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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760, SUB-FILE 47

IN THE MATTER OF ARBITRATION BETWEEN
UNION PACIFIC RAILROAD COMPANY AND THE
BROTHERHOOD OF LOCOMOTIVE ENGINEERS & TRAINMEN
(Arbitration Review)

EXHIBIT LIST TO CARRIER'S REPLY TO PETITIONER'S APPEAL

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CARRIER'S EXHIBITS

Exhibit A	December 29, 2013 Zusman Award
Exhibit B	UP's Opening Submission to Arbitrator Zusman
Exhibit C	UP's Rebuttal Submission
Exhibit D	Parties' agreement creating Arbitration Board No. 598
Exhibit E	BLET Brief in Appeal of Perkovich Award
Exhibit F	Public Law Board 6740/Award 2

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INTRODUCTION

In this proceeding, Petitioner Brotherhood of Locomotive Engineers and Trainmen, Western Region ("BLET"), seeks to overturn an arbitration award issued on December 29, 2013, by Arbitration Board No. 598 chaired by Neutral Arbitrator Marty Zusman (the "Award"). A copy of the Award is attached hereto as Ex. A. BLET's appeal addresses Arbitrator Zusman's resolution of disputes regarding the proper interpretation of two agreements between BLET and Respondent Union Pacific Railroad Company ("UP"): (a) a New York Dock implementing agreement applicable to governing UP's operations in the Los Angeles, California, area (the "LA Hub Agreement"); and (b) Article IX of the 1986 national collective bargaining agreement between BLET and many of the nation's railroads, including UP, as that agreement was amended in 1991 ("Article IX"). In the Award, Arbitrator Zusman accepted UP's interpretation of language contained in Side Letter No. 3 of the LA Hub Agreement over BLET's contrary interpretation. The Award went on to also accept UP's interpretation of Article IX over a contrary interpretation offered by BLET.

The parties' disputes are traditional, garden variety disagreements about which of two competing interpretations of agreement language is correct. Most fundamentally, the parties disagree as to whether language in Side Letter No. 3 to the LA Hub Agreement allowing UP to use Article IX to establish "New pool operations not covered in this implementing Agreement" somehow prevents it from establishing pool operations with home terminals in Yermo, California, and Yuma, Arizona, and away from home terminals in West Colton, California. BLET contended before Arbitrator Zusman that these pool operations were not new because the LA Hub Agreement contains pool operations with home terminals in West Colton and away from home terminals in Yermo and Yuma. BLET argued that reversing the home and away from

home terminals did not create a "new pool operation." UP disagreed, arguing that because the LA Hub Agreement did not contain pool operations with home terminals in Yermo and Yuma and away from home terminals in West Colton, its proposed service was a "new pool operation not covered" by the LA Hub Agreement. To support this argument, UP cited arbitral precedent holding that changes in home terminals and away from home terminals did create new pool operations. Public Law Board 7318/Award 20 (Carrier's Ex. 17); Public Law Board 7463/Award 1 (Carrier's Ex. 18).[1]

After being presented with these two competing interpretations of Side Letter No. 3, Arbitrator Zusman issued the Award favoring UP. His decision quoted and analyzed the language of Side Letter No. 3 and rejected BLET's interpretation of that language as prohibiting UP's proposed actions. Specifically, the Award found that the service proposed by UP was indeed new. Having made this finding, Arbitrator Zusman then went on to discuss issues arising solely under Article IX, including the terms and conditions for the new service. He concluded that UP's proposed terms were "reasonable" and, therefore, adopted them.

BLET's appeal of the Award must fail. First, with regard to Arbitrator Zusman's interpretation of Side Letter No. 3, BLET's arguments fail to take into account the limited nature of this Board's review of New York Dock arbitration awards. The parties presented Arbitrator Zusman with two different possible interpretations of the LA Hub Agreement. His conclusion that UP's interpretation was the proper one is most certainly not "irrational" or "wholly baseless" and is the exact sort of contract interpretation issue that this Board reserves for expert railroad industry arbitrators such as Arbitrator Zusman. Second, BLET's efforts to have this Board

[1] UP provided Arbitrator Zusman with two submissions that contained 47 sequentially numbered exhibits. UP's Opening Submission to Arbitrator Zusman is attached hereto as Ex. B, and its Rebuttal Submission is attached as Ex. C. To avoid confusion, exhibits to those submissions are cited herein using the numbers assigned to them in UP's arbitral submissions.

review Arbitrator Zusman's interpretations of Article IX ask this Board to exceed its jurisdiction. As explained below, Article IX is an RLA collective bargaining agreement over which this Board lacks authority.

FACTS

A. Article IX

UP and BLET are parties to numerous RLA collective bargaining agreements. Some of these agreements apply only to UP; others are negotiated in multi-employer bargaining and apply to UP and other railroads. One such broadly applicable CBA is Article IX (Carrier Ex. 1). In exchange for large wage increases and generous protection for adversely affected employees, Article IX was adopted to create a mechanism to allow UP to create new train runs (called "Interdivisional Service" or "ID Service") on an expedited basis.[2] Under Article IX, UP serves notice of its desire to establish those new train runs, and BLET is required to negotiate terms and conditions governing that service. Carrier Ex. 1 at §§ 1-3. Failing an agreement on the terms and conditions for the proposed new service, the parties proceed to arbitration. Id. at § 4. Under § 7 of Article IX, employees who are adversely effected by UP's new service are entitled to compensation for reduced earnings and moving expenses. Carrier Ex. 1 at § 7 (incorporating enhanced Washington Job Protection Agreement benefits).

The ability to establish new train runs is essential for UP to operate its system efficiently. Over time, as people move, traffic patterns change, or other efficiencies dictate, UP must be able to adapt. Train runs established years earlier become obsolete or inefficient, requiring new methods of operation. As held in Arbitration Board No. 586 (Carrier Ex. 26, at 7), the "entire

[2] Article IX is entitled "Interdivisional Service," a name that would indicate that it only applies to new runs between existing seniority districts. However, Article IX specifically states that the phrase "Interdivisional Service," as used therein, includes both interdivisional, interseniority district, intradivisional, and/or intraseniority district service. Carrier Ex. 1 at 1.

purpose" of Article IX is to permit railroads "to improve the efficiency of their operations . . . ." UP therefore regularly uses the Article IX process to improve its operations and to better serve its customers. Carrier Ex. 15 at 2-13, 15-18 (containing the first pages of more than 16 examples where Union Pacific has utilized Article IX procedures).

B. The UP-Southern Pacific Merger and the Formation of the LA Hub Agreement

In 1996, this Board approved the merger of Union Pacific Corporation and Southern Pacific Transportation Co. and its affiliated carriers (the "Merger"). Union Pac. Corp. – Control & Merger – Southern Pac. Transp. Co., 1 S.T.B. 233 (1996). As required by 49 U.S.C. § 11326(a), the Board imposed the New York Dock labor protection conditions as part of its Merger approval order. 1 S.T.B. at 452-53.[3]

Following the Merger, and in accordance with New York Dock, UP entered into a series of merger implementing agreements with various labor organizations, including BLET. One of these agreements is the LA Hub Agreement (Carrier Ex. 20, at 26-64), which was imposed by an arbitrator under Article I, § 4 of New York Dock and went into effect in 1999.

The LA Hub Agreement set up the initial pool operations in the Los Angeles area. Two of these operations are especially relevant to the present case. Specifically, the LA Hub Agreement created one pool operation with a home terminal in West Colton, California, and an away from home terminal in Yermo, California; and another pool operation with a home terminal in West Colton, and an away from home terminal in Yuma, Arizona.

However, the LA Hub Agreement contained explicit language that preserved UP's rights under Article IX to change the pool operations created therein. Specifically, Side Letter No. 3 to the LA Hub Agreement, entitled "New Pools created after this Agreement," provides that, "New

[3] The Board also applied the Norfolk & Western and Oregon Short Line labor protective conditions to trackage rights agreements and abandonments occurring as part of the Merger transaction. 1 S.T.B. at 453-54.

pool operations not covered in this Implementing Agreement whether between Hubs or within the Hub shall be handled per Article IX of the 1986 National Arbitration Award." Carrier Ex. 20, at 54.

Thus, Article IX and Side Letter No. 3 give UP the right to create new pool operations in the LA Hub. It naturally follows that the implementation of new runs may require employees to make life changes, including relocating. Article IX anticipates these changes and provides certain benefits and protections, including paid house-hunting trips, protection against losses incurred when selling a home, and financial protection for employees that precludes an decreased in an effected employee's earnings for a period of six years following implementation of a new pool operation under Article IX. Carrier Ex. 1, § 7.

C. UP's Los Angeles Area Operations

UP links 23 states in the western two-thirds of the country by rail. From 2007 to 2012, UP invested approximately $18 billion in its network and operations to support America's transportation infrastructure. In California, UP serves the rich agricultural central valley, the Port of Oakland and the San Francisco Bay area, as well as the Los Angeles metropolitan area with its two major ports at Los Angeles and Long Beach (the "Ports"). Approximately 33% of all United States waterborne trade comes into or out of the Ports, translating into 11 million shipping containers annually. To accommodate this volume of traffic, the rail infrastructure and carriers must operate efficiently and safely 24 hours per day, 7 days per week. Customers demand minimal transport time as well as consistent on-time departures and deliveries, particularly in the container market.

UP competes fiercely for this traffic. Its two primary competitors are the BNSF Railway Company ("BNSF") and trucks. However, UP's route system puts it at a competitive

disadvantage. For example, looking at a comparison of the Los Angeles to Chicago routes, UP's schedule consumes 12 crews between these points, while BNSF's schedule consumes only 9. On the Los Angeles to Chicago corridor, only 50% of UP's line is double or multiple main track, while BNSF's corridor has double or multiple main track on 99% of its line segment. Both BNSF and UP's truck competitors consistently make deliveries on this route in an average of 55 hours or less. As UP established at arbitration, its average time to transport goods between Los Angeles and Chicago lags behind that of BNSF and trucks. Ex. B at 9.

To partly offset its route disadvantage, UP has, over the past decade, made significant investments in infrastructure designed to make its train operations into and out of the Los Angeles area more efficient. For example, UP participated with others in the construction of the Alameda Corridor, which included a below-grade level track. This track eliminated numerous grade crossings that slowed rail traffic coming from the Ports, and also eliminated delays and potential safety issues for motorists and pedestrians. Following this construction, UP served an Article IX notice on BLET to establish service from Dolores, California (near the Ports), to Yermo and Yuma. BLET objected to this new service, arguing that it was improper under the LA Hub Agreement because the new runs would proceed through the terminal in West Colton. In Arbitration Board No. 580, an Article IX arbitrator rejected BLET's argument and permitted UP to begin the proposed service. Carrier Ex. 4.

However, UP soon determined that these new, longer runs were impractical given remaining congestion in the Los Angeles area. UP suspended these "long runs" so that it could make additional infrastructure improvements. These projects include the construction of the Colton Crossing Flyover, a bridge that replaced a grade crossing of UP and BNSF tracks that had caused considerable delays for both railroads. UP also spent over $360 million constructing over

93 miles of second main track between Los Angeles and El Paso, Texas. These expenditures have created a more efficient and competitive route between Los Angeles and eastern markets, with double track covering approximately 72% of that route. Additionally, UP's current plans include making significant capital investments to complete installation of double track between Los Angeles and El Paso.

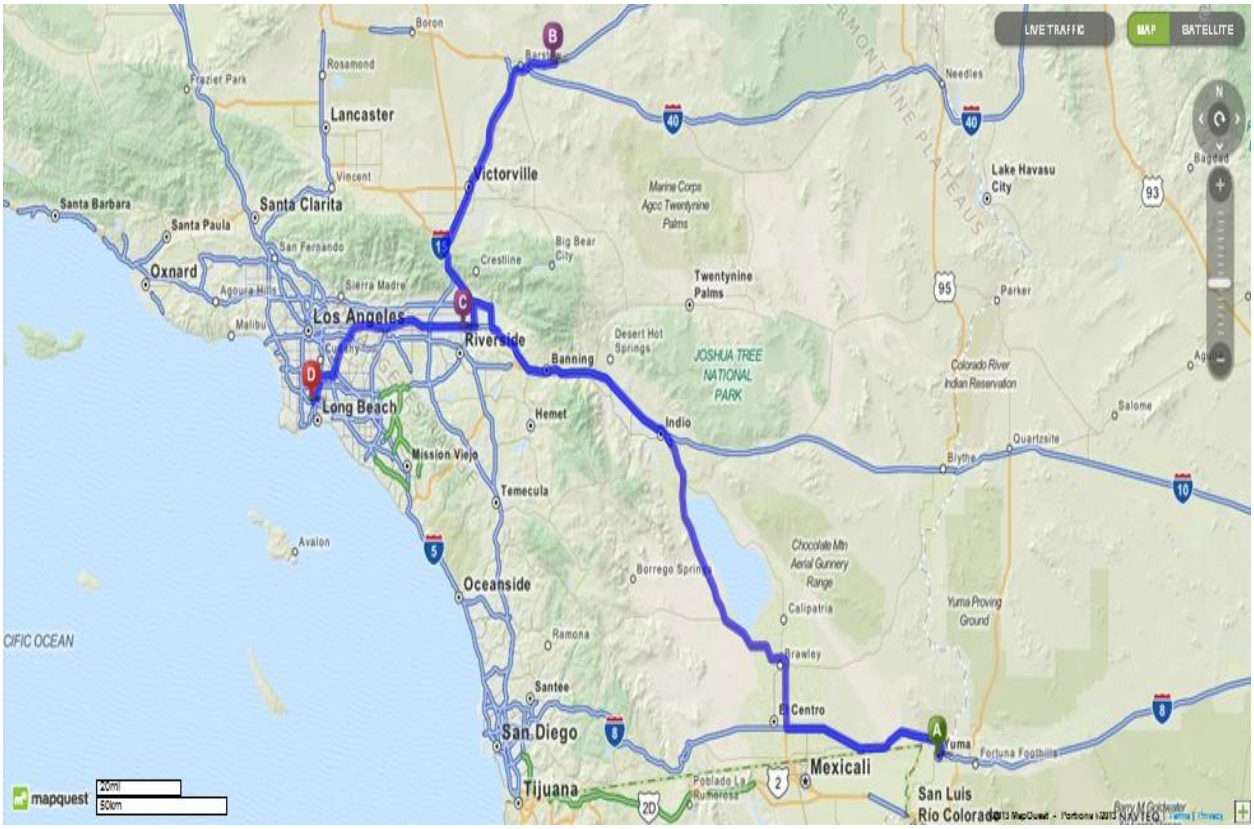
These and other projects have caused and will continue causing significant changes in the way UP operates its service in the Los Angeles area. UP intends to reinstate the "long runs" between Dolores and Yermo and Yuma, passing through West Colton without a crew change, as permitted by Arbitration Board No. 580. As these trains carry cargo to and from the Ports, they will typically be high priority, high volume operations.

While planning for resuming these operations, UP also had to determine how to handle the other, lower priority trains that would still need to move between Yermo and Yuma, on the one hand, and West Colton, on the other. On February 11, 2013, UP served notice under Article IX to establish two new, all-encompassing pool operations that would have multiple on-duty home terminal locations throughout the Los Angeles Basin Metroplex and operate to away from home terminals in Yuma and Yermo. Carrier Ex. 3. Pursuant to Article IX, BLET and UP met about this proposal, and BLET expressed several objections to the proposed service. After considering BLET's concerns, UP withdrew its proposal. Rather than create one very large pool operation to which all engineers could be assigned, UP issued a new Article IX notice on July 17, 2013, that would only create new pool operations providing service from the home terminals of Yuma and Yermo to the away from home terminals at West Colton. Carrier Ex. 2.

This notice would, like all Article IX notices, change current operations. As stated above, there are currently pool operations with home terminals in West Colton that provide

service to the away from home terminals in Yermo and Yuma. But no current pool operations exist with a home terminal in Yuma or Yermo that provide service to the away from home terminals in West Colton.

The map below depicts the proposed pool operations. **Location A** is Yuma, Arizona, the home terminal for one of the new pool operations. **Location B** is Yermo, California, the home terminal for the other new pool operation. **Location C** is West Colton, California, the away from home terminal for both the Yuma and Yermo new pool operations. **Location D** is Dolores, California, from which the higher priority, higher volume traffic will operate.



To succeed in this highly competitive market, especially given its natural disadvantage in route location versus BNSF, UP needs to maximize the efficiency of its Los Angeles operations. This means getting the most productive work done with the least amount of unnecessary cost. As UP showed at arbitration (Ex. B at 55-57), having home terminals in Yermo and Yuma will

improve the efficiency of UP's operations. As discussed above, the traffic moving from Yermo and Yuma to West Colton tends to be of lower priority. Therefore, as these trains operate from points east toward Yermo and Yuma on their way to West Colton, they are frequently delayed. Over the course of the days that it takes those trains to arrive in Yuma and Yermo, those delays accumulate. As a result, the westbound traffic bound for West Colton is far less reliable than the eastbound traffic moving from West Colton to Yermo and Yuma. Engineers who operate trains from the home terminal in West Colton are therefore frequently forced to stay in Yermo or Yuma for extended periods of time waiting for delayed trains arriving from points east. UP must eventually decide whether to pay the engineer to deadhead home, or to have the engineer wait at the away from home terminal. After 16 hours, that time must be paid (so-called "hold away from home terminal pay"). And, while BLET now seems to argue that held away from home terminal pay is a good thing for engineers, it ignores the fact that time spent at the away from home terminal is time that the engineer is spending away from his or her family. BLET has frequently criticized UP for the impact of too much held away from home terminal time on its members and their families.

In contrast, having engineers with home terminals in Yermo and Yuma will allow the engineers to remain at home until the frequently delayed westbound trains are close to their on-duty point. Then, because the eastbound trains that these engineers will be taking from the away from home terminal in West Colton back to Yermo and Yuma are more predictable (since they are generally just beginning their journey), it is easier for UP to line up a train for them to take back to their home terminal (after receiving their required rest). Moreover, there is very limited space in Yuma for a train to sit after arriving. Thus, UP must have a crew ready to take a train out of Yuma quickly after it arrives. This will be easier to do if employees are based in Yuma,

versus having to ensure that a West Colton based engineer is available. The result is not only faster, more efficient service, but a better quality of life for the engineers involved.

Having engineers service these pools who reside in or near Yermo has one other benefit. As UP's operations are presently structured, the pool operation between West Colton and Yermo is one of the lower-paid runs. As a result, engineers tend to bid off that assignment when possible. This often means that UP must force a junior engineer to take this assignment, and these persons are frequently not qualified to operate the run. When this occurs, UP must have an additional engineer (called a pilot) on the train, meaning that UP is paying two engineers to do the work of one. In its arbitration submission, UP established that it had to use pilot engineers 3,659 times in the Los Angeles hub in 2012-13, compared to 1,134 in the Utah hub (the one with the second most pilot runs). Ex. B at 58. Having a home terminal in Yermo will reduce these unnecessary costs, improving the efficiency of UP's operations.

D. Proceedings to Date

After UP served its July 17, 2013, Article IX notice, the parties met several times to try to reach agreement for the new service. Unable to do so, BLET suddenly filed suit against UP in the United States District Court for the Northern District of Illinois and requested a temporary restraining order or preliminary injunction to prevent UP from commencing its proposed operations. UP moved to dismiss that lawsuit, arguing that jurisdiction to resolve the dispute resided exclusively in a New York Dock or Article IX arbitrator. After an evidentiary hearing on the matter, the parties reached an agreement to engage in the expedited arbitration that led to the creation of Arbitration Board No. 598, which subsequently issued the Award under review. A copy of the parties' agreement creating Arbitration Board No. 598 is attached hereto as UP Ex. D.

As shown in paragraph (a) of UP Ex. D, Arbitration Board No. 598 was created under the authority of both New York Dock and Article IX. This was done because some of the questions submitted arose under the LA Hub Agreement and others arose under Article IX. At arbitration, BLET contended that UP was prohibited from issuing its July 17 notice because of the language of Side Letter No. 3 to the LA Hub Agreement, which provides:

> New Pools created after this Agreement: New pool operations not covered in this Implementing Agreement whether between Hubs or within the Hub shall be handled per Article IX of the 1986 National Arbitration Award.

BLET took the position that this language limited UP's Article IX rights, and that reversing the home and away from home terminals was not a new pool operation. UP disagreed. UP contended that Side Letter No. 3 expressly preserved UP's rights under Article IX, and that its plain language permitted UP to establish any "new pool operation not covered in" the LA Hub Agreement. Because it was undisputed that the LA Hub Agreement did not contain any pool operations with home terminals in Yermo and Yuma and away from home terminals in West Colton, the proposals made by UP in its July 17 notice qualified as "new pool operations." As mentioned above, UP supported this argument with citation to arbitral authority. Public Law Board 7318/Award 20 (Carrier Ex. 17); Public Law Board 7463/Award 1 (Carrier Ex. 18).

Furthermore, the parties debated at length what the terms and conditions of the service should be if the Award held that UP's notice was proper. These arguments, none of which involve any language under the LA Hub Agreement, simply involve an interpretation of Article IX.

The Award was issued on December 29, 2013. In the Award, Arbitrator Zusman set forth the arguments of the parties, including their specific disagreement about the meaning of Side Letter No. 3. After discussing the alternative interpretations of Side Letter No. 3 offered to him,

Arbitrator Zusman concluded that UP's interpretation of that Side Letter was correct. Critically, he held that UP's proposed pool operations were indeed new. As the Award holds, "What does 'new' mean if not new? This pool operation does not exist. The proposal to make it exist is new, by any standard." Award at 11.

In addition, the Award analyzed whether UP's proposed operations ran afoul of the requirements of Article IX. Specifically, the Award looked to the interpretation given Article IX that permits a railroad to issue a new Article IX notice even though a prior Article IX notice had been previously issued for the same geographic area. Arbitrator LaRocco had held that such a notice was permissible under Article IX "unless it is a substantial recreation of the prior Interdivisional Service designed solely to obtain the more favorable conditions in the 1986 National Agreement." Carrier Ex. 8, at 5. Arbitrator Zusman rejected BLET's argument that the new service was a substantial recreation of the service and also found that UP had shown that its new service would increase the efficiency of its operation, by eliminating unnecessary pilot costs and by better meshing the service on these lines, increasing the speed and movement of the trains. Award at 11-14.

Finally, Arbitrator Zusman rejected BLET's challenges to the terms and conditions of the service proposed by UP. The Award noted that Article IX permits UP to designate the terms of the new service, which must be reasonable and practical, and found that UP's proposed terms met this definition. Moreover, Arbitrator Zusman made it clear that he had "seriously considered all of the Organization's proposed changes and additional Sections," Award at 19, but found that they would in fact reduce the efficiency of UP's operations and increase its costs. Id. at 19-20.

Because UP's proposed conditions met the requirements of Article IX of being reasonable and practical, Arbitrator Zusman adopted them.[4]

BLET now petitions this Board to overturn the Award. Notably, BLET challenges not only the Award's rulings regarding the meaning of the LA Hub Agreement, but also the Award's conclusions under Article IX. As shown below, BLET's arguments regarding the meaning of the LA Hub Agreement are incorrect and ignore the standard of review, and its arguments concerning the Award's interpretations of Article IX are outside this Board's jurisdiction to consider.

ARGUMENT

A. The Board Has Extremely Limited Jurisdiction To Review The Award

As this Board and its predecessor have held, and as the Courts have agreed, this Board has the authority to review arbitral interpretations of New York Dock or of implementing agreements entered into thereunder. Chicago & N.W. Transp. Co. – Abandonment – Near Dubuque & Oelwein, Iowa, 3 I.C.C.2d 729, 736 (1987), aff'd sub nom. IBEW v. ICC, 862 F.2d 330, 336 (D.C. Cir. 1988) ("Lace Curtain"). This is true regardless of whether the arbitration panel was convened under New York Dock or under the RLA. Union Pac. Corp. – Control & Merger – Southern Pac. Transp. Corp., 2010 WL 5125512, *5 (STB 2010); Grand Trunk W.R.R. Co. – Merger – Detroit & T.S.L.R.R., 7 I.C.C.2d 1038, 1043 (1991).

Thus, as applicable to this case, this Board has jurisdiction to review the portion of the Award that interprets Side Letter No. 3 to the LA Hub Agreement. However, the fact that the Board can review that part of the Award does not necessarily mean that it should exercise that

[4] The Award also addressed an issue not mentioned in BLET's Brief and therefore outside the scope of this Board's review. Specifically, the parties had asked Arbitrator Zusman to decide whether the Yuma to West Colton pool operation should be staffed with engineers holding seniority in the Los Angeles Hub, the Southwest Hub (which borders the Los Angeles hub), or a combination of both. Because 99% of that pool operation is within the Los Angeles Hub, Arbitrator Zusman ruled that the work should be awarded to those engineers. Award at 15-16.

right. Grand Trunk, 7 I.C.C.2d at 1043. The Board has recognized the importance of having disputes arising under New York Dock implementing agreements decided by expert railroad arbitrators. As explained in Lace Curtain, the Supreme Court has affirmed the special role of labor arbitrators to resolve such contractual disputes and has noted that the "personal knowledge of the arbitrator, particularly of the industry and labor practices, thus give him special experience and competence in resolving disputes." 3 I.C.C.2d at 736. "Arbitrators are most familiar with the complexities of labor laws and peculiarities of disputes involving railroad employees." Id. (citing Leavens v. Burlington N., 348 I.C.C. 962 (1977)).

Given the special status of labor arbitrators, the Board's Lace Curtain standard is extremely narrow and requires BLET to meet two high burdens. First, BLET must show that this case presents "recurring or otherwise significant issues of general importance regarding the interpretation of our labor conditions." Id. Second, even then, the Board does not vacate awards "because of substantive mistake, except when there is egregious error, when the award fails to draw its essence from the labor protective conditions, or when the arbitrator exceeds the specific limits on his authority." American Train Dispatchers v. CSX Transp., Inc., 9 I.C.C. 2d 1127, 1130-31 (1993) (citing Loveless v. Eastern Airlines, Inc., 681 F.2d 1272, 1275-76 (11th Cir. 1982). The term "egregious error" is defined to mean an award that is "irrational," "wholly baseless and completely without reason," or "actually and indisputably without foundation in reason or fact." Id.

As these cases prove, a party seeking this Board's review of an arbitration award bears a considerable burden. This is especially true when, as here, a party seeks to review an arbitrator's interpretation of a merger implementing agreement. As the D.C. Circuit held in Brotherhood of Maintenance of Way Employees v. I.C.C., 920 F.2d 40 (D.C. Cir. 1990), arbitrators'

interpretations of New York Dock implementing agreements are subject to "extreme deference," and can be overturned only where they fail to draw their essence from the agreement. Id. at 45. To explain the "fail to draw their essence" standard, the D.C. Circuit cited two critical Supreme Court cases. First, United Paperworkers Int'l Union v. Misco, Inc., 484 U.S. 29, 38 (1987), which holds that "as long as an arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision." Second, United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 599 (1960), which teaches that "so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his."

As narrow as this Board's jurisdiction is to review Arbitrator Zusman's interpretations of Side Letter No. 3, the remainder of BLET's arguments that seek review of the portions of the Award that interpret Article IX fall completely outside this Board's jurisdiction. Article IX is not a New York Dock implementing agreement; it is a collective bargaining agreement in effect under the RLA. Under § 3 of the RLA, 45 U.S.C. § 153, the National Railroad Adjustment Board (created by 45 U.S.C. § 153, First) or private boards of arbitration such as Arbitration Board No. 598 (created by 45 U.S.C. § 153, Second) have the exclusive jurisdiction to resolve disputes over RLA collective bargaining agreements. 45 U.S.C. § 153, First (i). As the Supreme Court has held, the RLA establishes these arbitration boards as the "mandatory, exclusive, and comprehensive system for resolving grievance disputes." Brotherhood of Locomotive Eng'rs v. Louisville & N.R.R., 373 U.S. 33, 38 (1963); see also Slocum v. Delaware, L. & W.R. Co., 339 U.S. 239, 244 (1950) (jurisdiction of § 3 arbitration boards to interpret existing collective bargaining agreements is exclusive). Here, § 4 of Article IX creates a private arbitration process

under the RLA. Thus, if BLET wished to properly appeal the portions of the Award that interpret Article IX, it had to do so under the RLA by commencing a lawsuit in federal district court under RLA § 3, First (q), 45 U.S.C. § 153, First (q) (authorizing actions to overturn RLA arbitration awards).

B. Arbitrator Zusman's Findings Regarding Side Letter No. 3 Cannot Be Disturbed Under The Lace Curtain Standard

Given the foregoing, the only issue that BLET properly brings before this Board relates to the Award's conclusion that UP's July 17, 2013, Article IX notice did not violate the terms of Side Letter No. 3 of the LA Hub Agreement. As described above, BLET's burden under Lace Curtain is huge. First, BLET must show that the instant dispute presents "recurring or otherwise significant issues of general importance regarding the interpretation of our labor conditions." Second, because the Award's interpretation of Side Letter No. 3 is subject to "extreme deference," BMWE, 920 F.2d at 45, BLET must show that it fails to draw its essence from the language of that Side Letter. This requires that BLET prove that Arbitrator Zusman was not "even arguably construing or applying the contract." Misco, 484 U.S at 38.

BLET cannot possibly meet these twin burdens. With regard to its threshold obligation to show a "recurring or otherwise significant issue of general importance," BLET fails to point to one other time that the language of Side Letter No. 3 has been litigated by the parties. BLET also does not show that UP is intending to reverse home and away from home terminals at other locations. Nor does BLET present an agreement on another railroad involving the same or similar language as found in Side Letter No. 3. Thus, BLET entirely fails to show that the Award will have any impact outside of portions of UP's operations that are directly affected thereby. Instead, BLET points to a prior dispute between the parties regarding UP's Article IX rights under other implementing agreements, none of which address or even discuss the language

of Side Letter No. 3. Union Pac. Corp. – Control & Merger – Southern Pac. Transp. Corp., 2010 WL 5125512 (STB 2010). Notably, in that case, BLET specifically argued that the "recurring or otherwise significant issue of general importance" standard was not met. BLET Brief, Ex. E., at 28-36. The same is true here.

The contrast between the present case and those in which the Board has found "recurring or otherwise significant issues of general importance" warranting review is stark. In Delaware & Hudson Co. – Lease Trackage Rights – Springfield Terminal Ry. Co., 1994 WL 464886 (I.C.C. 1994, the ICC found that the "recurring or otherwise significant" test was met in a case that decided the meaning of specific language in the Mendicino Coast labor protective conditions. In so holding, the ICC found that the arbitrator had not resolved "any dispute about facts or evidence," but was merely interpreting the ICC's labor protective conditions. Id. at *4. Because there was no definitive ICC interpretation of that phrase and even a lack of arbitral authority, the ICC found that the recurring or otherwise significant issue test was met. Id. Similarly, in Wisconsin Central Ltd. – Purchase Exemption – Soo Line R.R. Co., 1995 WL 226035 (I.C.C. 1995), the ICC accepted review of an arbitration award because it addressed "an element potentially present in almost all transactions in which the agency's conditions are approved . . . ." Id. at *5. In contrast, the present case involves an interpretation of a single side letter to one merger implementing agreement. The "recurring or otherwise significant issue" test is simply not met.[5]

Moreover, even if BLET could show the existence of "recurring or otherwise significant issues," it most certainly cannot meet its burden to overturn the Award under the Lace Curtain standard. Under that standard, BLET's appeal fails unless it can show that the Award fails to

[5] In both Delaware & Hudson and Wisconsin Central, however, even though the ICC found the recurring or otherwise significant issue test to be met, it found that the arbitration awards could not be set aside under the limited Lace Curtain review standard.

draw its essence from the language of Side Letter No. 3, meaning that Arbitrator Zusman was not "even arguably construing or applying the contract." Misco, 484 U.S at 38.

No such showing is possible here. The language of Side Letter No. 3 is as follows:

> **New Pools created after this Agreement**. New pool operations not covered in this implementing Agreement whether between Hubs or within the Hub shall be handled per Article IX of the 1986 National Arbitration Award.

Carrier Ex. 20, at 59. Arbitrator Zusman was given two conflicting views of the meaning of this language. UP contended that its proposed pool operations with Yermo and Yuma as home terminals with West Colton as an away from home terminal were "new pool operations not covered" in the LA Hub Agreement. Under UP's interpretation of Side Letter No. 3, the service was "new" because UP had no pool operation with home terminals in Yermo and Yuma and an away from home terminal in West Colton. BLET took a different stance. It contended that UP's proposal did not create "new pool operations not covered" in the LA Hub Agreement because, while the home and away from home terminals would be changed, the impacted engineers would be operating on the same track, between the same terminals, and with the same mileage as the existing runs.

As discussed above, the question for this Board is not which of these competing interpretations of Side Letter No. 3 was correct. The sole issue is whether Arbitrator Zusman, in concluding that UP's interpretation was correct, was "arguably construing or applying the contract." Misco, 484 U.S. at 38. BLET has no real argument that he was not doing so. After all, Arbitrator Zusman specifically quoted the language of Side Letter No. 3 on page 8 of the Award and spent the next 5 pages discussing the parties' arguments and his conclusions that BLET's contentions were incorrect. The Award specifically rejected BLET's principal argument as follows:

> The Board has fully considered the Organization's argument that the July 17, 2013 proposal for new pool service was not "new", but already existing and not permitted under the existing Side Letter No. 3. The language of "not covered by this Agreement" means something and if running the same trains over the "same track" with the "same mileage" isn't meant, what is? The Board finds this argument unpersuasive, as the purpose of the language is not explicit and means what is says within the totality of the Agreement allowing for "new Pools created after this Agreement" when they are "New pool operations." What does "new" mean if not new. This pool operation does not exist. The proposal to make it exist is new, by any standard.

Award, at 11. "No one in this industry would consider a change in home terminal as insignificant or minor. It is a major change which affects employees and the Carrier's operations." Award, at 10.

As this language proves, Arbitrator Zusman was most certainly interpreting Side Letter No. 3 in the Award. He quoted the relevant language, discussed the competing arguments of the parties, and decided that UP's interpretation was the correct one. Just as UP could not have complained about a contrary result, BLET cannot complain here.

Moreover, the Award's conclusion that UP's new runs constituted "new pool operations not covered in" the LA Hub Agreement is clearly in keeping with the plain language of Side Letter No. 3 and is most certainly not "irrational" or "wholly baseless." As discussed above, it is undisputed that UP had no pool operations with home terminals in Yerma or Yuma and with away from home terminals in West Colton. Given that UP did not have these proposed new pool operations previously, it is difficult to understand BLET's position that the proposed operations were not new and even more difficult to understand BLET's position that the Award's agreement with the plain language of Side Letter No. 3 is "irrational." By definition, something is new if it is different than what presently exists. BLET may disagree with Arbitrator Zusman's conclusion, but it cannot seriously claim that it is "irrational."

Finally, Arbitrator Zusman's ruling that the change in home and away from home terminals created new pool operations finds arbitral support. At least two prior awards specifically agree with Arbitrator Zusman's holding. First, in Public Law Board 7318/Award 20 (Carrier's Ex. 17), the carrier had maintained a so-called "double headed" train run between Nashville, Tennessee, and Birmingham, Alabama (meaning that some employees had a home terminal in Nashville and an away from home terminal in Birmingham, while other employees had a home terminal in Birmingham and an away from home terminal in Nashville). The carrier issued an Article IX notice to eliminate the Nashville home terminal and require all engineers to work out of the Birmingham home terminal. Just as BLET contends here, the union argued that the employees would still be operating the same distance, over the same tracks, and following the same route, and that, therefore, no new service was being created. The arbitrator rejected that argument:

> However, the Board finds, as does the most recent Award on this property (Public Law Board 7463, Radek), **that when the Carrier changes the home terminal of an existing ID service it is a material change in service and constitutes new ID service**. Such change is permissible under Article IX of the 1985 Agreement. The Organization's arguments throughout this dispute of the Carrier's ID service are not persuasive. The Carrier has not violated the Agreement between the parties. The Board is convinced from the full record and arguments presented that this is a "rearrangement" which is a materially different ID service from the service that existed prior. **While the Board notes that in some prior awards additional adjustments were made to add a river route or expand train types, the central issue is that of fundamental removal of a home terminal. This is not a substantial recreation, but new service; a permissible rearrangement' a materially different ID service than existed prior. . . .**

Carrier Ex. 17, at 7 (emphasis added).

Similarly, in Public Law Board 7318/Award 1 (Carrier Ex. 18), a railroad had maintained a pool operation with a home terminal in Florence, South Carolina, that ran through Savannah, Georgia, to an away from home terminal in Jacksonville, Florida. However, some conductors on

this run were permitted to have Savannah as a home terminal, with away from home terminals in both Florence and Jacksonville. The carrier served an Article IX notice to eliminate the Savannah home terminal without making any other changes to the train runs. Notably, the affected employees would continue to operate the same trains on the same tracks. Arbitrator Richard Radek, a former BLET official, rejected the argument that this service was not new, holding that "the elimination of the Savannah terminal constitutes a significant material change from the former ID service in the Florence/Jacksonville corridor, and, therefore, the new service was not a substantial recreation of the former." Carrier Ex. 18, at 9.

Thus, not only is Arbitrator Zusman's construction of Side Letter No. 3 perfectly consistent with the normal use of the word "new," it is also consistent with industry precedent. Notably, BLET does not contend that there is arbitral authority to the contrary.[6] As discussed above, knowledge of industry practices is one of the major reasons that courts and this Board defer to the judgment of labor arbitrators. Lace Curtain, 3 I.C.C.2d at 735. It is impossible to call Arbitrator Zusman's decision "irrational," or to argue that it does not draw its essence from the language of Side Letter No. 3. BLET's efforts to overturn the Award therefore fail.

C. Nothing In The Award Violates The Labor Conditions Imposed In the Merger Approval

Unable to show that Arbitrator Zusman's interpretation of Side Letter No. 3 can be set aside, BLET instead contends that the Award somehow overturns this Board's intent in approving UP's Merger with Southern Pacific. Specifically, BLET argues that the Award fails to take into account UP's stated plan to create a hub and spoke model following the merger.

[6] BLET does cite to awards (BLET Brief, at 13) that it states found new service was being created where carriers made changes beyond the location of home and away from home terminals. BLET's apparent contention that these awards should be read to hold that such changes are always required is completely illogical. The fact that the carriers could make changes involving more than terminal locations does not mean that changes to terminal locations alone are also not proper. Carrier Exs. 17-18 are clearly consistent with Arbitrator Zusman's Award in the instant case.

BLET has not met its burden to show that Arbitrator Zusman's Award does not draw its essence from the labor conditions imposed by this Board in approving the Merger. In order to satisfy the Lace Curtain standard, BLET must establish that application of the language in Side Letter No. 3 would prevent the intended transportation benefits of the transaction. Burlington N. Inc. & Burlington N. R.R. Co. – Control & Merger – Santa Fe Pac. Corp. & The Atchison, Topeka & Santa Fe Ry. Co., 2002 WL 31117574 (S.T.B. Sept. 23, 2002) (declining review under Lace Curtain when the carrier did not demonstrate that application of the relevant CBA would prevent the intended transportation benefits of the transaction).

BLET's argument suffers from a number of fatal flaws. First, the fact that UP intends to operate two pool operations with home terminals outside the major city of the seniority district hardly shows that it is ending the hub and spoke structure. Not only is this change too small to be a dismantling of a hub, the fact is that Los Angeles remains a hub – meaning that all engineers within the hub have seniority rights to bid on all assignments within the hub. The fact that reporting points will not all be at one central point does not mean that the hub no longer exists.

Second, BLET's entire argument flows from a flawed premise: that this Board, in approving the Merger, ordered UP, for all time henceforth, to operate all of its train runs with home terminals at a single point in a hub and away from home terminals at other points. Notably, while BLET cites this Board's merger approval order generally, it fails to direct the Board's attention to any specific place in that order where the Board conditioned that approval on the perpetual (much less temporary) maintenance of all runs with home terminals at central points. The reason for this omission is clear: the Board imposed no such requirement. Indeed, the words "hub" and "spoke" appear nowhere in the Board's entire 358-page order approving the Merger. Instead, the Board approved the Merger because it would result in quantifiable public

benefits, more efficient routes, increased capacity and capital investment, and improvement of service. 1 S.T.B. at 369. Nothing in the Board's approval of the Merger states that UP could never have pool operations like those allowed by the Award.

In fact, with regard to the protection of its employees as a result of the Merger, what UP was required to do was made explicit by the Board: UP was ordered to make the labor protective conditions of New York Dock applicable to its employees. 1 S.T.B. at 452-53. Under that portion of the Board's order, issued in accordance with 49 U.S.C. § 11326, engineers receive protection from, among other things, merger-related job abolishments, reductions in income, and relocation expenses. The Board did not also require UP to set up or maintain centralized home terminals for all operations within a seniority district.

BLET's arguments that the Award violates some provision of this Board's order approving the Merger is completely incorrect and should be rejected.

D. The Kenis and Perkovich Awards Are Irrelevant

Unable to persuasively argue that Arbitrator Zusman's interpretation of Side Letter No. 3 is irrational or wholly baseless, BLET instead argues that it is somehow inconsistent with awards previously issued by Arbitrators Kenis and Perkovich. The Kenis and Perkovich Awards concluded, based on specific language in the St. Louis, Kansas City, North Little Rock/Pine Bluff, and Houston II merger implementing agreements, that UP had given up its right to utilize the procedures of Article IX in those hubs if the new pool operations would nullify or modify any provision of those merger implementing agreements. In contrast, under the different language of the LA Hub Agreement, Arbitrator Binau had concluded that UP had not given up its right to utilize a provision of another national RLA collective bargaining (Article II of the

1971 National Agreement) to extend the switching limits of a terminal. Carrier Ex. 11.[7] BLET's arguments ignore the crucial differences between the language of the merger implementing agreements under consideration by Arbitrators Kenis and Perkovich and that of the LA Hub Agreement.

First, and most notably, none of the implementing agreements interpreted by Arbitrators Kenis and Perkovich contained any language like that of Side Letter No. 3. As discussed above, the instant dispute centers around their competing interpretations of that critical document. In the Award, Arbitrator Zusman agreed with UP's interpretation of Side Letter No. 3 as allowing UP to utilize its Article IX rights to establish the new pool operations at issue. For the reasons explained above, Arbitrator Zusman's ruling was fully compliant with the plain language of Side Letter No. 3, as he found that UP's proposed pool operations were "new" because they were different from those set forth in LA Hub Agreement. Given that Arbitrators Kenis and Perkovich never considered any agreement containing the language of Side Letter No. 3, their awards are completely irrelevant to this dispute. Union Pac. Corp. – Control & Merger – Southern Pac. Transp. Corp., 2010 WL 5125512, *9-10 (STB 2010) (analyzing the actual agreement language relied on by Arbitrators Kenis and Perkovich).

Moreover, even if the existence of Side Letter No. 3 could be ignored, there are other critical differences between the language of the LA Hub Agreement and the implementing agreements considered by Arbitrators Kenis and Perkovich. Those distinctions were specifically recognized as pivotal in this Board's decision upholding the Perkovich Award. Id. at *9-10. In that decision, this Board held that both Arbitrators Kenis and Perkovich had based their awards on an "Applicable Agreements" clause in the four implementing agreements that they

[7] Article II is very similar to Article IX in that it allows UP to make changes to switching limits on an expedited basis by service of a notice on the impacted unions. Union Pac. Corp. – Control & Merger – Southern Pac. Transp. Corp., 2010 WL 5125512, *2 (STB 2010).

considered. That clause stated that the pre-existing national RLA collective bargaining agreements (such as Article II and Article IX) would apply, but that "where conflicts arise, . . . the specific provisions of [the hub merger implementing agreement] shall prevail." Id. at *9. This Board found that Arbitrator Perkovich had not egregiously erred in concluding that the Applicable Agreements clause prohibited UP from modifying or nullifying a provision of those merger implementing agreements through the use of Article IX. Id. at *9-10.

While Union Pacific continues to disagree with the Kenis and Perkovich Awards, they are completely irrelevant to the instant dispute because, as this Board has already found, the LA Hub Agreement does not contain an Applicable Agreements clause. Id. at *9.[8] As this Board held, Arbitrator Binau therefore "properly distinguished" the Kenis Award from a dispute arising under the LA Hub Agreement. Id. at *9 (citing Carrier Ex. 11, at 21 (Kenis Award was "based on specific agreement language not found in the" LA Hub Agreement)). Given these crucial language differences, the Binau Award broadly concluded that the LA Hub Agreement "preserves ***all national agreements*** that existed prior to the creation of the Los Angeles Hub." Carrier Ex. 11, at 23 (emphasis added).

BLET's arguments concerning the Kenis and Perkovich Awards are misplaced, as those Awards arose under completely different contractual language than does the dispute at bar. The present case turns on the proper interpretation of Side Letter No. 3, which was before neither Arbitrator Kenis nor Perkovich. As discussed above, Arbitrator Zusman's interpretation of Side Letter No. 3 was proper, especially given Arbitrator Binau's conclusion that all of UP's rights under national collective bargaining agreements such as Article IX were preserved in the LA

[8] Similarly, Public Law Board No. 7577/Award No. 2 (Carrier Ex. 40), held that the San Antonio Hub Implementing Agreement, which also does not contain an Applicable Agreement clause, did not preclude UP from utilizing its rights under Article II to extend switching limits in Laredo, Texas, even though doing so would change the terms of the San Antonio Hub Implementing Agreement.

Hub Agreement. BLET's arguments to the contrary most certainly do not satisfy its burden under the tightly circumscribed Lace Curtain standard of review.

E. BLET's Arguments Regarding UP's Rationale For Its New Pool Operations Are Outside This Board's Jurisdiction and Factually False

BLET spends much time in its Brief criticizing Arbitrator Zusman's factual findings that the new pool operations would improve UP's operational efficiency rather than merely cause a savings in labor costs. Arbitrator Zusman considered this issue because it was relevant under Article IX. After Article IX went into effect, Arbitrator LaRocco was named to chair the "Informal Disputes Committee" that answered questions about the meaning of the new agreement. One of those questions, known as Issue No. 3, asked whether, under Article IX, "Carriers may extend or rearrange interdivisional service established prior to the effective date of Article IX . . . ." Carrier Ex. 8, at 1-2. In response, Arbitrator LaRocco concluded that railroads could indeed issue Article IX notices covering territories already covered by prior notices unless the new service was "a substantial recreation of the prior interdivisional service designed solely to obtain the more favorable conditions in the 1986 National Agreement." Id. at 5.

Thus, to determine whether UP could establish its new service under Article IX, Arbitrator Zusman looked to see whether the new pool operations were designed solely to obtain the more favorable conditions of the 1986 National Agreement, which called into question why UP was making the changes it wished to make. But that issue deals exclusively with the proper interpretation of Article IX. It has nothing to do with the proper interpretation of Side Letter No. 3, which only raises the question of whether the July 17, 2013, Notice involved "new pool operations not covered in" the LA Hub Agreement. Because Article IX is an RLA collective bargaining agreement and is not part of this Board's New York Dock Conditions, BLET's arguments regarding this portion of the Award fall outside this Board's jurisdiction.

Moreover, even if BLET could properly make its arguments to this Board, all of its contentions would necessarily fail under the Lace Curtain standard of review. In Grand Trunk W., the ICC specifically held that it would "not review arbitrator's decisions on issues of causation, . . . or resolution of other factual questions." 7 I.C.C.2d at 1043 (citing Lace Curtain, 3 I.C.C.2d at 736). See also Misco, 484 U.S. at 38 ("[A]n arbitrator must find facts and a court may not reject those findings simply because it disagrees with them. . . . [I]mprovident, even silly, factfinding" is not grounds to overturn an arbitration award). Clearly, Arbitrator Zusman's finding that UP was motivated not only by a desire to save labor costs, but also by a desire to improve the overall efficiency of its operations, is a factual finding that is therefore outside of the scope of review.

Moreover, even if this Board did review factual findings, it would be impossible to conclude that Arbitrator Zusman's conclusions were irrational or wholly baseless. Although BLET claims that no evidence supported UP's arguments that operational deficiencies would result from the new pools, nothing could be further from the truth. As discussed above, for the "short runs" between Yermo and West Colton and between Yuma and West Colton, having home terminals at the more easterly points provides for better predictability of service. This is true because the trains coming from the east are frequently delayed, and their arrival times difficult to predict. Calling engineers to begin work at Yermo and Yuma rather than having them waiting at those locations after they arrive in West Colton leads to better service. Indeed, given the limited space at Yuma, if a crew is not ready to take an arriving train, that train may block the tracks and delay other trains. As UP explained before Arbitrator Zusman, and as its General Director of Labor Relations testified during the earlier court proceedings, the result would be faster train velocities that would allow UP to run more trains, hopefully leading to

higher market share and an increase in the number of jobs for engineers. Award at 13; BLET Appx. at 284-85. Moreover, as Arbitrator Zusman concluded, the fact that some savings would come from reduced labor costs hardly means that the new pools were "designed **solely** to obtain the more favorable conditions of the 1986 National Agreement," as BLET had to prove to succeed under Issue No. 3. Carrier Ex. 8, at 5 (emphasis added).

BLET ignores this evidence and criticizes UP for the fact that the new pool operations will result in a reduction in held away from home terminal time and the unnecessary use of pilots. BLET's arguments fail to recognize why Article IX exists. As Arbitration Board No. 586 concluded, Article IX's "entire purpose" is "to permit carriers to improve the efficiency of their operations . . . ." (Carrier Ex. 26, at 7). See also Award at 14 ("Article IX was to create efficiency . . . ."). The definition of "efficiency" is "the ability to do something or produce something without wasting materials, time, or energy . . . ." Merriam-Webster Dictionary, available at http://www.merriam-webster.com/dictionary/efficiency. Paying engineers to sit in Yermo and Yuma while they wait for trains is obviously not "efficient." Similarly, it is incredibly inefficient to use pilots between Yermo to West Colton, thereby paying two engineers to operate a train that can be operated by one. The fact that these increases in efficiency also involve labor savings hardly makes them inappropriate.

Again, arbitral precedent supports Arbitrator Zusman's decision. In Public Law Board 6740/Award 2 (attached hereto as Ex. F), the carrier maintained a train run from Oakland to Fresno, running through Stockton. Because of high traffic, the carrier wound up being forced to deadhead engineers from Oakland to Stockton where they would board the train. The carrier subsequently served an Article IX notice to create a run that began at Stockton. The arbitrator

held that the new run was proper under Issue 3 of the Informal Disputes Committee because reducing deadheading costs would increase the carrier's efficiency. Ex. F at 8.

For all of these reasons, BLET's challenge to Arbitrator Zusman's conclusions regarding whether the new pools were "designed solely to obtain the more favorable conditions of the 1986 National Agreement" should be rejected.[9]

F. BLET's Arguments Regarding the Conditions for the New Service Imposed By the Award Are Beyond the Board's Jurisdiction

Finally, BLET concludes its Brief with an attack on the portion of Arbitrator Zusman's Award that adopted UP's proposed terms and conditions as those under which engineers would operate the new pool operations. As discussed above, under Article IX, if the parties are unable to agree on the terms for new pool operations, they proceed to arbitration under § 4 of Article IX. Carrier Ex. 1 at § 4. The arbitrator then imposes those terms and conditions.

Again, the question of what the terms and conditions of the new service should be addresses only the meaning of Article IX. It does not concern the meaning of New York Dock or of the LA Hub Agreement. In fact, this portion of BLET's Brief (pages 17-19) never cites to the LA Hub Agreement or New York Dock, but only to § 2 of Article IX. As a result, none of BLET's arguments regarding the terms and conditions can be considered by the Board; all fall within the RLA's arbitration appeal process that required BLET to file suit in federal district court.

Moreover, even if this Board could review Arbitrator Zusman's conclusions regarding the proper terms and conditions for UP's new service under Lace Curtain, BLET's objections would

[9] BLET suggests that UP should have produced some kind of study to validate that the new pool operations will in fact be more efficient. No Article IX arbitrator has, to UP's knowledge, ever required such proof. UP provided Arbitrator Zusman with copies of many Article IX decisions (Carrier Exs. 4, 26, 28, 32-34, 36, 41). In all of these cases, the railroads did what UP did here: explained how the new operations would increase efficiency. None of the awards cite any study, and BLET's unprecedented suggestion that a formal study is required should be rejected.

still fail. As shown below, Arbitrator Zusman's conclusions were most certainly not egregiously wrong; in fact, they are in keeping with well-established Article IX precedent.

Under § 1 of Article IX, the process for creating new train runs begins when the carrier serves notice of its intent to create such new service together with its proposed terms and conditions under which the employees would provide that service. Section 2 of Article IX imposes certain minimum standards for these terms and conditions. Specifically, Article IX requires that runs be adequate for efficient operations (Id., § 2(a)), provides how longer runs are to be compensated (Id., § 2(b)), requires the carrier to provide transportation to employees under certain circumstances (Id., § 2(c)), and provides for certain meal allowances (Id., §§ 2(d)-(e)). While the parties are free to agree to additional terms and conditions, they are not required to do so (Id., § 2(f)).

Article IX precedent is clear that arbitrators are not permitted to impose terms and conditions inconsistent with the minimums established in § 2. For instance, in Arbitration Board No. 493, the arbitrator refused to provide a meal allowance beyond that permitted by § 2 of Article IX, or to increase the overtime payments required therein. Carrier Ex. 33, at 4, 6. Because the methodology for paying runs in excess of a basic day is set in § 2 of Article IX, when UP was permitted to create the Dolores to Yermo and Dolores to Yuma runs, Arbitration Board No. 580 rejected BLET's efforts to cover those new assignments under an agreement calling for higher wage rates. As the arbitrator flatly stated, "This Board lacks the authority to change rates of pay." Carrier Ex. 36, at 3. A similar result was reached in Arbitration Board No. 507, where the arbitrator stated that he lacked authority to change deadheading pay, held away from home terminal pay, extra board pay, overtime pay, pay for initial terminal delay, and

meal allowances. Carrier Ex. 34, at 8-25. That award also refused to award additional labor protective conditions beyond those required by § 7 of Article IX. Id. at 31-32.

Similarly, Article IX arbitrators frequently reject other terms and conditions proposed by unions that will increase a carrier's cost of operations. These rulings are based on the fundamental reason that Article IX exists – to increase the efficiency of a carrier's operations. Thus, for instance, when BLET asked the arbitrator who allowed the creation of the Dolores long runs to increase the amount of time that engineers would have to report to work when called from 90 to 180 minutes, the arbitrator refused, finding that impacted engineers could relocate closer to Dolores and be compensated for their moving expenses under § 7. Carrier Ex. 36, at 2. Similarly, Arbitration Board No. 507 refused to require an increase in call in time so engineers living in the old work location (Lufkin, Texas) would not have to relocate to a place closer to the new work location (Houston, Texas), finding that such a proposal could lead to train delays and would only serve to benefit employees who voluntarily elect to reside in one place and work in another. As the Arbitrator held, "we do not believe the Carrier should bear the cost of inefficiency and delay for such individuals." Carrier Ex. 34, at 30.

Here, BLET proposed terms and conditions far beyond those permitted under Article IX. See Appendix A to BLET Arbitral Submission. Its proposals were, in fact, a list of "poison pills" meant to ensure that UP would never want to establish its proposed new service. For instance, BLET's proposal would have created additional overtime pay (prohibited by § 2 of Article IX), additional call time for engineers to report to Yermo or Yuma (up to four hours), and guaranteed and lengthy time off in West Colton (up to 48 hours). As discussed above, similar proposals have been rejected by numerous Article IX arbitrators.

Notably, BLET's Brief offers no real analysis of its proposals. BLET cites no Article IX arbitration award approving the types of terms and conditions it proposed; it also cites no precedent that disagrees with any of the awards cited above. Most importantly, BLET offers no explanation of how Arbitrator Zusman's rejection of its proposed conditions can be set aside under the Lace Curtain standard as irrational or wholly baseless. Absent proof to that effect, BLET fails to make a cognizable argument to this Board.

Unable to cite any precedent to support its position, BLET falsely contends that Arbitrator Zusman did not really consider its proposals. The language of the Award belies that assertion. As the Award specifically states, "The Board has directed its attention to the full Carrier proposal and the many issues raised by the Organization." Award at 18. Arbitrator Zusman made clear that he understood that he had the authority to assure that UP's proposed terms were "reasonable and practical," as required by § 2 of Article IX. Award, at 19. He specifically found that they were. He then went on to address the reasonableness and practicality of BLET's proposals and concluded that "almost all of the Organization's requests would increase Carrier costs or more importantly, to increase *inefficiency* of operations, the antithesis of Article IX, Section 2(a) . . . ." Award at 19-20 (emphasis in original).

BLET misleadingly ignores all of this specific Award language. Instead, it selectively quotes the portions of the Award in which Arbitrator Zusman made it clear that his jurisdiction to consider certain proposals made by BLET was constrained by § 2 of Article IX (for example, changes to overtime pay). As shown above, that holding is completely consistent with Article IX precedent, and BLET cites no case to the contrary. BLET cannot persuasively contend that Arbitrator Zusman did not consider the merits of its other proposals given that he specifically explained that he was rejecting them as unreasonable. Award at 19-20.

There is no egregious error here. The Award is completely consistent with Article IX precedent. BLET's appeal therefore fails.[10]

CONCLUSION

WHEREFORE, for all of the foregoing reasons, BLET's appeal of Arbitrator Zusman's Award should be rejected.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Carrier's Reply to Petitioner's Appeal has been sent via electronic mail, this 23rd day of April, 2014 to:

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Chicago, IL 60602

/s/Clifford A. Godiner

[10] In the conclusion to its Brief, BLET cites correspondence between Union Pacific and the United Transportation Union regarding a completely separate dispute in Texas regarding a New York Dock notice Union Pacific has served. BLET states that it agrees with UTU that Union Pacific is trying to use New York Dock in Texas to circumvent the procedures required under the Railway Labor Act. Union Pacific is baffled by BLET's reference to this dispute with UTU, which involves a completely different area of the railroad and has nothing to do with the language of Side Letter No. 3. Indeed, in the instant case, Union Pacific is not using New York Dock to make changes, but is instead using the procedures set forth in Article IX, an RLA collective bargaining agreement.

In the Matter of Arbitration Between:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

and

UNION PACIFIC RAILROAD COMPANY

Arbitration Board No. 598

Applicable Information

Hearing Date: November 14, 2013
Hearing Location: Chicago, Illinois
Date of Award: December 29, 2013

Members of the Committee

Employees' Member: E. L. (Lee) Pruitt
Carriers' Member: Randal P. Guidry
Neutral Member: Marty E. Zusman

Organization's Questions for Arbitration

Question No. 1

Does the Carrier's proposal of July 17, 2013 (as modified) create new pool operations not covered in the Merger Implementing Agreement for the Los Angeles Hub?

Question No. 2

Is the Carrier allowed by Article IX, Section 2 & Section 4 (a) of the 1986 BLE National Arbitration/Agreement, to change or merge seniority districts created by the Merger Implementing Agreement for the Los Angeles Hub and the Merger Implementing Agreement for the Southwest Hub? If the answer is "no," can the Carrier use Article IX, Section 2 & Section 4 (a) of the 1986 BLE National Arbitration/Agreement to remove service from the

seniority district created by the Merger Implementing Agreement for the Los Angeles Hub to the Merger Implementing Agreement for the Southwest Hub?

Question No. 3

If the Carrier's proposal of July 17, 2013 (as modified) is a legitimate good faith exercise of a contractual prerogative, what shall be the terms and conditions governing engineers assigned to or working in the interdivisional service between Yermo, California and West Colton, California, and between Yuma, Arizona and West Colton, California?

Carrier's Questions for Arbitration

Question No. 1

Do the proposed interdivisional operations between Yermo, California, and West Colton, California, and between Yuma, Arizona, and West Colton, California, set forth in Union Pacific Railroad Company's notice dated July 17, 2013, comport with the provisions contained in Side Letter 3 of the Los Angeles Hub Implementing Agreement and Article IX of the 1986 BLE National Arbitration/Agreement, as amended by Article IX of the 1991 BLE National Agreement?

Question No. 2

If the foregoing question is answered in the affirmative, and in accordance with the requirements set forth in Article IX, Section 2 & Section 4 (a) of the 1986 BLE National Arbitration/Agreement, what shall be the terms and conditions governing engineers assigned to or working in the interdivisional service between Yermo, California and West Colton, California, and between Yuma, Arizona and West Colton, California?

Background

This dispute revolves around the Los Angeles (L A) Hub Agreement and is centered

upon Side Letter No. 3. The fundamental issue at bar is this: Does the Carrier have the right within the language of Side Letter No. 3 to change the "home" and "away-from-home" terminals and call that, "new pool operations not covered" by the LA Hub Agreement?

As background, on August 12, 1996, the Surface Transportation Board approved a merger of the Union Pacific and Southern Pacific railroads subject to the New York Dock Labor Protective Conditions. During the process, an arbitrator imposed conditions to control the merger on the area herein under dispute by creating the Los Angeles Hub Agreement. The January 16, 1999 LA Hub Agreement set aside previous seniority districts creating hubs, which allowed engineers to run any service within hubs from the "home" terminal to the "away-from-home" terminals. This system was in place under the LA Hub Agreement with different pool operations, including the "West Colton-Yermo" and the "West Colton-Yuma" pools, with West Colton as the home terminal in each operation. The LA Hub Agreement included Side Letter No. 3. This instant dispute began when the Union Pacific Railroad Company (hereafter the Carrier) proposed major changes on February 11, 2013 and began discussions culminating in a new notice now before this Board.

On July 17, 2013, the Carrier served notice proposing terms and conditions for a "new" pool freight service extending from two different home terminals: Yermo, California and Yuma, Arizona both going to an away-from-home terminal in West Colton, California. It argued that the Interdivisional Notice was proper and controlled by Article IX (Interdivisional Service) of the May 19, 1986 Award of Arbitration Board No. 458. The Arbitration Board imposed the 1986 BLET National Agreement which gave the Carrier the right under Article IX to propose the new pool freight service. The Carrier had withdrawn the earlier February proposal after discussions with the Brotherhood of Locomotive Engineers and Trainmen (hereafter the Organization) led to reconsideration.

In the July 17, 2013 proposal, the Carrier left intact a "long run" operation from Dolores, California as the home terminal with two different pools operating to away-from-home terminals at Yermo, California and Yuma, Arizona. The Carrier made a major change in the "short run" pool service by reversing the home and away-from-home terminals for crews operating between West Colton to Yermo, California and from West Colton to Yuma, Arizona. Where the Carrier had previously established the service under the LA Hub Agreement between these points with West Colton as the home terminal and the other two cities as the away-from-home terminals, a hub and spoke model, it now

proposed reversing the designated terminals. The starting point for the unassigned through freight pools that were proposed would be the home terminal at Yermo, California and the home terminal at Yuma, Arizona, with the away-from-home terminal at West Colton, California for both "short runs" service. The Carrier argued that this new interdivisional service was proper pursuant to Article IX of the 1986 BLET National Agreement as needed for efficiency. The Organization argued the proposal was certainly not "new" service and the Carrier was estopped by Side Letter No. 3 to the LA Hub Agreement.

The parties failed to reach any settlement on the property. The Organization maintains that the Carrier lacked the Agreement right to invoke Article IX and make the changes proposed. The Carrier was prohibited from doing so by the identical language of the Los Angeles and Southwest Hub Implementing Agreements in Side Letter No. 3 from the LA Hub Agreement and Side Letter No. 2 from the SW Hub Agreement. Those Side Letters left intact existing pool arrangements as stated:

> New Pools created after this Agreement: New pool operations not covered in this implementing Agreement whether between Hubs or within the Hub shall be handled per Article IX of the 1986 National Arbitration Award.

The Organization holds that the Carrier was barred from its proposed changes by the conditions set in the Hub Agreements, *supra*. The Carrier disagreed arguing that the Hub Agreement and Side Letter No. 3 made this change proper and codified its right to do so. Unable to resolve the dispute the Organization filed suit in the United States District Court for the Northern District of Illinois on August 21, 2013 to enjoin the Carrier from its unilateral attempt to implement the changes in its July 17, 2013 (as modified) notice. Following a day of testimony and evidence, the parties agreed to create this instant Board to decide the issue at bar, while the federal case is stayed (BLET vs. Union Pacific, Case No. 13-cv-5970 N.D. Illinois).

Position of the Union

The Organization's contention is that under the conditions of this claim, the Carrier is not creating anything "new". Under the LA Hub Agreement, the Carrier already has on this property all that it is now requesting. In Section III (Pool Operations/Assigned Service), the Carrier has service with a home terminal at West Colton with operations run as separate pools to away-from-home terminals of Yermo, California and Yuma, Arizona.

These terminals on the two short runs remain the same terminals. There is no change being proposed in the mileage or trackage as the proposed runs will cover the precise mileage, precise track and the same terminals of West Colton and Yermo, California and Yuma, Arizona. Article IX does not apply as the Carrier is constrained by the fact that it signed Side Letter No. 3, *supra*, which states that after the Los Angeles Hub Agreement pools were created that any new pool operations "not covered in this implementing Agreement" would be handled per Article IX. This is not a notice to create "new" pool operations "not covered" by this Agreement. There is no change that constitutes a "new pool created" as the one proposed by the Carrier is already covered by this Implementing Agreement.

What the Carrier has proposed is not permissible under the Hub Agreement as it is not a "new" pool created after this Agreement. All that the Carrier is proposing is to reverse the home terminal and away-from-home terminals to create cost savings. The Organization argues that the Carrier is rearranging the service to gain economic advantage in two key ways. First, the Carrier has had a difficult time obtaining qualified and certified engineers to take the West Colton to Yermo route which is a difficult grade and pays significantly less money. Qualified engineers bid off to routes where they can make more money, leaving less qualified junior engineers forced to take the West Colton-Yermo runs. Since they are less qualified, the Carrier has to pay for a pilot to ride along, raising costs. The Organization argues that if senior engineers had Yermo as a home terminal, they would more likely take the run, reducing Carrier costs. Second, at Yuma, where there is less track space, it is difficult to know when the Carrier will need a train to depart since trains are arriving from the east across country, so they must keep a crew waiting. When the engineer is waiting more than sixteen (16) hours, the engineer must be paid held away-from-home terminal time. This is a payment made while engineers are not working, raising the Carrier's costs. There is no efficiency gained, no real change occurring, and no arbitral precedent to support this as "new service". The Carrier is simply trying to run around the Agreement and Side Letter No. 3 to substantially reduce labor costs.

The Organization holds that *as* this proposed interdivisional service is the very same service which already exists, a substantial reconstruction to obtain only economic gains, it is not permissible. Side Letter No. 3 controls the creating of any new service not contained in the LA Hub Agreement. This is <u>not</u> a new pool operation and the Carrier may not institute it.

The Organization argues that the issue has been previously visited between this

Organization and the Carrier at various other locations. In Arbitration Board No 581, Arbitrator Kenis held that the Union Pacific Railroad Company could not use Article IX in an attempt to create service changes due to the fact that where a Hub Agreement conflicted with other Agreements, the Hub must prevail. Similarly, the Organization points to Arbitration Board No. 590 on this same property with this same LA Hub Agreement, that while supporting the Carrier in that dispute, specifically stated that the Kenis Award was on target in that where conflicts arise, language controls. In Board No. 590, Arbitrator Binau maintained that under Article VI, Section C of the LA Hub Agreement, "National Agreements prevail over the Los Angeles Hub Agreement." Arbitrator Binau did not consider Side Letter No. 3 which given his finding would prevail in this dispute. Similarly, in Arbitration Board No. 589, Arbitrator Perkovich agreed and stated that, "the Hub Merger Implementing Agreements 'shall prevail'." In all of these disputes, the arbitrators found that when conflicts occurred in the Hub Agreements, the specific language held: "except as otherwise provided herein." Within this Hub Agreement there already exists this pool operation and the restrictive language is clear: "New pool operations not covered in this implementing Agreement". Therefore, it is not new to propose it and the Carrier cannot use Article IX of the 1986 National Agreement to recreate an existing service. That violates the Agreement as supported by the above Arbitration Boards, given the explicit language in Side Letter No. 3.

Position of the Carrier

The Carrier argues that the proposed Interdivisional Service is an entirely "new" pool operation permitted by Article IX of the 1986 BLET National Agreement. It points to the fact that the Informal Disputes Committee considering Article IX answered the question: "Can established Interdivisional Service be extended or rearranged under this Article". The Interpretation of Arbitrator La Rocco in Issue 3 stated in pertinent part that:

> . . . The Carriers have the right to establish . . . rearranged interdivisional service and it constitutes new service within the meaning of Article IX unless it is a substantial re-creation of the prior interdivisional service designed solely to obtain the more favorable conditions in the 1986 National Agreement".

The Carrier argues that even if this new service which reverses the away-from-home and home terminal designations were a substantial re-creation, it is still *not* designed solely to

obtain more favorable conditions. In fact, the terms and conditions of the prior service already established are largely carried forward in the Carrier's notice. As such, it is permissible. This service is designed to create efficiencies between long and short runs taking advantage of the changes that have been introduced to rail service. It is not designed solely to obtain more favorable conditions.

The Carrier introduced figures that millions of dollars have been spent to create improvements including the development of some second track and a Colton Crossing Flyover above BNSF's route through West Colton. Moreover, the Carrier provided data and argument that the proposed new pool operations with home terminals of Yuma and Yermo for short runs, will provide efficiencies not presently existing in the movement of traffic for customers. The Carrier argued herein that the modifications improved "the velocity, efficiency and consistency of its operations". However, to make maximum use of the changes and projects on long runs which will operate through West Colton, the short runs in this dispute, which cost more to operate, must become more efficient. The east bound trains originate near West Colton and can be more efficiency controlled. The west bound trains that originate in the east, for example Chicago, arrive at inconsistent times caused by numerous types of delays, requiring crews to wait at Yuma, Arizona, the away-from-home terminal. This is inefficient and reducing the time will reduce held away-from-home pay. By changing Yuma to a home terminal, the Carrier will gain efficiency in connection to long runs and additionally, the Carrier argues it is permissible by the LA Hub Agreement.

The Carrier points to the decision by Arbitrator Binau in Arbitration Board No. 590 recognizing the Carrier's right to introduce new pool service under the National Agreement. Arbitrator Binau stated on this property and about the LA Hub Agreement that, "Article VI, Section C of the Los Angeles Hub Agreement preserves all national agreements that existed prior to the creation of the Los Angeles Hub." Article IX is therefore preserved and Side Letter No. 3 simply confirms that fact by its title and language:

> New Pools created after this Agreement: New pool operations not covered in this implementing Agreement whether between Hubs or within the Hub shall be handled per Article IX of the 1986 National Arbitration Award.

As for the Organization's argument that the LA Hub Agreement takes precedence in that Side Letter No. 3 specifically denies the right of the Carrier to create service which is

not new: this service is new. The Carrier argues that the Organization's reading of the Los Angeles and Southwest Hub Agreements is off mark. The Organization is selectively arguing a few disconnected words not read in full comprehension of the total phrase and intent. The intent is stated, "New Pools created after this Agreement" and that is what the Carrier has proposed at bar. This is a new pool. There is nothing in the LA Hub Agreement with a home terminal at Yuma, Arizona. There is nothing in the LA Hub Agreement with a home terminal in Yermo, California and West Colton is not operated in the LA Hub Agreement as an away-from-home terminal. Therefore, it is new service. In support of its argument the Carrier has pointed to a number of Awards holding that the Carrier has the right under the National Agreement to propose new service when it deems such service proper (Public Law Board 7577, Award No. 1; Arbitration Board No. 590; Arbitration Board No. 580, centered on the letter of March 5, 2002 of the Organization's Submission to that dispute). The Carrier fundamentally disagrees with the Organization's arguments that these proposed pool operations are already covered in the Los Angeles Hub Agreement or the Southwest Hub Agreement.

Discussion and Findings

The Board has studied this full and detailed record. In support of its position, the parties have attached a long list of Awards and citations to support all of the various arguments raised in Submissions, Rebuttal Submissions and argument at the hearing. After full consideration, we reach the following conclusions.

Fundamental to the case is BLET's Question No. 1, "Does the Carrier's proposal of July 17, 2013 (as modified) create new pool operations not covered in the Merger Implementing Agreement for the Los Angeles Hub?" The key issue is decided on the language of Side Letter No. 3:

> New Pools created after this Agreement: New pool operations not covered in this implementing Agreement whether between Hubs or within the Hub shall be handled per Article IX of the 1986 National Arbitration Award.

Clearly, the determination of the meaning of this Side Letter is central to this dispute. The Organization argues that because the Los Angeles and Southwest Hub Agreements already have pool service between Yermo and West Colton and Yuma and West Colton, this is not new service. Further, this already existing service is included in Side Letter No. 3. It is a

contractual limitation that stops the Carrier from invoking Article IX of the 1986 National Agreement.

Central to the argument of the Organization is that this limitation is similar to that found by Arbitration Board No. 581 (Kenis Award) and Arbitration Board No. 589 (Perkovich Award) which held in other hub agreements that when the Hub Agreement conflicts with other Agreements, the Hub Agreement language must prevail. Further, Arbitration Board No. 590 (Binau Award) which arbitrated this very LA Hub Agreement found similarly that under Article VI, C. that, "National Agreements prevail over the Los Angeles Hub Agreement". However, Binau did not interpret Side Letter No. 3, which is a clear contractual limitation to the use of Article IX as Article VI, C. states, "except as specifically provided herein...". The Organization argues that Side Letter No. 3 specifically protects this already existing service from change. Side Letter No. 3 permits the use of Article IX for proposed "New pool operations not covered in this implementing Agreement . . . (emphasis added)" The Organization is definite that the pool operations proposed are covered: they already exist and are therefore excluded by negotiated language.

The Organization's central argument before this Board is that the language must mean something. The Side Letter in dispute was to create something. The Organization maintains that it means that the Carrier can use Article IX on new pool service, with the express restriction on existing service created by the LA Hub Agreement, i.e. "not covered in this implementing agreement . . ." As the Organization contends:

> Instead of giving meaning to the operative language, Union Pacific argues that the only purpose of Side Letter No. 3 was to be "belt and suspenders" and to make clear that the parties were "preserv[ing] UP's Article IX rights...[.]" ... "Belt and suspenders" is code for "surplussage." This Board should not interpret the limiting language "pool operations not covered in this implementing Agreement" as either a belt or braces. Neither can that language be reasonably interpreted as a preservation of a right to change operations covered by the LA Hub Agreement.
>
> That interpretation would really be absurd. . . . If the goal, as it says, was to make doubly clear (belts and suspenders) that it could use Art. IX to change the service put in place as part of the New York Dock labor-protective conditions accompanying the 1996 merger; it would be easy to say so

plainly. For example, "Nothing in this Agreement shall inhibit the Carrier's use of Ar. IX." Or maybe, "The Carrier may change all service established by this implementing Agreement through Article IX."

The Organization strongly argues that the effect of this Side Letter is to restrict the Carrier from what it proposes. The Organization holds that to take a pool operation running on the same track to the same terminals and with the very same mileage and call it "new" because you change the "home" and "away-from-home" terminals would render Side Letter No. 3's language meaningless.

The Carrier responds to this argument by maintaining that the language is clear and its notice complies with the language. It is proposing a new pool operation that is nowhere to be found in the Implementing Agreement. It is not relevant that it is on the same track, same mileage and same terminals, because it is not the same pool service, but *new* pool operations which do not exist. Nowhere in the entire LA Hub Agreement does the Carrier have West Colton as an away-from-home terminal and Yermo and Yuma as a home terminal. A change in home and away-from-home terminals is not a minor change. It is a major change. This is new service and in compliance with Side Letter No. 3. As new service it is permissible under Article IX, as preserved by Side Letter No. 3. The Carrier argues that to follow the Organization's argument, the only new service would have to be between new points where the Carrier does not operate trains or have terminals. It finds no restriction to this notice of July 17, 2013 and the LA Hub Agreement language or Side Letter. It points to Public Law Board 7318 Award 20 (Arbitrator Zusman) and Public Law Board 7463, Award 1 (Arbitrator Radek) which found that changes in a home terminal were permissible under Article IX of the 1986 Agreement.

The Organization and Carrier disagree as to the meaning and outcome of Side Letter No. 3. It appears on its face to be clear and unequivocal, but in the context of this dispute the central issue before this Board is not the same as faced by Arbitrators Kenis or Perkovich which had *explicit* language directing a conclusion e.g. Kenis, "Where conflicts arise, the specific provisions of this [Implementing] Agreement shall prevail . . ." There is no clear and explicit language in this LA Hub Agreement listing the disputed reversed terminal designations which are "not covered in this implementing Agreement . . ." There is no current pool service with a home terminal of Yermo, California or Yuma, Arizona. The purpose of the language is made clear in the underlined component as to: "New Pools created after this Agreement". No one in this industry would consider a change in home terminal as insignificant or minor. It is a major change which affects employees and the

Carrier's operations. The parties dispute the proper interpretation of what the language in Side Letter No. 3 means. It is unclear, causing the dispute over whether this is or is not "new" service.

The Board finds the language has latent ambiguity which is before us as the issue at bar. The argument that the Organization brings before us is that given Side Letter No. 3, the Carrier is restrained because this is the same pool service already in existence. Even further, that if the Carrier is permitted just to take and change the home and away-from-home terminals it is changing the language of the Agreement. The Board is not persuaded by those arguments. The fact is that even the Binau Award (Arbitration Board 590), which is the only Award to look at the LA Hub Agreement found that the Carrier could change the switching limits in the LA Hub Agreement, even though they were clearly listed in the Agreement. The Carrier could do that because it retained its rights to "all national agreements that existed prior to the creation of the Los Angeles Hub" as indicated in Article VI, Section C.

The Board finds the same logic applies in this instant case. The Carrier has not given up its rights; even in Side Letter No. 3 to utilize its Article IX rights involving new pool operations. The Board has fully considered the Organization's argument that the July 17, 2013 proposal for new pool service was not "new", but already existing and not permitted under the existing Side Letter No. 3. The language of "not covered by this Agreement" means something and if running the same trains over the "same track" with the "same mileage" isn't meant, what is? The Board finds this argument unpersuasive, as the purpose of the language is not explicit and means what it says within the totality of the Agreement allowing for "New Pools created after this Agreement" when they are "New pool operations". What does "new" mean if not new. This pool operation does not exist. The proposal to make it exist is new, by any standard.

The history of Article IX is well known. The purpose is to create an Agreement that would permit the latitude necessary for carriers to establish interdivisional pool operations improving efficiency. This improved efficiency was exchanged for "large wage increases" (Public Law Board 1679, Award No. 1; Arbitration Board No. 586). The focus when language permits "new" pool operations is whether they increase *efficiency* and are not substantially the same pool service.

The Organization has strongly argued that the proposed service is duplication and has no relevance to efficiency. It argues strongly that the proposal is to gain one-sided

"carrier friendly only" benefits (Special Board of Adjustment No. 6741, Award No. 1). It maintains throughout its review of the declarations and Carrier's assertions that the Carrier is trying to obtain monetary gain, which could increase efficiency. However, Article IX is for pools that increase efficiency and thereafter might produce some monetary gain. The Organization argues there is no efficiency in the reversal of home terminals. As it states, the Carrier can already do what it proposes; has failed to explain how "engineers would mesh into its service once they were at the new "away-from-home" terminal" and,

> . . . has not offered evidence supporting its claim that its proposed changes will be a factor in creating "more efficient and faster service . . . There are no intermediary terminals . . . Swapping the location of the home terminal will not allow Union Pacific to avoid any bottleneck: it will not change where the trains start or end; it will not change the need for a crew change; and it will not extend any run or run through any terminal. All it will change is where engineers report to work. There is no operational case for the proposal.

The Board has considered these issues carefully to determine if the proposal is supported by Arbitrator La Rocco's Issue 3 Interpretation. While the Organization argues strongly that Article IX does not allow the duplication of existing service or to "substantially recreate" existing service, the Carrier's proposal meets the two part test. Arbitrator La Rocco's Issue 3 Interpretation clearly held that Carriers:

> Have the right to establish extended or rearranged Interdivisional Service and it constitutes new service within the meaning of Article IX unless it is a substantial re-creation of the prior Interdivisional Service designed solely to obtain the more favorable conditions in the 1986 National Agreement.

The Organization argues that this is a substantial re-creation of the pool service that already exists. The Organization argues that the Carrier cannot effectively create identical service or recreate or modify existing pool service for economic gain when there is no new intermediary terminal, crew change points or evidence of an operational change (Public Law Board No. 3800, Award No. 1 with Carrier Dissent). After a review of the Carrier's evidence, the Board finds that this is not an improper alteration. It is a permitted rearrangement as it does not occur simply to obtain more favorable conditions in the 1986 National Agreement, *supra*. There is no persuasive base for this argument. This is new rearranged interdivisional service that does not now exist and is therefore permitted.

The Board has also studied the Organization's strong assertions that the Carrier's proposal is a one sided attempt to obtain benefits. As stated often and cited by Special Board of Adjustment No. 6741, "It has historically been held that the impediment to rearranging an existing interdivisional run would be to substantially recreate it in order to access benefits that are one-sided, i.e., 'carrier friendly only' conditions." As argued by the Organization, the assertions are that the Carrier is attempting both to avoid paying pilots and save money on held away-from-home pay to obtain one-sided benefits. The Organization points to the testimony of Randy Guidry and Paulo Tortorice (BLET v. UP, Case No. 13-cv-5970, N.D. Ill. hearing of October 1, 2013) as well as Award support to argue that these "new" proposals are not for any efficiencies, but to obtain one sided financial gain (Public Law Board No. 6740, Award No. 2; Public Law Board 6741, Award No. 1; Public Law Board 6449, Award No. 19). As example, Mr. Tortorice, Locomotive Engineer and Local Chairman testified that the proposal was "just changing the on-duty points" and the senior engineers are not working Yermo "because it's our lowest paid run in Los Angeles." (p. 89). The Organization challenges the efficiency gains and notes that in the Sworn Declaration of Gordon Wellington, Regional Finance Director, the proposal would reduce the Carriers "approximately $9.0 - $10.0 million direct labor expenses . . . by at least 2%" (BLET Appendix p. 184). This savings would be obtained not by efficiencies, but by keeping senior engineers at Yermo and by not having to pay the large financial penalty payments for held away-from-home pay at Yuma.

Our careful reading of those Awards and of the testimony does not support the fact that this is one sided gain. The full testimony of General Director of Labor Relations Mr. Guidry is that the proposal is instituted for efficiency. Mr. Guidry testified that:

> The overall velocity improvement is going to improve the train capacity and the velocity of those trains. You'll be able to operate more trains, and those more trains, hopefully with increased market share; we'll be able to increase the number of jobs available to engineers in the basin as a whole" (p. 170).

Further, Mr. Guidry testified: "And our ability to have the terminal at Yuma and Yermo into West Colton will better facilitate and mesh with the overall operation in the basin as a whole" (p. 171). The Carrier is permitted to create service if it is new; if it is not a "substantial re-creation of the prior interdivisional service designed solely to obtain the more favorable conditions in the 1986 National Agreement". The Informal Disputes Committee was clear on this point.

The Organization has not provided substantial evidence that the proposal is "designed solely" and therefore violative of the National Agreement. The Carrier provided sufficient proof of the efficiency obtained by the reversal in home and away-from-home terminals. There is efficiency in increasing the pool service in a manner that produces fewer trains with two engineers. The fact that the Carrier saves money in payment for held away-from-home terminal time also means that with less hours held away, there is more efficiency in operations. The fact that the Carrier would not need pilots means it saves money, but it also means it has more efficient operations. Article IX was to create efficiency and this record supports the fact that a change in away-from-home and home terminals will produce more efficient pool service that meshes with other pools and increases the speed and movement of freight. The fact that the Carrier also obtains additional monetary gains along with efficiency does not negate its proposal. The Board finds the proposal is fully compatible with the operating efficiency documented. The change is not shown to be "merely an opportunistic maneuver singularly designed to take advantage of more favorable conditions" in the National Agreement (Public Law Board No. 5121).

This Board finds that this is a substantial change and not a re-creation. It fundamentally changes the entire pool operation. Even if *arguendo* and we do not concede the point, that the Organization was correct, it is certainly not "designed solely to obtain the more favorable conditions in the 1986 National Agreement". The Board finds no evidence to draw that conclusion (see again the testimony of R. Guidry, BLET Appendix, pp. 282-289). In fact, all of the evidence of record indicates that the current benefits will remain and the proposal does not contain more favorable conditions than contained in the 1986 National Agreement.

Accordingly, when, as here, the Carrier can document with substantial proof that the change of home and away-from-home is properly new and there exists no estoppel language, the Board must answer the Organization's Question No. 1 and the Carrier's Question No. 1 with a "yes."

Decision and Award

The Organization has asked: "Does the Carrier's proposal of July 17, 2013 (as modified) create new pool operations not covered in the Merger Implementing

Agreement for the Los Angeles Hub?" The answer is yes. The Carrier has proposed something that is new. Similarly the Carrier asked: "Do the proposed interdivisional operations between Yermo, California, and West Colton, California, and between Yuma, Arizona, and West Colton, California, set forth in Union Pacific Railroad Company's notice dated July 17, 2013, comport with the provisions contained in Side Letter 3 of the Los Angeles Hub Implementing Agreement and Article IX of the 1986 BLE National Arbitration/Agreement, as amended by Article IX of the 1991 BLE National Agreement?" The answer is yes. Accordingly, the Board turns to the Organization's Question No. 2.

The Organization has asked in Question No. 2: "Is the Carrier allowed by Article IX, Section 2 & Section 4 (a) of the 1986 BLE National Arbitration/Agreement, to change or merge seniority districts created by the Merger Implementing Agreement for the Los Angeles Hub and the Merger Implementing Agreement for the Southwest Hub? If the answer is "no," can the Carrier use Article IX, Section 2 & Section 4 (a) of the 1986 BLE National Arbitration/Agreement to remove service from the seniority district created by the Merger Implementing Agreement for the Los Angeles Hub to the Merger Implementing Agreement for the Southwest Hub?"

The Board has carefully reviewed the arguments by the parties to this merged seniority dispute. The Organization points to the facts of seniority and that the Carrier is prohibited from changing or merging seniority districts. Currently, the pool service from West Colton to Yermo, California is completely within the Los Angeles Hub. There is no question that in this run, work opportunities belong to the Los Angeles Hub engineers. The fact that the new pool service begins the run at Yermo with an away-from-home terminal at West Colton changes nothing major in the seniority arrangements, if permitted. What the Organization further objects to is that the Merger Implementing Agreement for the Southwest Hub would be merged or changed by the new pool service which has a home terminal at Yuma, Arizona and ends at West Colton. The objection is based on two arguments. First, Yuma is in the Southwest Hub and not in the Los Angeles Hub. Second, the Organization maintains that Article IX, Section 2 and 4 (a) don't apply wherein the Implementing Agreement from the Surface Transportation Board instituted seniority conditions to protect engineers from the Union Pacific-Southern Pacific merger. Even if the Carrier is permitted to create a new pool operation, it can't remove work from one seniority district and move it to another.

The Board has studied the Organization's argument and Carrier's detailed rebuttal.

In this instance, the Board notes that Article IX is not in any material way in this instance damaging the extant seniority configuration. There is nothing in this altering of pool arrangements that modifies either the seniority districts, miles run in either seniority district or the Agreements governing these actions. Side Letter No. 3 in the LA Hub Agreement is identical in language to Side Letter No. 2 of the Southwest Hub Agreement. The miles run have not changed for either seniority district. It is important to note that in this instance, the adjacent Southwest Hub has only approximately one per cent (1%) of the current miles run on the Yuma to West Colton pool operation. Therefore if the Board would conclude that the Carrier was wrong in its action, it would be tantamount to permitting Southwest Hub engineers to obtain an inordinate and unfair distribution of work, simply because the home terminal began on the 1% of miles run, even though the Los Angeles engineers go over 99% of territory within the Los Angeles Hub. This would not result in a fair and equitable division of work. It would not be consistent with existing historical division of territory.

The Board has considered many issues in reaching this decision. We note the language of the Southwest Hub, Note No. 1 holds that, "The Hub identifies the on duty points for assignments and not the boundaries of assignments. (This note is further explained in Side Letter No. 2)." The Board is aware that a decision has been previously made which authorized work allocated on the proportion of mileage run when work crossed seniority district boundaries (Public Law Board No. 6833, Award 40). Additionally, the Board notes that the Carrier herein has proposed new pool operations under Article IX, rather than a technical change or modification of seniority districts. The most rational outcome of this Board's determination is that it is illogical to permit a change from what has been currently permitted to allow those who perform almost no train miles on the track from Yuma to West Colton to obtain a substantial change in work opportunities. The Board finds that the answer to the Organization's Question No. 2 is that the Carrier is not proposing to "change or merge seniority districts" but to create new pool service. Accordingly, the Board will permit the continuation of existing configuration as indicated in the Carrier's proposal. The new home terminal of Yuma, Arizona, although technically in the Southwest Hub, will be staffed by the Los Angeles Hub engineers. While this may be the on duty point, their assignments on the Yuma to West Colton run will be almost entirely within the Los Angeles Hub and is therefore equitable in allocation and work opportunities under Article IX.

Having resolved the two former questions of the Organization and the first of the Carrier, the Board turns to the fundamental question raised by both parties and partially

stated identically as, "what shall be the terms and conditions governing engineers assigned to or working in the interdivisional service between Yermo, California and West Colton, California, and between Yuma, Arizona and West Colton, California? The Organization prefaces this question with, "If the Carrier's proposal of July 17, 2013 (as modified) is a legitimate good faith exercise of a contractual prerogative", while the Carrier prefaces the same question with, "If the foregoing question is answered in the affirmative, and in accordance with the requirements set forth in Article IX, Section 2 & Section 4 (a) of the 1986 BLE National Arbitration/Agreement". Both turn to the proposals at bar.

The Board has considered the Carrier's proposal of July 17, 2013, as amended October 18, 2013 with attached Side Letters. It varies from the Organization's proposal, amended by the BLET's Rebuttal Submission to this Board; not exchanged and discussed on property. The facts at bar are that this Board is confronted with two different proposals for the new pool operations. Consideration has been given to the many differences included within the authority of this Board to determine conditions proposed before it.

The Organization argues that the Board should not reach a decision, but permit the parties to continue to negotiate the terms. The Carrier maintains that it has complied with Article IX, Section 1 in that it has served notice specifying "the service it proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such service" (Section 1, Article IX). The Carrier further maintains that under Section 3 it met and discussed the notice and unable to agree, was ready to proceed with a trial run, interrupted by court proceedings and now with arbitration. Given Section 4, when the parties can't agree it is subject to arbitration, but governed by Section 2 of Article IX.

The Board has reviewed first the on-property action of the parties to this dispute. The record indicates that the parties met on July 17, 2013 to consider the Carrier's proposal. Subsequently the Organization objected to the proposal by letter sent July 24, 2013 (misdated) and with Carrier email response of July 26, 2013. Further, the Carrier and Organization met again on August 13, 2013 with a third meeting planned for October 16, 2013, cut short due to the Organization's legal action. Certainly the parties exchanged ideas on the proposal. The Organization maintains that the Board should not reach a decision, but permit the parties to negotiate the terms. The Carrier maintains that the terms were proper under Article IX, Section 2 and should be accepted by this Board.

The Board has considered the two different proposals presented by the parties. The Board has studied Article IX. Article IX, Section 2 governs the establishment of interdivisional service specifying five mandatory issues (a through e), other reasonable and practical conditions suggested including any other terms or conditions the parties may negotiate. The Board is clearly constrained by the limiting language on our authority, made clear in Article IX. As Section 1 - Notice explicitly states, the "carrier . . . shall . . . specify the service it proposes . . . and the conditions, if any, which it proposes shall govern the establishment of such service." This puts a painfully difficult burden on the Organization to propose or negotiate conditions. The Organization argues that the change to a very distant new home terminal will cause drastic work life issues on the employees. Certainly, the Board is sensitive to the fact that Yermo is around 100 miles away and Yuma over 200 miles away from the current home terminals. This is a long distance to transverse and will most likely require employees to make tough life choices, including relocating.

The Board is restrained in its actions under Section 4 to those aspects delineated by Section 2 and within the framework of constraint to narrowly observe the purpose of the language. The Board notes that the two proposals are exact only in Carrier's October 18, 2013, Sections 6, 8, 9 and 12. They are largely similar in other areas with additional language, as example, in Carrier's Sections 1, 2 or 3. Each difference is important. The Board has directed its attention to the full Carrier proposal and the many issues raised by the Organization.

The Board finds nothing in the Carrier's proposal that would run counter to the language of Article IX and therefore to directly question its applicability. The Organization has argued that the new home terminals are less desirable living areas. The Organization also raises a large number of issues based on the fact that if the employee continued to live at their current location, they would incur onerous burdens of time and family issues working at the distant new home terminals. Accordingly, the Organization asks this Board to find that the severity of the effect be moderated creating more "reasonable and practical" conditions. The Organization requests a tie up for 24, 36 or 48 hours rest which would allow employees time to be with their families. The Organization also requests a call time of at least four (4) hours advance notice necessary for the extra time the employees would need to get to their work location. The Organization also wants reverse lodging to be permanent so that employees would have a place to stay. The Board is restrained from such action as there is no justification for the Carrier to absorb these costs, when the negotiated language and proposed language protects the employees.

Article IX, Section 7 was negotiated to assure Protection to any employee adversely affected, including a change of residence. Such actions are contemplated by protection required by Section 7 of Article IX, but not an estoppel to the right of the Carrier to create new service.

The Board has seriously considered all of the Organization's proposed changes and additional Sections, within the constraints of Article IX. What is most noticeable to the Board is that the Organization has introduced a number of new proposals, including Reverse Lodging, Tie-Up (permitting mark off for 24, 36 or 48 hours rest), Call Time (of at least four (4) hours), Preservation of Working Conditions and belatedly, Preservation of Pool Service – No Commingling. All of these and other changes in Extra Boards and Overtime, increase costs, decrease efficiency or are beyond the Board's authority.

The Carrier's limitation certainly includes Section 2, holding that, "reasonable and practical conditions shall govern" and that "although they are not limited" to those listed, there is no additional contractual obligation to include proposals suggested by the Organization. What the Carrier is obligated to abide by are those conditions clearly stipulated by Article IX. This Board is similarly constrained by Section 2. The question the Board considers is whether the Carrier's proposal of July 17, 2013 (as amended October 18, 2013) meets the standard.

The Board makes clear that it has the authority to assure that the proposal is "reasonable and practical" and the concerns of the Organization are considered. The Board has carefully reviewed the Organization's arguments about the negative consequences for employees forced to move to the undesirable cities of Yermo and Yuma; the needs for permanent reverse lodging, changes in Extra Boards, enhanced overtime or the need for a four (4) hour call. The Board is clearly restricted in awarding any terms beyond those set forth in Section 2, although the parties may or may not agree to do so. The authority of this Board is very limited, particularly as to issues involving compensation (Arbitration Board No. 507; Board of Arbitration No. 580).

The Organization's proposal is beyond the Agreement, which permits the Carrier's actions if such is in compliance with Article IX conditions. The Board is governed by Section 2, which are the required conditions and limits to our authority (see Arbitration Board No. 468). The Board finds nothing in the Carrier's proposal that deviates from the requirements of Section 2. The Board finds almost all of the Organization's requests would increase Carrier costs or more importantly, to increase *inefficiency* of operations,

the antithesis of Article IX, Section 2(a): "runs shall be adequate for efficient operations and reasonable in regard to the miles run, hours on duty and in regard to other conditions of work". The Board does not find the Carrier's proposal violative of that condition and does find efficiency at the core of the proposal. The Carrier's proposal must therefore be accepted by this Board. It complies with the requirements of Article IX.

Accordingly, in answer to the Organization's Question No. 3 and the Carrier's Question No. 2 the terms of the interdivisional services between Yermo, California to West Colton, California and Yuma, Arizona to West Colton, California are those proposed by the Carrier on July 17, 2013 (as modified October 18, 2013 and incorporating the attached three Side Letters on Overtime, Reverse Lodging and Work Allocation). Those terms are adopted. This decision is specific to the factual base of this dispute and not as a precedent to other disputes with different circumstances.

The Arbitrator will retain jurisdiction for thirty (30) days in the event either party seeks clarification of this decision or to resolve any applicable disputes.

Marty E. Zusman

Marty E. Zusman, Chairman
Neutral Member

R. P. Guidry, Carrier Member

E. L. Pruitt, Organization Member
DISSENT ATTACHED

In the Matter of Arbitration Between:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

and

UNION PACIFIC RAILROAD COMPANY

Arbitration Board No. 598

Dissent of Organization Member

The Board has answered "yes" to both the Organization's Question No. 1 and the Carrier's Question No. 1. Those affirmative answers are premised on serious flaws and as such I must dissent from the Award.

The record clearly shows that the Carrier has not proposed "new" pool operations not covered in the Merger Implementing Agreement. Rather, it has simply switched the home and away-from-home terminal designations in existing service and intends to operate the same service to and from the same points as exists before the supposed "change." Because the Carrier's proposal does not create anything new operationally, the Board should have answered the first questions "no" and not gone further.

Furthermore, to the extent that the first questions are answered "yes," the Carrier has not established that there is any true "efficiency" related to the proposed changes, so the Board's finding that there is lacks sufficient evidence in the record to support it. That there may be cost savings is not proof that the Carrier will enjoy any *operational* efficiencies as a result of the proposed changes, and *operational* efficiencies are what must be proven in order for the intended transaction to be allowed to proceed. The majority apparently and incorrectly believes that cost efficiencies – for example as in relation to reducing held away-from-home time at Yuma or pilot pay at Yermo – achieved solely by reducing contractual obligations to pay engineers are the

types of efficiencies that matter. That is simply wrong, as I explain below. The Carrier is *not* arguing that additional changes are necessary for it to achieve the efficiencies foreseen by the Union Pacific-Southern Pacific merger, nor could it as it has already achieved those efficiencies.

In particular, the testimony of Mr. Guidry, which is all that the majority relies upon, failed to provide any evidentiary support for the majority's conclusions that:

> "The overall velocity improvement is going to improve the train capacity and velocity of those trains."

Or that,

> "[The Carrier's] ability to have the terminal at Yuma and Yermo into West Colton will better facilitate and mesh with the overall operation in the basin as a whole."

Yes, Mr. Guidry said those things, but simply saying something is not proof; UP provided no proof that what he said was correct, and the majority committed manifest error by failing to require UP to satisfy its burden in this matter.

By considering that flipping the home and away-from-home terminals as a "rearranged interdivisional service [that] constitutes new service within the meaning of Article IX" and not a "substantial re-creation of the prior interdivisional service designed solely to obtain the more favorable conditions in the 1986 National Agreement," the majority has eviscerated the meaning of Side Letter No. 3. That is especially evident when Arbitrator LaRocco's Issue 3 Interpretation and the Awards that followed are considered. The majority of the Board has improperly written that bright-line limitation out of the contract. Under the majority's overbroad interpretation, it is doubtful that any proposal could be considered a "substantial re-creation." The Agreement contemplates that a carrier that wants the types of changes UP proposed here would have to secure them through bargaining. The majority has not honored that part of the bargain that underlies the Agreement.

The majority also acknowledges that the Carrier wants to move away from the "hub and spoke" model it asked for and obtained when the Union Pacific – Southern Pacific merger was approved by the Surface Transportation Board. That proceeding and the resulting merger allowed Union Pacific to avoid RLA Section 6 negotiations with the BLET over changes to engineer seniority, which has long been recognized as a property right. See NRAB Third Division Award No. 4987 (Boyd) ("It has long been settled that ***seniority is a valuable property right.***"). Now, by allowing UP to fundamentally change the nature of the service approved by the STB, and the existing seniority rights resulting from that process, without going through the procedures set forth in the *New York Dock* conditions that the STB imposed as a condition of the merger approval, the majority has overstepped its lawful authority and allowed Carrier to take away benefits and protections that were an essential component of the merger approval process.

Finally, in its answers to the remaining questions posed, the majority fundamentally erred in considering itself restrained from approving any of the conditions proposed by the Organization. Section 2 exists because where there is truly "new" service, "new" conditions may be necessary. It recognizes that the "reasonable and practical conditions" imposed may be more than what the Carrier proposes; there is considerable arbitral support for that proposition. Because the majority perceives a limit on its authority that the Agreement does not support, I must dissent to this part of the award as well.

E.L. Pruitt, Organization Member

BOARD OF ARBITRATION

CARRIER'S SUBMISSION

* * * * * * * * * *

PARTIES TO DISPUTE:

UNION PACIFIC RAILROAD COMPANY (UP)

And The

BROTHERHOOD OF LOCOMOTIVE ENGINEERS & TRAINMEN (BLET)

CARRIER'S QUESTIONS AT ISSUE:

Question No. 1

Do the proposed interdivisional operations between Yermo, California, and West Colton, California, and between Yuma, Arizona, and West Colton, California, set forth in UP Railroad Company's notice dated July 17, 2013, comport with the provisions contained in Side Letter 3 of the Los Angeles Hub Implementing Agreement and Article IX of the 1986 BLE National Arbitration/Agreement, as amended by Article IX of the 1991 BLE National PEB/Agreement?

Question No. 2

If the foregoing question is answered in the affirmative, and in accordance with the requirements set forth in Article IX, Section 2 & Section 4 (a) of the 1986 BLE National Arbitration/Agreement, what shall be the terms and conditions governing engineers assigned to or working in the Interdivisional Service between Yermo, California, and West Colton, California, and between Yuma, Arizona, and West Colton, California?"

ORGANIZATION'S QUESTIONS AT ISSUE:

"Question No. 1"

Does the Carrier's proposal of July 17, 2013 (as modified) create new pool operations not covered in the Merger Implementing Agreement for the Los Angeles Hub?

