS's parent company, KCSI, like other companies, contributed to the effort of the Coalition For Competitive Rail Transportation.

This 23rd day of April, 1996.

Richard P. Bruening
Robert K. Dreiling
The Kansas City Southern
Railway Company
114 West 11th Street
Kansas City, Missouri 64105
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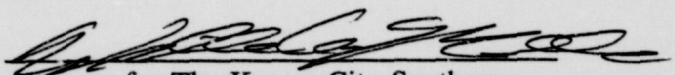
Fax: (202) 274-2994

Attorneys for The Kansas City
Southern Railway Company

April 23, 1996

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "The Kansas City Southern Railway Company's Supplemental Response to Interrogatory No. 1 of Applicants' Fifth Set of Interrogatories and Document Requests" was served this 23rd day of April, 1996, by hand delivery to counsel for Applicants and by hand delivering or depositing a copy in the United States mail in a properly addressed envelope with adequate postage thereon addressed to each other party of record.



Attorney for The Kansas City Southern Railway Company

(carrolbh)wpdocs\molmhc\kcs\uprp\kcs45

Item No. _____

Page Count 5

Appl #323

82664

CR-34

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY

-- CONTROL AND MERGER --

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

CONSOLIDATED RAIL CORPORATION'S RESPONSES TO APPLICANTS' TENTH SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Constance L. Abrams
Jonathan M. Broder
Anne E. Treadway
CONSOLIDATED RAIL CORPORATION
2001 Market Street
Philadelphia, PA 19101

Daniel K. Mayers
A. Stephen Hut, Jr.
Joseph E. Killory, Jr.
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037

April 22, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY

-- CONTROL AND MERGER --

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

CONSOLIDATED RAIL CORPORATION'S RESPONSES TO APPLICANTS' TENTH SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Consolidated Rail Corporation ("Conrail") hereby provides its responses to Applicants' Tenth Set of Interrogatories and Document Requests, dated April 12, 1996.

GENERAL OBJECTIONS

These responses are made subject to and without waiving the general and additional objections expressly stated or incorporated by reference in Conrail's Objections to Applicants' Tenth Set of Interrogatories and Requests for Production of Documents (CR-33) filed April 19, 1996.

INTERROGATORIES

1. To the extent not answered in your previous discovery responses, identify any communications or agreements between Conrail and KCS or their representatives, concerning any desires, plans or efforts of KCS or Conrail to bid on the purchase of all or any portion of the lines of applicants. **[CR, KCS]**

Response: Conrail hereby responds to this Interrogatory as limited by agreement between counsel for Conrail and counsel for Applicants, pursuant to which Applicants agreed to limit this Interrogatory so as to require identification only of responsive agreements between Conrail and KCS, as well as the following brief narrative description.

Subsequent to announcement of Applicants' proposed merger, representatives of Conrail and KCS had two meetings at which they had discussions that may be responsive to this Interrogatory. Without waiving any applicable common interest privilege, Conrail states that no agreements were reached at that time, or at any other time, concerning any desires, plans, or efforts of KCS or Conrail to bid on the purchase of all or any portion of the lines of Applicants.

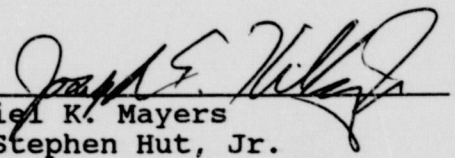
DOCUMENT REQUESTS

1. Produce any documents relating to or reflecting the communications or agreements referred to in Interrogatory No. 1. **[CR, KCS]**

Response: Conrail hereby responds to this Interrogatory as limited by agreement between counsel for Conrail and counsel for Applicants, pursuant to which Applicants agreed to limit this Document Request to documents reflecting the

agreements referred to in Interrogatory No. 1. Conrail entered into no such agreements, and therefore has no responsive documents.

Constance L. Abrams
Jonathan M. Broder
Anne E. Treadway
CONSOLIDATED RAIL CORPORATION
2001 Market Street
Philadelphia, PA 19101



Daniel K. Mayers
A. Stephen Hut, Jr.
Joseph E. Killory, Jr.
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037

April 22, 1996

CERTIFICATE OF SERVICE

I certify that on this 22nd day of April, 1996, a copy of the foregoing Consolidated Rail Corporation's Objections to Applicants' Tenth Set of Interrogatories and Requests for Production of Documents was served by hand delivery to:

Arvid E. Roach II
S. William Livingston, Jr.
Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044

Paul A. Cunningham
Richard B. Herzog
James M. Guinivan
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, D.C. 20036

and served by facsimile transmission on all parties on the Restricted Service List.

Joseph E. Killory, Jr.

n No. _____

Page Count 10

Apr #310

81533

MAN SANDERS LLP

RNEYS AT LAW

LIMITED LIABILITY PARTNERSHIP

999 PEACHTREE STREET, N.E. · SUITE 750
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NORTH BUILDING
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April 18, 1996

ENTERED
Office of the Secretary
APR 22 1996
Part of
Public Record

RECEIVED
APR 18 1996
MAIL
MANAGEMENT
I.C.C.