"Question No. 2"

Is the Carrier allowed by Article IX, Section 2 & Section 4 (a) of the 1986 BLE National Arbitration/Agreement, to change or merge seniority districts created by the Merger Implementing Agreement for the Los Angeles Hub and the Merger Implementing Agreement for the Southwest Hub? If the answer is "no," can the Carrier use Article IX, Section 2 & Section 4 (a) of the 1986 BLE National Arbitration/Agreement to remove service from the seniority district created by the Merger Implementing Agreement for the Los Angeles Hub to the Merger Implementing Agreement for the Southwest Hub?

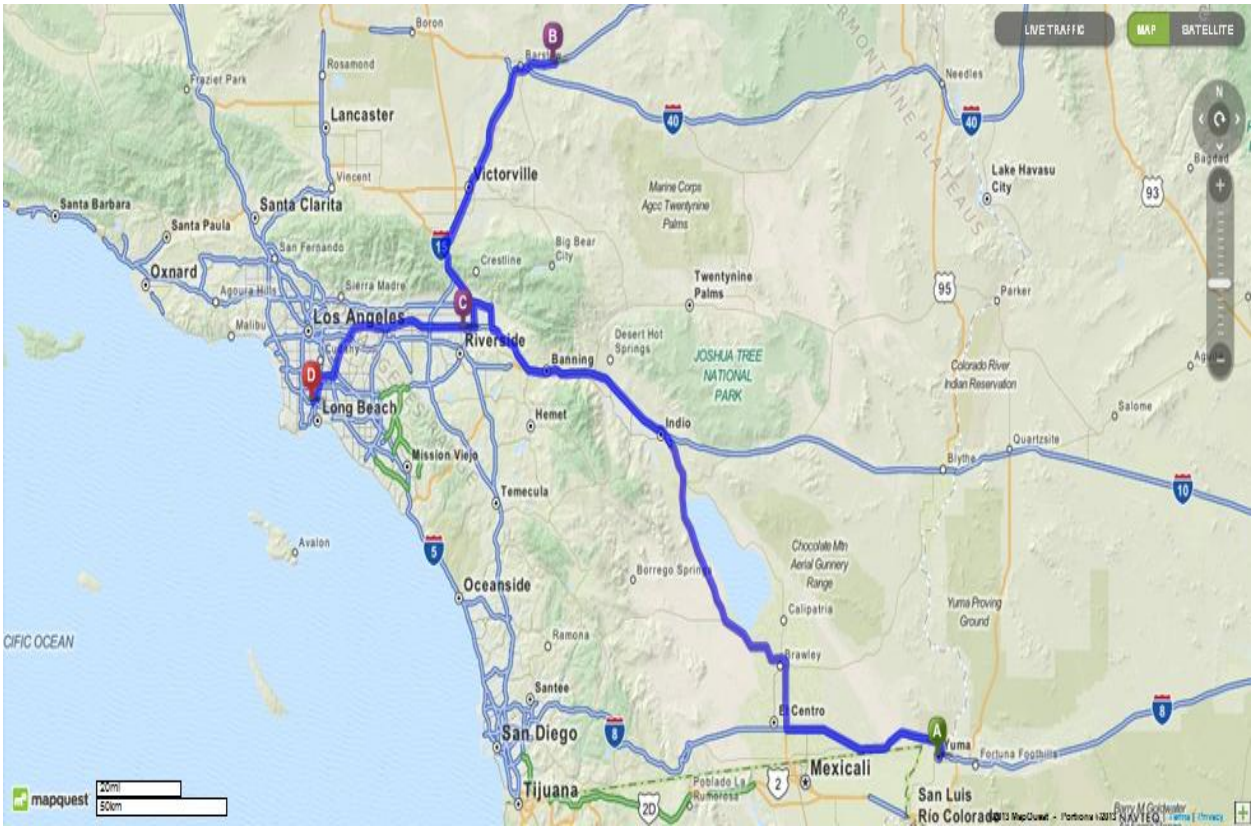
"Question No. 3"

If the Carrier's proposal of July 17, 2013 (as modified) is a legitimate good faith exercise of a contractual prerogative, what shall be the terms and conditions governing engineers assigned to or working in the interdivisional service between Yermo, California, and West Colton, California, and between Yuma, Arizona and West Colton, California?"

Introduction

This case involves Union Pacific's (UP) routine deployment of National Agreement provisions to obtain their intended efficiencies. This writing will show that Article IX – Interdivisional Service of the May 19, 1986 BLET National Agreement **(Carrier's Exhibit 1)** is the controlling and intended Agreement provision that affords UP a nearly unlimited tailoring of its operations to obtain these efficiencies. UP will further show that its July 17, 2013, Interdivisional Notice **(Carrier's Exhibit 2)** and proposed terms and conditions for the new pool freight services with a home terminal in Yermo, California and an away from home terminal in West Colton, California, and a home terminal in Yuma, Arizona, and an away from home terminal in West Colton, California, meet and/or exceed Article IX Agreement requirements.

To visualize how the proposed operation will work, **Location A** on the map below is Yuma, Arizona, the home terminal for one of the new pool operations. **Location B** is Yermo, California, the home terminal for the other new pool operation. **Location C** is West Colton, California, the away from home terminal for both the Yuma and Yermo new pool operations. These two proposed *"shorter runs"* must compete with other *"longer runs"* on the Sunset Corridor and into and out of the Los Angeles Basin Metroplex (LABM). The *"longer runs"* (a separate operation) from **Location D** which is Dolores, California, will primarily handle the more competitive, time sensitive containerized traffic out of the Ports of Long Beach and Los Angeles. On these *"longer runs",* Dolores, California is the home terminal for two separate pools operating to away from home terminals - - Yuma, Arizona, and Yermo, California.



How the *"shorter runs"* must interplay with the more time sensitive and voluminous port traffic is a key component in UP's business case. It is important the Board consider the proposed operation from a broader, if not system perspective. The new combined "*short run/long run"* arrangement as proposed will stabilize the workforce, positively address ongoing and chronic qualification issues and reduce time spent away from home complained of by both parties.

As the July 17, 2013, Interdivisional Notice states, UP withdrew its more complex February 11, 2013, Interdivisional Notice **(Carrier's Exhibit 3)** to establish two all encompassing pool subsets (LABM to Yuma and LABM to Yermo) originating and/or terminating at multiple on-duty locations within the LABM. During those February 11, 2013, negotiations, BLET made clear certain items of concern with that proposed

operation such as time on duty, limbo time, etc. BLET also objected to the fact that the proposed runs would, at least in some cases, operate through the current home terminal in West Colton. Even though UP's reasons for needing more efficient and faster service options out of the LABM have not changed, its operating strategy was modified after taking the Organization's objections and concerns into account.

In line with BLET's suggestions, it was decided to utilize the existing Dolores to Yuma and Dolores to Yermo Interdivisional Agreement **(Carrier's Exhibit 4)** only for the *"long run"* port traffic and traffic originating/terminating on the western end of the LABM. However, for the subordinate numbers of manifest trains originating and/or terminating in and around West Colton, an operating plan had to be developed that could efficiently engage this traffic into the much larger numbers of time sensitive *"longer runs"* - - both over the road and into LABM terminal flows. Having home terminals at Yuma and Yermo for the *"shorter runs"* instead of West Colton effectively serves this purpose, along with customer and employee interests and UP's long term strategic objectives on the Sunset Route and within the LABM.

To assist the Board's review, UP will divide its presentation into four (4) parts. **Part I** will outline UP's business case and justification for the new pools. **Part II** will address BLET's misplaced New York Dock assertions and its three Questions at Issue. **Part III** will discuss the proper and historical application of Article IX of the May 19, 1986 BLET National Agreement and cite significant precedent in support of that narrative. **Part IV** will discuss the on-property treatment of UP's July 17, 2013, Interdivisional Service Notice by the BLET and a point – counterpoint on the issues.

Part I

The Business Case

One of America's most recognized of companies, Union Pacific Railroad (UP) links twenty-three (23) states in the western two thirds of the country by rail, providing a critical and essential link in the global supply chain. From 2007 to 2012, UP invested $18 billion in its network and operations to support America's transportation infrastructure. The railroad's diversified business mix includes Agricultural Products, Automotive, Chemicals, Coal, Industrial Products and Intermodal. UP serves many of the fastest-growing U.S. population centers, operates from all major West Coast and Gulf Coast ports to Eastern gateways, connects with Canada's rail systems and is the only railroad service to all six major Mexico gateways.

In California, UP serves the rich agricultural central valley, the port of Oakland and the San Francisco Bay area, as well as the Los Angeles metropolitan area with its two major ports at Los Angeles and Long Beach. Rail cargo travels in and out of the Ports and LABM in a variety of ways, i.e., shipping containers, box cars, tank cars and gondola cars, etc. Beyond traditional rail manifest business, the Ports of Long Beach and Los Angeles, California ("the Ports") together make up the largest container port in the United States. Approximately thirty-three (33) percent of all United States waterborne trade comes to the Ports, which translates to about 11 million shipping containers annually. To put this into perspective, in 2011, the next four biggest U. S. ports - - New York-New Jersey, Savannah, Oakland and Seattle - - moved less than 10

million containers combined. To accommodate this volume of traffic, the rail infrastructure and carriers must efficiently and safely operate 24/7.

Well Car/COFC/TOFC – A well car, also known as a "double-stack" is a type of railroad car specifically designed to carry intermodal containers. The depressed section makes it possible to carry a stack of two containers one on top of the other. Advantages to using well cars include the increased volume over traditional flat cars, increased stability due to the lower center of gravity of the load, and in the case of articulated units, reduced slack action.

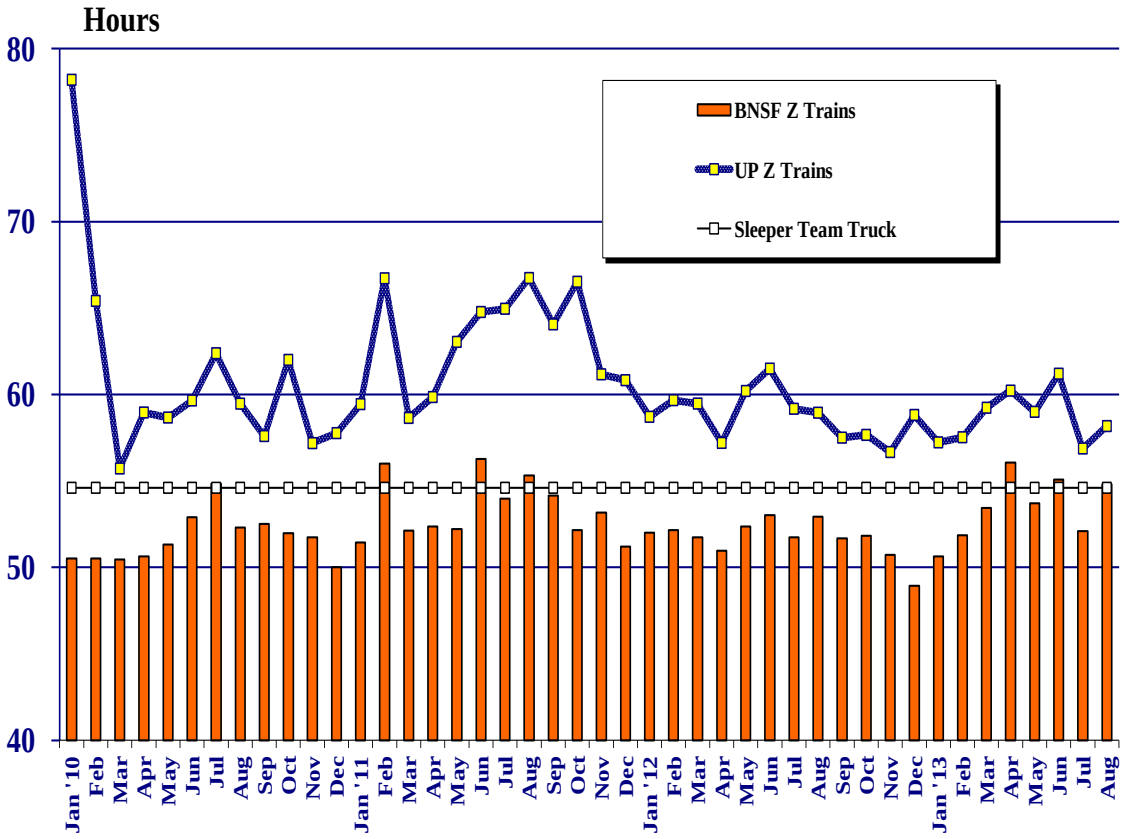
When ocean-going container ships arrive, the transportation infrastructure offloads rail-bound cargo thereafter transporting it to various destinations. Likewise, when cargo comes into the Ports via railroads, that same infrastructure delivers to local customers or the appropriate shipping terminal and outbound ship. The two long-haul

rail carriers serving the Ports and Los Angeles Metropolitan Complex are UP and Burlington Northern Sante Fe Railway Company (BNSF).

Competition for the transportation of goods, including intermodal and containerized port traffic, into and out of the LABM is keenly aggressive. While UP's transportation service offerings between the LABM and Midwest and East Coast markets are good, there is strong competition for this market, i.e., **BNSF and trucks.**

For example, looking at a Los Angeles – Chicago route comparison, UP's schedule consumes twelve (12) crews between these points while BNSF's schedule consumes nine (9). On the Los Angeles - Chicago corridor, only 50% of UP's line is double or multiple main track while BNSF's corridor has double or multiple main track on 99% of its line segment. Comparing UP's extremely time sensitive "Z" train performance with BNSF's "Z" train performance and trucks, the chart below shows improvement in our performance, but it is clear that operations must change if we are going to effectively compete in this market long term. Not only must UP compete with BNSF, but trucks as well, both of which consistently deliver in an average of 55 hours or less. While five to ten hours may not seem like much over such a distance, it is extremely critical in keeping on time delivery variances to a minimum. Simply stated, customers demand minimal transport time as well as consistent on time departures/delivery, particularly in the container market.

Los Angeles – Chicago UP v. BNSF Z Train and Sleeper Team Truck ~ 2010 - 2013



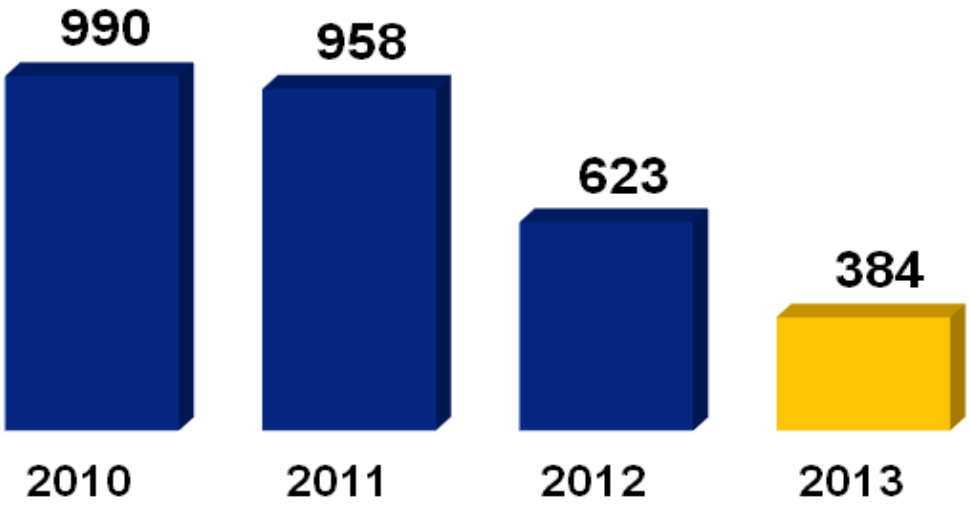
UP Trains = ZCIG1/ZCIBP/ZCIG4

Notwithstanding the competitive edges BNSF and truck competitors hold in the Los Angeles - Chicago Corridor, UP strives diligently to improve the quality and competitiveness of its transportation products. Continuous improvement is a must. Complacency is not an option. To this end, and with the view that *"… every minute counts …,"* UP constantly works to wring every minute of delay, congestion and variability out of its routes and transportation products. Obviously, for it to do otherwise would be nothing short of an immediate recipe for failure. Therefore, to accomplish its

goals, UP aggressively pursues a number of strategies designed to improve the velocity, efficiency and consistency of its operations.

One element of UP's strategy is to ensure its infrastructure is maintained at a very high level in order to avoid delays relating to track conditions and slow orders. Proactive maintenance and hardening of the physical plant by installing new crossties and/or rail, ballast resurfacing, undercutting, joint elimination, track defect inspections, etc. allow trains to flow at permanently posted maximum speeds. The graphic below illustrates UP's efforts in reducing the number "slow order miles" throughout its System.

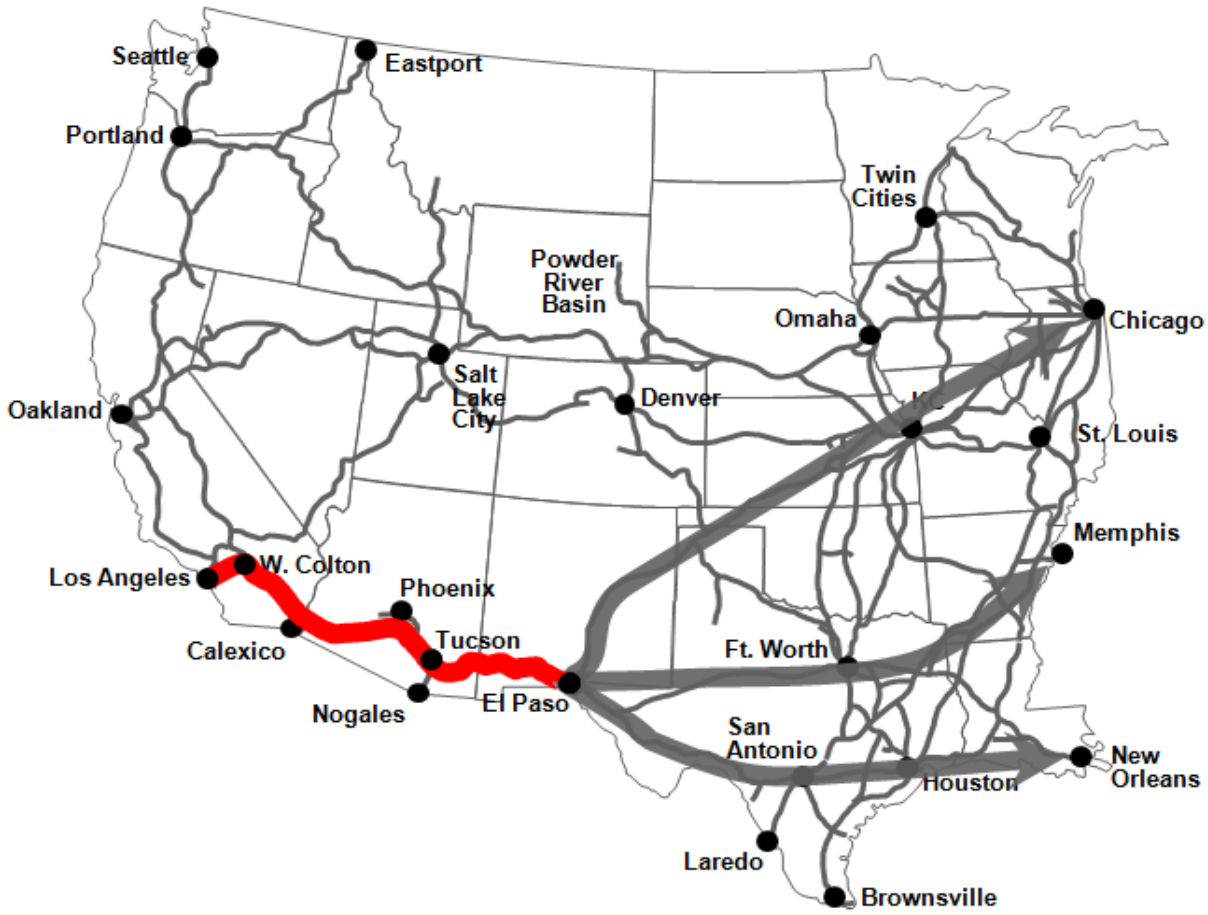
Network Productivity – YTD 2013
Reduction in Slow Order Miles



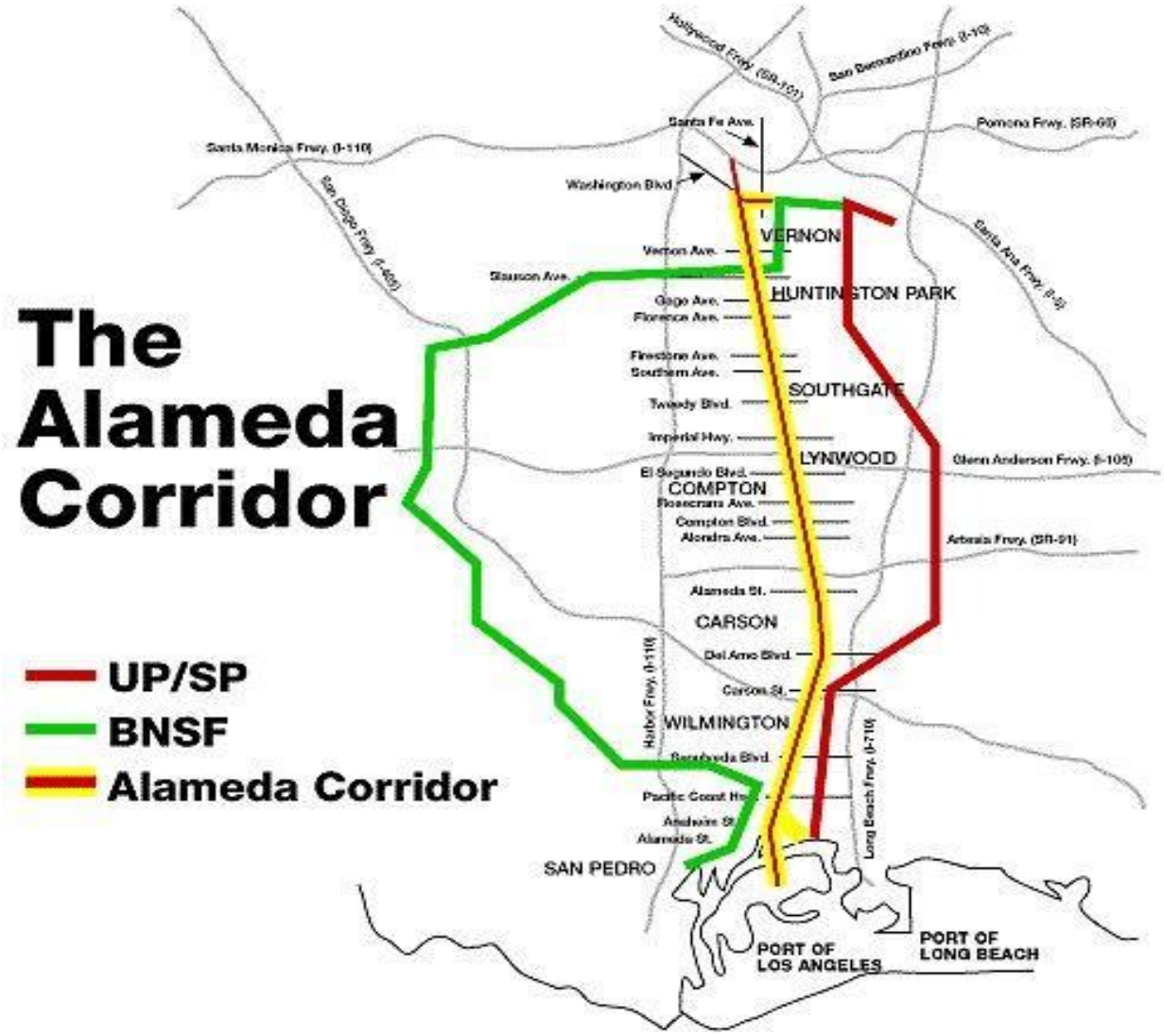
Another focuses on deployment of the latest technologies to enhance safety and facilitate train movements (i.e., locomotives, wayside detectors, communication systems, etc.). For example, new high tech locomotives currently cost between $2.5 -$3

million each depending on how they are equipped. Due to new 2014 emissions standards, that unit cost will increase by $500,000.

Another critical and effective strategy for improving our competitive posture lies in UP's strategic deployment of capital for infrastructure improvements (i.e., new and/or expanded commercial facilities, line and yard capacity enhancements, etc.). A key tactic in UP's long-term capital expenditure strategy has been to address or fix "bottleneck" areas that contribute to significant service delays or congestion, diminished velocity, increased or unnecessary re-crews (i.e., dog-catching), or inefficient use of train and engine crews. Nowhere is this perhaps more evident than on the Sunset Route leading into or out of the LABM. For example, over the last four years alone, UP has spent over $360 million constructing over 93 miles of second main track between Los Angeles, California, and El Paso, Texas. The result of these expenditures is a more efficient and competitive route between Los Angeles and eastern markets, with approximately 72% of that route now equipped with double track. UP plans to spend nearly [redacted] more over the next six years to complete double track over the Sunset Route between Los Angeles and El Paso. As illustrated on the map below, it becomes very clear that the line segment between Los Angeles and El Paso is a densely traveled corridor given it moves rail traffic to and from three major east coast gateways - - Chicago, Memphis and New Orleans.



To facilitate rail traffic in and around Los Angeles proper, UP played a key role in the highly acclaimed Alameda Corridor project, along a 21-mile route connecting the Los Angeles/Long Beach harbor complex to downtown Los Angeles rail yards. Completed in 2002, the $2 billion-plus Alameda Corridor construction effort consolidated three rail access routes, included a triple-track bridge over the Los Angeles river and a 10-mile trench for trains to move below surface grade which improved safety and vehicle traffic flow by eliminating 209 grade-level street/rail crossings and doubled the speed of freight trains using the corridor. The improved rail transit time alone saved an estimated 15,000 hours per day in truck and vehicular traffic delays while reducing train, truck and auto emissions.



Another striking and very recently completed example of UP's drive to improve its competitive posture and garner an increasing share of the transportation market is the Colton Crossing Flyover. The Colton Crossing Interlocking was a major chokepoint that impeded the movement of imported, exported and domestically produced/consumed goods on rail between Southern California and the rest of the United States.

Prior to construction, time delays incurred for a typical 100-car train at that crossing alone averaged one hour as recently as 2007. Further, these interlocking delays cascaded to the other parts of the rail network. Eliminating this chokepoint benefits major links in the supply chain. The nearly $100 million project provides UP with a “bridge” or “overpass” above BNSF’s route through West Colton, California, and an opportunity to eliminate a major source of congestion and improve train velocity in the central and eastern portions of the terminal as well as all lines into and out of the LABM.

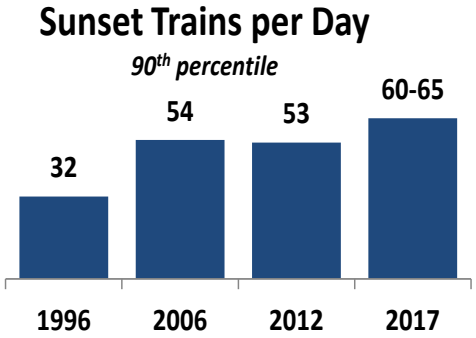
An immediate and obvious safety effect of the Colton Crossing Flyover is that it eliminates the direct interference of 70 to 120 trains per day with one another. From a

capacity and efficiency perspective, trains no longer have to wait for one to clear before another can use the intersecting route. Over time when economic activity recovers, freight traffic will resume growth, even if it is slower than the pace of 2000-2006. In a 20-year timeframe, even a one percent or so per year increase in train counts would result in a 22-percent increase of trains using the overpass. In addition to its safety benefit and easing rail congestion, the project will reduce delays for motorists at area rail crossings, decrease noise and air emissions from idling locomotives, expedite freight movement and improve passenger train schedules.

Carrier's Exhibit 5 is a detailed analysis of the private and public benefits derived from this project. It is a very interesting and informative read. While the benefits of the Colton Crossing Flyover are dramatic, it is important to remember BNSF's competitive edge has likewise improved.

With this level of strategic investment, it is incumbent upon UP to obtain every operational and service improvement contemplated when it embarks on expensive construction projects and, in particular, to physically translate these benefits into new, improved and innovative services that will benefit shippers. UP's continuing investment in maintaining its routes into and out of the LABM at high levels together with huge investment in projects like the Alameda Corridor, Colton Crossing Flyover and multiple-main/double tracking will no doubt contribute to innovative operation and service options designed to significantly reduce train delay and terminal congestion, improve train velocity and increase capacity. The ultimate result will be UP's opportunity to expand its existing market share and attract and efficiently manage further traffic growth into and out of the LABM and along its Sunset Route. Increased market share and growth will

correspondingly increase lucrative railroad jobs and improve working conditions and job security for UP employees.



While a seven to twelve train increase per day may not seem significant, such an increase over existing traffic is tremendous in any corridor operating at or near capacity. The cascading effect of a seven to twelve train increase per day on employment could conservatively require approximately 500 additional train and engine service employees not to mention additional non-operating and support personnel. These are all challenges UP welcomes, as should BLET. However, to meet these challenges there must be change in how UP operates.

UP's hardening of the physical plant and aforementioned capital projects alone will not adequately address all of the efficiencies needed to compete against the superior BNSF route structure. This brings us to the issue at hand and the need to fully exercise the contractual prerogative that BLET conceded to the rail industry in general and to UP in particular.

Part II

BLET's contentions are misplaced and lack contractual support

The fundamental rule of interpreting contracts, to which all others are subordinate, is that a contract is to receive the interpretation which will best effectuate the intention of the parties. Every part of the controlling agreement is to be interpreted so as to carry out this general purpose. To ascertain that intention, the writing will be read as a whole and, in the case of several contemporaneously executed instruments relating to the same transaction, all of them will be read together. Intention is not to be collected from detached portions of the agreement; individual clauses and particular words are to be construed in relation to the main purpose. Moreover, it is the intention that is expressed in the contract that controls, not an intention secretly cherished by one of the parties. Greater regard is to be had to the clear intent of the parties than to any particular words they may have used in the expression of their intent.[1]

BLET wrongly believes the Los Angeles (Side Letter 3) and Southwest (Side Letter 2) Merger Implementing Agreement **(Carrier's Exhibit 6)** language must be read as detached portions, individual clauses or single words completely overlooking any relation to its whole or intent. In BLET's view, this dispute centers on a detached reading of the Los Angeles and Southwest Hub Implementing Agreements specifically the portion of each of these Agreements (Side Letter 3 from the Los Angeles Hub Agreement and Side Letter 2 from the Southwest Hub Agreement) reading:

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[1] Formulated from the Handbook of the Law of Contracts by Laurence P. Simpson, Professor of Law Loyola University, Los Angeles Professor Emeritus, New York University, Second Edition. Pertinent text attached as **Carrier's Exhibit 7.**

> **“New Pools created after this Agreement** New pool operations not covered in this implementing Agreement whether between Hubs or within the Hub shall be handled per Article IX of the 1986 National Arbitration Award.”

Based on this language, BLET contends that, because UP currently has pool operations with home terminals in West Colton and away from home terminals in Yermo and Yuma, UP’s proposed new operations with home terminals in Yermo and Yuma and away from home terminal in West Colton are not new pool operations. BLET couches this issue as one arising under New York Dock because the provisions quoted above come from Hub Implementing Agreements.

BLET’s reading of the Hub Implementing Agreements is wrong for a large number of reasons. Notably, BLET disregards the bold and underlined heading - - ***“New pools created after this Agreement”*** - - reading only - - *“New pool operations not covered in this implementing Agreement…”* and pays no attention whatsoever to the remainder of the rule. BLET contends that such a reading makes UP’s July 17, 2013 Notice “procedurally defective”. UP firmly disagrees with BLET’s parsed reading. Even under BLET’s narrowest interpretation, UP’s proposed Interdivisional Service is on its face *“new pool operations not covered in”* the Implementing Agreements. BLET does not dispute and must concede there is nothing in the Implementing Agreements allowing, nor is there currently a pool or pool operation with a home terminal at Yuma, Arizona, operating to an away from home terminal at West Colton, California. Similarly, there is nothing in the Implementing Agreements authorizing nor is there currently a pool or pool operation with a home terminal at Yermo, California, operating to an away from home terminal at West Colton, California. Therefore, under even the most tortured

reading of the rule, UP's proposed Interdivisional Service is an entirely new pool operation that the Implementing Agreements expressly allow UP to create under Article IX of the 1986 BLET National Agreement.

BLET has verbally referenced Article IX language, related interpretations and precedent to make its case. Ironically, any Article IX reference by BLET weakens, if not eviscerates, its New York Dock arguments and strengthens UP's narrative. Any Article IX reference by either party ties the "Issue 3" Disputes Committee Interpretation **(Carrier's Exhibit 8)** to that reference. Though "Issue 3" will be further discussed later on, it is important to show how BLET's selective opinions actually highlight and support UP's position.

BLET's threshold argument is that UP's July 17, 2013 Notice is nothing but a substantial recreation of the prior Interdivisional Service and is therefore procedurally improper. To make that point BLET will reference, directly or indirectly, the following part of Arbitrator La Rocco's "Issue 3" Interpretation:

> "… **The Carriers have the right to establish extended or rearranged** Interdivisional Service and it constitutes new service within the meaning of Article IX unless it is a *substantial re-creation of the prior Interdivisional Service* **designed solely** to obtain the more favorable conditions in the 1986 National Agreement."

BLET simply stops reading this interpretation when it arrives at the word "designed." Arbitrator La Rocco rejected BLET's line of reasoning then as this Board should now. Reading the "Issue 3" Interpretation in context, even if UP's July 17, 2013, Interdivisional Notice was arguendo a *"substantial recreation of the prior Interdivisional*

Service," it would still be a proper notice because it is not *"designed solely to obtain the more favorable conditions in the 1986 National Agreement."*

In General Chairman Hannah's only substantive correspondence (misdated February 24, 2013) **(Carrier Exhibit 9)** to Labor Relations Director Foley, BLET asserts that because mileage payments have not changed, the new pool operations are *"exactly the same as that of the existing service, i.e., "130 Basic Day miles from West Colton to Yermo and 198 miles from West Colton to Yuma."* Director Foley's July 26, 2013, **(Carrier's Exhibit 10)** reply to Mr. Hannah's letter addressed that contention as follows:

> "… Among the disputes decided by that Committee was "Issue 3" as it is commonly known. That decision held Carriers clearly have the right to establish, extend or rearrange interdivisional service to obtain the efficiencies contemplated by Article IX. Neutral Member John B. La Rocco states in pertinent part:
>
> > "…The Carriers have the right to establish extended or rearranged interdivisional service and it constitutes new service within the meaning of Article XI unless it is a substantial re-creation of the prior interdivisional service **designed solely to obtain the more favorable conditions in the 1986 National Agreement**."
>
> **********
>
> "… In the instant case, your conceding the fact compensation was not diminished from an "Article IX" perspective makes the Carrier's case on its face. BLET cannot in any way argue the Carrier's motives are *"solely to obtain to obtain the more favorable conditions in the 1986 National Agreement."* Union Pacific's valid reasons for more efficient and faster service options in this corridor were clearly outlined in its July 17, 2013 Notice."

BLET never disputed Mr. Foley or followed up on his July 26, 2013, correspondence. It is also important to note, as with the trip rates, no other agreement

that contains more favorable conditions than Article IX will change. This alone confirms that UP's motives are not punitively designed. Notwithstanding, there are valid business case and operating reasons for the new service. Paradoxically, the more forcefully BLET argues that pay and working conditions have not changed, the stronger UP's position becomes. Again reading "Issue 3" in context, because the proposed terms and conditions governing UP's July 17, 2013 Notice do not work to obtain any more favorable conditions than are currently applied to other Interdivisional Service and because they meet or exceed all conditions outlined in the 1986 National Agreement, there is no limitation whatsoever on the establishment of this service.

Moreover, BLET's crabbed reading of the above quoted language from the Hub Implementing Agreements ignores the entire purpose of Article IX. Simply stated, *"new pool operations"* are precisely what Article IX of the 1986 BLET National Agreement covers. Thus, the language from the Hub Implementing Agreements that authorizes UP to create *"new pool operations"* in both the Los Angeles and Southwest Hubs under Article IX simply establishes that neither of these Hub Implementing Agreements limit UP's rights under Article IX. As such, Article IX is the contractual authority defining what is considered *"new service"* under that Article. As more fully explained below, under Article IX, <u>new is new, changed is new, rearranged is new, consolidated is new, abolished is new and recreations can be new.</u>

BLET's New York Dock contention is a red herring. UP has routinely used its National Agreement rights in the post-merger environment to extend switching limits, enhance customer service, establish/extend/rearrange runs, etc. time and time again.

This very BLET General Committee had identical arguments rejected by Arbitrator Binau in Arbitration Board 590 **(Carrier's Exhibit 11)**. In that case, UP served notice on September 26, 2006, to extend an east switching limit at the West Colton Terminal pursuant to Article II of the May 15, 1971 BLET National Agreement. On Page 2 and 3 of its submission **(Carrier's Exhibit 12)** BLET argued:

> "UP waived its Article II rights when it filed notice on January 13, 1998, which led to the Los Angeles Hub Agreement, in which the original switching limits were explicitly retained, and relinquished any rights it may have had there under when it agreed to Article V of the Los Angeles Hub Agreement."

Rejecting BLET's arguments and central to the case at hand is Arbitrator Binau's conclusion on Page 23 reading:

> "…Finally, the Board finds that the Carrier has shown that Article II of the 1971 BLE National Agreement is in force on the Los Angeles Hub. **Article VI, Section C of the Los Angeles Hub Agreement preserves all national agreements that existed prior to the creation of the Los Angeles Hub.** Article II of the May 13, 1971 BLE Agreement was preserved by the language of Article VI, Section C."

Given the Los Angeles Hub Agreement preserved all national agreements that existed prior to its creation, Side Letter 3 is simply "belt and suspenders" in matters related to Article IX. Moreover, the preservation of all national agreement provisions carries with it all interpretations and related precedent.

Another example where this very BLET General Committee had identical opinions rejected was in Arbitration Board No. 580 establishing Interdivisional Service out of Dolores, California **(Carrier's Exhibit 4)**. On January 22, 2002 UP served an Article IX Notice proposing the establishment of three (3) new freight pools, all of which had Dolores/ICTF (International Container Transfer Facility) in the Los Angeles Basin as

their home terminal. Again objecting, General Chairman Hannah addressed Labor Relations Director Hallberg on March 5, 2002 in pertinent part:

> "… This will serve to reaffirm the Committee's position, regarding the propriety of the notice insofar as Item 1, "…turnaround freight service pool with ICTF/Dolores as a home terminal…" and the position of this Committee that the establishment of the pool freight service in Items 2 and 3, require running through home terminal(s)
>
> Moreover, your intent to establish the service in Item 1 of your notice, **constitutes a wrongful attempt on your part to change agreed upon working conditions as required in the arbitrated and subsequently implemented, Los Angeles Hub Implementing Agreement,** It is obvious to this Committee, that this is a blatant attempt on your part to gain the better conditions in Article IX of the May 1986 BLE National Agreement, than those in the Los Angeles Hub arbitrated agreement…." (Emphasis Added)

Mr. Hannah's March 5, 2002, letter was included in BLET's submission as **Organization's Exhibit B** before Arbitration Board No 580. It is included in this writing as **Carrier's Exhibit 13.** Again, Arbitrator Richter rejected BLET's arguments and endorsed the Carrier's proposed operation consistent with Article IX of the 1986 BLET National Agreement.

Another more recent example is where UP served notice on April 5, 2012, to extend an east switching limit at Beaumont, Texas, pursuant to Article II of the May 15, 1971 BLET National Agreement. There too BLET strongly argued UP's actions were superseded by the subsequent 1997 Houston Hub Merger Implementing Agreement and Article I, Section 13, paragraph (c) of the arbitrated Beaumont ID Agreement which specifically limited future switching limit expansions. Arbitrator Zusman rejected BLET's argument and granted the switching limit extension in Award 1 of Public Law Board 7577 **(Carrier's Exhibit 14)** stating:

"… There is nothing in the language of the Beaumont ID Agreement that supersedes, supplants or negates the Carrier's rights to invoke Article II…"

Messrs. Zusman, Binau and Richter's Awards all make clear national agreements survived the merger. To further make this point, UP has routinely used its National Agreement rights in the post-merger environment to extend switching limits, enhance customer's service, establish runs, etc. throughout its System; all consistent with the holdings cited above. **Carrier's Exhibit 15** contains the first page of several agreements and awards illustrating that fact for this printed presentation. The full text of agreements and awards has been included electronically on a CD containing this entire presentation with all exhibits.

UP will now turn its focus to BLET's three Questions at Issue.

BLET'S QUESTION AT ISSUE

"Question No. 1"

Does the Carrier's proposal of July 17, 2013 (as modified) create new pool operations not covered in the Merger Implementing Agreement for the Los Angeles Hub?

Side Letter 3 to the Los Angeles Hub Agreement is quite clear. It permits UP to create *"new pool operations not covered"* in that Hub Agreement. It is undisputed that UP has not had pool operations with home terminals in Yerma, California, or Yuma, Arizona, and with away from home terminals in West Colton, California. Instead, the Los Angeles Hub Agreement creates pool operations with home terminals in West Colton and away from home terminals in Yermo and Yuma.

Given that UP has not had these proposed new pool operations previously, it is difficult to understand BLET's position that the proposed operations are not new. By

definition, something is new if it is different than what presently exists. To argue that these new pool operations are not new is to ignore the reality that they do not exist at this time.

The fact that these are new pool operations is proven by the bulletins that exist for the current pool operations with home terminals in West Colton and away from home terminals in Yermo or Yuma. Any engineers wishing to submit standing bids for these assignments can see these job listings. Each posting specifically states the home terminal and the away from home terminal for that operation **(Carrier's Exhibit 16).** The idea that creating an operation with a new home and away from home terminal is not a new pool operation is silly; indeed, the fact that BLET is complaining about the differences between the old and new pools shows that a substantial change is being made.

In fact, BLET asks this Board to do something that it lacks to power to do: to rewrite Side Letter 3 to the Los Angeles Hub Agreement. According to BLET, this Board should find that Side Letter 3 only allows UP to establish new pool operations not in this Implementing Agreement that would operate between two points where UP does not presently operate trains regardless of the home terminals and away from home terminals involved. Had the parties intended such a major restriction on UP's Article IX rights, they would have written it into Side Letter 3. They did not. They simply wrote into Side Letter 3 a preservation of UP's Article IX rights: the right to establish new pool operations not already established in the Los Angeles Hub Agreement. All of this is consistent with the way Article IX has been historically interpreted and applied.

BLET made identical arguments before Arbitrator Zusman in **Public Law Board 7318 (Carrier's Exhibit 17)** which were soundly rejected. In that case, CSX Transportation, Inc (CSX) served an Article IX Notice dated May 1, 2010, *"to establish Interdivisional Service between Birmingham, Alabama to Nashville, Tennessee operating between these locations on or after June 1, 2010."* Because this run did not operate through a home terminal, CSX instituted its proposed change of the Interdivisional Service home terminal from Nashville, Tennessee, to Birmingham, Alabama on September 9, 2010.

The BLET Committee on CSX contended that merely changing/flipping the home terminal at Nashville, Tennessee, to Birmingham, Alabama, on an existing "double headed" interdivisional run was procedurally improper under existing Agreements arguing as follows:

> "… The sole purpose of your most recent notice is to change the home terminal of Nashville crews currently working this existing interdivisional run. No new service is being established, no existing Interdivisional Service is being extended or rearranged, and the carrier is essentially "recreating" an existing run to secure different conditions."

This is clearly the same argument BLET makes in the instant case. Rejecting BLET's argument, Arbitrator Zusman found, that when the Carrier changes the home terminal of an existing Interdivisional run it is a material change in service and constitutes *"new service"* within the meaning of Article IX. In deciding the CSX case, Arbitrator Zusman held:

Public Law Board 7318, Case/Award 20

" … However, the Board finds, as does the most recent Award on this property (Public Law Board 7463, Radek), **that when the Carrier changes the home terminal of an existing ID service it is a material change in service and constitutes new ID service**. Such change is permissible under Article IX of the 1985 Agreement. The Organization's arguments throughout this dispute of the Carrier's ID service are not persuasive. The Carrier has not violated the Agreement between the parties. The Board is convinced from the full record and arguments presented that this is a "rearrangement" which is a materially different ID service from the service that existed prior. **While the Board notes that in some prior awards additional adjustments were made to add a river route or expand train types, the central issue is that of fundamental removal of a home terminal. This is not a substantial recreation, but new service; a permissible rearrangement' a materially different ID service than existed prior. …"**

Of particular note is Arbitrator Zusman's reference to Award 1 of Public Law Board 7463 **(Carrier's Exhibit 18)** by Arbitrator Richard Radek. Among Mr. Radek's qualifications in deciding rail industry cases, he was a long time BLET International Vice-President – Director of Arbitration, holding the position of National Railroad Adjustment Board Chairman for several years. Mr. Radek's biography is attached as **Carrier's Exhibit 19.** Having held positions of authority in the rail industry for many years, Mr. Radek would be very familiar with agreement history, language, party intent and precedent surrounding Interdivisional Service. As the Chairman and Neutral member of Board 7463, Arbitrator Radek likewise held that an elimination of a home terminal on an existing Interdivisional Service operation, *"constitutes a significant, material change*" and therefore, such *"new service was not a substantial re-creation of the former."*

By any measure UP's July 17, 2013, Interdivisional Notice constitutes a significant, material change in its operation and is subject to and governed by Article IX of the 1986 BLET National Agreement, not Article I, Section 11 of New York Dock. As both the Los Angeles and Southwest Hub Merger Implementing Agreements **(Carrier's Exhibit 20)** specifically preserved Article IX of the 1986 BLET National Agreement, the parties mutually agreed that Article IX would be the overriding process[2].

BLET'S QUESTION AT ISSUE

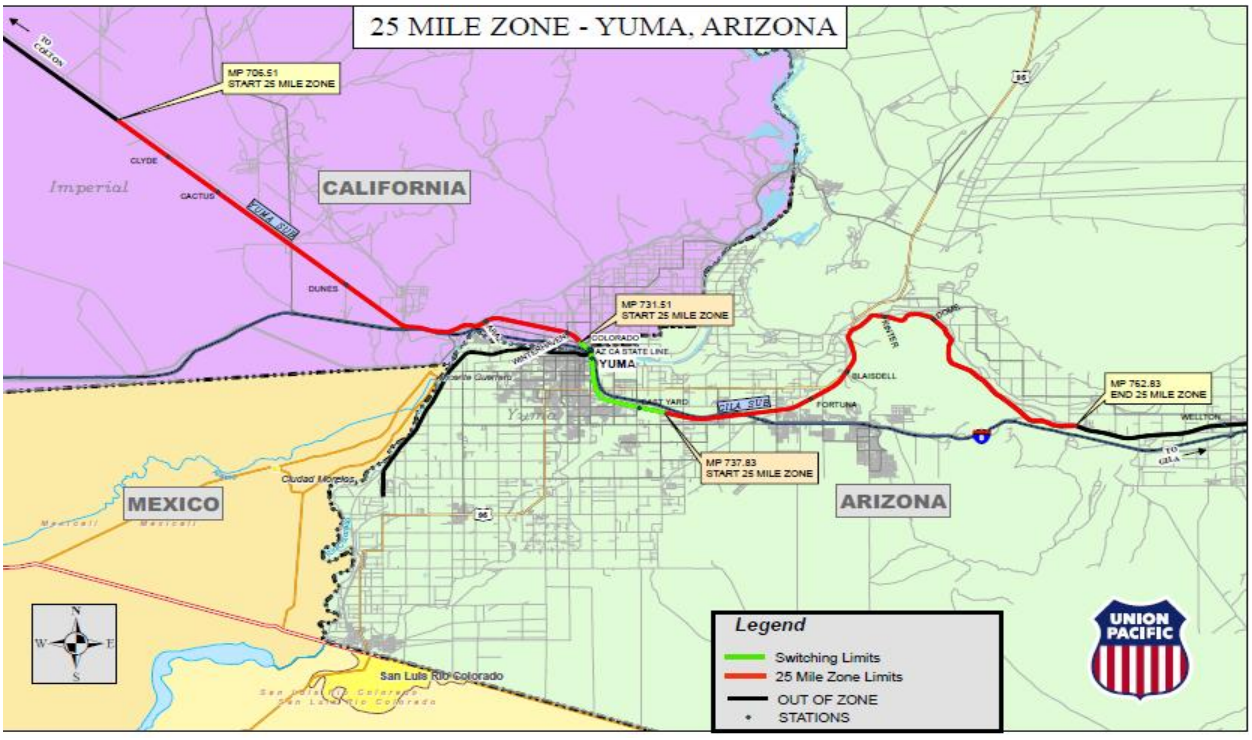
"Question No. 2"

Is the Carrier allowed by Article IX, Section 2 & Section 4 (a) of the 1986 BLE National Arbitration/Agreement, to change or merge seniority districts created by the Merger Implementing Agreement for the Los Angeles Hub and the Merger Implementing Agreement for the Southwest Hub? If the answer is "no," can the Carrier use Article IX, Section 2 & Section 4 (a) of the 1986 BLE National Arbitration/Agreement to remove service from the seniority district created by the Merger Implementing Agreement for the Los Angeles Hub to the Merger Implementing Agreement for the Southwest Hub?

This question proceeds from a flawed premise. UP is not seeking to change or merge seniority districts. Instead, UP's seeking to establish new pool operations under Article IX as it is expressly permitted to do by both the Los Angeles and Southwest Hub Agreements. Once it is established that these are new pool operations, the sole remaining issue is what the terms and conditions of that service shall be, including but not limited to which Hub's engineers will have the right to bid on the assignments being created.

[2] Thus, whether this decision is an interpretation of Article IX or an interpretation of the New York Dock Implementing Agreement is not material to the outcome of the matter before this Board. Either way the issue is whether these runs are new as defined by Article IX.

BLET's argument that UP's current Article IX proposal impermissibly "changes or merges" seniority districts is belied by the fact this same territory is traversed by Los Angeles Hub engineers on the *long run* from Dolores, California to Yuma, Arizona. As will be explained further, Board of Arbitration 580, which already addressed a previous Article IX proposal, held those runs did not change or merge in any way territories and/seniority districts or violated the Los Angeles or Southwest Hub Agreements. With regard to the Yuma to West Colton new pool operation, it is true that approximately 2 miles of that 198 mile train run will take place in the Southwest Hub. As illustrated in the map below, the Los Angeles Hub ends and Southwest Hub begins at Mile Post 731.51. This is, at best, an incidental encroachment.



The Organization's question is irrelevant to UP's new pool operation from Yermo to West Colton. As the Organization must concede, this new pool operation takes place

entirely within the Los Angeles Hub and does not remotely involve the Southwest Hub. Los Angeles Hub engineers are clearly entitled to that new pool operation.

Therefore, UP's position that the Yuma to West Colton run should be staffed by Los Angeles Hub engineers must also be sustained. The idea of having Los Angeles Hub engineers staff the Yuma to West Colton regular pools is quite logical. First, approximately 99% of the run takes place within the Los Angeles Hub. When a new pool operation has been created that operates in more than one hub, the parties have historically divided the work based on the proportion of the mileage on the new run within each hub. Contrary to BLET's position in this matter, BLET has never once taken the position that 100% of the work must be given to engineers who have seniority at the reporting point. BLET has always argued that "Article IX" work opportunities should be allocated based upon the seniority district(s), territory or territories traversed by the Interdivisional Run. Having Southwest Hub engineers do the work in this case would, in UP's judgment, be unfair to the Los Angeles Hub engineers given the territory traversed by the new run. It makes sense to permit them to keep this work and is ground in decades of precedent.

Award 40 of Public Law Board 6833 (**Carrier's Exhibit 21)** is directly on point and validates UP's contention. Again post-UP/SP Merger and the result of a capital project (alternate track constructed to facilitate eastbound movements), UP served notice on November 4, 2004, to establish Interdivisional Service between Fort Worth and Halsted, Texas. This new run traversed multiple routes over territories in the Fort Worth and San Antonio Hubs. As usual, BLET insisted the work be allocated based on

the proportion of the mileage on the new run within each hub. Arbitrator Nash agreed. The work was allocated as follows.

Section 1: Allocation

Work opportunities in this Interdivisional Service shall be allocated to employees of the DFW and San Antonio Hubs as follows:

Turn#	Hub Allocation	Turn#	Hub Allocation
1	DFW	11	DFW
2	San Antonio	12	DFW
3	DFW	13	San Antonio
4	DFW	14	DFW
5	DFW	15	DFW
6	San Antonio	16	DFW
7	DFW	17	San Antonio
8	DFW	18	DFW
9	San Antonio	19	DFW
10	DFW	20	San Antonio

The question for this Board is whether the Southwest or Los Angeles Hub Agreements require that this run be staffed by Southwest Hub engineers or whether Article IX, as incorporated into those Hub Agreements, allows this Board to come up with an equitable division of the work between the hubs. UP's proposal would be to have the regular pool for the Yuma to West Colton run staffed by Los Angeles Hub engineers. Such an action is authorized by Article IX and is fair and equitable. UP believes that the Side Letters that preserve its Article IX rights also preserve the historical rights of Article IX arbitrators to fairly and equitably divide the work where a new pool operation covers territory in more than one seniority district. However, if the Board concludes that Southwest Hub engineers must or should be granted this work, UP will accept such a ruling and comply.

In the event a single extra board is established at Yuma, Union Pacific proposes that 50% of the assignments would be allocated to Los Angeles Hub employees and 50% of the assignments would be allocated to Southwest employees. This fair and equitable arrangement is consistent with existing Southwest Hub Agreement Language reading:

> **C.** The extra boards at Yuma will be consolidated on a 50/50 basis with the LA Hub entitled to prior rights to the even numbered assignments 2, 4 and 6. The Southwest Hub zone 1 shall have prior rights to all other extra board assignments. There will then be one extra board at Yuma and the extra board at Yuma will be used to fill short term vacancies on all assignments that have Yuma as a home terminal (whether LA Hub or Southwest Hub vacancies) and EL Centro as a home terminal. This extra board shall protect hours of service relief/turnaround service as far West as Niland (MP 667) in the LA Hub and as far East as is provided elsewhere in this agreement.

Employees assigned to the single/consolidated Yuma Extra Board will, in addition to the work outlined above, also protect vacancies/made up turns in the Yuma to West Colton pool, hours of service relief/turnarounds, etc. Again, this proposal regarding the extra board assignments is, in UP's view, endorsed by the existing agreement. If this Board determines, however, that the Southwest Hub Agreement requires that the extra boards be staffed by Southwest Hub engineers, UP will accept and comply with that award.

BLET'S QUESTION AT ISSUE

"Question No. 3"

If the Carrier's proposal of July 17, 2013, (as modified) is a legitimate good faith exercise of a contractual prerogative, what shall be the terms and conditions governing engineers assigned to or working in the interdivisional service between Yermo, California and West Colton, California, and between Yuma, Arizona, and West Colton, California?"

UP will let this presentation speak to BLET's Question at Issue No. 3. For now suffice it to say, under the clear precedent cited above and in Parts III and IV below, UP's July 17, 2013 Notice and proposed terms and conditions meet the requirements of Article IX and therefore it is a "legitimate good faith" instrument served with honest intent.

However, it is fitting at this juncture to highlight an Award cited in Part III of this presentation supporting another theme, but directly on point here. BLET again tries to improperly shift its evidentiary burden to the Carrier by inferring UP's motives are somehow illegitimate and lack good faith. Arbitrator Dana Eischen, in **Arbitration Board 468** (BLET vs. Southern Pacific now UP) **(Carrier's Exhibit 32),** was very clear on where this burden lies. Speaking to the "two part test" developed by the Disputes Committee in connection with its Issue 3 Interpretation, Arbitrator Eischen's Award held:

> "… Analysis shows that these arguments deal more with the question of motivation than the threshold question whether the new interdivisional service is a substantial recreation per se. In any event, however, even if arguendo BLE prevailed on the recreation aspect **that is only one part of the two-part test developed by the Committee.** To divest Carrier of its divested rights under Article IX of the 1986 National Agreement and bind it on the extended or rearranged run to terms and conditions for interdivisional serve established under Article VIII of the 1971 National Agreement, **the Organization must also show that the recreation was "designed solely to obtain the more favorable conditions of the 1986 National Agreement."**
>
> "It is self evident to any sentient being that part of Carrier's motivation, in proposing establishment of the extension or rearranged service was to avail itself of the "more favorable" conditions of Article IX. **But Carrier has presented prima facia evidence that it had arguably bonafide reasons to justify the extension and rearrangement of the existing interdivisional service,** other than solely to get out from under Article IX

of the 1971 National Agreement and under article IX of the 1986 National Agreement. **The test enunciated by the Committee puts the Organization in a very difficult evidentiary position, but speculation, conjecture and suspicion regarding Carrier motives cannot substitute for preponderating evidence.** Carrier has made a colorable showing that the extension or rearrangement of the existing interdivisional service was not designed solely to escape from the coverage of the 1971 National Agreement. **Under the test developed by the Committee, therefore, this Board must find that Carrier has the right to establish this extended or rearranged interdivisional service under terms and conditions prescribed in Article IX, Section 2 and 4 of the 1986 National Agreement.'**

Here again, UP has presented a bonafide business case for establishing the proposed service. This alone meets UP's burden under Article IX. Moreover and as mentioned earlier, because the proposed terms and conditions governing UP's July 17, 2013 Notice do not work to obtain any more favorable conditions than are currently applied to other Interdivisional Service and because they meet or exceed all conditions outlined in the 1986 National Agreement, there would be no limitation whatsoever on UP's establishment of this service. Respectfully, this Board should also hold UP *"has the right to establish this extended or rearranged interdivisional service under terms and conditions prescribed in Article IX, Section 2 and 4 of the 1986 National Agreement."*

Part III
Interdivisional Service Agreements and History

Over the years, a series of negotiated Interdivisional Service Agreements have provided UP and other rail carriers with contractual assurances necessary in making aggressive marketing strategies, innovative operational changes and large analogous investments. The intended and mutually understood objective of Interdivisional Service

Agreements is to obtain efficiencies through improved productivity, economical crew utilization, increased velocity and capacity, superior service and overall cost reductions.

Article IX of the May 19, 1986 BLET National Agreement **(attached as Carrier's Exhibit 1)** is the controlling provision that affords rail carriers a nearly unlimited tailoring of its operations to obtain these intended efficiencies. To make this point, the Carrier will discuss the purpose and intent of Article IX and related precedent in five segments:

The Definition of Interdivisional Service

The Purpose of Interdivisional Service

The Evolution of Interdivisional Service Agreements

The Process for establishing Interdivisional Service

Standards used in determining whether the Carrier's proposal is appropriate

The Definition of Interdivisional Service

To properly apply Article IX of the May 19, 1986 BLET National Agreement as intended, one must understand how the parties have historically defined Interdivisional Service. A clear and unambiguous "NOTE" within Article IX defines Interdivisional Service as follows:

> "NOTE: As used in this Agreement, the term Interdivisional Service includes interdivisional, interseniority district, intradivisional and/or intraseniority service."

This has been the stated intent for more than half a century. Negotiators have long recognized that any of the four (4) named "run types" or combination(s) thereof constitute Interdivisional Service within the meaning of Article IX. This was first

documented in Article 4 of the May 23, 1952 BLET National Agreement **(Carrier's Exhibit 22)** which read:

> "ARTICLE 4 – INTERDIVISIONAL, INTERSENIORITY DISTRICT, INTRADIVISIONAL. AND/OR INTRASENIORITY DISTRICT SERVICE (FREIGHT OR PASSENGER)
>
> Where a carrier desires to establish interdivisional, interseniority district, intradivisional, or intraseniority district service, the carrier shall give notice to the General Chairman ..."

Later, the February 1962, Report of the Presidential Railroad Commission (PRC)[3] **(Carrier's Exhibit 23)** affirmed and further clarified what type of run or operating change would constitute Interdivisional Service within the meaning of this rule.

The PRC stated:

> "Although the Carriers have referred to their runs as interdivisional, interseniority district, intradivisional and intraseniority district, in our discussion we shall use the term "interdivisional runs" as applying to all runs of these types."
>
> The PRC also defined each of the four types of runs[4] –
>
> **Interdivisional Runs:** Runs which extend over two or more operating divisions or parts thereof and usually two or more seniority districts or parts thereof.

[3] What is the Presidential Railroad Commission? On November 2, 1959, the nation's railroad carriers served notice on the five "operating" unions (BLET, BLF&E, ORC&B, BRT & SUNA), pursuant to the Railway Labor Act. The unions served notice on September 7, 1960. In recognition of the complexity of the issues involved, the carriers and the five unions signed an agreement submitting the "controversy" to a Commission, with the consent and approval of the President of the United States. On November 1, 1960, President Eisenhower signed Executive Order 10891, establishing a 15 member Commission, which became known as the Presidential Railroad Commission (PRC). The PRC consisted of five members from the railroads, five members from the unions, and five members from the public. Simon Rifkind served as chairman of the PRC, which studied major issues involving the operating crafts, such as locomotive firemen, crew consist, wage structure, interdivisional runs and combination of road and yard service. The Commission's February, 1962 report summarized each of the issues and made recommendations. Some of the recommendations are recognizable in the June 25, 1964 National Agreement between the nation's carriers and all five of the operating unions. Chapter 11 of the PRC report contained the recommendations regarding Interdivisional Service, some of which were utilized in Article VIII of the May 13, 1971 BLET National Agreement.

[4] Appendix Volume 1 to the Report of the Presidential Railroad Commission, "Index-Digest to the Record of the Commission's Hearings"(page 90). A copy of the portion of Appendix 1 addressing interdivisional runs is attached as **Carrier's Exhibit 24**.

Interseniority District Runs: Runs operating over two or more seniority districts or parts thereof. Such runs may be confined to one operating division or may extend into more than one division.

Intradivisional Runs: Runs operating within the confines of one operating division, and may or may not be interseniority district runs.

Intraseniority District Runs: Runs operated within the confines of one seniority district and may or may not extend into more than one operating division.[5]

Any run UP could envision and/or propose is covered by at least one of the four run types outlined in Article IX and as further defined by the PRC. If the service proposed operates exclusively within a single Hub/Division/Service Unit, it is **"Intradivisional service"**. If it operates over two or more operating Hubs/Divisions/Service Units or parts thereof and usually two or more Hub seniority districts or parts thereof, it is **"Interdivisional Service".** Similarly, if the service proposed operates exclusively within a single Hub seniority district, it is "**intraseniority district service"**. If it operates over two or more Hub seniority districts or parts thereof, it is **"interseniority district service".** In the instant case, operating between Hubs is the same as operating over "*two or more Divisions/Service Units, seniority districts or parts thereof*." Doing so has never changed or merged seniority districts.

Traditional work equities historically associated with Interdivisional Service would be the same in a post merger environment and do not in any way complicate or frustrate Hub Implementing Agreements. As shown earlier, Article IX has been used to establish runs from one Hub into another since the UP/SP merger. Percentage work equities based on the territory traversed has always been discussed primarily at the behest and

[5] Today, UP refers to its operating administration units as Service Units instead of Divisions. Like the previous label of Division a Service Unit is headed by a Superintendent.

insistence of the Organizations. There was nothing novel or new there, just as there is nothing novel or new in the instant case. The primary difference here is that BLET has chosen not to engage in any meaningful discussion on that subject.

The PRC further affirmed the nearly unlimited right of a carrier to establish Interdivisional Service and:

> **"... (b) establish, move, consolidate or abolish crew terminals in connection therewith,** (c) to operate such runs in assigned or unassigned service (including extra service) on a one way or turnaround basis (including short turnaround) and through established crew terminals; and on such runs to handle any class of traffic as may be required regardless of origin or destination."

It is axiomatic that negotiators intended to provide Carriers broad latitude in transforming operations to enhance general and/or specific service efficiencies. This is exactly what the parties intended.

The Purpose of Interdivisional Service

Again referencing the PRC and substantial precedent, there can be no doubt as to the purpose of Interdivisional Service. In comments from the PRC Report, Chapter 11 (**Carrier's Exhibit 23**), findings by well respected industry arbitrators and the plain language of Article IX all make clear that the purpose of Interdivisional Service is to allow carriers to improve efficiency.

> **PRC**: "The **efficient** expeditious movement of trains requires as a matter of public interest that machinery be derived under which carriers will be able to propose and eventually secure definitive judgment with respect to the establishment of interdivisional runs." (Page 301) [6] (Emphasis added)

[6] Chapter 11 of the PRC Report addressing interdivisional runs is attached as **Carrier's Exhibit 23**.

Public Law Board No. 1679, Award No. 1 (Arbitrator A. T. Van Wart)

"The Board finds that the May 13, 1971 BLET National Agreement was designed, **in exchange for large wage increases**, to remove certain artificial contractual barriers as reflected by the various Rules agreed to therein and to merely improve the **efficiency** of Carrier's operation." (Emphasis added)

Arbitration Board No. 586, (Arbitrator B. E. Simon)

"The entire purpose for establishing interdivisional assignments was to permit carriers to improve the **efficiency** of their operations by expanding the nature of work that may be performed by road crews and the territory over which they operate." (Emphasis added)

Article IX, Section 2(a) of the 1986 BLET National Agreement (Arbitration Board No. 458)

"Runs shall be adequate for **efficient** operations and reasonable to the miles run, hours on duty and regard to other conditions of work." (Emphasis added)

Respectively attached as **Carrier's Exhibit 25** and **Carrier's Exhibit 26** are Public Law Board Nos. 1679 and Arbitration Board No. 586. **Carrier's Exhibit 1** contains Article IX, Section 2(a) of the 1986 BLET National Agreement.

The Evolution of Interdivisional Agreements

Interdivisional Service has meaningfully expanded the ability of carriers to operate effectively and efficiently; thus new runs play a vital role in the ability of UP to attract, serve and retain customers. Historically, agreements dealing with the establishment of Interdivisional Service reflect a keen understanding of how essential it is that carriers be able to effectively address competition and customer service issues. This is evidenced by the fact that the evolution of agreements governing the establishment of new runs over the last several decades has only dealt secondarily with

whether the proposed terms and conditions of a new run meet Article IX requirements. Rather, and more importantly, the issue of most concern has been how to expedite the rearrangement or establishment of new runs.

To fully understand matters pertaining to the establishment of new interdivisional service, one requires a perspective on the evolution of Interdivisional Service Agreements. A separate copy of Article IX is attached as **Carrier's Exhibit 1**[7] for ready reference.

As previously mentioned, Interdivisional Service rules date back to the Korean War. Article 4 of the May 23, 1952 BLET National Agreement (**Carrier's Exhibit 22)** permitted carriers to serve notice outlining the service it proposed to establish and:

> ". . . conditions, if any, which it proposes shall govern the establishment of such service, the purpose being to furnish the employees with all necessary information."

The May 23, 1952 BLET National Agreement was the first national rule addressing the establishment of Interdivisional Service. It essentially required carriers desiring to establish Interdivisional Service to negotiate and, if necessary, mediate an agreement for the new operation. If neither negotiation nor mediation lead to an agreement, the matter would be referred to a committee comprised of an equal number of union and carrier representatives. Neither the unions nor carriers were satisfied with this arrangement. In particular, the 1952 Agreement failed to demonstrate/provide

[7] Even though the entire Award of Arbitration Award No. 458 is attached as **Carrier's Exhibit 28**, a copy of Article IX is attached as **Carrier's Exhibit 1**. In addition, the Award provided, in Article XVI, for an Informal Disputes Committee. A copy of Article XVI and of the decision of the Informal Dispute Committee concerning Article IX is attached within **Carrier's Exhibit 29**.

enough expediency or guidance about how new runs could be established and associated disputes resolved. Moreover, the 1952 Agreement proved unsatisfactory in that it did not have an effective provision for final and binding resolution. The 1952 Agreement was amended by Article VIII of the May 13, 1971 BLET National Agreement ("the 1971 Agreement"). Article VIII of the 1971 Agreement, attached as **(Carrier's Exhibit 27)**, set forth specific "reasonable and fair" arrangements to be included in interdivisional runs. It also provided protective conditions for those adversely affected by the establishment of Interdivisional Service along with final and binding arbitration to settle disputes relating to the establishment of Interdivisional Service.

Article IX of the 1986 BLET National "Agreement" ("the 1986 Agreement") made significant changes to the 1971 Agreement both substantively and administratively[8]. The 1986 Agreement tightened timelines, by requiring only a 20-day advance notice (as opposed to 30 days in the 1971 Agreement). One of the principle benefits gained by Carriers from the 1986 modifications was the ability to promptly implement a proposed interdivisional service run on a trial basis if the run did not operate through a home terminal. Lastly, the 1986 Agreement stipulated when matters are to be arbitrated, *"… [T]he arbitration board shall be governed by the general and specific guidelines set forth in Section 2 above."*

It is important to note this provision was collectively bargained through the years and employees benefited in this evolution as well. For example, financial protection

[8] As information, the 1986 Agreement became effective June 1 on those carriers that did not elect to preserve the 1971 Agreement. UP did not elect to preserve the 1971 Agreement. Therefore, the 1986 Agreement is controlling Interdivisional Service authority on UP.

increased from 60% to 100% of earnings and was extended from 5 years to 6 years. Relocation benefits were also enhanced with employees allowed more time off to relocate and increased compensation to cover temporary living costs. Along with these lucrative protection benefits, rail carriers paid for this flexibility since the 1970's by means of significant wage increases[9]. It is disingenuous for BLET to bargain in good faith for wage increases and thereafter attempt to inhibit UP from exercising the intended quid pro quo.

Article IX of the May 19, 1986 BLET Agreement was amended by Article X of the July 29, 1991 BLET National Agreement ("the 1991 Agreement"), but only to the following extent:

> "**ARTICLE X – INTERDIVISIONAL SERVICE**
>
> Article IX – Interdivisional Service of the May 19, 1986 Award of Arbitration Board No. 458, is amended as follows:
>
> Section 4(b) of Article IX is renumbered Section (c) and a new Section 4 (b) is hereby adopted:

[9] First General Wage Increase - **5.0%** (January 1, 1970)
Second General Wage Increase - **32¢** per hour (November 1, 1970)
Third General Wage Increase - **4.0%** (April 1, 1971)
Fourth General Wage Increase - **5.0 %** (October 1, 1971)
Fifth General Wage Increase - **5.0 %** (April 1, 1972)
Sixth General Wage Increase - **5.0 %** (October 1, 1972)
Seventh General Wage Increase - **15¢** per hour (January 1, 1973)
Eighth General Wage Increase - **10¢** per hour (April 1, 1973)
The wage increases in the 1986 Arbitration Award were not insignificant either:
First General Wage Increase - **1%** (July 1, 1986)
Second General Wage Increase - **2%** (July 1, 1986)
Third General Wage Increase - **1.5%** (October 1, 1986)
Fourth General Wage Increase - **2.25**% (January 1, 1987)
Fifth General Wage Increase - **1.5%** (July 1, 1987)
Sixth General Wage Increase - **2.5%** (July 1, 1988)

In addition, the Agreement provided for Cost-of-Living Adjustment on October 1, 1986, January 1, 1987, July 1, 1987 and July 1, 1988. A copy of the Award of Arbitration Award No. 458 is attached as **Carrier's Exhibit 28.**

UP requests the Board to take special notice of the price it has paid for the opportunity to implement this Service.

(b) The carrier and the organization mutually commit themselves to the expedited processing of negotiations concerning interdivisional runs, including those involving running through home terminals, and mutually commit themselves to request the prompt appointment by the National Mediation Board of an arbitrator when agreement cannot be reached."

Other than a mutual commitment to expedite negotiations and implementation of Interdivisional Service, the verbiage, mechanics, interpretations and precedent from Article IX contained in the 1986 BLET Agreement remain intact. Article X of the July 29, 1991 BLET National Agreement is attached as **Carrier's Exhibit 30**.

Another important consideration is how experienced authority has interpreted and/or applied Article IX's clear language and intent. An Informal Disputes Committee was established pursuant to Article XVI of the May 19, 1986 BLET National Agreement to decide a host of issues. The purpose of this Disputes Committee was to guarantee that uniform interpretations of the 1986 Agreement were applied on rail Carriers signatory to that Agreement. This was an important element of both the May 19, 1986 BLET and October 31, 1985 UTU National Agreements. So much so, its framers debated related issues before those respective Committees. The BLET Disputes Committee, with John B. LaRocco serving as its Neutral Member, delivered decisions on twenty-one issues/questions from March of 1987, through May of 1990. Of those twenty-one (21) issues, two (2) involved Article IX related matters. As mentioned earlier and pertinent to this case is "Issue 3" as it is commonly known from the BLET Disputes Committee and attached as (**Carrier's Exhibit 8)**. "Issue 3" asked the Disputes Committee the following question:

"Can established Interdivisional Service be extended or rearranged under this Article?"

UP is very familiar with "Issue 3" as it involved the former Southern Pacific Railroad **(SP now UP)** concerning its extension of an existing interdivisional run and whether conditions under prior Interdivisional Service agreements were carried forward to the new run. Rejecting what the Organization will no doubt reassert in the instant case, Arbitrator LaRocco's decision again affirmed UP's right to establish, extend or **rearrange** Interdivisional Service (runs) to obtain efficiencies based on Article IX of the May 19, 1986 BLET National Agreement. Neutral Member John B. La Rocco states in pertinent part:

"...The **former provision did not impose a restraint on creating new Interdivisional Service over territory covered by an existing interdivisional agreement**. See Public Law Board 3695; Award No. 1 (Seidenberg). During the recent round of national bargaining, the parties were aware of the well entrenched past practice. If they wished to deviate from the past practice, the parties would have written unequivocal language in Article IX, Section 5 to the effect that an extension or rearrangements of present Interdivisional Service within the meaning of Article IX. **Moreover, Article IX, Section 3 clearly evinces the parties' intent that Carriers could legitimately extend existing Interdivisional Service.** Section 3 refers expressly to "...previously existing runs which are to be extended..." **The parties would not have set up a trial basis procedure for implementing an extended run if the Carriers, in the first instance, lacked the authority to propose an extended Interdivisional Service. Thus, Section 5 of Article IX does not restrict the Carrier's from rearranging or extending existing Interdivisional Service**."

*** * * ***

"The Committee concludes that the parties must reach a balanced application of Article IX. The **Carriers have the right to establish extended or rearranged Interdivisional Service and it constitutes new service within the meaning of Article IX** unless it is a substantial re-creation of the prior Interdivisional Service designed solely to obtain the

more favorable conditions in the 1986 National Agreement."

Additionally, the UP/SP Los Angeles Merger Implementing Award/Agreement dated May 10, 1999 and Side Letter 3 referenced earlier specifically embeds Article IX in the respective Hub Agreement to be used in the establishment, extension, rearrangement, etc of Interdivisional Service. Again for ready reference, Side Letter 3 from the Los Angeles Hub Implementing Agreement (Side Letter 2 in the Southwest Hub Agreement) states in part:

> "**New Pools created after this Agreement:** **New pool operations not covered in this implementing Agreement whether between Hubs or within the Hub shall be handled per Article IX of the 1986 National Arbitration Award."**

Although more discussion will follow on the applicability of the Agreement provisions cited above, it is important to keep two undisputed facts in mind:

(1) The carrier, not the organization, has the right to propose Interdivisional Service. The carrier also has the exclusive right to specify the terms and conditions that will apply to the service proposed, provided those terms and conditions comply with at least the minimum requirements in the CBA.

(2) In the 1991 Agreement, BLET committed to expedite the negotiation and arbitration process.

The Process for Establishing Interdivisional Service

The May 19, 1986 BLET National Agreement makes clear the carrier alone is the moving party in the interdivisional run process. Specifically, the introduction of Article IX and Section 1 thereof (**Carrier's Exhibit 1**) read as follows:

"An individual carrier may establish Interdivisional Service, in freight or passenger service, subject to the following procedure.

"**Section 1 – Notice**

"An individual carrier seeking to establish Interdivisional Service shall give at least twenty days written notice to the organization of its desire to establish service, specify the service it proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such service." (Emphasis added)

In addition, Article IX, Section 3 – Procedure describes the negotiating process and Section 4 – Arbitration describes the arbitration process. For ready reference Sections 3 and 4 are quoted in pertinent part below:

"Section 3 – Procedure

"Upon the serving of a notice under Section 1, the parties will discuss the details of operation and working conditions of the notice. If they are unable to agree, at the end of the 20-day period, with respect to runs which do not operate through a home terminal or home terminals of previously existing runs which are to be extended, such run or runs will be operated on trial basis until completion of the procedures referred to in Section 4. This trial basis operation will not be applicable to runs which operate through home terminals."

"Section 4 – Arbitration

"(a) In the event the carrier and the organization cannot agree on the matters provided for in Section 1 and the other terms and conditions referred to in Section 2 above, the parties agree that such dispute shall be submitted to arbitration under the Railway Labor Act, as amended, within 30 days after arbitration is requested by either party. **The arbitration board shall be governed by the general and specific guidelines set forth in Section 2 above."**

There is one more important concept concerning the Interdivisional Service process that must be discussed. That concept addresses the Organization's role. Quite simply, once the process gets to arbitration, the Organization's role is extremely limited. Dr. Jacob Seidenberg, in Public Law Board No. 3965, Award No. 1, best summarized the Organization's role when he said:

> "…The board finds from the weight of the probative evidence that the parties covenanted by virtue of the May 13, 1971 National Agreement that Carriers could establish interdivisional runs at the discretion of management, subject to the Organization's right to challenge whether these runs were unreasonably long or were encompassed with burdensome conditions…."

A copy of Public Law Board No. 3965, Award No. 1, is attached as (**Carrier's Exhibit 31)**. Here BLET has not challenged these newly proposed runs as being unreasonably long or encompassed with burdensome conditions because they are not unreasonably long or burdensome. Therefore and respectfully, neither BLET nor this Board can veto management's discretion in the establishment of these runs. The only issue is the terms to be applied to them.

Standards used in determining whether the Carrier's proposal is appropriate

No doubt the Organization will proffer its commentary on how "things should be" rather than focus on what has been actually agreed upon. UP welcomes debate on the bargaining history and agreed upon intent of Article IX and will explain in detail how clear language supports UP's position and why it squares with related precedent.

Understanding the standards used in determining whether the Carrier's proposal is appropriate starts with Section 1 of Article IX:

> "Section 1 – Notice
>
> An individual carrier seeking to establish Interdivisional Service shall give at least twenty days' written notice to the organization of its desire to establish service, specify the service it proposes to establish and the conditions**, if any,** which it proposes shall govern the establishment of such service."

The interesting point in the above language is the phrase "if any." Exactly what is the purpose of the "if any" language? This question must be asked because Section 2 sets forth the required conditions such as rates of pay, transportation, away from home meal allowances, etc.

Read in context, because there are required conditions which the carrier must include, the "if any" language can only refer to any additional conditions the carrier wishes to include. So long as the additional conditions proposed by the carrier satisfy the reasonable and practical standard of Section 2, including the requirement that *"runs be adequate for efficient operations,"* they are appropriate and are to be accepted by the Arbitrator. However, the "if any" language makes clear the Carrier is under no obligation to propose any additional conditions except for those referenced by Section 2; particularly if any intended efficiency is lost with that offering.

Therefore, the *"if any"* phrase must only refer to additional terms and conditions proposed by the Carrier. Nothing contractually mandates the inclusion or consideration of additional terms and conditions. The Agreement permits the Carrier to propose

additional terms and conditions it deems necessary in keeping with the dominant intent of the rule - - efficiency. While the Organization can offer suggestions - - which the Carrier may consider if they add to efficiency - - it cannot insist upon terms and conditions that make the operation inefficient or pay elements beyond those specified in Article IX.

Paragraph (f) of Section 2 provides the parties may negotiate on other terms and conditions of work. From a contract construction perspective, this language is critical. It is only permissive. The carrier ***may or may not*** negotiate additional terms beyond those required by Section 2, Paragraphs (a) through (e) and proposed by the carrier under the "if any" language of Section 1. Though UP has made every effort to solicit input in its on-property discussions, no constructive suggestions were put forth by BLET. Beyond what was contained in UP's last proposal, the parties did not agree upon any other terms and conditions. Therefore, BLET is precluded from seeking other terms and conditions in this forum.

In the event the parties cannot agree on matters relating to a proposed Interdivisional Service, as here, Section 4(a) of Article IX governs:

> **"Section 4 – Arbitration**
>
> "(a) In the event the carrier and the organization cannot agree on the matters provided for in Section 1 and the other terms and conditions referred to in Section 2 above, the parties agree that such dispute shall be submitted to arbitration under the Railway Labor Act, as amended, within 30 days after arbitration is requested by either party. **The arbitration board shall be governed by the general and specific guidelines set forth in Section 2 above."** (Emphasis added)

As Section 4 stipulates, the arbitration board shall be governed by the general and specific guidelines set forth in Section 2. The primary role of the arbitrator is to determine whether the Interdivisional Service, and the governing terms and conditions, proposed by the Carrier comply with the requirements set forth in Article IX.

What does all that mean for this Board? A host of respected Arbitrators have answered that very question - - as outlined in Section 4 (a) supra, Arbitrators are contractually precluded as a general rule from granting additional terms and conditions other than those outlined in Section 2.

Arbitrator Dana Eischen, in **Arbitration Board 468** (BLET vs. Southern Pacific now UP) **(Carrier's Exhibit 32),** states:

> "… Article IX, Section 4 (a), from which this Board derives its jurisdiction and authority, mandates that we "shall be governed by the general and specific guidelines set forth in Section 2. …"

> "… Even though the Parties granted local negotiators latitude to discuss and agree to conditions which might vary from the express guidelines of Section 2, they expressly withheld from Arbitration Boards authority to award terms and conditions which conflict with those set forth in Section 2 (a) through (e). **Therefore, we recognize and are bound by the very real express limitations imposed upon our authority.** …" (Emphasis added)

Arbitrator William Fredenberger, in **Arbitration Board 493** (BLET vs Southern Pacific now UP) **(Carrier's Exhibit 33),** states:

> "… The Carrier contends that under Article IX Section 4 (a) of that Award this Board must be "… governed by the general and specific guidelines set forth in Section 2 above. …"

"… **We believe the Carrier has the stronger position on this issue**…" (Emphasis added)

Arbitrator William Fredenberger, in **Arbitration Board 507** (UTU vs Southern Pacific now UP) **(Carrier's Exhibit 34),** states:

"…The Carrier maintains that a negotiated implementing agreement notwithstanding, this Board has no jurisdiction under Article IX, Section 4 of the October 31, 1985 National agreement to grant increased compensation to employees. It requires this Board to be "… governed by the general and specific guidelines set forth in Section 2…" of Article IX …"

"… **We believe the Carrier makes a strong case on this point that as a general rule a Board such as this has no authority under Article IX, Section 4 to award or impose provisions which would result in increased compensation to employees**…." (Emphasis added)

Arbitrator Francis Quinn, in **Public Law Board No. 6761 Award No. 1 (UTU vs. BNSF) (Carrier's Exhibit 35)**, states:

"… **This Board is limited by Section 4(a) regarding any conditions included in an arbitrated Interdivisional Service agreement.** The Section 2 conditions are the only required conditions and the National Agreement recognizes these conditions to be both general and specific in nature." (Emphasis added)

Arbitrator Robert Richter in Board of Arbitration 580 **(BLET vs. UP) (Carrier's Exhibit 36)** states:

"… This Board lacks authority to change rates of pay."

Thus this Board as well has no authority under Article IX, Section 4 to impose provisions which would result in increased compensation to employees.

Part IV

UP's July 17, 2013 Notice

Point - Counterpoint.

UP's July 17, 2013 Notice was hand delivered to BLET representatives at a meeting held that same day to discuss it. As mentioned, the July 17, 2013, Interdivisional Notice withdrew the previous and more complex February 11, 2013, Interdivisional Notice proposing pool subsets and multiple on/off duty locations within the LABM. In line with BLET's (and United Transportation Union) suggestion, the existing Dolores to Yuma and Dolores to Yermo Interdivisional Agreement would be utilized for *"long run"* port and area traffic. For secondary manifest trains originating/terminating in and around West Colton, a better operating plan had to be developed that could efficiently engage and slot this traffic into the overall LABM flow.

Upon its receipt, BLET requested time to review the July 17, 2013 Notice and proposed operation. UP agreed and another meeting was scheduled and took place on August 13, 2013. In the interim BLET General Chairman Hannah sent a letter **(Carrier's Exhibit 9)** to UP dated February 24, 2013 (intended date July 24, 2013), via e-mail referencing his review of the Carrier's July 17, 2013 Interdivisional Notice. UP responded on July 26, 2013 **(Carrier's Exhibit 10)**

Mr. Hannah wrongly contended the Carrier's July 17, 2013, Interdivisional Notice

and Proposed Draft Agreement *"…does not create any new interdivisional service, and is therefore an improper application of Article IX…."* and that the *"only means for securing a change in home terminal is pursuant to the collective bargaining agreement under Section 6 of the Railway Labor Act."* BLET made no mention whatsoever of its New York Dock contention at that time.

UP's July 26, 2013, reply to Mr. Hannah made its position clear. The Informal Disputes Committee established pursuant to Article XVI of the May 19, 1986 National Agreement and a host of Arbitration precedent had decided this identical issue in UP's favor. Simply stated, UP is permitted virtually any operating transformation to enhance general operating efficiency and/or complement its overall transportation effort. In addition, BLET was advised that the rearrangement of home terminals can be part of any such operating transformation.

Mr. Hannah was further advised that on-property Award No. 1 of PLB 3965 **(Carrier's Exhibit 31)** addressed this very issue in UP's favor. In that case UP served an Article IX Notice on a BLET Eastern District General Chairman to establish Interdivisional Service between Fremont and North Platte, Nebraska. That BLET General Chairman took *"procedural exception"* to the notice likewise contending interdivisional service already existed in this territory and the Carrier was barred from so changing this operation under the guise of an Article IX notice. The Eastern District BLET General Committee also argued the only means available to change a home terminal was through Section 6 of the Railway Labor Act. BLET's argument was soundly rejected by Arbitrator Jacob Seidenberg as did later Messrs. Zusman and Radek.

Most supportive of UP's July 17, 2013 Interdivisional Notice is Mr. Hannah

conceding the fact compensation has not been diminished with the new service. What's more, the latest proposal transmitted to BLET on October 18, 2013, resolved any "Issue 3" qualifier, i.e., given that pay rates will be preserved, BLET cannot argue the Carrier's motives are *"solely to obtain to obtain the more favorable conditions in the 1986 National Agreement."*

It is important to note UP's proposed retention of current trip rates barring any material change is, in its view, a pay enhancement, not a reduction. The current trip rate does not take into account how operating efficiencies of the new operation could affect the nine (9) pay elements embedded into the existing trip rates. For instance, initial and final terminal delay payments are likely to be reduced. Therefore current trip rates are arguably higher than would be required under Article IX and therefore the proposed terms and conditions exceed Article IX requisites in this regard.

No doubt, BLET saw the value of this concession in its recent Santa Theresa Interdivisional Agreement **(Carrier's Exhibit 37).** There BLET agreed to take the current trip rate speculating as well that initial and final terminal delay payments will likely be reduced with the new operation. Clearly, the terms and conditions proposed in UP's July 17, 2013, Notice are consistent with what BLET has already found acceptable.

Following this July exchange of correspondence, the parties met as planned on August 13, 2013. At this meeting, BLET representatives did little more than complain about this change and refused to engage in any constructive or meaningful dialog on the proposed operation. Reaching impasse, another meeting was scheduled for October 16, 2013, to frame the Issue(s) for arbitration. Shortly thereafter, UP was

blindsided by BLET's filing of a lawsuit in the United States District Court for the Northern District of Illinois. In that lawsuit, BLET claimed that UP's Article IX notice was procedurally defective because it violated a term of the Los Angeles Hub Agreement. BLET then asked a federal judge to enjoin UP from commencing a trial run of the new pool operations until an arbitration proceeding took place.

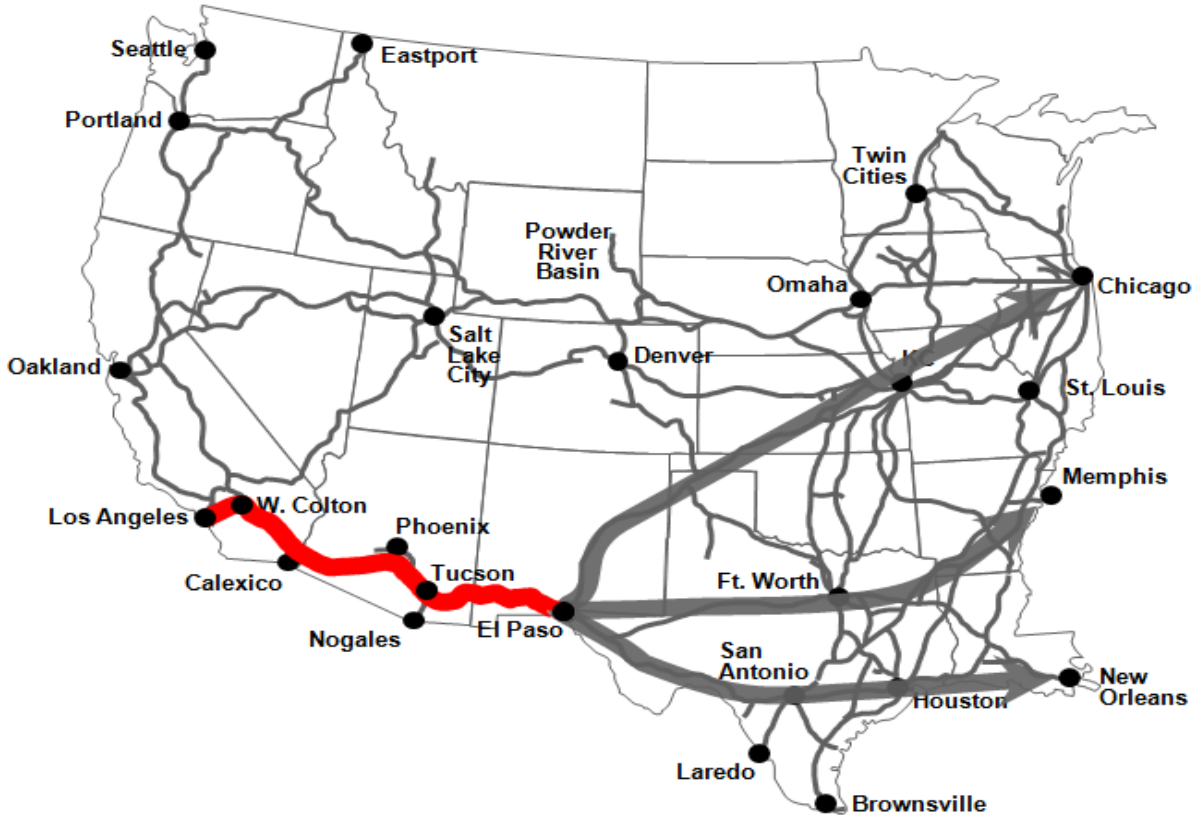
UP's response to this lawsuit was that it welcomed arbitration. In fact, UP argued that only an arbitrator could decide the parties' dispute and that the federal court lacked the jurisdiction to enter any kind of order. Moreover, UP stated that, if BLET would cooperate and agree to expedited arbitration, the entire matter could be resolved before a trial run was ever implemented. The Judge, while stating that he had not made up his mind, indicated that he tended to agree with UP, and asked the parties to agree to expedited arbitration. The result was the agreement to create this arbitration board.

Other than Mr. Hannah's misdated July 24, 2013, letter to Mr. Foley, BLET has not outlined its position. Given BLET's legal maneuverings, one can only speculate that it has replaced its *"only Section 6 of the Railway Labor Act"* assertion with the New York Dock argument. And, of course, the Awards of Arbitrators Siedenberg, Zusman and Radek fatally undermine that argument. Interestingly, BLET's proposed Questions at Issue focus more on Article IX than any particular New York Dock contention. UP's presentation is based on BLET's limited correspondence and meeting conversations. Notwithstanding, UP is best served by validating its reasons for the proposed service.

As stated earlier, the combined "*short run/long run"* arrangement will stabilize the workforce, positively address chronic qualification/certification issues and improve away

from home terminal issues complained of by both parties. Moreover, this revised operating strategy favorably addresses BLET's multiple reporting point and excessive limbo and commuting time concerns. Lastly, the proposed "*short run"* does not operate through West Colton which was another major objection BLET had with the previous operating strategy.

UP's ability to efficiently fuse lesser priority West Colton traffic onto the Sunset Corridor (Freeway) is, in part, the basis for UP's July 17, 2013, Interdivisional Notice.



Westbound manifest trains from points east and north must compete with the higher priority container and auto trains. That competition often results in delay to the lesser priority traffic. Having Yuma and Yermo as away from home terminals for the West Colton operation exacerbates quality of life issues for employees and increases

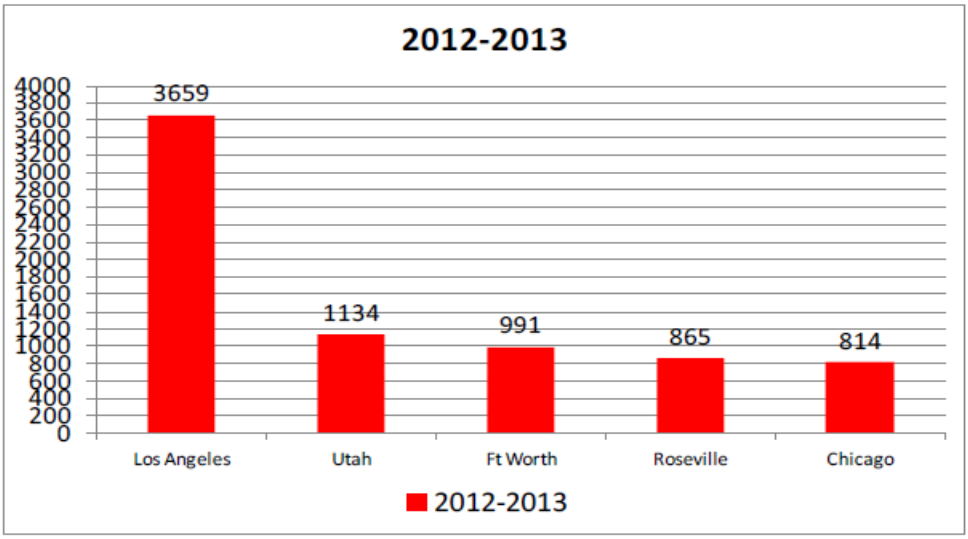
operating cost. UP must routinely decide whether to hold away from home terminal employees for the delayed manifest trains and pay “held away” payments or weigh that cost against deadheading employees home. Either way UP must pay for service not performed, i.e., no throttle time.

Conversely, having Yuma and Yermo as home terminals and West Colton the away from home terminal for the *“shorter runs”* eliminates having to weigh that cost because it is much less an issue. Any inherent or unanticipated delay attributed to the distance west bound trains must travel before arriving Yuma and Yermo only results in more home time for employees headquartered at those locations. Because east bound manifest trains originate in and around West Colton, Service Unit Managers and UP’s Train Dispatching Center can more efficiently coordinate those departures. Having the benefit of additional track space at West Colton and localized control will keep held away payments and terminal to terminal deadhead cost to a minimum. Moreover, having the “*short and long runs”* headquartered in this manner provides additional dispatching options. UP can better react to surges, day of week fluctuations, directional fleeting, etc. in a more cost effective manner thereby minimizing payments for service not performed.

Additionally, over time, hiring employees who live in and around Yuma and Yermo will reduce movement (churn) and stabilize that workforce. Constant movement of employees in the LABM creates chronic qualification/certification issues. For instance, the current West Colton-Yermo pool is one of the lower paid runs in the Hub. As a result, many employees bid off the run when their seniority allows it. The junior engineers then forced to take the assignment frequently are not qualified to operate the

run.[10] This requires UP to have an additional engineer (pilot) on many of its trains. It is axiomatic that having two engineers on every train is inefficient. The chart below illustrates the degree to which this has become an issue.

PLE by Service Unit, Jan 2012- Sep 2013
Top 5 Number Used



The measurements above identify the top five Service Units on UP's System using the most number of engineer pilots during the stated time period. Clearly, the Los Angeles Service Unit stands out using the most number of engineer pilots by far. In fact, the Los Angeles Service Unit used more than three times the number of engineer pilots than did the next highest Service Unit (Utah). Adding the number of pilots used by next four Service Units, i.e., Utah, Ft. Worth, Roseville and Chicago together, the Los

[10] During the Court proceedings, BLET tried to counter this contention by noting that UP had never been left without an engineer to operate trains between Yermo and West Colton. BLET completely misses the point. The inefficiency is not that the trains cannot run it is that UP has to pay for two engineers to operate the service much more frequently than necessary.

Angeles Service Unit only used approximately 145 more engineer pilots than the others combined.

By all accounts, Utah Service Unit runs are as challenging as those in the Los Angeles Service Unit - - maybe more so. The Utah Service Unit operates in five (5) different directions, has eleven different freight pools working out of Ogden, Salt Lake and Provo, Utah, has challenging grade territories, has a large number of lower paid runs, etc. Yet Los Angeles with only five pools and similar seniority characteristics uses three times the number of engineer pilots.

At our October 15, 2013 meeting, General Chairman Hannah was well aware of and openly advocated for that inefficiency, stating that having *"two engineers on every train will make [him] happy."* Mr. Hannah's only solution to not having two engineers on every train is to unreasonably inflate the rate of pay on lesser paid runs. We disagree. BLET made the same "just pay more" argument before Board of Arbitration 580. Arbitrator Richter rejected Mr. Hannah's effort stating that he lacked "authority to change rates of pay."

UP strongly believes the answer is to increase the efficiency of its operations through Article IX as UP proposes to do. The proposed operation will yield these efficiencies. Our willingness to invest as we have and incur the wage protection and relocation expenses certainly affirms that belief.

Conclusion

UP respectfully request the Board answers both the Carrier and Organization's Questions at Issue No. 1 in the affirmative based on five summarized points of reason:

1. "New pool operations" are precisely what Article IX of the 1986 BLET National Agreement covers. The language from the Hub Implementing Agreements that authorizes UP to create "new pool operations" in both the Los Angeles and Southwest Hubs under Article IX simply establishes that neither of these Hub Implementing Agreements limit UP' rights under Article IX. As such, Article IX is the contractual authority defining what is considered new service under that Article.

2. Given that UP has not had these proposed new pool operations previously, it is difficult to understand BLET's position that the proposed operations are not new. By definition, something is new if it is different than what presently exists. To argue that these new pool operations are not new is to ignore the reality that they do not exist at this time.

3. Arbitrator's Zusman and Radek found, that when the Carrier changes the home terminal of an existing Interdivisional run it is a material change in service and constitutes *"new service"* within the meaning of Article IX holding:

> **Public Law Board 7318, Case/Award 20**
>
> " … However, the Board finds, as does the most recent Award on this property (Public Law Board 7463, Radek), **that when the Carrier changes the home terminal of an existing ID service it is a material change in service and constitutes new ID service**. Such change is permissible under Article IX of the 1985 Agreement. The Organization's arguments throughout this dispute of the Carrier's ID service are not persuasive. The Carrier has not violated the Agreement between the parties. The Board is convinced from the full record and arguments presented that this is a "rearrangement" which is a materially different ID service from the service that existed prior. **While the Board notes that in some prior awards additional adjustments were made to add a river route or expand train types, the central issue is that of fundamental removal of a home terminal. This is not a substantial recreation, but new service; a permissible rearrangement' a materially different ID service than existed prior. …"**

4. Because the proposed terms and conditions governing UP's July 17, 2013 Notice do not work to obtain any more favorable conditions than are currently applied to other Interdivisional Service and because they meet or exceed all conditions outlined in the 1986 National Agreement, there would be no limitation whatsoever on UP's establishment of this service.

5. UP strongly believes its proposed operation will yield the intended efficiencies. UP's willingness to invest as it has in its infrastructure and incur wage protection and relocation expenses contained in Article IX to establish this new pool operation certainly affirms that belief.

Answering the Carrier and Organization's Questions at Issue No. 1 affirmatively, the terms and conditions governing the Interdivisional Service between Yermo, California, and West Colton, California, and between Yuma, Arizona, and West Colton, California should be the terms and conditions outlined in UP's modified proposal transmitted October 18, 2013 and attached as **Carrier's Exhibit 38.**

Respectfully Submitted

R. P. Guidry
General Director Labor Relations

ARTICLE IX - INTERDIVISIONAL SERVICE

Note: As used in this Agreement, the term interdivisional service includes interdivisional, interseniority district, intradivisional and/or intraseniority district service.

An individual carrier may establish interdivisional service, in freight or passenger service, subject to the following procedure.

Section 1 - Notice

An individual carrier seeking to establish interdivisional service shall give at least twenty days' written notice to the organization of its desire to establish service, specify the service it proposes to establish and the conditions, if any, which it proposes shall govern the establishiment of such service.

Section 2 - Conditions

Reasonable and practical conditions shall govern the establishment of the runs described, including but not limited to the following:

(a) Runs shall be adequate for efficient operations and reasonable in regard to the miles run, hours on duty and in regard to other conditions of work.

(b) All miles run in excess of the miles encompassed in the basic day shall be paid for at a rate calculated by dividing the basic daily rate of pay in effect on May 31, 1986 by the number of miles encompassed in the basic day as of that date. Weight-on-drivers additives will apply to mileage rates calculated in accordance with this provision.

(c) When a crew is required to report for duty or is relieved from duty at a point other than the on and off duty points fixed for the service established hereunder, the carrier shall authorize and provide suitable transportation for the crew.

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

(d) On runs established hereunder crews will be allowed a $4.15 meal allowance after 4 hours at the away from home terminal and another $4.15 allowance after being held an additional 8 hours.