HAND DELIVERED

Mr. Vernon A. Williams
Surface Transportation Board
Case Control Branch
Room 2215
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Finance Docket No. 32760, *Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company -- Control & 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*

Dear Secretary Williams:

Enclosed please find an original and twenty copies of The Kansas City Southern Railway Company's Seventh Discovery Requests to Applicants ("KCS-44").

Also enclosed is a 3.5 inch disk containing the text of KCS-44.

Sincerely yours,

William A. Mullins

Enclosures

cc: The Honorable Jerome Nelson
Restricted Service List

KCS-44

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S SEVENTH DISCOVERY REQUESTS TO APPLICANTS

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Attorneys for The Kansas City
Southern Railway Company

April 18, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S
SEVENTH DISCOVERY REQUESTS TO APPLICANTS

Pursuant to 49 C.F.R. §§ 1114.21 - 1114.31, The Kansas City Southern Railway Company ("KCS") directs the following requests to Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company and to Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company, collectively referred to as "Applicants."

KCS incorporates by reference the definitions of the Railroad Entities, Definitions and Instructions contained in its First Interrogatories (KCS-7, pp. 1-8) as if fully set forth herein, with paragraph 1 of the Instructions being revised to require written response to

interrogatories and actual production of the requested documents within six calendar days of service.

Interrogatories

83. Describe with particularity all correspondence or contacts with, presentations to or other communications by or on behalf of Applicants with any representative of the following agencies, departments or entities, wherein the subject matter of such communication was the position taken or advocated to be taken by Applicants or any other party to this proceeding:

(a) the Department of Justice;

(b) the Department of Defense;

(c) the Department of Agriculture;

(d) the Department of Transportation;

(e) any state attorney general;

(f) any state department of transportation; or

(g) any state railroad commission.

Your description of each such communication shall include (i) the date, (ii) the names and job titles of the participants, and (iii) a description of the specific topics discussed.

84. Describe with particularity all correspondence or contacts with, presentations to or other communications by or on behalf of Applicants with any representative of the following agencies, departments or entities, wherein the subject matter of such communication was the position taken or advocated to be taken by Applicants or any other party to this proceeding:

(a) the President of the United States;

(b) any cabinet member;

(c) any United States senator;

(d) any United States congressman;

(e) the Federal Trade Commission;

(f) any state governor; or

(g) any other elected or appointed state or federal official.

85. State the name and address of each lobbyist, government relations firm or similar political consultant retained by Applicants to assist in their contacts or dealings with the persons or entities identified in interrogatory nos. 83 and 84. Include for each (i) the specific purpose for which Applicants retained such person or firm and (ii) each person or entity contacted on behalf of Applicants.

86. Describe with particularity all contacts or communications subsequent to March 29, 1996, between either Applicant and any shipper or shipper group, the subject matter of which was the position taken or not taken by that shipper in this proceeding. Your description of each such communication shall include (i) the date, (ii) the names and job titles of the participants, and (iii) a description of the specific topics discussed.

87. Describe with particularity all contacts or communications between either Applicant and any other party of record in this proceeding, the subject matter of which was modification or withdrawal of that party's opposition to the merger application as submitted by Applicants. Your description of each such communication shall include (i) the date, (ii)

the names and job titles of the participants, and (iii) a description of the specific topics discussed.

88. Describe all communications between either Applicant and CSX Transportation, Inc. and/or Canadian National Railway Company the subject matter of which was the position taken or to be taken by any party in this proceeding. Your description of each such communication shall include (i) the date, (ii) the names and job titles of the participants, and (iii) a description of the specific topics discussed.

89. Describe with particularity all contacts between Applicants and BNSF subsequent to December 1, 1995, the subject matter of which was (i) a modification of or amendment to the Agreement or (ii) the sale of lines to BNSF. Your description of each such communication shall include (i) the date, (ii) the names and job titles of the participants, and (iii) a description of the specific topics discussed.

90. If you contend that any contacts or communications requested to be identified in interrogatory nos. 83-89 is privileged, as to each communication state (i) the date, (ii) the identity of all participants, and (iii) the basis of the assertion that such communication is privileged.

91. Attached hereto as Exhibit "A" is a page labeled HC-400018. Identify

(a) the name, employer and job title of the author;

(b) the name, employer and job title of the addressee;

(c) the job title and employer of Mark Franklin;

(d) the job title and employer of Larry Erwin;

(e) the job title and employer of Ron Babin; and

(f) the job title and employer of Bill Ruhl.

Document Requests

92. Produce all documents evidencing the facts stated in your response to interrogatory no. 83. Production of such documents in lieu of responding to subparagraphs (i), (ii), and (iii) shall be a sufficient response to the interrogatory only insofar as the documents clearly respond to each subparagraph. If the documents do not clearly indicate the response to any subparagraph, that subparagraph shall be answered in addition to production of the responsive documents.