(e) In order to expedite the movement of interdivisional runs, crews on runs of miles equal to or less than the number encompassed in the basic day will not stop to eat except in cases of emergency or unusual delays. For crews on longer runs, the carrier shall determine the conditions under which such crews may stop to eat. When crews on such runs are not permitted to stop to eat, crew members shall be paid an allowance of $1.50 for the trip.

(f) The foregoing provisions (a) through (e) do not preclude the parties from negotiating on other terms and conditions of work.

Section 3 - Procedure

Upon the serving of a notice under Section 1, the parties will discuss the details of operation and working conditions of the proposed runs during a period of 20 days following the date of the notice. If they are unable to agree, at the end of the 20-day period, with respect to runs which do not operate through a home terminal or home terminals of previously existing runs which are to be extended, such run or runs will be operated on a trial basis until completion of the procedures referred to in Section 4. This trial basis operation will not be applicable to runs which operate through home terminals.

Section 4 - Arbitration

(a) In the event the carrier and the organization cannot agree on the matters provided for in Section 1 and the other terms and conditions referred to in Section 2 above, the parties agree that such dispute shall be submitted to arbitration under the Railway Labor Act, as amended, within 30 days after arbitration is requested by either party. The arbitration board shall be governed by the general and specific guidelines set forth in Section 2 above.

(b) The decision of the arbitration board shall be final and binding upon both parties, except that the award shall not require the carrier to establish interdivisional service in the particular territory involved in each such dispute but shall be accepted by the parties as the conditions which shall be met by the carrier if and when such interdivisional service is established in that territory. Provided further, however, if carrier elects not to put the award into effect, carrier shall be deemed to have waived any right to renew the same request for a period of one year following the date of said award, except by consent of the organization party to said arbitration.

Section 5 - Existing Interdivisional Service

Interdivisional service in effect on the date of this Agreement is not affected by this Article.

Section 6 - Construction of Article

The foregoing provisions are not intended to impose restrictions with respect to establishing interdivisional service where restrictions did not exist prior to the date of this Agreement.

Section 7 - Protection

Every employee adversely affected either directly or indirectly as a result of the application of this rule shall receive

the protection afforded by Sections 6, 7, 8 and 9 of the Washington Job Protection Agreement of May 1936, except that for the purposes of this Agreement Section 7(a) is amended to read 100% (less earnings in outside employment) instead of 60% and extended to provide period of payment equivalent to length of service not to exceed 6 years and to provide further that allowances in Sections 6 and 7 be increased by subsequent general wage increases.

Any employee required to change his residence shall be subject to the benefits contained in Sections 10 and 11 of the Washington Job Protection Agreement and in addition to such benefits shall receive a transfer allowance of four hundred dollars ($400.00) and five working days instead of the "two working days" provided by Section 10(a) of said agreement. Under this Section, change of residence shall not be considered "required" if the reporting point to which the employee is changed is not more than 30 miles from his former reporting point.

If any protective benefits greater than those provided in this Article are available under existing agreements, such greater benefits shall apply subject to the terms and obligations of both the carrier and employee under such agreements, in lieu of the benefits provided in this Article.

- - - - - - - - - -

This Article shall become effective June 1, 1986 except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before such date. Article VIII of the May 13, 1971 Agreement shall not apply on any carrier on which this Article becomes effective.

ARTICLE X - LOCOMOTIVE STANDARDS

In run-through service, a locomotive which meets the basic minimum standards of the home railroad or section of the home railroad may be operated on any part of the home railroad or any other railroad.

A locomotive which meets the basic minimum standards of a component of a merged or affiliated rail system may be operated on any part of such system.

ARTICLE XI - TERMINATION OF SENIORITY

The seniority of any employee whose seniority in engine or train service is established on or after November 1, 1985 and who is furloughed for 365 consecutive days will be terminated if such employee has less than three (3) years of seniority.

UNION PACIFIC RAILROAD COMPANY

Western Region

D. B. Foley Dir. Labor Relations
Tel: (916) 789-6345

10031 Foothills Blvd.
Roseville, CA 95747

July 17, 2013

Carrier File: 920.40-35

Mr. D. W. Hannah
General Chairperson BLET
1902 Orange Tree Lane, Suite #120
Redlands, CA 92374

(Hand delivered)

Dear Sir:

Pursuant to Article IX of Appendix B to Award of Arbitration Board No. 458, dated May 19, 1986 (also referred to as the May 19, 1986 BLE National Agreement), as amended by Article X of the Agreed Upon Implementation of Public Law 102-29, effective July 29, 1991 (also referred to as the 1991 BLE National Agreement), this letter shall serve to advise of Union Pacific Railroad Company's ("UP") desire *"... to establish interdivisional service ..."* and simultaneously serve as its *"... [requisite] written notice to the [Brotherhood of Locomotive Engineers and Trainmen] of its desire to establish..."* two separate unassigned through freight pools operating between Yermo, California, and West Colton, California and between Yuma, Arizona and West Colton, California. In compliance with the requirements set forth in Article IX, Section 1 of the May 19, 1986 National Agreement, the purpose of this notice is to *"... specify the service ... [UP] proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such service."*

In conjunction with this notice, Union Pacific concurrently withdraws its prior notice of February 11, 2013 to your Organization of its desire to establish two separate unassigned through freight pools operating between an area described as the Los Angeles Basin Metroplex (LABM) and Yermo, California, and between the LABM and Yuma, Arizona.

Prior to describing the pertinent parameters of this new service and the proposed conditions attendant thereto, it is relevant to discuss UP's reasons for implementing this new service. Competition for the transportation of goods, including intermodal traffic, into and out of the Los Angeles Basin is keenly competitive. While UP's transportation service offerings between the Los Angeles Basin and Midwest and East Coast markets are good, significantly more

efficient and faster service options are available from UP's principal competitors – i.e., the Burlington Northern Santa Fe Railway Company ("BNSF") and trucks. Notwithstanding the competitive edges they hold, UP strives diligently to improve continuously the quality and competitiveness of its transportation products. To this end, and with the view that *"... every minute counts ...,"* UP constantly works to wring every minute of delay, congestion and variability out of its routes and transportation products. Obviously, to do otherwise would be nothing short of an immediate recipe for failure. Therefore, to accomplish its goals, UP aggressively pursues a number of strategies designed to improve the velocity, efficiency and effectiveness of its operations. One element of our strategy is to ensure our infrastructure is maintained at a very high level in order to avoid delays relating to track condition slow orders, etc. Another focuses on deployment of the latest technologies to enhance safety and facilitate train movements. Perhaps one of the most critical and effective strategies for improving our competitive posture lies in our strategic deployment of capital for infrastructure improvements (i.e., new commercial facilities, line and yard capacity enhancements, etc.) A key tactic in UP's long-term capital expenditure strategy has been to address or fix "bottleneck" areas that contribute to significant service delays or congestion, diminished velocity, increased or unnecessary re-crews (i.e., dogcatching), or inefficient use of train crews. Nowhere is this perhaps more evident than in the lines leading into or out of the Los Angeles Basin. For example, over the last four years alone, UP has spent over $360 million constructing over 93 miles of second main track, between Los Angeles, California, and El Paso, Texas. The result of these expenditures is more efficient and competitive route between Los Angeles and eastern markets, with approximately 72% of the route now equipped with double track. UP plans to spend nearly $590 million more over the next five to six years to complete the double track between Los Angeles and El Paso.

Another striking example of UP's drive to improve its competitive posture and garner an increasing share of the Los Angeles Basin transportation market is evidenced by its commencement last year of constructing the "Colton Flyover." This nearly $100 million project will provide UP with a "bridge" or "overpass" over BNSF's route through Colton, California, and an opportunity to eliminate a major source of congestion and improve train velocity in the central and eastern portions of the Los Angeles Basin.

With this level of strategic investment, it is incumbent upon UP to obtain the operational and service benefits improvements contemplated when it embarked on these expensive construction projects and, in particular, to physically translate these benefits into new, improved and innovative services and operations that will benefit shippers. UP's continuing investment in maintaining its routes into and out of the Los Angeles Basin at high levels and the investment in projects like the Colton Flyover will provide UP with a foundation for adopting innovative operations and services designed to significantly reduce train delay and terminal congestion, improve train velocity and thus further improve our service product for Los Angeles Basin shippers. The construction of the Colton Flyover will, in particular, enable UP to more efficiently utilize its train and engine service crews by operating longer runs and

adopting more innovative and service-responsive procedures within the Los Angeles Basin. In conjunction with this, the ultimate result will be the opportunity for further traffic growth into/out of the Los Angeles Basin and an increase in lucrative railroad jobs.

With the foregoing in mind, UP intends to establish two new interdivisional service operations between Yermo, California and West Colton, California and between Yuma, Arizona and West Colton, California with Yermo and Yuma serving as the home terminals and with West Colton as the away-from-home terminal locale for both interdivisional service operations. In regard to our requirements, as indicated in Article IX, *"...to specify the service ... [UP] proposes to establish and the conditions ... it proposes shall govern ...,"* a synopsis of our proposed new interdivisional service operations and a proposed implementing agreement for the new services are respectively provided below and as an accompaniment to this notice. In summary, UP proposes the following new interdivisional service:

New Interdivisional Service (Runs):

1. Yermo, California – West Colton, California.

   A. Home terminal for this run will be Yermo, California.

   B. Away-from-home-terminal for this run will be West Colton, California.

   C. Length of run will be 130 miles.

2. Yuma, Arizona – West Colton, California.

   A. Home terminal for this run will be Yuma, Arizona.

   B. Away-from-home-terminal for this run will be West Colton, California.

   C. Length of run will be 198 miles.

The mileages set forth above for each of the runs are subject to final verification by the parties.

The terms and conditions contained in the controlling collective bargaining agreement, applicable BLE/BLET National Agreements, including, but not limited to, Article IX of the 1986 BLE National Agreement, as Amended by Article X of the 1991 BLE National Agreement, and applicable practice and arbitral precedent, as well as the terms of the Agreement will apply to the interdivisional service established pursuant to this notice.

As indicated above, a proposed agreement detailing the terms and conditions for these new services accompanies this notice.

In Article X of the 1991 BLE National Agreement, BLE and various carriers including UP, specifically and unambiguously "... ***[committed] themselves to the expedited processing of negotiations concerning interdivisional runs, including those involving running through home terminals, and ... to request the prompt appointment by the National Mediation Board of an arbitrator when agreement cannot be reached."*** (Emphasis ours) Consistent with this commitment, we are eager to commence promptly the requisite negotiations on this matter. Accordingly, we suggest the parties meet to discuss this service and negotiate the requisite agreement on **July 17, 2013 at 10:00 AM at the Hilton San Francisco Financial District**. We would appreciate your prompt attention to this matter and anxiously await your reply.

Yours truly,

D. B. Foley
Director – Labor Relations

(Attachment)

CC: Shane Keller - RVP
Chad Wilbourn - ARVP
Rod Doerr - Super't
Terry Tate - Gen. Dir. Qual Srv
Gordon Wellington - Dir Fin
Ken Hunt - VP HDC
Terry Olin - AVP LR
Randy Guidry - Gen Dir LR
Pete Jeyaram - Dir LR
Vanessa Warren - Asst Dir LR
Jay Reilly - Asst Dir LR
Josephine Jordan - Gen Dir CMS
Pat Kenny - Dir CMS
Tony Leazenby - Dir CMS
Cliff Johnson - Sr. Dir Tk

DRAFT 1
(07-17-2013)

MEMORANDUM OF AGREEMENT
#71_ _ _ _ _ _48
(920.40-35)

Between

UNION PACIFIC RAILROAD COMPANY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS & TRAINMEN

YERMO – WEST COLTON
YUMA – WEST COLTON
INTERDIVISIONAL SERVICE

In connection with Union Pacific Railroad Company's Notice dated July 17, 2013, wherein it advised its intent to establish new unassigned (pool) through freight service between Yermo, California and West Colton, California and Between Yuma, Arizona and West Colton, California pursuant to Article IX, "Interdivisional Service", of the 1986 BLE National Agreement, the parties agree the following shall apply to this new service:

Section 1. Interdivisional Service. Union Pacific may establish the following new pool freight operations:

1. Yermo, California – West Colton, California.

   A. Home terminal for this run will be Yermo, California.

   B. Away-from-home-terminal for this run will be West Colton, California.

   C. Length of run will be 130 miles.

2. Yuma, Arizona – West Colton, California.

   A. Home terminal for this run will be Yuma, Arizona.

   B. Away-from-home-terminal for this run will be West Colton, California.

C. Length of run will be 198 miles.

Note: As in the 1986 BLE National Agreement and this Agreement, the term interdivisional service includes interdivisional, interseniority district, intradivisional and/or intraseniority district service.

Section 2. Terminals for Run. (a). Yermo, California, shall be the home terminal for employees working between Yermo and West Colton. West Colton shall be the away-from-home terminals for Yermo based crews.

(b). Yuma, Arizona shall be the home terminal for employees working between Yuma and West Colton. West Colton shall be the away-from-home terminal for Yuma based crews.

Section 3. Miles of Run. Crews working in this interdivisional service will be allowed the following miles:

A. The miles run between Yermo – West Colton is 130 miles.

B. The miles run between Yuma – West Colton is 198 miles.

Note: The mileages specified above are subject to final verification by the parties.

Section 4. Rates of Pay, Rules and Working Conditions. Except as set forth herein, applicable provisions of the Agreement between the Union Pacific Railroad and the Brotherhood of Locomotive Engineers & Trainmen covering the UP/SPWL and provisions of National BLE/BLET Agreements shall apply.

(a) The existing trip rates currently established for the West Colton/Mira Loma to Yermo and West Colton/Mira Loma to Yuma pool freight runs shall be applied to the new runs established under this agreement.

Note: This Agreement shall not serve to modify, amend or restrict any existing rights of the Carrier including, but not limited to, Article III (A.) of the UP/SP BLET Los Angeles Hub Merger Implementing Agreement concerning trains originating or terminating at Mira Loma, California.

Section 5. Overtime. Employees operating in this freight service will be allowed overtime after actual miles run divided by 16.25 overtime divisor pursuant to Article IV, Section 2 of the November 1, 1991 PEB 219 BLE National Agreement.

Section 6. Transportation. Transportation will be provided in accordance with Section (2) (c) of Article IX of the May 19, 1986 BLE National Agreement.

Section 7. On and Off Duty Points. The Carrier will designated the on- and off-duty points for crews in this service pursuant to Article VI, Section A, 2 of the 1998 BLE Los Angeles Hub Agreement and Article IX, Section 2 (c) of the 1986 BLE National Agreement. Such on and off duty points will have appropriate facilities as currently required by the controlling collective bargaining agreement.

Section 8. Meal Allowance and Eating En Route. Meal allowances at the away from home terminal will be governed by Article IX, Section 2 (d) of the 1986 BLE National Agreement. Meals enroute for not stopping to eat enroute will be governed by Article IX, Section 2 (e) of the 1986 BLE National Agreement.

Section 9. Suitable Lodging. Suitable lodging will be provided by the Carrier in accordance with Section 1 of Article II of the June 25, 1964 National Agreement.

Section 10. Extra Boards. The Carrier may establish guaranteed extra board(s) pursuant to Attachment "A" of the BLE and UP/SPWL November 3, 1997 Modifications Agreement.

Section 11. Hours-of-Service Relief. Turnaround service/hours of service relief shall be handled by the extra board, if available, prior to using pool crews. Employees used for this service may be used for multiple trips in one tour of duty in accordance with the designated collective bargaining agreement. Nothing in this agreement prevents the use of other crews to perform work currently permitted by prevailing agreements, including, but not limited to yard crews performing hours of service relief within the road/yard zone, ID crews performing service and deadheads between terminals, road switchers handling trains within their zones and using a crew from a following train to work a preceding train.

Section 12. Employee Protection. Employees adversely affected by the initial implementation of this interdivisional service will be afforded the protection benefits provided in Section 7 of Article IX of the May 19, 1986 BLE National Agreement.

Section 13. Implementation. On the effective date of this agreement, the Carrier will post a bulletin for this interdivisional service. Thereafter, employees who have a standing application on file with CMS for this interdivisional service will be assigned in accordance with the applicable seniority assignment rules.

Section 14. Effective Date. The Carrier shall give the General Chairman seven (7) days' written notice of its desire to implement this Agreement.

Signed at _____, this ____ day of _____.

FOR BROTHERHOOD OF LOCOMOTIVE ENGINEERS & TRAINMEN	FOR UNION PACIFIC RAILROAD COMPANY:
D. W. Hannah General Chairman	D. B. Foley Director Labor Relations

BNSF Flyover 7/17/13

B. Foley	LR	Roseville
RP Guidry	LR	Omaha
Patrick Kenny	CMS	Omaha
Larry Keith	LASM	LC
Shane Keller	West	RSV
Gordon Wellington	West	RSVL
Bill Hannah	GC	Rolling S
Lee Pruitt	ND	Cleveland, OH
Kent Richards	LA BLET 56	West Colton
Paulo Tortucc	Blet 5	LA
Don Carroll	BLET - 660	L.A. Colton-ESC.
Ron Sprague	BLET	Tucson
Brian Carr	BLET	Roseville
John Eustice	BLET	Reno
MW Twombly	BLET	Cleveland, OH
K. H. Hunt	UPRR	Omaha.

August 13, 2013

Yuma/Yermo ID Negotiations

Randy Guidry	LR	Omaha
Tony Leagett	CMS	Omaha
TOM WILLIAMS	LASU	W COLTON
SHANE KELLER	UPRR	ROSEVILLE
KENT RICHARDS	BLET	WEST COLTON
E. L. Pruitt	BLET	Cleveland, OH
Bill Hannah	BLET	REDLANDS, CA
DON CARROLL	BLET	LA, CA.
PAULO TORTORICE	Blet	LA, CA

UNION PACIFIC RAILROAD COMPANY

Frank A. Tamisiea
Dir. Labor Relations
Tel: (916) 789-6345

Western Region

10031 Foothills Blvd.
Roseville, CA 95747

February 11, 2013

W 910.40 - 36

(Via E-Mail & UPS Mail)

Mr. D. W. Hannah
General Chairperson
Brotherhood of Locomotive Engineers
and Trainmen
1902 Orange Tree Lane, Suite #120
Redlands, CA 92374

Dear Mr. Hannah:

Pursuant to Article IX of Appendix B to Award of Arbitration Board No. 458, dated May 19, 1986 (also referred to as the May 19, 1986 BLE National Agreement), as amended by Article X of the Agreed Upon Implementation of Public Law 102-29, effective July 29, 1991 (also referred to as the 1991 BLE National Agreement), this letter shall serve to advise of Union Pacific Railroad Company's ("UP") desire *"... to establish interdivisional service ..."* and simultaneously serve as its *"... [requisite] written notice to the ... [Brotherhood of Locomotive Engineers and Trainmen] of its desire to establish..."* two separate unassigned through freight pools operating between an area to be known as the Los Angeles Basin Metroplex ("LABM") and Yermo, California, and between the LABM and Yuma, Arizona. Accordingly, and in compliance with the requirements of Article IX, Section 1 of the May 19, 1986 National Agreement, the purpose of this notice is to *"... specify the service ... [UP] proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such service."*

Prior to describing the pertinent parameters of this new service and the proposed conditions attendant thereto, it is relevant to discuss UP's reasons for implementing this new service. Competition for the transportation of goods, including intermodal traffic, into and out of the Los Angeles Basin is keenly competitive. While UP's transportation service offerings between the Los Angeles Basin and Midwest and East Coast markets are good, significantly more efficient and faster service options are available from UP's principal competitors – i.e., the Burlington Northern Santa Fe Railway Company ("BNSF") and trucks. Notwithstanding the competitive edges they hold, UP strives diligently to improve continuously the quality and competitiveness of its transportation products. To this end, and with the view that *"... every minute counts ...,"* UP constantly works to wring every minute of delay, congestion and variability out of its routes and transportation products. Obviously, for it to do otherwise would be nothing short of an immediate recipe for failure. Therefore, to accomplish its goals, UP aggressively pursues a number of strategies designed to improve the velocity, efficiency and

effectiveness of its operations. One element of our strategy is to ensure our infrastructure is maintained at a very high level in order to avoid delays relating to track condition slow orders, etc. Another focuses on deployment of the latest technologies to enhance safety and facilitate train movements. Perhaps one of the most critical and effective strategies for improving our competitive posture lies in our strategic deployment of capital for infrastructure improvements (i.e., new commercial facilities, line and yard capacity enhancements, etc.) A key tactic in UP's long-term capital expenditure strategy has been to address or fix "bottleneck" areas that contribute to significant service delays or congestion, diminished velocity, increased or unnecessary re-crews (i.e., dogcatching), or inefficient use of train crews. Nowhere is this perhaps more evident than in the lines leading into or out of the Los Angeles Basin. For example, over the last four years alone, UP has spent over $360 million constructing over 93 miles of second main track, between Los Angeles, California, and El Paso, Texas. The result of these expenditures is more efficient and competitive route between Los Angeles and eastern markets, with approximately 72% of the route now equipped with double track. UP plans to spend nearly $590 million more over the next five to six years to complete the double track between Los Angeles and El Paso.

Another striking example of UP's drive to improve its competitive posture and garner an increasing share of the Los Angeles Basin transportation market is evidenced by its commencement last year of constructing the "Colton Flyover." This nearly $100 million project will provide UP with a "bridge" or "overpass" over BNSF's route through Colton, California, and an opportunity to eliminate a major source of congestion and improve train velocity in the central and eastern portions of the Los Angeles Basin.

With this level of strategic investment, it is incumbent upon UP to obtain the operational and service benefits improvements contemplated when it embarked on these expensive construction projects and, in particular, to physically translate these benefits into new, improved and innovative services and operations that will benefit shippers. UP's continuing investment in maintaining its routes into and out of the Los Angeles Basin at high levels and the investment in projects like the Colton Flyover will provide UP with a foundation for adopting innovative operations and services designed to significantly reduce train delay and terminal congestion, improve train velocity, thus further improve our service product for Los Angeles Basin shippers. The construction of the Colton Flyover will, in particular, enable UP to more efficiently utilize its train and engine service crews by operating longer runs and adopting more innovative and service-responsive procedures for assigning train crews at on-duty locations and tying up crews at off-duty locations within the Los Angeles Basin. In conjunction with this, the ultimate result will be the opportunity for further traffic growth into/out of the Los Angeles Basin and an increase in lucrative railroad jobs.

With the foregoing in mind, UP intends to establish two new interdivisional service operations between an area to be known as the Los Angeles Basin Metroplex ("LABM") and Yermo and between the LABM and Yuma, with LABM serving as the home terminal locale for both interdivisional service operations and with Yermo and Yuma as the away-from-home terminals. The LABM will essentially be comprised of the area between the Ports of Los Angeles/Long Beach, Taylor Yard, Riverside, and the present eastern, northern and southern

switching limits near Colton. (A more detailed description of the Los Angeles Basin Metroplex is contained in the proposed implementing document accompanying this notice.) In regard to our requirements, as indicated in Article IX, *"...to specify the service ... [UP] proposes to establish and the conditions ... it proposes shall govern ...,"* a synopsis of our proposed new interdivisional service operations and a proposed implementing agreement for the new services are respectively provided below and as an accompaniment to this notice. In summary, UP proposes the following new interdivisional service:

1. **New Pool Freight Operations/Service**

A. Pursuant to this notice, UP may establish two new interdivisional service operations. New interdivisional unassigned (pool) through freight service will be established between the Los Angeles Basin area and Yermo, California, and between the Los Angeles Basin area and Yuma, Arizona. The home terminal locale for both operations (LABM – Yermo and LABM – Yuma) will be the Los Angeles Basin Metroplex (LABM) and, specifically, the on-/off-duty locations (Nodes) within the LABM. It is not intended that the runs between the LABM and Yermo and between the LABM and Yuma will be operated as a single pool with a single home terminal locale. Yermo, California and Yuma, Arizona will be the away-from-home terminals for the two (2) separate freight pools.

1. The territory comprising the LABM will be essentially bounded by the Ports of Los Angeles and Long Beach, LATC, East Los Angeles to West Colton, California. (The specific boundary locations for the LABM are set forth in the implementing agreement proposal accompanying this notice.)

2. Employees will go on or off duty at any location within the LABM and, accordingly, can get, receive or deliver their train to any location comprising, or within the confines of, the LABM.

3. To facilitate matters pertaining to determining an employee's trip compensation, on-duty time, etc., the LABM will be divided into five on-/off-duty nodes. The major train arrival or departure points within each of the five nodes are summarized below:

LABM On-/Off-Duty Nodes	Primary Train Arrival/Departure Locations
Port	Dolores, ICTF, Thenard, Port of Los Angeles, Port of Long Beach, Mead
Downtown	LATC, East Los Angeles, Gemco

LABM On-/Off-Duty Nodes	Primary Train Arrival/Departure Locations
Suburban	City of Industry, Bartolo
Midway	Pomona, Montclair, Mira Loma
East	Kaiser, Riverside, West Colton, Colton

4. An employee may be called to operate a train or deadhead from a location within the LABM (i.e., at any of the LABM Nodes identified above) and will report to the specified location within the Node to work or deadhead therefrom. Similarly, an employee operating a train and arriving in or deadheading into the LABM may be required to operate the train to any location within the LABM.

5. An employee arriving at the away-from-home terminals at Yermo or Yuma will be used (called) on a first-in, first-out basis out of Yermo or Yuma, as appropriate, to work or deadhead to the home terminal (i.e., any point within the LABM).

6. An employee going on duty at a location within the LABM will not be required to go off-duty on a subsequent trip at that same location. Accordingly, an employee returning to the LABM from the away-from-home terminal that worked a train or deadheaded to an off-duty location within the LABM other than where he or she initially went on duty from their previous trip will be provided transportation to the location where he or she went on duty for their prior trip/tour of duty.

7. Employees tying up at either their home or away-from-home terminal at the conclusion of a tour of duty will be placed on the appropriate board listing based on their off-duty time.

8. Employees will be compensated in accordance with controlling collective bargaining agreement provisions based on the distance the employees are required to operate a train. To simplify calculations for mileages used in determining an employee's compensation, the following mileages will be used:

LABM To/From Yermo

Originating (On-Duty) Location	Destination (Off-Duty) Location	Run Miles * (Miles Worked)
Any location within Port Node	Yermo, California	175 miles
Any location within Downtown Node	Yermo, California	168 miles
Any location within Suburban Node	Yermo, California	137 miles
Any location within Midway Node	Yermo, California	116 miles
Any location within East Node	Yermo, California	105 miles
Yermo, California	Any location within Port Node	175 miles
Yermo, California	Any location within Downtown Node	168 miles
Yermo, California	Any location within Suburban Node	137 miles
Yermo, California	Any location within Midway Node	116 miles
Yermo, California	Any location within East Node	105 miles

LABM To/From Yuma

Originating (On-Duty) Location	Destination (Off-Duty) Location	Run Miles * (Miles Worked)
Any location within Port Node	Yuma, Arizona	280 miles
Any location within Downtown Node	Yuma, Arizona	262 miles

Any location within Suburban Node	Yuma, Arizona	243 miles

LABM To/From Yuma

Originating (On-Duty) Location	Destination (Off-Duty) Location	Run Miles * (Miles Worked)
Any location within Midway Node	Yuma, Arizona	224 miles
Any location within East Node	Yuma, Arizona	209 miles
Yuma, Arizona	Any location within Port Node	280 miles
Yuma, Arizona	Any location within Downtown Node	262 miles
Yuma, Arizona	Any location within Suburban Node	243 miles
Yuma, Arizona	Any location within Midway Node	224 miles
Yuma, Arizona	Any location within East Node	209 miles

* - The specified mileages are subject to verification by the parties

B. The terms and conditions contained in the controlling collective bargaining agreement, applicable BLE/BLET National Agreements, including, but not limited to, Article IX of the 1986 BLE National Agreement, as amended by Article X of the 1991 BLE National Agreement, and applicable practice and arbitral precedent, as well as the terms of the Agreement will apply to the interdivisional service established pursuant to this notice.

As indicated above, a proposed agreement detailing the terms and conditions for these new services accompanies this notice.

In Article X of the 1991 BLE National Agreement, BLE and various carriers, including UP, specifically and unambiguously "… ***[committed] themselves to the expedited processing of negotiations concerning interdivisional runs, including those involving running through home terminals, and … to request the prompt appointment by the National Mediation Board of***

an arbitrator when agreement cannot be reached." (Emphasis ours) Consistent with this commitment, we are eager to commence promptly the requisite negotiations on this matter. Accordingly, we suggest the parties meet to discuss this service and negotiate the requisite agreement on **February 27, 2013 at 9:00 AM at our regional offices in Roseville, CA**. We would appreciate your prompt attention to this matter and anxiously await your reply.

Yours truly,

F.A. Tamisiea
Director – Labor Relations

Attachment

CC: Mr. W. R. Turner – Omaha, Mail Stop #0710
Mr. A. T. Olin – Omaha, Mail Stop #0710
Mr. R. P. Guidry – Omaha, Mail Stop #0710
Ms. M. J. Ahart – Omaha, Mail Stop #0710
Mr. F. C. Johnson – Omaha, Mail Stop #1755
Mr. R. S. Blackburn – Omaha, Mail Stop #1180
Mr. K. H. Hunt – Omaha, HDC
Mr. S. K. Keller – Roseville, CA
Mr. C. A. Wilbourn – Roseville, CA
Mr. D. B. Foley – Roseville, CA
Mr. R. N. Doerr – Bloomington, CA
Mr. J. A. Landers – Omaha, HDC
Ms. K. K. Dunn – Omaha, HDC/CMS
Mr. A. A. Leazenby – Omaha, HDC/CMS
Mr. P. G. Kenny – Omaha, HDC/CMS
Mr. D. S. Johnson – San Bernardino, Train Mgmnt.
Mr. M. N. Bailey – Omaha, Finance
Mr. G. J. Wellington – Roseville, Finance

DRAFT 1
(02-11-2013)

MEMORANDUM OF AGREEMENT
#71_ _ _ _ _ _48
(920.40-36)

Between

UNION PACIFIC RAILROAD COMPANY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS & TRAINMEN

LOS ANGELES BASIN METROPLEX – YERMO
LOS ANGELES BASIN METROPLEX - YUMA
INTERDIVISIONAL SERVICE

In connection with Union Pacific Railroad Company's Notice dated February 11, 2013, wherein it advised its intent to establish new interdivisional unassigned (pool) through freight service between the single consolidated Los Angeles, California Metropolitan area separated into five (5) administrative areas consisting of the Ports of Los Angeles, California, downtown Los Angeles, California, Suburban Los Angeles, California, Midway Los Angeles, California, and the East (West Colton) area of Los Angeles, California and Yermo, California and between the consolidated Los Angeles Metropolitan area and Yuma, Arizona pursuant to Article IX, "Interdivisional Service", of the 1986 BLE National Agreement, the parties agree the following shall apply to this new service:

Section 1. Interdivisional Service. Union Pacific may establish two (2) separate new unassigned pool freight operations with the Los Angeles Basin Metroplex (LABM) as the home terminal and Yermo, California and Yuma, Arizona as the away-from-home terminals.

Section 2. Terminals for Runs.

(a). The Los Angeles Basin Metroplex (LABM), shall be the home terminal for employees working between LABM and Yermo, California as well as the home terminal for employees working between LABM and Yuma, Arizona.

(b). Yermo, California shall be the away-from-home terminal for employees working between Yermo and the LABM. Yuma, Arizona shall be the

away-from-home terminal for employees working between Yuma and the LABM.

(c). Road crews may receive or leave their trains anywhere within the LABM Complex and in connection therewith perform the applicable National Agreement Road/Yard moves within the LABM.

Section 3. Designated On-/Off- Duty Points & Miles Of Run.

(a). There will be five (5) -on/-off duty nodes within the home terminal of the LABM operating to/from Yermo, California and to/from Yuma, Arizona. Crews may be called to report for work or go off duty at one of the following designated points within an identified node. Crews will be paid the actual run miles specified in the tables below with a minimum of a basic day:

LABM To/From Yermo

LABM On-/Off Duty Nodes	Primary Train Arrival/Departure Locations	Run Miles LABM - Yermo
Port	Dolores, ICTF, Thenard, Port of Los Angeles, Port of Long Beach, Mead	175 miles
Downtown	LATC, East Los Angeles, Gemco	168 miles
Suburban	City of Industry, Bartolo	137 miles
Midway	Pomona, Montclair, Mira Loma	116 miles
East	Kaiser, Riverside, West Colton, Colton	105 miles

LABM To/From Yuma

LABM On-/Off Duty Nodes	Primary Train Arrival/Departure Locations	Run Miles LABM - Yuma
Port	Dolores, ICTF, Thenard, Port of Los Angeles, Port of Long Beach, Mead	280 miles
Downtown	LATC, East Los Angeles, Gemco	262 miles
Suburban	City of Industry, Bartolo	243 miles
Midway	Pomona, Montclair, Mira Loma	224 miles
East	Kaiser, Riverside, West Colton, Colton	209 miles

Note: The mileages specified above are subject to final verification by the parties.

(b). The Carrier will designated the on- and off-duty points for crews in this service pursuant to Article VI, Section A, 2 of the 1999 BLE Los Angeles Hub Arbitration/Agreement and Article IX, Section 2 (c) of the 1986 BLE National Agreement.

(c). The on- and off-duty points will have appropriate facilities.

Section 4. Rates of Pay, Rules and Working Conditions.

(a). Except as set forth herein, applicable provisions of the Agreement between the Union Pacific Railroad and the Brotherhood of Locomotive Engineers & Trainmen covering the UP/SPWL and provisions of National BLE/BLET Agreements shall apply.

(b). Trip rates will be developed in accordance with Article V of the December 16, 2003 BLE National Agreement for engineers working on runs established pursuant to this Agreement. Any of the nine (9) pay elements referenced in this Agreement will not change how it is to be applied or included in the calculation of a trip rate for these runs pursuant to Article V of the December 16, 2003 BLE National Agreement.

Section 5. Overtime. Employees operating in this freight service will be allowed overtime after actual miles run divided by 16.25 overtime divisor pursuant to Article IV, Section 2 of the November 1, 1991 BLE National Agreement.

Section 6. Transportation. Transportation will be provided in accordance with Section (2) (c) of Article IX of the May 19, 1986 BLE National Agreement.

(a). Employees who are called to work a train or deadhead from one of the LABM arrival/departure locations listed for a corresponding on-/off-duty node will report to duty at that location to work and/or deadhead to the appropriate away-from-home terminal of Yermo, California or Yuma, Arizona.

(b). Employees returning to the home terminal (LABM) from the applicable away-from-home terminal, Yermo/Yuma, who work a train and/or deadhead to an arrival/departure location other than where he/she initially went on duty from their previous trip, will be provided transportation back to the location where they went on duty on the previous trip for tie-up.

Section 7. Board Position/Placement, Runarounds.

(a). Employees arriving at the far terminal of Yermo or Yuma will be placed on their regular respective pool board based on their final off-duty time and will operate first-in, first-out back to the LABM home terminal.

(b). Employees arriving the LABM home terminal will be placed on their regular respective (Yermo or Yuma) pool board at the home terminal based on their final off duty time and will operate first-in, first-out at the home terminal.

(c). Until trip rates are established, a terminal runaround may only occur when employees assigned to the same pool board (Yermo or Yuma), depart on a working trip out of the same location within the same LABM On-/-Off Duty (Node) area, depart the same yard, and both trains have their power attached to their train and depart in other than the order called. "Depart" means that a train has started moving for a bonafide departure. Departure runarounds do not apply to crews who are called to deadhead. As indicated in Section 4 above, once trip rates are established this pay element will be incorporated therein and no longer exist.

Section 8. Meal Allowance and Eating En Route. Meal allowances at the away from home terminal will be governed by Article IX, Section 2 (d) of the 1986 BLE National Agreement. Meals enroute for not stopping to eat enroute will be governed by Article IX, Section 2 (e) of the 1986 BLE National Agreement.

Section 9. Suitable Lodging. Suitable lodging will be provided by the Carrier in accordance with Section 1 of Article II of the June 25, 1964 National Agreement.

Section 10. Extra Boards. The Carrier may establish or reduce guaranteed extra board(s) within the LABM pursuant to Attachment "A" of the BLE and UP/SPWL November 3, 1997 Modifications Agreement.

Section 11 . Hours-of-Service Relief. Turnaround service/hours of service relief shall be handled by the extra board, if available, prior to using pool crews. Employees used for this service may be used for multiple trips in one tour of duty in accordance with the designated collective bargaining agreement. Nothing in this agreement prevents the use of other crews to perform work currently permitted by prevailing agreements, including, but not limited to yard crews performing hours of service relief within the road/yard zone, ID crews performing service and deadheads between terminals, road switchers handling trains within their zones and using a crew from a following train to work a preceding train.

Section 12. Employee Protection. Employees adversely affected by the initial implementation of this interdivisional service will be afforded the protection benefits provided in Section 7 of Article IX of the May 19, 1986 BLE National Agreement.

Section 13. Implementation. On the effective date of this agreement, the Carrier will post an advance bulletin for this interdivisional service. Thereafter,

employees who have a standing application on file with CMS for this interdivisional service will be assigned in accordance with the applicable seniority assignment rules.

Section 14. Effective Date. The Carrier shall give the General Chairman seven (7) days' written notice of its desire to implement this Agreement.

Signed at _____, this ___ day of _____.

FOR THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS & TRAINMEN

_____
D.W. Hannah
General Chairman

FOR THE UNION PACIFIC RAILROAD COMPANY:

_____
F.A. Tamisiea
Director Labor Relations

_____
R.P. Guidry
General Director
Labor Relations

DRAFT 3
(05-16-2013)

MEMORANDUM OF AGREEMENT
#71_ _ _ _ _ _48
(920.40-36)

Between

UNION PACIFIC RAILROAD COMPANY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS & TRAINMEN

LOS ANGELES BASIN METROPLEX – YERMO
LOS ANGELES BASIN METROPLEX - YUMA
INTERDIVISIONAL SERVICE

In connection with Union Pacific Railroad Company's Notice dated February 11, 2013, wherein it advised its intent to establish new interdivisional unassigned (pool) through freight service between the single consolidated Los Angeles, California Metropolitan area separated into five (5) administrative areas consisting of the Ports of Los Angeles, California, Downtown Los Angeles, California, Suburban Los Angeles, California, Midway Los Angeles, California, and the East (West Colton) area of Los Angeles, California and Yermo, California and between the consolidated Los Angeles Metropolitan area and Yuma, Arizona pursuant to Article IX, "Interdivisional Service", of the 1986 BLE National Agreement, the parties agree the following shall apply to this new service:

Section 1. Interdivisional Service. Union Pacific may establish two (2) separate new unassigned pool freight operations with the Los Angeles Basin Metroplex (LABM) as the home terminal and Yermo, California and Yuma, Arizona as the away-from-home terminals.

Section 2. Terminals for Runs.

(a) The Los Angeles Basin Metroplex (LABM) shall be the home terminal for employees working between LABM and Yermo, California as well as the home terminal for employees working between LABM and Yuma, Arizona.

(b) Yermo, California shall be the away-from-home terminal for employees working between Yermo and the LABM. Yuma, Arizona shall be the

away-from-home terminal for employees working between Yuma and the LABM.

(c) Road crews may receive or leave their trains anywhere within the LABM Complex and in connection therewith perform the applicable National Agreement Road/Yard moves within the LABM.

Section 3. Designated On-/Off- Duty Points & Miles Of Run.

(a) There will be five (5) -on/-off duty nodes within the home terminal of the LABM operating to/from Yermo, California and to/from Yuma, Arizona. Crews may be called to report for work or go off duty at one of the following designated points within an identified node. Crews will be paid the actual run miles specified in the tables below with a minimum of a basic day:

LABM To/From Yermo

LABM On-/Off Duty Nodes	Primary Train Arrival/Departure Locations	Run Miles LABM - Yermo
Port	Dolores, ICTF, Thenard, Port of Los Angeles, Port of Long Beach, Mead, Anaheim	175 miles
Downtown	LATC, East Los Angeles, Gemco	168 miles
Suburban	City of Industry, Bartolo	137 miles
Midway	Pomona, Montclair, Mira Loma	116 miles
East	Kaiser, Riverside, West Colton, Colton	105 miles

LABM To/From Yuma

LABM On-/Off Duty Nodes	Primary Train Arrival/Departure Locations	Run Miles LABM - Yuma
Port	Dolores, ICTF, Thenard, Port of Los Angeles, Port of Long Beach, Mead	280 miles
Downtown	LATC, East Los Angeles, Gemco	262 miles
Suburban	City of Industry, Bartolo	243 miles
Midway	Pomona, Montclair, Mira Loma	224 miles
East	Kaiser, Riverside, West Colton, Colton	209 miles

Note: The mileages specified above are subject to final verification by the parties.

(b) The Carrier will designate the on- and off-duty points for crews in this service pursuant to Article VI, Section A, 2 of the 1999 BLE Los Angeles Hub Arbitration/Agreement and Article IX, Section 2 (c) of the 1986 BLE National Agreement.

(c) The on- and off-duty points will have appropriate facilities.

Section 4. Rates of Pay, Rules and Working Conditions.

(a) Except as set forth herein, applicable provisions of the Agreement between the Union Pacific Railroad and the Brotherhood of Locomotive Engineers & Trainmen covering the UP/SPWL and provisions of National BLE/BLET Agreements shall apply.

(b) Trip rates will be developed in accordance with Article V of the December 16, 2003 BLE National Agreement for engineers working on runs established pursuant to this Agreement. Any of the nine (9) pay elements referenced in this Agreement will not change how it is to be applied or included in the calculation of a trip rate for these runs pursuant to Article V of the December 16, 2003 BLE National Agreement.

Section 5. Overtime. Employees operating in this freight service will be allowed overtime after actual miles run divided by 16.25 overtime divisor pursuant to Article IV, Section 2 of the November 1, 1991 BLE National Agreement.

Section 6. Transportation. Transportation will be provided in accordance with Section (2) (c) of Article IX of the May 19, 1986 BLE National Agreement.

(a) Employees who are called to work a train or deadhead from one of the LABM arrival/departure locations listed for a corresponding on-/off-duty node will report to duty at that location to work and/or deadhead to the appropriate away-from-home terminal of Yermo, California or Yuma, Arizona.

(b) Employees returning to the home terminal (LABM) from the applicable away-from-home terminal, Yermo/Yuma, who work a train and/or deadhead to an arrival/departure location other than where he/she initially went on duty from their previous trip, will be provided transportation back to the location where they went on duty on the previous trip for tie-up.

Section 7. Board Position/Placement, Runarounds.

(a) Employees arriving at the far terminal of Yermo or Yuma will be placed on their regular respective pool board based on their final off-duty time and will operate first-in, first-out back to the LABM home terminal.

(b) Employees arriving at the LABM home terminal will be placed on their respective (Yermo or Yuma) pool board at the home terminal based on their final off duty time and will operate first-in, first-out at the home terminal.

(c) Until trip rates are established, a terminal runaround may only occur when employees assigned to the same pool board (Yermo or Yuma), depart on a working trip out of the same location within the same LABM On-/-Off Duty (Node) area, depart the same yard, and both trains have their power attached to their train and depart in other than the order called. "Depart" means that a train has started moving for a bonafide departure. Departure runarounds do not apply to crews who are called to deadhead. As indicated in Section 4 above, once trip rates are established this pay element will be incorporated therein and no longer exist.

Section 8. Meal Allowance and Eating En Route. Meal allowances at the away from home terminal will be governed by Article IX, Section 2 (d) of the 1986 BLE National Agreement. Meals enroute for not stopping to eat enroute will be governed by Article IX, Section 2 (e) of the 1986 BLE National Agreement.

Section 9. Suitable Lodging. Suitable lodging will be provided by the Carrier in accordance with Section 1 of Article II of the June 25, 1964 National Agreement.

Section 10. Extra Boards. The Carrier may establish or reduce guaranteed extra board(s) within the LABM pursuant to Attachment "A" of the BLE and UP/SPWL November 3, 1997 Modifications Agreement.

Section 11. Hours-of-Service Relief. Turnaround service/hours of service relief shall be handled by the extra board, if available, prior to using pool crews. Employees used for this service may be used for multiple trips in one tour of duty in accordance with the designated collective bargaining agreement. Nothing in this agreement prevents the use of other crews to perform work currently permitted by prevailing agreements, including, but not limited to yard crews performing hours of service relief within the road/yard zone, ID crews performing service and deadheads between terminals, road switchers handling trains within their zones and using a crew from a following train to work a preceding train.

Section 12. Employee Protection. Employees adversely affected by the initial implementation of this interdivisional service will be afforded the protection benefits provided in Section 7 of Article IX of the May 19, 1986 BLE National Agreement.

Section 13. Implementation. On the effective date of this agreement, the Carrier will post an advance bulletin for this interdivisional service. Thereafter, employees who have a standing application on file with CMS for this interdivisional service will be assigned in accordance with the applicable seniority assignment rules.

Section 14. Effective Date. The Carrier shall give the General Chairman seven (7) days' written notice of its desire to implement this Agreement.

Signed at _____, this ____ day of _____.

FOR THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS & TRAINMEN	**FOR THE UNION PACIFIC RAILROAD COMPANY:**
_____	_____
D.W. Hannah	**D. B. Foley**
General Chairman	**Director Labor Relations**
_____	_____
Mike Twombley	**R. P. Guidry**
Vice- President	**General Director**

UNION PACIFIC RAILROAD COMPANY

Building America

----------, 2013

Side Letter 1 – Pool Subsets
File #71_ _ _ _ _ _48
(920.40-36)

Mr. D. W. Hannah
General Chairperson
Brotherhood of Locomotive Engineers
And Trainmen
1902 Orange Tree Lane, Suite #120
Redlands, CA 92374

Dear Sir:

This refers to our March 12, 2013, conference wherein we discussed Union Pacific's February 11, 2013, notice to establish interdivisional service between the LABM and Yermo, California and between LABM and Yuma, Arizona pursuant to Article IX of the 1986 BLE National Agreement.

Considering your concerns over the scope and size of this operation, the parties have mutually agreed to manage individual assignments/turns within the LABM/Yermo and LABM/Yuma runs as follows:

1. Board subsets of the LABM/Yermo and LABM/Yuma pool may be advertised to independently operate from up to three (3) of the five (5) LABM nodes. The LABM/Yermo and LABM/Yuma pool turns assigned to each subset within the nodes will serve traffic normally originating and/or terminating out of those respective nodes.

   Note 1: Current operations contemplate LABM/Yermo and LABM/Yuma board subsets assigned in the East and Port nodes. However, a LABM/Yermo and LABM/Yuma board subset may also be assigned to another of the five nodes to accommodate traffic and schedules.

Note 2: The number of pool turns assigned to each board subset will be determined and regulated by the volume of trains handled by crews in each respective node.

2. LABM/Yermo and LABM/Yuma pool turns assigned to each node will have a single regular reporting point within each of the two or three nodes. Regular reporting points will be specified in job bulletins advertising those board subset assignments for seniority choice. Employees assigned to a LABM/Yermo and LABM/Yuma board subset within a particular node will report to their designated reporting point when called for service. Transportation from the designated reporting point in each node to and from the train will be provided pursuant to Section (2) (c) of Article IX of the May 19, 1986 BLE National Agreement.

3. LABM/Yermo and LABM/Yuma board subsets will normally operate trains originating out of their assigned node. However, LABM/Yermo and LABM/Yuma pool turns may be called at the Carrier's discretion from any node/board subset and required to operate any train to or from any location in the LABM or within the LABM.

4. LABM/Yermo and LABM/Yuma pool crews from the various board subsets will be placed on respective away from home terminal boards based on their off duty times. Except as outlined in **Side Letter 5**, LABM/Yermo and LABM/Yuma pool crews may be called first in, first out from their respective away from home terminal and may operate any train to any point in the LABM or within the LABM. Upon delivering a train in the LABM, transportation to the regular reporting point will be provided pursuant to Section (2) (c) of Article IX of the May 19, 1986 BLE National Agreement.

5. LABM/Yermo and LABM/Yuma pool crews returning to the home terminal will be placed on their respective boards based on off duty times and thereafter called for subsequent service first in, first out independent of pool crews assigned to other LABM board subsets/nodes consistent with Item 3 above.

It is understood and agreed nothing in this **Side Letter 1** or Interdivisional Agreement is intended to restrict any existing rights of the Carrier including, but not limited to, assignments, rates of pay, incidental work, combining deadhead and service, overtime divisors, training, etc. as outlined in controlling agreements. Further, the terms outlined herein are limited to Interdivisional Service established pursuant to this Agreement in connection with Carrier's February 11, 2013, notice served under Article IX of the May 19, 1986 BLE National Agreement.

If you agree with the terms and conditions outlined above, please indicate by affixing your signature in the space provided below.

Agreed:

Bill Hannah
General Chairman BLET

Yours truly,

D. B. Foley
Director – Labor Relations

UNION PACIFIC RAILROAD COMPANY

Building America

----------, 2013
Side Letter 2 – Trip Rates
File #71_ _ _ _ _ _48
(920.40-36)

Mr. D. W. Hannah
General Chairperson
Brotherhood of Locomotive Engineers
And Trainmen
1902 Orange Tree Lane, Suite #120
Redlands, CA 92374

Dear Sir:

This refers to our March 12, 2013, conference wherein we discussed Union Pacific's February 11, 2013, notice to establish interdivisional service between the LABM and Yermo, California and between LABM and Yuma, Arizona pursuant to Article IX of the May 19, 1986 BLE National Agreement.

Provisions contained in this **Side Letter 2** are contingent upon a successful ratification and execution of this Interdivisional Agreement on or before June 1, 2013. The signing of the Interdivisional Agreement by all parties on or before June 1, 2013, is considered successful execution thereof. However, should the parties not reach a voluntary accord and arbitration becomes necessary, it is understood that the Carrier reserves its right to revert to and argue the arbitrator must impose those terms set forth in its original ID proposal and items mutually agreed upon without this qualifier. It is understood so doing will not prejudice the position of either party.

Consistent with the terms, conditions and timelines outlined above, the following is agreed to in connection with and will modify Sections 3 and 4 of the LABM/Yermo and LABM/Yuma Interdivisional Agreement as follows:

Section 3. Designated On-/Off- Duty Points & Miles Of Run.

Except as set forth herein, the applicable provisions of the Agreement between the Union Pacific Railroad and the Brotherhood of Locomotive Engineers & Trainmen covering the

UP/SPWL and provisions of the National BLE Agreements shall apply.

(a) Consistent with **Side Letter 1** there may be up to three (3) board subsets and reporting points within the LABM operating to/from Yermo, California and to/from Yuma, Arizona. Depending on the designated board subset and reporting point, crews will be paid consistent with the run tables in Section 3 of this Interdivisional Agreement as outlined below:

1. If a LABM/Yermo and LABM/Yuma board subset is assigned a reporting point in the Port node, pool crews so assigned will receive Port run miles for service to and/or from the LABM.

2. If a LABM/Yermo and LABM/Yuma board subset is assigned a reporting point in the Downtown node, pool crews so assigned will receive run miles to the Downtown node for service to and/or from the LABM except when operating a train to the Port node at which time they will receive run miles to the Port node as specified in Section 3 of the Interdivisional Agreement.

3. If a LABM/Yermo and LABM/Yuma board subset is assigned a reporting point in the East, Suburban or Midway node, pool crews so assigned will receive the applicable run miles outlined in Section 3 of the Interdivisional Agreement when originating or terminating trains within LABM.

   Example: A LABM/Yermo crew reporting for service in the East node is transported to operate a train out of a location in the Downtown node to Yermo and returns from Yermo operating a train to the Suburban node, what compensation is received?

   This crew is paid run miles/trip rate of 168 miles/$306.85 for the LABM to Yermo trip and 137 miles/$249.40 for the Yermo to LABM return.

Section 4. Rates of Pay, Rules and Working Conditions.

Except as set forth herein, the applicable provisions of the Agreement between the Union Pacific Railroad and the Brotherhood of Locomotive Engineers & Trainmen covering the

UP/SPWL and provisions of the National BLE Agreements shall apply.

(a) In lieu of developing current data for a trip rate test period, or use of a comparable run/pool, if any, in accordance with Article V - "Pay System Simplification" of the December 16, 2003 BLE National Agreement, a trip rate may be established for each of the new pools as follows:

1. Pay elements currently applied to the Colton/Yermo and Colton/Yuma trip rates will be averaged. This average will be used to calculate trip rates for the LABM/Yermo and LABM/Yuma pools out of each respective node.

2. The run miles specified in Section 3 of this Interdivisional Agreement will serve as the basis upon which these averaged pay elements are to be applied. Trip rate calculations/adjustments (present and future) will be made pursuant to controlling agreements and practices.

3. The rate table in this **Side Letter 2** stipulates the current trip rate calculations for each node.

(b) It is understood development of trip rates in this fashion is without prejudice to Article V of the 2003 BLE National Agreement. Accordingly, either party may request review and adjustment of said trip rates pursuant to Section 8 - "Material Changes", of Part B of Article V of the 2003 BLE National Agreement.

LABM To/From Yermo

LABM On-/Off Duty Nodes	Primary Train Arrival/Departure Locations	Run Miles LABM – Yermo/Trip Rate
Port	Dolores, ICTF, Thenard, Port of Los Angeles, Port of Long Beach, Mead	175 miles/$319.82
Downtown	LATC, East Los Angeles, Gemco	168 miles/$306.85
Suburban	City of Industry, Bartolo	137 miles/$249.40
Midway	Pomona, Montclair, Mira Loma	116 miles/$242.45
East	Kaiser, Riverside, West Colton, Colton	105 miles/$242.45

LABM To/From Yuma

LABM On-/Off Duty Nodes	Primary Train Arrival/Departure Locations	Run Miles LABM – Yuma/Trip Rate
Port	Dolores, ICTF, Thenard, Port of Los Angeles, Port of Long Beach, Mead	280 miles/$509.06
Downtown	LATC, East Los Angeles, Gemco	262 miles/$475.44
Suburban	City of Industry, Bartolo	243 miles/$439.95
Midway	Pomona, Montclair, Mira Loma	224 miles/$404.46
East	Kaiser, Riverside, West Colton, Colton	209 miles/$376.44

It is understood and agreed nothing in this **Side Letter 2** or Interdivisional Agreement is intended to restrict any existing rights of the Carrier including, but not limited to, assignments, rates of pay, incidental work, combining deadhead and service, overtime divisors, training, etc. as outlined in controlling agreements. Further, the terms outlined herein are limited to Interdivisional Service established pursuant to this Agreement in connection with Carrier's February 11, 2013, notice served under Article IX of the May 19, 1986 BLE National Agreement.

If you agree with the terms and conditions outlined above, please indicate by affixing your signature in the space provided below.

Agreed:

Bill Hannah
General Chairman BLET

Yours truly,

D. B. Foley
Director – Labor Relations

UNION PACIFIC RAILROAD COMPANY

Building America

----------, 2013

Side Letter 3 – Overtime

File #71_ _ _ _ _ _48
(920.40-36)

Mr. D. W. Hannah
General Chairperson
Brotherhood of Locomotive Engineers
And Trainmen
1902 Orange Tree Lane, Suite #120
Redlands, CA 92374

Dear Sir:

This refers to our March 12, 2013, conference wherein we discussed Union Pacific's February 11, 2013, notice to establish interdivisional service between the LABM and Yermo, California and between LABM and Yuma, Arizona pursuant to Article IX of the May 19, 1986 BLE National Agreement.

Provisions contained in this **Side Letter 3** are contingent upon a successful ratification and execution of this Interdivisional Agreement on or before June 1, 2013. The signing of the Interdivisional Agreement by all parties on or before June 1, 2013, is considered successful execution thereof. However, should the parties not reach a voluntary accord and arbitration becomes necessary, it is understood that the Carrier reserves its right to revert to and argue the arbitrator must impose those terms set forth in its original ID proposal and items mutually agreed upon without this qualifier. It is understood so doing will not prejudice the position of either party.

Consistent with the terms, conditions and timelines outlined above, the following is agreed to in connection with and will modify Section 5 of the LABM/Yermo and LABM/Yuma Interdivisional Agreement as follows:

Section 5. Overtime.

(a) Employees will be allowed overtime pursuant to Article II, A, G, 4, 5 & 6 of the May 13, 2004 BLE/UP Agreement Modifications and June 3, 2004 BLE/UP Understanding which reads as follows:

> **4. Effective May 16, 2006, engineers who have an engineer/train service seniority date subsequent to October 31, 1985, and prior to July 2, 2004, or were in engineer training class on July 1, 2004, and are assigned to or working on through freight runs that payment of overtime governed by Section G, Paragraph 3.b. of this Article V shall have their overtime commence when their on-duty time is in excess of 12 hours."**
>
> **5. Employees hired after July 1, 2004, shall be paid overtime in accordance with the National Rules governing same in and in the same manner previously paid on the Union Pacific prior to the merger."**
>
> **6. When overtime, initial terminal delay and final terminal delay accrue on the same trip, allowance will be the combined initial and final terminal delay time, or overtime, whichever is the greater.**

During the April 16, 2013, meeting we discussed the July 1, 2004 engineer eligibility seniority date for purposes of calculating overtime for engineers noted in the above BLE May 2004 Agreement. In conjunction with these discussions engineers who have a seniority date on or before October 1, 2004 shall be allowed the overtime set forth in Article II, A, G, 4, 5 & 6 of the May 13, 2004 BLE/UP Agreement Modifications and the June 3, 2004 BLE/UP Understanding concurrent with the effective date of this interdivisional agreement. Engineers who have a seniority date after October 1, 2004 shall be paid overtime in accordance with the National Rules.

It is understood and agreed nothing in this **Side Letter 3** or Interdivisional Agreement is intended to restrict any existing rights of the Carrier including, but not limited to, assignments, rates of pay, incidental work, combining deadhead and service, overtime divisors, training, etc. as outlined in controlling agreements. Further, the terms outlined herein are limited to Interdivisional Service established pursuant to this Agreement in connection with Carrier's February 11, 2013, notice served under Article IX of the May 19, 1986 BLE National Agreement.

If you agree with the terms and conditions outlined above, please indicate by affixing your signature in the space provided below.

Agreed:

Yours truly,

Bill Hannah
General Chairman BLET

D. B. Foley
Director – Labor Relations

UNION PACIFIC RAILROAD COMPANY

Building America

----------, 2013
Side Letter 4 – Extra Boards
File #71_ _ _ _ _ _48
(920.40-36)

Mr. D. W. Hannah
General Chairperson
Brotherhood of Locomotive Engineers
And Trainmen
1902 Orange Tree Lane, Suite #120
Redlands, CA 92374

Dear Sir:

This refers to our March 12, 2013, conference wherein we discussed Union Pacific's February 11, 2013, notice to establish interdivisional service between the LABM and Yermo, California and between LABM and Yuma, Arizona pursuant to Article IX of the May 19, 1986 BLE National Agreement.

Consistent with **Section 10 - Extra Boards and Section 14 - Implementation** of this Interdivisional Agreement, the Carrier may establish, consolidate/combine and/or discontinue any extra board (road and/or yard) to efficiently protect all jobs within the LABM. When an extra board is established, consolidated/combined, preserved, etc. will, unless the General Chairman is notified otherwise, protect all jobs in that node or surrounding nodes that's lay off and reporting points are closer to the location of the extra board than to the location(s) of other extra boards.

Upon the Carrier serving its implementation notice, Service Unit representatives and affected local chairmen will review extra board assignments and discuss demographics. If after these discussions, it is determined vacancies can be better protected by other than the closest extra board, the undersigned Labor Relations Director and General Chairman will be so advised in writing.

It is understood and agreed nothing in this **Side Letter 4** or Interdivisional Agreement is intended to restrict any existing rights of the Carrier including, but not limited to, assignments, rates of pay, incidental work, combining deadhead and service, overtime divisors, training, etc. as outlined in controlling

agreements. Further, the terms outlined herein are limited to this Interdivisional Service established pursuant to this Agreement in connection with Carrier's February 11, 2013, notice served under Article IX of the May 19, 1986 BLE National Agreement.

If you agree with the terms and conditions outlined above, please indicate by affixing your signature in the space provided below.

Agreed:

Bill Hannah
General Chairman BLET

Yours truly,

D. B. Foley
Director Labor - Relations

UNION PACIFIC RAILROAD COMPANY

Building America

----------, 2013

Side Letter 5
Away From Home Terminal Call Order Exception

File #71_ _ _ _ _ _48
(920.40-36)

Mr. D. W. Hannah
General Chairperson
Brotherhood of Locomotive Engineers
And Trainmen
1902 Orange Tree Lane, Suite #120
Redlands, CA 92374

Dear Sir:

This refers to our March 12, 2013, conference wherein we discussed Union Pacific's February 11, 2013, notice to establish interdivisional service between the LABM and Yermo, California and between LABM and Yuma, Arizona pursuant to Article IX of the May 19, 1986 BLE National Agreement.

If multiple trains are to be called at the away from home terminal within a four (4) hour window, crews may be matched to the train destined to their node/reporting point notwithstanding board position.

> **Example 1:** Three trains are to be called between 1:00 and 5:00 PM. The first train is destined for the Port node, the second train is destined for the East node and the third train is destined for the Port node. The board placement of crews at the away from home terminal is an East node crew first out, and a Port node crew second out and a Port node crew three times out.
>
> Because these trains are to be called within a four hour window, the second out Port node crew may be called for the first Port destined train and the East node crew held for the second East destined train. The third out Port node crew will be called for the third Port destined train.

Example 2: The trains arrive in the same order except the first Port train is called at 1:00 PM the second East train is called at 6:00 PM and the third Port train is called at 7:00 PM.

Because at least one of the second or third trains were not called before 5:00 PM, the first out East node crew must be called for the Port destined train or be paid a board runaround penalty.

It is understood and agreed nothing in this **Side Letter 5** or Interdivisional Agreement is intended to restrict any existing rights of the Carrier including, but not limited to, assignments, rates of pay, incidental work, combining deadhead and service, overtime divisors, training, etc. as outlined in controlling agreements. Further, the terms outlined herein are limited to this Interdivisional Service established pursuant to this Agreement in connection with Carrier's February 11, 2013, notice served under Article IX of the May 19, 1986 BLE National Agreement.

If you agree with the terms and conditions outlined above, please indicate by affixing your signature in the space provided below.

Agreed:

Bill Hannah
General Chairman BLET

Yours truly,

D. B. Foley
Director Labor - Relations

UNION PACIFIC RAILROAD COMPANY

Building America

----------, 2013

Side Letter 6
Advanced Planning and Implementation

File #71_ _ _ _ _ _48
(920.40-36)

Mr. D. W. Hannah
General Chairperson
Brotherhood of Locomotive Engineers
And Trainmen
1902 Orange Tree Lane, Suite #120
Redlands, CA 92374

Dear Sir:

This refers to our March 12, 2013, conference wherein we discussed Union Pacific's February 11, 2013, notice to establish Interdivisional service between the LABM and Yermo, California and between LABM and Yuma, Arizona pursuant to Article IX of the May 19, 1986 BLE National Agreement.

Consistent with **Section 13 – Implementation** of this Agreement, the Carrier may post all inclusive job bulletins covering the anticipated LABM operation up to one hundred and twenty (120) days prior to implementation of this Interdivisional service. The entire LABM assignment footprint (assigned, unassigned pools, extra, road, yard, etc.) will be identified in these job bulletins which will include traditional information and, in the case of Interdivisional pool assignments, the node, board subset, reporting point, and respective away from home terminal(s).

Successful applicants will be administratively assigned to these bulletins but remain on and protect their actual working assignment(s) until this Interdivisional service is implemented. Any advance bulletin that receives no bids will be administratively assigned under current agreement rules as though it were an active assignment. When this Interdivisional service is implemented, these administrative assignments will be activated at one with the advance bulletins and actual LABM service requirements.

After successful applicants are administratively assigned, the Superintendent, Directors of Road and Terminal Operations and Managers of Operating Practices will assess what, if any, territorial familiarization must take place to prepare employees for their post-implementation assignment.

Employees may be required to attend classroom instruction, take simulator check rides; make student trips over territory they are not familiar and be examined on any unique aspects of the run or job assigned.

Once this Interdivisional service is implemented, all employees will remain on their post-implementation LABM assignment and fenced thereon for one hundred and twenty (120) days. During this one hundred and twenty (120) day post-implementation period, employees will not be displaced and will not be allowed to move off their assignment.

It is understood and agreed nothing in this **Side Letter 6** or Interdivisional Agreement is intended to restrict any existing rights of the Carrier including, but not limited to, assignments, rates of pay, incidental work, combining deadhead and service, overtime divisors, training, etc. as outlined in controlling agreements. Further, the terms outlined herein are limited to this Interdivisional Service established pursuant to this Agreement in connection with Carrier's February 11, 2013, notice served under Article IX of the May 19, 1986 BLE National Agreement.

If you agree with the terms and conditions outlined above, please indicate by affixing your signature in the space provided below.

Agreed:

Bill Hannah
General Chairman BLET

Yours truly,

D. B. Foley
Director Labor - Relations

UNION PACIFIC RAILROAD COMPANY

Building America

----------, 2013

Side Letter 7 – Limbo Time

File #71_ _ _ _ _ _48
(920.40-36)

Mr. D. W. Hannah
General Chairperson
Brotherhood of Locomotive Engineers
And Trainmen
1902 Orange Tree Lane, Suite #120
Redlands, CA 92374

Dear Sir:

This refers to our April 16, 2013, conference wherein we discussed Union Pacific's February 11, 2013, notice to establish interdivisional service between the LABM and Yermo, California and between LABM and Yuma, Arizona pursuant to Article IX of the May 19, 1986 BLE National Agreement.

BLET expressed concern for crews assigned to the East node who may be required to operate (backtrack) to or from arrival and departure locations west of the Suburban node prematurely reaching their monthly limbo time threshold/cap. The Carrier did not feel this would be the case except in unusual circumstances. Notwithstanding and considering your concern, the parties have mutually agreed to manage individual assignments/turns assigned to the East node within the LABM/Yermo and LABM/Yuma runs as follows:

> Crews assigned to East node LABM/Yermo and LABM/Yuma run who are within six (6) hours of reaching their monthly limbo time threshold/cap may not be required to operate to locations west of the Suburban node unless train management reasonably anticipates the trip can be completed within Hours of Service requirements or minimal limbo time will be incurred.

It is understood and agreed nothing in this **Side Letter 7** or Interdivisional Agreement is intended to restrict any existing rights of the Carrier including, but

not limited to, assignments, rates of pay, incidental work, combining deadhead and service, overtime divisors, training, etc. as outlined in controlling agreements. Further, the terms outlined herein are limited to Interdivisional Service established pursuant to this Agreement in connection with Carrier's February 11, 2013, notice served under Article IX of the May 19, 1986 BLE National Agreement.

If you agree with the terms and conditions outlined above, please indicate by affixing your signature in the space provided below.

Agreed:

Bill Hannah
General Chairman BLET

Yours truly,

D. B. Foley
Director – Labor Relations

UNION PACIFIC RAILROAD COMPANY

Building America

----------, 2013

Side Letter 8 – Calling Windows

File #71_ _ _ _ _ _48
(920.40-36)

Mr. D. W. Hannah
General Chairperson
Brotherhood of Locomotive Engineers
And Trainmen
1902 Orange Tree Lane, Suite #120
Redlands, CA 92374

Dear Sir:

This refers to our April 16, 2013, conference wherein we discussed Union Pacific's February 11, 2013, notice to establish interdivisional service between the LABM and Yermo, California and between LABM and Yuma, Arizona pursuant to Article IX of the May 19, 1986 BLE National Agreement.

Provisions contained in this **Side Letter 8** are contingent upon a successful ratification and execution of this Interdivisional Agreement on or before June 1, 2013. The signing of the Interdivisional Agreement by all parties on or before June 1, 2013, is considered successful execution thereof. However, should the parties not reach a voluntary accord and arbitration becomes necessary, it is understood that the Carrier reserves its right to revert to and argue the arbitrator must impose those terms set forth in its original ID proposal and items mutually agreed upon without this qualifier. It is understood so doing will not prejudice the position of either party.

Consistent with the terms, conditions and timelines outlined above, the parties have agreed to manage assignments/turns in the LABM/Yermo and LABM/Yuma runs as follows:

1. LABM/Yermo and LABM/Yuma pool turns assigned as outlined in Side Letter 1 may be placed into one of two calling

windows at the home terminal. The first calling window may be from 0601 to 1800; the second calling window may be from 1801 to 0600. These twelve (12) hour timeframes may be adjusted forward or backwards by two (2) hours to accommodate traffic flows out of the LABM.

2. Employees assigned to LABM/Yermo and LABM/Yuma pool turns will indicate their preference of calling window with standing bid.

3. The number of turns assigned to each calling window will, as near as practical, reflect the number of turns anticipated and/or needed to protect trains operating during these twelve (12) hour timeframes.

4. Employees assigned to LABM/Yermo and LABM/Yuma pool turns within a particular node and to a certain calling window will be called first in first out within their respective node and calling window. Employees assigned to LABM/Yermo and LABM/Yuma pools not called for service during their calling window on a calendar day will stand for service in relative order during their calling window on the next calendar day.

5. Employees laying off for any reason must do so prior to the first call time of their calling window.

6. Extra employees may be called to protect service if available engineers within a calling window have been exhausted.

7. Calling windows will not apply at the away from home terminal. LABM/Yermo and LABM/Yuma pool turns will be positioned and operated out of the away from home terminal as outlined in Side Letter 5.

8. LABM/Yermo and LABM/Yuma pools will be regulated to operate in the equivalent range of 3800 to 4200 miles per month on districts/pool subsets where those miles can be made. Turns added or reduced to pool subsets (and calling windows) and/or shifted from one calling window to another may be adjusted and/or allocated to match current and anticipated traffic volumes on a weekly basis.

9. Calling windows may be temporarily suspended during service interruptions. Employees assigned to LABM/Yermo and LABM/Yuma pool turns will, as soon as practical, be advised of calling window suspensions, the reason for doing so and its anticipated resumption. A broadcast message may be utilized in notifying employees under this section.

10. This agreement may be cancelled upon sixty (60) days written notice. During this sixty (60) day period, the parties may meet in an effort to resolve issues precipitating its cancellation.

It is understood and agreed nothing in this **Side Letter 8** or Interdivisional Agreement is intended to restrict any existing rights of the Carrier including, but not limited to, assignments, rates of pay, incidental work, combining deadhead and service, overtime divisors, training, etc. as outlined in controlling agreements. Further, the terms outlined herein are limited to Interdivisional Service established pursuant to this Agreement in connection with Carrier's February 11, 2013, notice served under Article IX of the May 19, 1986 BLE National Agreement.

If you agree with the terms and conditions outlined above, please indicate by affixing your signature in the space provided below.

Agreed:

Bill Hannah
General Chairman BLET

Yours truly,

D. B. Foley
Director – Labor Relations

UNION PACIFIC RAILROAD COMPANY

Building America

----------, 2013

Side Letter 9 – Compensated Leave

File #71_ _ _ _ _ _48
(920.40-36)

Mr. D. W. Hannah
General Chairperson
Brotherhood of Locomotive Engineers
And Trainmen
1902 Orange Tree Lane, Suite #120
Redlands, CA 92374

Dear Sir:

This refers to our May 16, 2013, conference wherein we discussed Union Pacific's February 11, 2013, notice to establish interdivisional service between the LABM and Yermo, California and between LABM and Yuma, Arizona pursuant to Article IX of the May 19, 1986 BLE National Agreement.

In connection with compensated leave for employees assigned to these runs, its impact on employee protection and existing compensated leave agreements and obligations, the following agreement provisions shall apply:

Employees assigned to the LABM/Yermo pool who take time off, miss a trip and are paid compensated leave (personal leave and/or single day vacation) in connection therewith will take and be paid two (2) consecutive days for each such layoff event.

Employees assigned to the LABM/Yuma pool who take time off, miss a trip and are paid compensated leave (personal leave and/or single day vacation) in connection therewith will take and be paid three (3) consecutive days for each such lay off event

Note: Employees assigned to the LABM/Yermo or LABM/Yuma pools may take one (1) compensated leave day during home terminal layover days between

trips without taking time off providing they protect their turn in rotation and there would be enough time to do so prior his or her turn next being called for service.

It is understood and agreed nothing in this **Side Letter 9** or Interdivisional Agreement is intended to restrict any existing rights of the Carrier including, but not limited to, assignments, rates of pay, incidental work, combining deadhead and service, overtime divisors, training, etc. as outlined in controlling agreements. Further, the terms outlined herein are limited to Interdivisional Service established pursuant to this Agreement in connection with Carrier's February 11, 2013, notice served under Article IX of the May 19, 1986 BLE National Agreement.

If you agree with the terms and conditions outlined above, please indicate by affixing your signature in the space provided below.

Agreed:

Bill Hannah
General Chairman BLET

Yours truly,

D. B. Foley
Director – Labor Relations

UNION PACIFIC RAILROAD COMPANY

Building America

----------, 2013

Side Letter 10 – LABM Transport Time

File #71_ _ _ _ _ _48
(920.40-36)

Mr. D. W. Hannah
General Chairperson
Brotherhood of Locomotive Engineers
And Trainmen
1902 Orange Tree Lane, Suite #120
Redlands, CA 92374

Dear Sir:

This refers to our April 16, 2013, conference wherein we discussed Union Pacific's February 11, 2013, notice to establish interdivisional service between the LABM and Yermo, California and between LABM and Yuma, Arizona pursuant to Article IX of the May 19, 1986 BLE National Agreement.

As outlined in **Side Letter 3**, engineers who have a seniority date after October 1, 2004, are governed by pay rates and overtime divisors outlined in controlling National Agreements. The current overtime divisor in freight service is 16.25 (130 basic day miles divided by 8 hours equals an overtime divisor of 16.25). In an actual example, the 280-mile Yuma run to or from a Port node location would pay post-October 1, 2004 engineers overtime or premium pay only after 17.23 hours on duty. Given LABM pool crews are on duty and under pay from their designated reporting point on an outbound trip or until they arrive at their designated reporting point on the completion of an inbound trip, their time on duty is fully compensated under these national rules.

Provisions contained in this **Side Letter 10** are contingent upon a successful ratification and execution of this Interdivisional Agreement on or before June 1, 2013. The signing of the Interdivisional Agreement by all parties on or before June 1, 2013, is considered successful execution thereof. However, should the parties not reach a voluntary accord and arbitration becomes

necessary, it is understood that the Carrier reserves its right to revert to and argue the arbitrator must impose those terms set forth in its original ID proposal and items mutually agreed upon without this qualifier. It is understood so doing will not prejudice the position of either party.

Notwithstanding the fact post-2004 engineer compensation is in undisputed harmony with controlling National Agreement provisions, the Carrier will consider a premium pay element as outlined below expressly contingent upon the terms, conditions and timelines outlined in paragraph three of this **Side Letter 10.**

Post-October 1, 2004, engineers assigned to the LABM/Yuma pool with an East node reporting point who operate through the East node to deliver a train in the Port or Downtown nodes shall be paid a backtracking allowance as follows:

When post-October 1, 2004 engineers assigned to the LABM/Yuma pool with an East node reporting point operate westbound trains through the East node and deliver to the Port or Downtown nodes they will be paid on a minute basis up to a maximum of one hour and thirty minutes at the pro-rata rate for time consumed over twelve hours on duty in addition to the destination trip rate.

Example: A post-October 1, 2004 LABM/Yuma engineer assigned to the East node operates a train from the away from home terminal (Yuma) through the East node to Dolores and is thereafter transported to his or her off duty point. The total time on duty on this trip is twelve hours and forty-five minutes. What compensation is due?

This post-October 1, 2004 engineer would be paid the 280 miles/$509.06 trip rate and an additional forty-five minutes at the pro rata rate for time consumed over twelve hours on duty.

Note: This payment will not apply to any pre-October 1, 2004 engineer, will not apply to any post-October 1, 2004, engineer assigned to the LABM/Yermo pool, will not under any circumstance exceed one hour and thirty minutes regardless of time on duty and will only apply for the service and circumstances outlined herein.

It is understood and agreed this payment is not a required element of compensation, establishes no

precedent and will not be referred to in connection with any other case, agreement (local and/or national), negotiation and/or dispute resolution.

It is understood and agreed nothing in this **Side Letter 10** or Interdivisional Agreement is intended to restrict any existing rights of the Carrier including, but not limited to, assignments, rates of pay, incidental work, combining deadhead and service, overtime divisors, training, etc. as outlined in controlling agreements. Further, the terms outlined herein are limited to Interdivisional Service established pursuant to this Agreement in connection with Carrier's February 11, 2013, notice served under Article IX of the May 19, 1986 BLE National Agreement.

If you agree with the terms and conditions outlined above, please indicate by affixing your signature in the space provided below.

Agreed:

Bill Hannah
General Chairman BLET

Yours truly,

D. B. Foley
Director – Labor Relations

March 12, 2013
LABM/Yermo-Yuma ID Meeting

Randy Quidry	LR	Omaha
Pat Kenny	CMS	OMAHA
Ron Sprague	BLET GCA	
Kent Richards	BLET	
Tony Leazenby	CMS	OMAHA
Mike Twombly	BLET NUP	NATIONAL D.U.
Paulo Tortorice	BLET 5	Los Angeles
John R Eutsler	G.C.A.	
LR Law	✓	LA
Bill Hannah	GC	LA
Rod Doerr	UPRR	LA
Larry Keith	UPRR	LA
D. Foley	LR	ROSEVILLE
Don Carroll	BLET 660	LOS ANGELES

April 16, 2013 BLET

Colton Flyover ID Negotiations

Randy Guidry	LR	Omaha
Don Foley	LR	OMAHA
Pat Kenny	CMS	OMAHA
Cliff Johnson	TKG	Timekeeping
Tony Lenarby	CMS	OMAHA
Lee Pruitt	BLE-T	Cleveland
Mike Twombly	BLE-T	Cleveland.
Bill Hannah	BLET	LA
Paulo Turtuce	BLET 5	L/C
KENT RICHARDS	BLET 56	L/C
DON CARROLL	BLET 660	L/C
Larry Keith	UP	Lima
Rod Dorr	UP	LA
Ron Sprague	BLET	
John R Eutsler	" "	UP WL GCA
Brian Carr	" "	" "

BLET

May 16, 2013 Las Vegas Colton Flyover
ID Negotiations

Randy Snider	LR	Omaha
Cliff Johnson	TK	11
Tony Leal	OMS	OMAHA
DON CARROLL	BLET 660	LOS ANGELES
BRIAN CARR	BLET	ROSEVILLE
PAULO TURTURICE	BLET 5	LOS ANGELES
KENT RICHARDS	BLET 56	WEST COLTON
E. L. PRUITT	BCET	National
D. W. HANNAH	GC	REDLANDS, CA
JR Eutsler	BLET	RENO, NV.
TOM WILLIAMS	VP	W. COLTON, CA
PAT KENNY	CMS	OMAHA
[illegible]	HDC	OMAHA
[illegible]	BLET	TUCSON

ARBITRATION BOARD NO. 580
ESTABLISHED UNDER THE PROVISIONS OF
ARTICLE IX OF ARBITRATION AWARD 458
EFFECTIVE MAY 16, 1986

Union Pacific Railroad)
) **PARTIES TO DISPUTE**
Brotherhood of Locomotive Engineers)

BACKGROUND

On January 23, 2002, the Carrier served an interdivisional/intradivisional service notice on the Organization in accordance with Article IX of the May 19, 1986 BLE National Agreement as revised. The notice proposed establishment of three (3) new freight pools, all of which had Dolores/ICTF (International Container Transfer Facility) in the Los Angeles Basin as their home terminal.

Item #1 in the proposal contemplated creation of an "intradivisional" turnaround freight pool to handle traffic in the terminal area defined by the Ports of Los Angeles and Long Beach on the south and City of Industry on the east with the home terminal at Dolores/ICTF located between those limits.

Item #2 in the proposal contemplated creation of a new freight pool operating between Dolores/ICTF and Yermo, California, with Dolores/ICTF as home terminal.

Item #3 in the proposal contemplated creation of a new freight pool operating between Dolores/ICTF and Yuma, Arizona, with Dolores/ICTF as home terminal.

At this time traffic originating at the Ports of Los Angeles and Long Beach (usually about three trains per day) and traffic originating at Dolores/ICTF (usually about six trains per day) is handled by crews from Los Angeles or West Colton to either Los Angeles (LATC) or to West Colton. The trains are then handled from those points by through freight crews to Yermo, California or Yuma, Arizona. Movement of traffic between the Ports and Dolores/ICTF has historically been a slow and time-consuming process. Train tracks in the area were intermixed with streets and there were literally hundreds of street crossings. Trains would be lucky to make 10 miles an hour in working their way through this territory. It was not unusual for trains to take three hours to traverse this territory.

Creation of this new service headquartered at Dolores/ICTF was made possible by a municipal project in which 20 miles of track was relocated into a subsurface trench with no road crossings. This eliminated in excess of 200 road crossings between the Ports and Dolores/ICTF. Trains are now able to make this run at a steady 45 miles per hour. This improvement in running time makes possible single crew operations from the Ports and/or DoloresllCTF to Yuma, Arizona and Yermo, California. It is this interdivisional service that is created by items no. 2 and 3 in the interdivisional/intradivisional service notice.

The parties met on several dates, exchanged proposals, negotiated changes and clarified understandings relating to functioning of the new interdivisional/intradivisional service operation.

The negotiations reached a successful conclusion on all three proposed operations and a basic agreement was initialed. The parties intended to add final clarifying Side Letters and/or notes before finalizing the deal. Pursuant to the bylaws of the Brotherhood of Locomotive Engineers, the General Chairman submitted the basic agreement to each of the involved local committees for a ratification vote. The Agreement failed ratification. Accordingly, the parties jointly requested the appointment of this Arbitration Board in accordance with Section 4 of Article IX, and the parties now come before this Board seeking closure of this matter.

FINDINGS

The Organization, which filed a voluminous submission, argues that the Agreement failed ratification because the employees wanted three items. These items are:

1. Away from home terminal hours of service relief performed by the pool that needed relief. In other words, long pool patch the long pool and the short pool patch the short pool. No co-mingling of away from home terminal crews for hours of service relief.

2. Three (3) hour call to report to duty.

3. Basin trip rates on the proposed service to Yermo, CA.

In Item number 1 the Organization wants each pool to do its own dog catching for crews that die under the Hours of Service Law. The Agreement proposed in Section 9d) that the West Colton Yuma Pool perform all Hours of Service Relief at Yuma if the Yuma Extra Board is exhausted. The Organization argues that the Engineers in the West Colton Yuma Pool will be stuck at Yuma.

The Carrier counters the argument by stating the crews established by the Agreement are in a longer run service and will be hauling the "hottest" commodities. Also, the Collective Bargaining Agreement limits the crews at Yuma to one short trip per time at Yuma.

The provision agreed to by the parties is not unreasonable, ergo it will not be changed.

The Organization argued vigorously because of the traffic around Los Angeles that engineers should be given a three hour call for work. The Carrier argues it cannot anticipate the readiness of a train by more than two hours, and that nobody presently has a three hour call in the Los Angeles area.

The Protective Conditions for Interdivisional Service provide for moving assistance if an employee is required to move because of the implementation of this service. A two hour call should be sufficient.

Finally, the Organization requests that assignments working on the West Colton to Yermo service be covered under the "Basin Trip Rates" established in a July 1, 1991 Agreement with the then Southern Pacific.

This Board lacks any authority to change rates of pay.

AWARD

After listening to the vigorous arguments of the Organization on all issues as well as Carrier's strong resistance to change the tentative agreement, this Board believes the tentative agreement adequately handles all issues. Accordingly, this Board adopts the parties tentative agreement, including the rates and such provisions as were effectively agreed upon by the parties which are included in the Attachment A to this Award. The Attachment will serve as the Implementing Agreement for the Carrier's proposed Interdivisional Service.

Robert B. Richter
Chairman

Bill Hannah
Employee Member

Al Hallberg
Carrier Member

Dated May 27, 2003

ATTACHMENT A

ARBITRATION AGREEMENT

between the

UNION PACIFIC RAILROAD COMPANY

and its engineers in the Los Angeles HUB represented by

BROTHERHOOD OF LOCOMOTIVE ENGINEERS (UP Western Lines)

ALAMEDA CORRIDOR INTERDIVISIONAL SERVICE

Pursuant to the Company's notice dated January 23, 2002, served under the provisions of Article IX of the May 1986 BLE National Agreement, as amended, three new freight pools will be created subject to the following conditions:

IT IS AGREED

Except as specifically provided herein the provisions of the Union Pacific Western Lines Collective Bargaining Agreement, as modified, including the Los Angeles Hub Implementing Agreement shall prevail.

Section 1: Terminals

All Engineers assigned to and filling vacancies, in this service will report at Dolores/ICTF. (The on/off duty point has not yet been constructed and the precise location remains to be determined.)

Section 2: New Pool Freight Operations at Dolores/ICTF operating to Yermo and Yuma

a) Dolores/ICTF shall be home terminal for a freight pool with Yermo as the away-from-home-terminal.

b) Dolores/ICTF shall be home terminal for a freight pool with Yuma as the away-from-home-terminal.

c) Engineers in these pools may be used on any of the routes in the Basin and can receive or leave their trains anywhere on their respective assignments (including on Dock locations).

Section 3: Multiple Trip Turnaround Pool Freight Service

a) Unassigned turnaround pool freight service will be established to operate between ICTF/Dolores and Spadra and Walnut, via any route and return. Crews in this service can get or leave their trains anywhere in the territory covered by this pool.

b) This also includes the territory south of ICTF/Dolores. These moves shall be made only in connection with their own trains for traffic to and from dockside, and to handle trains as necessary within the territory covered by this pool. It is recognized that the dock may be expanded and such expansions shall automatically be included as part of this agreement.

c) Engineers shall not be required to depart the terminal limits on a subsequent trip after ten (10) hours on duty. Specifically no engineer can go east of C.P. Alameda after 10 hours on duty in the Alameda Corridor. Engineers will be under pay until returned to their on duty points. This Section 3(c) also applies to the engineers in the Colton Pool working at Dolores.

d) This service will NOT operate beyond the following points:

1) Walnut - MP 506.8

2) Spadra -MP 27.8

3) LATC - MP 482.9 (Including Taylor Yard, and including movements on the Alhambra Subdivision.)

e) Engineers operating in this service may be required to pick up or set out en route, but will not perform industrial switching.

Note: This is subject to the "Road/Yard" provisions of applicable National Agreements.

f) All engineers in violation of item 3(e) above will be compensated a basic day at Engineer Road Switcher rate of pay, in addition to and without deduction, from their earnings for this trip.

g) All engineers in violation of item 3(d) above who are required to go beyond the limits of this assignment, or who exceed the 10 hour provision in Section 3(c), will be compensated a payment of a new day at the rate identified in Section 4, below, in addition to and without deduction from their earnings for their trip. Engineers who properly stood for this service will be compensated in accordance with Section 1 (e) of Article 12.

Section 4: Rates of Pay.

a) All Pool engineers in this Section 3 Turnaround Pool service (excluding Yuma/Yermo) shall be paid in accordance with Sections 1, 2, 5, and 6 of the flat rate road switcher agreement effective September 16, 1996. (Currently identified in Los Angeles Hub Agreement VI Agreement Coverage B 2.d.)

b) Made up assignments and/or extra assignments called to operate within the scope of this agreement will qualify for the trip rate created by this agreement.

Section 5: Transportation

Engineers who are required to report for duty or are relieved from duty at a point other than the on duty and off duty points fixed for the service established hereunder, the Carrier shall authorize and provide suitable transportation for the crew.

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

All Engineers destined to Yuma covered by this agreement who are relieved en route will be deadheaded to the far terminal, except in cases of emergency, but will be allowed full mileage/earnings of assignment in either case. This language does not prohibit the Carrier from staging trains, (in the same direction).

Section 6: Separation of Service

The assignments established pursuant to this agreement are not intended to supplant or be supplanted by road switcher or local freight assignments.

Section 7: Rest

a) In lieu of any other agreement provisions governing rest, engineers assigned to West Colton Yuma Pool will be permitted to mark eight (8), ten (10), or (12) hours of undisturbed rest at the away from home terminal.

b) West Colton/Yuma Pool engineers deadheading back from Yuma, either separate and apart, or after completing service, will be allowed to mark eight (8), ten (10), twelve (12), or eighteen (18) hours UNDISTURBED rest at the home terminal, without any offset of New York Dock Protection. Engineers who mark additional rest will not have their protection offset if they are

available for and accept the next call tendered following expiration of the undisturbed rest.

Note: This paragraph is based on and is subject to the May 23, 1998 agreement titled "Action Plan for West Colton".

Section 8: Call

a) Engineers assigned to or filling vacancies in this service shall be called two (2) hours prior to the on-duty time and will be placed to their respective board at ICTF/Dolores in the order of their tie-up time at the location where they reported for duty.

b) Engineers called for a separate and apart deadhead will not be required to work back, until getting required rest, when reaching the far terminal, if there are other engineers rested and available.

Note: This paragraph (b) applies to the Dolores/ICTF/Yuma and the Dolores/ICTF/Yermo pools only.

Section 9: Away from home terminals

a) Engineers arriving at the away from home terminal shall be placed on the bottom of the pool list at tie-up time.

b) Engineers shall be allowed to voluntarily "blueprint" at their home terminals.

c) Yuma shall operate as two away from home terminal pools (long and short) and crews shall be called on a first in/first out basis. Dolores/ICTF and LA engineers will be in the "long" pool. West Colton engineers will be in the "short" pool.

d) The West Colton Yuma Pool (the short pool) will perform all hours of service relief not covered by the Yuma Extra List, (Side Letter #2, dated November

6, 1998, paragraph 2, of the Los Angeles Hub Implementing Agreement). This language creates a calling order for said service.

e) It is not the intent of this Section to circumvent the provisions of Section 3(b) of Article 6 of the current agreement covering engineers.

f) The Carrier shall work with the Local Chairmen to insure that the train identifiers are properly coded at the away from home terminals.

Note: This paragraph (f) does not limit the right of the Company to operate any train in any pool.

Section 10: Lodging

All engineers will be paid in lieu lodging if so requested.

Note: This applies in the Dolores/ICTF/Yuma-Yermo Pools only.

Section 11: Familiarization.

a) Engineers covered by this Agreement whose assignments require performance of duties of a new geographic territory not familiar to them will be given familiarization opportunities as quickly as possible. Engineers will not be required to lose time or ride the road on their own time in order to qualify for these new operations.

b) Engineers will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualification shall be handled with local operating officers. The parties recognize that different terrain and train tonnage impact the number of trips necessary and an operating officer will be assigned to this new operation that will work with the local managers of Operating practices in implementing this Section. If disputes occur under this Agreement they may be addressed

directly with the appropriate Director of Labor Relations and the General Chairman for expeditious resolution.

c) It is understood that familiarization required pursuant to this agreement will be accomplished by calling a qualified engineer, peer engineer, (or qualified Manager of Operating Practices) to work with an engineer called for service on a geographical territory not familiar to the engineer.

d) Engineers who work their assignment accompanied by an engineer taking a familiarization trip shall be paid one (1) hour at the pro rata rate, in addition to all other earnings for each tour of duty. This payment shall not be used to offset any extra board payments. The provisions of 3 (a) and (b) Training Conditions of the System Instructor Engineer Agreement shall apply to the regular engineer when the engineer taking the familiarization trip operates the locomotive.

e) Locomotive Engineers will not be required to make the decision on whether or not an engineer being familiarized is sufficiently familiarized for the territory.

Section 12: Protection

a) The provisions of Section 7 of Article IX of the May 19, 1986 Agreement shall apply to employees adversely affected by the application of this Agreement for wage protection and relocation benefits.

b) Employees with New York Dock merger salary protection will be permitted to retain that protection while at the same time opting for relocation benefits pursuant to Section 7 of Article IX of the May 19, 1986 National Agreement.

c) Section 3 of New York Dock permits engineers to elect which labor protection they wish to be protected under. By agreement between the parties, engineers may elect the protection governing this agreement and then switch to the number of years remaining under New York Dock or remain under New York Dock and switch to the remainder of the protection that this

agreement provides. Pursuant to New York Dock and Washington Job protection provisions an engineer may not receive duplicate benefits or count protection payments under another protection provision toward their test period average.

Section 13: Temporary Lodging

If, as a consequence of this transaction an employee is unable to hold a position at the original location, and is required to relocate to follow the work to Dolores, temporary lodging at the Company lodging facility in Long Beach will be provided for a period of up to ninety (90) calendar days. This benefit is intended to apply only to those employees who actually relocate.

Section 14: Savings Clause

The parties recognize that this Agreement was reached pursuant to Article IX of Arbitration Award 458, effective May 16, 1986, and agree that all agreements, side letter agreements, moratoriums, and understandings of the December 1, 1997, Southern Pacific Western Lines Modification Agreement, will remain in full force and effect subject to their terms unless specifically changed and/or modified by this Agreement and shall be subject to change pursuant to the Railway Labor Act, as amended.

Section 15: Effective Date

The Carrier will give the General Chairman fifteen (15) days' written notice of its intent to implement this agreement.

Colton Crossing Separation To Improve Mobility in Southern California

Eliminating rail gridlock at Colton Crossing, one of the busiest at-grade (same level) rail intersections in the country, will relieve road and rail congestion, reduce wait time and delays for motorists at area rail crossings and improve air quality in Southern California. The projected cost of $202 million in 2013 dollars will be met by a $33.8 million investment of Federal funds through the *Transportation Investment Generating Economic Recovery* (TIGER) grant, and a $97.3 million investment of State funds from the *Trade Corridor Improvement Fund* (TCIF), providing a public benefit estimated as high as $828 million.

.

- The project is expected to account for 2,701 direct, indirect and induced jobs across California's economy, along with $368.7 million (2007 dollars) of direct, indirect and induced business output during construction and the first 20 years of operation.

- According to a 2008 public benefit analysis, communities surrounding the Colton Crossing rail intersection such as Riverside, Colton, San Bernardino, and Pedley, stand to benefit greatly from the crossing separation. Public benefits of this crucial freight mobility project could be from $503.0 million (local) and $706.7 million (national) to as much as $624.2 million (local) and $827.9 million (national), not including the many benefits derived from keeping freight and passenger traffic off highways as fluidity of trains dramatically improves.

- The overall benefit of the Colton Crossing grade separation includes travel time and operating cost savings for motorists, as well as environmental savings from reduced wait times of vehicles delayed at area railroad crossings, and freight and passenger trains delayed at the crossing.

- Colton Crossing is known globally as a bottleneck in the Southern California supply chain. An affirmative action by State policy makers on this project will be a signal to the international trade community that California is addressing infrastructure needs and is committed to current and future business.

The free-flowing crossing would provide the following benefits to communities:

1) Reduced noise and air emissions of hundreds of idling locomotives waiting their turn to proceed through the crossing

2) Elimination of delays for motorists waiting at area rail crossings for slowing, stopping and accelerating trains making their way through the crossing

3) Ambient and I-10 noise reduction through the project's east/west rail embankment "wind walls"

4) Lower-cost rail transportation that competes for future traffic growth of congested roads and highways through increased capacity and expedited freight movement

5) Better road fluidity through improved and predictable passenger train service that attracts drivers away from congested roads and highways

Funding Plan (costs in millions of dollars)

	TIGER Funds	State STIP	State TCIF	Union Pacific	BNSF	Supp Funds	Local Funds	TOTAL	
Project Approval / Environmental Documentation	$2.8	$3.7	-	$11.9	$0.5	$0.9	$0	$19.8	9.8%
Plans, Specifications and Estimates	$2.1	-	-	$8.5	$0.4	$0.6	$0	$11.6	5.7%
Right-of-Way (Capital and Support)	-	-	-	$9.0	$1.6	-	$0	$10.6	5.3%
Construction (Capital and Support)	$28.9	-	$97.3	$20.3	$5.0	$8.5	$0	$160.0	79.2%
TOTAL	**$33.8**	**$3.7**	**$97.3**	**$49.7**	**$7.5**	**$10.0**	**$0**	**$202.0**	
	16.7%	1.8%	48.2%	24.6%	3.7%	5.0%	0%		100.0%

* Due to rounding, the total amount may deviate slightly from the actual total.

** If project costs exceed projections, private sources will provide supplemental funding necessary to complete the project.

Colton Crossing Project Overview

Fast Facts

- ***Project Name:*** Colton Crossing Grade Separation
- ***What:*** Grade separation of a rail-to-rail grade crossing
- ***Where:*** Southern California (City of Colton, San Bernardino County)
  Located in an urban area and in California's 43rd Congressional District
- ***Cost:*** $198.3 Million (2012 $)
- ***TIGER Request:*** $43.8 Million (22%)
- ***Construction Timeframe:*** 2011 - 2013
- ***Jobs:*** An average of 674 total jobs/year from 2010-2013
- ***Public Benefits:*** $707 Million Present Value (2007 $)

Why Is This Project The Best Choice For TIGER?

1. **Project of National and Regional Significance**

   Colton Crossing is the node where two Class I railroad mainlines cross on their routes connecting Southern California with the Midwest, East Coast, and Southeast. These lines serve as a key link in the supply chain between Asia and most of the United States: approximately 40% of all containerized traffic entering or leaving the U.S. passes through the California port complexes of Los Angeles/Long Beach (POLA/POLB). More than 60% of POLA/POLB volume is moved inland through the L.A. Basin, and the vast majority of which moves via rail over Colton Crossing. The crossing is also of vital importance to California's local economy, as 40% of its traffic is not port related.

   The at-grade crossing, which handled 129 trains/day in 2006 at its peak, is a major chokepoint in the supply chain—delays and impacts cascade across a multi-state network. This project builds upon the Alameda Corridor and Alameda Corridor East (infrastructure projects), and is particularly important in ensuring that the national benefits of those state and federal investments are realized.

2. **Significant Long-Term Benefits**
   - Accommodates future increases in passenger and commuter train service.
   - Reduces travel time, saves on inventory costs, and improves reliability for the movement of goods across the country.
   - Avoids the need for an additional 14 million truck-miles per year.
   - Saves more than 10 million gallons of fuel per year.
   - Saves nearly 3 million hours/year for motorists delayed at rail-highway crossings.
3. **It's A Solid Public Investment**
   - B/C Ratio >7.0
   - Public benefits outweigh the TIGER Grant request by a 16:1 ratio.
4. **Tremendous Partnership**
   - Leverages committed financial contributions from the State of California and two private railroads—non-federal funds represent 78% of the financial plan.
   - Includes the coordination of several stakeholders.

Why Now?

- ***Now or Never:*** Significant state and private funding is programmed but a federal commitment is needed by February 2010 to avoid reprogramming of state funds.
- ***Jobs in an Economically Distressed Area (EDA):*** Colton is an EDA with an unemployment rate of 15.0% (5.3 percentage points higher than the national average as of July 2009). San Bernardino County's per capita income is less than 73% of the national average.

Caltrans Submittal Letter

[replace this page with the California letter]

TIGER Discretionary Grant Application

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Carrier's Exhibit 5
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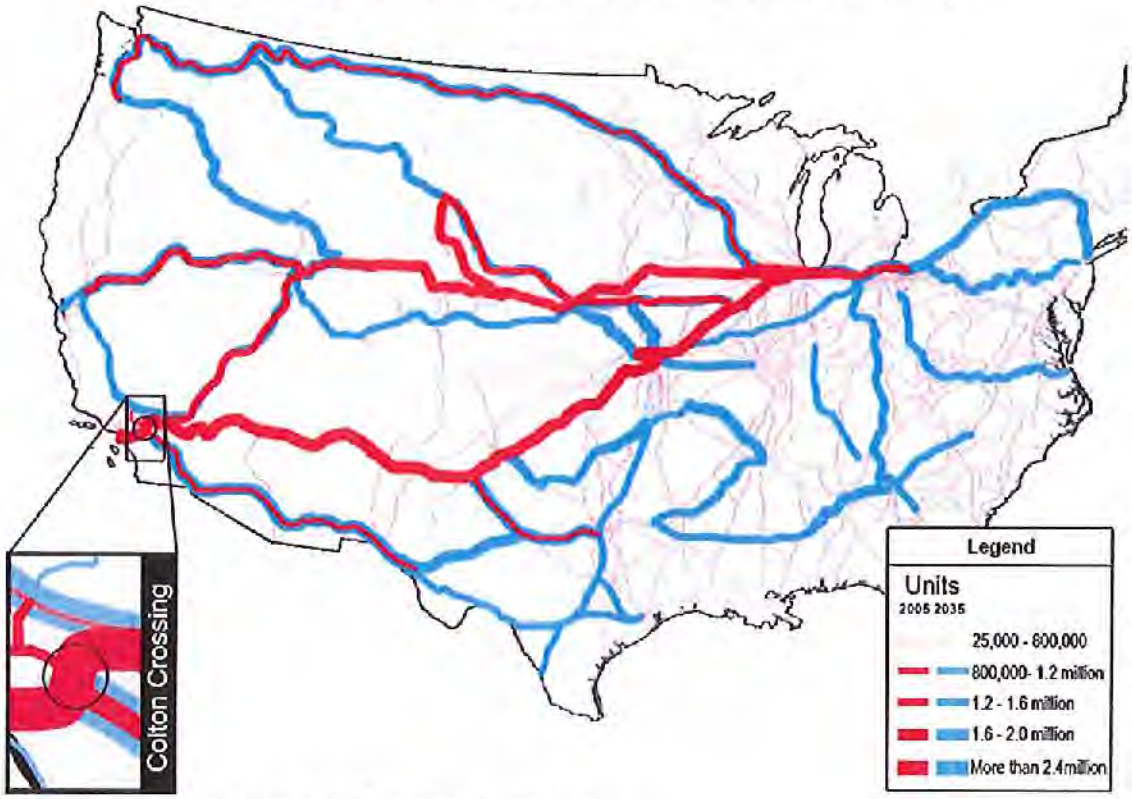
1.0 Project Description

Colton Crossing is an at-grade junction of two Class I railroads in Southern California—*it is the key intersection of two of the nation's busiest rail corridors.* Exhibit 1-1 shows how the two primary rail lines connect the Los Angeles metropolitan area—including the Ports of Los Angeles and Long Beach—with the Midwest, East Coast, and Southeast regions of the United States. For the Union Pacific Railroad (UP), the crossing is part of their routes to both Salt Lake City and on to Chicago, and the Sunset Route to Texas and the Southeast. For the BNSF Railway (BNSF), the crossing is part of its major "Transcon" route linking Los Angeles with Chicago and the Southeast. As illustrated in the figure below, these two routes carry more rail cars than just about any other line in the country; if Colton Crossing were a highway junction, it would be the equivalent of the Springfield, Virginia, Interchange (where I-95, I-395, and I-495 meet) replaced by a traffic light.

Exhibit 1-1 Project Location (Colton Crossing and Rail Car Traffic)



Source: Adapted from AASHTO Freight-Rail Bottom Line Report, 2003
Notes: The thickness of the bars represents the number of rail cars on the links

As noted by AASHTO, these two rail lines handle more than 70% of the potential intermodal rail traffic, both containers and trailers-on-flat cars, flowing between Southern California and the Midwest and East Coast.[1] Approximately 40% of all containerized traffic entering or leaving the U.S. passes through the Ports of LA/Long Beach, more than 60% of the port volume is moved inland through the L.A. Basin, and the vast majority of that traffic moves via rail over Colton Crossing. The crossing's importance is not limited to international trade, however, as 40% of its traffic serves other businesses in the State of California and is not related to the ports. For

[1] "Freight-Rail Bottom Line Report," AASHTO, 2008.

example, the crossing plays an important role in moving high-value consumer packages, and more than 90% of the automobiles manufactured in the United States and sold in Southern California utilize the crossing. Furthermore, consumer products, forest products, processed foods, and construction materials move via rail to and from various parts of the United States to Southern California. The Inland Empire is a growing manufacturing center with employment at the 87,000 mark as of 2007. Each year the railroads originate or terminate over one million units of traffic, excluding international intermodal, which supports local industry in the Los Angeles basin.

Colton Crossing is a major chokepoint of the Southern California rail network, with an average of 129 train operations (including three Amtrak intercity passenger trains and eight Metrolink commuter trains) per day at its peak in 2006. Although 2008 demand moderated due to the economic retraction by 16% versus 2006, congestion is expected to grow increasingly worse as passenger train counts increase and when the economic demand for additional freight shipments returns. For example in 2007, freight trains experienced delays up to several hours (with an average of one hour delay at the crossing) as they waited for other trains to pass through the crossing. These delays cascade through the nation's rail network, requiring both UP and BNSF to hold trains as far as 20-50 miles from Colton in order to fit them into operating "gaps" at the crossing. These systemic delays not only have a direct time impact on how long it takes to move goods across the country, but the range of delays also severely affects the reliability of shipping goods via rail. Shippers have higher inventory costs, as they need to hold larger stockpiles of materials to avoid shortages if/when shipments arrive late. The impacts of delays at Colton Crossing limit the viability of rail in certain markets (particularly for high value goods), resulting in additional truck trips taken on already congested Interstate highways.

Although significant impacts are realized beyond California, the crossing's congestion also causes negative impacts in the city of Colton, California, and the surrounding area. Diesel locomotives sometimes idle for long periods as they wait for a crossing window, and more than 24 rail-highway crossings can be blocked by trains that are moving slowly (due to railway congestion) as they approach Colton Crossing. The road delays at these affected rail-highway grade crossings are significant (it is estimated that an average of nearly 3 million person hours per year will be saved at affected rail-highway grade crossings when the Colton Crossing grade separation project is implemented), and these road delays contribute additional emissions. Once the trains move through the crossing, which happens an average of once every 10 minutes (24 hours per day), the trains generate noise impacts when the slack is removed and again when each rail wheel eventually travels over the four gaps at the "diamond" crossing.

Exhibit 1-2 shows a photo of the existing conditions at Colton Crossing. This view looks west toward Los Angeles, with north at the right. The two UP tracks (coming from the top to the bottom of the photo) run in the east-west direction, parallel Interstate 10. The two BNSF Transcon tracks cross the UP tracks on an at-grade crossing, passing under I-10.

Exhibit 1-2: Project Area (Colton, California)

The Colton Crossing project has been discussed for decades, and received increasing attention with the rapid growth of rail intermodal traffic (starting in the 1990s) that in turn resulted in larger delays to area highway traffic at rail-highway crossings. Indeed, the crossing is identified as one of the three top freight rail chokepoints in the state that should be addressed.[2] The routes passing through Colton Crossing have also been the focus of Office of Naval Research studies because of their strategic defense role in connecting inland Department of Defense facilities with the naval bases on the Pacific Coast.

In 2005, the Governor of California appointed a blue-ribbon panel to develop a statewide Goods Movement Action Plan (GMAP), with Colton Crossing listed as a "high-priority" project. As part of the $20 billion Transportation Bond initiative (Proposition 1B), a $2 billion Trade Corridor Improvement Fund (TCIF) was established for surface transportation "Trade Corridors of National Significance." The California Transportation Commission (CTC), who is responsible for administering the TCIF funds and used a competitive process to determine which candidate projects would receive TCIF funding allocations. The California Department of Transportation (Caltrans) submitted an application for the Colton Crossing grade separation project and received a $97.3 million TCIF allocation.[3]

The Alameda Corridor Transportation Authority (ACTA) conducted a feasibility study for Colton Crossing in 2006. The study analyzed various alternatives, including the east-west flyover alternative that was recommended as the preferred alternative and is the basis of the TCIF funding and this TIGER Grant proposal. The San Bernardino Association of Governments (SANBAG) is currently validating/determining the preferred alternative in an update to the Project Report, leading outreach activities, and performing the project's environmental assessment process.

The Multi-County Goods Movement Action Plan (MCGMAP) was a partnership between county, regional, and state transportation agencies to address goods movement challenges faced by the Southern California counties. The study, published in April 2008, recommended the Colton

[2] See p.208 of the California State Rail Plan.
[3] http://www.catc.ca.gov/programs/tcif.htm

Crossing grade separation as a specific recommended action to relieve congestion and improve mobility.

Plan and profile drawings for the proposed Colton Crossing grade separation project can be found in Exhibit A-1 (in Appendix A). This exhibit shows the location of the new tracks, which are adjacent to I-10 and essentially follow the existing alignment. The flyover structure will carry the two UP tracks over the BNSF tracks, eliminating the cause of delays at Colton Crossing.

Colton Crossing is an integral part of California's plans to improve the movement of goods within and through the region. This investment complements and builds on prior projects such as Alameda Corridor and Alameda Corridor East, as well as significant passenger/commuter rail capacity investment in the L.A. Basin. It is particularly important in ensuring that the national benefits of those state and federal investments are realized. Further, investments in other parts of the rail corridors (beyond California) cannot recognize their full potential until the Colton Crossing project is implemented.

While funding issues have caused some delays in the implementation of the project, filling the gap with a TIGER Grant will permit the Colton Crossing project to move forward with a rapid (yet efficient) implementation.

2.0 Project Parties

A number of entities are actively participating in the Project. The primary organizations and their roles are discussed below. Letters of support from other supportive entities (representing broad and diverse interests) are included in Appendix E.

California Department of Transportation (Caltrans)
The mission of the California Department of Transportation (Caltrans) is to improve mobility across California. Recognized as one of the world's outstanding transportation organizations, Caltrans provides leadership in the planning, development, operation, and maintenance of the State's comprehensive transportation system. In this leadership, it seeks to support overall State efforts to provide a prosperous economy, social equity, and a quality environment.

People and goods must be accommodated by an efficient, seamless, and safe multimodal transportation system. As part of that multimodal system, freight rail is one of its key strategic components and is vital to the state's economic interests. As endorsed by Governor Schwarzenegger in the California State Rail Plan, it is the State's policy objective to foster the maintenance and improvement of the State's rail network and its freight market share, through system planning, system investments, environmental enhancements, and ongoing partnerships.

As the public sponsor of this project for TCIF, the sponsor of the TIGER Grant application, and the public agency responsible for delivering and overseeing the project, Caltrans has already secured more than three-quarters of the funds needed to complete this project. Caltrans also provided $3.7 million in FY06–07 for Colton Crossing preliminary engineering and environmental analysis.

San Bernardino Associated Governments (SANBAG)
SANBAG is the transportation planning agency for the San Bernardino County, the location of Colton Crossing. SANBAG's mission is to support the construction or rehabilitation of highways, roads, railroad crossings, and public transit for San Bernardino County. On the Colton Crossing project, SANBAG is the lead agency for preparing the Project Report and for managing the

planning and environmental assessment process, which includes public hearings, outreach, communication, and stakeholder meetings.

Union Pacific Railroad (UP)
UP is a major Class I railroad that covers 23 states across the western two-thirds of the continental United States. UP owns and operates the east-west tracks of Colton Crossing (parallel to Interstate 10) and it will co-administer the project construction process with BNSF. To reflect the benefits that it anticipates receiving from the project, UP has committed $49.6 million toward the grade separation project.

Burlington Northern Santa Fe Railway Corporation (BNSF)
As the other major Class I railroad in the western United States, BNSF owns and operates railroad tracks in 28 states. BNSF owns and uses the north-south tracks of Colton Crossing, it shares the operations of the crossing with UP, and it will co-administer the project construction process with UP. BNSF has committed $7.5 million to the grade separation project.

U.S. Department of Transportation (USDOT)
To date, the project has not received any federal funds and no U.S. Department of Transportation (USDOT) agency has been involved in the Colton Crossing grade separation efforts. With a TIGER Grant, however, USDOT involvement will be needed (through one of the cognizant modal agencies, either the Federal Railroad Administration or the Federal Highway Administration) to perform oversight of the federal funds and to ensure the project's compliance with federal-aid requirements, including the National Environmental Policy Act of 1969 (NEPA). The cognizant modal agency's involvement in the project will begin once NEPA scoping is initiated.

3.0 Grant Funds

The total project cost is estimated to be $198.3 million. This estimate is in year 2012 dollars, based on the mid-point of the construction period. To date, the project has secured $154.5 million (78% of all funds needed), and the application is seeking the remaining amount needed ($43.8 million, or 22%) from the U.S. DOT TIGER Grant Program. The state's Trade Corridor Improvement Fund allocated $97.3 million to the project, and the railroads have committed nearly 30% of the funding, or $57.1 million. Capital construction activities constitute the majority of the costs (81%), while other soft costs and right-of-way costs represent approximately 19%. Exhibit 3-1 presents a breakout of the sources and uses of all funds.

Exhibit 3-1: Colton Crossing Funding Allocations

	TIGER Funds (requested)	State TCIF	Union Pacific	BNSF	TOTAL	
Project Approval / Environmental Documentation	$3.7	-	$11.8	$0.5	$16.0	8.1%
Plans, Specifications and Estimates	$2.7	-	$8.5	$0.4	$11.6	5.8%
Right-of-Way (Capital and Support)	-	-	$9.0	$1.6	$10.6	5.3%
Construction (Capital and Support)	$37.4	$97.3	$20.3	$5.0	$160.0	80.7%
TOTAL	**$43.8**	**$97.3**	**$49.6**	**$7.5**	**$198.3**	
	22.1%	49.1%	25.0%	3.8%		100.0%

Due to rounding, the total amount may deviate slightly from the actual total.

4.0 Primary Selection Criteria

The grade separation project will produce enormous long-term benefits, its benefits far exceed the costs, and it will create a large number of jobs for workers in an Economically Distressed Area. Information on the primary selection criteria are below.

4.1 Long-Term Outcomes

4.1.1 Economic Competitiveness

Long-Term Efficiency, Reliability, and Cost-Competitiveness in the Movement of Goods

As noted in the Project Description section, Colton Crossing is a major freight chokepoint that impedes the movement of imported, exported, and domestically produced/consumed goods on rail between Southern California and the rest of the United States, including major population centers and key industrial areas of the country. Containerized imports include not only final consumer goods, but also intermediate goods that go into products manufactured in the United States (e.g., computers). The bulk of U.S. goods exported through the Ports of LA/Long Beach also traverse Colton Crossing. Among the key export sectors that move through the crossing are transportation equipment, chemicals and plastics, high-tech and electronics equipment, and recyclable materials. Further, the crossing plays an important role in moving high-value consumer packages and automobiles via rail. More than 90% of the automobiles manufactured in the United States and sold in Southern California utilize the crossing. It is also used for shipments of consumer products, forest products, processed foods, and construction materials from various parts of the United States to Southern California. Each year the railroads originate or terminate over one million units of traffic, excluding international intermodal, which supports local industry in the Los Angeles basin.

Time delays incurred just at the crossing for a typical 100-car unit train averaged one hour as recently as 2007, although delays are less severe in 2009 as rail traffic volumes suffered from the contraction of the economy. Delays can also be unpredictable, adding additional cost and uncertainty to the movement of goods. Further, the crossing's delays cascade to the other parts of the rail network. Eliminating this chokepoint will benefit major links of the supply chain – including segments that have already received significant public and private investment – in terms of speed, reliability and costs. It will also provide system capacity sufficient to serve current traffic and to accommodate future growth.

Over time when economic activity recovers, freight traffic will resume growth, even if it is slower than the pace of 2000-2006. In a 20-year timeframe, even a one percent per year increase in train counts would result in a 22 percent increase over the period. With increased demand, delays will grow at even higher rates (as fewer gaps are available for crossing trains) and train performance will erode further. This project represents a relatively low-cost approach for addressing freight rail impedances. Additional tracks or securing new right-of-way to build new routes would cost much more.

The Colton Crossing project will improve the nation's economic competitiveness and economic well being in the following ways. Specifically, the grade separation project will:

- Reduce inventory costs and improve reliability for many shipping industries throughout the United States. These industries include importers of finished consumer goods, producers who import intermediate goods for final production, U.S. auto manufacturers, and many U.S.

export industries that ship via the Ports of LA/Long Beach. For exporters in particular, lower transport costs will improve the competitiveness of U.S. products in world markets.

- Lower prices for U.S. consumers. Shippers will pass part of their benefits derived from the inventory travel time savings and the reliability improvements on to consumers in the form of reduced product prices. Because such a large percentage of U.S. consumer goods arrive via containers at the Ports of LA/Long Beach and move inland by rail, eliminating the Colton Crossing chokepoint will help to reduce consumer prices by improving supply chain efficiency and reducing inventory and warehousing costs.
- Support the competitiveness of U.S. ports. Non-U.S. ports on the west coast of North America are making significant investments to improve the flow of goods along supply chain routes that travel through their ports. For example, Canada is investing billions in improved connections between its major Pacific ports (Prince Rupert and Vancouver) and the United States rail system in an effort to divert U.S.-bound cargo through Canada.[4] Failure to implement improvements in the U.S. rail network will make routes through the Canadian Pacific Northwest and through Mexico's west coast more attractive for international intermodal traffic. Colton Crossing will help make freight travel through U.S. ports more competitive.
- Leverage other key capacity investments. Significant investments have been made in double-tracking the UP Sunset and the BNSF Transcon routes that use Colton Crossing. Further, the federal government and others have made (and are making) significant investments in the Alameda Corridor and Alameda Corridor East—two infrastructure projects that are also linked to Colton Crossing. To realize the full extent of benefits possible from these other investments, the grade separation of Colton Crossing is needed to address the impacts of this junction on other parts of the network.
- Enhance the mobility of workers. In addition to supply chain benefits, the Colton Crossing project will improve mobility for workers in the L.A. Basin. The project would accommodate additional commuter and passenger train frequencies, and further, it would eliminate unexpected motorist delays at more than 24 rail-highway grade crossings.

Allows for the Expansion, Hiring, or Other Growth of Private Sector Production

- Impacts on U.S. industrial output, employment, profits, and wages: As noted above, Colton Crossing will reduce inventory travel times and increase the reliability of travel times. As a result of the project, shippers may be able to hold less (buffer) inventory and/or hold inventory for a shorter length of time, effectively reducing the logistics costs. Reductions in logistics costs have been found in numerous studies to generate significant increases in industrial output, improvements in industry productivity, and reductions in production costs.[5,6,7] Such increases in industrial output and productivity lead to both increased hiring of workers as well as higher worker wages.

  Although the project is expected to reduce the need for some future additional truck traffic, it should be noted that this is unlikely to have a sizeable negative impacts on truck driver employment—truck driver shortages are a current and growing problem in the trucking industry. Thus, the avoidance of the need for some truck trips is not expected to reduce overall employment in the trucking industry.

[4] For more information, see Transport Canada's Asia-Pacific Gateway and Corridor Initiative: http://www.tc.gc.ca/canadasgateways/apgci/document/APGC-PCAP_en.pdf and http://www.pacificgateway.gc.ca/whats-new.html.
[5] Nadiri and Manuneas, "Contributions of Highway Capital to Industry and National Productivity Growth," September 1998.
[6] For an overview of these concepts, see T.R. Laskmanan, Anderson, et al. in U.S. DOT - FHWA, "Freight Transportation Improvements and the Economy."
[7] "Freight Transportation: Improvements and the Economy: Appendix B Transportation Infrastructure, Freight Services Sector and Economic Growth: A Synopsis." U.S. DOT - FHWA, January 2002.

- Maintenance of market position for U.S. ports: As noted, inland transportation capacity and efficiency – including the inland rail system – are critical to maintaining the position of the Ports of LA/Long Beach as the pre-eminent maritime port for the west coast of North America. Threats from both Canadian and Mexican Pacific ports are real, as these countries move to support their facilities. In general, the Colton Crossing project will maintain and enhance the capacity of the U.S. West Coast port system.

4.1.2 Sustainability

The Colton Crossing project would contribute to energy efficiency and reduce the country's dependence on oil in several ways. First, it would reduce delays for motorists at 24 rail-highway grade crossings that are affected by Colton Crossing railway congestion, saving more than 900,000 gallons of gasoline and nearly 80,000 gallons of diesel per year. Second, it would eliminate the need for trains to idle as they wait for a "crossing window," saving an additional 7.3 million gallons of train diesel per year. Finally, the improved rail efficiencies would avoid the need for at least 14 million ton-miles of goods to be moved by trucks, saving an additional 2.1 million gallons of truck diesel per year.[8] As shown in Exhibit 4-1, the fuel savings alone amounts to an average of *more than 10 million gallons per year in savings.*

Exhibit 4-1: Colton Crossing Fuel Savings

Impact	Fuel Savings Category	Average Amount per Year After Project Completion
1	Average Amount of Gasoline Saved from Vehicles, (gallons)	908,000
2	Average Amount of Diesel Saved from Vehicles, (gallons)	79,000
3	Average Amount of Diesel Saved from Train Efficiencies, (gallons)	7,292,000
4	Average Amount of Diesel Saved from Truck Avoidance, (gallons)	2,061,000
TOTAL		**10,340,000**

The environmental effects of the current crossing also include noise impacts on adjacent residential neighborhoods. The current at-grade rail crossing (using diamond tracks with gaps for the wheel flanges) results in loud impact sounds for every wheel that passes over the gaps. Based on 2006 train counts, grade separation would eliminate more than 120 crossing events per day, where each crossing event has an average of 500 discrete wheel-diamond impacts. To put these figures into perspective, trains pass through Colton Crossing on an average of nearly once every 10 minutes, 24-hours a day. It is estimated that the noise levels of these events, which total approximately 8 hours spread throughout the day, are equivalent to approximately 100 dBA.[9] The noise associated with slack as trains start and stop can be very loud. These noise impacts, however, would be eliminated with a grade separated crossing.

Air quality in the immediate area is impacted by diesel locomotives idling and from highway delays at affected rail-highway grade crossings. Although the freight emissions would be far worse if the goods were shipped by truck (the EPA estimates that for every ton-mile, a typical truck emits roughly three times more nitrogen oxides and particulates than a locomotive), the impacts of locomotive emissions are still noticeable. The analysis of emissions benefits estimated that annual reductions of highway and locomotive diesel emissions would include 46

[8] See Appendix C for the analysis of truck traffic avoided due to the Colton Crossing grade separation project. This analysis conservatively only evaluated the impacts associated with rail delays, and it did not consider the potential for rail-to-truck diversion due to the rail crossing reaching capacity in a future year.
[9] Estimate based on the 2006 FTA Transit Noise and Vibration Impact Assessment manual, Table 5-5.

tons of Hydrocarbons, 364 tons of Carbon Monoxide, 341 tons of Nitrous Oxide, and 10 tons of Particulate Matter. There would also be an annual CO_2 reduction of more than 55,000 tons.

4.1.3 Livability

The current delays at Colton Crossing impact Metrolink commuter travel times and reliability, affecting the nine Metrolink trains (eight on the Inland Empire-Orange County line and one on the Riverside-San Bernardino line) that use the crossing every weekday. The grade separation project will eliminate these delays, improving livability for the passengers who rely on Metrolink services by making their commute times shorter and more reliable. Metrolink is critical to linking residents who live in the Economically Distressed Area of San Bernardino County with higher paying jobs in Orange County. The project could also provide the potential for additional passenger trains by increasing the predictability of rail movements.

Although Amtrak and Metrolink commuter trains receive priority on both lines that use Colton Crossing, impacts are so widespread that these services are not immune to the delays. Amtrak currently has interest in expanding its Sunset Limited service (which uses the crossing) from tri-weekly to daily. If additional passenger trains were added without the grade separation project, the amount of freight train staging would increase; accordingly, more staged trains would block rail-highway crossings for longer durations and at farther distances from Colton Crossing.

Other livability benefits will also be generated by the project. With the current grade crossing configuration, significant amounts of train staging are required as the freight trains must wait for crossing windows. Freight train staging is more frequent during peak commute times (when Metrolink commuter trains are at their peak), so unplanned motorist delays are more likely to occur when many people are trying to get to work or perform after-work activities such as pick up children from daycare. These delays not only have reliability implications for travelers, but they also generate additional pollution in an air quality non-attainment area.[10] Once Colton Crossing is grade separated, the staging requirements will be eliminated, along with the noise, emissions, and unexpected vehicular delays at roadway crossings they create.

To address and incorporate local needs, considerable public outreach has been and will continue to be performed during the project development process. SANBAG has led a series of public involvement activities to ensure that the project works with the local community and that residents have a voice in the process. UP and BNSF are working with local government officials to develop a mitigation strategy to address the concerns of the local area. A concept to mitigate the community's concerns was presented to the local agency and has been positively received. Discussions to further develop the concept are underway.

Historically, UP and BNSF have actively worked with San Bernardino, Los Angeles, Orange, and Riverside counties to design and construct new grade separations as government funding became available. Since 2006, UP and BNSF have completed construction on 14 grade separations and are in the process of constructing an additional 40 grade separations in 2009-2010. Furthermore, UP and BNSF have agreed to work with local authorities on the design and construction of 26 grade separations identified in the TCIF applications based on adequate funding being available.

[10] http://www.bts.gov/publications/state_transportation_statistics/california/html/table_07_06.html

4.1.4 Safety

While Colton Crossing is interlocked and movements are controlled by signals, a grade-separated crossing will eliminate any chance of human error (e.g., passing a red signal), which could contribute to an accident.

Another safety benefit is related to the elimination of train staging. When freight trains are stopped (or traveling at very slow speeds) across 24+ rail-highway grade crossings as they wait for crossing windows, these freight trains can currently block access for public safety vehicles such as fire trucks, ambulances, etc. The project would eliminate these potential hazards.

The Colton Crossing project will also reduce the number of highway accidents by allowing more goods to be shipped via rail instead of via heavy trucks. During the period between 2015 and 2035, it is estimated that the project will save more than 800 highway accidents from occurring, including three fatal accidents avoided and more than 100 injury accidents avoided. The project is estimated to reduce the number of heavy truck accidents by an average of 38 incidents per year (highway accident cost savings is discussed further in Section 4.2).

4.1.5 State of Good Repair

The project will upgrade a surface transportation facility that threatens the future economic growth and stability of the United States if its inadequate operating conditions are not addressed. Because the two railroads—who use life-cycle costing to make investment decisions—will be responsible for maintaining and rehabilitating the asset over its entire lifetime, the project's design and procurement decisions include assets that will minimize the life-cycle costs. Further, the private partners will ensure that adequate revenue (funded through their operating cash flows) will be available for long-term operations and maintenance.

The project will also lead to reduced roadway deterioration by reducing the need for additional truck travel. Routes such as Interstate 10, Interstate 15, and Interstate 215 would benefit.

4.2 Evaluation of Expected Project Costs and Benefits

Summary of the Project's Economic Evaluation
The Colton Crossing grade separation would generate economic benefits that far exceed the economic cost, with *a benefit/cost ratio of 7.1*.

A public benefit study of the Colton Crossing grade separation project was conducted in February 2008.[11] This analysis, along with a supplemental analysis of the benefits that the project could generate by avoiding the need for additional truck traffic,[12] was used as the basis for the economic evaluation presented in the TIGER Grant application. Both analyses conservatively assumed that the design and construction period would occur from 2011-2014, and the final evaluation year was set at 2035. The project implementation schedule has been accelerated by one year since the original study (based in part by the identification of TIGER funds to fill the funding gap); however, the robustness of the economic evaluation results suggests that updating the construction timing in the original study would have a negligible impact on the conclusion that the economic benefits far exceed the costs. Further, the supplemental analysis of avoiding additional truck traffic only considered the effects of railway delay, and it did not consider the potential for additional rail-to-truck diversion due to an at-grade Colton Crossing reaching a capacity limit in some future year. The 2008 public benefit study

[11] Public Benefit Study for Colton Crossing Grade Separation, Final Report, HDR | HLB Decision Economics Inc., February 2008.
[12] Economic Analysis of Avoiding Additional Truck Traffic with the Implementation of Colton Crossing.

and the supplemental economic analysis of avoiding additional truck traffic are located in the appendices.

The total public benefit of the project (i.e., benefits that accrue to the general public and to non-railroad businesses and their employees) on a 2008 present value basis is expected to be approximately $707 million (in year 2007 dollars). Multi-state benefits include inventory travel time savings and various benefits (operating cost savings, highway accident cost savings, highway maintenance cost savings, oil import savings, and environmental cost savings) derived from allowing more freight to be shipped by rail instead of being shipped by truck. Although the analysis of the project's ability to avoid additional truck traffic suggests that the Colton Crossing project would have a relatively small impacts on the amount of freight that might be shipped by trucks (in the base case, the amount of freight shipped by trucks that could be avoided represents less than 0.6% of current truck traffic on the origin-destination pairs considered in the analysis), the time savings generated by the project combined with the high volumes on these routes results in significant impacts. The remaining benefits would be realized solely within the State of California, and represent a savings in local impacts caused by the at-grade crossing. Exhibit 4-2 summarizes the project benefits.[13]

Exhibit 4-2: Total Discounted Value of Benefits

#	Benefit	Total Discounted Value in Base Case (2007 $M)	Total Discounted Value with 3.5-hour Savings Post-2020 (2007 $M)
1	Travel Time Savings for Vehicles from Reduced Delay at Rail-Highway Crossings	$219.7	$219.7
2	Vehicle Operating Costs Savings from Reduced Time-in-Queue at Rail-Highway Crossings	$21.7	$21.7
3	Environmental Savings from Reduced Time-in-Queue for Vehicles at Rail-Highway Crossings	$3.1	$3.1
4	Environmental Savings from Reduced Train Delay at Colton Crossing	$16.9	$16.9
5	Inventory Travel Time Savings for Trains from Reduced Delay at Colton Crossing	$241.7	$241.7
6	Truck Vehicle Operating Cost Savings (from Avoidance of Additional Truck Traffic)	$107.9	$139.8
7	Highway Accident Cost Savings (from Avoidance of Additional Truck Traffic)	$70.3	$95.3
8	Highway Maintenance Cost Savings (from Avoidance of Additional Truck Traffic)	$3.9	$5.1
9	Economic Cost of Oil Import Savings (from Avoidance of Additional Truck Traffic)	$6.4	$8.3
10	Environmental Cost Savings (from Avoidance of Additional Truck Traffic)	$15.1	$19.5
TOTAL		$706.7	$771.1

Due to rounding, the total amount may deviate slightly from the actual total.

As noted in earlier sections, the project is expected to generate many positive impacts, which are identified in Exhibit 4-3. Impacts 1-12 present various metrics relating to the project's effects on reducing delay at 24 rail-highway grade crossings analyzed in the 2008 Public Benefit

[13] A sensitivity test was performed to assess the impacts on the net present value of benefit categories 6-10 if the total network travel time savings generated by Colton Crossing amounted to 3.5 hours per train in the years beyond 2020. The base case assumed 2.5 hours of total savings per train in the years beyond 2020. With the exception of Exhibit 4-2, all figures in the application reflect the base case.

study. Impacts 13-17 represent metrics identified in the analysis of the project's impacts on multi-state truck travel (allowing this freight to be shipped by rail). Finally, impacts 18-23 represent time savings and emissions reductions associated with eliminating delays incurred at the crossing.

Exhibit 4-3: Selected Impacts

Impact	Impact Name	Average Impact per Year After Project Completion
Vehicle Metrics		
1	Average Reduction in Delay for Vehicles, (passenger-hours)	2,916,539.0
2	Average Reduction in Time-in-Queue for Vehicles, (hours)	2,436,996.0
3	Average Reduction in HC from Vehicles, (tons)	2.8
4	Average Reduction in CO from Vehicles, (tons)	218.2
5	Average Reduction in NO_X from Vehicles, (tons)	273.2
6	Average Reduction in PM from Vehicles, (tons)	4.2
7	Average Reduction in CO_2 from Vehicles, (tons)	32,494.7
8	Average Reduction in VOC from Vehicles, (tons)	21.9
9	Average Reduction in SO_2 from Vehicles, (tons)	1.7
10	Average Amount of Gasoline Saved from Vehicles, (gallons)	907,590.0
11	Average Amount of Diesel Saved from Vehicles, (gallons)	79,060.0
12	Average Amount of Oil Saved from Vehicles, (gallons)	101,583.0
13	Average Amount of Diesel Saved from Avoiding Additional Truck Traffic (gallons)	2,061,343.1
14	Average Amount of Oil Saved from Avoiding Additional Truck Traffic, (gallons)	2,613,272.8
15	Average Number of Additional Trucks Avoided, (trucks)	9,506
16	Average Number of Truck Miles Avoided, (miles)	14,429,402.0
17	Average Number of Ton-Miles Shipped Via Truck Avoided, (ton-miles)	194,796,927.1
Train Metrics		
18	Average Reduction in Freight Train Delay, (hours)	74,852.0
19	Average Reduction In HC from Locomotives, (tons)	42.8
20	Average Reduction in CO from Locomotives, (tons)	146.1
21	Average Reduction in NO_X from Locomotives, (tons)	67.4
22	Average Reduction in PM from Locomotives, (tons)	5.8
23	Average Reduction in CO_2 from Locomotives, (tons)	23,371.0

With total project benefits equaling nearly $707 million on a present value basis, and the present value of project construction costs estimated to be approximately $99.7 million, the project is expected to generate a surplus of approximately $607 million. The project yields a benefit/cost ratio of approximately 7.1. Exhibit 4-4 summarizes the benefit-cost analysis results.

Exhibit 4-4: Project NPV and Benefit/Cost Ratio

Category	Value
Net Present Value of Project (2007 $ Millions)	$606.7
Benefit/Cost Ratio (PV Benefits/PV Costs)	7.1

Summary of Benefit-Cost Analysis Assumptions

In the 2008 benefit-cost analysis, the present value (PV) of public construction costs were estimated at $52.7 million, while the PV of private construction and private incremental O&M costs were estimated at $47.0 and $0.3 million, respectively. Public costs were discounted at a 7% real discount rate, while private costs were discounted at a 9.5% real discount rate (consistent with the Surface Transportation Board average regulatory cost of capital). Exhibit 4-5 summarizes the analysis's key assumptions, and additional detail can be found in both the Public Benefit study and the supplemental economic analysis of avoiding additional truck traffic with the implementation of Colton Crossing documents.

Exhibit 4-5: Key Assumptions Used in the Benefit-Cost Analysis

BCA Category	TIGER Guidance	Assumption Used for the Colton Crossing BCA
Discount Rate for Future Benefits	7%	7%
Discount Rate for Future Public Costs	7%	7%
Discount Rate for Future Private Costs[14]	N/A	9.5%
Value of a Statistical Life (VSL) (2009 $)	6,000,000	6,000,000
MAIS 1 (fraction of VSL)	0.0020	0.0020
MAIS 2 (fraction of VSL)	0.0155	0.0155
MAIS 3 (fraction of VSL)	0.0575	0.0575
MAIS 4 (fraction of VSL)	0.1875	0.1875
MAIS 5 (fraction of VSL)	0.7625	0.7625
MAIS 6 (fraction of VSL)	1.0000	1.0000
Monopsony Component of Oil Imports (2007 $)	$0.266	$0.266
Price Shock Component of Oil Imports (2007 $)	$0.116	$0.116
CO (value per ton)	$-	$70
VOC (value per ton)	$1,700	$1,700
NO_X (value per ton)	$4,000	$4,000
PM (value per ton)	$168,000	$168,000
SO_2 (value per ton)	$16,000	$16,000
CO_2 (value per ton)	$33	$33
Truck Variable Operating Costs/Mile (2007 $)	N/A	$1.16
Net Highway Maintenance Costs/Mile (2007 $)	N/A	$0.0032
Freight Traffic Growth Rate	N/A	Global Insight GDP Forecast
Highway Accident Rates	N/A	Cal-B/C Standard Rates

While the economic analysis generated an extremely high B/C ratio, several key benefits were not included in the quantitative benefit-cost analysis generally due to data limitations and challenges associated with measuring these benefits in terms that lend themselves to benefit-cost analysis. Project benefits that were not quantified in the benefit-cost analysis include:

- Benefits of reducing noise for local residents
- Benefits of less congestion (due to the need for fewer trucks)
- Benefits of more reliable shipping times
- Benefits to U.S. ports (Los Angeles and Long Beach)
- Benefits to railroads

[14] According to the Surface Transportation Board, the Class I average regulatory cost of Capital for 2006 was 12 percent. This was adjusted to a real discount rate of 9.5% and was used to discount the value of future costs incurred by the private railroads in the 2008 Public Benefit Study.

- Benefit of potential capacity for additional passenger trains

Further, the analysis of rail-to-truck diversion only considered the impacts of railway congestion caused by Colton Crossing, and it did not include the additional diversion to heavy trucks that might be necessary if an at-grade Colton Crossing reached a capacity limit at some point in the future.

4.3 Evaluation of Project Performance

Caltrans is committed to monitoring and reporting the actual project impacts consistent with the guidelines of the American Recovery and Reinvestment Act of 2009. Further, Caltrans will also analyze and prepare a Final Delivery Report (within six months of project completion) that compares estimated versus actuals for the project's capital costs, implementation schedule, scope, and performance outcomes. The plan for evaluating of project performance is outlined further in the TCIF Accountability Implementation Plan.[15]

4.4 Job Creation & Economic Stimulus

Job Creation and Economic Stimulus Overview

The grade separation of Colton Crossing is expected to create significant near-term economic benefits for the San Bernardino County area, the State of California, and other parts of the nation. An analysis of the economic impacts stemming from the project using Bureau of Economic Analysis (BEA) RIMS II multipliers was used to determine the quantity and industry composition of benefits generated by the project. Short-term job creation, earnings, and economic output were estimated.

Methodology Summary

1. Each capital cost category was classified according to industrial sectors (using NAICS industry codes).
2. BEA RIMS II multipliers that most closely reflected each of the industrial sectors were identified.
3. The RIMS II multipliers were then combined with each industry category to estimate the overall economic impact of the project.

Most of the benefits accruing to the County as a result of the project arise from an increase in capital construction spending in the region. Project expenditures would represent a short-term increase in demand for engineering and technical services, as well as construction-related labor and materials. Economic multipliers from the BEA were applied to the spending increase to estimate three types of impacts:

- **Direct** impacts represent new spending, hiring, and production by civil engineering construction companies, rail transportation companies, and professional, scientific and technical companies working on the project.
- **Indirect** impacts result from inter-industry purchases necessary to support the increase in production from the above industries. All industries producing goods and services consumed by construction, service, and technical industries will also increase production and possibly hire new workers to meet the additional demand.
- **Induced** impacts stem from the re-spending of wages earned by workers/households benefitting from the direct and indirect activity. If an increase in demand leads to new industrial employment and earnings, workers in these industries will spend some portion of their increased earnings at local retail shops, restaurants, and other places of commerce, further stimulating the local economy.

[15] Caltrans TCIF Accountability Implementation Plan

The results of the economic impact analysis are shown below in Exhibit 4-6.

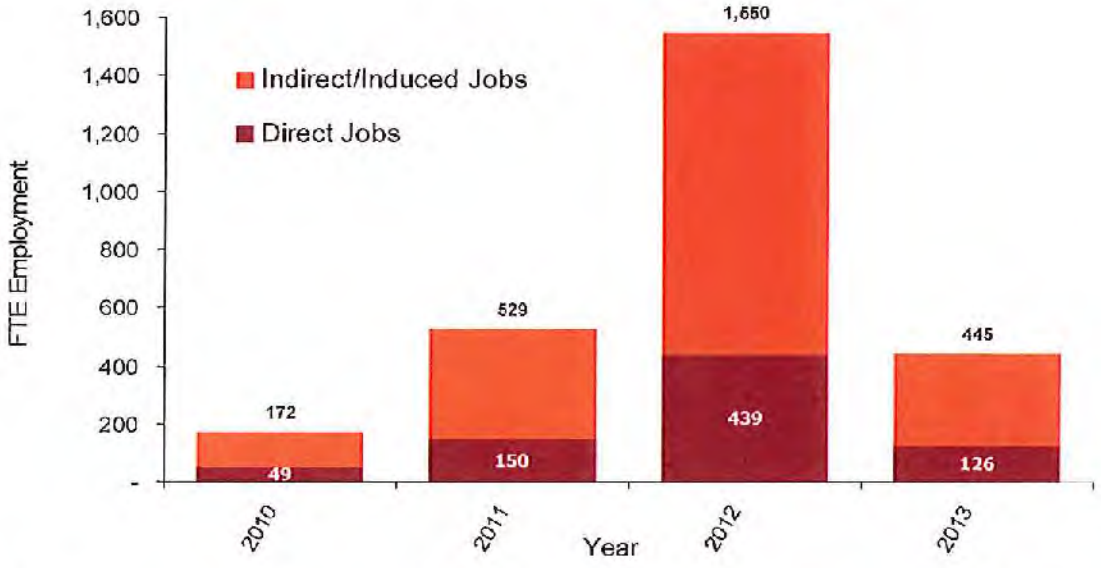
Exhibit 4-6: Summary of Jobs Creation and Near-Term Economic Stimulus

Impact	Annual Average (2010-2013)
Direct Impacts	
Output ($ millions)	$37.0
Employment (# jobs in FTE equivalents)	191
Earnings ($ millions)	$9.9
Total Impacts (Direct, Indirect, Induced)	
Output ($ millions)	$91.9
GDP ($ millions)	$50.4
Employment (# jobs in FTE equivalents)	674
Earnings ($ millions)	$30.7

Note: Figures are presented in year 2007 dollars

The Colton Crossing project is expected to generate significant economic benefits in the region, beginning in year 2010. An estimated average of 674 total jobs will be created annually by the project, including an average of 191 direct jobs per year. Exhibit 4-7 shows the profile of full-time employment generated by the project's construction. At the peak of construction spending in the first quarter of 2012, approximately 1,916 full-time equivalent persons are employed as a result of the project, including 543 direct jobs.

Exhibit 4-7: Construction Period Employment Profile



The total economic output generated by the project is expected to amount to $91.9 million per year, including $30.7 million in direct output.[16]

[16] Figures are presented in year 2007 dollars.

Job Creation in Economically Distressed Areas (EDA)

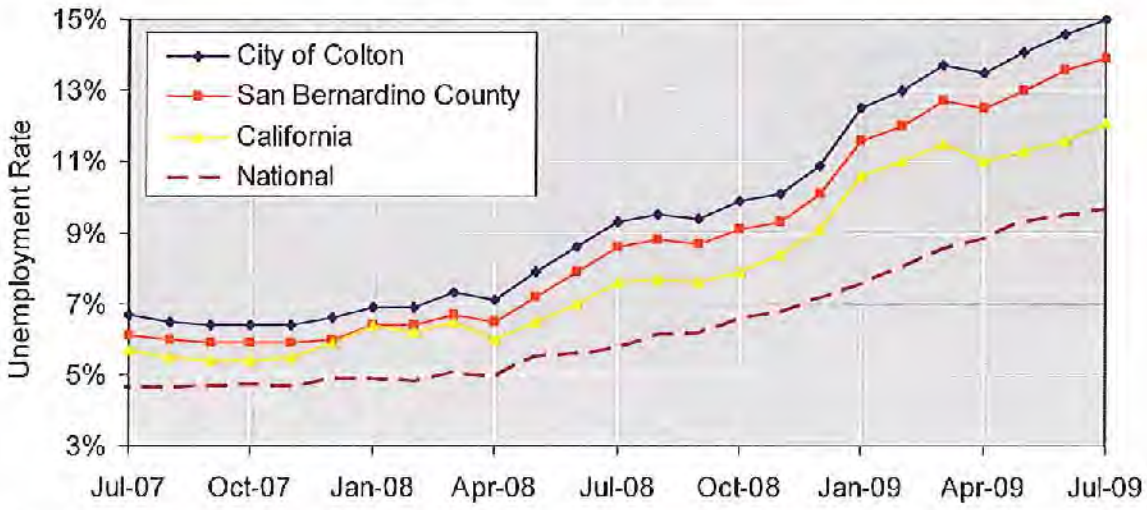
Considering that San Bernardino County (the county in which the Colton Crossing is located) is an Economically Distressed Area based on both per capita income and unemployment statistics, this project will generate considerable benefits for low-income workers.

The unemployment rate in the Riverside-San Bernardino-Ontario MSA was 14.3% in July 2009, up from a 13.9% in June 2009 and above the year-ago estimate of 8.9%.[17] Trade, transportation, and utilities decreased by 20,100 jobs between July 2008 and July 2009, down 6.9%. County-level unemployment in July 2009 was 13.9% in San Bernardino County,[18] compared with a national average of 9.7%.[19] San Bernardino County unemployment is currently 4.2 percentage points above the national average, and the County's 2007 per capita income is less than 73% of the national average.[20] Further, the County's foreclosure rate (as of January 2009) is more than twice the state average, and more than five times the national average. The City of Colton's statistics are even worse—*Colton's unemployment rate was 15.0% in July 2009*. Recent statistics are summarized in Exhibits 4-8 and 4-9.

Exhibit 4-8: Economically Distressed Area Statistics

Metric	San Bernardino County	United States	California
Unemployment Rate (July 2009)[21]	13.9%	9.7%	12.1%
2007 Per Capita Income	$28,024	$38,615	$41,805
Foreclosure Rates (Jan 2009)[22]	1.23%	0.21%	0.58%

Exhibit 4-9: Unemployment Rates



It can reasonably be expected that a substantial amount of the project's economic benefits will be received by local businesses and laborers. These jobs can also be expected to be of a

[17] Nine of 11 nonfarm industries recorded month-over declines. A decline of 2,900 jobs was also seen in wholesale trade, down 7%.
[18] http://www.calmis.ca.gov/htmlfile/county/sbern.htm
[19] http://data.bls.gov/PDQ/servlet/SurveyOutputServlet
[20] http://www.bea.gov/regional/reis/crius.cfm; and http://bber.unm.edu/econ/us-pci.htm
[21] Not seasonally adjusted. The 24-month average unemployment rates (August 2007 – July 2009) for San Bernardino County and the U.S. are 8.95% and 6.46%, respectively.
[22] http://www.realtytrac.com/ContentManagement/PressRelease.aspx?ItemID=5821

moderate to high salary, as most consist of professional services, construction labor, civil engineering, and other technical occupations. The Colton Crossing project clearly has potential to improve the economically distressed position of the County and the City.

Equal Opportunity
Funding agreements will be administered by Caltrans, which conforms to all employment opportunity laws. Caltrans requires all contractors with contracts receiving federal-aid funds of $10,000 or more to complete an Annual Equal Employment Opportunity Report (FHWA Form 1391). Within the Division of Construction, Caltrans employs seven labor compliance managers to ensure that all workers are paid specified prevailing wages and are allowed to work in an equal opportunity environment free of harassment and discrimination.

The railroads, who will administer the project construction process, will also include equal opportunity actions to ensure that targeted workers are included in the project's employment opportunities. For example, Union Pacific is a member of the DirectEmployers Association, a non-profit organization that ensures that job opportunities are made available to diversity and niche workers, including military veterans. It also hosts a rapid re-employment initiative for displaced workers. UP has a long-standing, strong relationship with the National Association of State Workforce Agencies and the state Urban Leagues. These organizations link worker and employer services together to help employers connect disadvantaged workers with jobs.

4.5 Quick-Start Activities

Project Schedule
The Colton Crossing project has already made several advancements in the project development process. Initial public hearings have already been held and support has been registered from key state and local groups. Further, it has been cited as one of the state's high-priority projects in multiple reports. A preliminary feasibility study was completed in December 2006 and delivered to SANBAG by the ACTA. In April 2008, the CTC adopted a 79-project program that included Colton Crossing as part of the state's TCIF program.

Preliminary engineering has begun and 30 percent plans are expected by late 2009. The state environmental review process is underway, including an evaluation of alternatives that is expected to validate the recommended alternative identified in the ACTA feasibility study. These reviews are expected to be completed in early 2010. Once the project completes 30 percent of design and the environmental impact review process is complete, the project could be implemented on an accelerated basis. Permitting and design of track and structures is anticipated to be completed in June 2011. Utility relocation is expected to begin in March 2011, and construction (including grading and drainage work) is anticipated to start in September 2011. Bridge construction would commence in late 2011, with final track and signal work beginning in late 2012. The project is expected to be completed in late 2013.

Regarding the timing of direct on-project jobs, 35 direct project jobs are expected in the first quarter of 2010, followed by 42, 50, and 69 direct jobs in the second, third, and fourth quarters of 2010. Final design would start in February 2011, and 75 to 107 positions will be required through June 2011. Design completion and utility relocation would be performed from July 2011 to October 2011, at which time approximately 152 employees would be required. Contractor work on grading and bridges would be ramping up in November 2011, with between 265 and 543 direct positions estimated to be required each month between November 2011 and September 2012. As track work is completed and signal construction starts, on-project jobs would ramp down from 241 jobs in October 2012 to 123 jobs in the final quarter of 2013.

Environmental Approvals

Only two environmental approvals are needed for this project:

- The Environmental Impact Report (EIR) is a state requirement and the draft EIR is estimated to be complete by February 2010.
- Assuming the receipt of a TIGER Grant, a Finding of No Significant Impact (FONSI) is expected to be received from the cognizant federal agency by October 2010.

Legislative Approvals

In 2006, the voters of California approved The Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, otherwise known as Proposition 1B, on November 7, 2006. Within this $20 billion bond act, the $2 billion TCIF was created for infrastructure improvements along federally-designated "Trade Corridors of National Significance." In 2008, Caltrans submitted the Colton Crossing grade separation project to the California Transportation Commission, which resulted in programming $97.3 million of TCIF funds to the project. No additional legislative approvals are required for the project to begin construction.

State and Local Planning

The Project is included in the current STIP, the state rail plan, and the fiscally-constrained long-range plan for the region (known as the SCAG Regional Transportation Plan).[23] See Section 9 (Index of Websites for Supporting Information) for the specific documents.

One additional state requirement required for the Trade Corridor Improvement Funds is a Project Baseline Agreement signed by the railroads, SANBAG, Caltrans, and the California Transportation Commission. A Project Baseline Agreement is needed before construction can begin, and unless a Baseline Agreement is reached by March 2010, the TCIF funds can be reprogrammed to other projects. Caltrans and the railroads will finalize the Baseline Agreement by March 2010 if the project receives a TIGER Grant.

Technically Feasibility

The Colton Crossing will incorporate the latest developments in railroad technology, meeting all AREMA design standards and incorporating concrete ties, welded rail and Centralized Traffic Control (CTC). The signal and interlocking systems will incorporate Positive Train Control (PTC) as required by the recent federal mandate contained in the Rail Safety Improvement Act of 2008. The preliminary engineering completed to date has not identified any "fatal flaws" or obstacles to construction. Preliminary engineering has included the development of horizontal and vertical alignments and preliminary structural plans to determine project cost estimates. The project is located adjacent to the existing Union Pacific tracks and is adjacent to the Interstate 10 freeway, and prior construction has not encountered any adverse soil conditions.

Financial Feasibility

The Colton Crossing project is a unique example of public-private partnership. As mentioned in Section 3 (Grant Funds), the state has programmed nearly half the funding through the TCIF program and the railroads have committed to 29% of the capital costs. In total, over 78% of the needed funds are in place, and only a TIGER Grant is required to fill the gap (22% of the overall

[23] Although the California State Rail Plan (2007-08 to 2017-18) does not include a capital program for freight rail projects, the Colton Crossing grade separation project is listed as one of the eight "key required freight projects" (see figure 16A). Further, Colton Crossing is identified as one of three freight chokepoints that should be addressed in the state (see p.208).

financial package). Upon receiving the TIGER Grant award, the project stands ready to begin implementation immediately.[24]

That said, there is a significant risk of financial infeasibility if the TIGER Grant is not received. The remaining funds need to be secured when the TIGER Grant award decisions are announced in order to help secure a Baseline Agreement with UP and BNSF. Without a Baseline Agreement by February 2010, the state may reprogram the $97.3 million in TCIF funds for other uses. In fact, the State's current financial commitment to this project is dependent upon the approval of this TIGER Grant application. Therefore, this application does not only depend on securing the remaining funds necessary, but also to secure the state funds already in place.

Assuming the project is successful with securing a TIGER Grant, the railroads are committed to delivering the project within budget and on schedule—and they have significant incentives to do so. In the event that cost overruns were to occur, the public's contribution would be capped, as the private-sector partners would be responsible for 100% of any cost overruns. Nevertheless, the project cost estimate includes 25% contingency reserves and five percent annual inflation through the end of construction. Both Caltrans and the railroads will use their rigorous program management tools and approaches to monitor and manage expenditures. All parties will work to contain costs.

Obligation of Funds

All federal (TIGER) funds could be awarded before September 2011. The construction schedule anticipates that $75 million could be spent by February 2012, and that all TIGER funds requested ($43.8 million) could be outlaid before February 2012 if the TIGER Grant funded many of the early project costs. Exhibit 4-10 shows the projected cash flow (outlay) spending by calendar quarter.

[24] Although the state has encountered recent cash flow challenges for the General Fund, the project's TCIF funding will be available and TCIF bonds will be able to be issued when needed. BNSF and UP will fund their financial commitments through their regular operating cash flow.

Exhibit 4-10: Project Cash Flow (Outlay) Projections

Year/Quarter	Quarterly Spending ($000s)	Cumulative Spending ($000s)
2009 Q4	$900	$900
2010 Q1	$2,233	$3,133
2010 Q2	$2,700	$5,833
2010 Q3	$3,200	$9,033
2010 Q4	$4,440	$13,473
2011 Q1	$4,850	$18,323
2011 Q2	$6,904	$25,227
2011 Q3	$9,850	$35,077
2011 Q4	$17,143	$52,220
2012 Q1	$35,067	$87,287
2012 Q2	$33,630	$120,917
2012 Q3	$29,230	$150,147
2012 Q4	$15,594	$165,741
2013 Q1	$5,330	$171,071
2013 Q2	$8,097	$179,168
2013 Q3	$11,189	$190,357
2013 Q4	$7,943	$198,300
TOTAL	**$198,300**	

5.0 Secondary Selection Criteria

5.1 Innovation

Colton Crossing was originally constructed in 1882. While railroad technology has advanced in the intervening 127 years – with diesel locomotives replacing steam, electrical interlockings replacing manual controls, and the introduction of 100+ car double-stacked container unit car trains – the physical arrangement of the Colton crossing has not changed. This obsolete configuration limits the safety, capacity, speed and reliability of the rail system. By improving reliability and travel times, this project will support further use of service innovations associated with intermodal railroading.

The innovation in the proposed project is not in new technology—grade separations of major rail junctions have been constructed for decades. The design approach, however, is innovative from the perspective of sharing resources to extract the maximum value and minimize negative impacts. The proposed design will utilize existing railroad right-of-way plus right-of-way from the side slope area of the parallel Interstate 10 (owned by Caltrans) for the construction of an embankment and the flyover structure. This approach will ensure that no private property will need to be required and freight traffic will not need to be diverted. The completed construction with all the latest features of railroad track and signal systems (including Positive Train Control, which will be implemented on the rail lines as part of a separate project) will finally bring Colton Crossing up to 21st Century standards.

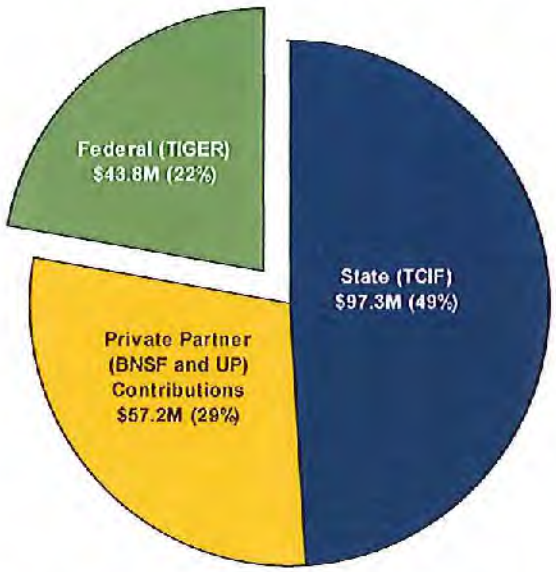
5.2 Partnership

Financial Partnership

To date, the development of the project has been a tremendous example of state/local/private cooperation. With the award of a TIGER Grant, it will be a model for federal, state, local, and private-sector partnership.

The Colton Crossing project represents a significant financial partnership and an incredible opportunity for the federal government to make a meritorious project happen. The State of California's contribution represents nearly half of the project cost, and the combined private-sector contributions from two (traditionally competing) Class I railroads represent more than one-quarter of the project cost. *Non-federal sources represent more than 78% of the project funding*. Exhibit 5-1 illustrates the financial contributions by source.

Exhibit 5-1: Financial Partnership



Jurisdictional and Private-Partner Collaboration

The Colton Crossing project has also engaged a wide range of stakeholders and jurisdictions. Efforts have been coordinated with stakeholders such as:

- Caltrans
- Union Pacific
- BNSF
- SANBAG
- The Riverside County Transportation Commission
- The Los Angeles County Metropolitan Transportation Authority
- The Orange County Transportation Authority
- The Southern California Association of Governments (SCAG)
- The Ports of LA/Long Beach
- The City of Colton

SANBAG is the lead agency to manage public involvement, and it is also producing the Project Report and Environmental Impact Report. Many of these entities are outside the immediate

project area but they recognize that Colton Crossing's impacts are widespread. The Alameda Corridor Transportation Authority performed the initial feasibility study, and the Ports of Los Angeles and Long Beach have an interest in ensuring there is an efficient landside transportation network that enables fluid movement of its freight from the maritime ports to destinations inland.

Non-Profit Groups
The project partners have also partnered with non-profit groups such as the DirectEmployers Association and the National Association of State Workforce Agencies to ensure that job opportunities are made available targeted workers. As an example of their activities, the DirectEmployers Association hosts a rapid re-employment initiative for displaced workers. UP is also working with the National Association of State Workforce Agencies and the state Urban Leagues, which strive to help employers connect disadvantaged workers with jobs.

6.0 Federal Wage Rate Certification

UP has signed the federal wage rate certification stating that it will comply with Subchapter IV of Chapter 31 of Title 40 of the United Stated Code. See the attached certification.

7.0 NEPA Requirements

In the event that this project is awarded a TIGER Grant, a federal NEPA evaluation will be required. An Environmental Assessment (EA) may be needed, which could take up to six months. The project schedule anticipates that the NEPA process will begin (with scoping) in April 2010 and conclude by October 2010, drawing heavily on work already done under the state environmental process. It is anticipated that the project will receive a Finding of No Significant Impact (FONSI), although there may be a path under which a Categorical Exclusion is possible.

8.0 Environmentally-Related Federal, State, and Local Actions

The state's environmental impact review process is currently underway, and the draft Environmental Impact Report (EIR) is expected to be complete by February 2010. No private property would be taken for the construction of the project and the only right-of-way acquisition needed for the project is an approximately 40-foot wide strip of state-owned land that is part of the Interstate-10 right-of-way (Caltrans has agreed to convey the right-of-way to the project). There is a remote potential that an endangered species could inhabit the area (the Delhi Sands fly is found in parts of San Bernardino and Riverside Counties), however, field surveys underway (in the summer of 2009) have thus far indicated that this species is not expected to be found in the project area. No additional environmentally related actions are anticipated to be needed.

9.0 Index of Websites for Supporting Information

California Transportation Commission – Adoption of the TCIF Program and Allocation of Funds:
http://www.catc.ca.gov/programs/TCIF/Adopted_TCIF_Program_041008.pdf

Caltrans TCIF Accountability Implementation Plan:
http://svdtsucp.dot.ca.gov:8084/bondacc/documents/TCIF%20Accountability%20Plan_bls.pdf

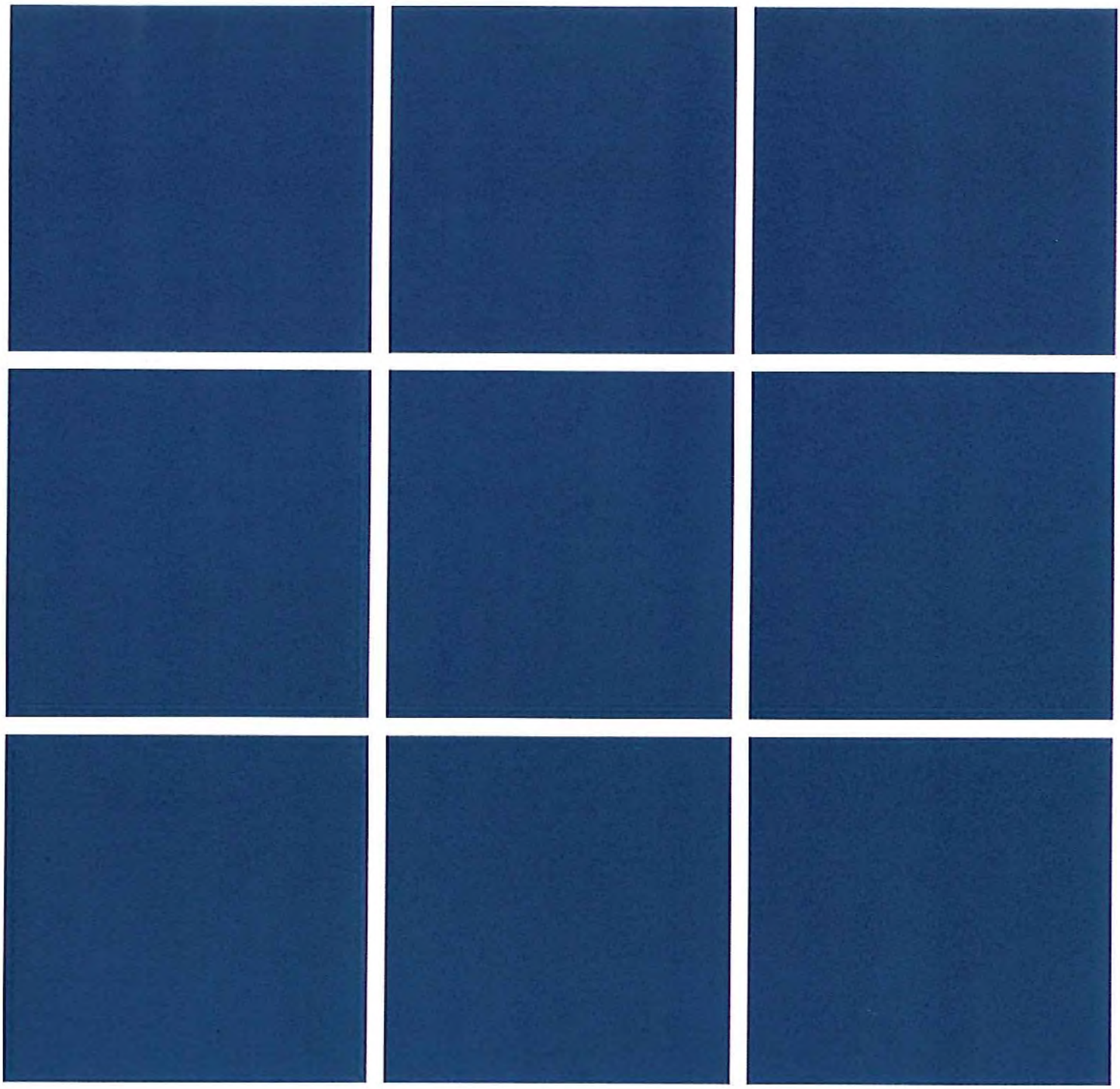
California STIP: http://www.catc.ca.gov/programs/stip.htm

California State Rail Plan: http://www.dot.ca.gov/rail/go/dor/california-state-rail-plan/index.cfm

Final 2008 Regional Transportation Plan (RTP) - Supplemental Report:
http://www.scag.ca.gov/rtp2008/pdfs/finalrtp/reports/fFinance_AppF_01_BusinessCase.pdf
http://www.scag.ca.gov/goodsmove/

Alameda Corridor Transportation Authority (ACTA) Feasibility Study on the Colton Crossing Grade Separation: http://www.acta.org/projects/projects_completed_CCFS.asp

Multi-County Goods Movement Action Plan (MCGMAP):
http://www.dot.ca.gov/hq/tpp/offices/ogm/index_files/MCGMAP_Executive_Summary.pdf



Caltrans

November 6, 1998
Side Letter No.3

Gentlemen:

During negotiations the parties spent considerable discussion concerning the intent and meaning of NOTE 1 of Article I. It was agreed that further detail would be provided in a side letter explaining how different types of operations would be affected.

Therefore, the following is meant to give further definition to the NOTE.

Road Switchers: Road Switcher agreements in the controlling CBA provide for a 25 mile limit unless specifically provided otherwise. A road switcher that goes on duty inside the Hub and covered by the 25 mile provisions, would be limited by those provisions even though the 25 miles would take the assignment into the adjoining Hub. For example, a road switcher at Yermo (LA Hub assignment) would therefore be limited to 25 miles from the station limits in either direction. Similarly a road switcher that goes on duty in another Hub may work to its limits even if those limits include part of the LA Hub.

Locals on duty inside the Hub: Current locals that go on duty inside the Hub may continue to operate to points outside the Hub. New locals that go on duty in the Hub that will work in two or more Hubs will be established in accordance with CBA provisions including Article IX national ID provisions.

Locals on duty outside the Hub: Current locals that go on duty outside the Hub may continue to operate to points inside the Hub. New locals that go on duty in the Hub that will work in two or more Hubs will be established in accordance with CBA provisions including Article IX national ID provisions.

Current Pools and Pools established by Merger Agreements: These pools may operate between their designated terminals even if outside the Hub. At Yermo and Yuma they may operate up to 25 miles beyond the terminal when picking up a train in accordance with the 25 mile provisions of Article VI B 3. Bakersfield pool crews will be governed by their 25 mile provisions for trains East of West Colton but not for trains that are West of West Colton including the area between LATC and the Harbor area.

New Pools created after this Agreement: New pool operations not covered in this implementing Agreement whether between Hubs or within the Hub shall be handled per Article IX of the 1986 National Arbitration Award.

Extra Boards: LA Hub extra boards may go as far as Santa Barbara on the Coast Line, as far as Hivolt on the line to Bakersfield from West Colton and Palmdale from LATC and as far as Kelso towards Las Vegas to perform hours of service relief. The Yuma extra board may go as far as Niland in the LA Hub to perform hours of service relief.

NOTE: It is not the intent to supersede the provisions of 3(c) of Article 6 of the controlling CBA. Hours or service relief required west of M.P. 667 (Niland) will continue to belong to the West Colton Pool.

Example 1: A road switcher on duty at Yermo may work in any direction up to the limits of its radius as set by the road switcher agreement without infringing on the rights of Salt Lake Hub crews.

Example 2: A West Colton pool freight crew would continue to operate through freight from West Colton to Yuma and perform the same work as it performed pre-merger.

Example 3: A Bakersfield pool freight crew would continue to operate through freight from Bakersfield to West Colton and perform the same work as it performed pre-merger.

Example 4: LA Hub crews would work the Dolores unit oil train that runs to Mojave and back to the Basin if the home terminal is in the Basin.

Yours truly,

W.S. Hinckley

Agreed:

_____
General Chairman BLE

_____
General Chairman BLE

_____
General Chairman BLE

June 15, 1999
Side Letter No. 2

Gentlemen:

During negotiations the parties spent considerable discussion concerning the intent and meaning of NOTE 1 of Article I. It was agreed that further detail would be provided in a side letter explaining how different types of operations would be affected.

Therefore, the following is meant to give further definition to the NOTE.

Road Switchers: Road Switcher agreements in the controlling CBA provide for a 25 mile limit unless specifically provided otherwise. A road switcher that goes on duty inside the Hub or zone, would be limited by the 25 mile provisions even though the 25 miles would take the assignment into the adjoining Hub or zone. For example, a road switcher at Pratt (Southwest Hub assignment) would therefore be limited to 25 miles from the station limits in either direction. Similarly a road switcher that goes on duty in another Hub or zone may work to its limits even if those limits include part of the Southwest Hub.

Locals on duty inside the Hub: Current locals that go on duty inside the Hub or zone may continue to operate to points outside the Hub or Zone. New locals that operate in more than one Hub or zone shall be established in accordance with Article IX of the 1986 National Award.

Locals on duty outside the Hub: Current locals that go on duty outside the Hub may continue to operate to points inside the Hub. New locals that go on duty outside the Hub and operate into the Hub shall be established in accordance with Article IX of the 1986 National Award.

Current Pools and Pools established by Merger Agreements: These pools may operate between their designated terminals even if outside the Hub or Zone. They may operate up to 25 miles beyond the terminal when picking up a train in accordance with the 25 mile provisions of Article VI.

New Pools created after this Agreement: New pool operations not covered in this implementing Agreement whether between Hubs or zones or within the Hub or zone shall be handled per Article IX of the 1986 National Award.

NOTE: It is not the intent to supersede the provisions of 3,c of Article 6 of the controlling CBA. Hours or service relief required west of M.P. 667 (Niland) will continue to belong to the West Colton Pool.

Yours truly,

W.S. Hinckley

Side letter No. 2 Southwest Hub

Agreed:

General Chairman BLE

General Chairman BLE

General Chairman BLE

General Chairman BLE

CONTRACTS

Laurence P. Simpson

Hornbook Series

Carrier's Exhibit 7
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CHAPTER 9

INTERPRETATION OF CONTRACTS

INTERPRETATION OF CONTRACTS

102. The three primary rules of interpretation are:

1. **Words are to be given their plain and normal meaning; except**
   - **(a) Usage may vary the normal meaning of words.**
   - **(b) Technical words are to be given their technical meaning.**
   - **(c) Where possible, words will be given the meaning which best effectuates the intention of the parties.**
2. **Every part of a contract is to be interpreted, if possible, so as to carry out its general purpose.**
3. **The circumstances under which the contract was made may always be shown. If after applying the primary rules the meaning of the contract is yet not clear, there are secondary rules tending to the same end—to ascertain and effectuate the intention of the parties. They are:**
   1. **Obvious mistakes of writing, grammar or punctuation will be corrected.**
   2. **The meaning of general words or terms will be restricted by more specific descriptions of the subject matter or terms of performance.**
   3. **A contract susceptible of two meanings will be given the meaning which will render it valid.**
   4. **Between repugnant clauses, a possible interpretation which removes the conflict will be adopted.**
   5. **A contract will, if possible, be interpreted so as to render it reasonable rather than unreasonable.**
   6. **Words will generally be construed most strongly against the party using them.**
   7. **In case of doubt, the interpretation given by the parties is the best evidence of their intention.**
   8. **Where conflict between printed and written words, the writing governs.**

Interpretation is the process of determining the meaning of words or other manifestations of intention of the parties in forming their agreement.[1] Rules of interpretation, as developed by the courts as aids in determining the meaning to be attributed to the words or manifestations of the parties, are not conclusive, but are regarded as factors to be considered, and one rule may outweigh another in determining the final result. There are three primary rules of interpretation which are always applicable whether the words used in the contract are clear and consistent or ambiguous and inconsistent.

Primary Rules of Interpretation

(1) The first general rule is that words are to be understood in their plain and normal meaning; and this rule is followed, though the consequences may not have been in the contemplation of the parties.[2] The rule, however, is subject to the qualification that a particular custom and usage, which, as we have seen, may be proved, may vary the meaning of words;[3] and that technical words are to be given their technical meaning.[4] It is also subject to rules which we will

1. Restatement of Contracts, Sec. 226.
2. Thompson v. Trenton Water Power Co., 77 N.J.L. 672, 73 A. 410 (1909); First Nat. Bank v. Nat. Surety Co., 228 N.Y. 469, 127 N.E. 479 (1920); Plano Mfg. Co. v. Ellis, 68 Mich. 101, 35 N.W. 841 (1888).
3. Ante, § 101.
4. "The burden of proof of showing a special or technical or trade meaning is on him who asserts

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now explain, as to giving effect to the intention of the parties.

(2) The cardinal or fundamental rule of interpretation of contracts, to which all others are subordinate, is that a contract could receive that interpretation which will best effectuate the intention of the parties.[5] To ascertain that intention the writing will be read as a whole; [6] and, in the case of several contemporaneously executed instruments relating to the same transaction, all of them will be read together.[7] Intention is not to be collected from detached portions of the agreement; but individual clauses and particular words are to be construed in relation to the main purpose to be effectuated.[8] Moreover, it is the intention that is expressed in the contract that controls, not an intention secretly cherished by one of the parties. "Greater regard is to be had to the clear intent of the parties than to any particular words they may have used in the expression of their intent." [9]

Where the intention clearly appears from the words used, there is no need to go further, for in such cases the words must govern; or, as it is sometimes said, where there is no doubt, there is no need for interpretation.[10] The court will not attempt, under cover of interpretation, to make a new contract for the parties, nor to change a written contract so as to make it express the real intention of the parties different from that expressed in the words thereof.[11]

(3) The surrounding circumstances under which a contract was made may be shown, whether the contract is oral or in writing. If the meaning is not clear, the court will place itself, as nearly as may be, in the position of the parties to the contract,[12] and will consider the circumstances under which the contract was made, the subject matter, the relation of the parties, and the object of the agreement, in order to ascertain their intention; and for this purpose, as we have seen, parol evidence is admissible.[13]

These rules seem to be in conflict with the rule first stated. Taking them together they come substantially to this: that men will be taken to have meant precisely what they

it." Parker J., in American Lithographic Co. v. Commercial Cas. Ins. Co., 81 N.J.L. 271, 80 A. 25 (1911). See also Lloyd v. Kehl, 132 Cal. 107, 64 P. 125 (1901); Mendelson v. Realty Mtg. Corp., 257 Mich. 442, 241 N.W. 154 (1932).

5. W. C. Shepherd Co. v. Royal Indem. Co., 192 F.2d 710 (C.A.Ga.1952); Sattler v. Hallock, 160 N.Y. 291, 54 N.E. 667 (1899); Warrum v. White, 171 Ind. 574, 86 N.E. 959 (1909).

6. Restat. of Contracts, Sec. 235(c).

7. Morgan v. Griffith Realty Co., 192 F.2d 597 (C.A. Okl.1952), certiorari denied 343 U.S. 934, 72 S.Ct. 770, 96 L.Ed. 1342; Hubbard v. R. B. Wallace Co., 201 Iowa 1143, 208 N.W. 730, 45 A.L.R. 1065 (1926); American Gas Co. v. Wood, 90 Me. 516, 38 A. 548 (1897).

8. Washington Const. Co. v. Spinella, 8 N.J. 212, 84 A.2d 617 (1952).

9. Ford v. Beech, 11 Q.B. 852 at 866 (1840).

10. Dwight v. Germania Life Ins. Co., 103 N.Y. 341, 8 N.E. 654 (1886); Abraham v. Oregon & C. Railroad, 37 Or. 495, 60 P. 899 (1900).

11. Sass v. Hank, 108 Cal.App.2d 207, 238 P.2d 652 (1952); Washington Const. Co. v. Spinella, 8 N.J.L. 212, 84 A.2d 617 (1952).

12. Chesapeake & Potomac Tel. Co. v. Murray, 84 A. 2d 870 (Md.1952).

13. Excelsior Needle Co. v. Smith, 61 Conn. 56, 23 A. 693 (1892); Mobile & M. R. Co. v. Jurey, 111 U.S. 584, 4 S.Ct. 560, 28 L.Ed. 527 (1885); Gillett v. Bank of America, 160 N.Y. 549, 55 N.E. 292 (1899); Hull Coal & Coke Co. v. Empire Coke Co., 113 F. 256, 51 C.C.A. 213 (C.C.A.W.Va.1902); McLean v. Windham Light & Lumber Co., 85 Vt. 167, 81 A. 613 (1911). Thus, where a policy of marine insurance excepted the time "while the vessel is at Baker's Island loading," and the vessel was lost while there, but before it had begun to load, it was held, after evidence of the dangerous character of the place, that the intention of the parties was to except the time while the vessel was there for the purpose of loading, and not merely while it was actually loading. Reed v. Merchants Mut. Ins. Co., 95 U.S. 23, 24 L.Ed. 348 (1877). Prior negotiations between the parties may be considered in determining the meaning of an ambiguous contract. Pothoff v. Safety Armorite Conduit Co., 143 App.Div. 161, 127 N.Y.S. 994 (1911).

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have said, unless, from the whole tenor of the instrument, a definite meaning can be collected which gives a broader interpretation to specific words than their literal meaning would bear. The courts will not make an agreement for the parties, but will ascertain what their agreement was, if not by its general purport, then by the literal meaning of its words.

Subsidiary Rules

As subsidiary to the cardinal rule of ascertaining and giving effect to the intention of the parties, there are a number of subsidiary rules which are applied by the courts in the construction of contracts. As said in a Wisconsin case,[14] however, "no rule of construction merely is a strict rule of law. In applying and enforcing any and every contract, especially when reduced to writing, it is the duty of the court to ascertain what the parties really intended by the words used in the instrument, and so-called rules of construction are but aids or suggestions resulting from common experience to the effect that people generally, in arranging and using words, mean thus or so thereby."

(1) Courts will correct obvious mistakes in writing and grammar.[15] Accordingly, words may be transposed, rejected, or supplied, if necessary, to make the meaning clear.[16] This rule includes another, namely, that the punctuation of a document, though it may aid in determining the meaning, will not control or change a meaning which is plain from a consideration of the whole document and the circumstances.

(2) In interpreting a contract the court will restrict the meaning or application of general words by more specific and particular descriptions of the subject matter to which they are to apply. For example, the grant of authority to an agent by written power of attorney may in general terms be very broad, but this is cut down by recitals of specific things the agent may do on behalf of his principal, to other things of the same kind.[17] And where specific terms in a contract contradict the general terms, the specific terms govern.[18] If there is no contradiction, the position of the general and specific clauses may disclose an intention that the general words are intended to broaden, rather than the specific words to cut down, the operative effect. Thus an enumeration of specific things followed by general terms may be so interpreted.[19]

(3) Where a particular word, or the contract as a whole, is susceptible of two meanings, one of which will render the contract valid, and the other of which will render it invalid, the former will be adopted so as to uphold the contract.[20] Thus, where a document was expressed to be given "in consideration of your being in advance" to a person, and it was argued that this showed a past consideration which would not support the promise, the court held that the words "being in advance" might mean a propective advance, and be equivalent to "in consideration of your becoming in advance," or "on condition of your being in advance." [21] So,

14. Per Dodge, J., in Hoffmann v. Eastern Wisconsin Ry. & Light Co., 134 Wis. 603, 115 N.W. 383 (1908).

15. Wilson v. Wilson, 5 H.L.Cas. 40, 66; City of Garden City v. Heller, 61 Kan. 767, 60 P. 1060 (1900); Newbern Banking & Trust Co. v. Duffy, 153 N.C. 62, 68 S.E. 915 (1010). The word "and" may be read "or", or vice versa, to prevent an absurd or unreasonable result. Manson v. Dayton, 153 F. 258 (C.C.A.Colo.1907).

16. Pothoff v. Safety Armorite Conduit Co., 143 App. Div. 161, 127 N.Y.S. 994 (1911).

17. Swift & Co. v. Columbia Ry. Co., 17 F.2d 46, 51 A.L.R. 083 (C.C.A.S.C.1927); Fisher Electric Co. v. Bath Iron Wks., 116 Mich. 293, 74 N.W. 493 (1898); In re Smith's Estate, 210 Pa. 604, 60 A. 255 (1905).

18. Weisberg v. Hunt, 239 Mass. 190, 198, 131 N.E. 471, 473, 474 (1921).

19. Lindeke v. Associates Realty Co., 146 F. 630 (C.C. A.Minn.1906).

20. W. C. Shepherd Co. v. Royal Indem. Co., 192 F.2d 710 (C.A.Ga.1052); Portland Gasoline Co. v. Superior Co., 243 S.W.2d 823 (Tex.1952).

21. Haigh v. Brooks, 10 Adol. & E. 326 (1839).

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also, where a contract is susceptible of two constructions, one of which will render it unlawful as being in violation of law or contrary to public policy, that construction which will render it lawful will be adopted.[22]

(4) Where there are repugnant clauses in a contract and an interpretation is possible which gives effect to all of them, that interpretation is to be adopted. Thus a contract between a creditor and the principal debtor, by which the creditor "releases the debtor but reserves his rights against the surety," is construed not as a release, but as a covenant not to sue.[23] To construe the contract as a release would be to ignore the reservation of right against the surety, since that would be ineffective; whereas in a covenant not to sue, the surety's liability continues.

(5) If possible without going contrary to the manifest intention of the parties, a contract will be interpreted so as to render it reasonable and fair rather than unreasonable and harsh to one of the parties.[24] Thus interpretation which avoids a forfeiture will be adopted where possible.[25] If the terms of the contract itself leaves its meaning in doubt, "the court will ascribe to the parties an intention to enter into a fair agreement, and will adopt the construction which makes the contract equitable." [26]

(6) "Language must be interpreted in the sense in which the promisor knew, or had reason to know, the promisee understood it." [27]

(7) The courts will construe words most strongly against the party who used them.[28] Words in an offer, for instance, will be construed most strongly against the proposer, and words in an acceptance, most strongly against the acceptor; words in a promissory note, most strongly against the maker; words in a policy of insurance, most strongly against the insurer; and words in a conveyance, particularly of exception or reservation, most strongly against the grantor.[29] The principle on which this rule is based has been said to be that a man is responsible for ambiguities in his own expressions and has no right to induce another to contract with him on the supposition that his words mean one thing, while he hopes the court will adopt a construction by which they would

22. Lorillard v. Clyde, 86 N.Y. 384 (1881); Horton v. Rohlff, 69 Neb. 95, 95 N.W. 36 (1903).

23. Kramer v. Morgan, 85 F.2d 96 (C.C.A.N.Y.1936); Dean v. Rice, 63 Kan. 691, 66 P. 992 (1901); Gholson v. Savin, 137 Ohio St. 551, 31 N.E.2d 858, 139 A.L.R. 75 (1941).

24. Woods v. Postal Tel. Co., 205 Ala. 236, 87 So. 681, 27 A.L.R. 834 (1921); Federal Land Bank v. Nicholson, 209 Okl. 512, 251 P.2d 490 (1952).

25. North Carolina Ins. Co. v. Terrell, 227 Ala. 410, 150 So. 318, 89 A.L.R. 1459 (1933); Warfield Natural Gas Co. v. Allen, 248 Ky. 646, 59 S.W.2d 534, 91 A.L.R. 890 (1933).

26. Russell v. Allerton, 108 N.Y. 288, 15 N.E. 391, 13 St.R. 629 (1888); Stoddart v. Golden, 179 Cal. 663, 178 P. 707, 3 A.L.R. 1060 (1919).

27. American Lithographic Co. v. Commercial Cas. Ins. Co., 81 N.J.L. 271, 80 A. 25 (1911).

28. W. C. Shepherd Co. v. Royal Indem. Co., 192 F.2d 710 (C.A.Ga.1952); Gelb v. Haynes Corp., 185 Minn. 295, 240 N.W. 907 (1932); Schaffer v. Hotel & Railroad News Co., 266 Mass. 276, 165 N.E. 389 (1929). Restatement of Contracts, Sec. 236(d).

29. Sharp v. Thompson, 100 Ill. 447 (1896); Waterman v. Andrews, 14 R.I. 589 (1884); Hill v. John P. King Manufacturing Co., 79 Ga. 105, 3 S.E. 445 (1887); Phoenix Ins. Co. v. Slaughter, 79 U.S. 404, 12 Wall. 404, 20 L.Ed. 444 (1871); American Surety Co. v. Pauly, 170 U.S. 160, 18 S.Ct. 563, 42 L.Ed. 987 (1898); Snyder v. Dwelling House Ins. Co., 59 N.J.Law 544, 37 A. 1022 (1897); Wilson v. Cooper, 95 F. 625 (C.C.Neb.1899). The rule does not apply where it would cause a penalty or forfeiture. A condition in a bond, for instance, is construed most strongly against the obligee. Butler v. Wigge, 1 Saund. 65 (1667); Hoffman v. Aetna Fire Ins. Co., 32 N.Y. 405 (1865); Bennehan v. Webb, 28 N.C. 57 (1845); Chicago, B. & Q. R. Co. v. City of Aurora, 99 Ill. 205 (1881). But a grant from the government is construed most strongly against the grantee. Canal Fund Com'rs v. People ex rel. Tibbits, 5 Wend. (N.Y.) 423, 459 (1830); 2 Bl.Comm. 347; Raleigh & G. R. Co. v. Reid, 64 N.C. 155 (1870); Mayor, etc., of Allegheny v. Ohio & P. R. Co., 26 Pa. 355 (1855); Hartford Bridge Co. v. Union Ferry Co., 29 Conn. 210 (1860); Northwestern Fertilizing Co. v. Village of Hyde Park, 70 Ill. 634 (1873), affirmed 97 U.S. 659, 24 L.Ed. 1036; Mayor etc., of City of New

mean another thing more to his advantage.[30] This rule of construction, it is sometimes said, is the last to be resorted to, and is never to be relied on except where other rules of construction fail.[31]

The liability of a guarantor or surety is said to be *stricti juris*, and is to be determined by the strict interpretation of the words used, and cannot be extended by implication. Such contracts are nevertheless to he interpreted reasonably and according to the intention of the parties.[32] And if the contract is fairly susceptible of two interpretations, and the other party has acted upon the interpretation most favorable to his rights, it seems that such interpretation will prevail.[33]

(8) The interpretation which the parties themselves have placed on their contract, as shown by their conduct subsequent to its formation, will have great weight in determining the meaning to be given to doubtful terms and has been said to be "the best evidence of their intention."[34] But where there is no ambiguity and the meaning of the terms used is clear, the fact that the parties have by their subsequent conduct placed an erroneous interpretation upon them will not prevent the court from enforcing the contract in accordance with its terms.[35]

(9) Where a contract is partly printed and partly written, as in the use of printed forms, if there is a conflict between the written and printed portion, the written will control.[36] Typed portions are regarded in the same manner as if written with the pen, within the meaning of this rule.[37]

Terms Implied—Unexpressed Intention

Certain terms, though unexpressed, are imported into the contract by law without proof that they were intended by the parties. Unless a contrary intention was expressed, the law conclusively presumes that they intended to make them a part of their contract. "The unexpressed obligations in these instances, which are implied by law, are those which are inherent in the transaction accord-

York v. Broadway & Seventh Ave. R. Co., 97 N.Y. 275, 281 (1884). It is said, however, that this "rule of construction has been applied to gratuitous grants made by the sovereign of property, franchises, and privileges, upon the solicitation of the grantee," but that it does not apply, "certainly not in its full extent, to grants made for the benefit of the sovereign upon adequate valuable consideration paid to the sovereign for the thing granted." Langdon v. Mayor, etc., 93 N.Y. 129 (1883). And see Proprietors of Charles River Bridge v. Proprietors of Warren Bridge, 7 Pick. (Mass.) 344, 485 (1829), affirmed 61 U.S. (11 Pet.) 420, 9 L.Ed. 773; Garrison v. U. S., 74 U.S. 688, 7 Wall. 688, 19 L.Ed. 277 (1869).

30. Fowkes v. Association, 3 B. & S. 929 (1905); Gillet v. Bank of America, 160 N.Y. 549, 55 N.E. 292 (1899). A party must he deemed to have assented to a contract in the sense in which he knew the other intended it to signify, if the language is capable of that meaning. Cowles Electric Smelting & Aluminum Co. v. Lowrey, 79 F. 331 (C.C.A.Ohio 1897). See also Leete v. Pac. Mill & Mining Co., 88 F. 957 (C.C.Nev.1898), affirmed 94 F. 968; Wood v. Allen, 111 Iowa 97, 82 N.W. 451 (1900).

31. Empire Rubber Mfg. Co. v. Morris, 73 N.J.L. 602, 65 A. 450 (1907).

32. People v. Lee, 104 N.Y. 441, 10 N.E. 884 (1887); Powers v. Clarke, 127 N.Y. 417, 28 N.E. 402 (1891); Hooper v. Hooper, 81 Md. 155, 31 A. 508 (1895); Northern Light Lodge v. Kennedy, 7 N.D. 146, 73 N.W. 524 (1898).

33. Smith v. Molleson, 148 N.Y. 241, 42 N.E. 669 (1896); London etc. Bank v. Parrott, 125 Cal. 472, 58 P. 164 (1899).

34. Balian v. Rainey, 115 Cal.App.2d 11, 251 P.2d 731 (1953); Ford Dodge Co-op. Dairy Ass'n v. Ainsworth, 217 Iowa 712, 716, 251 N.W. 85, 87 (1933); Albert v. Ford Motor Co., 112 N.J.L. 597, 172 A. 379 (1934). Restatement of Contracts, Sec. 235(e).

35. Johnston v. Joint Highway Dist., 138 Cal.App. 450, 32 P.2d 681 (1934); Young v. Illinois Athletic Club, 310 Ill. 75, 141 N.E. 369, 30 A.L.R. 985 (1923); Brainard v. New York Central R. Co., 242 N.Y. 125, 151 N.E. 152, 45 A.L.R. 751 (1926).

36. Thomas v. Taggart, 209 U.S. 385, 28 S.Ct. 519, 52 L.Ed. 845 (1908); Saranac Automatic Machine Corp. v. Duke, 67 F.2d 436 (C.C.A.Ga.1934); City of Chicago v. Weir, 165 Ill. 582, 46 N.E. 725 (1897); Murray v. Pillsbury, 59 Minn. 85, 60 N.W. 844 (1894); Commonwealth Title Co. v. Ellis, 192 Pa. 321, 43 A. 1034 (1899). Restat. of Contracts, Sec. 236(e).

37. Preugschat v. Hedges, 41 Wash.2d 660, 251 P.2d 166 (1953); Heyn v. New York Life Ins. Co., 192 N.Y. 1, 84 N.E. 725 (1908).

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ing to its true nature, and may be regarded as the unexpressed intention of the parties. * * * It is generally said that contracts will be construed according to the intention of the parties. But this means, not only what they did actually intend, but also what, according to the essential nature of the particular transaction, the law considers that they should have intended. No intention can, however, be read into a contract unless it is thus a necessary legal implication. * * * When a particular kind of contract is made, it is presumed that the parties intended to embody all the legal consequences of the act, whether they knew of them or not, unless it can be seen from the language they used that they intended to exclude some of them." [38]

38. Genet v. President, etc. of Delaware & H. Canal Co., 136 N.Y. 593, 32 N.E. 1078 (1893); Rioux v. Ryegate Brick Co., 72 Vt. 148, 47 A. 400 (1900).

This principle is illustrated by an ordinary contract of sale. In all such contracts, in the absence of expression to the contrary, it is conclusively presumed that the seller intended to stipulate that he had the title to the property and the right to sell it. These implied stipulations are frequently called "implied warranties." Though unexpressed, they are imported into the contract by implication of law. The law in force when and where a contract is made forms a part of the contract and the parties are presumed to have entered into their agreement with reference to the existing law, making its provisions a part of their terms.[39]

39. Kentucky Utilities Co. v. Public Service Comm., Ky., 252 S.W.2d 885 (1953).

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ISSUE NO. 3

Can established Interdivisional Service be extended or rearranged under this Article?

Pertinent Agreement Provisions

ARTICLE IX - SECTIONS 1, 3 AND 5 - INTERDIVISIONAL SERVICE

"Section 1 - Notice

"An individual carrier seeking to establish interdivisional service shall give at least twenty days' written notice to the organization of its desire to establish service, specify the service it proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such service.

* * * *

"Section 3 - Procedure

"Upon the serving of a notice under Section 1, the parties will discuss the details of operation and working conditions of the proposed runs during a period of 20 days following the date of the notice. If they are unable to agree, at the end of the 20-day period, with respect to runs which do not operate through a home terminal or home terminals of previously existing runs which are to be extended, such run or runs will be operated on a trial basis until completion of the procedures referred to in Section 4. This trial basis operation will be applicable to runs which operate through home terminals.

* * * *

"Section 5 - Existing Interdivisional Service

"Interdivisional service in effect on the date of this Agreement is not affected by this Article."

Discussion

The threshold question is whether Carriers may extend or rearrange interdivisional service established prior to the effective date of Article IX of the 1986 Arbitrated National

Agreement. It should be noted that the Article IX, Section 2 conditions attached to interdivisional service are more favorable to the Carriers than the terms and conditions in Article VIII of the May 13, 1971 National Agreement. The second but related issue is whether the conditions under which the interdivisional service was previously established are carried forward with the extended or rearranged interdivisional service made pursuant to notice under Section 1 of Article IX.

The record contains, as an example, a dispute which has arisen on the Southern Pacific Transportation Company. Although the Southern Pacific dispute is pending before Arbitration Board No. 468, the proceeding has apparently been held in abeyance until this Committee can provide the parties with some necessary guidance. Under the auspices of Article VIII of the 1971 Agreement, the Southern Pacific established interdivisional service between San Antonio and Ennis through the away from terminal Hearne on March 26, 1986. Ennis and San Antonio are home terminals. This elongated interdivisional service had been superimposed on preexisting interdivisional service between San Antonio and Flatonia and between Flatonia and Hearne. Now, under the auspices of Article IX of the 1986 Agreement, the Southern Pacific seeks to establish interdivisional service between Dallas and San Antonio and between Fort Worth and San Antonio. The Southern Pacific proposes a two pronged extension of the existing interdivisional service through home terminal Ennis.

In addition to the Southern Pacific example, the Carriers provided other instances where new interdivisional service

overlapped or extended existing interdivisional service pursuant to the 1971 Agreement even though Article VIII, Section 4 of the 1971 National Agreement is substantively identical to Article IX, Section 5 of the 1986 Arbitrated National Agreement. The former provision did not impose a restraint on creating new interdivisional service over territory covered by an existing interdivisional agreement. See Public Law Board No. 3695, Award No. 1 (Seidenberg). During the recent round of national bargaining, the parties were aware of the well entrenched past practice. If they wished to deviate from the past practice, the parties would have written unequivocal language in Article IX, Section 5 to the effect that an extension or rearrangement of present interdivisional service could never be construed as new interdivisional service within the meaning of Article IX. Moreover, Article IX, Section 3 clearly evinces the parties' intent that the Carriers could legitimately extend existing interdivisional service. Section 3 refers expressly to "...previously existing runs which are to be extended..." The parties would not have set up a trial basis procedure for implementing an extended run if the Carriers, in the first instance, lacked the authority to propose an extended interdivisional service. Thus, Section 5 of Article IX does not restrict the Carriers from rearranging or extending existing interdivisional service.

The second question is what shall be the terms and conditions that apply to interdivisional service which is extended or rearranged pursuant to Article IX. The Carriers

argue that Section 5 only applies to interdivisional service which remains absolutely intact. The Organization stresses that the conditions in the existing interdivisional service agreement must be preserved and automatically apply to the extended or rearranged service. In our view, the Carriers' construction of Article IX, Section 5 is too narrow while the Organization seeks an overly broad interpretation of Section 5.

Article IX, like its predecessor contract provision, grants a Carrier the right to serve a notice seeking to establish interdivisional service. The Carrier may subsequently establish or refrain from establishing the proposed service. An arbitrated interdivisional run agreement might apply conditions so onerous the Carrier is deterred from instituting the interdivisional service. Since the discretion is vested in the Carrier, a Carrier may not use Article IX as a pretext for taking advantage of the more favorable conditions set forth in Section 2 of Article IX. Section 5 of Article IX bars a Carrier from proposing only a minor modification in an existing interdivisional run with the motive of procuring the more favorable conditions. Thus, Section 5 preserves conditions on existing interdivisional runs or any proposed extended run that is substantially the same as the existing run where the purposeful objective of the extension is to procure the more beneficial conditions in Article IX, Section 2. In resolving the Southern Pacific dispute, Arbitration Board No. 468 should examine the surrounding circumstances and apply Article IX, Section 5 in a manner consistent with our Opinion.

The Committee concludes that the parties must reach a balanced application of Article IX. The Carriers have the right to establish extended or rearranged interdivisional service and it constitutes new service within the meaning of Article IX unless it is a substantial re-creation of the prior interdivisional service designed solely to obtain the more favorable conditions in the 1986 National Agreement.

Answer to Issue No. 3: Yes to the extent consistent with the Committee's Opinion.

DATED: March 31, 1987

Larry D. McFather
Organization's Member

Charles I. Hopkins, Jr.
Carriers' Member

John B. LaRocco
Neutral Member

Brotherhood of Locomotive Engineers and Trainmen

UNION PACIFIC WESTERN LINES & PACIFIC HARBOR LINE, Inc.
1902 Orange Tree Lane, Suite 120
Redlands, CA 92374
(909) 792-1200 • Fax (909) 792-1211

D.W. HANNAH
Chairman

RLC4

February 24, 2013

Certified Mail No. 7012 2920 0000 8557 6295
Return Receipt Requested

Mr. David Foley, Director, Labor Relations
Union Pacific Railroad Company
10031 Foothills Blvd.
Roseville, CA 95747

Org. File Claims E-20800 LABM

Dear Sir,

I have reviewed your letter of July 17, 2013, which purports to serve a Notice under Article IX of the May 19, 1986 National Agreement, of Union Pacific's intent to establish new interdivisional service. Without belaboring other problems with that Notice, it simply *does not create any new interdivisional service*, and is therefore an improper application of Article IX.

Union Pacific's Notice seeks to establish new service: (1) from Yermo to West Colton and (2) from Yuma to West Colton. This is *not* new service. As clearly set forth in the Los Angeles Hub Agreement, created as part of the Union Pacific – Southern Pacific merger, operations were instituted from West Colton to Yermo and from West Colton to Yuma. Union Pacific, in fact and reality, currently operates interdivisional service over the *exact same* territory it seeks to establish as "new" interdivisional service by its Article IX Notice of July 17, 2013. Notably, the mileage of UP's "new" proposed service is *exactly the same* as that of the existing service, i.e., 130 Basic Day miles from West Colton to Yermo, and 198 miles from West Colton to Yuma.

In fact, the Carrier also *currently has the right* to run service all the way from LATC/East Yard to both Yermo and Yuma. Union Pacific – for reasons known to it – has chosen to "zero out" this service instead of utilizing this longer run.

It is transparent that the true purpose of the Carrier's Article IX notice is to change an existing home terminal. This is not a proper nor allowable use of Article IX. The only means for securing a change in home terminal is pursuant to collective bargaining under Section 6 of the Railway Labor Act.

In light of the foregoing, the BLET – while willing to meet and negotiate in good faith – does not recognize the legitimacy of Union Pacific's purported Article IX notice of July 17, 2013, and asks that the Carrier formally withdraw it. Please advise if you intend otherwise.

Sincerely,

D.W. Hannah

cc: Executive Committee (Email)
Mr. P. Tortorice, Local Chairman, Division 5 (Email)
Mr. K. Richards, Local Chairman, Division 56 (Email)
Mr. D. Carroll, Local Chairman, Division 660 (Email)
Mr. R. Sprague, Local Chairman, Division 28 (Email)

UNION PACIFIC RAILROAD COMPANY

Western Region

D. B. Foley Dir. Labor Relations
Tel: (916) 789-6345

10031 Foothills Blvd.
Roseville, CA 95747

July 26, 2013

Carrier File: 920.40-35

Mr. D.W. Hannah
General Chairman BLET
1902 Orange Tree Lane, Suite 120
Redlands, CA 92374

(Sent Via E-mail & US Mail)

Dear Sir:

This letter confirms our July 17, 2013, meeting in San Francisco wherein we discussed the establishment of new interdivisional service in the Yermo/West Colton and Yuma/West Colton transportation corridors. As the newly-issued July 17, 2013 notice outlined, this service was being established pursuant to Article IX "Interdivisional Service" of the May 19, 1986 BLE National Agreement, as amended and in response to certain items of concern BLET had voiced in earlier LABM Interdivisional Service negotiations.

Additionally, this letter responds to yours dated February 24, 2013, received via e-mail on July 24, 2013 referencing BLET's review of the Carrier's July 17, 2013 Interdivisional Notice. Typographical error aside, BLET's correspondence wrongly contends the Carrier's July 17, 2013 Interdivisional Notice and Proposed Draft Agreement *"...does not create any new interdivisional service, and is therefore an improper application of Article IX...."* As will be shown, such contention has been repeatedly and soundly rejected by competent authorities.

An Informal Disputes Committee established pursuant to Article XVI of the May 19, 1986 National Agreement decided a host of issues shortly after the 1986 BLET National Agreement was implemented. Debating those issues before a competent arbitrator were the very framers of the 1986 National Agreement. Among the disputes decided by that Committee was "Issue 3" as it is commonly known. That decision held Carriers clearly have the right to establish, extend or rearrange interdivisional service to obtain the efficiencies contemplated by Article IX. Neutral Member John B. La Rocco states in pertinent part:

"...The Carriers have the right to establish extended or rearranged interdivisional service and it constitutes new service within the meaning of Article XI unless it is a substantial re-creation of the prior interdivisional service **designed solely to obtain the more favorable conditions in the 1986 National Agreement**."

Because the term interdivisional service as used in Article IX includes interdivisional, interseniority district, intradivisional and/or intraseniority district service, Carriers are permitted virtually any operating transformation to enhance general operating efficiency and/or compliment its overall transportation effort providing it meets the tenets of Issue 3. The rearrangement of home terminals can be part of any operating transformation.

In fact, on property Award No. 1 of PLB 3965 addressed this very issue. In that case Union Pacific served an Article IX Notice on a BLET Eastern District General Chairman to establish interdivisional service between Fremont and North Platte, Nebraska. That General Chairman took procedural exception to the notice likewise contending interdivisional service already existed in this territory and the Carrier was barred from so changing this operation under the guise of an Article IX notice. BLET also argued, as do you, the only means available to the Carrier for such change was through Section 6 of the Railway Labor Act. Rejecting BLET's arguments in there entirety Referee Jacob Seidenberg states:

"... The Board finds that it was pursuant to the May 1971 National Agreement that the parties negotiated the December 16, 1971 Agreement and implemented that Agreement on July 1, 1972 by a Notice dated May 1, 1972. These Agreements established the interdivisional service between Council Bluffs and North Platte and eliminated Grand Island as the away-from-home terminal for Engineers of the First and Second Seniority Districts.

"The Board finds no provision in the appropriate terms of the December 16, 1971 Agreement and Implementing Notice of May 1, 1972 that indicates or suggests that the Carrier could not, or was in any way prohibited from or limited in, establishing another interdivisional run within the territorial confines of Council Bluffs and North Platte, subject to the requisite Agreement provisions. It is difficult to hold analytically that there was any contractual prohibition against establishing a run within those confines but not quite as extensive, i. e., Fremont to North Platte and return. ...

*****

"... In summary since the Board finds no probative evidence in the record to show that the Carrier's October 2, 1984 Notice was contractually proscribed, it has no recourse but to conclude that the aforesaid Notice was proper, notwithstanding the December 16, 1971 Agreement provided

for interdivisional service on the territory covered by the October 2, 1984 Notice..."

In the instant case, your conceding the fact compensation was not diminished from an "Article IX" perspective makes the Carrier's case on its face. BLET cannot in any way argue the Carrier's motives are *"solely to obtain to obtain the more favorable condilions in the 1986 National Agreement."* Union Pacific's valid reasons for more efficient and faster service options in this corridor were clearly outlined in its July 17, 2013 Notice.

BLET representatives made clear during previous "LABM" negotiations that certain items were not acceptable and suggested several alternatives for Union Pacific to consider. After listening to BLET and taking into account its issues, factors, concerns and suggestions our operating strategy was modified. As you were advised, our long pool operations between Delores/ICTF and Yermo and Delores/ICTF and Yuma would be reestablished under existing agreement provisions. However that alone does not address all of the required efficiencies. The newly proposed short pool and exlsting long pool arrangements will stabilize the workforce, positively address ongoing and chronic qualification/certification issues inherent to these transportation corridors and solve away from home terminal issues previously experienced and complained of by both parties. Moreover, this operating strategy diminishes BLET's multiple reporting point and excessive limbo and commuting time concerns within the Los Angeles Metropolitan Area. Lastly, the proposed short pool operation does not contemplate operating through Colton which was another issue BLET had with the previous operating strategy.

This letter will also serve as confirmation that the parties will **meet in Las Vegas, Nevada at 8:00 AM on Tuesday August 13, 2013. A conference room has been reserved for the meeting at the Golden Nugget Hotel, 129 East Fremont,** to continue negotiations pursuant to and consistent with your Organization's commitment to ***"...mutually commit themselves to expedited processing of negotiations concerning interdivisional runs,..."*** as set forth in Article X of the November 1, 1991 BLE National Implementing Agreement.