93. Produce all documents evidencing the facts stated in your response to interrogatory no. 84. Production of such documents in lieu of responding to subparagraphs (i), (ii), and (iii) shall be a sufficient response to the interrogatory only insofar as the documents clearly respond to each subparagraph. If the documents do not clearly indicate the response to any subparagraph, that subparagraph shall be answered in addition to production of the responsive documents.

94. Produce all documents evidencing the facts stated in your response to interrogatory no. 85. Production of such documents in lieu of responding to subparagraphs (i), (ii), and (iii) shall be a sufficient response to the interrogatory only insofar as the documents clearly respond to each subparagraph. If the documents do not clearly indicate the response to any subparagraph, that subparagraph shall be answered in addition to production of the responsive documents.

95. Produce all documents evidencing the facts stated in your response to interrogatory no. 86. Production of such documents in lieu of responding to subparagraphs

(i), (ii), and (iii) shall be a sufficient response to the interrogatory only insofar as the documents clearly respond to each subparagraph. If the documents do not clearly indicate the response to any subparagraph, that subparagraph shall be answered in addition to production of the responsive documents.

96. Produce all documents evidencing the facts stated in your response to interrogatory no. 87. Production of such documents in lieu of responding to subparagraphs (i), (ii), and (iii) shall be a sufficient response to the interrogatory only insofar as the documents clearly respond to each subparagraph. If the documents do not clearly indicate the response to any subparagraph, that subparagraph shall be answered in addition to production of the responsive documents.

97. Produce all documents evidencing the facts stated in your response to interrogatory no. 88. Production of such documents in lieu of responding to subparagraphs (i), (ii), and (iii) shall be a sufficient response to the interrogatory only insofar as the documents clearly respond to each subparagraph. If the documents do not clearly indicate the response to any subparagraph, that subparagraph shall be answered in addition to production of the responsive documents.

98. Produce all documents evidencing the facts stated in your response to interrogatory no. 89. Production of such documents in lieu of responding to subparagraphs (i), (ii), and (iii) shall be a sufficient response to the interrogatory only insofar as the documents clearly respond to each subparagraph. If the documents do not clearly indicate the response to any subparagraph, that subparagraph shall be answered in addition to production of the responsive documents.

99. Produce all pages of the document of which Exhibit A is a part.

100. Produce all documents dealing with the same subject matter as the subject matter of Exhibit A.

This 18th day of April, 1996.

Richard P. Bruening
Robert K. Dreiling
The Kansas City Southern
Railway Company
114 West 11th Street
Kansas City, Missouri 64105
Tel: (816) 556-0392
Fax: (816) 556-0227

James F. Rill
Sean F.X. Boland
Virginia R. Metallo
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Attorneys for The Kansas City
Southern Railway Company

April 18, 1996

days. They then sit on the KCS for a number of days and by that time he has cars sitting for sometimes 10-12 days.

I have been talking to Mark Franklin, DQT, who is very familiar with the operations in Shreveport. He is going to talk to Larry Erwin (and might have already) about why we are moving these cars from Shreveport and then Reisor back. We are losing 3 and 4 days. He has advised he has some ideas that may minimize or eliminate these delays.

Ron Babin and his boss, Bill Ruhl, have asked for a name and number to call to discuss this issue. Ron's message was that if the Railroads didn't start addressing this concern, the Red River Project would become a reality quicker than what they plan today. We do not have much control over the Red River Project (as far as his threat for loss of business) although Pennzoil has been painting a picture that the railroads would not lose that much business, in fact in could be offset by more business with their change in markets and market strategy. However, what he is saying now is that if Shreveport is not operating more fluently and up to their needs, the expansions and changes for Pennzoil at Shreveport may be adjusted to minimize rail participation and expand the barge capabilities.

My intent is to work with the local people (Larry Erwin and Mark Franklin) before escalating this beyond at this time. Pennzoil's request for a name and number is the easy part. The action plan and how we are going to address this issue is what is most important at this time, specifically Pennzoil wants to know when MP will eliminate congestion and when will power be distributed to the Shreveport area to allow them to meet their customer's needs.

Mark Franklin and I will discuss further what has transpired with his conversations with Larry Erwin. Mark has been in and out of the office, trying to find a house, relocating, etc. I will keep a handle on this and keep all advised.

Due Date:
Attention Priority: Normal

Due Date:
Attention Priority: Normal

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "The Kansas City Southern Railway Company's Discovery Requests to Applicants" was served this 18th day of April, 1996, by hand delivery to counsel for Applicants and by hand delivering or depositing a copy in the United States mail in a properly addressed envelope with adequate postage thereon addressed to each other party on the restricted service list, except that only outside counsel for parties other than Applicants are served with Exhibit "A."

Attorney for The Kansas City Southern Railway Company

(carrolbh)wpdocs\molmhc\kcs\upsp\kcs44