If you have any further questions regarding this please call my office at your convenience.

Yours truly,

D. B. Foley
Director – Labor Relations

CC: Mike Twombly - BLET International VP
mtcotrain@aol.com

CC: Shane Keller - RVP
Ken Hunt – VP HDC
Rod Doerr - Super't
Terry Tate - Gen. Dir. Qual Srv
Gordon Wellington - Dir Fin
Brian McGavock - Super't HDC
Terry Olin - AVP LR
Randy Guidry - Gen Dir LR
Pete Jeyaram - Dir LR
Vanessa Warren - Asst Dir LR
Jay Reilly - Asst Dir LR
Josephine Jordan - Gen Dir CMS
Pat Kenny - Dir CMS
Tony Leazenby - Dir CMS
Cliff Johnson - Sr. Dir Tk

Arbitration Board No. 590

Parties)		Brotherhood of Locomotive Engineers and Trainmen
)		
To)		and
)		
Dispute)		Union Pacific Railroad Company

Organization's Question at Issue:

"Shall the September 26, 2006, proposal submitted by the Company to the BLE (sic) extending switch limits at West Colton from Milepost 541.15 to Milepost 543.1 be adopted?"

Carrier's Question at Issue:

Shall Union Pacific be permitted to extend the east switching limit (Yuma line) at West Colton from Milepost 541.15 to Milepost 543.10, as set forth in its notice of September 26, 2006, and yard engineers performing service in such extended switching limits to be compensated under yard service rules and rates of pay but without additional compensation?

Background:

This dispute involves Union Pacific's notice of its intention to extend the switching limit at its West Colton, California terminal from Milepost 541.15 to Milepost 543.1, served pursuant to Article II of the May 13, 1971 BLE National Agreement. UP has a terminal at West Colton, California, which is at the east end of an area known as the Los Angeles basin. West Colton is a crew change point for crews operating in the Los Angeles basin.

UP bave two routes between Colton and the western portion of the basin (the City of Los Angeles and the LA/Long Beach harbors). The northern route is the former Southern Pacific (SP) line. The southern route is the original UP line. Since the UP/SP merger in 1996, both lines have been operated by UP. In order to minimize

the number of times trains operating on single track have to "meet" a train operating in the opposite direction, the Carrier implemented directional running in the Los Angeles basin. The predominant movement of trains on the former SP line tends to be westward and the movement of trains on the original UP line tends to be eastward. If one thinks of the UP lines in the Los Angeles basin as an oval, the primary flow of trains is counterclockwise.

A portion of the UP route between Los Angeles and Las Vegas has involved movement over BNSF Railway via trackage rights between Riverside and Daggett, California. Eastward trains operating on the original UP line still utilize the BNSF trackage rights beginning at Riverside. While on the BNSF trackage rights, the original UP route crosses the former SP route at grade within the switching limits of the West Colton terminal. Some of the eastward UP trains continue on the trackage rights to Daggett and Las Vegas. However, the majority of these eastward UP trains leave the trackage rights (i.e., turn right) within the terminal limits of Colton via a track that connects the BNSF line to the former SP line. The distance from the start of the connector track to the east switching limits of West Colton is a little more than two miles. One train will fit comfortably in this space. If, however, two trains are moved off the BNSF trackage rights in close succession, it is necessary to move the head end (locomotives and cars at the front) of the first train beyond the switching limit in order for the rear of the second train to move off the BNSF line

The UP lines in the Los Angeles basin carry a large number of trains. During the past few years, the number of carloadings has risen to an all-time high.

Additional cars cannot always be added to existing trains. The configuration of UP's physical plant, such as gradient, curvature and siding length, establishes a limit on the number of cars that can be handled in a single train. Therefore, the current level of business has resulted in an all-time high number of daily train starts.

The BNSF line over which UP operates is also a very busy piece of railroad. The BNSF track between Riverside and Colton was described as the most congested in Southern California in an Article from the Riverside Press-Enterprise. Eastward UP trains often have to wait at Riverside for a "slot" before the BNSF dispatcher will let them onto the BNSF track for the seven mile movement to where the connector track diverges. During 2006, an average of 18.5 eastward UP trains per day traveled over the BNSF track and left these tracks at Colton. When more than one eastward UP train is waiting at Riverside to enter the BNSF track, UP is faced with a decision when a "slot" becomes available. To move only the first UP train onto the BNSF track will leave the second train at Riverside subject to additional delay. To move two UP trains onto the BNSF track will result in the front of the first train being required to operate east of the switching limit at West Colton. West Colton is a crew change location for the engineers who bring the trains from Los Angeles or the harbor. Trains exiting the BNSF trackage rights at the connector track do not make a continuous movement through the West Colton terminal. They must stop to change crews.

In recent years a dispute has arisen over requiring road engineers to run through the terminal when two trains are moved over BNSF tracks and pulled into

Colton. An engineer, who operates beyond the switching limits, is paid additional compensation for being instructed to operate beyond the switching limits. The Organization contended that the movement of a train beyond the switching limits violated the agreement. In 2006 the Organization sought an injunction to prevent the Carrier from moving trains beyond the switching limits at the crew's final terminal. The Court denied the injunction and held that the dispute was minor.

On September 26, 2006, UP served BLET with a notice stating UP's desire to move the east switching limit at Colton 1.95 miles eastward, from Milepost 541.15 to Milepost 543.1. The notice was served pursuant to Article II of the May 13, 1971 BLE National Agreement. The parties met in the office of A. C. Hallberg, UP's Director of Labor Relations on October 19. Following a conference on the proposal held on October 19, 2006, the Organization responded in writing to the Carrier by letter dated October 30, 2006. That letter recapitulated the Organization's position, which briefly was as follows:

- Article 13, Section 1 of the Collective Bargaining Agreement ("CBA") is controlling.
- "The use of Article 2 of the [1971] Agreement was never designed to change existing CBA, but to allow extension of switching limits to facilitate industries. There are absolutely no industries in the defined territory of your notice; only two railroad main tracks."
- "The specific service covered in your Notice was created through negotiations with this Committee and became effective July 1, 1991, covered under file E&F 188-138. Section 6(b) of that agreement clearly states 'This service will not operate beyond the following points.' 'Yuma Line east of M.P. 541.15."

- UP waived its Article II rights when it filed notice on January 13, 1998, which led to the Los Angeles Hub Agreement, in which the original switching limits were explicitly retained, and relinquished any rights it may have had thereunder when it agreed to Article V of the Los Angeles Hub Agreement.
- The Award of Arbitration Board No. 581 also served to preempt Article II.
- This preemption is supported by the Award of Arbitration Board No. 581.

The Carrier responded by letter dated November 10, 2006. The Carrier stated that it considered it advisable to extend the switching limits at West Colton in order to improve the efficiency of the outbound move from the Los Angeles basin to Yuma. They further stated that by extending the switching limits from Milepost 541.15 to Milepost 543.1 it will be possible to bring two trains at a time across the BNSF from Riverdale to Colton. They noted that the threshold for extending switching limits is that the company considers it advisable to change the switching limits. They concluded that the Company considers it advisable to change the West Colton switching limits because the terminal is not big enough to bandle the necessary crew change and train staging functions. They cited numerous awards that supported their position.

The Carrier also stated that nothing in the agreements at issue insulate the West Colton switching limits from change by the 1971 National Agreement. They pointed out that the Western Lines Merger Implementing Agreement contained a savings clause that stated that all agreements remain in full effect unless specifically changed. They further stated that the Award of Arbitration Board No. 581 was not

applicable and applied to interdivisional runs and different merger implementing agreements. They concluded that the switching limits notice met the standards of improved service to the customer and improved rail service.

Discussion:

The Carrier's position was that the proposed switching limit change was fully supported by Article II of the May 13, 1971 BLE National Agreement. The pertinent part of that agreement provides:

> "(a) Where an individual carrier not now having the right to change existing switching limits where yard crews are employed, considers it advisable to change the same, it shall give notice in writing to the General Chairman or General Chairmen of such intention, specifying the changes it proposes and the conditions, if any, it proposes shall apply in event of such change.

The Carrier stated that extending the east switching limit at the West Colton terminal would improve operational efficiency by being able to utilize one "slot" on the BNSF to move two trains, without complaint from BLET. They further stated that the proposed extension would permit two trains to fit within the West Colton terminal without moving a portion of the first train beyond switching limits. The Carrier insisted that this would improve the efficiency of UP's train operation. They concluded that nothing in the language of Article II precludes the change in switching

limits proposed by UP, and nothing in the language speaks to disqualify UP's reasons for its proposal.

The Carrier listed several benefits from the proposed change. Moving two trains at a time over the BNSF trackage rights will reduce the waiting time for eastward trains to enter the BNSF track rights at Riverside and improve the performance of eastward trains between origin and destination. The Carrier stated that the proposed change would permit engineers to tie up and go home sooner. Finally, the Carrier stated that the proposed change will bring resolution to the dispute between BLET and UP concerning engineers operating beyond the east switching limit at West Colton.

As stated above, an engineer instructed to operate beyond switching limits is paid additional compensation for doing so. The Organization unsuccessfully sought injunctive relief to stop this practice. The Carrier readily admits that an ancillary benefit of extending switching limits will be the elimination of such additional compensation. Although the Carrier's primary objective is improved efficiency from the reduction in delay of UP trains entering the BNSF line at Riverdale, the Carrier stated that the elimination of the penalty payment does not alter the Carrier's right to make the switching limits change. The Carrier cited Arbitration Board No. 330 in support of its position. In this award Referee Friedman held:

> "Although elimination of penalty payments is not a criterion under Article VI, the fact that this may be a by-product of an appropriate extension of switching limits, does not alter Carrier's rights under Article VI to obtain the kind of change which will enhance efficiency."

The Carrier also cited several other arbitration awards to support the proposed switching limit change.

The Organization objected to the Carrier proposal on several basis. First, the Organization argued that Article 13, Section 1, of the CBA governs the instant dispute, because it is more specific than the general provision set forth in Article II. Second, the Organization stated that the Carrier is estopped from invoking Article II in this instance because its Article II rights have been preempted by the Los Angeles Hub Agreement. Third, even if Article II was available to the Carrier, it failed to comply with the requirements of the rule. And, fourth, the Carrier's claimed rationale for changing the switching limits that are the subject of the instant dispute is a sham.

The Organization stated that when Article II is read in context with other applicable contractual provisions, it becomes clear that it cannot apply in the instant dispute. It is their position that this matter is governed by Article 13, Section 1 of the CBA which provides in pertinent part as follows:

ARTICLE 13
WHAT CONSTITUTES A TRIP

SECTION 1. An engineer is understood to have reached the terminal of a trip when he reaches the division terminal at which engine crews are usually changed, or arrives at the established terminal of his train, as shown by assignment, and having done so and proceeding further with same train, or being sent out on another trip or train, he is, in either case, understood to have begun another trip.

When an engineer is called for service on other than assigned runs, he will not be run through terminals except when no engineer entitled to the service is available. When

run through, he will begin another trip upon leaving such terminal.

The points shown below constitute all division terminals at which engine crews are usually changed as defined by this section:

* * *
West Colton
* * *

(Yuma–West Colton and Bakersfield–West Colton engineers only)

The Organization stated Article 13, Section 1, provides that a road engineer's trip ends upon arrival at West Colton, and that the engineer may not be sent beyond the switching limits of the terminal without beginning a new trip for pay purposes. They also pointed out that those switching limits were established by an agreement that became effective on January 5, 1995. This agreement provides in part:

Section 5:
Engineers operating in this service may operate between Los Angeles or ICTF and West Colton via any route except for the restrictions in Section 6 below.

Section 6:
* * *
(b) This service will not operate beyond the following points.

Location	Milepost
* * *	
Yuma Line	east of M.P. 541.15
* * *	

(d) Engineers in this service used in violation of Items (a), (b) or (c) above will be compensated one hundred (100) miles in addition to and without deduction for their earnings for their trip. However, in the event the violation is an engineer in this service operating west of M.P. 461.50 (Coast) and M.P. 471.20 (Valley), a new $275.00 trip rate day will commence in lieu of the one hundred mile penalty. (Examples: 1. Engineer Jones operates west of M.P. 461.50. What is ha entitled to? Answer: $275.00 trip rate. 2. Engineer Smith operates east of M.P.

541.15 and subsequently operates west of M.P. 461.50. What is he entitled to? Answer: 100 miles and $275.00 trip rate.)

The Organization argued that these agreements are significant because they were negotiated a quarter of a century after Article II was written and second, the Carrier had two other opportunities to eliminate the above restrictions in the latter half of the 1990's and did not do so. The Organization concluded that the Carrier seeks to do nothing more than escape the penalty Article 13, Section 1, imposes for running road engineers through their final terminal, a purpose not contemplated by and, indeed, inconsistent with the intent of Article II.

The Carrier answered the Organization's argument by stating that Article 13 merely lists the division terminals at which engine crews are exchanged. They stated that by expanding the eastern limit of the terminal at West Colton by 1.95 miles, the definition of West Colton is not changed. They further stated that this is the purpose of Article II of the 1971 National Agreement and nothing in the present agreements restrict the Carrier's right to utilize this provision.

The Organization next argued that the Los Angeles Hub was created in a period during which a Carrier implementing a merger had the ability to unilaterally change almost any collective bargaining agreement provision in nearly any fashion it chose. They stated that the main two vehicles for exercising "cram down" rights in the UP merger were the development of hub agreements and the Carrier's unilateral selection of the collective bargaining agreement that would govern a particular hub.

The Organization argued that the Carrier did not change the switching limits during these processes and thus was preempted from doing so.

The Organization noted that on November 3, 1997, in preparation for the creation of the Los Angeles Hub, the parties negotiated an agreement (hereinafter "Modification Agreement") that conformed the former Southern Pacific Western Lines ("SP WEST") CBA then being utilized in the Los Angeles area to former Union Pacific CBAs. The Organization noted that the Modification Agreement made no changes whatsoever to either Article 13 of the CBA or to the switching limits identified in Section 1 thereof. Indeed, they noted the term "switching limits" appears nowhere in the Modification Agreement. Further, they stated the Modification Agreement included the following Savings Clause:

> The parties agree that all agreements, side letters, understandings, or any other benefits of the former Southern Pacific (Western Lines) including the former El Paso and Southwestern (EP&SW) Engineer's Agreement will remain in full force and effect unless specifically changed, modified by, and/or in conflict with this Agreement, Side Letters, and Questions &Answers. If changed, modified and/or conflicting, then this Agreement shall govern. Future changes shall be subject to the Railway Labor Act as amended.

The Organization concluded that the limitation on requiring a road engineer to take his/her train beyond the terminal limits at milepost 541.15 not only survived the Modification Agreement, but it was expressly continued in full force and effect by virtue of the Savings Clause set forth in Article VIII.

The Organization argued that the second part of the merger process occurred when the Carrier served notice pursuant to New York Dock to create the Los Angles

Hub. They stated that the Hub Agreement specifically covers the switching limits of the LA Hub. They noted that Article III of the Hub Agreement provided for the establishment of several pools with West Colton as the home terminal. Moreover, they stated, Article III, Section E, provided that "[n]one of the engineers ... shall be restricted, in or between the terminals of their assignment, as to where they may set out or pick up cars or leave or receive their train," and that the "type and amount of work shall be governed by the controlling CBA."They concluded that Article 13, Section 1 of the CBA continued to control, and road engineers could not be required to travel beyond the switching limits at West Colton without penalty.

The Organization also pointed to Article VI, Section B.1 as providing further support that the Carrier could not change switching limits. The Organization further argued that Article V, Terminal and Other Consolidations, of the HUB Agreement specifically stated that the Carrier cannot enlarge the limits of the terminal. This provision provides:

V. TERMINAL AND OTHER CONSOLIDATIONS

> "A. The SP LATC and UP LA East Yard shall be combined into a single terminal covering the existing terminal limits for each Carrier and the connecting trackage between the two terminals. Yard engineers shall not be restricted as to where in the terminal they can operate.
>
> "B. The provisions of A above will not be used to enlarge or contract the current limits except to the extent necessary to combine into a unified operation.

"C. In the LA Hub, prior to this implementing Agreement, there existed several trackage rights, stations and Harbor areas used by both Carriers. With the implementation of the Agreement all areas, trackage, stations and facilities in the Hub shall be common to all engineers as a single unified system. Engineers shall not be restricted in the Hub where they can operate except on the basis of CBA provisions that set forth limits of an assignment such as the radius of a road switcher.

"D. Riverside Line – When heading west, trains that pass Colton Crossing onto the Riverside line may be operated by West Colton-Basin crews as if "in the terminal". When heading East, trains that reach Streeter, a point directly south of West Colton on the Riverside line, may be operated by West Colton-Yuma or West Colton-Yermo crews as if "in the terminal". This does not apply to Mira Loma trains as those trains have separate provisions."

Finally, the Organization noted that Article VI, Section C, of the Hub Agreement states as follows:

> Engineers working in the Los Angeles Hub shall be governed, in addition to the provisions of this Agreement, by the Collective Bargaining Agreement selected by the Carrier, including all addenda and side letter agreements pertaining to that agreement and previous National Agreement/Award/Implementing Document provisions still applicable. Except as specifically provided herein the system and national collective bargaining agreements, awards and interpretations shall prevail. None of the provisions of these agreements are retroactive. The Carrier has selected the SP WEST modified BLE Agreements.

It was the Organization's position that all National agreement provisions survived except as otherwise provided by the Hub Agreement. The Organization stated contrary to the Carrier's argument, Section II of the 1971 Agreement did not survive insofar as the facts and circumstances of this case are concerned.

The Organization cited the Award rendered by Arbitration Board No. 581 to support its position that Article II of the May 13, 1971 BLE National Agreement did not apply and was preempted by the Hub Agreement. The parties in

that matter were this Carrier and another Organization General Committee with jurisdiction over a different portion of the system. At issue was an attempt by the Carrier to invoke the provisions of Article IX of the 1986 National Agreement to alter interdivisional runs it had established approximately five to six years earlier in a series of three hub agreements negotiated pursuant to the New York Dock process. The 581 Award held that, "although Carrier's Article IX rights survive under the Savings Clause of the hub merger implementing agreements, their exercise is not unfettered." The Board further held:

> the parties recognized ... that prior agreements would remain in effect. They also recognized, however, that circumstances might arise in which the implementing agreements would conflict with these pre-existing agreements. When that happens, the parties agreed that the implementing agreement provisions would prevail. The bargain that was struck is not ambiguous and it is entitled to enforcement.

The Organization argued that the Board in rejecting the Carrier's argument that, once implemented, a hub agreement becomes indistinguishable from any other agreement, is subsumed within the whole fabric of agreements and understandings, "and is no longer a stand alone document," when it held as follows:

> The parties are experienced negotiators. They must be held to have full knowledge of the provisions of the Hub Merger Implementing Agreements
>
> and the significance of the clear and unambiguous language contained therein. Moreover, it must be presumed that they did not include language in those agreements with the understanding that the provisions would be rendered superfluous or meaningless. The Carrier and the Organization have plainly stated ... that the Hub Merger Implementing Agreements prevail when they conflict with other applicable agreements. If the Carrier's position were accepted in this case, although the parties made express promises ... to resolve conflicts in agreements in favor of the hub merger implementing agreements, the Carrier would be allowed to ignore those commitments. No such result is warranted here.

The Organization concluded that the issue decided in the 581 Award and the analysis employed by the 581 Board is absolutely on point in the instant matter.

The Carrier stated that nothing in the Hub Agreement precludes subsequent changes to switching limits. They noted that the Hub Agreement only dealt with switching limits in two places. First, in Article V (reproduced above) and again in Article VI, Section B..3., which provides for a "Twenty-Five Mile Zone" at Yuma, AZ and Yermo and West Colton, CA. The Carrier noted that the twenty-five mile zone at West Colton is not involved in the current dispute. They also stated that Article V is not applicable. They concluded that nothing in the Hub Agreement nailed down the switching limits and that there is no mention of Milepost 541.1 anywhere in the agreement.

The Carrier further argued that a review of the Los Angeles Hub Agreement language supports UP's position that Article II is alive and well. Article VI, Section C of the Los Angeles Hub Agreement (reproduced above) preserves all national agreements that existed prior to the creation of the Los Angeles Hub. They concluded that if Article II of the May 13, 1971 BLE National Agreement was "still applicable" at the time the Hub Agreement became effective, it was preserved by the language of Article VI, Section C.

The Carrier also argued that the 581 Award has no application to this case. The Carrier stated that there can be no doubt Arbitrator Kenis based her decision on specific language found in the three merger implementing agreements at

issue before her (Kansas City. St. Louis and North Little Rock/Pine Bluff Merger Implementing Agreements). Specifically, she said:

> "Accordingly, the provisions of the Hub Merger Implementing Agreements must prevail in accordance with Article IV.A. and the side letter set forth in full above."

Article IV.A. contained in those three merger implementing agreements reads as follows:

> "**ARTICLE IV – APPLICABLE AGREEMENT**
>
> "A. All engineers and assignments in the territories comprehended by this Implementing Agreement will work under the Collective Bargaining Agreement currently in effect between the Union Pacific Railroad Company and the Brotherhood of Locomotive Engineers dated October 1, 1977 (reprinted October 1, 1991), including all applicable national agreements, the 'local/national' agreement of May 31, 1996, and all other side letters and addenda which have been entered into between date of last reprint and the date of this Implementing Agreement. Where conflicts arise, the specific provisions of this Agreement shall prevail. None of the provisions of these agreements are retroactive."

The Carrier noted that the key phrase in Article IV.A. for Arbitrator Kenis was "[W]here conflicts arise, the specific provisions of this Agreement shall prevail." They concluded that she emphasized this phrase in the Award and based her decision on the existence of this phrase:

They also argued that she made specific reference to Side Letter No. 20 and relied upon Side Letter No. 20 to support her decision when she said:

> "Our reading of Article IV.A is supported by the express language of the side letter incorporated in each of the three hub merger implementing agreements. To dispel any doubt about the interplay between the pre-existing agreements and the implementing agreements, the side letter incorporated in the hub merger implementing agreements plainly states that, to the extent that there are other applicable collective bargaining agreements that were not expressly modified or nullified, 'they still exist and apply.' However, the parties expressly acknowledge that 'the specific provisions of the Merger Implementing Agreement, where they conflict with the basic schedule agreement, take precedence, and not the other way around.' "

The Carrier stated there can be no doubt Arbitrator Kenis based her decision on the specific language of Article IV.A and Side Letter No. 20. They noted that a comparison of the three merger implementing agreements in the Kenis Award with the Los Angeles Hub Merger Implementing Agreement reveals none of the language relied on by Arbitrator Kenis exists in the Los Angeles Hub Agreement. Finally, they stated there is no side letter to the Los Angeles Hub Agreement like Side Letter No. 20. They concluded that without the language noted above the Kennis award does not support the Organization's position.

The Organization disagreed with the Carrier's interpretation. Although Side Letter No. 20 was not contained in the Los Angles Hub Agreement, they stated that it was the Carrier's interpretation of how Hub Implementing Agreements apply. They stated that the intent of that letter applies everywhere and not to the territories contained in the Kennis Award as the Carrier contended.

The Organization next argued that if Article II of the 1971 National Agreement was available , the Carrier is not entitled to relief from this Board because it failed to comply with the requirements of the provision. They stated Article II of the 1971 Agreement was a companion rule with Article III, governing switching service for new and other industries. They noted that the genesis for both rules was the 1952 Agreement, in which Article 6 dealt with switching service for new industries and Article 7 — Article II's direct predecessor — addressed switching limits. They argued that these two rules relaxed existing work rules to enable a railroad to provide more efficient service to industries that located outside switching limits, whether those switching limits were changed or not. They pointed out that the Carrier never identified any new industries that located outside the current switching limit at West Colton. Moreover, they noted that the Carrier never rebutted our statement that no new industries have located outside West Colton.

The Organization further argued that the Carrier's rational for changing the switching limits is a sham. They argued that the Carrier conceded that its motivation was solely to escape the limitations imposed by Article 13, Section 1 of the CBA, as incorporated into the Hub Agreement. They further argued that the Carrier provided no support for its position but instead made a series of vague, unsubstantiated assertions with no data presented that would establish the veracity of its assertions. They concluded that the Carrier failed to meet its burden of proof.

The Organization cited a case that it stated was directly on point with its position that a Carrier may not automatically change switching limits simply because "the Company considers it advisable" to do so. This case involved Article II in the UTU National Agreement where Arbitration Board No. 318 held:

> Nor are switching limits extended, as appears to be suggested in Carrier's brief, simply because Carrier "considers it advisable" to do so. That consideration triggers the negotiations required in Article VI, and arbitration if negotiations are unsuccessful. Either the Organization or the Arbitrator must be persuaded what contractual standards set forth in the preamble to Article VI are being met.
>
> Among reasons suggested by Carrier in this case for proposed changes is cost-savings on penalty claims by road crews. While this may on occasion contribute to the justification for an extension of switching limits, it is apparent that Article VI anticipated a careful case-by-case approach using the criteria it contains.
>
> Otherwise, any extension of switching limits which would reduce a carrier's cost of operation would have been stated as an appropriate reason. An extension of switching limits may not necessarily change the way switching service is performed and yet be a money-saver, as some of the Carrier's proposals indicate

The Organization concluded that the Carrier does not have the right to estend switching limits as proposed.

The Carrier disagreed with the Organization interpretation of Article II. They stated that the language of Article II permits a Carrier to serve notice to change switching limits whenever that Carrier "considers it advisable to change" switching limits. They further argued that nothing stated or implied in the language of Article II restricts it use to situations involving switching service to industries. The Carrier further noted that the UTU National Agreement is different from Article II of the 1971 BLE Agreement in that the UTU Agreement has a preamble containing the stated purpose of the Agreement:

> "... to the end that efficient and adequate switching service may be provided and industrial development facilitated..."

The Carrier further argued that although the preamble to Article VI of the 1971 UTU National Agreement does refer to "switching service", various arbitrators have held that extension of switching limits under the UTU agreement is not restricted to instances where the purpose of the extension is ability to provide switching service to a particular industry or industries. They cited the decision of Arbitration Board 372 to support its position wherein Referee Brown held:

> Vice President J. M. Hicks argues that the stated purpose of Section VI is to provide efficient and adequate *switching* service but that the avowed purpose of the L&N extension at Ravenna is to allow road crews to yard their trains at Calla – not to provide improved *switching* service. This is true, and the Referee has given much thought to this approach. There is no precedent apparently, and the numerous awards studied are helpful only in that they reflect uniformly liberal decisions in favor of the carriers. After much study the Referee concludes that the intent of Section VI is to allow Carriers to improve *service* to customers. To say that Article VI authorizes the extension of switching limits only where presently inadequate switching service is to be replaced by purely "switching" service as opposed to convenient yarding of a unit train by road crews is to adopt a narrow view that we cannot endorse."

The Carrier concluded that its notice was proper and that the switching limit extension should be granted.

Findings:

In order for the Board to determine if the Carrier may extend switching limits as proposed, it must first address the Organization's contention that the Carrier is estopped from invoking Article II in this instance because its Article II rights have been preempted by the Los Angeles Hub Agreement. Therefore, paramount to this

decision is whether the Los Angles Hub Agreement contains any restrictions to the Carrier's right to utilize Article II of the 1971 National Agreement.

After carefully considering the entire record, the Board can not find any foundation for the Organization's claim that there is a conflict between the Los Angles Hub Agreement and Article II of the 1971 BLE National Agreement. The Board reached this decision based on several factors.

The first factor was that the Award rendered by Arbitration Board No. 581 or Kennis award does not support the Organization's position. It is clear from the award that Referee Kennis based her decision on specific agreement language not found in the Los Angles Hub Agreement. The Board agrees with the Carrier that a side by side comparison of Article IV.A. in the Kenis Award with Article VI, Section C of the Los Angeles Hub Agreement clearly shows the phrase "[W]here conflicts arise, the specific provisions of this Agreement shall prevail" is only in Article IV.A. and not in Article VI, Section C of the Los Angeles Hub Agreement .

The Board also finds that the Organization recognizes this distinction. The Organization in a brief filed with the United States Court of Appeals for the Seventh Circuit wherein it stated:

> "What is clear from the quote when put in its proper context is that the interdivisional service runs established in *other territories* by the Carrier were under *different* Hub Merger Implementing Agreements which did not contain the same language found in the three Hub Agreements which were the subject of the arbitration before Kenis (nor did the outside hub agreements have the same side agreements as the three at issue)."

It is clear the BLET Committee involved in the Kenis Award has unequivocally stated the Kenis Award is based on 'the three Hub Agreements" and "the same side agreements" and other implementing agreements without the specific language of the "three Hub Agreements" and "the same side agreements" cannot be compared to the Kenis Award

The Board also disagrees with the Organization that while Side Letter No. 20 is not present in the Los Angles Hub Agreement, it shows what the parties intended and should apply. The Board notes that the Los Angles Hub Agreement was not a negotiated settlement but was imposed by arbitration pursuant to New York Dock. In its presentation to this Board, the Organization requested several items some of which were two side Letters dated March 8, 1996 and concerned matters not covered by Side letter No. 20. Arbitrator Muessig when imposing the agreement that failed ratification stated :

> "... This conclusion is given greater substance by noting the lengthy process that led to the proposed Implementing Agreement and the experience of the individuals involved. The persons involved in this process were seasoned negotiators who have years of experience addressing and resolving complex rule, benefit and wage issues. The evidence in the record before this Board demonstrates that the negotiators were keenly aware of the various factors that influenced and lead to successful bargaining. They clearly took into account that their efforts could not be conducted in a vacuum and that success depended upon properly based compromises."

Referee Muessig clearly felt that the adopted agreement covered all the parties' intentions. If the parties intended Side Letter No. 20 to apply, it would have been part of the failed agreement.

The Board also notes that the Organization cited the Award of Arbitration Board No. 580 to support its position that the Carrier had several opportunities to extend switching limits in Los Angles prior to its notice under Article II of the 1971 National Agreement. This award involved a notice served on January 23, 2002 in accordance with Article IX of the May 19, 1986 BLE National Agreement. The notice proposed the establishment of three fright pools in the Los Angles Basin with Dolores as a home terminal. The parties reached an agreement but it failed ratification. In imposing the tentative agreement the Board considered several items brought up by the Organization, none of which was the Carrier was estopped from using provisions of the 1986 National Agreement because the Los Angles Hub Agreement preempted those provisions. This award does not support the Organization's position but confirms that National Agreements prevail over the Los Angles Hub Agreement.

Finally, the Board finds that the Carrier has shown that Article II of the 1971 BLE National Agreement is in force on the Los Angles Hub. Article VI, Section C of the Los Angeles Hub Agreement preserves all national agreements that existed prior to the creation of the Los Angeles Hub. Article II of the May 13, 1971 BLE National Agreement was preserved by the language of Article VI, Section C.

The Board then turns to the question of whether the September 26, 2006, proposal submitted by the Company to the BLE (sic) extending switch limits at West Colton from Milepost 541.15 to Milepost 543.1 be adopted?". The Board agrees with the Carrier that that the language of Article II permits a Carrier to serve notice to change switching limits whenever that Carrier

"considers it advisable to change" switching limits. The Board further finds that numerous decisions of other Arbitration Boards support the Carrier's position that nothing in Article II restricts it use to situations involving switching service to industries.

The Board notes that Referee Seidenberg in Arbitration Board No. 338 held:

> " The Board is also persuaded to grant the Carrier's request in view of the fact that there are no overt restrictions imposed on the Carrier by Article II. The Board would have to find substantial and material evidence in the record militating against extending the proposed new switching limits."

This Board also held:

> "The Carrier's evidence reveals persuasive operating and financial reasons for extending the aforementioned yard switching limits."

This Board also agrees with the reasoning in Arbitration Board No. 337 cited above by the Carrier :

> "... the intent...is to allow carriers to improve service to customers."

The Board notes that the above opinion was also endorsed by Arbitration Board No. 399 and 404

In the present case the Carrier has shown that extending the switching limits will allow two trains at a time to move over the BNSF trackage. This will reduce waiting time for eastbound trains and reduce congestion in this overcrowded corridor. While the Carrier can not point to any one

customer that will benefit, the Board believes that the change will improve customer service.

The Board also does not agree with the Organization's contention that the reduction in expense not improved customer service is the Carrier's only motivation. While Article 13 is preserved in the modification agreement and does provide penalties to engineers operating beyond switching limits, it does not limit the Carrier's ability to extend switching limits pursuant to Article II. As previously shown by the Carrier, Arbitration Board 330 has held that while the elimination of penalty payments is not a criterion for extending switching limits, it may be a by-product of an appropriate extension and does not alter the Carrier's rights under Article II. Arbitration Board No. No. 318 also found that the reduction of penalty claims would not prevent a legitimate extension of switching limits by the Carrier.

The Board finds that the Carrier has justified its reasons for wanting to extend the switching limits at the east end of West Colton from Milepost 541.15 to Milepost 543.10. The Board finds nothing in the provisions of Article II of the 1971 BLE National Agreement that prohibits the proposed change. The change requested by the Carrier will be granted.

Award:

The Carrier's and Organization's questions are answered in the affirmative. The Carrier shall be permitted to extend the east switching limit (Yuma line) at West Colton from Milepost 541.15 to Milepost 543.10, as set forth in its notice of September 26, 2006

John R. Binau
Neutral Member

A.C Halberg
Carrier Member

E. L. Pruitt
Organization Member

AL ASKED
FOR AN
EX SESSION

National Mediation Board

Arbitration Board No. 590

Parties	)	Brotherhood of Locomotive Engineers and Trainmen
	)	
To	)	and
	)	
Dispute	)	Union Pacific Railroad Company

John Binau — Chairman and Neutral Member
E. L. Pruitt — Organization Member
A. C. Hallberg — Carrier Member

Submission of Brotherhood of Locomotive Engineers and Trainmen

National Mediation Board
Arbitration Board No. 590

Parties	)	Brotherhood of Locomotive Engineers and Trainmen
To	)	and
Dispute	)	Union Pacific Railroad Company

Brief of Brotherhood of Locomotive Engineers and Trainmen

I. QUESTION AT ISSUE

"Shall the September 26, 2006, proposal submitted by the Company to the BLE (sic) extending switch limits at West Colton from Milepost 541.15 to Milepost 543.1 be adopted?"

II. ORGANIZATION'S STATEMENT OF FACTS

By letter dated September 26, 2006, a copy of which is appended hereto as Exhibit BLET-1, the Carrier invoked Article II of the May 13, 1971 National Agreement, which governs the method for changing switching limits in certain circumstances. The Carrier began by briefly recounting a dispute between the parties that began more than three years earlier over its decision to require road engineers destined for West Colton to run through the terminal in order to dispose of their trains. *See* p. 1.

The Carrier then claimed both (1) that it already possessed "the right under the labor contract" to require engineers to run through the terminal, and (2) that it was going to resolve the dispute "by expanding the size of the terminal." Id. The Carrier next made the unsubstantiated claim that "traffic volumes create fluidity problems which can only be addressed by expanding the switching limits." Id. Lastly, the Carrier restated its contradictory claims as follows:

> While we come at this issue from different directions, in the end it appears that our interests coincide. Your interest is based on (incorrect) reading of the contract as prohibiting the operation of engineers through objective terminals. The Company's interest goes to efficient and fluid operations. To resolve this matter, attached please find an agreement extending the east switch limits at West Colton to Milepost 543.1. If you decline to adopt the proposed agreement, we will then be obligated to proceed in accordance with the dispute resolution provisions of the National Agreement previously quoted herein.

Id. at p. 2.

Included with that letter was the Carrier's proposed switching limit change, a copy of which is appended hereto as Exhibit BLET-2. The Carrier's proposal, in its entirety, reads as follows:

> This refers to extension of the West Colton switching limits pursuant to the May 13, 1971, B.L.E. National Agreement.
>
> It is agreed that the switching limits on the east side of the West Colton Terminal will be changed from Milepost 541.15 to Milepost 543.1.
>
> This change will be effective immediately.

Following a conference on the proposal held on October 19, 2006, the Organization responded in writing to the Carrier by letter dated October 30, 2006, a copy of which is appended hereto as Exhibit BLET-3. That letter recapitulated the Organization's position, which briefly was as follows:

- Article 13, Section 1 of the Collective Bargaining Agreement ("CBA") is controlling. *See* p. 1.
- "The use of Article 2 of the [1971] Agreement was never designed to change existing CBA, but to allow extension of switching limits to facilitate industries. I have clearly explained to you that there are absolutely no industries in the defined territory of your notice; only two railroad main tracks." Id.
- "The specific service covered in your Notice was created through negotiations with this Committee and became effective July 1, 1991, covered under file E&F 188-138.

Section 6(b) of that agreement clearly states 'This service will not operate beyond the following points.' 'Yuma Line east of M.P. 541.15." Id.

- UP waived its Article II rights when it filed notice on January 13, 1998,[1] which led to the Los Angeles Hub Agreement, in which the original switching limits were explicitly retained, and relinquished any rights it may have had thereunder when it agreed to Article V of the Los Angeles Hub Agreement. Id. at p. 2.

- The Award of Arbitration Board No. 580 also served to preempt Article II. Id. at p. 3.

- This preemption is supported by the Award of Arbitration Board No. 581. Id. at p. 4.

The Carrier replied by letter dated November 10, 2006, a copy of which is appended hereto as Exhibit BLET-4. It provided a narrative description of the operation and repeated its prior, unsubstantiated fluidity claim. *See* pp. 1-2. The Carrier also, again, acknowledged that the core of the matter was the dispute over requiring road engineers to run through the terminal. Id. at p. 2. The Carrier further claimed that the Award of Arbitration Board No. 581 was inapplicable, based on a ruling by a federal court judge in an action that sought to enforce the Award in a matter other than the dispute for which it was rendered. Id. at pp. 2-3. The Carrier then went on to list twenty-one arbitration awards it claimed "support[] the right of management to extend switching limits whenever it is advisable to do so," but did not produce the awards for review and rebuttal by the Organization. Id. at pp. 3-5.

By letter dated January 10, 2007, a copy of which is appended hereto as Exhibit BLET-5, the Carrier wrote the National Mediation Board ("NMB"), advising that an impasse had been

[1] The notice referred to was filed pursuant to Article I, Section 4, of the New York Dock conditions imposed by the Surface Transportation Board in Finance Docket No. 32760, involving the merger of the Union Pacific Corporation, Union Pacific Railroad Company/Missouri Pacific Railroad, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corporation, and The Denver & Rio Grande Western Railroad Company. *See* Section III.D, *infra*, for the New York Dock implications in this matter.

Brotherhood of Locomotive Engineers

GENERAL COMMITTEE OF ADJUSTMENT
Union Pacific Western Lines
1902 Orange Tree Lane, Suite #190
Redlands, CA 92374
(909) 307-0486 Fax (909) 307-8846

D.W. HANNAH
Chairman

HAND DELIVERED

March 5, 2002

Mr. A.C. Hallberg
Director, Labor Relations
Union Pacific Railroad
10031 Foothills Blvd.
Roseville, CA 95747

Dear Sir:

Reference your letter of January 23, 2002, which was subsequently followed by conference held in this office on February 7, 2002, concerning the Carrier's notice to establish interdivisional pool freight service pursuant to "...Article 9, "Interdivisional Service," Section 1 of the May 1986 BLE National Agreement; as revised..."

This will serve to reaffirm the Committee's position, regarding the propriety of the notice insofar as item 1, "...turnaround freight pool with ICTF/Dolores as a home terminal..." and the position of this Committee that the establishment of the pool freight service in Items 2 and 3, require running through home terminal(s).

Moreover, your intent to establish the service in Item 1 of your notice, constitutes a wrongful attempt on your part to change agreed upon working conditions, as required in the arbitrated, and subsequently implemented, Los Angeles Hub Agreement. It is obvious to this Committee, that this is a blatant attempt on your part to gain the better conditions in Article IX of the May 1986 BLE National Agreement, than those in the Los Angeles Hub arbitrated agreement.

Notwithstanding the above, nor limited to, and without prejudice to the Committee's position, I am agreeable to continue to meet with you for further discussions in order to reach an agreement regarding this service.

Sincerely,

D.W. Hannah

cc: L/C's Saunders, Law, Carroll, and V.P. Pruitt

BLE EXHIBIT B

® 93 Printed in U.S.A.

PUBLIC LAW BOARD NO. 7577

Case No. 1
Award No. 1

PARTIES TO DISPUTE: (Union Pacific Railroad Company
(
(vs.
(
(Brotherhood of Locomotive Engineers
(And Trainmen (Southern Region)

STATEMENT OF CLAIM:

Shall the Carrier's proposal as set forth in Notice dated April 5, 2012 notifying the Brotherhood of Locomotive Engineers and Trainmen of its desire to extend switching limits to the extent indicated at Beaumont, Texas be granted?

FINDINGS:

This Board, after hearing upon the whole record and all the evidence finds that the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and, that the parties were given due notice of hearing thereon.

The facts of this case are that the Carrier currently has an east switching limit on the Lafayette Subdivision at Milepost 275.62 and a west switching limit at Milepost 283.05 at Beaumont, Texas. On April 5, 2012, the Carrier proposed moving the east switching limit to Milepost 270.7 and the west switching limit to Milepost 292.6. The Carrier argued that the extension was necessary to increase and ease switching process efficiency and operations which would, "permit more fluid yard and road operations." It based its argument on Article II of the BLE National Agreement of May 15, 1971.

The Organization has argued on property and strongly before this Board that the Carrier's actions are unnecessary, flawed, and superseded by subsequent Agreements negating Article II of the BLE National Agreement. The Organization argues that there exists a clear history of negotiations and

imposed settlements which not only granted Beaumont provision changes for efficiency, but prevented the exercise of future enlargements to the existing limits of the Beaumont terminal. The Implementing Agreement of 1997 made no change to the switching and terminal limits of Beaumont. The imposed Beaumont ID Service Agreement held to no change. Accordingly, Article II is not applicable. What is applicable is Article I, Section 13, paragraph (c) of the arbitrated Beaumont ID Agreement which specifically estopped the Carrier as it was more recent and more specific than the general provisions of Article II. Those arbitrated terms of the Beaumont ID Agreement restrict the Carrier to the existing historical limits and deny the Carrier the right to its April 5th request to enlarge those limits. Further, even if the Board were to consider Article II of the 1971 BLE National Agreement, there is no showing by the Carrier of any industry to be serviced or legitimate rationale for the change.

The Board has carefully studied the history of this dispute on property, the facts of record, and the governing Agreements. The Board reaches the following conclusions. Article II of the 1971 BLE National Agreement specifically states in pertinent part that:

> Where an individual carrier not now having the right to change existing switching limits where yard crews are employed, considers it advisable to change the same, it shall give notice in writing to the General Chairman . . . of such intention, specifying the changes it proposes . . . carrier and the General Chairman . . . shall . . . endeavor to negotiate an understanding . . . In the event the carrier and the General Chairman . . . cannot so agree . . . the dispute shall be submitted to arbitration . . .

The Board has studied this language and concludes that the Carrier has properly provided proof that it followed the above notice on-property in an attempt to negotiate; and then moved to arbitration when negotiation failed.

The Board has studied the language of the Beaumont ID Agreement, particularly Article 1, Section 13 Sections, A, B and C. The Organization identifies Article C stating that, "This clause does not change the Beaumont Terminal Limits" as restraining and prohibiting the Carrier from invoking Article II, supra. There is nothing in the language of the Beaumont ID Agreement that supersedes, supplants or negates the Carrier's rights to

invoke Article II.

As such, the Board turns to the Organization's position on property and before this Board that there is no justification, no proof, and no record presented by the Carrier that an industry has been identified for which the change in switching limits were shown to be necessary. The Organization argues that there is no industry or industries that were demonstrated to be in need of additional service for which the proposed change would be justified. Carrier's rational of efficiency, cost saving, reducing penalty payments and the like are invalid (Public Law Board 354, Award 1). Failing to show any such justification, the Carrier cannot be permitted to simply request a change and receive it.

The Board finds no language in Article II that constrains a change in switching limits to servicing industries. In fact, the language clearly permits the notice to be submitted when the Carrier "considers it advisable to change" the switching limits. Such change must be proven. Throughout this dispute, the Carrier has argued that the changes would increase operational efficiency. It has maintained that the changes would allow the switching and movement of trains without problems and penalties; allow trains to "fit within the terminal without moving a train beyond the existing switching limits" and provide numerous other benefits. On point, the Carrier maintained that:

> The current size of the Beaumont terminal does not allow sufficient room to yard and exchange crews. Therefore, trains are either held at initial terminals or at other points in order to avoid congestion at the Beaumont terminal. As a result of these delays, scheduled trains fail to arrive at their destination on time. This also inhibits the Company when bidding on new business requiring expedited transit time. This results in inconvenience and increased cost to the Company's customers.

The Carrier has shown that the change improves efficiency and under these circumstances is properly advanced to this Board. The Organization has not shown that such arguments lack factual proof.

Accordingly, having reviewed the numerous prior Awards that have considered Carrier requests, the facts of this record convince this Board that the Carrier's proposed change is justified (Public Law Board 5269, Award 1;

Public Law Board 5832, Award 1; Arbitration Board Nos. 318, 338, 372, 378, 404, 511, 512). In short, the Board is not persuaded by the Organization's objections and the General Chairman's strong arguments. Due to the circumstances of this instant case, the Board upholds, sustains, and grants the Carrier's extended switching limits put forth in this Arbitration.

AWARD:

The Question at issue in the Statement of Claim must be answered in the Affirmative. The Carrier's proposal as set forth in the Notice of April 5, 2012 to extend switching limits as indicated at Beaumont, Texas shall be granted.

Marty E. Zusman
Marty E. Zusman
Chair and Neutral Member

T. G. Taggart
Carrier Member, UP

W. Dent
Organization Member, BLET

Date: 6-18-2013

Married Pool Agreement

MEMORANDUM OF AGREEMENT
BETWEEN
THE CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY
AND
THE UNITED TRANSPORTATION UNION AND
THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS
REGARDING THE ASSIGNMENT OF
TRAINMEN AND ENGINEMEN POOLS
AT SOUTH MORRILL, NEBRASKA AND BILL, WYOMING

In recognition of the request of both Organizations (the UTU and the BLE) that Trainmen and Enginemen pools at both South Morrill, Nebraska and Bill, Wyoming, respectively, become merged to a single pool number, this Memorandum is being reached. Example: Trainman Pool No. 1 will correspond with Enginemen Pool No. 1, etc.

Based on this request, it is agreed that, beginning October 1, 1992, pool cars will be established which will consist of both an engineer and conductor position. Both the engineer and the conductor occupying a particular pool car will be ordered together when their service is required.

Vacancies on pool car assignments will be filled as follows:

ENGINEERS	TRAINMEN
First, from the Engineers' extra board;	First, from the Conductors' extra board;
second, set up to engine service the senior, qualified, available, set back engineer at the point;	second, from the youngest, rested, available conductor who can be used off their pool assignment; and
third, from the youngest, rested, available engineman who can be used off of their pool assignment; and	

finally, if a conductor or engineer has been used in emergency as described in step 2 or 3 above, upon his or her return to the home terminal, the engineman or trainman will be returned to his original pool assignment or will be allowed to wait for its return unless used in accordance with the second (Trainmen) or third (Enginemen) option listed above. Pool engineers or trainmen used in emergency will be held pending return of their assigned pool.

It is further agreed that, if either the engineman or conductor on a pool car requests and is granted rest beyond the minimum requirements, the additional rest period will apply to both incumbents of that pool car.

FEB 2 6 2001
Labor Relations

SPECIAL ARBITRATION BOARD

PARTIES TO DISPUTE:

Brotherhood of Locomotive Engineers
(UP Southern General Committee of Adjustment)
and
Union Pacific Railroad

STATEMENT OF CLAIM:

The Carrier's proposed Terms and Conditions to be applied to interdivisional train service from a new home terminal at Beaumont, Texas does not conform to the requirements of Section 2-Conditions of Article IX of the Arbitrated 1986 BLE National Agreement.

BACKGROUND

On August 17, 1998, the Carrier served notice, pursuant to Article IX of the BLE 1986 National Agreement, to establish interdivisional train operations from a new home terminal at Beaumont, Texas to various away-from-home terminals. On December 3, 1998, the parties agreed to an Interim Beaumont Interdivisional Operation, without prejudice to either parties' position.

Following further negotiations, the parties were unable to reach agreement. Accordingly, the dispute was arbitrated on January 18, 2000.

FINDINGS

The General Chairman has provided a well-reasoned brief which he expanded upon at the arbitration hearing. The General Chairman recognizes that, pursuant to Article IX and a long-line of Arbitral Awards, the Carrier has the right to establish new interdivisional train service. However, he points out that Section 2-Conditions of Article IX requires that "reasonable and practical conditions shall govern the establishment" of train runs. Moreover, Section 2 provides

MEMORANDUM OF AGREEMENT #1610010048

between the

UNION PACIFIC RAILROAD

and the

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

INTERDIVISIONAL OPERATIONS
South Pekin to Chicago/Clinton

IT IS AGREED:

On August 24, 2000 the Company served notice to establish dual-destination interdivisional service home terminaled at South Pekin, Illinois operating via Nelson to Chicago/Clinton.

The parties signatory hereto pursuant to the above cited Article, agree to the following interdivisional conditions:

CONDITIONS

Article I – Interdivisional Service

Section 1 – Home Terminal

(a) South Pekin, Illinois shall be the home terminal for employees working in the interdivisional service between South Pekin and Chicago/Clinton, the dual-destination away from home terminals for this interdivisional service.

NOTE: Effective with implementation of this IDR Agreement, the engineer pool operating between South Pekin, Illinois and Clinton, Iowa will be abolished and concurrently reestablished under the conditions set forth in this IDR Agreement. The parties agree that in the event this IDR Agreement is suspended, canceled, or otherwise modified in relevant part, the conditions prevalent prior to its implementation will be concurrently reestablished. For example, but not limited thereto, the South Pekin to Clinton engineer pool will be reestablished under the conditions set forth at Art. II, Sec. 5(d) of the Mikrut Award implementing the 1996 C&NW/UP Merger Agreement.

Section 2 – District Miles/Miles Run/Operation

(a) Crews used in straight-away, terminal-to-terminal service will be paid district miles. For the purposes of this IDR Agreement, district mileage between

MEMORANDUM OF AGREEMENT

between the

UNION PACIFIC RAILROAD COMPANY

and the

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

TURNAROUND POOL FREIGHT OPERATIONS
PORTLAND – KALAMA - PORTLAND

On October 25, 2002, Carrier served notice of its intent to establish new turnaround pool freight operations Portland – Kalama – Portland. On November 6, 2002, the parties met to discuss the proposed new service. In an effort to implement/establish this pool in accordance with Articles II (G) and III (F) of the Portland Hub Zone 1 Merger Implementing Agreement, the following is hereby adopted without prejudice to either parties' position:

IT IS AGREED:

1. Pool Operations.
   New turnaround pool freight service may be established with the on/off duty point of Portland, Oregon. This operation will be to Kalama, Washington with crews tying up back at Portland, Oregon.

2. Terms and Conditions.
   The provisions of the Zone 1 Merger Implementing Agreement will apply.

3. Transportation.
   When a crew is required to be relieved from duty at other than the on/off duty point identified in Item 1 above, the Carrier shall authorize and provide suitable transportation. Any necessary deadheading will be in combined service.

4. Familiarizarion
   To ensure proper familiarization and compliance, employees will be provided with a sufficient number of familiarization trips over the territory where they are not currently qualified. Issues concerning individual qualification shall be handled with local operating officers. Employees will not be required to lose time to "ride the road" on their own time in order to qualify for this new operation. If a dispute arises concerning this process,

ARBITRATION AGREEMENT

between the

UNION PACIFIC RAILROAD COMPANY

and its engineers in the Los Angeles HUB represented by

BROTHERHOOD OF LOCOMOTIVE ENGINEERS (UP Western Lines)

ALAMEDA CORRIDOR INTERDIVISIONAL SERVICE

Pursuant to the Company's notice dated January 23, 2002, served under the provisions of Article IX of the May 1986 BLE National Agreement, as amended, three new freight pools will be created subject to the following conditions:

IT IS AGREED

Except as specifically provided herein the provisions of the Union Pacific Western Lines Collective Bargaining Agreement, as modified, including the Los Angeles Hub Implementing Agreement shall prevail.

Section 1: Terminals

All Engineers assigned to and filling vacancies, in this service will report at Dolores/ICTF. (The on/off duty point has not yet been constructed and the precise location remains to be determined.)

ARBITRATION BOARD NO. 580
ESTABLISHED UNDER THE PROVISIONS OF
ARTICLE IX OF ARBITRATION AWARD 458
EFFECTIVE MAY 16, 1986

Union Pacific Railroad)
) **PARTIES TO DISPUTE**
Brotherhood of Locomotive Engineers)

BACKGROUND

On January 23, 2002, the Carrier served an interdivisional/intradivisional service notice on the Organization in accordance with Article IX of the May 19, 1986 BLE National Agreement as revised. The notice proposed establishment of three (3) new freight pools, all of which had Dolores/ICTF (International Container Transfer Facility) in the Los Angeles Basin as their home terminal.

Item #1 in the proposal contemplated creation of an "intradivisional" turnaround freight pool to handle traffic in the terminal area defined by the Ports of Los Angeles and Long Beach on the south and City of Industry on the east with the home terminal at Dolores/ICTF located between those limits.

Item #2 in the proposal contemplated creation of a new freight pool operating between Dolores/ICTF and Yermo, California, with Dolores/ICTF as home terminal.

Item #3 in the proposal contemplated creation of a new freight pool operating between Dolores/ICTF and Yuma, Arizona, with Dolores/ICTF as home terminal.

At this time traffic originating at the Ports of Los Angeles and Long Beach (usually about three trains per day) and traffic originating at Dolores/ICTF (usually about six trains per day) is handled by crews from Los Angeles or West Colton to either Los Angeles (LATC) or to West Colton. The trains are then handled from those points by through freight crews to Yermo, California or Yuma, Arizona. Movement of traffic between the Ports and Dolores/ICTF has historically been a slow and time-consuming process. Train tracks in the area were intermixed with streets and there were literally hundreds of street crossings. Trains would be lucky to make 10 miles an hour in working their way through this territory. It was not unusual for trains to take three hours to traverse this territory.

Creation of this new service headquartered at Dolores/ICTF was made possible by a municipal project in which 20 miles of track was relocated into a subsurface trench with no road crossings. This eliminated in excess of 200 road crossings between the Ports and Dolores/ICTF. Trains are now able to make this run at a steady 45 miles per hour. This improvement in running time makes possible single crew operations from the Ports and/or DoloresllCTF to Yuma, Arizona and Yermo, California. It is this interdivisional service that is created by items no. 2 and 3 in the interdivisional/intradivisional service notice.

MEMORANDUM OF AGREEMENT
between the
UNION PACIFIC RAILROAD COMPANY
and the
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
And TRAINMEN
For The Former C&NW Lines Territory

INTERDIVISIONAL SERVICE BETWEEN MASON CITY, SIOUX CITY AND ST. JAMES

On January 2, 2002, July 16, 2002, August 2, 2002 and August 8, 2003, Union Pacific Railroad Company ("Carrier" or "UP") served notice, pursuant to Article IX of Arbitration Award 458 (May 19, 1986 BLE National Agreement), on the Brotherhood of Locomotive Engineers ("Organization" or "BLE") of its intent to establish new interdivisional service between the Midwest Seniority District crews on the Fairmont and Rake Subdivision and the Central 5 Seniority District crews on the Worthington Subdivisions. In connection therewith, such service is to be governed and operated in accordance with the provisions of Article IX of Arbitration Award 458, as amended. The parties signatory hereto have agreed, pursuant to the above-cited Article, to the terms and conditions governing this new interdivisional service which will be combined with existing service on the respective seniority districts.

Accordingly, IT IS AGREED:

ARTICLE I - INTERDIVISIONAL SERVICE - OPERATIONS

UP may establish unassigned interdivisional pool freight service to operate over the Fairmont and the Worthington Subdivisions, utilizing unassigned engineers

MEMORANDUM OF AGREEMENT
between the
UNION PACIFIC RAILROAD COMPANY
and the
BROTHERHOOD OF LOCOMOTIVE
ENGINEERS AND TRAINMEN
For The Former C&NW Lines Territory

Interdivisional Service between Chicago, Illinois; Butler, Wisconsin; Adams, Wisconsin; Altoona, Wisconsin, and Minneapolis, Minnesota

The following provisions will apply to crews operating in Interdivisional service between Chicago, Illinois and Minneapolis, Minnesota. The provisions of this Agreement will be made a part of the Agreement imposed by PLB 6771, Award no. 1.

It is Agreed:

Section 1 - Overtime after 12 hours:

Overtime for this interdivisional service shall be computed in accordance with the applicable Agreements, or after the expiration of twelve (12) hours on duty, whichever occurs first.

Section 2 - Held away-from-home terminal :

A. Employees in this interdivisional pool freight service held at other than their home terminal will be paid continuous time for all time held after the expiration of sixteen (16) hours from the time released from duty, until time on duty.

B. The term "time on duty" cited above shall be the time the employee goes on duty.

C. Engineers tied up at the away-from-home terminal(s) will be sequenced to and called from a board that is independent of the home terminal board(s).

920.20-36

MEMORANDUM OF AGREEMENT

Between

UNION PACIFIC RAILROAD COMPANY

And the

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
File No. 920.20

****

ESTABLISHMENT OF INTERDIVISIONAL SERVICE BETWEEN FORT WORTH AND HALSTED, TEXAS

****

On November 19, 2004, Union Pacific Railroad Company ("Carrier" or "UP") served notice of its intention to establish new Interdivisional Service between Fort Worth and Halsted, Texas, under conditions set forth in Article IX of the May 19, 1986 BLET National Implementing Agreement, as amended.

Parties signatory hereto have, pursuant to the above-cited Article, agreed to the terms governing this new interdivisional service. Specifically, **IT IS AGREED**:

I. Interdivisional Service

Section 1: Operations

A. Carrier may establish Interdivisional Service to operate between Fort Worth and Halsted, Texas.

B. Fort Worth, Texas will be the home terminal and Halsted, Texas the away-from-home terminal for employees working in this Interdivisional Service.

C. Route miles are as follows:

Between Fort Worth and Halsted via Hearne - 281 miles.
Between Halsted and Fort Worth via Valley Junction - 259 miles.

Note 1: The mileage specified above that is to be paid for this Interdivisional Service is subject to final verification by the parties.

Note 2: Crews in this Interdivisional Service may

UNION PACIFIC RAILROAD COMPANY

Western Region - Transportation

Al Hallberg, Dir. Labor Relations
Tel: (916) 789-6345
Fax: (916) 789-6445

10031 Foothills Blvd.
Roseville, CA 95747

June 14, 2005

D. W. Hannah, General Chairman
Brotherhood of Locomotive Engineers
404 North 7th Street, Suite A
Colton, CA 92324

Dear Mr. Hannah:

It is the intent of the Company to establish new interdivisional service between West Colton, California and El Centro, California. West Colton will be the home terminal for this service, and El Centro will be the away from home terminal. The mileage of this new interdivisional service will be 173 miles.

Article IX "Interdivisional Service" of the May 19, 1986 BLE National Agreement provides in pertinent part as follows for creation of new interdivisional service not operating through an existing home terminal:

"ARTICLE IX – INTERDIVISIONAL SERVICE

Note: As used in this Agreement, the term interdivisional service includes interdivisional, interseniority district, intradivisional and/or intraseniority district service.

An individual carrier may establish interdivisional service, in freight or passenger service, subject to the following procedure.

Section 1 – Notice

An individual carrier seeking to establish interdivisional service shall give at least twenty days' written notice to the organization of its desire to establish service, specify the service it proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such service.

Section 2 – Conditions

Reasonable and practical conditions shall govern the establishment of the runs described, including but not limited to the following:

(a) Runs shall be adequate for efficient operations and reasonable in regard to the miles run, hours on duty and in regard to other conditions of work.

MEMORANDUM OF AGREEMENT

Between

UNION PACIFIC RAILROAD COMPANY

And the

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

****

ESTABLISHMENT OF INTERDIVISIONAL SERVICE
BETWEEN DALLAS AND SWEETWATER, TEXAS
Carrier File 920.20-37

****

On April 4, 2005, Union Pacific Railroad Company ("Carrier" or "UP") served notice of its intention to establish new Interdivisional Service between Dallas and Sweetwater, Texas, under conditions set forth in Article IX of the May 19, 1986 BLET National Implementing Agreement, as amended.

Parties signatory hereto have, pursuant to the above-cited Article, agreed to the terms governing this Interdivisional Service. Specifically, **IT IS AGREED**:

I. Interdivisional Service

Section 1: Operations

A. Carrier may establish Interdivisional Service to operate between Dallas and Sweetwater, Texas.

B. Dallas, Texas will be the home terminal and Sweetwater, Texas the away-from-home terminal for employees working in this Interdivisional Service.

C. Route miles are as follows:

Between Dallas and Sweetwater - 245 miles
Between Sweetwater and Dallas - 245 miles
Between Dallas and Sweetwater via Mesquite - 250 miles
Between Sweetwater and Dallas via Mesquite - 250 miles

Note 1: Where multiple/separate routes exist between Dallas and Sweetwater, crews may operate over any and all routes or combination of routes as part of their assignment. If the miles operated over multiple/separate routes exceed

MEMORANDUM OF AGREEMENT
between the
UNION PACIFIC RAILROAD COMPANY
and the
BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
For The Former C&NW Lines Territory

Interdivisional Service between the Twin Cities/Valley Park, Minnesota; Mason City, Iowa Falls, Boone, Des Moines, and Sioux City, Iowa; and St. James, Worthington, Minnesota.

On February 2, 2005, Union Pacific Railroad Company ("Carrier" or "UP") served notice, pursuant to Article IX of Arbitration Award 458, (May 19, 1986 BLE National Agreement), on the Brotherhood of Locomotive Engineers and Trainmen ("Organization" or "BLET") of its intent to establish new interdivisional service between the Twin Cities/Valley Park, Minnesota; to Mason City, Iowa Falls, Boone, Des Moines, and Sioux City, Iowa; and St. James, Worthington, Minnesota. In connection therewith, such service is to be governed and operated in accordance with the provisions of Article IX, Arbitration Award 458, as amended. The parties signatory hereto have agreed, pursuant to the above-cited Article, to the terms and conditions governing this new interdivisional service which will be combined with existing service on the respective seniority districts.

Accordingly, IT IS AGREED:

ARTICLE I - INTERDIVISIONAL SERVICE - OPERATIONS

Section 1: Operations-Twin Cities/Valley Park, Minnesota - Home Terminal – Single Pool

A. UP may establish unassigned interdivisional pool freight service between the Twin Cities/Valley Park and Mason City, Iowa Falls, Boone, Sioux City, and Des Moines, Iowa; and St. James, Worthington, Minnesota. The home terminal will be the Twin Cities/Valley Park

MEMORANDUM OF AGREEMENT

between

UNION PACIFIC RAILROAD COMPANY

and the

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN (San Antonio Hub)

==========

Service to/from Toyota Motor Company San Antonio, Texas

==========

Union Pacific Railroad Company ("UP") and the Brotherhood of Locomotive Engineers and Trainmen ("BLET") agree the following shall apply concerning UP's operations and service to/from Toyota's San Antonio facility:

I. OPERATIONS

A. Regular or extra employees working in through freight service on trains operating to San Antonio from Del Rio, Eagle Pass, Taylor, Hearne, Houston, Bloomington, Laredo and/or Smithville, or points between those locations and San Antonio, and are destined to Toyota's manufacturing facility on the Corpus Christi Subdivision, including crews providing hours-of-service relief for such employees, may operate through the San Antonio terminal and beyond the San Antonio switching limit on the Corpus Christi Subdivision to Toyota's facility.

NOTE: The switch leading to Toyota's facility is presently located at or near Milepost 12 on the Corpus Christi Subdivision.

B. Regular or extra employees working in through freight service on trains from Toyota's facility on the Corpus Christi Subdivision (or between Toyota's facility and the San Antonio switching limit on the Corpus Christi Subdivision) and are destined to Del Rio, Eagle Pass, Taylor, Hearne, Houston, Bloomington, Laredo and/or Smithville, or points between those locations and San Antonio, including crews providing hours-of-service relief for such employees between the Toyota facility and San Antonio,

MEMORANDUM OF AGREEMENT

between

UNION PACIFIC RAILROAD COMPANY

and the

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

AND TRAINMEN

Enhanced Customer Service: Salt Lake City Intermodal Facility

Pursuant to Article IX, Section 1, Paragraph (b) of the 1996 BLE National Agreement, Union Pacific Railroad Company ("UP") served notice on August 8, 2005, of its intent to implement new service to the new Salt Lake City Intermodal Facility (located near 5600 West and 800 South) in Salt Lake City, Utah. The essential element of the new service is to operate certain train crews through the Salt Lake City Terminal to/from the Salt Lake City Intermodal Facility without a crew change in Salt Lake City. The objective of this new operation is to ensure UP's service to existing and potential customers is cost-effective, reliable and competitive and that the cycle times (service levels) requested by those customers are achieved. Pursuant to Article I, Section 1, Paragraph (c) of Article IX of the 1996 BLE National Agreement, this new operation will be implemented on a trial basis on or about December 26, 2005.

Union Pacific ("UP") and the Brotherhood of Locomotive Engineers and Trainmen ("BLET") enter into this agreement to provide the particularized service referenced above and to help ensure efficient and reliable service to accommodate the new Salt Lake City Intermodal Facility ("SLCIF") located near 5600 West and 800 South in Salt Lake City, Utah, so UP may retain its current customer base and grow traffic levels. The parties recognize the SLCIF currently as an intermodal loading and unloading facility but which may in the future be joined by other facilities/operations requiring similar particularized and expedited service (auto-ramp, transload facilities, Roadrailer, etc). Accordingly, BLET and UP agree the following shall apply in connection with operations/service to/from the Salt Lake City Intermodal Facility.

I. OPERATIONS

A. Regular or extra engineers working in through freight service on trains operating into the Salt Lake City Terminal, and terminating at SLCIF, from

MEMORANDUM OF AGREEMENT

between the

UNION PACIFIC RAILROAD

and the

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
Former C&NW Lines Territory
And
Missouri Pacific Upper Lines

Service between the Joliet Intermodal Terminal and Chicago, Illinois.

IT IS AGREED:

This will confirm our discussions with regard to the new Joliet Intermodal Terminal (JIT) located south of the Chicago Terminal Complex, Illinois (CTC), between the BNSF and the Union Pacific line.

In an effort to meet the service level expectations of the JIT, the parties mutually agree:

Article I – Operations

Section 1: Joliet Intermodal Terminal (JIT) – CTC

A. Union Pacific may establish unassigned pool freight service, assigned service, or extra service in accordance with existing agreements, in order to meet the demands of the service and/or to meet customer requirements between the JIT and CTC. The home terminal will be at the JIT.

B. Engineers assigned to this new pool, assigned service, or extra service may operate over any route between the CTC and the JIT, in turnaround service.

C. An extra board shall be established at the JIT to protect the JIT-CTC service.

Section 2: Chicago, Illinois (CTC) - JIT

A. Union Pacific may establish unassigned pool freight service, assigned service, or extra service in accordance with existing agreements, in order to

MEMORANDUM OF AGREEMENT

between the

UNION PACIFIC RAILROAD

and the

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

Interdivisional Freight Service between Sweetwater, Texas and Monahans, Texas

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It is agreed the following terms and conditions shall apply to crews operating between Sweetwater and Monahans, Texas.

Article I – Operations

A. Union Pacific may establish a separate freight pool for crews to operate and/or deadhead between Sweetwater and Big Springs, Odessa, and Monahans. The home terminal will be Sweetwater. The away-from-home-terminals will be Big Springs, Odessa, and/or Monahans.

B. Engineers assigned to this new pool, assigned service or extra service may operate over any route between Sweetwater and Big Springs/Odessa/Monahans.

C. Nothing herein shall preclude the Carrier from utilizing pre-existing pools and protecting extra boards to handle traffic between Sweetwater and Big Springs/Odessa/Monahans.

D. Terms and conditions contained in the DFW Hub Implementing Agreement shall apply to crews operating and/or deadheading between Sweetwater and Big Springs/Odessa/Monahans.

Article II - Rates of Pay/Miles Run

A. The basic day, rates of pay and other operating conditions for employees engaged in interdivisional service will be governed by the applicable Local and National Agreements.

MEMORANDUM OF AGREEMENT
#7112011248
(920.40-35)

Between

UNION PACIFIC RAILROAD COMPANY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS & TRAINMEN

SANTA TERESA INTERDIVISIONAL SERVICE

In connection with Union Pacific Railroad Company's Notice dated December 23, 2011, wherein it advised its intent to establish new interdivisional unassigned (pool) through freight service between Tucson, Arizona and Santa Teresa, New Mexico – Santa Teresa, New Mexico and Vaughn, New Mexico, and Santa Teresa and Alpine and Pecos, Texas pursuant to Article IX, "Interdivisional Service", of the 1986 BLE National Agreement, the parties agree the following shall apply to this new service:

Section 1. Interdivisional Service. Union Pacific may establish the following new pool freight operations:

1. Tucson, Arizona - Santa Teresa, New Mexico and El Paso, Texas.

   A. Home terminal for this run will be Tucson, Arizona.

   B. Away-from-home-terminals for this run will be:

      i. Santa Teresa, New Mexico; and
      ii. El Paso, Texas.

   C. Length of runs.

      1. Tucson - Santa Teresa: 288 miles.
      2. Tucson - El Paso: 310 miles.

2. Santa Teresa, New Mexico - Vaughn, New Mexico.

   A. Home terminal for this run will be Santa Teresa, New Mexico.

File: 920.10-51

MEMORANDUM OF AGREEMENT
No. 1206011048

between the

UNION PACIFIC RAILROAD COMPANY

and the

BROTHERHOOD OF LOCOMOTIVE ENGINEERS and TRAINMEN (BLET)

INTERDIVISIONAL SERVICE OPERATIONS: RAWLINS, WYOMING – GRANGER, WYOMING

On April 22, 2010, Union Pacific Railroad Company ("UP") served notice pursuant to Article IX of the 1986 BLE National Agreement (Arbitration Award No. 458), as amended by the 1991 BLE National Agreement, on the Brotherhood of Locomotive Engineers and Trainmen ("BLET") advising of its intent to establish new interdivisional unassigned (pool) freight service between Rawlins, Wyoming and Granger, Wyoming.

In connection with that Notice, the parties signatory hereto agree the Carrier may establish this new interdivisional service subject to the terms and conditions set forth below.

ARTICLE I – INTERDIVISIONAL SERVICE OPERATIONS

Section 1 - Terminals for Service.

The Carrier may establish interdivisional service between Rawlins, Wyoming, and Granger, Wyoming, with Rawlins, Wyoming, as the home terminal. There shall be three (3) "Away-From-Home Terminals" for Engineers assigned to operate in this service. These terminals shall be:

1) Green River, Wyoming;

2) "The Patch"; and,

3) Granger, Wyoming.

Print this page

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                                BOARD LISTING                    PAGE:        1
DATE: 10/23/13                                            REQUEST BY:  RLAB142
TIME: 10:59                                               PROGRAM ID:  PSTR396
DESK ID  : (     )                          CIRC7  : ( SP760  )
  TERMINAL CODE: ( H    )(H=HOME A=AWAY)      BOARD TYPE: ( ROTATING POOL    )
   CIRC7  BOARD TERM     T ID DESCRIPTION                AVR GROUP DESCRIPTION
   SP760  DE10  SP760  H R O8 WCOLTON-YUMA RECREW BOARD
   SP760  DE11  SP760  H R O8 WCOLTON-YERMO RECREW BRD
   SP760  DT10  SP760  H R O8 WCOLTON-YUMA RECREW BOARD
   SP760  DT11  SP760  H R O8 WCOLTON-YERMO RECREW BRD
   SP760  EH10  SP760  H R O8 WCOLTON-LA HUB HELPER     COLTON ENGINEERS
   SP760  OE10  SP760  H R IS WEST COLTON INACTIVE ENG
   SP760  OT10  SP760  H R IS WEST COLTON INACTIVE TRN
   SP760  PE09  SP760  H R O8 W/COLTON BNSF DETOURS
   SP760  PE11  SP760  H R O8 WCLTN-REROUT PEER TRAINER
   SP760  PE14  SP760  H R O8 W/COLTON DPU PLT BRD      L.A. ENGINEERS
   SP760  RE08  SP760  H R O8 WEST COLTON WINDOW POOL
   SP760  RE09  SP760  H R O8 WC-BASIN POOL-FLAT RATE   COLTON ENGINEERS
   SP760  RE10  SP760  H R O5 WCOLTON-YUMA LA HUB ENG   COLTON ENGINEERS
   SP760  RE11  SP760  H R O5 WCOLTON-YERMO LA HUB ENG  COLTON ENGINEERS
   SP760  RE13  SP760  H R O8 WCOLT-ROBERTSON ROCK POOL COLTON ENGINEERS
   SP760  RE15  SP760  H R O8 WCOLTON - EL CENTRO ENG   COLTON ENGINEERS
   SP760  RH10  SP760  H R O8 WCOLTON-LA HUB HELPER     COLTON TRAINMEN
   SP760  RT08  SP760  H R O8 W.COLTON WINDOW POOL
   SP760  RT09  SP760  H R O8 WCOLTON-BASIN POOL        COLTON TRAINMEN
   SP760  RT10  SP760  H R O5 WCOLTON-YUMA HUB POOL BR  COLTON TRAINMEN
   SP760  RT11  SP760  H R O5 WCOLTON - YERMO LA HUB    COLTON TRAINMEN
   SP760  RT13  SP760  H R O8 WCOLT-ROBERTSON ROCK POOL COLTON TRAINMEN
   SP760  RT15  SP760  H R O8 WCOLTON - EL CENTRO TNM   COLTON TRAINMEN
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END OF REPORT

This column indicates that this is the home terminal CIRC7 of the assignment, which is also indicated by the "H" in the next column. The description also indicates where the pool operates, in this case the RE10 operates W. Colton to Yuma and the RE11 is W. Colton to Yermo.

Print this page

BOARD LISTING PAGE: 1

DATE: 10/23/13 REQUEST BY: RLAB142
TIME: 11:01 PROGRAM ID: PSTR396
DESK ID : ( ) CIRC7 : (SP760)
TERMINAL CODE: (A)(H=HOME A=AWAY) BOARD TYPE: (ROTATING POOL)

CIRC7	BOARD	TERM	T	ID	DESCRIPTION	AVR GROUP DESCRIPTION
SP760	PE09	SP563	A	R O8	W/COLTON DPU PLT BRD	
SP760	PE09	CX650	A	R O8	W/COLTON DPU PLT BRD	
SP760	RE08	CS720	A	R O8	BASIN-WCOLTON HUB POOL	COLTON ENGINEERS
SP760	RE09	CS720	A	R O8	BASIN-WCOLTON HUB POOL	COLTON ENGINEERS
SP760	RE10	SP563	A	R O5	YUMA-WCOLTON LA HUB ENG	COLTON ENGINEERS
SP760	RE11	CX650	A	R O5	YERMO - WCOLTON	COLTON ENGINEERS
SP760	RE15	SY131	A	R O8	EL CENTRO - WCOLTON ENG	COLTON ENGINEERS
SP760	RT08	CS720	A	R O8	W.COLTON AFHT FOR WINDOW	COLTON TRAINMEN
SP760	RT09	CS720	A	R O8	W.COLTON AFHT FOR WINDOW	COLTON TRAINMEN
SP760	RT10	SP563	A	R O5	YUMA-WCOLTON TRIP RATED	COLTON TRAINMEN
SP760	RT11	CX650	A	R O5	YERMO-WCOLTON	COLTON TRAINMEN
SP760	RT15	SY131	A	R O8	EL CENTRO - WCOLTON TNM	COLTON TRAINMEN

END OF REPORT

This column indicates the Away From Home Terminal CIRC7 of the assignment, which is also indicated by the "A" in the next column.

Print this page

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                                JOB HISTORY                          PAGE:        1
DATE: 10/23/13                                                  REQUEST BY:  RLAB142
TIME: 11:03                                                     PROGRAM ID: PSTR402
CR7: SP760  BRD: RE10 TERM:        CREW:      POS: ENG SYMB:
 START: 091613 END: 091613                SORT BY CENTRAL DATE/TIME: N

LOCEFF DTTM FUNCTION ARRVL DTTM  CENTRL DTTM CRE W/POS TRAIN SYM STA/RC EMPLOYEE
09/16-07:50 POOL ADD             09/16-09:50 SP32 ENG
09/16-07:50 POOL ADD             09/16-09:50 SP35 ENG
09/16-07:51 POOL ADD             09/16-09:51 SP36 ENG
09/16-07:51 POOL ADD             09/16-09:51 SP37 ENG
09/16-16:57 SEN-MOVE             09/16-18:58 SP29 ENG            OK0    MORRIS,
09/16-21:20 SEN-MOVE             09/16-23:21 SP32 ENG            OK1    BARRIOS,
              NO MORE RECORDS FOR THIS CRITERIA
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END OF REPORT

This report shows that on 9/16/2013 four turns were added to the SP760 RE10 pool. The turns were then be filled by standing bid (applications on file), based on seniority. For example, turn SP32 was added and Employee Barrios was assigned to the turn.

Print this page

PERMANENT BID HISTORY REPORT PAGE: 0001
DATE: 10/23/13 TIME: 09:03 REQUEST BY: RLAB142
LAST COMMITTED DATE / TIME: 06/13/13 12:00 PROGRAM ID: PSTR375

NAME: BARRIOS, J (JOHN) NUMBER: 000344853

PRI	CIRC7	BOARD	CREW ID	POS	GRP ID	EFFECTIVE	EXPIRATION	ADVERTISEMENT
001	SP760	RE10	ANY	ENG		061113	123199	000000

LAST UPDATED BY: OCMS500 DATE: 06/13/13 TIME: 13:00

END OF REPORT

The report shows that Employee J. Barrios entered a standing bid (application) on 6/11/13 requesting to be added to any turn that became open on the SP760 RE10 pool.

Print this page

JOB HISTORY PAGE: 1

DATE: 10/23/13 REQUEST BY: RLAB142
TIME: 11:12 PROGRAM ID: PSTR402
CR7: SP760 BRD: RE11 TERM: CREW: POS: ENG SYMB:
START: 071513 END: 072013 SORT BY CENTRAL DATE/TIME: N

LOCEFF DTTM	FUNCTION	ARRVL DTTM	CENTRL DTTM	CRE	W/POS	TRAIN SYM	STA/RC	EMPLOYEE
07/15-05:46	POOL ADD		07/15-07:46	MU01	ENG			
07/15-09:21	POOL ADD		07/15-11:21	UP12	ENG			
07/15-09:22	POOL ADD		07/15-11:22	UP16	ENG			
07/15-09:26	SEN-MOVE		07/15-11:26	UP12	ENG		OK1	WILLIAMS
07/15-09:28	SEN-MOVE		07/15-11:28	UP16	ENG		OK1	LOBATO,
07/15-10:38	SEN-MOVE		07/15-12:38	UP16	ENG		OK0	KARR JR,
07/17-09:58	SEN-MOVE		07/17-11:58	UP12	ENG		OK0	TRUE III
07/17-10:08	SEN-MOVE		07/17-12:08	UP13	ENG		OK0	COLEMAN,
07/17-12:59	SEN-MOVE		07/17-14:59	UP10	ENG		OK0	STARLING
07/19-05:21	SEN-MOVE		07/19-07:21	UP07	ENG		OK0	BRAWLEY,
07/19-13:01	SEN-MOVE		07/19-15:01	UP24	ENG		OK0	MCCALL,
07/19-15:15	SEN-MOVE		07/19-17:15	UP25	ENG		OK0	BACCARI,
07/20-00:04	SEN-MOVE		07/20-02:05	UP17	ENG		OK0	HENNINGE
07/20-00:08	SEN-MOVE		07/20-02:08	UP17	ENG		OK0	HENNINGE

NO MORE RECORDS FOR THIS CRITERIA

END OF REPORT

This report shows that on 7/15/2013, two turns were added to the SP760 RE11 pool. The turns were then filled by standing bid (application on file) based on seniority. For example, turn UP16 was added and Employee Lobato was assigned to the turn.

Print this page

PERMANENT BID HISTORY REPORT PAGE: 0001
DATE: 10/23/13 TIME: 09:12 REQUEST BY: RLAB142
LAST COMMITTED DATE / TIME: 07/08/13 22:29 PROGRAM ID: PSTR375

NAME: LOBATO, SS (SITARA) NUMBER: 000404886

PRI	CIRC7	BOARD	CREW ID	POS	GRP ID	EFFECTIVE	EXPIRATION	ADVERTISEMENT
001	SP760	XE11	ANY	ENG		070813	123199	000000
002	SP760	XE10	ANY	ENG		070513	123199	000000
003	SP760	RE11	ANY	ENG		070513	123199	000000

LAST UPDATED BY: OTEE666 DATE: 07/08/13 TIME: 23:29

END OF REPORT

The report shows that Employee Lobato entered a standing bid (application) on 7/5/2013, requesting to be added to any turn that became open on the SP760 RE11.

PUBLIC LAW BOARD 7318

Case No. 20
Award No. 20

PARTIES TO DISPUTE: (United Transportation Union
(vs.
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

Claim is hereby made on behalf of all employees, currently or previously, assigned to the ND having been affected by the moving of the home terminal, but not limited to those listed below, for one penalty day each beginning September 9, 2010, and for one penalty day each for every day thereafter until the home terminal for ND employees assigned to ID pool and assigned service is returned to Nashville, Tennessee.

FINDINGS:

This Board, after hearing upon the whole record and all the evidence finds that the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

This dispute began when the Carrier informed the Organization by notice dated May 1, 2010 of its "intent to establish Interdivisional Service between Birmingham, Alabama to Nashville, Tennessee for traffic operating between these locations on or after June 1, 2010." The Organization protested this change, arguing on point with its continued claim that the Notice was improper under the Agreements and that:

> . . . The sole purpose of your most recent notice is to change the home terminal of Nashville crews currently working this existing interdivisional run. No new service is being established, no existing interdivisional service is being

extended or rearranged, and the carrier is essentially "re-creating" an existing run to secure different conditions.

It is important to note by background that on November 3, 2010, the Organization argues it properly submitted a continuing claim beginning September 9, 2010 when the Carrier instituted the proposed change of the ID service home terminal from Nashville, Tennessee (ND employees) to Birmingham, Alabama. As that claim was not properly denied within the time limits, it must be paid. Furthering the claim, the Organization maintains that the claim remains for all employees denied right to their home terminal at Nashville.

As such, the Board is confronted with two groups of claims; an argument over the propriety of the Carrier's May 1, 2010 notice of changes; and the ultimate legitimacy of the September 9, 2010 implementation of the changes. Both sides site numerous Agreements, provisions, implications and Awards to support their positions. Both parties to this dispute strongly argue the merit of their position. Both parties have continued this dispute *long after* it was argued on the property and before this Board.

As a preliminary point, the parties are clearly aware that this Board is restricted by Section 153 Second of the Railway Labor Act, as amended, to consider only the record as established and argued between the parties on-the-property. This Board will not consider arguments and issues subsequently prepared or furnished in any discussions whatsoever. They are improper and will not be referred to herein.

As background to this decision, the Carrier's notification of intent to establish new interdivisional ID service between Birmingham, Alabama and Nashville, Tennessee was made on May 1, 2010. The Carrier argued that it was proper in accordance with Article IX, of the 1985 UTU National Agreement, incorporated as Article 28 (Section c). It is proper because as "new" service it is exempted from the restrictions of Article 28 (Section a), which pertained to the 1932 establishment of ID service between Nashville and Birmingham and Article 28 (Section b) modifications agreed to by date of December 11, 1972. The Organization

has protested the Carrier's actions as violating the existing "assigned" ID service of 1932 and the existing "unassigned/irregular" ID service Labor Agreement 4-60-92. That 1992 Agreement (4-60-92) adapted ID service between Nashville, Tennessee and Birmingham, Alabama. Accordingly, the ID service currently exists and no new service was being created. The Carrier's unilateral institution of the "new" ID service on September 9, 2010 removing Nashville Tennessee as a home terminal is improper, protected by the 1985 National Agreement provisions incorporated as Article 28(c).

Specifically, the Organization's argument is that the Carrier can not use the change in the Nashville, Tennessee home terminal as a pretext for changing an ID service that has existed since 1932, as modified, without making any material change to that service. The ID service as it exists will continue to exist unchanged. What is being changed is only the working conditions of the employees.

The Board has carefully and fully considered all of the historical evidence in the record dating from 1932 when assigned ID service was established between two different seniority districts of Nashville and Birmingham. The 1932 service continued with double headed ID service of home terminals in both cities, Birmingham and Nashville. The modifications of 1992 continued the double headed ID service of home terminals in both cities. The Carrier's changes herein, have made only a change in home terminal. There is no dispute that the Carrier has proposed no other change.

The position of the Organization is clear to this Board. The ID service between Nashville and Birmingham has long been established and is a part of the Agreement between the parties as Section (a), modified by December 11, 1972 Section (b) and added to Article 28, parts of the November 1, 1985 National Agreement as Section (c). The service exists and by past Awards (particularly, Public Law Board 4748, Special Board of Adjustment; procedural, Twomey) and Agreements, continues to exist. This is particularly made clear by Public Law Board 4778, Hays, stating that:

> If the carrier can persuasively prove that it is proposing to introduce a generically different type of interdivisional service, over territories currently covered by an existing interdivision agreement, . . . The procedures for establishing the rules and working conditions applicable to this "new" service are embraced by the parties' limited adoption of the 1985 National Agreement.

Hays went on to say, that the proposal is a "substantial burden" to be met demonstrating that the new ID service is "both unique and functionally distinct" from the old. Further, Twomey stated that to create a new ID service over the same territory would require the Carrier to demoustrate, as held by the Disputes Committee, that it was "extended or rearranged interdivisional service" and that it was not "a substantial re-creation of the prior interdivisional service designed solely to obtain the more favorable conditions in the 1986 National Agreement." In short, the Organization supports the application of Hays, Twomey and others that the Carrier has not "extended or rearranged" the existing ID service herein.

The Organization strongly argues that when the Carrier unilaterally put into effect beginning September 9, 2010 a change in ID service between Nashville and Birmingham, it made no substantive change in extending ID service or rearranging service. The filed claims of November 3, 2010 were not denied and therefore remains payable. The crux of this issue, is that this is not "new" ID service and as per prior Awards, it can not be properly established in this manner. The Organization maintains this is the same old service that had existed, changed only so that the Carrier can change the Agreement to obtain more favorable conditions.

The Organization argues that as the negotiated agreement of 4-6-92 already exists to establish and maintain ID service, it "shall continue in effect . . ." The Carrier's notice is improper and bared. The Carrier cannot serve notice to establish ID service which already exists. The Carrier's actions are simply to make material changes benefiting the Carrier to an Agreement made establishing ID Service (4-60-92). Such

changes are barred. They do not create new service but change Agreements already in existence. The Organization maintains you can't establish an ID service that already exists.

The Carrier's position fully rejects the arguments of the Organization. It maintains that it is establishing *new* service by its notice of May 1, 2010. The proposed new service is materially different from the existing service by establishing a fundamental change in making only one home terminal, Birmingham. This new service which was implemented on September 9, 2010 is fully permitted under Article 28, Section (c). The Carrier maintains that this is fully supported by Awards, some on this property (particularly Public Law Board 7463 No. 1; Public Law Board 5563 and Public Law Board 7285) which have reached the same conclusion on similar facts. The claim made by the Organization was not proper and has no legitimacy before this Board. There is no appropriate time claim at bar.

The Carrier holds that the there is ample Award support for the fact that when you establish a change in a home terminal, you have made a material change in the ID service and in fact it is "new" service as contemplated and supported by Article IX. The existing ID service has two home terminals of Birmingham and Nashville. The new ID service has one home terminal of Birmingham. This is a major change in service which is clearly permitted by the Agreements and the Awards. Under almost exact conditions, Public Law Board 7463, Award No. 1 had two home terminals of Florence and Savannah with a proposal of new ID service of one home terminal of Florence. The Award stated, "the board concludes that the elimination of the Savannah terminal constitutes a significant material change from the former ID service in the Florence/ Jacksonville corridor, and, therefore, the new service was not a substantial re-creation of the former." In Public Law Board 5563, Award No. 1, O'Brian stated similarly;

> Under the Carrier's proposal St. Louis will be the only home terminal for all engineers in the interdivisional service. To this board, this is a material distinction from the current interdivisional service allowable between St. Louis and

Kansas City.

Public Law Board 5563 also noted clearly that, similar to these circumstances, it would "operate over the same geographical area and involves the same kind of irregular freight service that the carrier now may operate in interdivisional service. Nevertheless, the Carrier is proposing new interdivisional service . . . That is materially different . . ."

The Board has carefully and fully studied the record at bar with regard to the merits arguments. The penultimate question for this Board is: Does the elimination of the home terminal of Nashville, Tennessee constitute a significant change in the ID service between Nashville and Birmingham Alabama so as to constitute "new" ID service? The arguments against this conclusion have been studied, particularly that expressed by Public Law Board 4748, which held that:

> The burden for clearly and convincingly proving entitlement to a specific dispensation from these viable agreements (1932/1972), where the territories are already covered under a pre-existing interdivisional agreement, is a substantial burden for the carrier each time it makes such a proposal.

In this instance, the on-property record documents that the Carrier's arguments revolve around the fact that the 1992 service no longer works, is not economical and is subject of problems, as stated:

> On numerous occasions complaints received from your committee members regarding the operation of the opposing pools and irregular work opportunities presented by crews becoming first out on their rest at the away from home terminals.

The Board is well aware that the Organization sees this Carrier change and other explanations as reducing deadheading costs as violating Article 28, in that the Organization maintains the Carrier is just taking the existing service and changing it to obtain more favorable working terms, rather than rearranging or creating a new service. The Board has

studied this central argument, that this is not new service, but that the Carrier is merely changing the home terminal for Nashville crews so that it can secure different working conditions under the guise of new ID service.

However, the Board finds, as does the most recent Award on this property (Public Law Board 7463, Radek), that when the Carrier changes the home terminal of an existing ID service it is a material change in service and constitutes new ID service. Such change is permissible under Article IX of the 1985 Agreement. The Organization's arguments throughout this dispute of the Carrier's ID service are not persuasive. The Carrier has not violated the Agreement between the parties. The Board is convinced from the full record and arguments presented that this is a "rearrangement" which is a materially different ID service from the service that existed prior. While the Board notes that in some prior awards additional adjustments were made to add a river route or expand train types, the central issue is that of fundamental removal of a home terminal. That is not a substantial recreation, but new service; a permissible rearrangement; a materially different ID service than existed prior.

The only remaining issue for this Board is the applicability of this Award to the Claimants' in the first part of the dispute. Those Claimants were listed by the General Chairman responding to the Carrier's served notice of May 1, 2010 that ID service would go into effect September 9, 2010. The General Chairman filed a claim on November 3, 2010. It has been disputed by the Carrier and stands before this Board.

The Board has studied the claim and the Carrier's action within the parameters of the Rules in effect on this property. Article 30, Section 1 lays out the parameters of a proper claim, stating that, "In the effect the General Chairman files a claim on behalf of the employee(s) it must be addressed to the Highest Designated Officer via US Mail." It goes on to say that, "If applicable the following information/details pertinent to the claim for compensation must be provided in order for the claim to be considered." The Board has studied the claim of November 3, 2010. The pertinent Rule states that if a claim has been properly filed, it must be

declined "by the earnings statements" of the employees and within the "fourth payroll period following the pay period in which the claim was received."

The Board has reviewed the initial claim. It is clearly in compliance with Article 30. It was filed by the General Chairman, listed the pertinent information and submitted to the Highest Designated Officer via US Mail. There are no other meanings or explicit language suggesting any failure to produce a proper claim.

Accordingly, the Carrier was obligated to deny the claim within the time frame of the Agreement with the proviso that, "Such claims not declined within these time frames will become payable by default without establishing a precedent." If there were problems with the claim they should have been denied and the issues should have been argued on the property. It was not properly declined. Carrier arguments have been studied and are rejected, particularly the argument of au improper appeal. Once the claims were payable by default, (the claims of September 9, 2010 to March 4, 2011), no further appeal was necessary. The Carrier is obligated by Agreement to pay claims to all legitimate employees affected, listed, and not properly declined. The further claim of the employees thereafter March 4, 2011 are by this record and findings, properly denied.

AWARD: As indicated in the Findings.

Marty E. Zusman
Chairman and Neutral Member

J R Willis
J. R. Willis DISSENT ATTACHED
Employee Member
Dated: 6/23/13

for M. Becker
Carrier Member

Organization's Dissent

PLB No. 7318, Award No. 20

The Organization wishes to express our dissent to the decision rendered by this Board involving the instant dispute.

In rendering their decision, the majority of the Board relied on Carrier submitted awards as the basis of their findings. All of the awards which were cited involved an actual material change in the material operations of the interdivisional services. Those material changes included the elimination of an on/off duty point (PLB No. 7463, Award No. 1), the allowance of additional trains not allowed by the original interdivisional agreement (PLB. No 5563, Award No. 1), or the increase in the territory involved in the service (PLB No. 7285, Award No. 1).

The majority of this Board relied heavily on the decision of PLB No. 7463. That award included the caveat that the findings were to be *"strictly limited to the particular dispute and record."* Additionally, that dispute involved the elimination of Savannah Terminal as a crew change point (on/off duty location).

The notice here disputed did not eliminate an on/off duty point (PLB No. 7463), add additional trains not covered by a previous notice (PLB No. 5563), or increase the territory of the existing ID service (PLB No. 7285). The material operation of the disputed ID service is exactly the same as before the notice was served. The effects of the change caused by the disputed ID notice only took place before and after the material operations were completed (the trains having completed operations over the territory). The only difference was the change in what the employees consider as their home terminal and has nothing to do with the material operations of the ID service.

Because of this Board's overreach by considering immaterial changes outside the realm of the material operations of the ID service, this award should be considered as having no precedential weight, nor should it be used in determining the outcome of any other dispute. To do otherwise would clearly have the effect of the Board's instant decision rendering harm to the integrity of UTU/NCCC 1985 National Agreement.

Respectfully submitted,

J.R. Willis

J.R. Willis, UTU GC
Employee Member

Public Law Board No. 7463
Richard K. Radek, Neutral Member and Chairman

Award No. 1
Case No. 1

Parties	}	United Transportation Union
To The	}	and
Dispute	}	CSX Transportaion, Inc.

Statement Of Claim

As stated by the Organization:

Claim of Conductor W.D. Whitfield (ID 145271) for $181.37 on September 18, 2010 and various dates in LCAT File 2010-078772 because his assignment being abolished and moved to Florence, SC, and/or offer of buyout pursuant to the "Orange Book Agreement."

As stated by the Carrier:

Orange Bk. Merger Agreement Article 42 Section 2 prior rights Step-on Step-off Agreement when trains run thru my home terminal.

Findings

The Board finds that the carrier of carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein. The Parties were given due notice of, and appeared at Hearing held thereon.

The Carrier raised a threshold objection at the hearing of this case that the claim the Organization placed before this Board is not the same claim as was handled on the property. While the parties agree that the component of the claim going to the compensation sought as a result of the Claimant's "assignment being abolished and moved to Florence, SC," is properly before us, the Carrier objects to the Organization's inclusion of the portion of the claim involving "offer of buyout pursuant to the 'Orange Book Agreement,'" and asks that the Board dismiss that portion of the claim.

Arbitration Boards, such as this one, instituted pursuant to Section 153 Second of the Railway Labor Act, as amended, function as appellate tribunals. Our jurisdiction is limited to a review of the record that the parties produced during their on-property handling of any particular dispute brought before us. We cannot consider matters that were neither raised or made part of

that record . The record of handling of this case does not show that the "offer of buyout" issue was raised while this case was yet in handling on the property. Accordingly, the Carrier's position is correct, and we must dismiss the portion of the claim involving the "offer of buyout pursuant to the "Orange Book Agreement" without considering the relative merit of that matter. The Board will, however, reach the merits of the remainder of the claim.

The record indicates that in the Fall of 1998, the Carrier served notice on the Organization of its intent to establish interdivisional (ID) through-freight service operating between Florence, South Carolina, and Jacksonville, Florida, through the existing home terminal of Savanna, Georgia. After a period of negotiations, the parties entered into an ID Agreement, effective November 4, 1998. That Agreement contained several provisions which bear on the instant dispute.

In its preamble, there is this statement:

> It is understood that this is a temporary agreement to permit the Carrier to commence operations while the parties negotiate a permanent agreement based upon Carrier's official notice dated September 18, 1998, to implement ID service in this corridor.

The final Article of the Agreement states the following:

> 22. This Agreement shall become effective on the [4th] day of [November], 1998 and shall remain in effect until January 31, 1999 or until such time as the parties reach a permanent agreement, whichever comes first. Further it is understood that this temporary agreement will not set a precedent nor will it prejudice or be referred-to in the future negotiations of a permanent agreement to cover this ID service in this territory or any other corridor on the CSXT property.

At the time the parties entered into their November 4, 1998 ID Agreement, the Carrier maintained a number of operating employees, including conductors, in the existing designated terminal of Savannah, Georgia. As an accommodation to its Savannah-based conductors, the Agreement contains the following provisions, reproduced in pertinent part:

> 2. Savannah will be the home terminal and Jacksonville & Florence will be the away-from-home terminals for service operated by Savannah Supply Point Conductors under the terms of this Agreement.
>
> 3. It is understood that Savannah Supply Point Conductors assigned to this ID service will be permitted to step-off/step-on at Savannah on the southbound trip.

Finally, with respect to stopping for meals en-route, the parties agreed to the following provision:

> g. In order to expedite the movement of trains operated under this Agreement, the Carrier shall determine the conditions under which crews may stop to eat. When such crews are not permitted to stop to eat, each member shall be paid an allowance of $6.00 for the trip.

The Carrier began to operate ID service pursuant to the terms of the November 4, 1998 Agreement; however, the parties took no steps to reach a permanent ID Agreement covering the Florence-Jacksonville corridor prior to the January 31, 1999 expiration date of the November 4, 1998 (temporary) Agreement. Despite the fact the expiration date was passed, the ID service was continued under the provisions of the expired Agreement. There was no return to the status quo ante, nor did the Organization object, or anyone file claims, in connection with the continuation of the ID service after the expiration of the Agreement.

In early 2000, the Carrier served the Organization a notice of intent to negotiate a permanent ID service agreement in place of the (expired) November 4, 1998 Agreement. The record is silent to whether any meetings or negotiations concerning the Carrier's notice ever took place. It is clear, though, that the parties did not enter into a new ID service agreement, yet the Florence-Jacksonville ID service continued under the terms of the expired Agreement, again without objection from anyone, until the Carrier served a new notice to establish ID service in the corridor effective June 4, 2010, pursuant to Article 40 of the Consolidated Southern Region Agreement (CSRA) Article 40 provides, in pertinent part:

> Article 40 Interdivisional Service
>
> ID Service agreements in effect will not be affected by the provisions of this Article unless otherwise modified by this Agreement. It is understood that any future changes to existing ID agreements must comply with the established criteria prior to modifying or amending an existing ID Agreement.
>
> When the Company intends to implement assigned and/or unassigned interdivisional/intradivisional freight service [ID] upon ten 10 days notice, the following conditions pursuant to the provisions of Article IX-Interdivisional Service of the October 31, 1985 UTU National Agreement will apply: ....

The Carrier asserts the claim before us is predicated on the Organization's belief that the Carrier's displacement of the existing ID service and implementation of ID service under a new

Agreement was improper. The Carrier maintains that its notice, and the promulgation of the new ID service, was done in consonance with existing Agreements; accordingly, the Carrier believes the instant claim lacks merit. The parties present several arguments in support of their respective positions.

Position of the Organization

The Organization points out that the November 4, 1998 ID Agreement expired 12 years prior to the Carrier's notice in May of 2012 that it intended to negotiate a new ID Agreement for the Florence/Jacksonville corridor. The Organization argues that because the Carrier did nothing to initiate negotiations prior to the temporary Agreement's expiration date, and because it did not act to negotiate a permanent agreement in the ensuing 12 years, the Carrier was estopped under the doctrine of laches from seeking to modify or abrogate the provisions of the temporary Agreement.

The Organization argues that CSRA Article 40, and, by extension, Section 5 of Article IX of the 1985 UTU National Agreement prohibit the replacement of existing ID service. Alternatively the Organization argues that if it was permissible that the Carrier could have served notice to implement new ID service, the conditions of the service the Carrier proposed were improper. The Organization believes the Carrier re-created the existing service changing only (1) the removal of the step-on/step-off provisions; and, (2) the lowering of the en-route meal allowance, both solely economic in nature. Because the new service is a substantial re-creation of the former, changed only to garner the more favorable economic conditions contained in the 2010 CSRA, the Organization asserts, the new service is a violation of Article IX of the 1985 UTU National Agreement and Article 40 of the CSRA. The Organization contends that the Carrier must properly seek the changes in the subject ID service through the conventional process established by the Railway Labor Act (Section 156).

The Organization concludes that Claimant, a Savannah Supply Point Conductor, was adversely affected by the elimination of the Savannah step-on/step-off provision of the prior Agreement and had to exercise his seniority away from his home terminal. Therefore, the Organization believes that the instant claim is valid and should be sustained.

Position of the Carrier

The Carrier argues that the November 4, 1998 Agreement was temporary, and that the Organization is incorrect that the Agreement became permanent simply because a permanent agreement was never reached. The Carrier relies upon Article 40 of the CSRA, which established its right to serve notice and create the new ID service subject of this dispute. The Carrier disagrees with the Organization's view that the new service is a re-creation of the former. The elimination of the Savannah terminal and corresponding operational changes represent a major change distinguishing the new service from the former, in the Carrier's view. In conclusion, the Carrier argues that the Claimant voluntarily exercised his seniority to Florence to work in the new ID service and accepted the conditions of that service, thus there is no valid basis for the claim he entered. The Carrier asks this Board to deny the instant claim.

Analysis and Decision

The Board has carefully considered the evidence and the arguments the parties have placed before us. We make the following determinations.

That the November 4, 1998 Agreement was intended to be temporary is beyond argument. It is equally clear that the parties did not enter into negotiations to reach a permanent agreement before the date the temporary agreement expired, that the Organization lodged no protest against the Agreement's continuation, that there was no follow up to the Carrier's untimely 1999 notice to negotiate a new agreement covering the service, that there were never any claims or grievances filed in connection with the continuance of the temporary agreement after its expiration date, and that the service was continued for 12 years in accordance with the expired agreement's terms. In sum, the parties established a practice, and in this instance, the practice was very well formed; it was of long standing, mutually acquiesced in by the parties, and adhered to without exception. In such circumstances, a practice becomes binding and is as much a part of the parties' agreement as any written provision it contains (see Detroit and Toledo Shoreline R.R. v. United Transportation Union, 396 U.S.142). Thus the provisions of the temporary agreement became permanent through the practice of the parties. Accordingly, we reject the Carrier's argument that the November 4, 1998 Agreement was temporary and did not require compliance with provisions of the Collective Bargaining Agreement (CBA) and/or the Railway Labor Act (RLA) pertaining to modifying or

abolishing agreements.

We also reject the Organization's contention that by the Carrier's 12-year continuation of the temporary agreement without attempting to initiate negotiations of a permanent one, the Carrier had "slept on its rights," and was barred under the doctrine of laches from seeking to change it in May of 2010. Agreements reached by the parties within the scope of the RLA remain in effect until they are modified or eliminated pursuant to the procedures provided by the RLA, or through agreement of the parties. Thus, if a particular agreement (or binding practice) satisfies the parties' needs, and there is, therefore, no compelling reason to treat with it, the parties need not do anything; the agreement continues in force. This is what occurred in the instant case. But this does not mean that because the parties elect not to re-visit an agreement (or particular agreement provisions) that they have relinquished their legal right under the RLA to seek changes when one party or the other feels the agreement no longer adequately addresses their needs. The passage of time, in these circumstances, is not relevant, and, therefore, laches is inapplicable in this case. The question now is not whether the temporary agreement could be changed, but whether the manner in which it was changed was proper.

The Carrier does not dispute its obligation with respect to the procedures for changing existing agreements, but takes the position that its notice to establish new ID service in the Florence/Jacksonville corridor was drawn pursuant to Article 40 of the CSRA, which incorporates Article IX of the October 31, 1985 UTU National Agreement (See Carrier's September 14, 2010 letter to the Organization's General Chairman.) The Carrier notes that Article IX, Section 5 of the October 31, 1985 UTU National Agreement is the same as Article IX, Section 5 of the 1986 Brotherhood of Locomotive Engineers (BLE) National (Arbitrated) Agreement, both providing:

> Interdivisional service in effect on the date of this agreement is not affected by this Article.

The Carrier cites Award No.1 of Public Law Board (PLB) No. 5563 (O'Brien) in support of its contention that Section 5 does not prohibit the establishment of <u>new</u> ID service subject to the procedures of Article IX. That Board held as follows:

> Article IX of the May 19, 1986 BLE Arbitrated National Agreement (Arbitration Board No. 458) allowed individual Carriers to establish interdivisional freight or passenger service subject to the procedures set forth in Article IX. Article IX was more favorable to the nation's Carriers than the May 13, 1971 BLE National Agreement which also allowed railroads to institute interdivisional service. <u>Section</u>

5 of Article IX stated that interdivisional service in effect on the date of this Agreement (June I, 1986) is not affected by this Article.

Following the Award of Arbitration Board No. 458, an Informal Disputes Committee was established to resolve questions involving the purpose and intent of the 1986 Arbitrated Agreement. In Issue No. 3, the Informal Disputes Committee addressed the question whether Carriers may extend or rearrange interdivisional service established prior to the effective date of Article IX. The Informal Disputes Committee ruled, in pertinent part, as follows:

> "...,The Carriers have the right to establish extended or rearranged interdivisional service and it constitutes new service within the meaning of Article IX unless it is a substantial re-creation of the prior interdivisional service designed solely to obtain the more favorable conditions in the 1986 National Agreement..."

...This Board recognizes that the interdivisional service contemplated in the Carrier's September 24, 1993 notice would operate over the same geographical area and involves the same kind of irregular freight service that the Carrier now may operate in interdivisional service. Nevertheless, the Carrier is proposing new interdivisional service in the St. Louis-Kansas City corridor that is materially different from the service instituted in 1984. Inasmauch as the newly proposed service is not merely a substantial re-creation of the interdivisional service established in 1984, the Carrier's notice is proper under Article IX of the Award of Arbitration Board No. 458.

The Organization responds that the language of the Informal Disputes Committee relied upon by PLB No. 5563 in interpreting Article IX, Section 5 of the 1986 BLE National Agreement does not exist in the 1985 UTU National Agreement. It cites Award No. 80 of PLB No. 4022 (Criswell) to this Board, a case involving another Carrier's notice to establish interdivisional service pursuant to Article IX of the October 31, 1985 UTU National Agreement, arguing it stands for the proposition that a Carrier may not establish new ID service on territory where an ID service agreement is already in existence. In its Opinion, that Board stated:

> There are existing agreements on the property which permit the Carrier to operate interdivisional trains in the territory in question.
>
> We believe that those agreements are sufficient and are in force. Further, we specifically find that those agreements:

> – Do not restrict what freight may be handled in the service proposed and considered herein.
>
> – Place no requirement for the Carrier to establish new trains, which are determined to be unnecessary, as a prequisite (sic) to the operation proposed by the Carrier. As an example, the existing agreement , dated in 1966, allows for Interdivisional turn-around service Detroit-to-Lansing. However, it contains language that such service may only operate when certain other trains which were operating in 1966 were in operation. Many of those trains were abolished years ago, and there is no need for them now. They need not be running in order for the interdivisional trains to Lansing to operate. ...
>
> With the foregoing, we determine that agreements exist to cover the questions, and that the proposed new agreement is not required.

The Board finds that Award No. 80 of PLB No. 4022 is not on point with the instant dispute. From our reading of its Opinion we understand that Board to have found the Carrier-proposed changes in ID service unnecessary because it already had the ability to do what it sought in the existing agreement. What is even more critical to the dispute we consider is that Award No. 80 does not take Section 5 of Article IX of the 1985 UTU National Agreement into account and does not offer us interpretive guidance as to whether the Carrier's notice was improper solely for the reason that it sought to replace an existing ID Agreement.

Award No. 1 of PLB 5563 is much more analogous to this dispute, in the Board's view. While the Organization argues appropriately that Award No. 1 involved Article IX of the 1986 BLE National Agreement and considered a decision of the Informal Disputes Committee arising from the BLE Agreement, the language of Article IX is virtually identical as between the 1986 BLE and the 1985 UTU National Agreements. Where Agreements contain identical or virtually identical provisions pertaining to the same subject matter, those provisions must ordinarily be interpreted and applied with consistency to similar sets of factual circumstances. Accordingly we will apply the logic and decision of PLB No. 5563 in Award No. 1 in this case; thet under CSRA Article 40 and Section 5 of Article IX of the 1985 UTU National Agreement the Carrier has the right to propose new interdivisional service so long as the new service is not merely a substantial re-creation of the former solely intended to obtain the more favorable conditions contained in CSRA Article 40.

The parties offer different perspectives on the changes the Carrier made in establishing the new ID service. There is no question that the lowering of the allowance in lieu of an en-route meal is a more favorable condition contained in CSRA Article 40. However, the Board sees the

elimination of the Savannah step-on/step-off provision in a much different light. That provision was eliminated because the new service eliminated Savannah as a terminal for the service. As the Carrier explained in its May 24, 2010 notice, the elimination of the terminal would obviate the Savannah crew base necessary to support the service as it had previously been configured. ID freight trains that were required to change crews could now run through Savannah without stopping. Without having to stop in Savannah, operating efficiency would improve, which, in turn, would eliminate certain limitations to the traffic the crews could handle.

The Board concludes that the elimination of the Savannah terminal constitutes a significant, material change from the former ID service in the Florence/Jacksonville corridor, and, therefore, the new service was not a substantial re-creation of the former. We find that the Carrier's May 24, 2010 notice to establish new ID service was proper under CSRA Article 40. As a result of the implementation of the new ID service, the abolishment of Claimant's position in Savannah did not violate the Agreement, and we must deny the instant claim. In reaching this result, we add that our Findings are strictly limited to the particular dispute and record before us. The Board's findings should not be construed as precedent applicable to other, similar disputes where the facts and arguments differ.

Award: Claim denied.

Richard K. Radek

Richard K. Radek, Neutral Member and Chairman

Robert Kerley, Organization Member

Myron W. Becker, Carrier Member

Signed on March 31, 2011, in Chicago, Illinois.

Richard K. Radek, Arbitrator
Biographical and Professional Data

Biographical

Date of birth:	November 19, 1947
Place of Birth:	Evanston, Illinois
Residence:	P. O. Box 34412 Chicago, Illinois 60634-0412
Telephone:	(216) 496-7170 (cellular) (773) 685-4762 (fax)
E-Mail:	portagepark2@aol.com

Education:
Northern Illinois University
Degrees: B. S. Ed.,
Comp. Major -Music . (Trumpet), 1969.
Northern Illinois University
Graduate Studies (M. M.), 1973.
Board-Certified Teacher (Illinois) 1969 to present.

Professional

Hinckley-Big Rock High School; Teacher, 1969-1974.
Chicago & North Western Railway Company; Locomotive Engineer, 1975-1981.
Professional Musician, Music Educator, Conductor, Intermittent 1969 to present.
International Brotherhood of Locomotive Engineers*; Director of Arbitration, 1981-2009.
National Railroad Adjustment Board; Member, 1982-2009; First Division Chairman or Vice Chairman, 1985-2009; National Railroad Adjustment Board Chairman or Vice Chairman, 2005-2009.
International Brotherhood of Locomotive Engineers; Vice President, 1996-2009.

Schedule of Fees

$1000.00 per day, plus customary and reasonable expenses when necessary.

*Name changed to Brotherhood of Locomotive Engineers and Trainmen, 2004.

BEFORE A BOARD OF ARBITRATION

Pursuant to Article 1, Section 4 of
the New York Dock Conditions

Finance Docket No. 32760

R.D.M.

JUN 28 1999

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

Members of the Board of Arbitration

Eckehard Muessig, Chairman
Jim McCoy, Organization Member
Scott Hinckley, Carrier Member

OPINION OF THE BOARD

I. INTRODUCTION

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

II. BACKGROUND AND SUMMARY OF FACTS

On January 13, 1998, pursuant to conditions as imposed by the STB, the Carrier served a Section 4 NYD notices on the General Chairmen of the SP Western General Committee and the UP Western General Committee concerning its desire to initiate negotiations relative to the terms and conditions of an Implementing Agreement for the Los Angeles Hub ("LA Hub") directed toward consummation of the approved transaction.

In its Operating Plan filed with its merger application, the Carrier indicated that it would implement a "hub and spoke" operating scheme for the merged railroad. Instructive for this dispute is that the LA Hub was the fourth Hub to be negotiated that involved the above-cited committees. Earlier, the two committees successfully negotiated and had BLE membership ratification for NYD Implementing Agreements at the Salt Lake, Roseville and Portland Hubs.

Following its January 13 notice, the Carrier prepared two documents relative to its LA Hub negotiations. One document contained terms covering a number of subjects and conditions similar to those contained in the earlier Hub Implementing Agreements. The other document was based on standard NYD conditions. However, prior to beginning its negotiations to finalize the Implementing Agreement, the Organization was asked if it wished to continue to negotiate the Implementing

Agreement along the lines of the earlier Hub negotiations or whether standard NYD conditions would form the basis for the negotiations. The Organization chose the same process and procedures as the parties had used when successfully arriving at the three earlier Hub Agreements.

Following several negotiating sessions, the negotiators reached agreement on a merger Implementing Agreement for the LA Hub ("The Implementing Agreement") in mid-November 1998. It was then sent to the BLE membership for a ratification vote. However, unexpectedly, an undated four page document, titled LA Hub Proposed Agreement signed by Mr. J. R. Saunders, Local Chairman, Division 5 and D. W. Hannah, Local Chairman, Division 56 was distributed to the BLE membership. This document in effect asked the BLE members not to ratify the negotiated Implementing Agreement. Indeed, the Agreement then failed to be ratified.

The Carrier asserts that the Organization engaged in bad-faith bargaining. It contends that the agreed upon and initialed Implementing Agreement was obtained falsely. Therefore, it argues that it now is invalid.

Subsequently, the matter was advanced to arbitration pursuant to Section 4 NYD. Although Section 4 of the New York Dock Conditions contemplates the adjudication of a dispute by a single Arbitrator, the parties agreed to establish this three Member Arbitration Board to decide this dispute. The undersigned was selected by the parties to serve as its Chairman.

On April 8, 1999, a hearing was held in St. Louis, Missouri. The Chairman, at the outset, restricted each party to one spokesman who was to be limited to a thirty minute presentation to be used in any manner desired. At the conclusion of the presentation, each spokesman was allowed fifteen (15) minutes for rebuttal. The spokesmen were Mr. Scott Hinckly, the Carrier member of this Board, and Mr. Richard Radek, a BLE Vice President and Director of Arbitration for the BLE. Mr. Jim McCoy, the BLE Member of this Board and a Vice President of the BLE, was provided a rebuttal opportunity at the end of the hearing to address the Board in view of his role as a Board member.

The Board granted Mr. Radek's motion to file a post-hearing brief to be received by the Chairman no later than April 23. The Carrier also chose to file a brief, subject to the same time restrictions. The Parties' briefs were received in a timely manner and are a part of the record considered by the Board in arriving at this Award.

III. QUESTION AT ISSUE

What shall be the terms of the Implementing Agreement for the selection and assignment of forces within the Los Angeles Hub?

IV. POSITIONS OF THE PARTIES

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

THE CARRIER'S POSITION

Basic to the Carrier's position is its strongly held view that it sincerely attempted to reach a negotiated Implementing Agreement with the Organization. However, because the two Local Chairmen authored and distributed the four page letter, noted earlier, to its membership, the Carrier contends the Implementing Agreement failed to be ratified. The Carrier asserts that the Organization engaged in bad-faith bargaining. Specifically, the BLE had the option at the outset to bargain on essentially NYD conditions or to follow the pattern used to arrive at Implementing Agreements at the other hubs. They chose the latter.

Accordingly, the parties, by expanding beyond basic NYD, could now bargain, for example, over such major issues as automatic certification, seniority, vacations, relocation benefits, etc. The Organization accepted this choice. However, the Carrier points out, in its letter to its membership, the two Local Chairmen claimed that the Implementing Agreement, agreed on by its negotiators, was "shoved down our throats." The Carrier asserts that the action taken by the two Chairmen shows a failure to adhere to generally accepted bargaining practices. Therefore,

Carrier contends that the initialed Agreement "was obtained falsely and, thus, is invalid." Accordingly, the Carrier now has presented a proposed Implementing Agreement that it contends adheres to the generally accepted basic NYD standards.

The Carrier submits that the Arbitrator and, in this case, the Board derives its authority and serves as an extension of the STB. Therefore, the committee must carry out the STB's mandate. In this respect, the Carrier relies upon a number of authorities. Among these are Interstate Commerce Commission ("ICC") (the predessor to the STB) decision of January 5, 1989 in Finance Docket No. 30965 when it stated:

> "The arbitrator's duty, simply stated, is to fashion an implementing arrangement that will reconcile worker protections with the terms and the objectives of the transaction that we approved. If those terms and objectives cannot be achieved without modification of existing work rules and collective bargaining arrangements, he clearly has the authority to modify such arrangements to the extent necessary to carry out his mandate."

Accordingly, this decision established that the Arbitrator (in this case, a three Member Board) has broad authority in matters such as this.

The Carrier explained how the extensiveness and complexities of the geographic area in which the UP and SP operated required it to make a number of critical decisions to comply with the STB's mandate. In this respect, it argued and provided its reason for including the following major issues in the Implementing Agreement:

1. A consolidated engineers' seniority roster would be prepared by dovetailing the seniority of all engineers into a common roster, with certain work "prior righted" for a two year period.

2. A single CBA would be applicable. In the Salt Lake and Portland Hubs, the Carrier selected the UP Idaho Collective Bargaining Agreement as the single Agreement for both of the hubs. By selecting the Idaho Agreement for the Los Angeles Hub, the Carrier would have a single CBA for the three hubs, which the Carrier submits would contribute to greater efficiency.

3. Modified Pool Operations to comport with the various routing options now available because the merger would be created.

4. Operating plans for train and engine crews would be the same. Basically, this means that the crew would go on and off duty at the same location and, when required, would stay at the same lodging facilities.

In summary, the Carrier maintains that its proposal complies with the STB decision and that this Board should impose its proposed Implementing Agreement to settle this case.

THE ORGANIZATION'S POSITION

The Organization contends that resolution of the key issues in this case must take into account substantive actions taken by the parties before and after the merger application had been approved. One major consideration in this regard was the modification of the SP-Western Lines Schedule Agreement.

Following negotiations, on November 3, 1997, the Parties consummated an Agreement referred to as the "BLE/SP West Modification Agreement" ("The Modification Agreement"). The Organization contends that the Modified Agreement contemplated the selection of the SP-West Lines Agreement as the CBA for all engineers in the Los Angeles Hub. That Agreement preserved certain unique provisions of the SP-West Lines Agreement, including enhanced protection for SP engineers who probably would be affected by the eventual restructing of work in the Los Angeles Basin. The Union strongly contends that the Carrier gained significant work rule concessions. Accordingly, the Union argues the SP-West Agreement now modified and effective for the large preponderance of LA Hub engineers became the foundation agreement for the Hub Implementing Agreement. The Union states: "The two simply must go together because they were designed as such, and the selection of the SP-West Agreement in the LA Hub was not a casual decision."

Moreover, the Organization points out that the Carrier selected the SP-West Agreement for Trainmen in the LA Hub. Therefore, extending it to the Engineers would be appropriate and consistent with the Carrier's earlier decision. It further argues that the Carrier may not select the Idaho Agreement, because it is not in force in any location within the LA Hub territory. In support of this contention, it relies upon a holding by Arbitrator Yost, dated April 14, 1997, in the Matter of Arbitration between the United Transportation Union and the UP.

Last, by way of substantive action taken prior to the finalization of the LA Hub Implementing Agreement, the Organization pointed out that the Carrier, in exchange for its support for the merger application, made certain commitments to the Organization. Particularly relevant to this dispute are two Carrier's letters, both dated March 8, 1996. The Organization notes that these letters made a number of commitments that should be considered in the matters at issue before the Board. In its letter, the Carrier stated (quoted verbatim) that:

> 1. Union Pacific will grant certification as adversely affected by the merger to the 1023 engineers projected to be adversely affected in the Labor Report Study and to all other engineers identified in any Merger Notice served after Board approval.
>
> 2. Union Pacific also commits that, in any Merger Notice served after Board approval, it will only seek those changes in existing Collective Bargaining Agreements that are necessary to implement transactions, meaning such changes that produce a public transportation benefit not based solely on savings achieved by Agreement change(s).
>
> 3. The final issue which was discussed pertained to integration of seniority as a result of post-merger consolidations and implementing agreements. BLE asked if Union Pacific would defer to the interested BLE committees regarding the method of seniority integration where the committees were able to achieve a mutually agreeable method for doing so. In that regard, Union Pacific would give deference to an internally devised BLE seniority integration solution, so long as; 1) it would not be in violation of the law or present undue legal exposure; 2) it would not be administratively burdensome, impractical or costly; and 3) it would not create an impediment to implementing the operating plan.

Accordingly, the Organization submits that the final LA Hub Implementing Agreement must give weight to the commitments briefed above.

Turning then to the specifics of the Implementing Agreement in this dispute, the Organization proposes the retention of the November 1998 Implementing Agreement in its entirety except as noted below.

The Organization, both in its detailed brief and before this Body, requests that the 25 mile zone provision (Article VI B-3 of the Implementing Agreement) be removed because it is unnecessary. It claims that the Yost Award previously cited came to the same conclusion, under a similar set of circumstances.

It further believes that application of Article III, Pool Operations/Assigned Service to the LA Hub is not practical or cost effective, asserting that the Carrier's proposal would only diffuse the workforce to too many points, a scheme that would not be operationally sound or in the public interest. The Organization rejects the practicability of the LA to Yermo/Yuma Pool service, stating that the same idea had been tried in the past and failed because of the distances involved and because of operational problems such as traffic density and special grade braking requirements in that territory. The Organization also suggests greater benefits would be achieved by adding two new pool provisions, as shown below:

1. On Duty: West Colton. May work to Gemco/Los Angeles/Dolores-Harbor/Anaheim & Return. Must tie up at the originating terminal. Home Terminal West Colton.

2. On Duty: Los Angeles/Dolores. May work to Gemco/West Colton/Anaheim. Home Terminal Los Angeles. May report to either Los Angeles or Dolores. Must tie up at the originating terminal.

In summary, the Organization contends that the changes it has proposed to the Implementing Agreement provide the merger benefits sought by the Carrier and is "in harmony with the applicable pre-negotiations commitments and the New York Dock conditions."

Nonetheless, the Organization states that, if the Board decides otherwise, a number of other provisions should be part of any revised

Implementing Agreement. With respect to which CBA should be applied to the LA Hub, the Organization maintains that the SP-West Agreement be selected. Concerning the Seniority provision, the Organization agrees that the seniority provision contained in Article II of The Implementing Agreement meets the March 8, 1996 Carrier commitment letter and should, therefore, be in the Board's Award of an Implementing Agreement. The Organization urges that Article IV of the November 3, 1997 SP-West Modification Agreement concerning disability and life insurance benefits be retained. Likewise, Article II of the November 3, 1997 Modification Agreement pertaining to the calculation of Protective Period monthly TPA should be retained.

In summary, the Organization arques that it has made its case as to what should be contained in the Implementing Agreement. However, if the Board does not adopt its recommendation, it arques that the November 1998 Implementing Agreement which failed ratification should be awarded by this Board.

V. DISCUSSION

This Arbitration arose because the two former SP Local Chairmen in their four page letter previously cited urged the employees they represent to reject the Implementing Agreement. The Carrier asserts that the Organization engaged in bad-faith bargaining. In our opinion, the letter is extremely misleading and in many instances factually wrong. Their actions were clearly harmful to these parties collective bargaining now and perhaps in the future. Fundamental to successful collective bargaining are the intangible elements of confidence and trust. The letter undermined those essential elements, harming the ability of the parties to successfully bargain.

While the Board does not intend to belabor the point, it is instructive to briefly discuss the intent and scope of NYD Section 4 (a) bargaining. It is apparent that the authors of the four page letter misunderstood the Section 4(a) scope of bargaining provisions. Under Section 4(a), the parties are required to bargain about the selection of forces involved in the transaction, the equitable arrangement for the assignment of employees based on the surrounding circumstances of the transaction and how the New York Dock Conditions would be applied.

There is no legal obligation in the New York Dock Conditions for either party to bargain about a permissive bargaining subject. In the case at hand, the Organization was provided the choice of basic Section 4 bargaining as described above or enhanced bargaining that would include subjects that are not mandatory bargaining under Section 4(a). The BLE selected the latter. Implicit in the selection of the accredited representatives was that the scope of bargaining would be expanded. These representatives obviously were aware of this fact because they are seasoned and extremely well-qualified bargainers. The give and take of bargaining is well-understood by these persons.

Indeed, the Organization leaders attempted to inform its membership of the difference between negotiating an Implementing Agreement and a Collective Bargaining Agreement. In its Summary Letter that transmitted the LA Hub ballots, the following observations were made (quoted verbatim):

> In order to fully understand this Implementing Agreement and the enormous amount of effort put into negotiating these provisions it is necessary for you each to understand that bargaining over an Implementing Agreement under New York Dock provisions is very different from negotiating collective bargaining conditions.
>
> First of all mergers are not made to benefit the employees of the railroads involved but are done to provide cost savings to the railroad and increase dividends for the stock holders. Therefore it is necessary for you to understand that this is not the proper forum to conduct negotiations to improve your collective bargaining agreement or address the unjust treatment of our post 1985 engineers.
>
> If a voluntary Implementing Agreement is not reached under the terms and conditions of New York Dock the issue is then placed before an Arbitrator who - after hearing the case - issues a decision that becomes the Implementing Agreement. The Arbitrator is limited by the New York Dock conditions in what he can and can not rule on and that is significant when it comes to blanket certification and relocation benefits.

Ironically, some of the bargaining issues complained of in the four page letter were raised by the Local Chairmen (e.g., the 25 mile zone issue). To agree to bargain about certain issues and when those issues

are not resolved to one's satisfaction does not mean that an Implementing Agreement was "shoved down our throats" as stated in the letter.

Throughout the four page letter, reference was made to the Modification Agreement, implying that somehow a vote on the initialed Implementing Agreement could reverse the earlier Agreement. This notion was clearly misleading and wrong. The authors of the four page document, for whatever reason, chose to ignore the guidance contained in the Ballot Transmittal Letter noted above. Likewise, the comments about extra boards certification of engineers and Union dues are not accurate and mislead as to what the negotiators had agreed to when they initialed the Implementing Agreement.

In summary, on this issue, the Carrier's charge of bad-faith bargaining is understandable. However, good-faith bargaining is difficult to define. It is a shapeless or formless principle. Apparently, the action by the two Local Chairmen was an unilateral one. In any event, the Board has no proper basis for rejecting the Organization's official explanation as provided in its post-hearing brief.

Before turning to the substance of the question before the Board, it should be noted again that this Board is a quasi-judicial extension of the STB and, thus, is bound to apply to the transaction at hand, the STB's interpretation of its controlling legislation and the New York Dock Conditions. Among many precedents on this point, see United Transportation Union v. Norfolk and Western Railway Co., 882 F.2d 1114, 1120 (D.C. Cir. 1987).

Certain key provisions of Finance Docket No. 32760 to which the various proposals of the parties would be applied are worthy of note. As stated in that Docket, these are (identified by page number):

> Union Support. The merger is supported by seven unions representing approximately 55% of the union-represented employees on the combined UP and SP systems: the United Transportation Union; the Brotherhood of Locomotive Engineers: the International Association of Machinists and Aerospace Workers; the International Brotherhood of Electrical Workers; the International Brotherhood of Boilermakers and Blacksmiths; the Sheet and Metal Workers International Association; and the International Brotherhood of Firemen and Oilers. The UP/SP merger is the first major merger since the Staggers Act that has received

widespread union support, and applicants are correct in their assessment that such extensive "labor support in a major rail merger case is unheard of in recent years, and stands as a testament to the compelling benefits of this merger." Page 171

We find that the statutory protections provided in New York Dock are appropriate to protect employees affected by the merger, the lines sales, and the terminal railroad control transactions, and we further find that, subject to such protections, approval of the merger (in the lead docket), the lines sales (in the Sub-No. 2 docket), and the terminal railroad control transactions (in the Sub-No. 3, 4, 5, 6, and 7 dockets) will be consistent with the public interest insofar as carrier employees are concerned. No unusual circumstances have been shown in this case to justify additional protection. Page 173

The Immunity Provision. An arbitrator acting under Article I, Section 4 of the New York Dock conditions imposed in the lead docket, the Sub-No. 2 docket, and the Sub-No. 3, 4, 5, 6, and 7 dockets will have the authority to override CBAs and RLA rights, as necessary to effect, respectively, the merger in the lead docket, the line sales in the Sub-No. 2 docket, and the terminal railroad control transactions in the Sub-No. 3, 4, 5, 6, and 7 dockets. This authority derives ultimately from 49 U.S.C. 11341(a), the "immunity" provision. Page 173

Certain Requests Denied. We will not impose several additional labor-related conditions that have been requested by parties to this proceeding. Page 174

Cherry-Picking. We will deny ARU's request that we order that any CBA "rationalization" be accomplished by allowing UP/SP's unions to "cherry-pick" from existing UP or SP agreements. This is a matter committed to the implementing agreement procedures established by the New York Dock conditions. See New York Dock, 360 I.C.C. at 85(Article I, Section 4). Page 174

Reimbursements. We will deny ARU's request that we require UP/SP to repay SP employees their forgone lump sum payments and their deferred wage increases. SP has already "paid" its employees for their wage concessions by giving up productivity concessions achieved by the nation's other railroads. Page 174

Turning then to the specific proposals of the parties, the Board has carefully reviewed the record, the briefs submitted by the parties and the oral arguments presented at the hearing. The Board concludes that, under the circumstances, it would be ill-advised to change the initialed proposed Implementing Agreement which we find meets the STB's goal of a more economic and efficient operation as envisioned by its approved transaction.

Fundamental to our holding in this matter is the principle that the reviewing third party should apply the same factors to the issues as the negotiating parties did when they bargained and reached an agreement. Also, it is well-settled that third parties should not disturb agreements reached unless it can be demonstrated that factors not relevant to the bargaining process were given weight by the parties during their negotiations. Accordingly, it is the third party's role to impartially weigh all of the evidence adduced with respect to the various factors considered by the parties when trying to reach their agreement. For this Board, given the circumstances, to change the negotiated Implementing Agreement, it must find that all relevant information was not considered or not given proper weight by the negotiating parties.

There is no evidence in the extensive record developed in this matter that the negotiating parties did not considered all relevant factors. The negotiators also recognized certain unique characteristics of the Company and its business issues and concerns. Moreover, it was shown that the parties' negotiators were aware of the current and future highly competitive business environment in which the railroad functioned. There is a sense that the parties also were aware that certain changes had to be forthcoming within the framework of the collective bargaining process. Accordingly, the Board concludes that the parties to these proceedings had before them all proper factors when they initialed the proposed Implementing Agreement.

As for the question of whether these factors were properly applied during the negotiating process, the Board finds that there is no evidence to the contrary. This conclusion is given greater substance by noting the lengthy process that led to the proposed Implementing Agreement and the experience of the individuals involved. The persons involved in this process were seasoned negotiators who have years of

experience addressing and resolving complex rule, benefit and wage issues. The evidence of record before this Board demonstrates that the negotiators were keenly aware of the various factors that influenced and lead to successful bargaining. They clearly took into account that their efforts could not be conducted in a vacuum and that success depended upon properly based compromises.

The proposed Implementing Agreement reflects the give and take of the bargaining process. It meets the STB authorized transaction goal in a manner serving the interests of both parties.

Obviously, the Implementing Agreement does not address or solve all individual needs or desires of the Organization. Nor does it meet all the Carrier's. However, for the reasons stated and, given the circumstances, this Board will not modify what the seasoned negotiators agreed upon when they initialed the Implementing Agreement in mid-November 1998. Any other Award would lead to further controversy and tend to undermind future collective bargaining by these parties.

AWARD

The negotiated initialed Implementing Agreement will serve as this Board's Award.

Eckehard Muessig
Chairman

Dated: MAY 10, 1999

IN THE MATTER OF INTERPRETATION OF THE MAY 10, 1999 NEW YORK DOCK ARBITRATION AWARD BETWEEN BROTHERHOOD OF LOCOMOTIVE ENGINEERS ("BLE") AND UNION PACIFIC RAILROAD COMPANY ("UP")	INTERPRETATION

BACKGROUND

On May 10, 1999, the undersigned issued an Arbitration Award which imposed a Tentative Agreement that had been reached by the Parties as the Agreement which would govern work rules and working conditions in the newly formed Los Angeles Hub of the merged Carrier ("LA Hub Agreement").

By letter dated December 13, 1999, the Carrier advised the Organization of its intent to implement the LA Hub Agreement effective with January 16, 2000. The letter announced a number of operational changes that the Carrier intended to make. One of these changes triggered the Request for Interpretation now before me. Specifically, the Carrier announced that it would: "Establish road switchers with an on duty point of Spence Street at East Los Angeles."

On January 12, 2000, in a letter to the Carrier, the Organization advised the Carrier that the establishment of road switchers at Spence Street violated the LA Hub Agreement. Following discussions between the parties, as well as an extensive exchange of views on the matter by correspondence, the parties were unable to resolve their differences. Consequently, the Carrier, on March 16, 2000, requested an interpretation of the May 10, 1999 Arbitration Award.

On April 1, 2000, the undersigned requested the parties to provide "their arguments on the question" presented by the Carrier no later than April 17, 2000. The Organization requested, and was granted an extension of time for its submission until June 22, 2000.

The matter is now before me for resolution.

ISSUE TO BE DECIDED

The Carrier has stated the issue as follows:

> "Does the Los Angeles Hub NYD Award prohibit the use of other than pool freight service to handle traffic between the Los Angeles area and the Dolores Harbor area?"

On the other hand, the Organization has posed the issue in the following manner:

> "May the Carrier supplant the Article III, Section C 'Pool Operations' which were negotiated in connection with the Los Angeles Hub Agreement with Road Switcher assignments?"

I conclude that the Carrier's statement of the issue is the most appropriate of the two.

POSITION OF THE PARTIES

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

Position of the Carrier

The Carrier's underlying position is that the establishment of the Spence Street road switchers does not violate any portion of the LA Hub Agreement. The Carrier cites Article III, Pool Operations/ Assigned Service of the LA Hub Agreement as the framework for its position in this dispute. That Article, in relevant part, reads as follows:

> III POOL OPERATIONS/ASSIGNED SERVICE
>
> The following operations may be instituted:
>
> A. West Colton-Yermo and West Colton-Yuma - These operations will be run as separate pools. Trains originating or terminating at Mira Loma may be operated by West Colton engineers with the on and off duty point at West Colton. Engineers in this pool that take trains to and from Mira Loma shall be governed as follows:

1. This only applies when engineers go through Riverside and does not permit West Colton pool engineers to run through West Colton to Pomona and then back down the Riverside line to Mira Loma.

2. Engineers in the West Colton-Yuma pool shall be paid actual miles between Mira Loma and Yuma.

3. Engineers in the West Colton-Yermo pool with a trainman/engineman seniority date subsequent to October 31, 1985 shall be paid a 30 minute arbitrary in addition to all other payments when delivering or receiving trains at Mira Loma. Should the engineer receive the train on the outbound trip and deliver one on the return trip then they shall be entitled to two 30 minute payments.

4. Engineers on duty time shall begin and end at West Colton and not at Mira Loma.

5. If pool engineers hostler their power to and from Mira Loma they shall be paid the mileage from West Colton to Mira Loma.

6. For those eligible engineers, ITD shall be computed from the time on duty at West Colton until departure is made from Mira Loma and FTD shall be computed from the time the engineer "yards" the train at Mira Loma and ties up at West Colton. This does not change the method used to calculate ITD and FTD but identifies that Mira Loma will be considered "in the terminal" for these calculations.

B. LATC/EAST YARD-YERMO/YUMA - These operations shall be run as two separate pools, one to Yuma and one to Yermo.

NOTE: The parties recognize that traffic disruption due to track work, and potential temporary line closures for other reasons, may result in several trains using alternate routes in A and B above. In these instances, CMS shall contact the Local Chairman, and engineers from the route with reduced traffic shall be called to operate on the other line with calls being alternated between the two pools.

C. WEST COLTON-BASIC - These operations shall be run as one pool or a combination of pool service, with the home terminal at West Colton, and assigned service. Assigned service shall designate the home and away from home terminal. Assigned service shall have a single away from home terminal for each assignment. The pool shall have three away from home terminals of, the combined SP/UP LATC/LA East Yard terminal/LA/Long Beach Harbor area, Anaheim, and Gemco. This pool may be run as straight away with engineers tying up at the far terminal or as turn around. Service to City of Industry shall be run as turn around service with the engineer working or being deadheaded in combination service back to West Colton at the end of the tour of duty.

NOTE: The Carrier shall give a ten day notice for the implementation of service in (A), (B) and (C), above if not given in the notice to implement this Hub agreement. Notice may be given individually or for more than one operation. Operations in place prior to the implementation of this Agreement shall continue until the Carrier serves notice to implement new operations and abolish old operations or the BLE exercises the cancellation clauses of the flat rate agreements.

D. Any pool freight, local, work train, hostler or road switcher service may be established in accordance with the controlling CBA.

E. None of the engineers in (A) through (D) above shall be restricted, in or between the terminals of their assignment, as to where they may set out or pick up cars or leave or receive their train. The type and amount of work shall be governed by the controlling CBA. All engineers may operate over any and all tracks and alternate routings between locations.

The Carrier relies mainly upon Sections D and E of Article III. It submits that Section D specifically provides for the establishment of "any" road switcher service in the LA Hub. Moreover, the Carrier argues that Section E directly states that there is no restriction on the "type of work which may be performed by engineers in the pools" or assigned service that is provided for in Sections A through D of Article III. It further points out that "assigned service" has been defined by Question and Answer Number 56 in the LA Hub Agreement as: "Local freight and road switcher service."

Finally, the Carrier contends that there is no provision in the controlling Collective Bargaining Agreement ("CBA") that would restrict road switchers from handling traffic between the Dolores Harbor area and Los Angeles. The controlling CBA is the former SP-West BLE Agreement. The parties had negotiated a road switcher rule pursuant to Article VII of the May 19, 1986 Award of Arbitration Board No. 458, which became Article 19½, effective August 25, 1986. The Carrier contends that Rule 19½ does not restrict where road switchers may be established or the type of traffic they may handle.

Accordingly, in light of the above reasoning, the Carrier requests that its position in this matter be affirmed.

Position of the Organization

As highlighted by its statement of the issue, the Organization contends that this dispute centers upon a very narrow issue, which can be summarized as: "May the work now performed by the West Colton-Basin Pool be performed by Road Switchers established solely for that purpose?"

The Organization submits that, to understand this dispute and to dispose of it in its favor, it is necessary to understand what the parties discussed and what work elements were particularly significant during the negotiations that finally led to the LA Hub Agreement. It asserts that the question of how trains would be shuttled between the Los Angeles and Harbor areas was a major element of discussion during the negotiating process. As a result, the parties agreed to establish the West Colton-Basin Pool with three separate "away-from-home" terminals. The Organization maintains that it is critical to this dispute to understand that it was in the context of pool service alone that the parties negotiated the LA Hub Agreement with respect to shuttling freight trains between West Colton and the Harbor area.

To support this fundamental portion of its position that such freight train movements were to be exclusively vested in the pool, the Organization also relies upon the express language of Article III,

however, it contends that Section C controls as well as Article IV, Section B, and Question and Answer Number 10 of the LA Hub Agreement. Article III has been previously quoted. The other two citations relied upon read as follows:

> IV. EXTRA BOARDS
>
> A. The Carrier may establish extra boards at any location in accordance with the governing CBA. The Carrier will give a thirty day notice of the consolidation of pre-merger extra boards and the notice provisions of the governing CBA shall be used in the establishment of new extra boards.
>
> B. If there are no rested and available West Colton pool engineers at the away from home points LATC and the Harbor area, then the closest extra board may be used to work trains back to West Colton. When so used they will not be tied up at West Colton but will deadhead back to their on duty point. If sufficient traffic exists to warrant a pool to protect this service then a pool shall be established. The use of this pool shall be ahead of using a West Colton engineer in combination deadhead service.
>
> C. Agreement Coverage - Engineers working in the Los Angeles Hub shall be governed, in addition to the provisions of this Agreement, by the Collective Bargaining Agreement selected by the Carrier, including all addenda and side letter agreements pertaining to that agreement and previous National Agreement/Award/Implementing Document provisions still applicable. Except as specifically provided herein the system and national collective bargaining agreements, awards and interpretations shall prevail. None of the provisions of these agreements are retroactive. The Carrier has selected the SP WEST modified BLE Agreement.
>
> QUESTION AND ANSWER NUMBER 10
>
> Will West Colton-Basin engineers be tied up a second time at an away from home point?
>
> No, if they take a train to some point other than the home terminal they will be transported to the home terminal. For example, if a West Colton-Basin engineer whose previous tour of duty took him/her to the Harbor, takes a train from the Harbor to LATC after they have obtained their rest, they will not be tied up at LATC, which would be a second tie-up at a far terminal but shall be transported back to West Colton.

Accordingly, the Organization contends that because the LA Hub Agreement was negotiated "around the exclusive use of pool crews to handle the train movements at issue here, and since the Agreement was reached and structured with the handling of pool crews in mind," the Carrier should be required to stand by its commitments to implement an operating scheme which was a part of the negotiations that led up to the LA Hub Agreement.

The Organization also contends that the Carrier's contention that it has the "unfettered right to establish road switcher assignments" is clearly misplaced. Moreover, it argues that, even if the Carrier had the right to set up road switcher assignments, it cannot do so in connection with the work at issue here because that work is vested by negotiated rule in the West Colton-Basin Pool.

Finally, the Organization submits that, based upon its analysis of the Carrier's reports, the work that is being performed by the Spence Street crews (a pool engineer and a road switcher trainman) is predominantly shuttling coal trains to and from the harbor and dock areas. It contends that the movement of unit trains or container trains has not been historically the work of road switchers on the Carrier's property.

The Organization also contends that its position is supported by the Carrier's actions. In late calendar year 1999, the Carrier sought to negotiate an agreement to allow road switchers to do the very work that caused this Request for Interpretation to arise. Thus, the Organization submits that, if the Carrier already had the right to assign the work involved here, it would not have engaged in bargaining to obtain a right it already had.

In summary, for all of the foregoing as further detailed in its brief, the Organization requests that the Carrier's Question at Issue should be answered in the affirmative, and the Question posed by the Organization should be answered in the negative.

FINDINGS AND CONCLUSION

After a review of the entire record, I conclude, for the reasons that follow, that the Carrier's position in this matter must be sustained.

At the outset, a few comments are needed about the claim by the Organization in its letter of January 12, 2000 that toward the end of 1999 the Carrier requested an agreement for road switcher assignments to work shuttle trains between Dolores and Los Angeles. If factually accurate, the Carrier's request obviously would give support to the Organization's position in this dispute.

The evidence shows that on January 14, 2000, the Carrier responded to the Organization's claim, noting that there had been several meetings to discuss agreement modification desired by the BLE. Nevertheless, the Carrier's participants in these meetings assert that they do not recall any such a request by the Carrier. The Carrier in this same letter requested that additional information be provided "if there was such a request" made.

Although there continued to be a number of letters exchanged between the parties, the Organization did not provide any additional support for its claim. Indeed, the issue was not raised again on the property. Accordingly, I conclude that whatever took place was a misunderstanding and has no relevance to my deliberations in arriving at this interpretation.

With respect to the merits, the Organization on the property has failed to legitimize its position in this dispute. Its construction of the LA Hub Agreement, relying upon Section E, Articles III and IV and Question Number 10 is simply misplaced. I am not unmindful of the well-stated points made in the Organization's Memorandum Brief. However, its arguments cannot overcome what I find to be a reasonable construction by the Carrier. There is no language in the LA Hub Agreement which precludes the use of engineers in assigned service, such as road switcher, to handle traffic in the LA Basin. This dispute has dragged on for months providing the Organization with ample time and opportunity to counter the Carrier's position. However, at

no time were concise arguments presented on the property to refute the Carrier's reliance upon Section D and E of Article III and Question Number 56 to the LA Hub Agreement. The Organzation has not explained why the Carrier's position was wrong. The Carrier, on the other hand provided a detailed analysis of the Organization's position stating specifically on each key issue why it considered it not on point to the issue at hand.

The Organization argues that the proposed road switchers are protected by the provision of Section C, Article III because the description of the work that was "allocated to this pool freight assignment by example in Question and Answer No. 10" as identified earlier and Section B, Article IV.

However, with respect to Question Number 10, I find the language clear as to its purpose. Specifically, that engineers operating in that pool will not be tied up a second time at an away-from-home terminal.

With respect to Section B, Article IV, the Carrier in its letter, in relevant part, stated as follows:

> The Company's interpretation of the Los Angeles Hub implementing agreement has remained constant. Since our meeting on January 7, I have reviewed this matter in depth with Scott Hinckley, the Company's negotiator for the Los Angeles Hub, and he confirms that interpretation. The Company's position is that establishment of the Spence Street road switcher jobs to shuttle trains between Los Angeles and the Harbor does not violate any portion of the Los Angeles Hub implementing agreement. One of the away-from-home terminals of the West Colton-Basin pool is an area defined in the Los Angeles Hub implementing agreement as "the combined SP/UP LATC/LA East Yard terminal/LA/Long Beach Harbor area." Article IV, Section B of that agreement refers only to the handling of traffic between this away-from-home terminal and West Colton. In other words, Article IV, Section B refers to east-west traffic between the greater Los Angeles/Harbor area and West Colton, and not north-south traffic between Los Angeles and the Harbor.

I agree with this interpretation.

Article III of the LA Hub Agreement provides for the creation of pools and defines assigned service in Question Number 56. Section D provides that "any" road switcher service may be established in the LA Hub "in accordance with the controlling CBA." The controlling CBA is the former SP-West BLE Agreement. Effective August 25, 1986, the parties negotiated a road switcher rule, Article 19½. I find that this rule contains no restriction on where road switchers may be established or the type of traffic they may handle.

In summary, the Carrier's argument on the issue presented are persuasive and accepted. The Carrier's construction of the LA Hub Agreement as applied to the Question at Issue is reasonable. Accordingly, the Question at Issue is answered in the negative.

Eckehard Muessig
Arbitrator

Dated: July 5, 2002

MERGER IMPLEMENTING AGREEMENT
Los Angeles Hub

between the

UNION PACIFIC
SOUTHERN PACIFIC TRANSPORTATION COMPANY
and
BROTHERHOOD OF LOCOMOTIVE ENGINEERS

In Finance Docket No. 32760, the U.S. Department of Transportation, Surface Transportation Board ("STB") approved the merger of the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") and Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SP"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp., and The Denver & Rio Grande Western Railroad Company ("DRGW") (collectively referred to as "SP"). In approving this transaction, the STB imposed New York Dock labor protective conditions.

In order to achieve the benefits of operational changes made possible by the transaction, to consolidate the seniority of all engineers working in the territory covered by this Agreement into one common seniority district covered under a single, common collective bargaining agreement.

IT IS AGREED:

I. Los Angeles Hub

A new seniority district shall be created that encompasses the following area: UP territory including milepost 164.42 East of Yermo westward to end of track in the Los Angeles Basin and SP territory from (not including) Santa Barbara and milepost 460.0 at (including) Hivolt, and between Burbank Jct and Palmdale Jct, East to milepost 731.5 at (not including) Yuma including all tracks in the Los Angeles Basin and shall include all main and branch lines, industrial leads and stations between the points identified.

> **NOTE 1:** Engineers with home terminals within the hub may work to points outside the Hub without infringing on the rights of other engineers in other Hubs and engineers outside the Hub may work to points inside the Hub without infringing on the rights of engineers inside the Los Angeles Hub. The Hub identifies the on duty points for assignments and not the boundaries of assignments. (This note is further explained in side letter No. 3)

II. Seniority and Work Consolidation.

The following seniority consolidations will be made:

A. A new seniority district will be formed and a master Engineer roster(s) shall be created for the Los Angeles Hub for the engineers on the current SP seniority roster and the current UP Seniority roster and PE Seniority roster or on a SP auxiliary board from a point inside the Hub but working outside the Hub or UP engineer borrowed out to other locations that will return to the Hub upon release. It does not include borrow outs or auxiliary board engineers to the Hub, if any. All such engineers must be on one of these rosters or in training on January 13, 1998.

B. The new roster will be created as follows:

1. UP, SP and PE Engineers will be dovetailed based upon the current engineer seniority date within the Hub. This shall include any engineer working in trainman/fireman service with an engineer's seniority date. If this process results in engineers having identical seniority dates, seniority ranking will be determined by the engineer's earliest retained hire date with the Carrier.

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

3. All engineers placed on the rosters may work all assignments protected by the roster in accordance with their seniority and the provisions set forth in this Agreement.

4. Engineers placed on the Los Angeles Hub Roster shall relinquish all seniority outside the new roster area upon implementation of this Agreement and all seniority inside the Los Angeles Hub held by engineers outside the Hub shall be eliminated.

5. For the purposes of prior rights, SP San Joaquin engineers who remain in the LA Hub, SP Los Angeles and PE engineers will be dovetailed into one SP prior right roster.

   NOTE: San Joaquin engineers who have a right in the Roseville Hub Agreement to bid and relocate on assignments where work is moved will

continue to do so in accord with those agreement provisions. Until that time they shall remain on the LA Hub roster.

C. Engineers who are on an authorized leave of absence or who are dismissed and later reinstated will have the right to displace to the appropriate roster, provided his/her seniority at time of displacement would have permitted him/her to hold that selection. The parties will create an inactive roster for all such engineers until they return to service in a Hub or other location at which time they will be placed on the appropriate seniority rosters and removed from the inactive roster.

D. Prior rights and dovetail rights shall be governed by the following:

1. Until new extra boards are established the current ones shall be prior righted and protect the same assignments that they protected pre-merger. Once new extra boards are established they shall be filled from the dovetail rosters.

2. Road switchers and work trains that go on duty at pre-merger points that were clearly an SP or a UP point shall be filled using the prior right roster.

3. Road Switchers, local freights and work trains that go on duty at a pre-merger point that was a joint location or at a point where on duty points are consolidated, shall be filled as follows:

Harbor area:	70% SP and 30% UP
City of Industry	75% SP and 25% UP

Engineers will be required to fill their prior right positions in the pre merger part of the above two areas first. For example, UP engineers will fill Paramount and Mead positions if available prior to former SP positions in the Harbor area.

NOTE: When on duty points of the two former Carriers are consolidated a ten (10) day advance notice will be given.

4. Locals that run to or from Yermo shall be prior righted to the UP roster regardless of the on duty point. Locals that run West (such as Oxnard, Gemco, Palmdale and Santa Barbara) to pre merger SP destinations shall be prior righted to the SP roster regardless of the on duty point. This does not apply to locals that run to the Harbor area as that has been a joint area. All other locals shall be prior righted based on the on duty point.

5. Extra work trains shall be filled from the extra boards.

6. Victorville helpers shall be UP prior righted and Colton Helpers shall be SP prior righted.

7. Except as otherwise provided for in this agreement, all assignments at LATC/East Yard shall be prior righted on a 50/50 percentage basis per shift, at West Colton they shall be SP prior righted and at Yermo they shall be UP prior righted. Any new facility assignments established at other locations after the merger shall be filled from the dovetail roster. (This does not apply to expansions of existing facilities)

8. Pools that run only to Yermo shall be UP prior righted and pools that run only to Yuma and/or Indio shall be SP prior righted up to the baseline number for the specific destination. The baseline number shall be 99(SP) and 37(UP). (The numbers 99 and 37 come from the number of pool turns the respective properties have had for the past two years). Turns above the baseline number shall be filled in one of the two following methods:

   a. If either the UP or SP drop below the baseline by a minimum of three turns and the other pools increase by a minimum of three then the Local Chairman may request that the increase in turns, up to the number decreased in the other pools, be prior righted to the roster that lost the turns. These turns will be the first ones whose prior rights are phased out in **E, 2,** below.

   b. All increases not filled by **a,** above shall be filled from the dovetail roster.

9. In determining the baseline, the SP shall add up the number of turns that go to Indio and Yuma, whether from West Colton or LATC/East Yard and subtract from that 35 (which represents their premerger portion of the West Colton-Basin Pool). The UP shall add up the number of turns that go to Yermo, whether from the West Colton or LATC/East Yard and subtract 9 (which represents their premerger portion of the West Colton-Basin Pool). Since there is more than one pool the Local Chairman shall designate how the prior right turns are allocated between the pools and once designated they cannot be changed.

Example: The SP baseline is 99. After implementation the West Colton-Yuma pool has 45 turns and the LATC/East Yard-Yuma pool has 25. The total is 70. When one adds the 35 allocated to the West Colton-Basin pool the total comes to 105. This is 6 over the baseline. The Local Chairman must designate how many of the 45 and 25 turns are prior righted leaving six non prior right turns. If he designates all 25 in the LATC/East Yard and 39 in the West Colton pools then he cannot later change the designation.

10. The West Colton-Basin pool shall be prior righted on an 80(SP)/20(UP) basis up to the number 44 and shall be filled on a dovetailed basis after that number. The attached chart shows the specific job allocation.

11. Assignments at Yuma, both regular and extra board, protected by the West Colton source of supply shall be governed as follows:

    a. The assignments shall be prior righted to SP engineers holding seniority in the Los Angeles Hub on the day this agreement is implemented.

    b. If an assignment goes no bid/application then it shall be filled by an engineer from the adjoining Hub.

    c. LA Hub SP prior right engineers shall have bid/application rights to vacancies on these assignments and shall not have displacement rights to them if they are held by an engineer from the adjoining Hub for a period of time not to exceed 6 months from the date the engineer from the other Hub holding the assignment is assigned, unless the 6 month period of time is waived by the engineer holding the assignment.

    NOTE: These provisions shall become applicable when the adjoining area is under a merger agreement/award.

12. Engineers who are on assignments on the day of implementation shall remain on those assignments unless they make application to another vacancy or are displaced by engineers with displacement rights under the controlling CBA. This agreement does not create displacement rights due to its implementation.

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

1. Non pool freight prior right assignments shall have the prior rights phased out at the rate of 25% per year beginning with the start of year eight and 25 % with the start of year nine. The local chairman shall designate in writing 30 days prior to the end of each year the assignments that will no longer be prior righted the next year. Failure to do so will result in the Carrier selecting the assignments. The remaining prior rights (50%) shall be phased out through attrition.

2. Pool freight prior right assignments shall have the prior rights phased out at the rate of 25% per year beginning with the start of year eight and 25 % with the start of year nine. The remaining prior rights (50%) shall be phased out through attrition.

3. Yuma positions shall be prior righted until attrited.

III. POOL OPERATIONS/ASSIGNED SERVICE

The following operations may be instituted:

A. West Colton-Yermo and West Colton-Yuma - These operations will be run as separate pools. Trains originating or terminating at Mira Loma may be operated by West Colton engineers with the on and off duty point at West Colton. Engineers in this pool that take trains to and from Mira Loma shall be governed as follows:

1. This only applies when engineers go through Riverside and does not permit West Colton pool engineers to run through West Colton to Pomona and then back down the Riverside line to Mira Loma.

2. Engineers in the West Colton-Yuma pool shall be paid actual miles between Mira Loma and Yuma.

3. Engineers in the West Colton-Yermo pool with a trainman/engineman seniority date subsequent to October 31, 1985 shall be paid a 30 minute arbitrary in addition to all other payments when delivering or receiving trains at Mira Loma. Should the engineer receive the train on the outbound trip and deliver one on the return trip then they shall be entitled to two 30 minute payments.

4. Engineers on duty time shall begin and end at West Colton and not at Mira Loma.

5. If pool engineers hostler their power to and from Mira Loma they shall be paid the mileage from West Colton to Mira Loma.

6. For those eligible engineers, ITD shall be computed from the time on duty at West Colton until departure is made from Mira Loma and FTD shall be computed from the time the engineer "yards" the train at Mira Loma and ties up at West Colton. This does not change the method used to calculate ITD and FTD but identifies that Mira Loma will be considered "in the terminal" for these calculations.

B. LATC/EAST YARD-Yermo/Yuma - These operations shall be run as two separate pools, one to Yuma and one to Yermo.

NOTE: The parties recognize that traffic disruption due to track work, and potential temporary line closures for other reasons, may result in several trains using alternate routes in **A** and **B** above. In these instances, CMS shall contact the Local Chairman, and engineers from the route with reduced

traffic shall be called to operate on the other line with calls being alternated between the two pools.

C. West Colton- Basin - These operations shall be run as one pool or a combination of pool service, with the home terminal at West Colton, and assigned service. Assigned service shall designate the home and away from home terminal. Assigned service shall have a single away from home terminal for each assignment. The pool shall have three away from home terminals of; the combined SP/UP LATC/LA East Yard terminal/LA/Long Beach Harbor area, Anaheim, and Gemco. This pool may be run as straight away with engineers tying up at the far terminal or as turn around. Service to City of Industry shall be run as turn around service with the engineer working or being deadheaded in combination service back to West Colton at the end of the tour of duty.

NOTE: The Carrier shall give a ten day notice for the implementation of service in (**A**),(**B**), and (**C**), above if not given in the notice to implement this Hub agreement. Notice may be given individually or for more than one operation. Operations in place prior to the implementation of this Agreement shall continue until the Carrier serves notice to implement new operations and abolish old operations or the BLE exercises the cancellation clauses of the flat rate agreements.

D. Any pool freight, local, work train, hostler or road switcher service may be established in accordance with the controlling CBA.

E. None of the engineers in (A) through (D) above shall be restricted, in or between the terminals of their assignment, as to where they may set out or pick up cars or leave or receive their train. The type and amount of work shall be governed by the controlling CBA. All engineers may operate over any and all tracks and alternate routings between locations.

IV. EXTRA BOARDS

A. The Carrier may establish extra boards at any location in accordance with the governing CBA. The Carrier will give a thirty day notice of the consolidation of pre-merger extra boards and the notice provisions of the governing CBA shall be used in the establishment of new extra boards.

B. If there are no rested and available West Colton pool engineers at the away from home points LATC and the Harbor area, then the closest extra board may be used to work trains back to West Colton. When so used they will not be tied up at West Colton but will deadhead back to their on duty point. If sufficient traffic exists to warrant a pool to protect this service then a pool shall be established. The use of this pool shall be ahead of using a West Colton engineer in combination deadhead service.

C. Exhausted extra boards.

1. If one of the above extra boards is exhausted, then another (secondary)extra board may be used prior to using other sources of supply. Secondary extra boards shall be identified by bulletin.

2. An engineer called from his/her extra board for an assignment in another area not principally covered by their extra board shall be handled as follows:

   a. Pay received for this assignment shall not be used as an offset for extra board guarantee but shall be in addition to, however, it shall be used in computing whether the engineer is entitled to protection pay at the end of the month.

   b. An engineer unavailable at time of call for secondary assignments shall have a deduction made in their extra board guarantee in accordance with the extra board agreement and shall have an offset to their protection in accordance with the protection offset provisions. If miss called for secondary calls, the engineer shall not be placed on the bottom of the board but will hold his/her place.

   c. An engineer unavailable at time of call for secondary assignments shall not be disciplined.

D. On a temporary basis, until the Yuma area is under a merger agreement/award that provides for the consolidated Yuma extra board to cover El Centro vacancies and Yuma based assignments, The LA Hub extra board at Yuma will continue to protect all assignments that it protected pre-merger.

V. TERMINAL AND OTHER CONSOLIDATIONS

A. The SP LATC and UP LA East Yard shall be combined into a single terminal covering the existing terminal limits for each Carrier and the connecting trackage between the two terminals. Yard engineers shall not be restricted as to where in the terminal they can operate.

B. The provisions of **A** above will not be used to enlarge or contract the current limits except to the extent necessary to combine into a unified operation.

C. In the LA Hub, prior to this implementing Agreement, there existed several trackage rights, stations and Harbor areas used by both Carriers. With the implementation of this Agreement all areas, trackage, stations and facilities in the Hub shall be common

to all engineers as a single unified system. Engineers shall not be restricted in the Hub where they can operate except on the basis of CBA provisions that set forth limits of an assignment such as the radius of a road switcher.

D. Riverside Line - When heading west, trains that pass Colton Crossing onto the Riverside line may be operated by West Colton-Basin crews as if "in the terminal". When heading East, trains that reach Streeter, a point directly south of West Colton on the Riverside line, may be operated by West Colton-Yuma or West Colton Yermo crews as if "in the terminal". This does not apply to Mira Loma trains as those trains have separate provisions.

VI. AGREEMENT COVERAGE

A. General Conditions for Terminal Operations.

1. Initial delay and final delay will be governed by the controlling collective bargaining agreement, including the Duplicate Pay and Final Terminal Delay provisions of the 1986 and 1991 National and Implementing Agreements and awards.

2. Engineers will be transported to/from their trains to/from their designated on/off duty point in accordance with Article VIII, Section 1 of the May 1986 National Agreement. The Carrier shall designate the on/off duty points for engineers.

3. The current application of National Agreement provisions regarding road work and Hours of Service relief under the combined road/yard service Zone, shall continue to apply. Yard engineers at any location within the Hub may perform such service in all directions out of their terminal.

B. General Conditions for Pool/Assigned Operations in Article III.

1. The terms and conditions of the pool operations set forth in Article III (A), and (B) shall be the same except where specifically provided otherwise in those Sections. The terms and conditions are those of the surviving collective bargaining agreement as modified by subsequent national agreements, awards and implementing documents and those set forth in this Agreement.

2. The terms and conditions of the pool and assigned service in Article III (C) shall be as follows:

   a. The pool shall operate first in/first out at the home terminal.

b. Engineers, if operated in pool service to Gemco and Anaheim, shall be operated first in/first out at each away from home location.

c. Engineers operated to LATC/LA East yard and the Harbor shall be treated as one pool, stay at the same lodging facility and shall operate first in/first out from the far terminal for calls to either LATC/LA East yard or the Harbor to return to West Colton. The lodging facility shall be the on and off duty point for this pool when at the away from home point.

d. Pool engineers shall be paid in accordance with Sections 1,2,5, and 6 of the flat rate road switcher agreement effective September 16, 1996. The flat rate for these assignments shall be $300.00/engineer. These payments shall be inclusive of any payments for not stopping to eat. When given a call and release, the call and release rules shall apply for engineers in this pool in lieu of the flat rate.

e. In addition, that agreement shall be amended so that the cancellation clause shall be a one year notice unless the hours of service is changed from the current 12 hour provisions, in which case the cancellation notice shall be a 30 day notice. If canceled then the engineers shall be paid in accordance with pool freight service conditions based on the miles of the assignments.

g. Other payments made to the pool engineers will be in accordance with the held way from home provisions, overtime after 12 hours, the 25 mile zone payments, payments that are applicable when another person is in the cab such as an employee in training and runarounds of the governing CBA. The held time payment shall be made at the rate as provided in section 5(a) of the agreement (156.11) subject to all future wage and cola adjustments.

h. If there is both pool service and assigned service to the same location, they shall not be combined at the far terminal but shall operate independently from each other for the return trip.

I. Local freight assignments shall operate under local freight work and pay rules.

j. Separate and apart deadheading shall be paid in accordance with the National Agreement provisions and shall not be paid the flat rate. Separate and apart deadheading shall be from the home or away from home point to the away from home or home point when not

connected with service. It does not include any deadheading in connection with service that would be covered in the flat rate.

k. Unless canceled sooner than the implementation date of this agreement, Agreement E&F 188-138 dated January 5, 1995 and all side letters and Questions and Answers to it are cancelled with the implementation of this agreement.

3. **Twenty-Five Mile Zone** - As provided in the note below, pool engineers may receive their train up to twenty-five miles on the far side of the terminal and run on through to the scheduled terminal. Engineers shall be paid an additional one-half (½) basic day for this service in addition to the miles run between the two terminals. If the time spent in this zone is greater than four (4) hours, then they shall be paid on a minute basis.

NOTE 1: This provision will apply at Yermo and Yuma for all pool engineers and at West Colton for LA Hub and Bakersfield pool engineers (only on trains that have not reached West Colton from Bakersfield, Yermo and Yuma). It does not apply to trains that have not reached West Colton from the West.

NOTE 2: The Twenty five mile zone towards Yermo and Yuma shall be measured from Colton Crossing which shall extend to milepost 563.7 towards Yuma.

4. **Turnaround Service/Hours of Service Relief**. Except as provided in (3) above, turnaround service/hours of service relief at both home and away from home terminals shall be handled by extra boards, if available, prior to using pool engineers. Engineers used for this service may be used for multiple trips in one tour of duty in accordance with the designated collective bargaining agreement rules. Extra boards may handle this in all directions out of a terminal.

5. Nothing in this Section B (3) and (4) prevents the use of other engineers to perform work currently permitted by prevailing agreements, including, but not limited to yard engineers performing Hours of Service relief within the road/yard zone, ID engineers performing service and deadheads between terminals, road switchers handling trains within their zones and using a engineer from a following train to work a preceding train and payments required by the controlling CBA shall continue to be paid when this work is performed.

C. **Agreement Coverage** - Engineers working in the Los Angeles Hub shall be governed, in addition to the provisions of this Agreement, by the Collective Bargaining Agreement selected by the Carrier, including all addenda and side letter agreements pertaining to that agreement and previous National Agreement/Award/Implementing Document provisions still applicable. Except as specifically provided herein the system and national collective bargaining agreements, awards and interpretations shall prevail. None of the provisions of these agreements are retroactive. The Carrier has selected the SP WEST modified BLE Agreements.

VII. PROTECTION.

A. Due to the parties voluntarily entering into this agreement the Carrier agrees to provide New York Dock wage protection (automatic certification) to all prior right engineers who are listed on the Los Angeles Hub Merged Rosters and working an assignment (including a Reserve Board) on January 13, 1998. (The term working shall also include those engineers disciplined and later returned to work and those full time Union Officers should they later return to service with the Carrier.) This protection will start with the effective (implementation) date of this agreement. The engineers must comply with the requirements associated with New York Dock conditions or their protection will be reduced for such items as layoffs, bidding/displacing to lower paying assignments when they could hold higher paying assignments, etc. Protection offsets due to unavailability are set forth in the Questions and Answers and side letter #1.

B. This protection is wage only and hours will not be taken into account.

C. 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, engineers required to relocate may elect one of the following options:

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

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

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

   (a) This option shall expire 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.

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.

NOTE: The two (2) year provision of this paragraph (4) shall be extended for engineers if operations affecting those engineers are not instituted until less than ninety (90) days remain in the two year period. If not instituted within 21 months of implementation then affected engineers shall have a one year extension from the date operations are instituted to request an "in Lieu of" payment.

5. 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.

6. In addition to those engineers required to relocate, engineers at the location where assignments are relocated from shall be treated as required to relocate under this Agreement, seniority governing, on a one for one basis equal to the number of assignments transferred. Once the number of in lieu of allowances are granted equal to the number of assignments transferred all other moves associated with the specific number of assignments transferred will not be eligible for any moving allowance. The following is a list of assignments that will be transferred:

   a. Assignments to West Colton for the West Colton-Basin pool/assigned service.
   b. Assignments to West Colton for the West Colton-Yermo pool.
   c. Assignments to LATC for the LATC-Yuma pool.
   d. Extra board assignments in connection with the above moves. Engineers who are augmenting an extra board from a regular extra board shall be considered as assigned at the regular extra board point for determining whether relocation provisions shall apply.

D. There will be no pyramiding of benefits.

E. National Termination of Seniority provisions shall not be applicable to Engineers hired prior to the effective date of this agreement.

F. Engineers will be treated for vacation, payment of arbitraries and personal leave days as though all their service on their original railroad had been performed on the

merged railroad. Engineers assigned to the Los Angeles Hub seniority roster with a seniority date prior to January 13, 1998 shall have entry rate provisions waived and engineers hired after that date shall be subject to the rate progression provisions of the controlling CBA. Those engineers leaving the Los Angeles Hub will be governed by the CBA where they then work.

VIII. FAMILIARIZATION

A. Engineers involved in the consolidation of the Los Angeles Hub covered by this Agreement whose assignments require performance of duties of a new geographic territory not familiar to them will be given familiarization opportunities as quickly as possible. Engineers will not be required to lose time or ride the road on their own time in order to qualify for these new operations.

B. Engineers will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualification shall be handled with local operating officers. The parties recognize that different terrain and train tonnage impact the number of trips necessary and an operating officer will be assigned to the merger that will work with the local managers of Operating Practices in implementing this Section. If disputes occur under this Agreement they may be addressed directly with the appropriate Director of Labor Relations and the General Chairman for expeditious resolution.

C. It is understood that familiarization required to implement the merger consolidation herein will be accomplished by calling a qualified engineer (or qualified Manager of Operating Practices) to work with an engineer called for service on a geographical territory not familiar to the engineer.

D. Engineers who work their assignment (road or yard) accompanied by an engineer taking a familiarization trip shall be paid one (1) hour at the pro rata rate), in addition to all other earnings for each tour of duty. This payment shall not be used to offset any extra board payments. The provision of 3 (a) and (b) Training Conditions of the System Instructor Engineer Agreement shall apply to the regular engineer when the engineer taking the familiarization trip operates the locomotive.

E. Locomotive engineers will not be required to make the decision on whether or not an engineer being familiarized is sufficiently familiarized for the territory.

F. An engineer concerned about familiarization on his/her assignment must contact a Manager Operating Practices prior to being called to resolve the concerns.

IX. IMPLEMENTATION

The Carrier shall give 30 days written notice for implementation of this agreement and the number of initial positions that will be changed in the Hub. Thereafter implementation provisions of the various articles shall govern any further changes.

X. HEALTH AND WELFARE

A. Engineers currently are under either the National Plan or the Union Pacific Hospital Association. Engineers coming under a new CBA will have six months from the implementation of this agreement to make an election as to keeping their old coverage or coming under the coverage of their new CBA. Engineers who do not make an election will have been deemed to elect to retain their current coverage. Engineers hired after the date of implementation will be covered under the plan provided for in the surviving CBA.

This Agreement is entered into this ____ day of _____ 1998.

For the Organization:

11-18-98
General Chairman BLE UP

11-18-98
General Chairman BLE SPWest

11-23-98
General Chairman BLE PE

11-20-98
Vice-President BLE

11-23-98
Vice-President BLE

For the Carrier:

11-18-98
General Director Labor Relations

BLE QUESTIONS AND ANSWERS LOS ANGELES HUB

Article I - LOS ANGELES HUB

Q1. How far east of Yermo may a LA Hub engineer work?
A1. This Question is answered in detail in side letter No.3

Q2. When the language says "not including" a point may engineers work into that point and if so what work may they do.
A2. Yes, engineers may work into those points. For example, LA Hub pool engineers may work into Yuma and perform any work permitted by applicable agreements for that class of service with Yuma as their final terminal. The "not including" refers to putting assignments with a home terminal on duty at that location. Both West Colton and Las Vegas pool engineers may work into the common terminal of Yermo, however only LA Hub engineers have seniority to hold yard, local, road switcher and extra board assignments that go on duty with Yermo as a home terminal.

Article II - SENIORITY AND WORK CONSOLIDATION

Q3. How long will prior rights be in effect?
A3. These will be phased out at differing times depending on the type of service.

Q4. Are full time union officers including full time state legislative board representatives, Company officers, medical leaves and those on leave working for government agencies covered under Article II, C?
A4. Yes.

Q5. How many engineers are covered by the inactive roster referenced in Article II.C?
A5 The "inactive roster" noted in Article II.C, refers to the status of engineers who are not in active service who pre-merger were on a UP roster in the Los Angeles Hub or at a location on SP West Lines during the qualifying period set forth in the assorted Hub Agreements. Such engineers include those on leave of absence for government, union and company service, medical leave including disability, etc. Because those engineers have rights to exercise seniority upon return to active service but may not do so from inactive status, such engineers will be required to select a Hub upon their return to active service. It is not possible to predict the number of people who may return from inactive status and, thereafter, the Hub that such people may select upon their return. Therefore, eligibility to mark up in a Hub must be determined for each individual upon that individual's return to active status.

ARTICLE III - POOL/ASSIGNED SERVICE OPERATIONS

Q6. What will be the mileage paid in West Colton-Yermo pool service?
A6. The actual mileage between those two points with a minimum of a basic day for service or combination deadhead/service. If the engineer receives or leaves a train at Mira Loma then engineers with a post October 31, 1985 trainman/engineer seniority date are entitled to a one-half hour arbitrary payment.

Q7. What will be the mileage paid in the West Colton-Yuma pool?
A7. Same as the pre merger mileage, 198 miles. If the engineer goes to Mira Loma then additional mileage will be paid.

Q8. Will existing pool freight terms and conditions apply on all pool freight runs?
A8. No. The terms and conditions set forth in the surviving collective bargaining agreements and this document will govern.

Q9. Will there be both assigned service and pool service at the same time in the West Colton-Basin operations?
A9. The Carrier has the right to establish the type of service needed to service its customers. As such it may have assigned service to some areas and pool service to other areas at the same time.

Q10. Will West Colton-Basin engineers be tied up a second time at an away from home point?
A10. No, if they take a train to some point other than the home terminal they will be transported to the home terminal. For example, if a West Colton-Basin engineer whose previous tour of duty took him/her to the Harbor, takes a train from the Harbor to LATC after they have obtained their rest, they will not be tied up at LATC, which would be a second tie-up at a far terminal but shall be transported back to West Colton.

Q11. Are there any van miles paid for riding to and from Mira Loma?
A11. No, since ITD and FTD is applicable or the half hour arbitrary van miles are not paid.

Q12. Does payment of miles run to Mira Loma from Yuma or the arbitrary from Yermo extend "free time" before ITD and FTD time is paid for?
A12. No.

ARTICLE IV - EXTRA BOARDS

Q13. How many extra boards will be established at implementation?
A13. The number is not known at this time. There will be a phase in of the familiarization process and they will consolidated and established as this process proceeds.

Q14. Are these guaranteed extra boards?
A14. Yes. The pay provisions and guarantee offsets and reductions will be in accordance with the surviving CBA guaranteed extra board agreement.

Q15. When will the Yuma extra board cover all the assignments provided for in this agreement.
A15. If after merger discussions with those engineers representatives from the adjoining Hub an implementing agreement/award so provides it will take place with the implementation of that agreement/award.

Q16. In Article IV B, will engineers be worked back from West Colton to their original on duty point?
A16. No, these engineers are made up extra board or pool engineers handling an imbalance of trains when no rested and available away from home engineers, and will be deadheaded back to their on duty point.

Q17. How will these engineers be paid?
A17. They will be paid under the flat rate provisions and their trip to West Colton and deadhead back shall be considered as one tour of duty.

ARTICLE V - TERMINAL CONSOLIDATIONS

Q18. Are the national road/yard Zones covering yard engineers measured from the new terminal limits where the yard assignment goes on duty?
A18. The new terminal/station limits where the yard engineer goes on duty will govern.

ARTICLE VI - AGREEMENT COVERAGE

Q19. When the surviving CBA becomes effective what happens to existing claims filed under the other collective bargaining agreements that formerly existed in the LA Hub?
A19. The existing claims shall continue to be handled in accordance with those agreements and the Railway Labor Act. No new claims shall be filed under those agreements once the time limit for filing claims has expired for events that took place prior to the implementation date.

Q20. How will vacations for 1999 be handled?
A20. They will continue to be handled under the CBA that covered them at the beginning of the year. Vacations for 1999 will be scheduled at the end of 1998 under the provisions of the then prevailing agreements.

Q21. If an engineer in the 25 mile zone is delayed in bringing the train into the original terminal so that it does not have time to go on to the far terminal, what will happen to the engineer?

A21. Except in cases of emergency, the engineer will be deadheaded on to the far terminal.

Q22. Is it the intent of this agreement to use engineers beyond the 25 mile zone?

A22. No.

Q23. In Article VI, is the ½ basic day for operating in the 25 mile zone frozen and/or is it a duplicate payment/ special allowance?

A23. No, it is subject to future wage adjustments and it is not duplicate pay/special allowance.

Q24. How is an engineer paid if they operate in the 25 mile zone?

A24. If a pre-October 31, 1985 engineer is transported to its train 10 miles East of Yermo and he takes the train to West Colton and the time spent is one hour East of Yermo and 9 hours between Yermo and West Colton with no initial or final delay earned,(total time on duty 10 hours) the engineer shall be paid as follows:

A. One-half basic day for the service East of Yermo because it is less than four hours spent in that service.

B. The road miles between Yermo and West Colton with a minimum of a basic day .

C. Overtime based on the governing CBA. Since the trip is less than 130 miles, overtime will commence after 8 hours on duty so one hour will be paid at overtime.

Q25. Would a post October 31, 1985 engineer be paid the same?

A25. In this case yes. The National Disputes Committee has determined that post October 31, 1985 engineers come under the overtime rules established under the National Agreements/Awards/Implementing Agreements that were effective after that date for both pre-existing runs and subsequently established runs. As such, the post October 31, 1985 engineer would receive the overtime in C above because the overtime provisions on runs of less than a basic day are the same for both pre and post October 31, 1985 engineers.

Q26. How will initial terminal delay be determined when performing service in the 25 mile zone?

A26. Initial terminal delay for engineers entitled to such payments will be governed by the applicable collective bargaining agreement and will not recommence when the engineer operates back through the on duty point. Operation back through the on duty point shall be considered as operating through an intermediate point.

Q27. Are any payments retained that are triggered by a West Colton Basin engineer turning or performing work that prevents them from turning?

A27. No

Q28. Are any payments retained for any engineer receiving or leaving a train dockside?

A28. No.

Q29. Can you give some examples of deadheads that would and would not be eligible for the flat rate pay and what is the deadhead rate?

A29. The deadhead rate is $156.11/daily and $19.51/hourly. The following would govern:

Example 1: A West Colton engineer is called to deadhead to the Harbor and obtain rest. This would not be eligible for the flat rate. If the engineer was called one hour after tying up and told to take a train back this would not be combined with the first deadhead because he had been instructed to tie-up and had done so. He/she would be paid the flat rate for the return trip separate from the deadhead over.

Example 2: A West Colton engineer is at the away from terminal and after rest is deadheaded back to West Colton. This would not be eligible for the flat rate.

Example 3: A West Colton engineer takes a train to LATC then is driven to Dolores and takes a train to City of Industry and is deadheaded back to West Colton without a break in service. This is covered under the flat rate agreement and no additional payment is made.

NOTE : When an employee is being paid under the flat rate provisions then the wording used to tell an engineer that they are being transported or deadheaded as part of their tour of duty is not material and does give rise to a separate and apart claim.

Q30. Does the language of VI B 4 prohibit the use of pool freight engineers in straight away combination deadhead/service from picking up a train whose engineer had earlier expired under the Hours of Service Act?

A30. No, the language of Article VI B 5 clearly preserves that service. The language of VI B 4 provides that extra boards will be used before pool engineers in turnaround service and does not require that they be used prior to pool engineers in straight away service.

Q31. May engineers run through their destination terminal up to 25 miles?

A31. No, the twenty-five mile provisions are only for obtaining a train on the far side of a terminal and not for running through their destination terminal.

ARTICLE VII - PROTECTION

Q32. What rights does an engineer have if he/she is already covered under labor protection provisions resulting from another transaction?

A32. Section 3 of New York Dock permits engineers to elect which labor protection they wish to be protected under. By agreement between the parties, if an engineer has three years remaining due to the previous implementation of Interdivisional Service the engineers may elect to remain under that protection for three years and then switch to the number of years remaining under New York Dock. It is important to remember that an engineer may not receive duplicate benefits, extend their protection period or count protection payments under another protection provision toward their test period average for this transaction.

Q33. How will reductions from protection be calculated?

A33. In an effort to minimize uncertainty concerning the amount of reductions and simplify this process, the parties have agreed to handle reductions from New York Dock protection as follows:

1. **Pool freight assignments** - 1/15 of the monthly test period average will be reduced for each unpaid absence of up to 48 hours or part thereof. Absences beyond 48 hours will result in another 1/15 reduction for each additional 48 hour period or part thereof.

2. **Five day assignments** - 1/22 of the monthly test period average will be reduced for each unpaid absence of up to 24 hours or part thereof. Absences beyond 24 hours will result in another 1/22 reduction for each additional 24 hour period or part thereof.

3. **Six & seven day assignments** - The same process as above except 1/26 for a six day assignment and 1/30 for a seven day assignment.

   NOTE: There shall be no offset from protection for rest days on five day and six day assignments,.

4. **Extra board assignments** - 1/30 of the monthly test period average will be reduced for each unpaid absence of up to 24 hours or part thereof. Absences beyond 24 hours will result in another 1/30 reduction for each additional 24 hour period or part thereof.

NOTE: Absences on the extra board shall be calculated from the time of unavailability (layoff, missed call, etc) until the next time called for service. For example: If a engineer lays off on Monday at noon, marks up the next day, Tuesday, and does not work until 2 AM on Wednesday, then they shall be off for protection purposes for thirty-eight (38) hours and shall be deducted 2/30 of their protection.

Q34. Why are there different dollar amounts for non-home owners and homeowners?
A34. New York Dock has two provisions covering relocating. One is Article I, Section 9, Moving Expenses and the other is Section 12, Losses from Home Removal. The $10,000 is in lieu of New York Dock moving expenses and the remaining $20,000 is in lieu of loss on sale of home.

Q35. Why is there one price on loss on sale of home
A35. It is an in lieu of amount. Engineers have an option of electing the in lieu of amount or claiming New York Dock benefits. Some people may not experience a loss on sale of home or want to go through the procedures to claim the loss under New York Dock.

Q36. What is loss on sale of home for less than fair value?
A36. This refers to the loss on the value of the home that results from the Carrier implementing this merger transaction. In many locations the impact of the merger may not affect the value of a home and in some locations the merger may affect the value of a home.

Q37. If the parties cannot agree on the loss of fair value what happens?
A37. New York Dock Article I, Section 12(d) provides for a panel of real estate appraisers to determine the value before the merger announcement and the value after the merger transaction.

Q38. What happens if a engineer sells the home for $20,000 to a family member?
A38. That is not a bona fide sale and the engineer would not be entitled to either an in lieu of payment or a New York Dock payment for the difference below the fair value.

Q39. What is the most difficult part of New York Dock in the sale transaction?
A39. Determine the value of the home before the merger transaction. While this can be done through the use of professional appraisers, many people think their home is valued at a different amount.

Q40. Who is required to relocate and thus eligible for the allowance?
A40. A engineer who can no longer hold a position at his/her location and must relocate to hold a position as a result of the merger. This excludes engineers who are borrow outs or forced inside the Hub and released and engineers who have to exercise seniority due to a non merger event.

Example : Due to the new West Colton-Yermo pool an engineer can no longer hold a position at East Yard and must work at West Colton. Since this is a result of the merger transaction then the engineer may be eligible.

Q41. Are there any seniority moves that will be treated as required to relocate?
A41. Yes and the following are examples:

Example 1: Ten turns are reduced in the West Colton-Yuma pool and ten turns are added in the LATC-Yuma pool. Ten senior engineers at West Colton may make application for those positions and be entitled to a relocation allowance should they meet the mileage criteria.

Example 2: The same ten turns are moved, however, a more senior engineer on a City of Industry road switcher makes application for one of the turns. Since the senior engineer is not following his/her work nor required to relocate the application is a seniority move and does not trigger a relocation allowance.

Q42. Are there mileage components that govern the eligibility for an allowance?
A42. Yes, the engineer must have a reporting point farther than his/her old reporting point and at least 30 highway miles between the current home and the new reporting point and at least 30 highway miles between reporting points.

Example 1: If the on-duty point for road engineers is relocated from East Yard to LATC, both within the same Terminal, this does not trigger a relocation allowance.

Example 2: An engineer lives in Long Beach, 18 miles from his/her on duty point and as a result of the merger must report at West Colton, 70 miles from their residence. If they relocate then they would be eligible for a relocation allowance.

Example 3: An engineer resides at Ontario and works at Gemco. Due to the merger they are required to report to West Colton. Since West Colton is closer than Gemco they are not entitled to a relocation allowance.

Q43. At what time did an engineer need to be a home owner to qualify as a home owner for relocation purposes?
A43. New York Dock protects home owners due to loss on sale of home that are caused by the merger. A person who purchases a home after the merger was approved in September 1996 would not be affected by the merger because they were not a home owner at that time.

Q44. Will engineers be allowed temporary lodging when relocating?
A44. Engineers entitled to a relocation allowance shall be given temporary lodging for thirty (30) consecutive days as long as they are marked up.

Q45. Are there any restrictions on routing of traffic or combining assignments?
A45. There are no restrictions on the routing of traffic in the Los Angeles Hub once the 30 day notice of implementation has lapsed. There will be a single collective bargaining agreement and limitations that currently exist in that agreement will govern (e.g. radius provisions for road switchers, road/yard moves etc.). However, none of these restrictions cover through freight routing. The combining of assignments between the Carriers is covered in this agreement and is permitted.

Q46. Will the Carrier offer separation allowances?
A46. The Carrier will review its manpower needs at each location and may offer separation allowances if the Carrier determines that they will assist in the merger implementations..

Q47. What period will be used for the TPA?
A47. Calendar year 1998 for engineers not electing to retain SP West modification/engineer protection.

Q48. How will Union Officers TPA's be established?
A48. The Carrier will average the two above and two below (on the pre-merger rosters) in any service. If greater than their regular TPA it shall be used. Engineers with unusually high or low TPA's will not be considered.

Q49. Since UP engineers hired after January 13, 1998 have a five year entry rate rule and the SP engineers have a three year entry rate rule how will the UP engineers be treated at implementation?
A49. They will come under the SP rule and will have their entry rates adjusted upward.

Article IX -FAMILIARIZATION

Q50. Are there a set number of trips that an engineer will take in learning new territory?
A50. No, since engineers have differing experiences the number of trips will vary and the local chairmen will work with local operating officers on the number and type of trips needed.

Article X - IMPLEMENTATION

Q51. On implementation will all engineers be contacted concerning job placement?
A51. No, the implementation process will be phased in and engineers will remain on their assignments unless abolished or combined and then they may place on another assignment. When the Carrier posts the notice on pool changes and increases and decreases in extra boards Local Chairman will assist in handling the bidding, application and placement process at that time and engineers may be contacted for placement if insufficient bids/applications are received. The new seniority rosters will be available for use by engineers who have a displacement.

Q52. What is meant by the term "harbor area"
A52. The harbor area is the area from Dominguez Jct (SP) and Douglas Jct (UP) and dockside. Engineers that report to an on duty point within this area may leave or receive their train anywhere between these two points and dockside.

Q53. If any existing road territory is turned into a switching territory would prior rights still exist?
A53. Yes

Q54. Are the road switchers that go on duty in the Imperial Valley remaining in the LA Hub?
A54. Yes, pursuant to the provisions of IV D.

Q55. Is the road switcher agreement E&F1-2248 going to apply for road switchers currently governed by it?
A55. Yes except that the cancellation clause has been amended to one year and the rate of pay is as provided in this agreement. The agreement will also now apply to all road switchers west of West Colton in the LA Hub.

Q56. What is meant by assigned service?
A56. Local freight and road switcher service.

November 6, 1998
Side Letter No. 1

Dear Sirs:

During our discussions on New York Dock and extended Protection we discussed the issue of a pool engineer taking a single day paid absence such as a Personal Leave day or single day vacation and the impact it will have on his/her protection. In an effort to simplify the process and to provide the pool engineer with an alternative the parties agree that a pool engineer shall have one of the following options:

(1) Elect a single paid personal leave or vacation day and hold their turn so that if it obtains a first out status they will be first out when they are marked up no less than 24 hours later, with no deduction from their protection; or

(2) Elect a minimum of two consecutive days paid personal leave days on pools whose round trip district miles are 400 or less or a minimum of three consecutive days on pools whose round trip district miles are more than 400 miles and not hold their turns. If the minimum number of consecutive days are met for each round trip, then no deduction will be made in their protection.

Question #1: If the round trip district miles of a run are 390 miles and initial and or final terminal delay make a payment over 400 miles how many personal leave days must be used.

Answer #1: Only the district miles are used for determining the number of personal leave days to be used. In this case two personal leave days would qualify for no deduction.

Question #2: If the round trip district miles are over 400 miles how is a deadhead counted.

Answer#2: Deadheads are already taken into account by using a 1/15th offset for pools. Since most pools do not average 15 round trips per month a 1/15th offset is less than using the average for each pool. As a result the round trip district miles are used for determining the number of personal leave days that would substitute for no offset and in this case three personal leave days would qualify.

Question #3: If the Yuma pool returns to Mira Loma, employees in that pool will not know if their trip would have gone over 400 miles at the time of layoff. How will they be governed?

Answer #3: The round trip district miles of the pool is the determining factor and trips that take a West Colton-Yuma pool to Mira Loma will not change the minimum two consecutive personal leave or vacation days since the regular pool round trip is 396 miles.

(3) Elect a single paid personal leave or vacation day and not hold their turn resulting in payment of a single day with a corresponding 1/15th deduction from protection.

The option must be selected by the engineer at the time the personal leave or vacation day is granted. Engineers must file the protection form each time they take paid days in accordance with the above options.

Yours truly,

W.S. Hinckley

Agreed:

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General Chairman BLE

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General Chairman BLE

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General Chairman BLE

November 6, 1998
Side Letter No.2

Dear Sirs:

This refers to our several discussions concerning Yuma and the Carrier's plans for assignments at that location and the extra board plans for that area.

Currently Yuma is the away from home terminal for West Colton crews. In addition there are a couple of assignments (local/road switcher) that work east and a couple of assignments (local/ road switcher) that work west from Yuma. Sometimes the Carrier has run the Imperial Valley assignments from Yuma and sometimes from West Colton.

In addition to the provisions of this agreement, the following will apply:

1. The two extra boards will be consolidated on a 50/50 basis with the LA Hub entitled to prior rights to the even number assignments up to the number of assignments on their extra boards when the extra boards are consolidated. For example, if there are three extra board assignments at time of consolidation then the LA Hub shall have prior rights to numbers 2, 4, and 6. There will then be one extra board at Yuma and the extra board at Yuma will be used to fill short term vacancies on all assignments that have Yuma as a home terminal whether LA Hub vacancies or the Hub that includes Tucson, and EL Centro assignments.

2. The extra board will perform hours of service relief/turnaround service as far west as Niland (MP 667) in the LA Hub and as far east as is negotiated in the next Hub.

3. These prior rights are to be attrited and are not under the phase out provisions

Yours truly,

W.S. Hinckley

Agreed:

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General Chairman BLE

_____
General Chairman BLE

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General Chairman BLE

November 6, 1998
Side Letter No.3

Gentlemen:

During negotiations the parties spent considerable discussion concerning the intent and meaning of NOTE 1 of Article I. It was agreed that further detail would be provided in a side letter explaining how different types of operations would be affected.

Therefore, the following is meant to give further definition to the NOTE.

Road Switchers: Road Switcher agreements in the controlling CBA provide for a 25 mile limit unless specifically provided otherwise. A road switcher that goes on duty inside the Hub and covered by the 25 mile provisions, would be limited by those provisions even though the 25 miles would take the assignment into the adjoining Hub. For example, a road switcher at Yermo (LA Hub assignment) would therefore be limited to 25 miles from the station limits in either direction. Similarly a road switcher that goes on duty in another Hub may work to its limits even if those limits include part of the LA Hub.

Locals on duty inside the Hub: Current locals that go on duty inside the Hub may continue to operate to points outside the Hub. New locals that go on duty in the Hub that will work in two or more Hubs will be established in accordance with CBA provisions including Article IX national ID provisions.

Locals on duty outside the Hub: Current locals that go on duty outside the Hub may continue to operate to points inside the Hub. New locals that go on duty in the Hub that will work in two or more Hubs will be established in accordance with CBA provisions including Article IX national ID provisions.

Current Pools and Pools established by Merger Agreements: These pools may operate between their designated terminals even if outside the Hub. At Yermo and Yuma they may operate up to 25 miles beyond the terminal when picking up a train in accordance with the 25 mile provisions of Article VI B 3. Bakersfield pool crews will be governed by their 25 mile provisions for trains East of West Colton but not for trains that are West of West Colton including the area between LATC and the Harbor area.

New Pools created after this Agreement: New pool operations not covered in this implementing Agreement whether between Hubs or within the Hub shall be handled per Article IX of the 1986 National Arbitration Award.

Extra Boards: LA Hub extra boards may go as far as Santa Barbara on the Coast Line, as far as Hivolt on the line to Bakersfield from West Colton and Palmdale from LATC and as far as Kelso towards Las Vegas to perform hours of service relief. The Yuma extra board may go as far as Niland in the LA Hub to perform hours of service relief.

NOTE: It is not the intent to supersede the provisions of 3(c) of Article 6 of the controlling CBA. Hours or service relief required west of M.P. 667 (Niland) will continue to belong to the West Colton Pool.

Example 1: A road switcher on duty at Yermo may work in any direction up to the limits of its radius as set by the road switcher agreement without infringing on the rights of Salt Lake Hub crews.

Example 2: A West Colton pool freight crew would continue to operate through freight from West Colton to Yuma and perform the same work as it performed pre-merger.

Example 3: A Bakersfield pool freight crew would continue to operate through freight from Bakersfield to West Colton and perform the same work as it performed pre-merger.

Example 4: LA Hub crews would work the Dolores unit oil train that runs to Mojave and back to the Basin if the home terminal is in the Basin.

Yours truly,

W.S. Hinckley

Agreed:

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General Chairman BLE

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General Chairman BLE

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General Chairman BLE

November 6, 1998
Side Letter No. 4

Gentlemen:

During our negotiations we discussed several times running a pool from the harbor area to Yermo and Yuma. Several points were discussed including having these operations combined with the LATC pool and having dual reporting points for the combined pools. Due to several uncertainties in how the Alameda corridor would operate once it was completed and any operating restrictions that would be placed on this area by government entities that are involved in its planning, building and operations, the Carrier agreed to remove this item from our negotiations. This withdrawal was without prejudice to either parties position on the appropriateness of the operations and aspects of this service and does not otherwise affect the merger of the two Carriers in the Harbor area.

If this service is instituted in the future then the Carrier will serve an Article IX Interdivisional Notice to cover its implementation.

Yours truly,

W.S. Hinckley

Agreed:

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General Chairman BLE

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General Chairman BLE

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General Chairman BLE

November 6, 1998
Side Letter No. 5

Gentlemen:

The parties recognize the need to coordinate the implementation of this Hub with that of the Roseville Hub and to allow sufficient time to properly set up pools and extra boards that an interim period is needed to assist in these matters. The following shall govern.

1. The interim period shall begin with the implementation of this agreement.

2. New York Dock wage protection shall not begin until the interim period is over except it shall be no longer than one year from the implementation date. Wage Protection during the interim period shall be known as interim protection and shall be governed by all the applicable provisions of this agreement.

3. During the interim period San Joaquin engineers in the LA Hub will be required to continue to work pool assignments to Bakersfield and San Luis Obispo and supporting extra boards and will be considered as holding the highest paying position they can hold until the work is relocated. This will not negatively impact their rights to a relocation if otherwise eligible.

4. Pool assignments and extra boards shall be established gradually to provide time to familiarize engineers on new assignments and still keep operations fluid. For example: When the West Colton-Yermo pool is established a temporary separate extra board will be set up to cover this service and to familiarize on the other West Colton assignments. When the two extra boards are sufficiently familiarized then they may be combined. Also the West Colton- Basin pool may be established a few assignments at a time to properly familiarize engineers.

5. All pay provisions as established in this agreement shall go into effect on implementation day, even for the remaining LATC/Dolores pool as it is phased out. Prior to implementation the Carrier will advise the single on duty point for the LATC/Dolores pool until phased out.

Yours truly,

W.S. Hinckley

Agreed:

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General Chairman BLE

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General Chairman BLE

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General Chairman BLE

November 30, 1998

Mr. M.A. Mitchell
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9216 Bella Vista Place
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Vice-President BLE
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Memphis TN 38157

Gentlemen:

This letter is a supplement to the Los Angeles Hub BLE Agreement. As the Hub Agreement was being reviewed, requests for further clarifications were made. Upon reviewing these requests the parties have developed the following additional Questions and Answers:

Question 57: Does this Agreement provide for West Colton-Basin crews to run through Gemco and Anaheim or provide service under the 25 mile zone provisions at these points?

Answer 57: No. Pre-merger service operates to Gemco and Anaheim and this Agreement provides continued service to those same locations, except under the West Basin-Pool and assigned service provisions. The 25 mile zone provisions of Article VI, B, 3, do not apply at points west of Gemco and Anaheim. If the Carrier later needs to run through these points with the West Basin-pool they will handle it in accordance with Article IX of the 1986 National Arbitration Award.

Question 58: Article III, C provides that service to City of Industry will be turnaround service with the engineer being returned home at the end of their tour of duty. Since this pool has more than one away from home terminal how will the engineer know that he/she is called for this location?

Answer 58: At time of call the employee will be told they are going to City of Industry so they will not have to bring an overnite grip.

Question 59: What happens if while en route to City of Industry, the engineer is told to take the train to East Yard by the dispatcher?

Answer 59: The engineer should comply with instructions, however he/she will not be tied up at East Yard but will be returned to West Colton after completing their work at East

Yard.

Question 60: Are engineers called to City of Industry and then used beyond that entitled to an additional basic day payment in addition to the flat rate payment?

Answer 60: Of the several far terminals that the West Basin Pool can work to, only City of Industry is not a layover point. By Agreement between the parties, work beyond it would entitle the engineer to this additional payment. The payment is not applicable to a crew initially called beyond City of Industry that changes trains or sets out a train at City of Industry and proceeds on to another terminal nor to crews called to other points beyond City of Industry that work in other parts of the basin. Example 3 of Question and Answer 29 sets forth in detail some of the work that can be performed without additonal pay when called beyond City of Industry and those principles govern non City of Industry calls.

Question 61: Question Answer 29 discusses when flat rate payments are applicable. could you explain in further detail when a "release" would trigger a separate payment?

Answer 61: If an employee is "released" from their assignment for the purpose of obtaining rest under the hours of service act then another payment is applicable when recalled to service. It is immaterial whether this release is for 4, 8 or more hours. The new payment would depend on whether the next call is service or a separate and apart deadhead. If the engineer is "released" for the purpose of updating computer records for CMS and timekeeping purposes then no additional payment is provided. An example would be an engineer takes train ABC from West Colton to East Yard, is "released" from that train and assigned to take train DEF back to West Colton with no hours of service break between the handling of the two trains. This "release" is for CMS and timekeeping purposes and does not result in an additional payment.

Question 62: After the 30 day notice of implementation is given may new assignments that are going to be part of the initial implementation be pre-advertised prior to implementation?

Answer 62: Yes, assignments may be bulletined 7 days prior to implementation for assignment on implementation day.

Question 63: Yuma and Yermo are both away from home terminals for two pools. Does this Agreement provide for those pools to be combined at the far terminals for return trips to the Home Terminal?

Answer 63: No, and West Colton based crews will not be called to go beyond West Colton on the return trip. While LATC/East Yard crews will return to their home terminal on the return trip, they may be used in combination service dropping off trains en route and deadheading on to LATC/East Yard.

Question 64: A review of the 25 mile zone payment provisions indicates that in very few circumstances it is possible that engineers would be paid less than if paid under normal pay provisions. For example; An engineer picks up a train 10 miles East

of Yermo and spends 4 hours in the 25 mile zone and 8 hours between Yermo and West Colton, which is less than 130 miles. The 25 mile provisions would provide for 12 hours straight time and since less than a basic day run would otherwise start overtime after 8 hours, the overtime would pay more. Are there alternate pay provisions in this type of circumstance?

Answer 64: Yes, if the time spent within the Zone, if factored into the computation of overtime, would produce road overtime earnings for the tour of duty in excess of the minimum four (4) hour payment, they shall be paid the higher amount in lieu of the separate 25 mile payment.

Question 65: Will the parties revisit this rule for the purpose of amending payment in these few circumstances?

Answer 65: Yes, they will review the issue for the Hubs that the signature General Chairmen are involved in. In addition to the overtime issue, there are other payment benefits covering engineers that need to be taken into account. For example; all deadheads between the initial and final terminal when work is performed in the 25 mile Zone is combination which pays more than separate and apart. It is believed that the instances in Question 64 are minimal, however these instances will be addressed.

Question 66: What is the Carrier's position on engineer familiarization in the 25 mile zone?

Answer 66: This issue was raised in another area on the Union Pacific System and the Carrier reissued instructions to its officers and sent a coy to the BLE International offices. Attached is a copy of that letter.

Yours truly,

W. S. Hinckley

Agreed:

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General Chairman BLE

_____
General Chairman BLE

_____
General Chairman BLE

UNION PACIFIC RAILROAD COMPANY

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October 27, 2009

LOU# 1705180918
(390.60)

Mr. D.W. Hannah
General Chairman BLET
404 North 7th St. Suite A
Colton, CA. 92324-2941

Dear Sir

This refers to our discussions concerning the pilot project in which all pool employees are permitted to hold their turn first out should it become first out when taking a single day vacation and/or a single day personal leave day as provided by Side Letter No. 1 of the Roseville, Los Angeles and Southwest Hub Agreements.

As we discussed, this pilot project turns out to be beneficial for both employees, as well as the Carrier, enabling employees to work their assignment and at the same time ensuring the availability of manpower to protect the service. Therefore, the parties agree to implement this understanding on a permanent basis.

The specific language under discussion is incorporated in each side letter as Section (1) and provides, in pertinent part, as follows:

> **"Elect a single paid personal leave or vacation day and hold their turn so that if it obtains a first out status they will be first out when they are marked up no less than 24 hours later..."**

This language applied exclusively to merger protected engineers.

Accordingly, it is understood at Roseville, Los Angeles and the Southwest Hub territories, all pool employees, and not just protected pool employees, will be permitted to utilize Section (1) of Side Letter No. 1. In other words, any pool employee taking a single personal leave or single day vacation will automatically be handled in accordance with Section 1 of the controlling Side Letters.

Except as specifically provided above, no other changes are made in Side Letter No. 1 of the respective Hubs.

H:DATA/WORD/DWH.390.60.HOLDTURN-FT

Mr. D.W. Hannah
October 27, 2009
LOU# 1705180918

It is understood either party may cancel this understanding by serving a 30-day written notice upon the other. It is understood that each of the identified Hubs have stand alone rights to terminate the understanding as it applies to them and to withdraw from this understanding. Similarly, the Company may cancel this understand at all three (3) Hubs or separately at each location.

To indicate your acceptance, please sign in the space provided below. Upon receipt of your acceptance, the revised process will be implemented.

Accepted

D.W. Hannah, General Chairman
Brotherhood Of Locomotive Engineers
& Trainmen

Sincerely,

Frank A. Tamisiea
Director, Labor Relations

Cc: Tony Leazenby, CMS
Kelly Mitchel, CMS
Jon Degraw, CMS
Cliff Johnson, TK
Greg Cox, TK
Terry Stone, LR
Frank Tamisiea, LR
Marilyn Ahart - LR
Lucy Ruf, LR

H:DATA/WORD/DWH.390.60.HOLDTURN-FT

UNION PACIFIC RAILROAD COMPANY

Western Region - Transportation

Frank A. Tamisiea
Dir. Labor Relations
Tel: (916) 789-6346

10031 Foothills Blvd.
Roseville, CA 95747

November 4, 2009

LOU# 1705180918
(390.60)

Mr. D.W. Hannah
General Chairman BLET
404 North 7th St. Suite A
Colton, CA. 92324-2941

Ref: Holding Turn First Out

Dear Sir:

This refers to our discussions on November 2, 2009 concerning LOU# 1705180918 dated October 27, 2009 and the application of engineers holding their turn first out as provided in the Letter of Understanding.

This will confirm our discussions and further understanding that any pool engineer taking a single personal leave or single day vacation may elect to hold their turn first out when they return (mark-up) to service after the expiration of the mark off.

It is understood should the October 27, 2009 LOU# 1705180918 be canceled by either party, this understanding will also automatically terminate in conjunction therewith. It is understood that each of the identified Hubs have stand alone rights to terminate the understanding as it applies to them and to withdraw from this understanding. Similarly, the Company may cancel this understand at all three (3) Hubs or separately at each location.

To indicate your acceptance, please sign in the space provided below. Upon receipt of your acceptance, I will forward to the affected Departments for their handling.

Accepted

D.W. Hannah, General Chairman

Sincerely,

Frank A. Tamisiea
Director, Labor Relations

H:DATA/WORD/DWH.390.60.HOLDTURN.a-FT

MERGER IMPLEMENTING AGREEMENT
Southwest Hub

between the

UNION PACIFIC
SOUTHERN PACIFIC TRANSPORTATION COMPANY
and
BROTHERHOOD OF LOCOMOTIVE ENGINEERS

In Finance Docket No. 32760, the U.S. Department of Transportation, Surface Transportation Board ("STB") approved the merger of the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") and Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SP"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp., and The Denver & Rio Grande Western Railroad Company ("DRGW") (collectively referred to as "SP"). In approving this transaction, the STB imposed New York Dock labor protective conditions.

In order to achieve the benefits of operational changes made possible by the transaction, to consolidate the seniority of all engineers working in the territory covered by this Agreement into one common seniority district covered under a single, common collective bargaining agreement.

IT IS AGREED:

I. Southwest Hub

New seniority districts shall be created that encompasses the following area: the territory from milepost 292.33 East of Pratt Kansas westward to milepost 731.5 West of Yuma, Arizona: BNSF trackage rights to Childress (not including) and Lubbock (including) that connect to this line; and the lines from El Paso to Alpine (not including) and Toyah (not including) and shall include all main and branch lines, industrial leads and stations between the points identified.

> **NOTE 1:** Engineers with home terminals within the hub may work to points outside the Hub without infringing on the rights of other engineers in other Hubs and engineers outside the Hub may work to points inside the Hub without infringing on the rights of engineers inside the Southwest Hub. The Hub identifies the on duty points for assignments and not the boundaries of assignments. (This note is further explained in side letter No. 2)

II. Seniority and Work Consolidation.

The following seniority consolidations will be made:

A. The territory shall be divided into three zones as follows:

1. Zone 1 - The territory between Yuma (including) and Lordsburg (not including).

2. Zone 2 - The territory between Lordsburg (including) and Alpine (not including), Toyah (not including) and Vaughn (not including).

3. Zone 3 - The territory between Vaughn (including) and Pratt (including), Childress (not including) and Lubbock (including).

B. A new seniority district will be formed and a master engineer Hub roster shall be created. In addition, engineer roster(s) shall be created for each Zone for those engineers on the current SPWL, EP&SW, UP, SSW and SPEL seniority rosters. It does not include borrow outs or SPWL auxiliary board engineers working in the Hub, if any. The new rosters will be created as follows:

HUB ROSTERS

1. Engineer's shall be dovetailed on the Hub roster based on their current engineer's date in the Hub. If engineers from different rosters have the same engineers seniority date they shall be placed on the rosters as follows:

Pre October 31, 1985 engineers

a. Engineers date and ranking as an engineer.
b. Firemans date and ranking as a fireman.
c. Hire date and ranking as an employee.
d. Age

Post October 31, 1985 engineers

e. Engineers date and ranking as an engineer.
f. Switchmans date and ranking as a switchman.
g. Hire date and ranking as an employee.
h. Age.

NOTE : This will keep all engineers on the Hub roster in the same relative standing with respect to other engineers from the same pre merger roster that had the same seniority date.

2. Engineers placed on the Southwest Hub Rosters shall relinquish all seniority outside the new hub upon implementation of this Agreement and all seniority inside the Southwest Hub held by engineers outside the Hub shall be eliminated.

NOTE: Because engineer seniority dates are based on the initial training date some employees now in training could be given a pre March 24, 1999 engineer seniority date after roster formulation. It is the intent of this agreement to include all those engineers based on the seniority date given them, and not when they finished training.

ZONE ROSTERS

The new zone rosters will be created in three parts as follows:

3. The first part will include SPWL, EP&SW, UP, SSW and SPEL Engineers, if any, with an engineer's seniority date prior to March 24, 1999 that will initially work in each zone. They will be dovetailed based upon the current engineer seniority date within the Hub. This shall include any engineer working in trainman/fireman service with an engineers seniority date.

4. Following next on the roster (second part) will include all SPWL, EP&SW, UP, SSW and SPEL Engineers with engineer seniority dates prior to August 6, 1996 working in the other zones. They will be dovetailed based upon the current engineer seniority date within the Hub. This shall include any engineer working in trainman/fireman service with an engineers seniority date.

5. Following them (third part) will include all SPWL, EP&SW, UP, SSW and SPEL Engineers with engineer seniority dates subsequent to March 23, 1999 working in the zone. It does not include SPWL, EP&SW, UP, SSW and SPEL Engineers with engineer seniority dates subsequent to August 6, 1996 working in other zones.

6. All engineers with engineer seniority dates subsequent to August 6, 1996 and those promoted after the implementation date will only have seniority in one zone except as provided in the consolidated seniority provisions of the surviving CBA. They require, among other provisions, the Carrier to post a notice of intent to promote additional engineers so that post August 6, 1996 engineers may request transfer to the zone with the need for additional engineers. Engineers may be held up to 9 months, in lieu of 7 months provided for in the consolidation seniority provisions, prior to being released to another zone. When an engineer moves under the consolidated seniority provisions, they shall come off the zone roster they left and shall be placed on the zone roster they move to. They shall use the same seniority date but placing in the non prior rights portion of the roster and below those with prior rights. Surplus engineers may be used in another zone in accordance with auxiliary board provisions.

7. All engineers placed on the zone rosters may work all assignments protected by the zone roster in accordance with their seniority and the provisions set forth in this Agreement. For an engineer to hold a baseline pool or yard percentage position using prior rights identified in this Section B., they must be zone prior righted and have a seniority date prior to August 6, 1996 except as defined in NOTE to 7(a) of Section D.

C. Zone prior rights shall be governed by the following:

1. Those engineers who make up the first part of the roster (pre March 24, 1999 working or originally transferred to the zone) shall have prior rights to assignments with home terminals in the zone over those engineers that make up parts two and three of the roster.

2. Those engineers who make up the second part of the roster (pre August 6, 1996 from other zones) may bid into the zone on assignments not filled by zone prior right engineers using their current seniority date without losing any of their original zone prior rights. This move shall not establish prior rights in the new zone.

3. Those engineers who are post August 6, 1996 will establish use of seniority when they move to another zone using the consolidated seniority provisions. This move shall not establish prior rights in the new zone nor relinquish existing prior rights, if any, in other zones.

D. Prior rights within a zone shall be governed as follows:

ZONE 1

1. The Tucson - El Paso pool (home terminal at Tucson) shall be prior righted with the odd numbered slots being filled by those with zone prior rights and the even numbered slots to those engineers who relocate to Zone 1 as part of this implementing agreement. Each relocating engineer, with seniority prior to August 6, 1996, shall be placed on a specific turn by name and shall have prior rights only to that turn. These prior rights shall no longer be effective at the end of the sixth year after implementation, and at that time all positions in the pool shall be available to engineers based on the zone prior right provisions. If an engineer relocating to zone 1 voluntarily moves off their prior right spot during the six year period then he/she shall no longer be prior righted to that pool position. Once voluntarily vacated, the turn will be treated as an odd numbered slot.

2. With respect to all other assignments, the engineers who relocate to zone 1 as part of the single ending of the pool shall have the same zone prior rights as all other engineers currently working in the zone.

3. Assignments at Yuma, both regular and extra board, protected by the West Colton source of supply shall be governed as follows:

   a. The assignments shall be prior righted to SP engineers holding seniority in the Los Angeles Hub on the day this agreement is implemented.

   b. If an assignment goes no bid/application then it shall be filled by an engineer from the Zone 1 Southwest Hub roster.

   c. LA Hub SP prior right engineers shall have bid/application rights to vacancies on these assignments and shall not have displacement rights to them if they are held by an engineer from the adjoining Hub for a period of time not to exceed 6 months from the date the engineer from the other Hub holding the assignment is assigned, unless the 6 month period of time is waived by the engineer holding the assignment.

   d. Yuma positions protected by the West Colton source of supply shall be prior righted until attrited. All other Yuma positions shall be protected by zone 1 Southwest Hub engineers.

ZONE 2

4. Except for El Paso yard assignments, Clifton locals and pool assignments all Zone 2 positions shall be filled from the common dovetail zone roster. Zone 2 pools shall be prior righted as follows:

   a. El Paso - Lordsburg, 100% SPWL up to a base line of 26 and then to the dovetail roster.

   b. El Paso - Vaughn, 100 % EP&SW up to a base line of 47 and then to the dovetail roster. When Alpine and Toyah are combined then the odd numbered slots, beginning with 35, shall be prior righted to SPNL engineers.

   c. El Paso – Alpine, 100% SPEL up to a base line of 31 and then to the dovetail roster.

   d. El Paso – Toyah, 100% UP up to a base line of 8 and then to the dovetail roster.

   e. El Paso - Alpine/Toyah (when combined) 79% SPEL and 21% UP up to a baseline of 39 and then to the dovetail roster. (see attached chart)

5. El Paso yard assignments shall be prior righted as follows: 60% UP/SPEL, 40% EP&SW . (see chart)

6. The Clifton locals shall be prior righted, one to J.E. Andress, a current occupant and the other to the initial successful bidder from the current El Paso /Tucson seniority district. Should either of the incumbents voluntarily vacate assignments at this location they shall lose their prior rights to these assignments and the assignments shall become common positions to the zone. This only applies when moving from this location not when moving from one assignment to another at the same on duty point.

ZONE 3

7. Except for pools all Zone 3 positions shall be filled from the common dovetail zone roster. Zone 3 pools shall be prior righted as follows:

a. Pratt – Dalhart/Dalhart – Pratt, 100% SSW up to a baseline of 38 then to the dovetail roster.

NOTE: SSW engineers working in Pratt from March 24, 1999 until implementation date will continue to hold prior rights pursuant to Article III, L, of this agreement until attrited.

b. Dalhart – Vaughn, 50%SSW(even) and 50%EP&SW(odd) up to a baseline of 38 then to the dovetail roster.

c. Dalhart - Childress/Lubbock, 100% SSW up to a baseline of 5 then to the dovetail roster.

E. Yard and pool prior rights shall be eliminated as follows:

1. El Paso yard prior rights shall be 100% for the first three years. Starting with the fourth year (from start of implementation) all third shift assignments shall lose their yard prior rights, and starting with the fifth year all second shift assignments shall lose their yard prior rights and starting with the sixth year all first shift assignments shall lose their yard prior rights.

2. Pool baseline prior rights shall phase out 25% per year beginning with the start of year four (from start of implementation) and ending with the start of year seven when the pools shall lose their pool prior rights. This does not apply to Pratt-Dalhart pool engineers who remain at Pratt nor to the Tucson-El Paso pool which has its own phase out schedule.

F. Engineers who are on an authorized leave of absence or who are dismissed and later reinstated will have the right to displace to the appropriate roster(s), provided his/her seniority at time of displacement would have permitted him/her to hold that selection. The parties will create an inactive roster for all such engineers until they return to service in a Hub or other location at which time they will be placed on the appropriate seniority roster(s) and removed from the inactive roster.

G. The movement of engineers from Zone 2 to zone 1 shall be as follows:

1. Engineers currently holding seniority on the Tucson Seniority District and working in zone 2 shall be given the first opportunity to elect to transfer to Tucson up to a baseline number of 35.

2. Should an insufficient number of engineers from this seniority district elect to transfer and prior to forcing engineers an opportunity for exchanges of seniority between former Tucson seniority district engineers and other engineers in Zone 2 and 3 shall be offered. The process shall be as follows:

   a. All requests must go through the local chairmen and be on file by August 15, 1999. The local chairmen will match up engineers with the closest seniority dates. The provisions of the surviving CBA requiring that engineers be within five years of age and five years of service are waived for this process.

   b. Each engineer shall take the younger of the two dates and shall be treated as holding seniority on the roster of the engineer they exchanged with.

   c. Other engineers in Zone 2 who go to Tucson will be treated the same as if they were initial voluntary transfer Tucson seniority district engineers. (relocation, zone prior rights and pool even numbered prior rights.)

   d. Rights to seniority exchanges will go first to former EP&SW engineers(at El Paso and Tucumcari) and then to other engineers in Zone 2 and finally to engineers in Zone 3.

3. Should an insufficient number of engineers elect to transfer or exchange seniority, then the remaining number (up to the demand number of 27) shall be forced from former Tucson seniority district engineers in junior order.

H. The structure of the zone seniority rosters is to provide a supply of engineers in each zone. Movement to other zones has some restrictions (depending on seniority) so as to provide a more stable Hub and Spoke system for engineers. This also provides a supply of available engineers in each zone for Carrier operations without the need to force engineers from one zone to another after the initial movement involving Tucumcari engineers and engineers involved in the El Paso – Tucson pool. Engineers forced to a new zone due to implementation will be permitted to make application back to their original prior rights zone. The application must be on file within sixty days of being forced and will be honored when vacancies of a minimum of thirty days exist in the original zone and there are no engineers their senior on reserve boards or demoted in that zone. If an engineer is recalled and declines the recall, then his/her application will be pulled and not

reentered. (see relocation section on restrictions if relocation allowances are requested Engineers who receive a relocation allowance shall not be recalled for the two (2) year period.)

NOTE: The minimum of thirty days shall be met when all engineers senior to the forced engineer have been assigned to a working position for a minimum of thirty days or on a leave of absence for a minimum of thirty days and an additional regular assignment becomes vacant. If the engineer returning to the original zone works for ninety days without being demoted then the forced zone rights will be relinquished and the original zone rights reinstated.

III. POOL OPERATIONS/ASSIGNED SERVICE

The following operations may be instituted:

A. Dalhart - Childress/Lubbock via Dalhart or Stratford as one pool with Dalhart as the home terminal.

B. Dalhart – Vaughn with Dalhart as the home terminal. However, Tucumcari – Vaughn and Dalhart - Tucumcari shall continue to operate as separate pools during the transition to the long pool.

C. Dalhart – Springfield with Dalhart as the home terminal.

D.. El Paso - Vaughn with El Paso as the home terminal.

E. El Paso - Toyah/Alpine as one pool with El Paso as the home terminal. The Carrier will not give notice to combine the pools until either the new lodging facility is built at Toyah or the pools away from home lodging is at Pecos.

F. El Paso - Lordsburg with El Paso as the home terminal.

G. Tucson - El Paso with Tucson as the home terminal.

H Tucson - Lordsburg with Tucson as the home terminal.

I. Tucson - Nogales/Phoenix as one pool with Tucson as the home terminal. Through freight pool service to Nogales shall be run in turnaround service with no away from home lodging. Tucson pool engineers working to Nogales and return shall be paid in combination service if they perform deadhead and service in the same tour of duty. Through freight service to Phoenix may be run as either turnaround or straight away service on a trip by trip basis.

J. Tucson - Yuma with Tucson as the home terminal.

K. Phoenix - Yuma with Phoenix as the home terminal.

L. Pratt- Dalhart – This pool shall continue to operate (regulation and balancing) as it currently operates (double-ended) pending agreement on final provisions. In the next six months the parties will meet and agree on the operation of the pool and the transition process that will take place as the pool attrites to Dalhart. The basic principles are as follows:

1. The Pratt engineers who qualify for this treatment shall be identified by name. The list will only include those engineers with a home terminal at or between Pratt and Liberal, Kansas and continually working at these locations from the date of notice March 24, 1999 to the date of implementation.

2. The listed engineers shall have prior rights to all SSW pool turns with a home terminal at Pratt subject to their obligations to cover other assignments set forth below. No non listed engineer may hold a pool turn at Pratt. They may hold non-pool assignments if there are no listed engineers available.

3. Listed Pratt engineers will be required to protect all other assignments (including extra board at Pratt) between Pratt and Liberal, Kansas prior to protecting pool assignments between Pratt and Dalhart. Absent bids or requests from senior engineers at Pratt, the junior engineer(s) in pool freight service may be removed from pool freight service and placed on the vacancies. When removed these engineers will be considered as holding the highest paying assignment for New York Dock purposes.

4. Lodging will be furnished at Dalhart for those Pratt engineers working into Dalhart and at Pratt for Dalhart based engineers.

5. Pool will operate so as to minimize time engineers are held at the away from home terminal.

6. There is no reverse held away from home terminal time or reverse lodging for either end of the pool.

7. Pratt engineers shall lay off at Pratt and Dalhart engineers shall lay off at Dalhart.

8. The carrier may offer relocation allowances to Pratt engineers to transfer to Dalhart.

M. Any pool freight, local, work train, or road switcher service may be established in accordance with the controlling CBA.

N. Crews may use and/or operate over any route or combination of UP and SP trackage between their initial and final terminal. Side trips shall continue to be paid under side trip provisions of the CBA.

O. New pool operations not covered in this implementing Agreement between Hubs or within a Hub will be handled per Article IX of the 1986 National Implementation Award.

P. The different pools identified in this agreement may be established individually or in groups. Other than Dalhart-Vaughn and Tucson – El Paso changes, pools not established at time of implementation shall be established upon ten days written notice to the General Chairman. Existing pools will remain in place until replaced by new pools. The Dalhart-Vaughn and Tucson-El Paso pools have their own implementation provisions. Tucson-Phoenix-Nogales and Phoenix-Yuma shall be implemented concurrently. When requested these pools may be pre advertised.

Q. The Tucumcari transition shall provide for the creation of a long pool at Dalhart. This pool shall initially have 12 pool turns (six from Dalhart and six from Tucumcari). If not already qualified they may run with two engineers, one from each roster, and familiarize each other over the route in addition to other methods of qualification. Every two months an additional 12 turns shall be bulletined until the entire pool is a long pool. With each bulletin of 12 turns another Tucumcari engineer shall be added to the extra board at Dalhart. At the same time as each group of engineers move to Dalhart four engineers shall be transferred to El Paso.

R. There are some current locals and road switchers operating under other than SPWL agreements. The transition to the SPWL Agreement shall not eliminate these assignments if the SPWL agreements do not have similar provisions that permit these operations. It is the desire of all parties to continue to provide service to customers after the Hub implementation so these assignments may continue to operate and be paid pending review of their operations and agreements by the General Chairmen and the Director Labor Relations with regard to the SPWL Agreement. If the SPWL agreement does not provide for continued coverage then the current agreements will be adopted on a limited basis, (current operations only).

S. Current blue print provisions for EP&SW, SSW, UP and SPEL pools shall be retained at implementation pending a review by the parties to see if changes need to be made. In addition, If the pools to Alpine and Toyah are combined, engineers shall be placed at the home terminal in the order in which called from the away from home terminals.

IV. EXTRA BOARDS

A. The Carrier may establish extra boards at any location in accordance with the governing CBA. The Carrier will give a thirty day notice of the consolidation of pre-merger extra boards and the notice provisions of the governing CBA shall be used in the establishment of new extra boards. Existing extra boards not covered by a notice shall continue to operate until a notice is served abolishing or combining them. Beginning with implementation, day these existing extra boards shall be governed by the provisions of the selected CBA.

B. The following information is given in order to assist engineers in any merger implementation decisions they must make. It is the Carriers intention to initially establish or retain extra boards at the following locations:

1. Dalhart

2. El Paso (2)

   a. One to cover the yard assignments and the territory between El Paso and Lordsburg.

   b. One to cover the territory between El Paso and Vaughn, Toyah and Alpine.

3. Tucson

4. Phoenix

5. Yuma

6. Pratt

C. The extra boards at Yuma will be consolidated on a 50/50 basis with the LA Hub entitled to prior rights to the even numbered assignments 2, 4 and 6. The Southwest Hub zone 1 shall have prior rights to all other extra board assignments. There will then be one extra board at Yuma and the extra board at Yuma will be used to fill short term vacancies on all assignments that have Yuma as a home terminal (whether LA Hub or Southwest Hub vacancies) and EL Centro as a home terminal. This extra board shall protect hours of service relief/turnaround service as far West as Niland (MP 667) in the LA Hub and as far East as is provided elsewhere in this agreement.

D. At Alpine, there may be a joint extra board that may cover hours of service relief for trains heading to Alpine that are within 65 miles of Alpine, all other non pool assignments in this area and other usual extra board work. If only one assignment then the senior bidder from the two Hubs (San Antonio and zone 2 of the Southwest Hub) shall be assigned and if two assignments then the other Hub shall be assigned. If forced then it shall be forced even years from Southwest Hub seniority and odd years from San Antonio Hub seniority. Southwest Hub forcing shall be limited to previous SPEL engineers and engineers hired/promoted after March 24, 1999.

E. Exhausted extra boards.

1. At El Paso, if one of the above extra boards is exhausted, then another (secondary)extra board may be used prior to using other sources of supply within the zone. Secondary extra boards shall be identified by bulletin.

2. An engineer called from his/her extra board for an assignment in another area not primarily covered by their extra board shall be handled as follows:

a. Pay received for this assignment shall not be used as an offset for extra board guarantee but shall be in addition to, however, it shall be used in computing whether the engineer is entitled to protection pay at the end of the month.

b. An engineer unavailable at time of call for secondary assignments shall have a deduction made in their extra board guarantee in accordance with the extra board agreement and shall have an offset to their protection in accordance with the protection offset provisions. If miss called for secondary calls, the engineer shall not be placed on the bottom of the board but will hold his/her place.

c. An engineer unavailable at time of call for secondary assignments shall not be disciplined.

V. TERMINAL AND OTHER CONSOLIDATIONS

A. The several yards at El Paso shall be combined into a single terminal. Yard engineers shall not be restricted as to where in the terminal they can operate. The new terminal limits shall be as follows:

SUBDIVISION/LINE		MILEPOST
Valentine		820.0
Lordsburg		1291.54
Carrizozo		1300.54

B. The provisions of **A** above will not be used to enlarge or contract the current limits except to the extent necessary to combine into a unified operation.

C. With the implementation of this Agreement all areas, trackage, stations and facilities in the Hub shall be common to all engineers as a single unified system. Engineers shall not be restricted in the Hub where they can operate except on the basis of CBA provisions that set forth limits of an assignment such as the radius of a road switcher.

D. Road crews may receive/leave their trains at any location within the consolidated terminals and may perform work within the terminals pursuant to the controlling collective bargaining agreement, including National Agreement provisions.

E. Within terminals, the carrier will designate the on/off duty points for all road and yard crews. Such on/off duty points will have appropriate facilities as currently required by the controlling collective bargaining agreement and/or by governmental statute or regulation.

F. The following payment applies to Alfalfa yard:

1. The 20 minute payment currently paid to pre October 31, 1985 employees shall continue to be paid to regularly assigned engineers who report to this location.

2. A 20 minute payment shall be paid to those extra board engineers (both pre and post October 31, 1985) who fill vacancies at this location and report directly to this location at the call time.

VI. AGREEMENT COVERAGE

A. General Conditions for Terminal Operations.

1. Initial delay and final delay will be governed by the controlling collective bargaining agreement, including the Duplicate Pay and Final Terminal Delay provisions of the 1986 and 1991 National and Implementing Agreements and awards.

2. Engineers will be transported to/from their trains to/from their designated on/off duty point in accordance with Article VIII, Section 1 of the May 1986 National Agreement. The Carrier shall designate the on/off duty points for engineers within a terminal. Suitable transportation includes Carrier owned or provided passenger carrier motor vehicles or taxi, but excludes other forms of public transportation.

3. The current application of National Agreement provisions regarding road work and Hours of Service relief under the combined road/yard service Zone, shall continue to apply. Yard engineers at any location within the Hub may perform such service in all directions out of their terminal.

4. SPEL and SSW engineers who have earned their vacation for the year 2000 in 1999 shall be allowed to take the number of weeks provided in their current vacation agreement for the year 2000.

B. General Conditions for Pool/Assigned Operations in Article III.

1. The terms and conditions of the pool operations set forth in Article III (A-L), shall be the same except where specifically provided otherwise in those Sections. The terms and conditions are those of the surviving collective bargaining agreement as modified by subsequent national agreements, awards and implementing documents and those set forth in this Agreement.

2. **Twenty-Five Mile Zone** - Pool engineers may receive their train up to twenty-five miles on the far side of the terminal and run on through to the scheduled terminal. Engineers shall be paid an additional one-half (½) basic day for this service in addition to the miles run between the two terminals. If the time spent in this zone is greater than four (4) hours, then they shall be paid on a minute basis. This payment shall be at the pro rata through freight rate.

   EXAMPLE: An El Paso-Vaughn crew receives their westbound train fifteen (15) miles east of Vaughn and runs to El Paso. They shall be paid the actual miles established for the El Paso - Vaughn run and a minimum of an additional one-half basic day for handling the train from the point fifteen (15) miles east of Vaughn back through that terminal. (See Q&A's for additional information.)

3. **Turnaround Service/Hours of Service Relief**. Except as provided in (2) above, turnaround hours of service relief at both home and away from home terminals shall be handled by extra boards, if available, prior to using pool engineers in turn around service. Engineers used for this service may be used for multiple trips in one tour of duty in accordance with the designated collective bargaining agreement rules. Extra boards may handle this in all directions out of a terminal. At El Paso each extra board will protect its primary area of coverage unless the other is exhausted.

4. Nothing in this Section B (2) and (3) prevents the use of other engineers to perform work currently permitted by prevailing agreements, including, but not limited to yard engineers performing Hours of Service relief within the road/yard zone, ID engineers performing service and deadheads between terminals, road switchers handling trains within their zones and using a engineer from a following train to work a preceding train and payments required by the controlling CBA shall continue to be paid when this work is performed.

5. Engineers, both pool and extra board, when called in turnaround hours of service relief shall be considered called as in combination deadhead/service and shall be paid as such.

C. **Agreement Coverage** – Engineers working in the Southwest Hub shall be governed, in addition to the provisions of this Agreement, by the Collective Bargaining Agreement selected by the Carrier, including all addenda and side letter agreements pertaining to that agreement and previous National Agreement/Award/Implementing Document provisions still applicable. Except as specifically provided herein the system and national collective bargaining agreements, awards and interpretations shall prevail. None of the provisions of these agreements are retroactive. The Carrier has selected the SP WEST modified BLE Agreements.

VII. PROTECTION.

A. Due to the parties voluntarily entering into this agreement the Carrier agrees to provide New York Dock wage protection (automatic certification) to all prior right engineers who are listed on the Southwest Hub Merged Rosters and working an assignment (including a Reserve Board) on March 24, 1999. (The term working shall also include those engineers disciplined and later returned to work and those full time Union Officers should they later return to service with the Carrier.) This protection will start with the effective (implementation) date of this agreement. The engineers must comply with the requirements associated with New York Dock conditions or their protection will be reduced for such items as layoffs, bidding/displacing to lower paying assignments when they could hold higher paying assignments, etc. Protection offsets due to unavailability are set forth in the Questions and Answers and side letter #1.

B. This protection is wage only and hours will not be taken into account.

C. 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, engineers required to relocate may elect one of the following options:

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

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

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

   (a) This option shall expire 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.

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. 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.

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

7. In addition to those engineers required to relocate, engineers at the location where assignments are relocated from shall be treated as required to relocate under this Agreement, seniority governing on a one for one basis equal to the number of assignments transferred. Once the number of in lieu of allowances are granted equal to the number of assignments transferred all other moves associated with the specific number of assignments transferred will not be eligible for any moving allowance.

D. There will be no pyramiding of benefits.

E. Engineers who do not have an interim protection shall select either the calendar year 1995 or 1996 to have their TPA calculated. Local Chairmen will provide the protection bureau a list of the names and SSN's and the year that the engineer selects to have his/her TPA developed. If an engineer is currently covered by an interim protection TPA due to the merger, then the engineer may elect to retain that TPA or select the period January 1, 1995 through December 31, 1995. When TPA's are mailed to the engineers the engineer must respond within thirty days from the date of the letter if they elect to retain the interim TPA. Engineers who were employed after the year 1995 shall use the twelve month period prior to implementation.

F. Those who elect to retain the interim (SPEL&SSW) TPA's shall have them adjusted the equivalent of the General Wage increase of July 1, 1997. All TPA's shall be eligible for the July 1, 1999 General Wage increase and SPEL and SSW engineers who worked a yard assignment a minimum of 150 yard shifts during their test period shall have a further adjustment of 2.3%. These are subject to this proposal being initialed by July 1, 1999.

G. The TPA for union officers will be based on the two engineers above and two engineers below the officer with regular work records on the pre-merger roster or their regular TPA, whichever is larger. Engineers with a current ID protection or a temporary SP West modification protection must either elect to retain that protection in accordance with those agreements or this New York Dock protection. Failure to so elect will result in retention of the ID or modification protection TPA.

H. Engineers will be treated for vacation, payment of arbitraries and personal leave days as though all their service on their original railroad had been performed on the merged railroad. Engineers assigned to the Southwest Hub seniority roster with a seniority date prior to March 24, 1999 shall have entry rate provisions waived and engineers hired after that date shall be subject to the rate progression provisions of the controlling CBA. Those engineers leaving the Southwest Hub will be governed by the CBA where they then work.

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

VIII. FAMILIARIZATION

A. Engineers involved in the consolidation of the Southwest Hub covered by this Agreement whose assignments require performance of duties of a new geographic territory not familiar to them will be given familiarization opportunities as quickly as possible. Engineers will not be required to lose time or ride the road on their own time in order to qualify for these new operations.

B. Engineers will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualification shall be handled with local operating officers. The parties recognize that different terrain and train tonnage impact the number of trips necessary and an operating officer will be assigned to the merger that will work with the local managers of Operating Practices in implementing this Section. If disputes occur under this Agreement they may be addressed directly with the appropriate Director of Labor Relations and the General Chairman for expeditious resolution.

C. It is understood that familiarization required to implement the merger consolidation herein will be accomplished by calling a qualified engineer (or qualified Manager of Operating Practices) to work with an engineer called for service on a geographical territory not familiar to the engineer.

D. Engineers who work their assignment (road or yard) accompanied by an engineer taking a familiarization trip shall be paid one (1) hour at the pro rata rate, in addition to all other earnings for each tour of duty. This payment shall not be used to offset any extra board payments. The provision of 3 (a) and (b) Training Conditions of the

System Instructor Engineer Agreement shall apply to the regular engineer when the engineer taking the familiarization trip operates the locomotive.

E. Locomotive engineers will not be required to make the decision on whether or not an engineer being familiarized is sufficiently familiarized for the territory.

IX. IMPLEMENTATION

A. The Carrier shall give 30 days notice for implementation of this agreement , if ratified prior to August 15, 1999. If ratified after August 15, 1999 the Carrier shall give 10 days notice for implementation.

B. After notice of acceptance of this agreement, the appropriate Labor Relations Personnel, CMS Personnel, General Chairmen and Local Chairmen will convene a workshop to implement assembly of the merged seniority rosters. At this workshop, the representatives of the Organization will participate with the Carrier in constructing consolidated seniority rosters as set forth in **Article II** of this Implementing Agreement.

C. Engineers who are on assignments on the day of implementation shall remain on those assignments unless abolished or unless they make application to another vacancy or are displaced by engineers with displacement rights under the controlling CBA. This agreement does not create displacement rights due to its implementation. See the Article on implementation which covers the bulletining of extra board and other common positions. At a minimum the carrier shall bulletin UP/SPEL yard assignments at El Paso, the two extra boards at El Paso, all zone 2 non pool assignments and all non baseline pool assignments.

D. Dependent upon the Carriers manpower needs, the Carrier will develop (for zones 2 and 3) a pool of representatives of the Organization, with the concurrence of the General Chairmen, which, in addition to assisting in the preparation of the rosters, will assist in answering engineer's questions. In addition to questions, explanations of the seniority consolidation and implementing agreement issues, discussing merger integration issues with local Carrier officers and coordinating with respect to CMS issues relating to the transfer of engineers from one zone to another or the assignment of engineers to positions. Due to minor qualification issues and seniority changes in Zone 1 this pool may be developed if needed, however it is not mandatory to do so.

X. HEALTH AND WELFARE

A. Engineers currently are under either the National Plan or the Union Pacific Hospital Association. Engineers coming under a new CBA will have six months from the implementation of this agreement to make an election as to keeping their old coverage or coming under the coverage of their new CBA. Engineers who do not make an election will have been deemed to elect to retain their current coverage. Engineers hired after the date of implementation will be covered under the plan provided for in the surviving CBA.

B. If an engineer is covered under a group life and/or disability insurance policy provided for in his/her collective bargaining agreement, and that collective bargaining agreement is not the surviving collective bargaining agreement, the Carrier shall continue the premium payments required at the time of implementation of this agreement for those engineers presently covered under those provisions for a period of six years, beginning January 1, 1998.

This Agreement is entered into this 15th day of June 1999.

For the Organization:

General Chairman BLE UP

General Chairman BLE SPWest

General Chairman BLE SSW

General Chairman BLE SP East

Vice-President BLE

Vice-President BLE

For the Carrier:

General Director Labor Relations

General Director Labor Relations

Assistant Vice President Southern Region

BLE QUESTIONS AND ANSWERS SOUTHWEST HUB

Article I –SOUTHWEST HUB

Q1. How far west of Yuma may a Southwest Hub engineer work?
A1. As far as Niland for hours of service work and the area of assignments that go on duty at Yuma and El Centro when they hold those assignments or fill them on a short term vacancy basis.

Q2. When the language says "not including" a point may engineers work into that point and if so what work may they do.
A2. Yes, engineers may work into those points. For example, LA Hub pool engineers may work into Yuma and perform any work permitted by applicable agreements for that class of service with Yuma as their final terminal.

Article II – SENIORITY AND WORK CONSOLIDATION

Q3. How long will pool and yard prior rights be in effect?
A3. These will be phased out at differing times depending on the type of service.

Q4. Are full time union officers including full time state legislative board representatives, Company officers, medical leaves and those on leave working for government agencies covered under Article II, F?
A4. Yes.

Q5. How many engineers are covered by the inactive roster referenced in Article II.F?
A5. The "inactive roster" noted in Article II.F, refers to the status of engineers who are not in active service who pre-merger were on a UP/SSW/SPEL/EP&SW or SPWL roster with rights to work in the Southwest Hub. Such engineers include those on leave of absence for government, union and company service, medical leave including disability, etc. Because those engineers have rights to exercise seniority upon return to active service but may not do so from inactive status, such engineers will be required to select a Hub upon their return to active service. It is not possible to predict the number of people who may return from inactive status and, thereafter, the Hub that such people may select upon their return. Therefore, eligibility to mark up in a Hub must be determined for each individual upon that individuals return to active status.

Q6. Does the "earliest retained hire date" in Article II B (1) refer only to an operating craft date?
A6. No, it refers to the earliest retained hire date regardless of position. However if an engineer took an allowance that required them to relinquish that seniority then that date would no longer apply.

Q7. When the new rosters are created, will there be any distinctions between former UP, SSW, SPEL, EP&SW and SPWL engineers?
A7. No, for assignments filled from the zone roster. Pool and yard prior right assignments will be from different pre merger rosters.

ARTICLE III – POOL/ASSIGNED SERVICE OPERATIONS

Q8. Will existing pool freight terms and conditions apply on all pool freight runs?
A8. Blue print provisions will, however the terms and conditions set forth in the surviving collective bargaining agreements and this document will govern other provisions.

Q9. How will the crews know the miles of the new assignments?
A9. The parties will meet and review the mileage and a chart will be given to timekeeping, Local Chairmen and posted at various locations.

ARTICLE IV – EXTRA BOARDS

Q10. How many extra boards will be established at implementation?
A10. The number is not known at this time. There will be a phase in of the familiarization process and they will be consolidated and established as this process proceeds, however the two extra boards at El Paso will be established at implementation.

Q11. Are these guaranteed extra boards?
A11. Yes. The pay provisions and guarantee offsets and reductions will be in accordance with the surviving CBA guaranteed extra board agreement.

Q12. When will the Yuma extra board cover all the assignments provided for in this agreement.
A12. When this Agreement is implemented and notice is served to combine the extra boards.

ARTICLE V – TERMINAL CONSOLIDATIONS

Q13. Are the national road/yard Zones covering yard engineers measured from the new terminal limits where the yard assignment goes on duty?
A13. The new terminal/station limits where the yard engineer goes on duty will govern.

ARTICLE VI – AGREEMENT COVERAGE

Q14. When the surviving CBA becomes effective what happens to existing claims filed under the other collective bargaining agreements that formerly existed in the Southwest Hub?
A14. The existing claims shall continue to be handled in accordance with those agreements and the Railway Labor Act. No new claims shall be filed under those agreements once the time limit for filing claims has expired for events that took place prior to the implementation date.

Q15. How will vacations for 2000 be handled?
A15. Vacations for 2000 will be scheduled at the end of 1999 under the provisions of the then prevailing agreements.

Q16. If an engineer in the 25 mile zone is delayed in bringing the train into the original terminal so that it does not have time to go on to the far terminal, what will happen to the engineer?
A16. Except in cases of emergency, the engineer will be deadheaded on to the far terminal.

Q17. Is it the intent of this agreement to use engineers beyond the 25 mile zone?
A17. No. These provisions only apply to outbound engineers at their initial terminal within 25 miles of the initial terminal.

Q18. In Article VI. B., is the ½ basic day for operating in the 25 mile zone frozen and/or is it a duplicate payment/ special allowance?
A18. No, it is subject to future wage and COLA adjustments and it is not a duplicate payment/special allowance and thus applies equally to pre and post 1985 engineers and engineers hired/promoted subsequent to the provisions of this agreement.

Q19. How is an engineer paid if they operate in the 25 mile zone?
A19. If an engineer is transported to his/her train 10 miles East of Vaughn and takes the train to El Paso and the time spent is one hour East of Vaughn and 11 hours between Vaughn and El Paso with no initial or final delay earned,(total time on duty 12 hours) the engineer shall be paid as follows:

A. One-half basic day for the service East of Vaughn because it is less than four hours spent in that service.
B. The road miles between Vaughn and El Paso.
C. Overtime, if any, based on the governing CBA provisions, calculated on the miles between Vaughn and El Paso and the 11 hours travel time between those two points.

Q20. Are miles in the 25 mile zone added to the district miles of the run?
A20. No, and time spent in the zone does not factor into the computation of overtime; however, if the time spent within the zone, if factored into the computation of overtime, would produce road overtime earnings for the tour of duty in excess of the minimum four (4) hour payment, the higher overtime earnings would apply in lieu of the minimum four hour payment.

EXAMPLE: An engineer on a 130 mile run works 6 hours in the 25 mile zone and 7 hours completing their trip to the far terminal. The engineer shall compute his/her time in two ways:

1. 6 hours at straight time in the 25 mile zone and 130 miles for the 7 hours (straight time) on the 130 mile trip; or

2. 13 hours on duty for a 130 mile trip, eight hours at straight time and 5 hours overtime;

And shall be paid the greater amount.

Q21. How will initial terminal delay be determined when performing service in the 25 mile zone?

A21. Initial terminal delay for engineers entitled to such payments will be governed by the applicable collective bargaining agreement and will not recommence when the engineer operates back through the on duty point. Operation back through the on duty point shall be considered as operating through an intermediate point.

Q22. Is it the intent of this agreement to use engineers in the 25-mile zone if not qualified to operate on that territory?

A22. No, it is not the intent of this agreement to require engineers to operate against their will within the 25 mile zone if not qualified on such territory.

Q23. If the away from home terminal is outside this Hub will the 25 mile zone rule apply?

A23. If the away from home terminal is in a Hub that also has a 25 mile zone rule then this rule will apply for Southwest engineers while at the away from home terminal. If the away from home terminal is in a Hub or non merged area that does not have a similar rule then the rule will not apply while at that away from home terminal.

Q24. Where is the 25 mile zone measured from?

A24. The same terminal limits as used by yard crews in their road/yard zone.

Q25. Does the language of VI B 3 prohibit the use of pool freight engineers in straight away combination deadhead/service from picking up a train whose engineer had earlier expired under the Hours of Service Act?

A25. No, the language of Article VI B 4 clearly preserves that service. The language of VI B 3 provides that extra boards will be used before pool engineers in turnaround hours of service relief and does not require that they be used prior to pool engineers in straight away service.

Q26. May engineers run through their destination terminal up to 25 miles?

A26. No, the twenty-five mile provisions are only for obtaining a train on the far side of a terminal and not for running through their destination terminal.

Q27. How will an engineer be paid who is used in the twenty-five mile zone to obtain a train, brings the train into the original on-duty terminal (now an intermediate point) and then deadheaded on to the far terminal because of insufficient time to continue with the train?

A27. The engineer will be paid under the twenty-five mile provisions for the work in that Zone and deadheaded in combination deadhead/service. For example on a run of 190 miles, if an employee worked 8 hours in the 25 mile zone and then deadheaded on to the far terminal they would be paid 8 hours plus 190 miles. Engineers will be deadheaded to the far terminal in these situations.

ARTICLE VII – PROTECTION

Q28. What rights does an engineer have if he/she is already covered under labor protection provisions resulting from another transaction?

A28. Section 3 of New York Dock permits engineers to elect which labor protection they wish to be protected under. By agreement between the parties, if an engineer has three years remaining due to the previous implementation of Interdivisional Service the engineers may elect to remain under that protection for three years and then switch to the number of years remaining under New York Dock. It is important to remember that an engineer may not receive duplicate benefits, extend their protection period or count protection payments under another protection provision toward their test period average for this transaction. Those receiving ID protection as a result of the implementation of the service to Vaughn may revert to any modification protection if they have any remaining when their ID protection ends.

Q29. How will reductions from protection be calculated?

A29. In an effort to minimize uncertainty concerning the amount of reductions and simplify this process, the parties have agreed to handle reductions from New York Dock protection as follows:

1. **Pool freight assignments** – 1/15 of the monthly test period average will be reduced for each unpaid absence of up to 48 hours or part thereof. Absences beyond 48 hours will result in another 1/15 reduction for each additional 48 hour period or part thereof.

2. **Five day assignments** - 1/22 of the monthly test period average will be reduced for each unpaid absence of up to 24 hours or part thereof. Absences beyond 24 hours will result in another 1/22 reduction for each additional 24 hour period or part thereof.

3. **Six & seven day assignments** – The same process as above except 1/26 for a six day assignment and 1/30 for a seven day assignment.

   NOTE: There shall be no offset from protection for rest days on five day and six day assignments,.

4. **Extra board assignments** - 1/30 of the monthly test period average will be reduced for each unpaid absence of up to 24 hours or part thereof.

Absences beyond 24 hours will result in another 1/30 reduction for each additional 24 hour period or part thereof.

NOTE: Absences on the extra board shall be calculated from the time of unavailability (layoff, missed call, etc) until the next time called for service. For example: If a engineer lays off on Monday at noon, marks up the next day, Tuesday, and does not work until 2 AM on Wednesday, then they shall be off for protection purposes for thirty-eight (38) hours and shall be deducted 2/30 of their protection.

Q30. Why are there different dollar amounts for non-home owners and homeowners?
A30. New York Dock has two provisions covering relocating. One is Article I, Section 9, Moving Expenses and the other is Section 12, Losses from Home Removal. The $10,000 is in lieu of New York Dock moving expenses and the remaining $20,000 is in lieu of loss on sale of home.

Q31. Why is there one price on loss on sale of home
A31. It is an in lieu of amount. Engineers have an option of electing the in lieu of amount or claiming New York Dock benefits. Some people may not experience a loss on sale of home or want to go through the procedures to claim the loss under New York Dock.

Q32. What is loss on sale of home for less than fair value?
A32. This refers to the loss on the value of the home that results from the Carrier implementing this merger transaction. In many locations the impact of the merger may not affect the value of a home and in some locations the merger may affect the value of a home.

Q33. If the parties cannot agree on the loss of fair value what happens?
A33. New York Dock Article I, Section 12(d) provides for a panel of real estate appraisers to determine the value before the merger announcement and the value after the merger transaction.

Q34. What happens if a engineer sells the home for $20,000 to a family member?
A34. That is not a bona fide sale and the engineer would not be entitled to either an in lieu of payment or a New York Dock payment for the difference below the fair value.

Q35. What is the most difficult part of New York Dock in the sale transaction?
A35. Determine the value of the home before the merger transaction. While this can be done through the use of professional appraisers, many people think their home is valued at a different amount.

Q36. Who is required to relocate and thus eligible for the allowance?
A36. A engineer who can no longer hold a position at his/her location and must relocate to hold a position as a result of the merger. This excludes engineers who are

borrow outs or forced inside the Hub and released and engineers who have to exercise seniority due to a non merger event.

Q37. Are there any seniority moves that will be treated as required to relocate?
A37. Yes and the following is an example:

Example 1: The El Paso portion of the Tucson-El Paso pool is moved to Tucson. Senior engineers from El Paso who bid in the turns in Tucson are eligible for the allowance.

Example 2: The same turns are moved, however, a more senior engineer on a Lordsburg Local makes application for one of the turns. While this engineer may receive a relocation allowance, the filling of his/her assignment will be a seniority move and the Carrier is not required to pay an additional allowance.

Q38. Are there mileage components that govern the eligibility for an allowance?
A38. Yes, the engineer must have a reporting point farther than his/her old reporting point and at least 30 highway miles between the current home and the new reporting point and at least 30 highway miles between reporting points.

Example 1: If the on-duty point for road engineers is relocated from one part of El Paso to another location in the terminal, both within the same Terminal, this does not trigger a relocation allowance.

Example 2: An engineer's home is in Tucson but he/she has worked the pool with an on duty point at El Paso. When the pool turn is transferred to Tucson the engineer is now closer to their home and is not entitled to a homeowners relocation allowance.

Q39. At what time did an engineer need to be a home owner to qualify as a home owner for relocation purposes?
A39. New York Dock protects home owners due to loss on sale of home that are caused by the merger. While other Hubs had an earlier date, due to the time lapse between the first and this Hub the Carrier has agreed to cover as home owners those who owned a home on or before October 1, 1998.

Q40. Will engineers be allowed temporary lodging when relocating?
A40. Engineers entitled to a relocation allowance shall be given temporary lodging for thirty (30) consecutive days as long as they are marked up.

Q41. Are there any restrictions on routing of traffic or combining assignments?
A41. There are no restrictions on the routing of traffic in the Southwest Hub once the 30 day notice of implementation has lapsed. There will be a single collective

bargaining agreement and limitations that currently exist in that agreement will govern (e.g. radius provisions for road switchers, road/yard moves etc.). However, none of these restrictions cover through freight routing. The combining of assignments between the Carriers is covered in this agreement and is permitted.

Q42. Will the Carrier offer separation allowances?
A42. The Carrier will review its manpower needs at each location and may offer separation allowances if the Carrier determines that they will assist in the merger implementations..

Q43. How will Union Officers TPA's be established?
A43. The Carrier will average the two above and two below (on the pre-merger rosters) in the same class of service. If greater than their regular TPA it shall be used. Engineers with unusually high or low TPA's will not be considered.

Q44. How will an engineer be advised of their test period earnings?
A44. Test period averages will be furnished to each individual and the General Chairmen.

Q45. Is vacation pay received during the test period considered as compensation?
A45. Yes, and used to determine if the TPA has been reached for the month when paid.

Q46. Regarding the above question, if an engineer is on vacation the entire month and the vacation pay thereof is less than his TPA, would he be entitled to draw a displacement for the difference?
A46. Yes.

Q47. How is length of service calculated?
A47. It is the length of continuous service an engineer has in the service of the Carrier with a month of credit for each month of compensated service.

Q48. If an engineer has two years of engineer's service and three years of conductor service, and one year of clerical service how many years of NYD protection will they have?
A48. Six.

Q49. How will the engineers know which jobs are higher rated?
A49. The Carrier will periodically post job groupings identifying the highest to lowest paid jobs.

Q50. Will specific jobs be identified in each grouping?
A50. Pools, locals and extra boards may be identified separately but yard jobs and road switchers will not be.

Q51. If an engineer has worked full time in yard service during the test period, will they have to place in road service if it is the highest paying assignment to keep from having offsets?

A51. Recognizing that some engineers have spent considerable time in the yard and have not been on the road in some time, the Carrier will allow these engineers to remain in yard service. It will be the responsibility of the Local Chairmen to identify these individuals. This does not apply to other assignments nor to engineers who worked both in the yard and on the road even if the road service was emergency road service.

Q52. If an engineer has started their NYD protection in another Hub and they elect to place in the Southwest Hub will they start their NYD protective period over?

A52. No, they will continue on with the same time period that started with the implementation of the other Hub.

Q53. If an engineer is displaced does an offset to his/her TPA begin immediately upon being notified?

A53. By agreement between the parties, the Carrier will allow an engineer up to three hours after being notified to make a displacement without an offset being applied.

Q54. If an engineer is displaced from his/her assignment and not immediately notified of the displacement, will their New York Dock protection be reduced?

A54. An engineer's reduction from New York Dock protection would not commence until notification or attempted notification by telephone or in person using normal calling procedures. The reduction would continue until the engineer placed himself/herself. Computer records will be referred to when needed.

Article IX –FAMILIARIZATION

Q55. Are there a set number of trips that an engineer will take in learning new territory?

A55. No, since engineers have differing experiences the number of trips will vary and the local chairmen will work with local operating officers on the number and type of trips needed.

Q56. An engineer who makes familiarization trips only on the portion of the geographic territory where he intends to work may later exercise seniority or be forced to another part of the territory with which he is not familiar. Does this Agreement apply to the necessary additional familiarization trips?

A56. Yes, no matter how much time has elapsed from date of implementation of this Agreement.

Q57. Who will approve an engineer as being properly familiarized on a new territory?
A57. An engineer will not be considered qualified on a new territory until check ride is given by the designated Carrier officer as per the requirements of 49 CFR, parts 240.127 and 240.129.

Q58. If an unqualified extra engineer stands first out for an assignment and the next extra engineer is qualified, may the first out extra engineer be run-around?
A58. No, however the Carrier will attempt to place engineers unfamiliar with extra board assignments on a familiarization board (paid the same as if on the extra board) to learn the area prior to marking up on the extra board. If the above happens then the Carrier may call the next out engineer to be a pilot, use a qualified officer to ride with them or use one of the peer training engineers.

Q59. If the next out engineer is used as a pilot, how shall they be compensated?
A59. The same as if they had operated the train plus the one hour payment in Article VIII, D.

Article X – IMPLEMENTATION

Q60. On implementation will all engineers be contacted concerning job placement?
A60. No, the implementation process will be phased in and engineers will remain on their assignments unless abolished or combined and then they may place on another assignment. When the Carrier posts the notice on pool changes and increases and decreases in extra boards Local Chairman will assist in handling the bidding, application and placement process at that time and engineers may be contacted for placement if insufficient bids/applications are received. The new seniority rosters will be available for use by engineers who have a displacement.

Q61. Are the road switchers that go on duty in the Imperial Valley remaining in the LA Hub?
A61. Yes, however short term vacancies will be protected form the Yuma Extra Board.

Q62. During the execution of this Agreement, it is possible that the parties may discover errors or omissions relating to mile post designations, crew district mileages, etc. Is it the intent of either party to hold the other party to such items because there was simply not time to verify them for accuracy?
A62. No, these type of clerical errors may be corrected when discovered.

Q63. Can an engineer be forced outside the Hub?
A63. There are not provisions in this agreement that permits an engineer to be forced outside the Hub.

Q64. What date determines what zone an SPWL engineer was working for establishing zone rights at implementation?
A64. The location an engineer was working on March 24, 1999 establishes zone rights.

Q65. On implementation day will the SPWL mountain rate apply to the Alpine pool run.
A65. Yes, because the grade meets the requirements for the payment.

Q66. When Tucson-Phoenix turnaround service is implemented how shall an engineer know that he/she is operating in turnaround service as opposed to straight away service?
A66. Engineers will be notified at call time, however this does not prevent the changing of calls prior to leaving a terminal.

June 15, 1999
Side Letter No. 1

Dear Sirs:

During our discussions on New York Dock and extended Protection we discussed the issue of a pool engineer taking a single day paid absence such as a Personal Leave day or single day vacation and the impact it will have on his/her protection. In an effort to simplify the process and to provide the pool engineer with an alternative the parties agree that a pool engineer shall have one of the following options:

(1) Elect a single paid personal leave or vacation day and hold their turn so that if it obtains a first out status they will be first out when they are marked up no less than 24 hours later, with no deduction from their protection; or

(2) Elect a minimum of two consecutive days paid personal leave days on pools whose round trip district miles are 400 or less or a minimum of three consecutive days on pools whose round trip district miles are more than 400 miles and not hold their turns. If the minimum number of consecutive days are met for each round trip, then no deduction will be made in their protection.

Question #1: If the round trip district miles of a run are 390 miles and initial and or final terminal delay make a payment over 400 miles how many personal leave days must be used.

Answer #1: Only the district miles are used for determining the number of personal leave days to be used. In this case two personal leave days would qualify for no deduction.

Question #2: If the round trip district miles are over 400 miles how is a deadhead counted.

Answer#2: Deadheads are already taken into account by using a $1/15^{th}$ offset for pools. Since most pools do not average 15 round trips per month a $1/15^{th}$ offset is less than using the average for each pool. As a result the round trip district miles are used for determining the number of personal leave days that would substitute for no offset and in this case three personal leave days would qualify.

(3) Elect a single paid personal leave or vacation day and not hold their turn resulting in payment of a single day with a corresponding $1/15^{th}$ deduction from protection.

The option must be selected by the engineer at the time the personal leave or vacation day is granted. Engineers must file the protection form each time they take paid days in accordance with the above options.

Yours truly,

W.S. Hinckley

Agreed:

General Chairman BLE

General Chairman BLE

General Chairman BLE

General Chairman BLE

June 15, 1999
Side Letter No. 2

Gentlemen:

During negotiations the parties spent considerable discussion concerning the intent and meaning of NOTE 1 of Article I. It was agreed that further detail would be provided in a side letter explaining how different types of operations would be affected.

Therefore, the following is meant to give further definition to the NOTE.

Road Switchers: Road Switcher agreements in the controlling CBA provide for a 25 mile limit unless specifically provided otherwise. A road switcher that goes on duty inside the Hub or zone, would be limited by the 25 mile provisions even though the 25 miles would take the assignment into the adjoining Hub or zone. For example, a road switcher at Pratt (Southwest Hub assignment) would therefore be limited to 25 miles from the station limits in either direction. Similarly a road switcher that goes on duty in another Hub or zone may work to its limits even if those limits include part of the Southwest Hub.

Locals on duty inside the Hub: Current locals that go on duty inside the Hub or zone may continue to operate to points outside the Hub or Zone. New locals that operate in more than one Hub or zone shall be established in accordance with Article IX of the 1986 National Award.

Locals on duty outside the Hub: Current locals that go on duty outside the Hub may continue to operate to points inside the Hub. New locals that go on duty outside the Hub and operate into the Hub shall be established in accordance with Article IX of the 1986 National Award.

Current Pools and Pools established by Merger Agreements: These pools may operate between their designated terminals even if outside the Hub or Zone. They may operate up to 25 miles beyond the terminal when picking up a train in accordance with the 25 mile provisions of Article VI.

New Pools created after this Agreement: New pool operations not covered in this implementing Agreement whether between Hubs or zones or within the Hub or zone shall be handled per Article IX of the 1986 National Award.

NOTE: It is not the intent to supersede the provisions of 3,c of Article 6 of the controlling CBA. Hours or service relief required west of M.P. 667 (Niland) will continue to belong to the West Colton Pool.

Yours truly,

W.S. Hinckley

Side letter No. 2 Southwest Hub

Agreed:

General Chairman BLE

General Chairman BLE

General Chairman BLE

General Chairman BLE

June 15, 1999
Side Letter No.3

Dear Sirs:

This refers to our several discussions concerning Yuma and the Carriers plans for assignments at that location and the extra board plans for that area.

Currently Yuma is the away from home terminal for West Colton crews. In addition there are a couple of assignments (local/road switcher) that work east and a couple of assignments (local/ road switcher) that work west from Yuma. Sometimes the Carrier has run the Imperial Valley assignments from Yuma and sometimes from West Colton.

In addition to the provisions of this agreement, the following will apply:

1. The two extra boards will be consolidated on a 50/50 basis with the LA Hub entitled to prior rights to the even number assignments 2, 4, and 6. There will then be one extra board at Yuma and the extra board at Yuma will be used to fill short term vacancies on all assignments that have Yuma as a home terminal whether LA Hub vacancies or the Hub that includes Tucson, and EL Centro assignments.

2. The extra board will perform hours of service relief/turnaround service as far west as Niland (MP 667) in the LA Hub and as far east as is negotiated in the next Hub.

3. These prior rights are to be attrited and are not under the phase out provisions

Yours truly,
W.S. Hinckley

Agreed:

Robert A Toe
General Chairman BLE

General Chairman BLE

D. E. Thompson
General Chairman BLE

General Chairman BLE

June 15, 1999
Side Letter No. 4

Gentlemen:

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

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

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

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

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

Yours truly
W. S. Hinckley
General Director-Labor Relations

Agreed:

Robert A. Poe
General Chairman BLE

Side letter no. 4 southwest hub

D. E. Thompson
General Chairman BLE

General Chairman BLE

General Chairman BLE

June 15, 1999
Side Letter No. 5

Gentlemen:

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

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

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

Yours truly,

W. S. Hinckley
General Director-Labor Relations

Agreed:

General Chairman BLE

General Chairman BLE

Side letter no. 5 Southwest Hub

D. E. Thompson
General Chairman BLE

General Chairman BLE

June 15, 1999
Side Letter No. 6

Gentlemen:

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

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

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

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

Yours truly,

W. S. Hinckley
General Director-Labor Relations

Agreed:

General Chairman BLE

General Chairman BLE

General Chairman BLE

General Chairman BLE

SOUTHWEST HUB MILEAGE CHART

Pool	Mileage
Pratt – Dalhart	244
Dalhart – Vaughn	195
El Paso – Vaughn	229
El Paso – Toyah	191
El Paso – Alpine	220
El Paso – Lordsburg	149
Tucson – El Paso	310
Tucson – Lordsburg	161
Tucson – Nogales (turnaround)	132
Tucson – Phoenix	121 (130 basic day)
Tucson – Phoenix (turnaround)	242
Tucson – Yuma	254
Phoenix - Yuma	278

These are base miles. In El Paso, if a yard different from the one used for base miles, is used for receiving or leaving a train and engineers are currently paid additional miles they are retained.

June 11, 1999

ICC-307-29

The following is a list of engineers that satisfy the conditions of Article III L of the Greater Southwest Hub and should be allowed to continue to reside at Pratt, Kansas should they not elect a relocation package.

Engineer
R. D. Kramer
J. W. Detwiller
R. E. Graven
B. G. Hardin
D. B. Johnson
F. W. Thomasson
T. L. Orem
J. R. Whitman
R. Pena
W. L. Bosley
L. L. Keller
R. D. Heskell
H. D. Collier
J. M. Hart
R. L. (Bucky) Moore
R. L. Jones
D. L. Rassmussen
C. D. Pike
T. L. Mayhan
M. L. Mathys
T. G. Jones
T. L. Shumway
J. P. Martin
M. E. Gilpin
L. C. Fell

D. E. Parsons

The three following engineers currently residing in Pratt do not meet the conditions of Article L of the Greater Southwest Hub and may be forced to relocate to Dalhart. They will be eligible for those relocation benefits of Article III L of the Greater Southwest Hub.

Engineers
P. N. Payne
G. N. Wallace
M. D. Collier

June 15, 1999

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

Dear Sir:

This refers to the Southwest Hub implementing Agreement. There were two issues raised concerning New York Dock protection that needed further clarification. These involved only SPEL engineers. Therefore the following will apply to SPEL engineers in the Southwest Hub:

1. The $1950 TPA roll in issue is withdrawn by the SPEL in this Hub only and is without prejudice or precedent to either party in any other Hub where it is a dispute.

2. The $1950 Lump Sum issue is not settled by the SPEL. It is currently in dispute and the outcome of that dispute will be applied to applicable engineers in their Hubs and the Southwest Hub agreement establishes no prejudice or precedent and likewise will not be cited by the parties in any forum.

Yours truly,

W S Hinckley

W. S. Hinckley

Agreed:

Robert A Poe

General Chairman BLE SPEL

June 15, 1999

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

Dear Sir:

This refers to the Southwest Hub implementing Agreement. There were two issues raised concerning New York Dock protection that needed further clarification. These involved only SSW engineers. This is due to the work already progressed by your office with correcting interim TPAs with the protection group and a pre existing TPA issue. Therefore the following will apply to SSW engineers:

1. SSW engineers will not be given an election to choose other than their current interim TPA. Those without an interim TPA will use the 12 months prior to implementation. The SSW engineers interim TPA will receive the July 1, 1997 general wage increase adjustment.

2. The $1950 (lump sum and TPA roll in) issues are not settled in this agreement for the SSW engineers. They are currently in dispute and the outcome of that dispute will be applied to their Hubs and this agreement also establishes no precedent or prejudice and likewise will not be cited by the parties in any other forum.

Yours truly,

W S Hinckley

W. S. Hinckley

Agreed:

D. E. Thompson

General Chairman BLE SSW

MEMORANDUM AGREEMENT

Between

UNION PACIFIC RAILROAD

And its engineers represented by

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

This agreement provides for the transfer of engineers from Tucumcari to Dalhart and El Paso. It is a separate agreement from the Southwest Hub merger agreement. This agreement covers only the transferring and relocation issues associated with the establishment of the Dalhart – Vaughn and El Paso – Vaughn pool freight runs. Seniority provisions are covered in the merger agreement.

A. The transfer of engineers from Tucumari shall be handled as follows:

1. A preliminary bulletin shall be posted offering 21 positions to Dalhart and 12 to El Paso.

2. Engineers must bid to these locations. If sufficient engineers do not bid to a location CMS and the General Chairmen and/or his designate will review the number that bid to each location. If all parties agree that the number is sufficient no adjustments will be made. If they do not agree then junior engineers will be forced to meet the 21 and 12 numbers.

3. When the transition to the long pool begins, the number of positions to be transferred shall be bulletined again and shall be filled in seniority order. If insufficient bids then the junior engineers shall be forced for each cycle of transfers. This shall continue until all engineers are transferred from Tucumcari.

4. The Tucumari transition shall provide for the creation of a long pool at Dalhart. This pool shall initially have 12 pool turns (six from Dalhart and six from Tucumcari). If not already qualified they may run with two engineers, one from each roster, and familiarize each other over the route in addition to other methods of qualification. Every two months an additional 12 turns shall be bulletined until the entire pool is a long pool. With each bulletin of 12 turns another Tucumcari engineer shall be added to the extra board at Dalhart. At the same time as each group of engineers move to Dalhart four engineers shall be transferred to El Paso. Efforts will be made to have the first group in Dalhart as close to August 1, 1999 as possible.

B. Engineers working at Tucumcari, required to relocate under this agreement, will be governed by the relocation provisions of Article IX of the May 19, 1986 Award of Arbitration Board no. 458. In lieu of Article IX provisions, engineers 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 $12,500.

2. Homeowners may elect to receive an "in lieu of" allowance in the amount of $42,500. Mobile homes not on property owned by the homeowner and anchored to a foundation do not qualify in this section (2) but shall be in section (1).

3. Such "in lieu of" allowance will be the total relocation benefit for which engineers are eligible and is instead of any other relocation benefits, including loss on sale of home or consideration of whether "comparable housing' is applicable in this relocation.

4. Engineers assigned at Tucumcari receiving an "in lieu of" allowance set forth in this agreement may sell or retain their current residence, at their option, and the company is under no obligation to purchase their residence or reimburse the employee for any costs involved in the sale of their residence. Engineers will be governed by the calling provisions at the new terminal where they will be required to report.

5. Claims for these allowances may be filed immediately upon the signature date of this agreement, however no claim for an "in lieu of" relocation allowance will be accepted after six months from date of this 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. The parties agree that the "in lieu of " monies are not meant to be separation allowances and those who apply for them agree to continue employment at the new location for the two year period. Failure to do so will obligate the engineer to return a pro-rata portion of the "in lieu of" allowance based on the portion of the two year period that he/she fails to work after receiving same.

7. Under no circumstances shall an engineer be permitted to receive more than one (1) "in lieu of" relocation allowance under this implementing agreement and/or the Southwest Hub merger agreement or award.

8. Only one "in lieu of" shall be paid per residence. There will be no pyramiding of benefits.

9. Engineers shall be eligible for the 30 days lodging at the new location when first transferring as long as they remain marked up.

C. Engineers, to be eligible for Article IX or "in lieu of", must meet general relocation requirements including having their residence being closer to their old on duty point than their new on duty point and at least thirty (30) miles from their new on duty point. Engineers must be homeowners prior to October 1, 1998 continuing to the time they apply for the relocation benefits. This does not apply to loaners or borrow outs to Tucumcari.

D. Engineers who do not want to transfer to either Dalhart or El Paso make elect to take a separation allowance in the amount of $20,000. This election must be made known at the time of the initial bid. Engineers so electing must continue working until the last group of assignments at Tucumcari is abolished as part of the phase in. They may work assignments at Dalhart until April 1, 2000 and still apply for this option. On that date the option is no longer available.

E. Those electing ID run protection shall have the same conditions and offsets as those found in the Southwest Hub merger implementing document.

F. The Dalhart – Vaughn and El Paso - Vaughn freight rate shall be the SPWest mountain rate. The Dalhart – Vaughn pool shall be paid under the provisions of the SPWest modified agreement if implemented prior to the Hub implementation.

G. This agreement is made in recognition of the unique circumstances which exist in connection with the change of terminals from Tucumcari to Dalhart and El Paso and is without prejudice or precedent to either party's position and will not be cited by any party in any other negotiations or arbitration.

This agreement is effective the 20th day of July 1999.

For the Organization:

General Chairman BLE SPWL

M.O. Coats for D.E. Thompson
General Chairman BLE SSW

For the Carrier:

W S Hinchey
General Director Labor Relations

M A Hartman
General Director Labor Relations

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

UNION PACIFIC RAILROAD COMPANY

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

July 27, 1999

Mr. E. L. Pruitt
General Chairman BLE
2414 Edison Hwy
Bakersfield, CA 93307

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

Gentlemen:

During our discussions on the Dalhart – Tucumcari pool we agreed to cover certain issues with a follow up letter to speed up the implementation of the run so that employees could relocate at the earliest possible. As such this letter is to cover those items that needed further clarification.

1. During the initial relocation of employees from Tucumcari to Dalhart and El Paso, it is possible that an employee may be forced to the location on which he/she did not bid. If this happens the employee may request that he/she be placed to the location on which he/she bid prior to the Carrier hiring at that location. When the employee is finally placed to the location bid, the employee will be placed on the seniority roster as if he/she had been a successful bidder in the initial relocation.

2. With the phase in of the operations there may be instances when the short pools are not properly adjusted. Therefore it is agreed that for the duration the short pools are in operation after implementation, they shall not be adjusted other than the reduction due to the long pool increase and employees assigned to the pool will make no less than the SP –West Engineers extra board guarantee. Layoffs shall also be covered under the guarantee provisions.

3. This is a new run that combines employees from two different seniority districts and two CBA's. In addition it is being implemented just prior to a Hub merger that is eliminating all but one CBA in the Hub. This pool will be covered under the regular SP West modified agreement from its implementation and pre-existing rules from other runs are not applicable.

Please sign below signifying your concurrence with the above provisions.

Yours truly,

W S Hinckley

W. S. Hinckley

Agreed:

E L Smith

General Chairman BLE SPWest

W E Thompson

General Chairman BLE SSW

William S. Hinckley 10/14/99 12:14 PM

To: Marilyn J. Ahart@UP, Bill E. Loomis@UP, Thomas G. Taggart@UP
cc:

Subject: SW Hub protection

As part of the BLE SW Hub agreement we agreed to extend protection to some former SPEL and UP engineers at El Paso. One group will receive one additional year and another gorup two additional years. I am forwarding to you a copy of the side letter. I have held this waiting for the list of those engineers who qualify and have received the list from GC Poe and have not from GC Slone. the agreement you will get in the mail has the Poe list attached. when I get the
Slone list I will forward to you.

June 15, 1999

Gentlemen:

During our Southwest Hub merger discussions several issues were discussed that your Organizations considered germane to that agreement. One of them was the issue of the length of protection due engineers. The Carrier advised that New York Dock was what was approved by the STB and that any further discussions concerning that issue must be discussed outside of merger discussions.

Upon review of several items you discussed the Carrier agreed to provide additional protection under the following conditions:

1. SPEL and UP Engineers with an engineer seniority date prior to December 1, 1997 who have worked in El Paso for the entire time between March 24, 1999 and implementation date who have six or more years of continuous service on implementation day shall be entitled to two additional years of New York Dock protection.

2. SPEL and UP Engineers with an engineer seniority date prior to December 1, 1997 who have worked in El Paso for the entire time between March 24, 1999 and implementation date who have less than six years of continuous service on implementation day shall be entitled to one additional year of New York Dock protection.

3. The TPA shall be frozen after the regular New York Dock period and not subject to future increases of any kind.

4. This agreement is without precedent or prejudice to either parties position as to length of protection and is not to be cited by any party in any other forum. It is not subject to any "me too" provisions of any agreement, merger or otherwise and if raised by the BLE in any other forum or claimed as a "me too" provision then the additional years protection shall automatically be forfeited.

Yours truly,

W S Hinckley

W. S. Hinckley
General Director-Labor Relations

Agreed:

General Chairman BLE

Robert A Poe

General Chairman BLE

Former SPEL Engineers, SW Hub, (10-01-99)

Name	Engr's Sen. Date
01) H. W. Cole	06/04/63
02) W. O. Orourke	04/14/71
03) G. M. Bonine	02/12/72
04) S. Perez	02/12/72
05) J. D. Hogg	10/17/72
06) A. G. Casillas	11/15/72
07) W. D. Folmer	09/30/73
08) A. F. Sida	09/30/73
09) D. Q. McQuade	10/31/73
10) J. D. Bowhay	10/31/73
11) W. A. Harrison	10/31/73
12) J. H. Gibson	11/02/73
13) L. B. Salas	11/02/73
14) G.B. Neagle	11/02/73
15) N. Aziz	11/02/73
16) C. Berry	11/06/73
17) J. A. Barragan	11/06/73
18) R. M. Aguilar	11/06/73
19) L. J. Hall	11/21/73
20) R. A. Poe	11/21/73
21) G. W. Zachary	11/29/73
22) R. M. Arredondo	06/24/78
23) H. Quartermane	10/12/79
24) R. T. Stewart	04/02/80
25) J. R. Heller	12/08/80
26) C. K. Royce	03/26/84
27) G. M. Ramsey	06/01/84
28) S. C. Wilcox	06/01/84
29) W. D. Johnson	05/06/91
30) R. Aguilar	03/23/92
31) R. R. Brown	03/23/92
32) J. Ramirez, Jr.	03/23/92
33) R. Chavez	03/23/92
34) M. L. Bolner	07/12/93
35) F. Arreola	03/04/94
36) A. W. Munn	06/05/95
37) R. Lopez, Jr.	06/05/95
38) G. L. Carter	06/05/95
39) R. Lopez	06/05/95
40) E. K. Chamberlin	06/05/95
41) C. Palyu	06/05/95
42) C. J. Gavit	06/05/95
43) R. D. Lungo	06/05/95
44) J. A. Gomez	06/05/95
45) L. L. Patton	06/05/95
46) C. Y. Lerma	06/05/95
47) R. H. Spencer	06/05/95
48) J. Hernandez	06/06/95

Former SPEL Engineers, SW Hub. (10-01-99)

Name	Engr's Sen. Date
49) W. H. Tanner	06/05/95
50) W. D. Cook	01/08/96
51) R. W. Connor	07/08/96
52) M. B. Taplin	10/09/97
53) D. D. Harrison	03/26/98
54) B. D. Tillery	09/14/98
55) E. Hernandez	09/14/98
56) B. B. Wilson	09/14/99
57) R. Huerta	09/14/99
58) J. F. Arranda	09/14/99
59) J. V. Martinez	09/14/99
60) D. O. Villalva	09/14/99
61) M. R. Fleming	09/14/99
62) J. J. Cobian (PP)	09/16/99
63) P. H. Shepard	09/16/99
64) W. S. Born	09/16/99
65) G. A. Sterrett	09/16/99
66) J. R. Maynard, III	09/16/99

June 15, 1999

Gentlemen:

During our Southwest Hub merger discussions several issues were discussed that your Organizations considered germane to that agreement. One of them was the issue of the length of protection due engineers. The Carrier advised that New York Dock was what was approved by the STB and that any further discussions concerning that issue must be discussed outside of merger discussions.

Upon review of several items you discussed the Carrier agreed to provide additional protection under the following conditions:

1. SPEL and UP Engineers with an engineer seniority date prior to December 1, 1997 who have worked in El Paso for the entire time between March 24, 1999 and implementation date who have six or more years of continuous service on implementation day shall be entitled to two additional years of New York Dock protection.

2. SPEL and UP Engineers with an engineer seniority date prior to December 1, 1997 who have worked in El Paso for the entire time between March 24, 1999 and implementation date who have less than six years of continuous service on implementation day shall be entitled to one additional year of New York Dock protection.

3. The TPA shall be frozen after the regular New York Dock period and not subject to future increases of any kind.

4. This agreement is without precedent or prejudice to either parties position as to length of protection and is not to be cited by any party in any other forum. It is not subject to any "me too" provisions of any agreement, merger or otherwise and if raised by the BLE in any other forum or claimed as a "me too" provision then the additional years protection shall automatically be forfeited.

Yours truly,

W S Hinckley

W. S. Hinckley
General Director-Labor Relations

Agreed:

General Chairman BLE

Robert A Poe

General Chairman BLE

Name	Engr's Sen. Date	r
01) H. W. Cole	06/04/63	
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09) D. Q. McQuade	10/31/73	
10) J. D. Bowhay	10/31/73	
11) W. A. Harrison	10/31/73	
12) J. H. Gibson	11/02/73	
13) L. B. Salas	11/02/73	
14) G.B. Neagle	11/02/73	
15) N. Aziz	11/02/73	
16) C. Berry	11/06/73	
17) J. A. Barragan	11/06/73	
18) R. M. Aguilar	11/06/73	
19) L. J. Hall	11/21/73	
20) R. A. Poe	11/21/73	
21) G. W. Zachary	11/29/73	
22) R. M. Arredondo	06/24/78	
23) H. Quartermane	10/12/79	
24) R. T. Stewart	04/02/80	
25) J. R. Heller	12/08/80	
26) C. K. Royce	03/26/84	
27) G. M. Ramsey	06/01/84	
28) S. C. Wilcox	06/01/84	
29) W. D. Johnson	05/06/91	
30) R. Aguilar	03/23/92	

Former SPEL Engineers, SW Hub, (10-01-99)

Name	Engr's Sen. Date
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64) W. S. Born	09/16/99
65) G. A. Sterrett	09/16/99
66) J. R. Maynard, III	09/16/99

William S. Hinckley 03/01/2000 09:28 AM

To: Marilyn J. Ahart@UP
cc: Bill E. Loomis@UP, Thomas G. Taggart@UP, Al C. Hallberg@UP

Subject: 1995 TPA Southwest Hub

This refers to our discussions over the last several months about letting the Southwest Hub engineers that were under lee pruitt elect to take the 95 earnings with supplemental fund included as their tpa in exchange for dropping the "double dock" protection they would be entitled to. As you may recall the issue popped up prior to implementation as to what election they were entitled to and it has taken this long to confirm the understanding. below is a list from Lee Pruitt that should be sent the new TPA with a note that if they do not elect within 30 days then they will keep what they have. the only name to add to the list is R. P. Haan 338-32-4076. Lee has agreed in writing as follows: "the election of the 1995 TPA would be in lieu of the SP West modification agreement and engineers electing the 1995 TPA will not have the Double New York Dock protection provided for in the 1997 modification agreement."

Lee says that some of the named engineers may have already signed up with you. Please handle this and advise when completed how many we may take off the double New York Dock list.. If you have a problem in opening his attached list let me know and I will fax you one.

---------- Forwarded by William S. Hinckley on 03/01/2000 09:19 AM ----------

"E. L. Pruitt" <pruitt@lightspeed.net> on 02/24/2000 04:47:09 PM

To: William S. Hinckley
cc: "Jon Hurst" <opujch@aol.com>

Subject: 1995 TPA Southwest Hub

Mr. Scott Hinckley
General Director Labor Relations
Union Pacific Railroad

Dear Mr. Hinckley

Reference our previous discussions concerning engineers electing their 1995
TPA in the Southwest Hub. As a follow up, find attached to this e-mail a word document identifying the engineers in Tucson. I am still waiting for the list from other Local Chairmen, of which I do not expect to be many, and will forward them to you as soon as I get them. Would it be possible to go ahead with the current names I have provided and update you with any others, if any, at a later date?

Thanking you in advance for your considerations, I remain,

Sincerely,
E. L. Pruitt
General Chairman UP Western Lines (former SP/WL & EP&SW)
Brotherhood of Locomotive Engineers
Auburn Office:
11930 Heritage Oak Place, Suite 1

G. Quintero
M. G. Shoemaker
P. R. Vaughan
D. A. Brown
T. L. Coil
M. J. Henschell
T. A. Kille
R. J. McDaniel
J. E. Meadows
R. L. Nowell
D. A. Tillery
D. A. Odell
R. N. McDaniel
D. P. Stock
C. L. Sperry
J. W. Holmes

UNION PACIFIC RAILROAD COMPANY

Western Region - Transportation

Frank A. Tamislea
Dir. Labor Relations
Tel: (916) 789-6345

10031 Foothills Blvd.
Roseville, CA 95747

October 27, 2009

LOU# 1705180918
(390.60)

Mr. D.W. Hannah
General Chairman BLET
404 North 7th St. Suite A
Colton, CA. 92324-2941

Dear Sir

This refers to our discussions concerning the pilot project in which all pool employees are permitted to hold their turn first out should it become first out when taking a single day vacation and/or a single day personal leave day as provided by Side Letter No. 1 of the Roseville, Los Angeles and Southwest Hub Agreements.

As we discussed, this pilot project turns out to be beneficial for both employees, as well as the Carrier, enabling employees to work their assignment and at the same time ensuring the availability of manpower to protect the service. Therefore, the parties agree to implement this understanding on a permanent basis.

The specific language under discussion is incorporated in each side letter as Section (1) and provides, in pertinent part, as follows:

> **"Elect a single paid personal leave or vacation day and hold their turn so that if it obtains a first out status they will be first out when they are marked up no less than 24 hours later..."**

This language applied exclusively to merger protected engineers.

Accordingly, it is understood at Roseville, Los Angeles and the Southwest Hub territories, all pool employees, and not just protected pool employees, will be permitted to utilize Section (1) of Side Letter No. 1. In other words, any pool employee taking a single personal leave or single day vacation will automatically be handled in accordance with Section 1 of the controlling Side Letters.

Except as specifically provided above, no other changes are made in Side Letter No. 1 of the respective Hubs.

H:DATA/WORD/DWH.390.60.HOLDTURN-FT

Mr. D.W. Hannah
October 27, 2009
LOU# 1705180918

It is understood either party may cancel this understanding by serving a 30-day written notice upon the other. It is understood that each of the identified Hubs have stand alone rights to terminate the understanding as it applies to them and to withdraw from this understanding. Similarly, the Company may cancel this understand at all three (3) Hubs or separately at each location.

To indicate your acceptance, please sign in the space provided below. Upon receipt of your acceptance, the revised process will be implemented.

Accepted

D.W. Hannah, General Chairman
Brotherhood Of Locomotive Engineers
& Trainmen

Sincerely,

Frank A. Tamisiea
Director, Labor Relations

Cc: Tony Leazenby, CMS
Kelly Mitchel, CMS
Jon Degraw, CMS
Cliff Johnson, TK
Greg Cox, TK
Terry Stone, LR
Frank Tamisiea, LR
Marilyn Ahart - LR
Lucy Ruf, LR

H:DATA/WORD/DWH.390.60.HOLDTURN-FT

UNION PACIFIC RAILROAD COMPANY

Western Region - Transportation

Frank A. Tamisiea
Dir. Labor Relations
Tel: (916) 789-6346

10031 Foothills Blvd.
Roseville, CA 95747

November 4, 2009

LOU# 1705180918
(390.60)

Mr. D.W. Hannah
General Chairman BLET
404 North 7th St. Suite A
Colton, CA. 92324-2941

Ref: Holding Turn First Out

Dear Sir:

This refers to our discussions on November 2, 2009 concerning LOU# 1705180918 dated October 27, 2009 and the application of engineers holding their turn first out as provided in the Letter of Understanding.

This will confirm our discussions and further understanding that any pool engineer taking a single personal leave or single day vacation may elect to hold their turn first out when they return (mark-up) to service after the expiration of the mark off.

It is understood should the October 27, 2009 LOU# 1705180918 be canceled by either party, this understanding will also automatically terminate in conjunction therewith. It is understood that each of the identified Hubs have stand alone rights to terminate the understanding as it applies to them and to withdraw from this understanding. Similarly, the Company may cancel this understand at all three (3) Hubs or separately at each location.

To indicate your acceptance, please sign in the space provided below. Upon receipt of your acceptance, I will forward to the affected Departments for their handling.

Accepted

D.W. Hannah, General Chairman

Sincerely,

Frank A. Tamisiea
Director, Labor Relations

H:DATA/WORD/DWH.390.60.HOLDTURN.a-FT

PUBLIC LAW BOARD 6833

Award 40
Case 40
File No. 1418910

PARTIES TO DISPUTE:

Brotherhood of Locomotive Engineers and Trainmen
And
Union Pacific Railroad Company

QUESTION AT ISSUE:

"Issue: What shall be the terms and conditions for the Carrier's proposed interdivisional service operation between Fort Worth and Halsted, Texas?"

FINDINGS:

This Board, after hearing upon the whole record and all the evidence finds that the Carrier and the Employees involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

On November 19, 2004, Union Pacific Railroad Company ("Carrier" or "UP") served notice upon the Brotherhood of Locomotive Engineers and Trainmen ("BLET") to establish new Interdivisional Service between Fort Worth and Halsted, Texas, pursuant to Article IX of the May 19, 1986 BLET National Implementing Agreement, as amended. Several negotiating sessions ensued yielding a proposed agreement that exceeded in several respects the conditions specified in Article IX. However, on March 21, 2005 the employees rejected this tentative agreement. Upon advise from BLET that the tentative agreement had failed ratification, UP withdrew its endorsement of the proposed agreement and has instead resubmitted the terms and conditions outlined in its initial notice, terms that were characterized by BLET during these proceedings as a "bare bones" agreement.

The tentative agreement was withdrawn by UP primarily for two reasons. First and foremost, UP asserts that longstanding applications and interpretations of Article IX and strong and uniform arbitral precedents precludes this Board or any other forum from adopting the terms contained in the tentative agreement. Secondly, those same abitral precedents hold that employees who reject the good faith effort of negotiators do so at their own peril and should not be rewarded therefor. Rejecting the tentative agreement that was negotiated in good faith hoping to embellish it in arbitration flies in the face of Article IX. UP argues the failure by BLET's constituents to ratify the generous terms of the tentative agreement is tantamount to a willful disregard of its obligation, as set forth in Article X of the 1991 National Agreement, to expediently progress negotiations governing new interdivisional service.

Carrier further submits that the United Transportation Union adopted certain enhanced customer service provisions that are unique to this service and therefore should be imposed due to the "commonality of interests" in implementing an efficient operation. Carrier points out Neutral R. E. Dennis in Arbitration Award 458 stipulates:

> " The commonality of interests that these two groups of employees share is obvious. It is equally obvious that harmony among the pay and work rules governing these two groups must exist. As a practical matter, efficient rail operations demand no less."

In connection with the unique requirements of this particular service, the Board does not disagree.

It was clear the negotiators fully understood the process and requirements for negotiating new interdivisional service runs. During this Board's hearing, both parties argued extensively on a wide range of issues and concerns regarding the appropriate terms and conditions of the new operation and cited substantial arbitral precedent dictating the appropriate terms to be incorporated into an arbitrating implementing agreement.

This tribunal's authority is not limitless and is in fact framed by the specific

language of Article IX and by substantial arbitral precedent. As has been properly claimed by both parties, some items, arguendo, in the proposed agreement are not within the jurisdictional purview of this Board and thus cannot be imposed. However, given the parties understanding of the unique service requirements, as well as the compatible content of the tentative agreement, this Board concludes the terms and conditions, contained in the agreement, attached hereto, meet the conditions of Article IX of Arbitration Award 458 and constitute "reasonable and practicable conditions" for interdivisional service between Fort Worth and Halsted, Texas. This decision is predicated on the parties' specific, non-referable and non-presidential understanding to expand jurisdictional restraints placed on this Board and is thus not to be viewed as guiding or setting a precedent in any other interdivisional service disputes.

AWARD:

As indicated in the Findings.

J. E. (Jim) Nash
Chairman and Neutral Member

E. L. Pruitt
Organization Member

R. P. Guidry
Carrier Member

June 1, 2005

ARTICLE 3 - SIX-DAY WORK WEEK (continued)

Section 12 - (continued)

into additional written understandings to implement the purposes of this Article 3, provided that such understandings shall not be inconsistent with this Article 3.

ARTICLE 4 - INTERDIVISIONAL, INTERSENIORITY DISTRICT, INTRADIVISIONAL, AND/OR INTRASENIORITY DISTRICT SERVICE (FREIGHT OR PASSENGER)

Where a carrier desires to establish interdivisional, interseniority district, intradivisional, or intraseniority district runs in passenger or freight service, the carrier shall give notice to the General Chairman of the organizations involved of its desire to establish such runs, giving detailed information specifying the service it proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such service, the purpose being to furnish the employees with all the necessary information.

The parties will negotiate in good faith on such proposals and failing to agree, either party may invoke the services of the National Mediation Board. If mediation fails and the parties do not agree to arbitrate the dispute under the Railway Labor Act, then at the request of either party, the proposal will be considered by a National Committee consisting of the chiefs of the employee organizations involved and an equal number of carrier representatives who shall be members of the Carriers' Conference Committees, signatories hereto, or their successors or representatives, provided, however, that this procedure of appeal to the National Committee thus created shall not be made in any case for a period of six months from the date of this agreement.

If said National Committee does not agree upon the disposition of the proposal, then the conferees will in good faith undertake to agree upon a neutral chairman who will sit with the Committee, hear the arguments of the parties, and make representations and recommendations to the parties with the view in mind of disposing of the controversy. In the event the parties do not agree upon such neutral chairman, then upon the request of the parties, or either of them, the National Mediation Board will appoint the chairman.

While the recommendations of the Chairman are not to be compulsory or binding as an arbitration award, yet the parties hereto affirm their good intentions of arranging through the above procedure for the final disposition of all such disputes on a fair and reasonable basis.

Every effort will be made to settle disputes over interdivisional service on the property and thus to minimize the number of appeals to the above National Committee.

This rule shall become effective August 1, 1952, except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before July 1, 1952.

ARTICLE 5 - MORE THAN ONE CLASS OF ROAD SERVICE

The dispute as to this rule shall be submitted to arbitration. The arbitrators shall have the right to consider whether or not any rule covering more than one class of road service should be granted, and if so, the language of such rule.

Each party shall designate the exact questions, conditions or issues relating to such rule which it desires to submit to arbitration, and same shall constitute the questions to be submitted to arbitration.

Report of the Presidential Railroad Commission

Washington D.C.

February 1962

Carrier's Exhibit 23
1 of 21

REPORT

of the

PRESIDENTIAL RAILROAD COMMISSION

Washington, D. C.

February, 1962

PRESIDENTIAL RAILROAD COMMISSION
200 MARYLAND AVENUE N.E.
WASHINGTON 25, D.C.

February 26, 1962

Mr. President:

We have the honor to present the report of the Presidential Railroad Commission together with separate statements or dissents submitted by Carrier and Organization Commissioners. This Commission was established by Executive Order No. 10891 of November 1, 1960, to consider, in accordance with the agreement of October 17, 1960, between the Carriers and the Organizations, a controversy between carriers represented by the Eastern, Western and Southeastern Carriers' Conference Committees and the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors and Brakemen, the Brotherhood of Railroad Trainmen, and the Switchmen's Union of North America.

Respectfully submitted,

Simon H. Rifkind, Chairman

John T. Dunlop

Charles A. Myers

Francis J. Robertson

Russell A. Smith

B.B. Bryant

James W. Fallon

T. A. Jerrow

S. W. Holliday

Guy W. Knight

S. C. Phillips

Daniel P. Loomis

H. F. Sites

J. E. Wolfe

A. F. Zimmerman

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Carrier's Exhibit 23
4 of 21

CHAPTER 11 FROM THE PRESIDENTIAL RAILROAD COMMISSION'S REPORT

Chapter 11

INTERDIVISIONAL RUNS

The Proposal

The Carriers propose the elimination of all agreements, rules, regulations, interpretations and practices, however established, applicable to any class or grade of road train or engine service employees which prohibit or restrict the Carriers' right to establish, move, consolidate or abolish crew terminals, merge or consolidate seniority districts, or establish interdivisional, interseniority district, intradivisional and intraseniority district runs. The proposal also calls for the elimination of all agreements, rules, regulations, interpretations and practices which prohibit or provide penalties for running crews through established crew terminals or provide for automatic release of crews upon arrival at terminals or end of run, or when off any assigned territory.

The Carriers' proposal contemplates the establishment of a rule which would permit a Carrier to make any of the types of changes outlined above and to establish interdivisional, interseniority district, intradivisional and intraseniority district runs in either assigned or unassigned service (including extra service), on either a one way or turnaround (including short turnaround) basis and through established crew terminals subject to the following conditions:

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(1) The Carriers would be required to distribute mileage ratably between the employees of the seniority districts affected.

(2) Where a new run is established, in a situation in which a carrier does not now have the unilateral right to establish such a run, and where the run would include the establishment of a new home terminal for the class of service involved and operation through an established crew terminal or terminals for the class of service, notice would be given to the organizations involved and an effort would be made to agree on the conditions which would apply if the change were effected. Upon failure to agree the matter would be referred to binding arbitration. The authority of the arbitrator would be limited to deciding what protective conditions must be met, if and when the run should be established.

The right to operate such runs as may be established under the Carriers' proposal would not be subject to the imposition of any restrictions as to class of traffic which may be handled or as to the origin or destination of any empty or loaded cars moving on such runs.

Discussion

The Carriers' proposal in the main is directed to obtaining the right (where it does not now exist) to establish runs which extend over territories where more than one group of employees hold seniority rights. Although the Carriers have referred to these runs as interdivisional, interseniority district, intradivisional and intraseniority district, in our discussion we shall use the term "interdivisional runs" as applying to all runs of these types.

By and large present-day railroad operating divisions were established when steam locomotives were the primary source of motive power and the length of divisions was determined largely by the operational range of the steam locomotive. While steam locomotives could run greater or lesser distances dependent upon such factors as the length and weight of the train, nature of the terrain and weather conditions, they normally required attention after approximately 100 miles. Consequently, facilities for fuel and water and for running maintenance were provided at points approximately 100 miles apart. Each point was designated as a division point and the distance from one point to the next was termed an operating division.

Operating divisions generally constituted the territory over which employees in road service accrued seniority. Hence seniority districts were established which were practically coextensive with operating divisions. In some instances, more than one seniority district was established within an operating division. Because of these seniority arrangements, when a carrier sought to operate a crew over more than one seniority district the rights of men on their home seniority district had to be taken into account. Thus, there developed a practice of prorating (or "distributing ratably") the mileage accrued on interdivisional runs between the employees in the seniority districts over which such runs operated.

As railroads were built and extended it was, of course, impossible for the Carriers to establish division points exactly 100 miles apart. Factors such as terrain and the locations of towns and industries had to be taken into account. As a result there are divisions less than 100 miles in length and others which extend over more than 100 miles. Except when working in interdivisional service road crews are normally confined to operating within their own seniority districts. Since seniority districts are generally co-extensive with divisions, many road service employees are restricted to working less than 100 miles in an assignment, and the carriers by application of the basic day rule are in these cases required to pay for miles not run. To illustrate:

the present basic day rule applicable to freight service provides that a basic day shall consist of "100 miles or less, 8 hours or less." Thus, a crew operating solely over a division of 80 miles must be paid (in addition to any other special payments, e.g., arbitraries) for an additional 20 miles not run. This is known as "constructive mileage." The basic day rule in passenger service brings about a similar result.

When crews are restricted solely to operating in their respective seniority districts, stops must be made to change crews, as well as to change cabooses, despite the fact that otherwise there would be no need for such stops. The practice of changing cabooses grows out of the traditional requirement that train crews be assigned their own cabooses. This requirement has been relaxed since the adoption of a national rule (following a recommendation of Emergency Board 81 in 1950) which permits the "pooling' of cabooses (use of the same caboose by consecutive crews on a given run). This, however, does not eliminate the necessity of a stop to permit a crew change.

During the steam era, particularly as the design and operating capabilities of steam locomotives were improved, restriction of runs to given divisions slowed down the movement of traffic. That effect is now more marked because of the development of the diesel as well as other advances in

technology, such as centralized control of signaling and traffic. Changes in the right of way, such as elimination of some grade crossings, and reductions in grades and track curvatures have also facilitated the movement of traffic. These developments have resulted in an increased potential for non-stop operation of trains over greater distances.

A survey made by the Carriers in July 1958 on the major railroads indicated that a considerable number of crews were assigned to runs involving less than the minimum number of miles encompassed within a basic day. For example, in through freight service approximately 20 percent of the runs were 95 miles or less. Over a third of these runs were completed in less than 5 hours. The results of the survey with respect to other crew members were similar. In general the findings of this survey were borne out by the pay structure study conducted by the staff of the Commission. For example, in the Commission study slightly over 20 percent of engineer assignments in through freight service were on runs under 100 miles.

Examples were cited by the Carriers to illustrate the frequency of crew changes on given runs. On a Santa Fe through freight run between Chicago, Illinois and Richmond, California (a distance of 2,498 miles), for example, engine crews were changed 19 times. The maximum total time on duty of any one of the twenty crews handling this train was 5 hours

and 25 minutes; the minimum was 2 hours and 10 minutes. Average time on duty was 3 hours and 23 minutes. Of course, less time was spent in the actual running of the train by the various crews assigned. In connection with crew changes it should be noted that the carriers must maintain terminals for that purpose and on occasion incur additional expense in the nature of initial and final terminal delay payments.

From the early days of railroading until the early 1930's there did not appear to be much question about the right of management to establish, arrange or re-arrange runs in interdivisional service, subject only to the condition that mileage be equitably apportioned between the men on the seniority districts involved. Beginning about 1937 several National Railroad Adjustment Board awards held that carriers had no right to establish interdivisional service without agreement with their employees, despite express provisions in the collective bargaining agreements providing formulae for dividing mileage on runs covering all or a portion of two divisions. A review of a number of these awards reveals both inconsistency and conflict of opinion. This probably accounts to some extent for the fact that today some carriers have considerably more latitude than others in establishing interdivisional service, depending upon whether they received favorable or adverse awards when their rights were questioned.

It appears that the first step which the carriers took to obtain a national rule permitting the establishment of interdivisional runs was in the 1945 national wage and rules movement. Nothing significant with respect to this matter was accomplished in these negotiations. Eventually, in May of 1951, the Brotherhood of Railroad Trainmen agreed to a national rule concerning the establishment of interdivisional service. Under that agreement the carrier and employees involved were to negotiate on proposed runs and make reasonable and fair arrangements in the light of the interests of both parties. The agreement provided for eventual resolution of the matter by final and binding arbitration.

The Engineers, Firemen and Conductors were not parties to the 1951 Trainmen agreement. In 1952 these organizations agreed to the establishment of a national rule similar to that of the Trainmen but with one significant difference. The 1952 agreements provided that where individual carriers did not have the right to establish interdivisional runs, and proposed to do so, the matter would be subject to negotiation, mediation, and eventually, referral to a national committee composed of the chief executives of the organizations involved and an equal number of carrier representatives. If the national committee failed to agree, a neutral chairman was to be selected to sit with the committee and make representations and non-binding recommendations. Apparently, because of a feeling that

the 1951 Trainmen's agreement availed little so long as the other organizations were not bound in the same manner, the carriers agreed to bring the 1951 Trainmen's agreement into conformity with the others. The rule incorporated in the 1952 agreements has not been changed since its adoption and it is presently applicable to the four operating brotherhoods other than the Switchmen, who do not represent road operating employees.

In essence, the Organizations' objections to the Carriers' proposal are based on the argument that this is a matter which is better left to local collective bargaining. The Organizations are also concerned with the economic and social consequences of rearrangments in runs. They fear that the Carriers will establish extremely long runs with concomitant increases in hours on duty; that constructive mileage will be absorbed; that there will be loss of job opportunities and that it will be necessary for employees continually to shift their residences because of frequent changes in the location of terminals, with consequent adverse effect not only upon the employees involved but also upon the communities in which they reside.

We are in sympathy with the Organizations' view that the institution of interdivisional service and the conditions relating to its establishment are legitimate subjects for collective bargaining. Therefore, we reject the proposal of the Carriers insofar as it would give management non-reviewable discretion to establish interdivisional service. We sincerely

hope that all problems which may arise in this area will be resolved by the collective bargaining process. We are convinced, however, that, failing agreement, there should be provision for terminal resolution of the differences between the parties rather than ultimate disposition by economic force. We are further convinced that the 1952 agreement does not provide efficient machinery for the resolution of disputes in this area. The probable increase in the rearrangement of runs to accommodate the revised basis of pay rules makes even more necessary improved machinery for the expeditious adjudication of questions arising in connection with the establishment of interdivisional service.

Experience on carriers which presently have the right to establish interdivisional runs indicates that the Organizations' fears that unduly burdensome runs would be established are not borne out by historical facts. However, to guard against arbitrarily long runs and resultant burdensome working conditions, provision can be made for review by a neutral whenever it is claimed that a proposed run would result in burdensome working conditions.

With respect to the absorption of constructive miles, we see no basis in reason why the Carriers should not be permitted to rearrange runs to absorb these miles. Under the present basic day rule the carrier guarantees an employee who reports for duty a full day's pay; this payment is made even

though the employee is not furnished sufficient work to occupy him for the length of the workday or is not required to perform the full measure of the task prescribed as the equivalent of a day's work. This means that a road service employee who operates less than 100 miles is not penalized because of the employing carrier's present inability to arrange its operations so as to utilize him to the normal extent, and he is paid as if he had been so utilized. When an employer in industry generally is unable to use the services of an employee to the extent contemplated by the agreed wage there is no justification for concluding that the employee acquires an equity in the continuance of that situation. When conditions change so that the employer is able to use the employee's services to the full extent of a day's work or task, as defined in the collective bargaining agreement, it is only fair and equitable that the employee respond without the expectation of anything more than his agreement requires. It is true that where constructive mileage can be absorbed there could be, theoretically, a minimal loss of job opportunities but this has always been a latent aspect of the agreement, as carriers have been able to lengthen runs up to 100 miles within a seniority district. In all other respects, with mileage proration the establishment of interdivisional runs as such would have no effect on employment opportunities for the employees who man the trains."

It is, of course, not pleasant to be required to uproot a family, break community ties and move to another locality to maintain one's employment. Mobility, however, has always been characteristic of many kinds of employment. Prudent management does not arbitrarily make changes which require relocation of personnel, but economic necessity frequently dictates change.

Enlightened employers recognize that employees should be protected from some of the adverse effects which may be attendant upon a managerial decision to relocate facilities. Such protection usually takes the form of assuring employees that they will suffer no losses in the sale of their homes because of decreased market values occasioned by such decisions to relocate and reimbursing them for moving expenses.

The adverse effects upon a given community of a relocation of an industrial facility involving the movement of a number of people raises problems involving serious social and economic implications. While in such a situation one community may be adversely affected, another is beneficially affected. This is a normal concomitant of progress and change in an industry so widely dispersed as is the railroad industry and raises questions beyond the scope of this Commission's task.

We believe that there are important advantages which should accrue to employees when longer runs are established. They can accumulate more mileage per trip which, in turn, would lessen

the number of away-from-home layovers required to earn the same amount of mileage. The elimination of some advance reporting time and of some stops would also contribute to cutting down the amount of time required to accumulate the same amount of mileage or earnings.

The efficient, expeditious movement of trains requires as a matter of public interest that machinery be devised under which the Carriers will be able to propose and eventually secure definitive judgment with respect to the establishment of interdivisional runs. The parties to the Trainmen's Agreement of 1951, which in many respects is a model agreement on this subject, clearly recognized this need. We do not feel that the solution to the problem is to go back to some of the earlier rules which allowed complete freedom to the Carriers to establish interdivisional runs subject only to proration of mileage, which is essentially what the Carriers now propose. Since the turn of the century there has been increasing consciousness of the importance of factors other than the retention of job rights in connection with geographical shifts of employment, and of the impact of dislocations on obligations incurred by employees in anticipation of continuous employment in a given locale. Recognition of these factors is basic to any proposed rule in this area.

Recommendations

In the light of the foregoing, it is recommended that the parties negotiate a national rule which will incorporate the following:

1. Provision for recognition of the right of a carrier, subject to the requirements of paragraphs 2, 3, and 4 below, (a) to establish runs in interdivisional service as defined in the first paragraph of the preceding discussion, (b) to establish, move, consolidate or abolish crew terminals in connection therewith, (c) to operate such runs in assigned or unassigned service (including extra service) on a one way or turnaround basis (including short turnaround) and through established crew terminals; and on such runs to handle any class of traffic as may be required regardless of origin or destination.

2. Provision for subjecting the aforesaid right to the qualifications (a) that such interdivisional runs as are established shall not create working conditions that are unreasonably burdensome or onerous; (b) that the mileage on such interdivisional runs be distributed ratably as between employees from the seniority districts affected; (c) that employees required to move their homes as the result of the establishment, movement, abolishment or consolidation of crew terminals be protected against loss from sale of their homes, be compensated for moving expenses in connection with any such moves, and be given reasonable allowance for wage loss directly attributable to the time involved in relocation; and (d) that the carrier shall not arbitrarily establish, move, consolidate or abolish crew terminals

so often as to require unduly frequent relocation of homes of employees affected.

3. Provision that where a carrier proposes to establish new runs in interdivisional service or to rearrange existing runs in interdivisional service it shall give reasonable written notice (such as 15 days) of the proposed runs to the representatives of the employees involved and:

(a) Following the notice period, the parties shall negotiate in good faith with respect to matters set forth in paragraph 2 above.

(b) If after a negotiating period, not to exceed 60 days, the parties fail to agree, the matter may be submitted by either party for final and binding determination by the special tribunal referred to in recommendation 2 of Part 1 of Chapter 6. The tribunal shall determine, in accordance with the qualifications set forth in paragraph 2 above, whether or not such runs may be established and the conditions to be attached to the establishment of such runs.

(c) The award of the tribunal shall be final and binding except that it may not require the carrier to establish the proposed run.

The decision of the tribunal shall serve as a bar to the carrier from proposing the same or similar runs for a period of at least one year from the award.

4. Provision that the initial rearrangement or establishment of interdivisional runs shall be made by the carrier in the form of a general or overall proposal within an agreed period of time (not to exceed one year) following the adoption of this rule. Any unresolved disputes concerning the proposed runs should be consolidated in one proceeding for submission to the special tribunal. The carrier shall not propose any further changes in interdivisional runs for a period of at least six months after the disposition of the initial group of proposals. Any further proposals for new runs or rearrangements of existing runs should thereafter be governed by the procedure set forth in paragraph 3 above.

5. Provision that on carriers which now have the right to establish such interdivisional service, the rights described in paragraph 1 above shall be applicable to the operation of such existing interdivisional service, and that paragraphs 1, 2,

3, and 4 above shall be applicable to the rearrangement of existing runs and to the establishment of new runs in such service.

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INDEX-DIGEST TO THE RECORD OF THE COMMISSION'S HEARINGS

Appendix Volume I
to the

Report of the Presidential Railroad Commission

Washington, D.C.
February 1962

Carrier's Exhibit 24
1 of 2

home-terminal rule indicated that earlier organization proponents of the rule stressed the factor of away-from-home expenses in justification for such a rule. In addition, the Carriers pointed out that although the organizations had requested away-from-home expenses on numerous occasions in the past, their efforts were unsuccessful. According to the Carriers, this lack of success stemmed from the fact that, as stated by Emergency Board 81 in 1950, the held-away-from-home-terminal rules, the dual basis of pay, and other pay rules adequately compensated operating employees for services performed and for expenses incurred while away from home. (CX. 171, pp. 16-70.)

In the opinion of the Carriers, the form of the Organizations' proposal failed to disguise its purpose—to obtain a wage increase. In this connection, they raised the following objections. The proposal made no attempt to relate the additional earnings to actual expenses. The proposal would produce disparate amounts for a given layover period as between the several classes of service and grades of employees. Although the Organizations admitted that the amounts of away-from-home expenses would vary greatly, these variances are totally ignored by the proposal. Based on the Organizations' own examples of meal costs, the allowances produced by the proposal would greatly exceed the actual costs. The proposal would provide additional compensation to employees who incurred little or no expenses at away-from-home terminals. Finally, according to the Carriers, the very assignments on which away-from-home-terminal expenses are likely to accrue are those for which the employees demonstrate a preference (i.e., road as opposed to yard assignments). (CX. 171, pp. 4–8.)

The Carriers called particular attention to the application of the proposal to short turnaround passenger service. Little, if any, away-from-home expenses are incurred by the employees in this type of service. In addition, the Carriers pointed to Organization testimony in a previous proceeding which indicated that the overtime rule (8 within 9) in short turnaround service took care of any away-from-home expenses incurred in this type of service. Yet, the Carriers stated, Organization testimony seemed to indicate that the present proposal would have equal application to short turnaround service, at least for that part of a layover not otherwise compensated. In view of the unique character of this type of service and the unique pay rules applicable thereto, the Carriers were of the opinion that the proposal would incur a particular hardship on those carriers who provide a substantial portion of short turnaround service. To the Carriers, the implications of the proposal in short turnaround service revealed the fundamental vice inherent in a request for reimbursement of expenses which, they alleged, either do not exist or are already comprehended in the earnings structure. (CX. 171, pp. 9–14.)

3. Scope of Runs and Assignments

a. *Terms Defined*

In order to comprehend more clearly the nature and scope of the Carriers' proposal with respect to road train and engine service assignments, the following definitions should be borne in mind:

Division. A segment of a railroad supervised, maintained, and operated by a group of local officials and employees working immediately under the direction of a division superintendent.

Seniority District. An area of railroad over which the seniority rights of a group of employees extend, and on which each individual employee has rights to his choice of runs or service, in accordance with his years of employment or seniority.

Interdivisional Runs. Runs which extend over two or more operating divisions or parts thereof, and usually two or more seniority districts or parts thereof.

Interseniority District Runs. Runs operating over two or more seniority districts or parts thereof. Such runs may be confined to one operating division or may extend into more than one division.

Intradivisional Runs. Runs operating within the confines of one operating division, and may or may not be interseniority district runs.

Intraseniority District Runs. Runs operated within the confines of one seniority district, and may or may not extend into more than one operating division.

Crew Terminals. Points where crews ordinarily start and end their runs. Include both home terminals (where crewmembers generally reside) and away-from-home terminals (where crewmembers eat, sleep, or rest after completing an outward trip and before returning in service to their home terminals). (Tr. 2, pp. 316–317.)

Document Type	Award
Board Type	PLB
Board Number	1679
Award Number	1
Carrier	SCL
Union	Brotherhood of Locomotive Engineers (BLE)
Date	25 January 1977

PUBLIC LAW BOARD NO. 1679>>>

Award No.
Case No.

Parties to Dispute: Brotherhood of Locomotive Engineers
and
Seaboard Coast Line Railroad Company

Question at Issue: "Is Carrier's Notice dated October 22, 1975, which was served pursuant to Article VIII of the May 13, 1971, National Agreemen Interdivisional Freight Service between the terminal of Manches Waycross, Georgia, through the terminal of Fitzgerald, Georgia when the restrictive provisions of Article VIII specifically ex the application of Article VIII to existing Rules on a property which have Inter-Intra divisional and/or Inter-Intra Seniority District Runs Rule such as the extended run rule between the pa here in dispute."

Findings: The Board finds, after hearing upon the whole record and all ev that the parties are Carrier and Employee within the meaning of Railway Labor Act, as amended; that this Board is duly constitu by Agreement dated March 26, 1976, that it has jurisdiction of parties and the subject matter and that the parties were given notice of the hearing held hereon.

Fitzgerald, Georgia, was, on October 22, 1975, the home termina for all through freight service crews operating between Fitzger Manchester, Georgia, and Fitzgerald and Waycross, Georgia.

The instant dispute was precipitated by Carrier's October 22, 1 Notice served under Article VIII on the May 13, 1971 BLE Nation

Agreement. Carrier, in said notice, sought to establish intra-seniority district through freight operations by abolishing Fitzgerald as a terminal for such operations, and establishing Waycross as the new home terminal and Manchester as the away-from home terminal for the contemplated through freight operations and thus run through Fitzgerald.

Before, during and subsequent to the conference held on Carrier's October 22, 1975 Notice, the Employees contended that such Notice was invalid because there was an existing agreement, effective July 1, 1967, between the parties and which agreement encompassed extended through freight runs in the territory in question. Further, that Section 4 of said Article VIII stated that the adoption of Article VIII was not to affect existing service or agreements in effect prior thereto. In light of their position, the Employees refused to bargain on Carrier's Notice. They requested establishment of a Public Law Board to determine Carrier's right to serve such a Notice.

Carrier disagreed therewith, contending that it had acquired a right under said Article VIII, that it did have such right to serve a request to establish intra-seniority district through freight service thereunder, that it had paid a big price therefor by the National settlement entered into on May 13, 1971. Carrier had requested the establishment of an Arbitration Board, as provided in Article VIII, of said May 13, 1971 National Agreement, to resolve the question as to its right, as well as recommending the terms and conditions for the new proposed service.

The difference between the views of the parties led to the establishment of this Board to resolve the procedural issue raised.

Carrier, as the result of a merger, is the successor railroad company of the former Seaboard Air Line and the Atlantic Coast Line Railroads. A Master Merger Agreement in connection therewith, was negotiated by the parties and pursuant thereto, District Implementing Agreements also were negotiated and made effective July 1, 1967. The latter agree-

ments covered, among other things, the consolidation of all engineers' former seniority districts into six (6) new seniority districts. The seniority district here involved is the Western District which is covered by Implementing Agreement No. 4, effective July 1, 1967.

Article II, therein - "Western Seniority District-Zoning", provides in Section 1., "Seniority Zones", Peregraph (c) "Fitzgerald Zone", that:

"Road service originating at and/or terminated at Fitzgerald including road service up to but not including Manchester and down to but not including Waycross on the Waycross-Manchester lines . . ."

"Note: Engineers of this district will have the right to operate the extended through freight service in accordance with the provisions of Article IV herein between: Fitzgerald, Georgia, and Jacksonville, Florida. (Via Waycross, Georgia)...."

"Section 2 - District Terminal Restrictions

"(a) Freight engineers will not be operated through the terminal of Atlanta, Manchester, Fitzgerald, Birmingham, (excluding those through freight assignments specifically covered in Article IV herein. . . .)"

During the negotiations of the aforementioned Implementing Agreements, and at the insistence of Carrier that there be a rule to cover inter-

divisional, inter-seniority, intra-divisional and intra-seniority runs, the parties negotiated a rule on the subject matter, i. e. , Article IV - "Extended Through Freight Runs," effective July 1, 1987. The Carrier, thereafter, advised the employees that the expanded seniority districts and Article IV had now disposed of its November 2, 1950 Section 6 Notice on the subject matter of inter-divisional, etc., service.

Said Article IV is a detailed, comprehensive rule providing terms and conditions covering the establishment, implementation and operation of inter-divisional and inter-seniority service. However, such service, by the provisions of Article IV, is predicated exclusively on its being operated solely on a traffic or corridor concept instead of an operation between two designated terminals.

Article IV - "Extended Through Freight Runs" - provides, in part:

"Section 1. Conditions

"Extended through freight runs such as 215, 193, and 81 (and correspond-

ing northbound trains) may be operated between terminals designated in paragraph (c) below within the Western Seniority District under the following conditions:

"(a) When extended through freight runs are assigned or contemplated by this Article, they will operate each way throughout the new merged system in the following corridors:

****

"(6) Birmingham and/or Atlanta to Lakeland-Winston via Manchester-Fitzgerald-Waycross-Dupont-High Springs-Dunnellon.

"(7) Birmingham and/or Atlanta to Jacksonville (Baldwin via Manchester-Fitzgerald-Waycross) ....

"NOTE: These runs assigned Atlanta to Lakeland . . . will operate either straightaway or turnaround between Fitzgerald and Waycross ..."

(b) Paragraph (b) provides that while the extended runs are not intended to do local work, etc., that if performed the engineer will be allowed actual time with a minimum of 1 hour for each such occurrence.

(c) Paragraph (c) provides that if such runs stop at more than three points enroute for the purpose of making a change in train content, the same monetary consideration in paragraph (b) also applies, i. e., 1 hour minimum.

(d) Paragraph (d) prohibits calling engineers off extended runs to perform other service except in emergency, but if so used they are to be made whole.

(e) Paragraph (e) provides for deadheading the engineers to the opposite terminal should one leg of his run be annulled.

"Section 2 - Compensation", paragraphs (a), (b) and (c) provide that, among other things:

"Engineers assigned to such runs will receive payment for all miles of that assignment up to 299 at the same basic rate as provided for the first 100 miles under the June 25, 1964 National Agreement; that engineers on these runs may operate through Fitzgerald; that overtime is to be computed on the basis of 25 miles per hour; and that held-away-from-home terminal time is to be paid engineers in such service for all time in excess of 20 hours.

"Section 4 Additional Extended Through Service"

"Additional extended through freight service may be assigned to supplement the service described hereinabove; but it must meet the same criteria as set forth in Sections 1, 2 and 3 of this Article. New assignments and/or runs involving . . . service through Manchester, Fitzgerald or Waycross to terminals other than Fitzgerald, Waycross and Jacksonville will not be inaugurated, except by Agreement between the parties.

"Section 6

"When extended assignments are made on this seniority district, they will be given a special identification symbol or name and, if operated over an adjoining district or districts as part thereof, the same rules and conditions will apply to these runs on the adjoining district or districts or part thereof and through the entire corridor; e.g., Richmond

to Miami and/or Tampa . . ."

The record shows that there are no "Extended Through Freight Runs" currently in operation under Article IV.

The Employees served Section 6 Notices in May and October, 1969, to revise rates of pay and for some new rules. Carrier served a Section 6 Notice in November, 1969, for some new rules, one of which proposed:

"D. Establish a Rule to Provide that:

"1. The Carrier shall have the right to establish, move, consolidate and abolish crew terminals to merge and consolidate seniority districts and to establish inter-divisional, inter-seniority district, intra-divisional intra-seniority district runs in assigned and unassigned (including extra) service, on either a one-way or turn-around (including short turn around) basis and through established crew terminals. The right to operate such runs as may be established under the provisions of this rule will be free of the imposition of any restrictions as to the class of traffic which may be handled or as to the origin or destination of any empty or loaded cars moving on such runs."

Carrier turned said Section 6 Notice, along with its power of attorney, over to the National Railway Labor Conference, Carrier's National negotiating representative, for handling and disposition on a National or industry-wide basis. Carrier tried to prevail upon the Employees to do likewise with its National negotiating group. They refused. The Employees sought a Court Order restraining Carrier, or their representative, from attempting to require the Employees to bargain nationally. Ultimately, when assured by the Employees National representatives that by adding the appropriate language "and/or agreements in effect" to proposed Article VIII's Section 4, that Article IV of their District Implementing Agreements, effective July 1, 1967, would thereby be protected, the Employees then moved to have the court case dismissed. The Employees then, gave their power of attorney to their National bargaining representatives and the Employees then became a party to the National Settlement of Carrier's November 1969 Notice, resulting in the May 13, 1971 BLE National Agreement. Included therein was Article VIII which, in part, provides:

"Article VIII - Inter-divisional, Inter-seniority District, Intra-divisional and/or Intra-seniority District service (Freight or Passenger)

"Article 4 of the May 23, 1952 Agreement is amended to read as follows:

"1. Where an individual Carrier not now having the right to esteblish .....intra-seniority district service, in freight service ..... the Car shall give at least thirty (30) days' written notice to the General Chai of the Committee ..... involved, of its desire to establish service...."

"3. In the event the Carrier and such committee ... cannot agree on the matters provided for in Section 1(a) and the other terms and conditions referred to in Section 2 above, the parties agree that such dispute shal be submitted to arbitration under the Railway Labor Act, as amended within 60-days from the date of notice by the Carrier of its intent to establish service pursuant to Article VIII.

"4. Inter-divisional, inter-seniority districts, intra-divisional or intra-seniority district service and/or agreements in effect on the date of this agreement are not effected by this Article VIII." (Underscoring supplied.)

"6. This rule shall become effective September 1, 1971, except on such Carriers as may elect to preserva existing rules in practice, and so notify the authorized employee representatives on or before August 1, 1971."

Article VIII, in the absence of any Carrier notice served under paragrap 6 quoted above, became effective on this Carrier September 1, 1971. The parties, subsequent thereto, incorporated said Article VIII into their schedule Agreement as present Article 42,

The Employees are to be complimented for the quality of their presentation. They presented their case in a most eloquent manner which helped to clarify a complex situation concerning the Western District Implement ing Agreement. The position of the Employees, essentially, was that Carrier, insofar as its Notice was concerned, has a right to establish intra-seniority district service sought therein, but can only do so unde the terms of the Western District's Agreement Article IV, "Extended Through Freight Runs"; that said Article IV prohibits the Carrier from running through Fitzgerald except on the basis of an extended run; that the prohibiting language of Section 4 of Article VIII (now Article 42), specifically bars Carrier from using said Article as a basis for service its October 22, 1975, Notice; that if Carrier desires the service to ope in the same manner as outlined in their October 22 Notice, then it must wait for the expiration of the current moratorium and then Carrier would be free to serva a Section 6 Notice to achieve same.

Thus, as the Employees viewed this situation, except for an application

of Article VIII to passenger service and freight service operated totall outside the defined corridors, Carrier achieved nothing from serving their Section 6 Notice in November 1969, which ultimately resulted in the adoption of Article VIII in the BLE National May 13, 1971 Agreement.

Carrier disagrees therewith. It argues that both rules, the 1967 Implementing Agreements and Article VIII, are applicable on this property. It avers that prior to adoption of said Article VIII, in the May 13, 197 BLE National Agreement, Carrier had an agreement rule providing for the establishment of intra-divisional runs, but only with a "corridor" requirement. Carrier avers that both Agreement Rules, the July 1967 Implementing Agreement and Article 42, have a side by side posture without a thread of conflict in their provisions or intent with respect to operation.

The conflicting positions bring into focus a question as to the signific if any, of Section 4 of Article VIII on Agreements existing prior to adoption of said Article. Section 4 thereof provides:

"Inter-divisional, inter-seniority district, intra-divisional or intra-seniority district service and/or Agreements in effect on the dates of this Agreement are not affected by this Article VIII." (Underscoring supplied.)

The Board understands that the purpose of the above underscored words was to accomplish the preservation of any terms and conditions governing inter-divisional, etc., service and/or agreements in effect, or agreed t prior to May 13, 1971. At best such language could only be construed as having been intended to act as a status quo on the then existing service or agreements covering the services contemplated by Article VIII. The Board finds that the local Agreements of July 1, 1967 were preserved. Such finding of course raises the question, as to the rights, if any, of both parties under both Agreements, i.e., Article VIII and the July 1, 1 Agreement. The Employees offered Awards to demonstrate that where inter-divisional service, etc., was in existence Article VIII was held t be not applicable and where "service" and "agreements" appear in Article VIII they are synonymous and thus this Board should likewise

hold that Article VIII to be not applicable. The Board would understand, from Awards No. 1 of Public Law Board No. 1229 and Public Law Board No. 1595, submitted by the Employees, that the right to rearrange or increase such service that existed prior to May 13, 1971, was found to be not covered by said Article VIII. Such changes, of course, are not be involved.

Having found that the July 1, 1967 Agreements were preserved, a key question that must be first answered is, "Does Carrier have the right under Article IV of the July 1, 1967 Implementing Agreement No. 4 to establish the specific intra-seniority district freight service as sought in its October 22, 1975 Notice to the OLE General Chairman?" Article IV of such Agreement grants Carrier the right to establish, or implement, only a freight service operation called "extended freight runs." Such runs under the 1967 Agreement must be operated on a "corridor" concept within that particular seniority district involved and also the established freight corridor of any other seniority district over which that train may be operated. Simply stated, this rigid contractual requirement means that if Carrier desired, as here, to operate from Terminal "C" through Terminal "D" to Terminal "E", the mandatory requirements of Article IV mean that in addition to operating the service "C" to "E", Carrier must either operate the inter-divisional or intra-seniority servi or pay as if so operated, the engineers involved in, from Terminals "A" and "D" and Terminals "F" to "Z", if the traffic were destined that far. This contractual requirement means that such freight service runs would then be caused to run, or Carrier would pay as if they were so run, for beyond the territorial limitations that Carrier, from a sound operating and efficiency viewpoint, might otherwise desire or contemplate. Consequently, the answer therefore to the question raised herein is, "No, Carrier does not have such right." The Employees, as did Carrier, have stipulated that the type of service as sought and requested under the October 22, 1975 Notice could not be established under Article IV

of the July 1, 1967 Implementing Agreement.

The record thus impels the conclusion that while the terms and conditions of the July 1, 1967 Implementing Agreements were not effected by the adoption of Article VIII, said terms and conditions neither contemplated nor permit of the type of freight service that may be requested under Article VIII. The Board finds that the May 13, 1971 BLE National Agreement was designed, in exchange for large wage increases, to remove certain artificial contractual barriers as reflected by the various Rules agreed to therein and to thereby improve the efficiency of Carrier's operations. Article VIII was one such Rule. In such circumstances, it would be unreasonable to conclude that Article IV of the 1967 Agreement should be here held applicable which when compared to National Article VIII tends to restrict the efficiency sough in Carrier's operations. Further, if there be a conflict between two Agreements on the same subject, the later Agreement thereon is construed to be held applicable. Consequently, the Board finds that in such circumstances the prerequisite to an application of Article 42 (Article VIII) which, in part, provides:

"Where an individual carrier not now having the right to establish... intradivisional or intraseniority district service, in freight ... service, considers it advisable to establish such service, the carrier shall give at least thirty days' written notice to the General Chairman..

has been met. This Carrier does not now have the right to establish the service that it desires.

Therefore, the Board finds that Carrier's Notice of October 22, 1975 was properly served pursuant to Article VIII of the May 3, 1971 BLE National Agreement. Carrier had the contractual right to serve such Notice. We thus find that the Question at Issue must be answered in the affirmative. While it may well be that the terms and conditions contained in Article IV may well ultimately be made applicable to this proposed service, such must result from the subsequent negotiations required under the October 22, 1975 Notice.

Award: The Question at Issue is affirmatively answered i.e., "Yes, the Carrier's Notice of October 22, 1975, was, and is, valid."

R. B. Curtis, Employee Member
Dissent Attached

D. C. Sheldon, Carrier Member

Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Jacksonville, Florida, January 25, 1977.

EMPLOYEE'S DISSENT TO AWARD
NO. 1 CASE No 1 OF PUBLIC
LAW BOARD NO. <<<1679>>>

It is extremely difficult to write a cogent dissent to an erroneous Award as this one without getting into an in depth exposure of the salient facts that should have been controlling in this Award.

QUESTION AT ISSUE:

"Is Carrier's Notice dated October 22, 1975, which was served pursuant to Article VIII of the May 13, 1971, National Agreement for Interdivisional Freight Service between the terminal of Manchester and Waycross, Georgia, through the terminal of Fitzgerald, Georgia valid when the restrictive provisions of Article VIII specifically exempt the application of Article VIII to existing Rules on a property which have Inter-Intra divisional and/or Inter-Intra Seniority District Runs Rule such as the extended run rule between the parties here in dispute."

To determine whether Carrier's Notice is valid one must look to the provisions of Article VIII of the May 13, 1971 National Agreement and the provisions of the "Extended Through Freight Runs" rule which became effective on the property July 1, 1967. These rules are set forth in part in the Award on pages 4, 5, 6 and 7, however, the "Extended Through Freight Runs" rule is quoted below in its entirety:

ARTICLE IV

EXTENDED THROUGH FREIGHT RUNS

Section 1. Conditions

Extended through freight runs such as 215, 103 and 81 (and corresponding northbound trains) may be operated between terminal designated in paragraph (f) below within the Western Seniority District under the following conditions:

(a) When extended through freight runs are assigned as contemplated by this Article they will operate each way throughout the new merged system in the following corridors:

(1) Richmond to Miami via Rocky Mount---Florence---

Savannah---Jacksonville---(Baldwin)---Wildwood, or Raleigh ---Hamlet---Florence---(either straightaway or turnaround between Hamlet and Florence.)

(2) Richmond to Tampa via Rocky Mount---Florence---Savannah---Jacksonville---Sanford (or Jacksonville---(Baldwin)---Wildwood).

(3) Richmond to Birmingham via Raleigh---Hamlet---Monroe---Abbeville---Atlanta.

(4) Richmond to Bestic via Raleigh---Hamlet.

(5) Savannah to Spartanburg via Yemassee or Fairfax ---Augusta.

(6) Birmingham and/or Atlanta to Lakeland---Winston via Manchester---Fitzgerald---Waycross---DuPont---High Springs---Gunnellen.

(7) Birmingham and/or Atlanta to Jacksonville (Baldwin) via Manchester---Fitzgerald---Waycross.

(8) Jacksonville to Columbus and/or Montgomery via Tallahassee---Bainbridge.

(9) Lakeland---Winston to Montgomery via Gunnellen ---Wildwood---Jacksonville (Baldwin)---Savannah---Florence ---Rocky Mount.

(10) Winston---Lakeland to Richmond via Gunnellen ---Wildwood---Jacksonville (Baldwin) ---Savannah--- Florence---Rocky Mount.

NOTE: Those runs assigned Atlanta to Lakeland---Winston via Manchester---Fitzgerald---Waycross---DuPont will operate either straightaway or turnaround between Fitzgerald and Waycross.

(b) It is understood that the extended through freight runs contemplated by this Article IV are bona fide through freights, and it is not intended that these runs be required to perform local freight work such as station, plant and industry switching. If, however, such service is required of a crew in this extended through freight service said engineer will be allowed the actual time consumed with a minimum of 1 hour at pro rata rate for each occurrence in addition to all other compensation for the day or trip.

(c) If an engineer in extended through freight service is required to stop at more than three points enroute for the purpose of making any change in the train content (other than setting out a bad order car from his train) said engineer in this extended through freight service will be allowed actual time in the aggregate with a minimum of 1 hour at pro rata rate in addition to all other compensation for the day or trip.

NOTE: It is understood that the provisions of the conversion rule of the engineers' schedule agreement are hereby set aside in the application of paragraphs (b) and (c) of this Section 1.

(d) Engineers assigned to the extended through runs contemplated hereby will not be called off their assignments to perform other service except in emergency, and when so used will be guaranteed not less than the earnings of their regular assignment, subject to temporary passenger vacancy rule in the schedule agreement.

(e) In the event a leg, or one (1) side of any of these extended through runs is annulled, the affected engineer will be deadheaded to the opposite terminal of the run to protect the return trip of his run.

(f) Engineers so assigned between:

(1) Manchester and Waycross via Fitzgerald will be allowed 201 miles in each direction.

(2) Atlanta and Fitzgerald via Manchester will be allowed 206 miles southbound and 207 miles northbound.

(3) Fitzgerald and Jacksonville via Waycross will be allowed 144 miles in each direction with the work between Fitzgerald and Jacksonville to be prorated with the engineers of the Eastern Seniority District.

Section 2. Compensation

(a) Engineers assigned to these extended through freight runs shall be compensated for all miles of the assignment up to 200 at the basic rates provided for the first 100 miles under the June 25, 1964 National Agreement.

Engineers on extended through freight runs may be operated through terminal of Manchester, Fitzgerald or Waycross.

(b) For the purpose of computing overtime in extended through freight service time shall be computed on a basis of 25 miles per hour.

(c) Engineers in extended through freight service held at the away-from-home terminal of their assignment in excess of 20 hours shall be placed on duty for pay purposes at the regular rate per hour paid them for the last service performed. The held-away-from-home terminal time shall cease at the time pay begins or when deadheading at the time the train leaves the terminal. Payments accruing under this rule shall be paid for separate and apart from pay for subsequent service or deadheading. Should an assignment be annulled after the expiration of 20 hours, the affected engineer will remain on duty for pay purposes (at the rate of service last performed) up to actual deadhead departure.

Section 3. Assigning Home Terminals

It is further agreed that with the establishment of extended through runs, consideration will be given by the parties locally to the establishing of home terminals at

NMB Knowledge Source

either end of the assignments, and additionally, if necessary, a step off arrangement at Manchester, Fitzgerald or Waycross on one leg of the trip, for the purpose of accommodating engineers on the seniority roster as of the effective date of this agreement, who are assigned thereto and now have their residence at one of these terminals. Should the parties locally fail to settle any request made in the application of this paragraph, same with all the facts will be referred jointly to the Director of Personnel and General Chairman and settled in conference. Engineers changing off at Manchester, Fitzgerald or Waycross will be compensated for the first 100 miles only at the basic through freight rates.

INTERPRETATION

Question: Would the extended through rates as contemplated in Section 2 (a) apply to those engineers operating one leg of the extended run through Manchester, Fitzgerald or Waycross?

Answer: Yes, It is intended that all extended run rules would apply except for Section 2 (e) when changing off at Manchester, Fitzgerald or Waycross.

Section 4. Additional Extended Through Service

Additional extended through freight service may be assigned to supplement the extended through freight service described hereinabove; but is must meet the same criteria as set forth in Sections 1, 2 and 3 of this Article. New assignments and/or runs involving extended through freight service through Manchester, Fitzgerald or Waycross to terminals other than Fitzgerald, Waycross and Jacksonville will not be inaugurated, except by agreement between the parties.

Section 5. Qualifying

(a) Engineers initially assigned to the extended through freight runs as set forth herein, and those who bid in or claim them as regular assignments beginning with their inauguration will be qualified, by Seaboard Coast Line Engineer Pilots, for the same under full pay of the assignment. Engineers who stand to perform relief service on the extended runs, as set forth herein, will take their turns and be qualified, by Seaboard Coast Line Engineer Pilots, under full pay of the assignment. In no event will engineers be qualified until they have made at least five round trips over the unfamiliar territory.

(b) In order to provide for the prompt qualification, all engineers called for pilot service on an extended run over their old seniority district and who are not qualified over the entire territory of the assignment, may be required to begin or extend their trip over the entire territory of the run for which called in pilot service and to qualify on that territory of the run over which not qualified.

Section 6.

When extended assignments are made on this seniority district they will be given a special identification symbol or name and, if operated over an adjoining district or districts or part thereof, the same rules and conditions

ville, the engineer would be deadheaded to the opposite terminal (Jacksonville) to protect the return trip of the assignment.

Question 4: Train TT23-175, for example, is assigned as an extended through freight run Richmond to Savannah. At Savannah, the train is split, with TT23 operating Savannah to Miami via Wildwood and 175 Savannah to Jacksonville. Would the extended run rules apply to engineers handling both TT23 and 175?

Answer: Yes, as TT23 is assigned as an extended run operating through Baldwin to Miami and 175 is assigned as an extended run operating Savannah to Jacksonville.

Question 5: Train 175-27, for example is assigned as an extended through freight run operating Richmond to Jacksonville with a diversion at hamlet of No. 27 Hamlet to Birmingham. Would the extended run rules apply to engineers handling No. 175-27 and No 175 and No. 27?

Answer: Yes, because the symboled trains are so assigned to operate in the specified corridors.

Question 6: Train 195 is not assigned as an extended through freight run, yet this assignment operates through the same corridor; e.g., Richmond to Tampa, as does Train 199, which is assigned as an extended run. Would the extended run rules apply to train 195?

Answer: No. The run must be designated and assigned as an extended run in accordance with this Article IV before the extended run rules apply.

Question 7: Train 199 is assigned as an extended run from Richmond to Tampa. If the number and/or symbol of the train is changed intermittently at Florence and 199's connection is operated through to Tampa under another number, would the extended run rules apply to engineers protecting the assignment from Florence through the remainder of the corridor to Tampa?

Answer: Yes. It is not contemplated that the extended run rules would be nullified simply by changing of the number or symbol of the train if there is sufficient traffic to justify continued operation through the corridor.

Section 1 of Article VIII reads in part:

"Where an individual Carrier not now having the right to establish interdivisional, interseniority district, intradivisional or intraseniority district service, in freight or passenger service, ------" (Underscoring supplied)

Section 1 and Paragraph (a) thereof, of the "Extended Through Freight Runs" rule reads as follows:

"Extended through freight runs such as 215, 193 and 81 (and corresponding northbound trains) may be operated between terminal designated in Paragraph (f) below within the Western Seniority District under the following conditions: (Underscoring supplied)

(a) When extended through freight runs are assigned as

contemplated by this Article they will operate each way throughout the new merged system in the following corridors: (Underscoring supplied)

Section 6 of the "Extended Through Freight Runs" rule reads in part as follows:

"When extended assignments are made on this seniority district, they will be given a special identification symbol or name and, if operated over an adjoining district or districts or part thereof, the same rules and conditions will apply to these runs on the adjoining district or districts or part thereof and through the entire corridor, e. g., Richmond to Miami and/or Tampa ---." (Underscoring supplied)

The Carrier had, and still has, the right to establish the service they seek, provided they comply with the terms and conditions of the Agreement presently in effect. They agree that the present "Extended Through Freight Runs" rule and Article 42 (Article VIII of the May 13, 1971 Agreement) of the schedule agreement, have a side by side posture without a thread of conflict in their provisions or intent with respect to the operation.

The Employees are in full agreement with the Carrier to the extent that, Article VIII of the May 13, 1971 Agreement has system wide application to passenger service and freight service totally outside of the corridor operation specified in the "Extended Through Freight Runs" rule; and that the "Extended Through Freight Runs" rule has application to service totally or partly within the specified corridors, such as the service Carrier is now seeking.

The Neutral states at the top of page 6, "The record shows that there are no "Extended Through Freight Runs" currently in operation under Article IV." The Employees stated during the "executive sessions" that the "Extended Through Freight Runs" rule had been placed into effect on the property and although, none were presently assigned, there were runs operated under such rule subsequent to the effective date of Article VIII of the May 13, 1971 National Agreement. In fact such runs have been operated in the same territory herein dispute. Despite the relevance of this information, the Neutral chose either to ignore or to "distinguish" it because of his aversion to nullify the applicable sections of the "Extended Through Freight Runs" rule in preference to adopting a negative answer to the question at issue.

Section 4 of Article VIII of the May 13, 1971 National Agreement reads:

"Interdivisional, interseniority district, intradivisional or intraseniority district service and/or agreements in effect on the date of this Agreement are not effected by this Article VIII."

The Employees cited Awards No. 1 of Public Law Board No. 1229 and Public Law Board No. 1695. In both of these cases the Carriers took the position that Section 4, of Article VIII of the May 13, 1971 National Agreement were controlling. They contended that "Interdivisional interseniority district service and/or agreements in effect on the date of this Agreement are not affected by this Article

VIII." (Underscoring supplied) Neutrals Harold M. Weston of Public Law Board No. 1505 and Jacob Seidenberg of Public Law Board No. 1229 both held that Carrier's position was correct. Neutral Weston had this to says

> "Since Carrier did not notify the Organization prior to August 1, 1971, of any election pursuant to Section 6 of Article VIII, it is clear that all of the terms of Article VIII became effective on its system on September 1, 1071. Among the terms of Article VIII and part and parcel of that Rule is Section 4 which stipulates that interdivisional, interseniority district service in effect on May 31, 1071 is not effected by Article VIII." (Underscoring supplied)
>
> "As of May 13, 1971, and for a number of years prior to that date, interdivisional, interseniority district service was in effect on Carrier's property only between Whitehall and Oneonta and between Wilkesbarre and Oneonta. Accordingly, if Carrier desires to estblish interdivisional service between other points, it must of course first comply with all the terms of Sections 1,2,3 and 5 of Article VIII since a timely election within the meaning of Section 6 has not been made. However, under the plain language of Section 4, no election was necessary for service that already had been established by May 13, 1971, inasmuch as Article VIII's requirements never applied to such service. We are satisfied that there is no ambiguity or restriction in the parties' contractual language regarding that point." (Underscoring supplied)

The position of the Carriers in these two Awards is identical to the position taken by the Employees in this case. The term "district service" which was in dispute in the above-referred to cases is without question synonymous with the term "Agreements" as those terms appear in Section 4 of the May 13, 1971 National Agreement. Yet in the face of the opinions of two Neutrals who ruled on the same question herein dispute, this Neutral chose to ignore for reasons best known to himself.

The Employees in Attachment 5 (A through G) of their Submission to this Board set forth the negotiating history of Article VIII which included copies of the proposals and counter-proposals exchanged by the parties. Also included as Attachment 4 was a copy of a letter dated May 12, 1976, addressed to General Chairman H. L. Geiger, from President D. H. Whitmire, of the Brotherhood of Locomotive Engineers, who at that time was one of the principal Employee negotiators and a signatory party to the May 13, 1971 Agreement. His letter reads as follows:

May 12, 1976

Mr. H. L. Geiger
General Chairman
Seaboard Coast Line
304 W. Orange Street, Rm. 228
P. O. Box 1232
Leesburg, Florida 32748

Dear Sir and Brother:

This is in response to your request for an explanation of the negotiating history of Section 4

of Article VIII of the BLE National Agreement of May 13, 1971 which reads:

> "Interdivisional, interseniority district, intradivisional, or intraseniority district service and/or agreements in effect on the date of this Agreement are not effected by this Article VIII."

The above provision became a part of Article VIII as a result of the negotiations, and was intended:

1. To preserve the terms and conditions governing interdivisional, interseniority district, intradivisional, or intraseniority district service and/or agreements which had been agreed to on individual railroad properties prior to the May 13, 1971 Agreement, and especially such terms and conditions resulting from the Herger Agreements. The Herger Agreements specifically considered during negotiations included, but was not limited to, the Burlington Northern Incorporated, Penn-Central Transportation Company, and the Seaboard Coast Line Railroad.

2. To insure that the provisions of Section 1 of Article VIII providing for the full mileage rate of pay, for miles over one hundred (100), suitable transportation, and meal allowances would be extended to interdivisional, interseniority district, intradivisional, or intraseniority district service and/or agreements in effect on May 13, 1971.

I am sure that you will recall that the phrase, "service and/or agreements" as finally included in Section 4, came about as one of the conditions of your General Committee of Adjustment becoming a party to the National Agreement of May 13, 1971. You will also recall that the inclusion of your General Committee of Adjustment was a condition which the carriers insisted upon before agreement could be reached. In other words, the carrier's negotiating committee advised, that unless our General Committee of Adjustment on the Seaboard Coast Line Railroad became a party to the National Movement, there would be no Agreement.

I believe the evolution of Section 4 of Article VIII can best be depicted by showing the emergence of that particular part of Article VIII as it developed throughout the negotiations in the form of proposals and counterproposals passed across the table. These proposals are attached hereto and identified below, by date and the sponsoring party.

Attachment 1 - Carrier's Proposal handed across the table on December 7, 1970. There is no provision comparable to Section 4 of Article VIII in this proposal.

Attachment 2 - BLE Counterproposal dated February 9, 1971. Item sixteen (16) of

this proposal contemplated the preservation of prior Agreements.

Attachment 3 - Carrier's Counterproposal handed across the table on March 11, 1971. There is no provision comparable to Section 4 of Article VIII in this proposal.

Attachment 4 - BLE Counterproposal dated April 26, 1971, Item 5 of this proposal contemplated the preservation of prior Agreements.

Attachment 5 - Carrier's Counterproposal of April 28, 1971. Item 4 of this proposal contemplated preservation of prior Agreements.

Attachment 6 - BLE Counterproposal of May 3, 1971. Item 5 of the proposal contemplated preservation of prior Agreements.

Attachment 7 - Carrier's Counterproposal of May 7, 1971 which was initialed by the Chief Negotiators of the carriers and the BLE. With exception of the term "and/or agreements" Section 4 of this proposal is the same as it appears in Article VIII of the May 13, 1971 Agreement.

Between May 7 and May 13, 1971, and at the insistence of your General Committee of Adjustment, the language "and/or agreement," was agreed upon and became a part of Section 4 of Article VIII.

In my opinion, this written evidence of the negotiating history of Section 4 shows that it was clearly intent of this Section 4 to prohibit the application of any part of Article VIII, including Section 1, to interdivisional, interseniority district intradivisional, or intraseniority district service and/or agreements, in effect, on May 13, 1971.

Fraternally yours,

/s/ B. H. Whitmire
President

The Carrier took no exception to the inclusion of Attachments 4 or 5 (A through G), nor did they present any evidence either written or orally from the Carrier signatory parties to the Agreement, which contradicted the information furnished by the Employees. Nor did the Neutral ask for or in any way seek information from the Carrier negotiators as to their understanding of the intent of Section 4 as related to the instant dispute. It should be noted that Mr. C. E. Mervine, Jr., then Vice President of Personnel and Labor Relations, of the Seaboard Coast Line, was a signatory party to the Agreement. Yet the Neutral, in his frustrated attempts to sustain the Carrier position, chose to ignore the documented factual history of the rule in addition to the interpretation of one of the drafters of the rule.

When Article VIII of the 1971 Agreement was adopted on this property there is no question but what Section 4 became just as much a part of the Agreement as any other provision of the Agreement. It clearly stated in part, "----district service and/or agreements in effect on the date of this agreement are not affected by this Article VIII." (Underscoring supplied)

Simply stated the terms, "district service and/or agreements in effect" means that the "Extended Through Freight Runs" rule is an "Agreement in effect" and is not effected by Article 42 (Article VIII of the May 13, 1971 Agreement) of the prosent schedule agreement. (Underscoring supplied)

The Neutral set forth a part of the Carrier position on pages 8 & 9 of the Award:

> "It avers that prior to adoption of said Article VIII, in the May 13, 1971 BLE National Agreement, Carrier had an agreement rule providing for the establishment of intra-divisional runs, but only with a "Corridor" requirement. Carrier avers that both Agreement Rules, the July 1967 Implementing Agreement and Article 42, have a side by side posture without a thread of conflict in their provisions or intent with respect to operations." (Underscoring supplied)

The Neutral states on page 10:

> "Having found that the July 1, 1967 Agreements were preserved, a key question that must be first answered is, "Does Carrier have the right under Article IV of the July 1, 1967 Implementing Agreement No. 4 to establish the specific intra-seniority district freight service as sought in its October 22, 1975 Notice to the BLE General Chairman?" (Underscoring supplied)

As previously stated the Carrier does have the right under Article IV to establish the specific service sought providing they comply with the terms and conditions thereofs such Agreement having been preserved as stated by the Neutral above. Without question both the Carrier and the Neutral agree that the "Extended Through Freight Runs" rule is still in effect. There are no exceptions taken to any part of the rule, therefore, it is still in effect in its entirety.

Carrier admits the existing agreement did ????? provide for the establishment of intradivision runs with ?????? requirement.

This is further affirmed by the fact that such service was established and even operated in the territory now in question subsequent to the effective date of Article VIII of the May 13, 1971 Agreement.

At this point the Neutral certainly had sufficient evidence to answer his question, "Does Carrier have the right under Article IV -------- to establish the specific-service as sought in its ------- Notice -------". But no, in continuing his diligent search for some basis for sustaining the Carrier's position in this Case, no matter how tenuous, he goes into great detail on pages 10 & 11 of the Award to explain the

operation of the "Extended Through Freight Runs" rule and its adversities from the Carrier view point. It is interesting to note that his explenation definitely set out the procedure in which the proposed operation of the Carrier could be operated under the "Extended Through Freight Runs" rule.

The entire theme of the Award rings with such observations in behelf of the Carrier as, "that it had paid a big price therefor"; "this rigid contractual requirement means that if Carrier desired, as here, to operate from Terminal "C" through Terminal "D" to Terminal "E", the mandatory requirements of Article IV mean that in addition to operating the service "C" to "E". Carrier must either operate the inter-divisional or intra-seniority service, or pay as if so operated, the engineers involved in, ": "Carrier would pay as if they were so run."; "far beyond the territorial limitations that Carrier from a sound operating and efficiency viewpoint, might otherwise desire or contemplate."; "The Board finds that the May 13, 1971 BLE National Agreement was designed, in exchange for large wage increases"; "to thereby improve the efficiency of Carrier's operations"; "it would be unreasonable to conclude that Article IV of the 1967 Agreement shall be here held applicable which when compared to National Article VIII tends to restrict the efficiency sought in Carrier's operations." (Underscoring supplied)

The Neutral was informed several times during the hearings and the Executive sessions that followed, as to the "cost" or "price" the employees paid for the various merger related Agreements, including the "Extended Through Freight Runs" rule, however, not one time in the Award does he mention the cost or price paid by the Employees. Nor the fact that this Carrier got a rule nearly four years prior to many Carriers receiving such a rule.

The Employes stated during the hearings that if Carrier's position were upheld the "Extended Through Freight Runs" rule may never be used by the Carrier again. They would then have the vehicle to "piece meal" an Inter-Intra divisional operation almost system wide without ever having to comply with the terms and conditions of the "Extended Through Freight Runs" rule. Yet, he chose not to mention these facts and quite obviously ignored them.

The Neutral in his desperate search for some basis to sustain the Carrier position states, "Further, if there be a conflict between two Agreements on the same subject, the later Agreement thereon is construed to be held applicable." He attempts to ground this statement on the following:

> "The record thus impels the conclusion that while the terms and conditions of the July 1, 1967 Implementing Agreements were not effected by the adoption of Article VIII, said terms and conditions neither contemplated nor permit of the type of freight service that may be requested under Article VIII. The Board finds that the May 13, 1971 BLE National Agreement was designed, in exchange for large wage increases, to remove artificial contractual barriers as reflected by the various Rules agreed to therein and to thereby improve the efficiency of Carrier's operations. Article VIII was one such Rule. In such circumstances, it would be unreasonable to conclude that Article IV of the 1967 Agreement should be here held applicable which when compared to National Article VIII tends to restrict the efficiency sought in Carrier's operations"

It is quite obvious, from the record before this Board and the shallow attempt of the Neutral to justify his position, there are no conflicts between the contractual provisions of the two Agreements, therefore, is it possible that "compassion" may have superceded "judgement" in reaching the conclusions set forth herein.

Much more could be written to show that the Award of Public Law Board No. <<<1679>>> goes far beyond the jurisdiction of the Board. The record of this case is voluminous with respect to facts, argument and evidence. A large portion of this material was completely ignored by the Neutral Member as is obvious from a reading of his Findings.

It would appear that the Neutral has bowed to the whims and fantasies of the Carrier rather than relying upon judgement of the integrity of the involved agreements, in reaching his conclusions, and in doing so, has added another dimension, not provided for in the procedures set forth in the Railway Labor Act, as amended, nor the agreement that established this Board.

We are left with the question which was asked the Neutral reading:

> If the "Extended Through Freight Runs" rule is still in effect, and both the Carrier and Neutral says it is, what effect will that part of Section 6 thereof, reading,
>
> > "When extended assignments are made on this seniority district they will be given a special identification symbol or name and, if operated over an adjoining district or districts or part thereof, the same rules and conditions will apply to these runs on the adjoining district or districts or part thereof and through the entire corridor."
>
> have on any agreement that may be reached in the application of Article VIII of the May 13, 1971 National Agreement. (Article 42 of the SCL Schedul

Agreement)

For these reasons, as well as numerous others which are patently obvious to anyone with any knowledge of railroad labor negotiations and agreements, I dissent.

Further, should this Award be contested before any tribunal, that may have jurisdiction thereof, I will not willingly participate in any defense of this erroneous Award.

R. B. Curtis
Employee Member

Date: 1-25-77

Organization File No.
Carrier File No. 111-163

ARBITRATION BOARD NO. 586

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
)
TO)
)
DISPUTE) ELGIN, JOLIET & EASTERN RAILWAY COMPANY

STATEMENT OF ISSUE:

What shall be the terms and conditions governing the establishment of the additional interdivisional freight service described in the Carrier's proposal.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On January 24, 2005, Director Labor Relations J. M. Hayes sent the following letter to BLET Division 520 General Chairman Ricky Jackman:

> The carrier hereby gives notice pursuant to Article IX – Interdivisional Service – of the Award of Arbitration Board No. 458, dated May 19, 1986, of its desire to establish additional interdivisional freight service.
>
> The new runs the carrier proposes are as follows:
>
> 1. Pool crews running out of Kirk Yard on a turnaround basis between points on the Lake Front Line and points on the Eastern and/or Western Subdivisions; and
>
> 2. Pool crews running out of East Joliet on a turnaround basis between Kirk Yard and/or points on the Lake Front Line and points on the Eastern and/or Western Subdivisions, running through East Joliet more than once in a single trip.

These runs would be governed by the conditions set forth in Article IX, Section 2 of the May 19, 1986 Arbitration Award.

I suggest we begin discussion of the carrier's proposal immediately following our Section 6 conference on Tuesday, January 25, 2005.

The Carrier and the Organization met to discuss this notice, and by letter dated April 21, 2005, General Chairman advised Director Labor Relations Hayes that the "Organization will agree to allow the carrier to use Pool Engineers to handle unit coal trains to State Line, that have been rerouted to Kirk Yard, and was [*sic*] originally destined to State Line, with the understanding that this agreement may need [to be] ratified by the membership." When the agreement was not ratified, the Carrier notified the National Mediation Board of its desire to submit the dispute to arbitration. On March 20, 2006, the National Mediation Board established Arbitration Board No. 586 and certified Barry E. Simon as the Neutral Member of the Board, mutually selected by the parties.

Subsequent to the issuance of the Award of Arbitration Board No. 458, which produced the 1986 Brotherhood of Locomotive Engineers[1] National Agreement, the Carrier exercised its right to serve notice upon the Organization for the establishment of interdivisional freight service.[2] The Carrier's notices were settled by Arbitration Board No. 463 (Referee Joseph A. Sickles) with the United Transportation Union (UTU) and by Arbitration Board No. 476 (Referee Jacob Seidenberg) with the BLET. Those decisions authorized the Carrier to operate trains in interdivisional service as follows, with the stipulation that crews could not be run through a terminal more than once:

---

[1]Now known as the Brotherhood of Locomotive Engineers and Trainmen. The initials "BLET," when used in this Award, will refer to the Organization, regardless of its name at the relevant time.

[2]The terms of Article IX of the 1986 BLET National Agreement, dealing with interdivisional freight service, are patterned after Article IX of the 1985 UTU National Agreement. For the purposes of this Award, the relevant provisions of the two Agreements are identical.

Kirk Yard to Waukegan
Kirk Yard to Western Subdivision to Joliet
Waukegan to Lake Front Line to Kirk Yard
Waukegan to Kirk Yard
Joliet to Lake Front Line to Western Subdivision to Joliet
Joliet to Western Subdivision to Lake Front Line to Joliet
Kirk Yard to Lake Front Line to Western Subdivision to Joliet
Joliet to Western Subdivision to Lake Front Line to Kirk Yard
(Lake Front Line includes South Chicago)
Kirk Yard to Joliet and return (turnaround service)
Joliet to Kirk Yard and return (turnaround service)

Two years later, the Carrier again served notices upon the UTU and the BLET to establish interdivisional service with pool crews working turnaround out of Kirk Yard in Gary, Indiana. The purpose of this notice, according to the Carrier, was to expedite the movement of unit coal trains received from foreign lines on the Western Subdivision to coal-fired electric generating plants located on the Lake Front Line between Gary and South Chicago. The Carrier reached an agreement with the UTU with respect to this notice, but proceeded to arbitration with the BLET before Arbitration Board No. 516 (Referee Marty E. Zusman), which held as follows:

> The Carrier's proposal is answered in the affirmative. The Carrier may establish the additional interdivisional freight service involving crews running out of Kirk Yard terminal on a turnaround basis between points on the Western Subdivision and points on the Lake Front Line as proposed and discussed in the Findings. All the terms and conditions set by the Award of Arbitration Board No. 476, which presently govern existing interdivisional service shall be in effect, except there shall be no restrictions on crews in interdivisional service running through a terminal more than once during a single trip.

Two months later, the Carrier served a new notice to establish additional interdivisional runs using pool crews from Joliet, Illinois in turnaround service to handle unit coal trains to plants on the Lake Front Line. Agreement was reached with the BLET to establish such assignments under the same terms and conditions set forth by Arbitration Board No. 516, again eliminating any restrictions on running through a terminal more than once on a single trip.

In explaining why it served the notice on January 24, 2005, the Carrier states it is still servicing one coal-fired electric generating plant on the Lake Front Line, Midwest Generation's State Line generating station. Unit coal trains destined for this plant are received from the BNSF at Eola, Illinois on the Western Subdivision. Under the existing interdivisional agreements, the Carrier may operate these trains with crews from either Joliet or Kirk Yard. If time permits, the same crew will operate back to Eola with empties. There are times, however, when it is necessary for the crew to leave the coal train on a siding west of Kirk Yard. Another road crew will be used later to bring the train into the State Line plant.

Since late 2001, because of plant security and railroad capacity problems, the Carrier sometimes finds it necessary to leave the coal train in the Kirk Yard Terminal. The Carrier had been using pool engineers in interdivisional service to bring the trains from Kirk Yard to the plant, and then perform other work consistent with their assignments. The BLET argued such work was reserved to yard transfer crews, and this position was sustained by Public Law Board No. 6603 in Award Nos. 1 and 3 (Referee Martin H. Malin). According to the Carrier, it has less freedom to assign additional work to yard transfer crews than if it were using pool crews. Consequently, it has served this notice for the purpose of being permitted to perform the work with interdivisional pool engineers.

The Carrier submits that its proposal for this interdivisional service, including the terms and conditions that apply to the runs, are reasonable and practical and in compliance with the provisions of Article IX, Section 2 of the 1986 National Agreement. These terms and conditions, according to the Carrier, are identical to those of its existing interdivisional assignments. The Carrier notes it has been running interdivisional service out of Kirk Yard and Joliet for more than fifteen years, giving

evidence that the runs are "adequate for efficient operations and reasonable in regard to the miles run, hours on duty and in regard to other conditions of work." It says the runs will be compensated in the same manner as existing interdivisional runs, and suitable transportation will be provided if engineers are required to go on or off duty at a point other than their fixed on and off duty points. As with other existing interdivisional runs, the Carrier says it will pay engineers $18 when they are not permitted to stop to eat, regardless of their total time on duty.

The Carrier asks that this Board approve the proposed interdivisional assignments subject to the following terms and conditions:

> Such runs will be subject to all of the terms and conditions set forth in the Award of Arbitration Board No. 476, as amended, governing existing interdivisional service, with the exception that any restrictions on crews in interdivisional service running through a terminal more than once during a single trip are eliminated.

The Organization argues that the Carrier is not truly seeking to establish new interdivisional service. Rather, it says the Carrier is merely attempting to rearrange existing service to take advantage of the more favorable conditions of Article IX, Section 2 of the 1986 National Agreement. Noting that the Carrier already enjoys the right to operate unit trains to and from the Lake Front Line, the Organization submits the Carrier is trying to avoid claim liability to yard and transfer service engineers when it places those trains within the confines of Kirk Yard, thereby requiring transfer crews to move them to the generating plant as dictated by Award No. 1 of Public Law Board No. 6603.

The Organization cites the March 31, 1987, decision of the BLE-NCCC Informal Disputes Committee (Referee John B. LaRocco) in Issue No. 3, addressing whether established interdivisional service may be extended or rearranged under Article IX of the 1986 National Agreement. On the

same question, the Organization also relies upon Arbitration Board No. 505 (Referee William E. Fredenberger, Jr.), involving the Southern Pacific and the UTU, as well as a Special Board of Adjustment (Procedural) (Referee David P. Twomey) between the BLET and BNSF. The Organization concludes from these decisions that the Carrier's notice is improper under Article IX and asks this Board to decline jurisdiction.

Alternatively, the Organization argues that the Board should not establish any conditions that are different from those agreed upon by the parties, but not ratified by the membership. In interest arbitrations, says the Organization, arbitrators generally attempt to do what the parties themselves would have done, had they been able to do so. The best evidence of what the parties would have done, according to the Organization, is what they actually agreed to do.

The 1986 National Agreement Informal Disputes Committee, in Issue No. 3, addressed the question, "Can established Interdivisional Service be extended or rearranged under this Article?" We first note that the Committee broke this question down to two questions, the first being "whether Carriers may extend or rearrange interdivisional service *established prior to the effective date of Article IX of the 1986 Arbitrated National Agreement.*" (emphasis added.) As the instant case does not involve any interdivisional operations that predate the 1986 Agreement, this question is not applicable herein. Nevertheless, we note the Committee determined that "Section 5 of Article IX does not restrict the Carriers from rearranging or extending existing interdivisional service."

The second question, which follows from the Committee's threshold question, and therefore applies only to extending or rearranging service that was established prior to the 1986 Agreement, asked what terms and conditions apply to such extended or rearranged interdivisional service. In answering this question, the Committee looked at the possibility of a carrier serving a notice seeking

relief from undesirable terms and conditions imposed upon the earlier interdivisional operation. That is clearly not the case here. The Carrier is not attempting to seek relief from restrictions found in any other interdivisional agreement. In fact, it is seeking terms and conditions identical to those in existing agreements. It is, rather, seeking to establish service out of Kirk Yard or Joliet on a turnaround basis, to work on the Lake Front Line and the Eastern and/or Western Subdivisions. This is work that is not covered by existing interdivisional service agreements. Contrariwise, Arbitration Board No. 505 addressed the type of issue considered by the Disputes Committee when the Southern Pacific proposed an interdivisional assignment that would replace another assignment that had been established prior to the 1985 UTU National Agreement, but would be governed by the more liberal conditions of the National Agreement. It was for this reason that the Board rejected the carrier's notice. It is also for this reason that the Award of Arbitration Board No. 505 is not applicable to this case. Similarly, in the procedural dispute before Referee Twomey, the carrier was attempting to change the terms and conditions of an interdivisional assignment that predated the 1986 National Agreement.

After careful consideration, the Board does not find the Organization's objections to the Carrier's notice to have merit. While it is evident that the Carrier's notice has the objective of avoiding the use of transfer or yard crews to move the coal trains from Kirk Yard to the power plant, we do not find that to be a basis for rejecting the Carrier's efforts. The entire purpose for establishing interdivisional assignments was to permit carriers to improve the efficiency of their operations by expanding the nature of work that may be performed by road crews and the territory over which they operate. When interdivisional assignments are created, other employees stand to lose work. That is a harsh reality, but it has been the reality since 1971.

We agree with the Organization that this Board should attempt to impose those conditions that the parties would have if they had been able. In this case, the Carrier is looking for nothing more than it had tentatively agreed upon with the Organization. Accordingly, we shall impose those terms and conditions.

AWARD: The Carrier may establish interdivisional service pursuant to its notice dated January 2, 2005. Such runs will be subject to all of the terms and conditions set forth in the Award of Arbitration Board No. 476, as amended, governing existing interdivisional service, with the exception that any restrictions on crews in interdivisional service running through a terminal more than once during a single trip are eliminated.

Barry E. Simon
Chairman and Neutral Member

R. K. Radek
Employee Member

J. F. Ingham
Carrier Member

Dated: February 12, 2007
Arlington Heights, Illinois

(a) The outlying point must be either 30 miles or more from the terminal limits of the location where the extra list from which called is maintained, or 60 miles or more from the reporting point of the extra list from which called.

(b) Lodging or allowances in lieu thereof where applicable will be provided only when extra men are held at the outlying point for more than one tour of duty and will continue to be provided for the periods held for each subsequent tour of duty.

2. It is agreed that the parties signatory to this agreement will continue negotiations on the matter of further increasing expenses-away-from-home allowances. Any such increase agreed upon to become effective January 1, 1973.

ARTICLE VIII - INTERDIVISIONAL, INTERSENIORITY DISTRICT, INTRADIVISIONAL AND/OR INTRASENIORITY DISTRICT SERVICE (FREIGHT OR PASSENGER)

Article 4 of the May 23, 1952 Agreement is amended to read as follows:

1. Where an individual carrier not now having the right to establish interdivisional, interseniority district, intradivisional or intraseniority district service, in freight or passenger service, considers it advisable to establish such service, the carrier shall give at least thirty days' written notice to the General Chairman or Chairmen of the committee(s) of the Brotherhood of Locomotive Engineers involved, of its desire to establish service, specifying the service it proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such service.

The parties will negotiate in good faith on such proposal and shall recognize each others fundamental rights, and reasonable and fair arrangements shall be made in the interest of both parties. Such rights and arrangements shall include, but not be limited to the following:

(a) Runs shall be adequate for efficient operations and reasonable in regard to the miles run, hours on duty and in regard to other conditions of work.

(b) All miles run over one hundred (100) shall be paid for at the mileage rate established by the basic rate of pay for the first one hundred (100) miles or less.

(c) When an engine crew is required to report for duty or is relieved from duty at a point other than the on and off duty points fixed for the service established hereunder, the carrier shall authorize and provide suitable transportation for the engine crew.

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

(d) On runs established hereunder engine crews will be allowed a $1.50 meal allowance after 4 hours at the away from home terminal and another $1.50 allowance after being held an additional 8 hours.

2. The foregoing provisions (a) through (d) do not preclude the parties from negotiating on other terms and conditions of work.

3. In the event the carrier and such committee or committees cannot agree on the matters provided for in Section 1(a) and the other terms and conditions referred to in Section 2 above, the parties agree that such dispute shall be submitted to arbitration under the Railway Labor Act, as amended, within 60 days from the date of notice by the carrier of its intent to establish services pursuant to this Article VIII.

The decision of the arbitration board shall be final and binding upon both parties, except that the award shall not require the carrier to establish interdivisional, interseniority district, intradivisional, or intraseniority district service in the particular territory involved in each such dispute but shall be accepted by the parties as the conditions which shall be met by the carrier if and when such interdivisional, interseniority district, intradivisional, or intraseniority district service is established in that territory. Provided further, however, if carrier elects not to put the award into effect, carrier shall be deemed to have waived any right to renew the same request for a period of one year following the date of said award, except by consent of employees party to said arbitration. In its decision the Arbitration Board shall include among other matters decided the provisions set forth in Section 5 below for protection of employees adversely affected as a result of the discontinuance of any existing runs or the establishment of new runs resulting from application of this rule.

4. Interdivisional, interseniority district, intradivisional or intraseniority district service and/or agreements in effect on the date of this Agreement are not affected by this Article VIII.

5. Every employee adversely affected either directly or indirectly as a result of the application of this rule shall receive the protection afforded by Sections 6, 7, 8, and 9 of the Washington Job Protection Agreement of May 1936, except that for the purposes of this Agreement Section 7(a) is amended to read 100% (less earnings in outside employment) instead of 60% and extended to provide period of payment equivalent to length of service not to exceed 5 years and to provide further that allowances in Sections 6 and 7 be increased by subsequent general wage increases.

Any employee required to change his residence shall be subject to the benefits contained in Sections 10 and 11 of the Washington Job Protection Agreement and in addition to such benefits shall receive a transfer allowance of four hundred dollars ($400.00) and five working days instead of the "two working days" provided by Section 10(a) of said agreement. Under this Section, change of residence shall not be considered "required" if the reporting point to which the employee is changed is not more than 30 miles from his former reporting point.

If any protective benefits greater than those provided in this Article are available under existing agreements, such greater benefits shall apply subject to the terms and obligations of both the carrier and employee under such agreements, in lieu of the benefits provided in this Article.

6. This rule shall become effective September 1, 1971, except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before August 1, 1971.

MAY 21 1986

VICE PRESIDENT - LABOR RELATIONS

BEFORE THE
ARBITRATION BOARD

Constituted Pursuant to a National Mediation Board Arbitration Agreement Made and Entered Into On April 15, 1986

By and Between

CERTAIN CARRIERS REPRESENTED BY THE NATIONAL CARRIERS' CONFERENCE COMMITTEE	)	Arbitration Board No. 458
and	)	
CERTAIN OF THEIR EMPLOYEES REPRESENTED BY THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS	)	National Mediation Board

(National Mediation Board Case Nos.
A-10712 and A-11472)

AWARD

Washington, D.C.
May 19, 1986

This award is made in conformance with the Railway Labor Act pursuant to a voluntary arbitration agreement executed by certain carriers represented by the National Carriers' Conference Committee (Carriers) and the employees of these carriers represented by the Brotherhood of Locomotive Engineers (BLE). That Agreement was executed on April 15, 1986, under the auspices of the National Mediation Board. A copy of the Arbitration Agreement is attached as Appendix "A".

William J. Wanke and Charles I. Hopkins, Jr. were duly designated by the BLE and the Carriers respectively, as members of the Arbitration Board. Rodney E. Dennis was appointed by the National Mediation Board to serve as Chairman of this Board. Such designations and appointment were made in accordance with the Railway Labor Act and the terms of the parties' Arbitration Agreement. Roland Watkins, Esq. was assigned by the National Mediation Board (NMB) to serve as Special Assistant to the Board. Mr. Watkins provided valuable assistance to this Board during the entire proceeding.

Background

The BLE represents approximately 25,000 Locomotive Engineers, or about 10% of the total number of represented employees on the Nation's railroads. On some carriers, the BLE represents Locomotive Firemen, Hostlers and Hostler Helpers.

The railroad companies in this dispute are represented by the National Carriers' Conference Committee.

On January 3, 1984, the BLE in accordance with Section 6 of the Railway Labor Act, served notice on the individual railroads of their demands for changes in the collective bargaining agreements. Another notice dealing with health benefits was served by the BLE on January 17, 1984. The Carriers served their notices on or about January 23, 1984.

The first formal meeting occurred on May 16, 1984. After several months of negotiations, the Carriers, on August 27, 1984, applied to the NMB for its mediatory services. The application was docketed as NMB Case No. A-11472. During the course of negotiations, the parties agreed to include in these negotiations the BLE's October 20, 1979 Section 6 notice regarding locomotive design which dispute had been previously docketed as NMB Case No. A-10712.

Mediation was undertaken by NMB Chairman Walter C. Wallace and NMB Staff Mediation Director E. B. Meredith. They met with the parties on October 23, 1984, and on numerous occasions throughout the following year. On December 18, 1985, the Carriers and the BLE reached an agreement.

The December 18, 1985 Agreement was placed before the appropriate BLE membership for approval. The Agreement was not ratified.

BLE International President John F. Sytsma appointed a new negotiating committee to meet with the Carriers. Mediation service was provided by NMB Member Charles L. Woods and Mr. Meredith. The parties met on March 12, 13, 14 and March 17, 1986, but were unable to resolve their differences.

On March 24, 1986, the NMB, in accordance with Section 5, First, of the Railway Labor Act, offered the parties the opportunity to submit their dispute to arbitration. The Carriers accepted the NMB's proffer of arbitration on March 25, 1986, and the BLE accepted on April 2, 1986. On April 15, 1986, the parties executed an Arbitration Agreement pursuant to which this Board was created.

The Board commenced hearings on May 1, 1986. The hearings resumed on May 2, 3, 5 and 6, 1986. The parties were given full opportunity to present contentions, oral testimony and documentary evidence. The transcript of the proceeding consists of 834 pages. The BLE submitted 33 exhibits and the Carriers submitted 13 exhibits.

After a full consideration of the evidence and arguments of the parties and upon the entire record, the Arbitration Board makes the following findings and Award. These findings and Award represent the majority opinion of the Board. Thus, hereinafter when we refer to the Board we are referring to the views of the majority of the Board members.

DISCUSSION AND FINDINGS OF THE MAJORITY OF THE BOARD

In this Board's judgment, the central issue before it is the extent, if any, to which its Award should be based on the parties' tentative agreement initialed on December 18, 1985. That tentative agreement comprehends, among other things, changes in the method of compensation, divisions of work, work limitations and pay relationships. The parties have taken sharply diverging positions on this issue. The BLE has contended that the tentative settlement is seriously flawed and should be disregarded by the Board in fashioning its Award. Instead, the BLE urges the Board to issue an Award based essentially on the Brotherhood's relevant Section 6 notices. In contrast, the Carriers have argued that the tentative settlement, subject to certain modifications, should constitute the Board's Award--notwithstanding their conviction that it falls far short of the relief to which they are entitled. The Carriers have cited a host of reasons to support their position relying primarily on the findings of Emergency Board 208, the UTU Agreement, and the current transportation economic environment brought about by deregulation.

For the reasons that follow and based on our consideration of the entire record of the proceedings, we conclude that the parties' tentative agreement, modified as described below, should serve as this Board's award.

In the Board's judgment, the principal consideration supporting adoption of the tentative agreement is the UTU Agreement of October 31, 1985. That agreement covers almost the identical set of issues and governs employees peforming the same work; i.e. railroad operating employees. In fact, the UTU Agreement applies to ground service employees as well as engineers and firemen, the employee classes represented by the BLE. The commonality of interests that these two groups of employees share is obvious. It is equally obvious that harmony among the pay and work rules governing these two groups must exist. As a practical matter, efficient rail operations demand no less.

However, there are a number of other compelling justifications for adopting the parties' tentative agreement as the basis for this award. Principally, we refer to the history of efforts to bring about change in the pay and work rules of operating employees. This history exceeds a generation. It is rich and full in study, reports and recommendations. But, until the October 31, 1985 UTU Agreement, it produced little in the way of change. There is no need to recite in depth this history. It has been lived by the participants in this proceeding and is in the record for historians. It is enough to note that the parties themselves designed through agreement in the last round a Study Commission that reviewed in depth this record and charted a full course of change.

We must be mindful, too, of the report of Emergency Board 208 issued under circumstances not unlike those that surround this Board. By that we mean that Emergency Board 208 was established after the original UTU Agreement was rejected. Thus, in a similar context, Emergency Board 208 issued a strong endorsement of the parties' efforts. We note that Board's views:

> Accordingly, this Board has concluded that there should be no changes in the resolution of issues [in the tentative agreement] other than the Firemen/Hostler Issue and those modifications to be set forth in the Board's recommendations which follow.
>
> It should be further recognized that the parties made substantial compromises in order to reach agreement. The Carriers, with the report of the

> Study Commission, could have argued that the rule changes recommended by the Study Commission should have been adopted en toto. They did not. The Agreement bears witness to the compromises made. (Report of Emergency Board No. 208, p. 14)

This Board shares that opinion.

We conclude as well that the tentative agreement should be adopted because it represents the parties' best efforts to make the pay and work rule changes deemed necessary to meet the challenges of deregulation. This proceeding is replete with exhibits demonstrating that the railroad industry must continue to improve its service and lower its costs if it is to remain a significant force in today's deregulated environment. Rather than deferring these problems yet again, the parties accepted the challenge and negotiated changes that they believe are necessary for the industry's future health. We can perceive no justification for this Board to disturb the parties' judgments in that area.

With the assistance of representatives of the National Mediation Board, they reached a comprehensive, voluntary settlement that incorporated a number of work and pay rule changes that had long been urged by various emergency boards and other distinguished bodies as both warranted and necessary. In return, the carriers made substantial compromises and agreed to retain various rules of special significance to the BLE. The tentative agreement is a well-balanced settlement that reflects the legitimate concerns and needs of both parties as expressed during their hundreds of hours of negotiations. Moreover, it represents the considered views of the parties' experienced negotiators, who have spent their careers in studying these issues, on the work and pay rule changes that must be made.

We believe the parties' negotiators, who had the courage and foresight to make the far-reaching changes contained in the tentative agreement deserve substantial credit for their achievement. We are unwilling to discard the fruits of those efforts and substitute our judgment for the collective wisdom of the parties' negotiators. This Board is convinced that its rejection of the tentative agreement would seriously damage the integrity of the bargaining process and weaken, if not destroy, the parties' ability to bargain successfully in the future.

In short, the realities that confront this Board permit no other conclusion. The distinguished authorities who have reviewed these issues have unanimously found the need for change compelling. Furthermore, the new competitive environment brought on by deregulation calls for no less. As noted by Emergency Board No. 208:

> The parties are well aware that the trucking industry, in particular, is making constant and inexorable inroads on the market share of the Nation's rail carriers. In that situation, it is understandable that the negotiators for both the Carriers and the UTU made significant changes in established rules and working conditions in order to halt the continued deterioration of market share and loss of railroad jobs. (Report of Emergency Board No. 208, p. 14)

We suggest that those who may be disappointed with our conclusion consider the consequences of rejecting this tentative agreement and recommending an arrangement more to the Brotherhood's liking. Such a result would destroy the successful bargaining that occurred in these negotiations, undermine the UTU contract, ignore the existence of deregulation, disregard the need for the industry to become more competitive and threaten the collective bargaining relationship that has been constructed with obvious care.

Therefore, for the reasons we have outlined, this Board has decided to adopt the parties' December 18, 1985 tentative agreement as its Award, subject to the modifications described below.

A. Pay Rule Amendments

The tentative agreement, if ratified, would have gone into effect on February 1, 1986. The carriers have contended that such agreement's pay and work rule changes, if awarded by the Board, cannot be implemented any earlier than June 1, 1986, and that they should not be required to bear the costs associated with this delay in implementation because they played no part in creating it. Accordingly, they have proposed adjustments to certain pay provisions of the settlement that are designed both to compensate the carriers for such delay and, as intended by the parties, to link the effective dates of the agreement's pay increases with commencement of work rule relief. We conclude that there is substantial evidence in the record to support these contentions and that certain adjustments are appropriate. Accordingly, the Award amends the tentative agreement as follows:

1. The first two general wage increases, originally scheduled for February 1, 1986, shall become effective on July 1, 1986.

2. The increase in the meal allowance shall become effective on July 1, 1986 rather than February 1, 1986.

3. The initial increase in the engineer's lonesome pay shall become effective on July 1, 1986 rather than February 1, 1986.

4. The third general wage increase shall be effective October 1, 1986, rather than July 1, 1986 as provided in the tentative agreement. The first COLA provision shall be similarly deferred to October 1, 1986.

The remaining modifications in this area proposed by the carriers are rejected. Accordingly, the maximum amount of the lump sum shall remain at $565, and the effective dates of the 104-mile basic day and the two-thirds reduction of the engine exchange arbitrary shall be July 1, 1986.

B. Work Rule Amendments

1. New Employees. Under both the UTU Agreement of October 31, 1985 and the tentative BLE agreement, employees hired after the date of such contract are treated differently from those hired prior to such date with respect to the application of a number of pay and work rules. In the UTU Agreement, the date used to define new employees for this purpose is November 1, 1985, but in the BLE tentative settlement, the applicable date was February 1, 1986. The carriers have demonstrated on the record that, unless eliminated, this variation could produce anomalous results because the same employee could be a "new employee" under the UTU Agreement and a "present employee" under the BLE settlement. We are persuaded that this anomaly should be corrected by conforming the dates in the two contracts. Accordingly, the tentative settlement is amended to provided that, for this purpose, a new employee shall be one whose seniority in engine or train service is established on or after November 1, 1985.

2. Firemen. The same considerations discussed in the preceding paragraph require a modification to the firemen provisions of the tentative agreement. Both the UTU Agreement and the tentative BLE settlement contain provisions establishing certain rights for firemen. The nature of those rights depends on whether an employee established fireman (helper) seniority before or after a particular date. In the UTU Agreement, such date is November 1, 1985, while in the BLE tentative settlement the date was stated as either February 1, 1986 or the date of the agreement. Again, the disparity in dates between the two contracts could produce anomalous results that cannot be justified. There is simply no reason to treat two firemen who established seniority on the same day differently with respect to

work opportunities solely because they are covered by contracts negotiated months apart. Accordingly, the firemen provision in the BLE tentative settlement is amended to conform to the UTU Agreement by substituting November 1, 1985 for February 1, 1986 or the date of the agreement in the appropriate places.

3. Final Terminal Delay. In the tentative settlement, the question of the point at which final terminal delay (FTD) would begin was left to arbitration, and a grace period of 60 minutes was established. In this proceeding, the carriers have contended that this Board should fix the appropriate point, and that such point should be identical to the FTD point established in the October 31, 1985 UTU Agreement.

The organization opposed the carriers request. It argues that, because conditions vary widely at terminals, a host of local agreements have been negotiated that differ widely with respect to the defined FTD point. In addition, it contends that such agreements typically provide grace periods of only 30 minutes before FTD becomes payable. The BLE is willing to extend the grace period to 60 minutes, but contends that no other changes should be made in the existing FTD rules.

The record supports the following conclusions. The Carriers and the Brotherhood established a national FTD rule for BLE represented employees in freight service in an August 11, 1948 Agreement. That rule created a 30-minute grace period and established a defined point at which FTD would commence. That provision also gave the BLE the right to preserve existing FTD rules on individual railroads, an option apparently exercised on a number of carriers. Because such local agreements vary with respect to the defined FTD points, at present there is no uniform rule applicable to BLE employees with respect to the point at which FTD commence. However, the majority of agreements provide that final terminal delay will begin at either the main track switch to the yard or to the track in which the train is left.

In their tentative agreement, the parties exhibited a desire to establish, through arbitration, a uniform national definition of the point at which FTD would commence. The Board believes such a rule would serve the interests of both the carriers and the organization. Engineers working under separate contracts would be placed on the same footing. The burdens now placed on certain railroads by local FTD rules that are more restrictive than those existing on other railroads would be removed, facilitating their ability to compete. These considerations have convinced this Board that a national FTD rule is appropriate and should be included in our Award.

In fashioning such a rule, we begin by recognizing the underlying purpose of the rule, namely the encouragement of prompt yarding of trains arriving at their final terminal yards. Thus, as a logical matter FTD should not commence until the train arrives at the switch, or signal governing same, used in entering the yard where the train is to be left or yarded. Under such a formulation the concern addressed by the rule, avoidance of undue delay in the yarding of trains due to unnecessary yard delays, would be served. Based on our review of the record, such a rule would not be a radical break with existing practice. The carriers have produced evidence indicating that (i) a majority of agreements covering a majority of employees provide that FTD shall begin either at the main track switch to the yard or the switch to the track where the train is to be left; and (ii) almost 75 percent of all crew trips have FTD points located within a mile of such switches.

Accordingly, the tentative settlement's FTD provision is amended to provide that FTD shall be computed from the time engine reaches the switch, or signal governing same, used in entering final terminal yard where train is to be left or yarded until finally relieved from duty, provided, that if a train is deliberately delayed (as defined in a letter attachment) between the last siding or station and such switch or signal, the time held at such point will be added to any time calculated as FTD. The grace period shall remain at 60 minutes as provided in the tentative settlement.

C. Miscellaneous

There are other minor changes adopted in this Award. They have all been discussed by the members of this Board. They do not represent significant change. Rather, they reflect for the most part clarifications of various provisions (a process that had been initiated by the parties themselves during the period the tentative agreement was subject to the ratification process) and certain adjustments in the contract and side letters (including four additional side letters) that appeared appropriate in the light of the record and discussions of the Board. For example, the Board has resolved what appeared to be a conflict between the parties as to the application of the Interdivisional Service Article of the tentative agreement. It is the Board's opinion that an exception should be made so that special overtime rules in existing interdivisional service agreements that are more favorable to the employees should continue to apply to employees with seniority in engine service prior to November 1, 1985 when such employees are working on interdivisional runs established prior to June 1, 1986. Other changes were made because of the time that has elapsed since the tentative agreement was initialed or in order to be consistent with the parties' style in formalizing their agreements.

D. Effective Dates

Except as otherwise specifically provided herein, those provisions of the tentative agreement that were to become effective on either February 1, 1986 or the date of the agreement shall become effective on June 1, 1986.

We believe that the effective dates established in this Award are consistent with the intent of this Board to implement the major work rule changes as soon as practicable. Certain rules such as Final Terminal Delay and Deadheading are to be effective on July 1, 1986 so as to be contemporaneous with the initial wage increases. The carriers earnestly pressed for June 1, which would have been the earliest possible effective date. This was based on the cost to the carriers of the delay in implementing the work rules because of the BLE's rejection of the tentative agreement which, the carriers maintained, would be compounded by delaying the effective date to July 1. Nevertheless, the Board concludes that given a June 1 effective date of this Award, it is appropriate that the effective date of the two rules in question and the initial pay increases be July 1, 1986. The cost to the carriers of delayed implementation of the rules is at least partially recompensed by the July 1, 1986 date of the initial wage increases that would have been effective February 1 under the tentative agreement and by delaying the third general increase (and COLA, if any) to October 1, 1986.

In accordance with the foregoing, the majority of this Board makes its Award as follows:

A W A R D

1. The request of the Brotherhood dated October 20, 1979, January 3, 1984, and January 17, 1984, copies of which are affixed to the Arbitration Agreement as Exhibits B, C and D, respectively, and all other proposals advanced during mediation or before this Board, are denied in their entirety except as otherwise provided in paragraph 3.

2. The request of the Carriers dated January 23, 1984, a copy of which is affixed to the Arbitration Agreement as Exhibit E, and all other proposals advanced during mediation or before this Board, are denied in their entirety except as otherwise provided in paragraph 3.

3. The tentative agreement and attached letters that were initialed by the parties on December 18, 1985, with certain modifications discussed above, are confirmed as our Award. A copy of such agreement and such letters that include these changes is affixed hereto as Appendix B and shall constitute in its entirety this Board's Award. This Board hereby finds that its Award constitutes a full and complete response to the specific questions submitted to it.

4. The Award shall become effective on the date issued and shall remain in effect in accordance with its terms until changed pursuant to the provisions of the Railway Labor Act.

5. The Award shall be final and conclusive upon the parties to the Arbitration Agreement as to the facts determined by the Award and as to the merits of the controversy decided. The Award shall be applied in the same manner as if reached through agreement and signed in the parties' customary manner.

Issued at a meeting of the Arbitration Board on May 19, 1986.

Rodney E. Dennis
Chairman of the Arbitration Board

Charles I. Hopkins, Jr.
Carrier Member of the
Arbitration Board

I dissent
W. J. Wanke
W. J. Wanke
Organization Member of the
Arbitration Board

Dissent attached

Dissent to Arbitration Award No. 458
by Organization Member W. J. Wanke

The Brotherhood of Locomotive Engineers strongly dissents to the Award of the majority members of Arbitration Board No. 458. This Award can not constitute a basis for disposition of the outstanding Section 6 Notices and future collective bargaining. The Award can only constitute a basis for continual dissension, dispute and endless argument, because it does not address the needs of the Brotherhood of Locomotive Engineers or the members we represent. This conclusion is supported by the fact that the membership overwhelmingly rejected the tentative agreement, for the members felt that due to the skill, responsibility and increased productivity of locomotive engineers they deserved better treatment from the railroads.

The Brotherhood of Locomotive Engineers has not been willing to accept arbitration under the Railway Labor Act since 1953, at which time they last submitted a case to arbitration. That report completely ignored the requests of this organization and went strictly by the Carriers' recommendations. This Board has done likewise! The Brotherhood of Locomotive Engineers has traditionally been a conservative organization and has prided itself on being able to reach collective agreements with the Nations' railroads based on the concept of quid pro quo. However, recent history has shown that the railroads are no longer willing to negotiate on these historic principles, but instead are trying to whipsaw their employees, specifically locomotive engineers, into concessionary agreements in the guise of competing with non-union truck drivers. We stressed our case before Arbitration Board No. 458 with three (3) days of testimony and hundreds of pages of supporting data through thirty-three (33) Exhibits. We went so far as to offer the Board as a Rebuttal Exhibit a proposed Award with the hope that the Board would finally address the specific needs of our members. This was not the case, but, as with the Study Commission the Board has seen fit to solely address the demands of the Carriers and has completely ignored the documentation and testimony of this Brotherhood. The Carriers further supported this contention during their testimony when they only argued two main areas, that pattern agreements should be adhered to no matter what they cost, but then only insofar as it meets the Carriers demands. For example, the Carriers inferred that the members represented by this organization must be <u>punished</u> for their rejection of the tentative agreement and they must never think that they can get more through arbitration than they can through collective bargaining. This ideology completely flies in the face of Sections 7 and 8 of the Railway Labor Act, as amended,

which specifically provide for arbitration to resolve disputes through peaceful means. As previously stated, this organization has always been a conservative organization and has exercised self-help very seldom; however, when this Brotherhood accepted binding arbitration, we did so with the hope that Arbitration Board No. 458 would finally give us the forum in which to address the needs of our members. This obviously has not occurred and will set back labor negotiations many years as the Carriers will continue to insist on bargaining with a single organization with whom they feel they can make the largest gains for the industry and then use the "pattern settlement" for all other organizations.

This organization clearly believes that we have the right to negotiate our own collective bargaining agreement irrespective of what any other labor organization agrees to with the nations' railroads. If a labor organization such as the Brotherhood of Locomotive Engineers no longer has the right to negotiate its own agreements, Arbitration Board No. 458 will set back labor-management relations decades and reaffirm that the only gain that can be made for labor is through adversary means.

Another concept that must be addressed in this dissent is the attempt by the Carriers to eliminate retroactivity from collective bargaining agreements. This issue was addressed before Arbitration Board No. 458 but the Board decided to punish the members of this organization by denying them the retroactivity provisions set forth in the tentative agreement. It is the organization's position that if there is no retroactivity encompassed in a collective bargaining agreement there will be no incentive in the future for the nations' railroads to make or reach a collective bargaining agreement with all expedition as required by Section 2 second. In view of the fact existing agreements remain in effect until a new one is reached there would be no impetus for those railroads to arrive at a settlement. Once again, therefore, the nations' rail carriers are dealt a full-hand to not bargain in earnest. Nothing can force them to so bargain and they, in turn, have made significant gains through their non-bargaining posture.

Moreover, any settlement of a labor dispute must be just and equitable to the employees involved. The Award of this Board violates that principle in denying the employees represented by this organization retroactive wage increases. Through this action, the differential between the locomotive engineers and the employees represented by the United Transportation Union will continue to draw apart. Further, the employees represented by the Brotherhood of Railway and Airline Clerks, who settled their dispute during the pendency of this arbitration proceeding, obtained retroactivity periods prior to those contained in the Agreement reached between the nations' railroads and that

organization. There appears no reason or justification to distinguish the employees represented by BLE from those represented by BRAC. Finally, the Award of this Board fails to recognize that there are ten (10) additional organizations who have as yet not settled with the nations' railroads. Does this mean that these employees who settled at a later date than the employees represented by the BLE will nevertheless receive retroactivity to July 1, 1984? Obviously, it would not be fair to deny the employees represented by the ten (10) organizations of retroactivity. Conversely, it is totally unfair and inequitable to deny the employees represented by this organization of the same right. In sum, denying the members represented by the Brotherhood of Locomotive Engineers retroactivity and further denying those employees of the other organizations who have not yet reached a settlement of their dispute of retroactivity violates the very basic principle of pattern settlement urged by the carriers to this Board. Pattern settlements require that the employees of all organizations have at least the same basic treatment of basic matters.

While the employee member of Arbitration Board No. 458 could address each specific issue which the Brotherhood feels is unfair for its members, obviously nothing will be gained at this point in doing so. However, this dissent must make all parties aware of the fact that the Railway Labor Act is clearly not functioning in the manner in which it was intended and that if labor and management cannot peacefully reach negotiated agreements, the remaining provisions of the Act will not serve to preclude the use of self help. As previously stated, this is clearly the result following this erroneous Award in which only Carrier demands were addressed and labor's requests were completely ignored. This will fully indicate to the next generation of labor negotiators, as well as members of this organization, that the only way to have our case fully addressed is to force a strike in order to call national attention to the dispute and hope for fairness and equity to be derived through such means.

In summation, I would like to be able to indicate that Arbitration Board No. 458 has finally recognized the importance of the craft of employees the Brotherhood of Locomotive Engineers represents but this is not to be. Instead, it has been nothing but an exercise in futility and frustration on the part of this organization in our sincere effort to cooperate with the nation and the nations' railroads in trying to find a peaceful resolution to this dispute. Once again, we have determined that we have no forum in which our case can be justly and fairly heard. For these cogent reasons, I have no recourse but to dissent to the entire Award of Arbitration Board No. 458.

W. J. Wanke
Organization Member of the
Arbitration Board

(c) The Committee shall be convened as promptly as possible and meet periodically until all of the matters that it considers are resolved. However, if the Committee has not resolved all issues by August 1, 1986, the neutral chairman will make recommendations on such unresolved issues no later than September 1, 1986. Upon voluntary resolution of all issues or upon issuance of recommendations by the neutral chairman, whichever is later, the Committee shall be dissolved.

(d) The proposals of the parties concerning health benefits (specifically, the organization's proposals dated January 17, 1984, entitled "Revise Contract Policy GA-23000" and the carriers' proposals dated on or about January 23, 1984, entitled "C. Insured Benefits") shall not be subject to the moratorium provisions of this Agreement, but, rather, shall be held in abeyance pending efforts to resolve these issues through the procedure established above. If, after 60 days from the date the neutral Chairman makes his recommendations, the parties have not reached agreement on all unresolved issues, the notices may be progressed under the procedures of the Railway Labor Act, as amended.

(e) Agreement reached by the parties on these issues will provide for a contract duration consistent with the provisions of Article XVIII of the Agreement, regardless of whether such agreement occurs during the time that the proposals of the parties are held in abeyance or subsequent to the time that they may be progressed in accordance with the procedures of the Railway Labor Act as provided for above.

ARTICLE XVI - INFORMAL DISPUTES COMMITTEE

Disputes arising over the application or interpretation of this agreement will, in the absence of a contrary provision, be referred to an Informal Disputes Committee consisting of an equal number of representatives of both parties.

If the Committee is unable to resolve a dispute, it may consider submitting the dispute to arbitration on a national basis for the purpose of ensuring a uniform application of the provisions of this Agreement.

ARTICLE XVII - LOCOMOTIVE DESIGN, CONSTRUCTION AND MAINTENANCE

Section 1 - Maintenance Of Locomotives

The parties recognize the importance of maintaining safe, sanitary, and healthful cab conditions on locomotives.

INFORMAL DISPUTES COMMITTEE

In the Matter of:	)	
	)	
BROTHERHOOD OF LOCOMOTIVE ENGINEERS,	)	Pursuant to Article XVI of the May 19, 1986 Arbitrated National Agreement
Organization,	)	
	)	
and	)	
	)	
THE NATIONAL CARRIERS' CONFERENCE COMMITTEE,	)	ISSUES ONE THROUGH SEVEN
	)	
Carriers.	)	

MEMBERS OF THE COMMITTEE

Organization's Member: Larry D. McFather
Carriers' Member: Charles I. Hopkins, Jr.
Neutral Member: John B. LaRocco

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INTRODUCTION

The parties established an Informal Disputes Committee pursuant to Article XVI of the May 19, 1986 Award of Arbitration Board No. 458. This Committee was duly constituted in accord with Article XVI as well as the Carriers' correspondence of December 9, 1986 and the Organization's January 22, 1987 response. The Committee resolved many questions arising under the May 19, 1986 Arbitrated National Agreement but some issues have been referred to arbitration pursuant to the second paragraph of Article XVI which reads:

> "If the Committee is unable to resolve a dispute, it may consider submitting the dispute to arbitration on a national basis for the purpose of ensuring a uniform application of the provisions of this Agreement."

The Informal Disputes Committee convened in Washington, D.C. on January 29, 1987 and March 18, 1987 to consider seven issues regarding the interpretation and application of the 1986 Arbitrated National Agreement.

The Committee notes that although the 1986 National Agreement was consummated through binding interest arbitration, most if not virtually all, the provisions were originally drafted by the Carrier and Organization negotiators. Thus, the parties' intent and the negotiating history are critical to properly interpreting the terms of the Agreement.

ISSUE NO. 1

Should an allowance paid for an engineer protecting any assignment which has a guarantee be included in the straight time hours worked if such individual was rested and available for service?

Pertinent Agreement Provision

ARTICLE III - LUMP SUM PAYMENT, Paragraphs 1 and 2.

> "A lump sum payment, calculated as described below, will be paid to each employee subject to this Agreement who established an employment relationship prior to the date of this Agreement and has retained that relationship or has retired or died.
>
> "Employees with 2,150 or more straight time hours paid for (not including any such hours reported to the Interstate Commerce Commission as constructive allowances except vacations and holidays) during the period July 1, 1984 through July 31, 1985 will be paid $565.00. Those employees with fewer straight time hours paid for will be paid an amount derived by multiplying $565.00 by the number of straight time hours (including vacations and holidays, as described above) paid for during that period divided by 2,150."

Discussion

There are many types of constructive allowances but a typical example is where an engineer protects an assignment which operates only five days a week but carries a seven day a week guarantee. The question at issue concerns whether or not the guaranteed payments for days when the engineer did not actually perform service should be included in computing straight time hours to determine if the engineer satisfies the eligibility requirements for a full lump sum payment.

The parenthetical phrase in paragraph two of Article III defines "straight time hours paid for." The language is

identical to the instruction for completing Column 5 of Form B of the Interstate Commerce Commission's "Rules Governing the Classification of Railroad Employees and Reports of Their Service and Compensation" dated January 1, 1951. The reference to Interstate Commerce Commission reports in the parenthetical expression confirms that the drafters of Article III intended to exclude from the straight time hours calculation compensation reported to the ICC as constructive allowances.

The Column 7 description on ICC Wage Statistic Form B specifically mentions deadheading, safety meetings and vacations as examples of constructive hours. In Article III, paragraph two, the parties expressly excepted vacation and holiday pay from the definition of a constructive allowance. If the parties had intended to similarly count guaranteed payments towards total straight time hours (for the purpose of ascertaining the amount of the lump sum payment), the parties could easily have added such an exception. The specific listing of two exceptions is a strong manifestation that the parties did not intend to create any additional exceptions. A guarantee associated with an assignment or extra list is more analagous to an employee protective payment or payment for being called but not used rather than compensation for actual service.

Based on the clear contract language in Article III, Paragraph 2, the answer to the Issue is "No." However, the Organization is concerned that the Carriers might engage in creative reporting methods to increase the number of hours classified as constructive allowances and to simultaneously

decrease straight time hours used to calculate the amount of the lump sum payment. This matter should be addressed on a case by case basis. Suffice it to state that in the record before us, we do not find any evidence that the Carriers are deviating from their past ICC reporting practices.

Answer to Issue No. 1: No.

DATED: March 31, 1987

Larry D. McFather
Organization's Member

Charles I. Hopkins, Jr.
Carriers' Member

John B. LaRocco
Neutral Member

ISSUE NO. 2

Are mileage limitations/regulations adjusted proportionately to the mileage increase in the basic day?

Pertinent Agreement Provision

ARTICLE IV - SECTION 2(a) - MILES IN BASIC DAY

"(a) The miles encompassed in the basic day in through freight and through passenger service and the divisor used to determine when overtime begins will be changed as provided below:

	Through Freight Service		Through Passenger Service	
Effective Date of Change	Miles in Basic Day	Overtime Divisor	Miles in Basic Day	Overtime Divisor
July 1, 1986	104	13.0	104	20.8
July 1, 1987	106	13.25	106	21.2
June 30, 1988	108	13.5	108	21.6

Discussion

As in Issue No. 1, the clear contract language controls the outcome of this question even though to some extent, the result is contrary to the parties' overall intention to avoid reducing the direct earnings of any presently employed engineer.

Section 2(a) of Article IV provides for incremental increases in basic day miles through June 30, 1988. There is no language in Section 2 or the remainder of Article IV which provides that the changes in the basic miles for through freight and through passenger service would automatically and proportionately raise the mileage limitation/regulations in effect under the scheduled agreements on the various railroads.

While we do not need to resort to extrinsic evidence to answer this issue, the bargaining history supports the plain meaning of the contract language. During negotiations, the

Carriers proposed that mileage limits be discontinued. At the bargaining table and before Arbitration Board No. 458, the Organization opposed any deviation from the mileage limits. The Organization pointed out that the limitations vary greatly from railroad to railroad. Moreover, on some railroads it is possible for an engineer to exceed the maximum mileage because the pool service is regulated according to mean miles (between minimum and maximum).

When the parties were considering an increase in basic day mileage for through freight and through passenger service, they could have foreseen the impact such a national rule might have on local rules and regulations. Even though the overall intent of the 1986 Arbitrated National Agreement was to preserve the earnings of a presently employed engineer, the Committee must prudently refrain from tampering with provisions in the schedule agreements. Before Arbitration Board No. 458, the Organization emphasized that the limitations are best addressed on each individual property.

Aside from its adjudicatory function, the parties envisioned that the Informal Disputes Committee would "...provide counsel, guidelines and other assistance in making necessary operational and or agreement rule changes to provide the type service necessary..." to accomplish the goals announced in Side Letter #23. In our advisory status, we urge the parties to formulate a rule on indexing mileage guarantees which, when fairly applied, recognizes that the basic day mileage is gradually increasing. The purpose of the mileage limits is to

insure that the Carriers have adequate, available manpower, to regulate the flow between the engineer and fireman classes and to more evenly distribute earnings so that a small group of senior engineers would not gain excess compensation at the expense of other craft members. Agreeing to a fair and equitable adjustment factor would, in the long run, result in more efficient railroad operations. The parties have several alternative methods for structuring an indexing system so that mileage regulations correspond to the basic day miles. Also, the ratio does not necessarily have to be on a one to one basis. The number of possible formulas is further support for the Committee's decision not to read an implied proportional adjustment into Article IV, Section 2.

While we are answering the question at issue in the negative, we need to comment on a specific dispute which has arisen on the Burlington Northern Railroad (BN). For engineers assigned to guaranteed extra boards, the guarantee equals the money equivalent of 3,250 miles at the minimum through freight rate of pay. (See Article 22, Section C(2)(a) of the former Frisco Schedule Agreement.)

The BN asserts that Article IV, Section 2(a) of the Arbitrated National Agreement lowered the value of one mile. After July 1, 1986, the BN calculates the 3,250 guarantee based on each mile being worth 1/104th of a basic day (currently 108.06). According to the BN, the money equivalent of 3,250 miles is $3,376.75. The Organization computes the value of one mile as 1/100th of the daily rate or $3,513.25 per month. The

record also contains an irreconcilable factual discrepancy over exactly how the BN has been applying Article 22, Section C(2)(b) of the Schedule Agreement. According to the Organization, the BN changed the proration of the monthly guarantees to further reduce engineers' pay. On the other hand, the BN conceded that it initially changed its guarantee claim forms to reflect a different proration system but the BN has reinstituted the proration monthly guarantees in effect before the award of Arbitration Board No. 458.

With regard to the BN dispute as well as disagreements which might arise on any of the signatory railroads, the Committee finds that Article IV, Section 2(a) changed only the basic mileage in through freight and through passenger service. Since Article IV, Section 2(a) did not impliedly raise mileage limitations, the provision cannot be similarly construed as an implied modification of other rules in existing schedule agreements. Therefore, if any railroad believes that wages paid on a guaranteed assignment or extra board should be adjusted to reflect the increase in the basic miles, the particular railroad's justification for the adjustment must be derived from the language (tying the guarantee directly to basic day miles) in its schedule agreement as opposed to any implication flowing from Article IV, Section 2(a) of the 1986 National Agreement.

Answer to Issue No. 2: No.

DATED: March 31, 1987

Larry D. McFather
Organization's Member

Charles I. Hopkins, Jr.
Carriers' Member

John B. LaRocco
Neutral Member

ISSUE NO. 3

Can established Interdivisional Service be extended or rearranged under this Article?

Pertinent Agreement Provisions

ARTICLE IX - SECTIONS 1, 3 AND 5 - INTERDIVISIONAL SERVICE

"Section 1 - Notice

"An individual carrier seeking to establish interdivisional service shall give at least twenty days' written notice to the organization of its desire to establish service, specify the service it proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such service.

* * * *

"Section 3 - Procedure

"Upon the serving of a notice under Section 1, the parties will discuss the details of operation and working conditions of the proposed runs during a period of 20 days following the date of the notice. If they are unable to agree, at the end of the 20-day period, with respect to runs which do not operate through a home terminal or home terminals of previously existing runs which are to be extended, such run or runs will be operated on a trial basis until completion of the procedures referred to in Section 4. This trial basis operation will be applicable to runs which operate through home terminals.

* * * *

"Section 5 - Existing Interdivisional Service

"Interdivisional service in effect on the date of this Agreement is not affected by this Article."

Discussion

The threshold question is whether Carriers may extend or rearrange interdivisional service established prior to the effective date of Article IX of the 1986 Arbitrated National

Agreement. It should be noted that the Article IX, Section 2 conditions attached to interdivisional service are more favorable to the Carriers than the terms and conditions in Article VIII of the May 13, 1971 National Agreement. The second but related issue is whether the conditions under which the interdivisional service was previously established are carried forward with the extended or rearranged interdivisional service made pursuant to notice under Section 1 of Article IX.

The record contains, as an example, a dispute which has arisen on the Southern Pacific Transportation Company. Although the Southern Pacific dispute is pending before Arbitration Board No. 468, the proceeding has apparently been held in abeyance until this Committee can provide the parties with some necessary guidance. Under the auspices of Article VIII of the 1971 Agreement, the Southern Pacific established interdivisional service between San Antonio and Ennis through the away from terminal Hearne on March 26, 1986. Ennis and San Antonio are home terminals. This elongated interdivisional service had been superimposed on preexisting interdivisional service between San Antonio and Flatonia and between Flatonia and Hearne. Now, under the auspices of Article IX of the 1986 Agreement, the Southern Pacific seeks to establish interdivisional service between Dallas and San Antonio and between Fort Worth and San Antonio. The Southern Pacific proposes a two pronged extension of the existing interdivisional service through home terminal Ennis.

In addition to the Southern Pacific example, the Carriers provided other instances where new interdivisional service

overlapped or extended existing interdivisional service pursuant to the 1971 Agreement even though Article VIII, Section 4 of the 1971 National Agreement is substantively identical to Article IX, Section 5 of the 1986 Arbitrated National Agreement. The former provision did not impose a restraint on creating new interdivisional service over territory covered by an existing interdivisional agreement. See Public Law Board No. 3695, Award No. 1 (Seidenberg). During the recent round of national bargaining, the parties were aware of the well entrenched past practice. If they wished to deviate from the past practice, the parties would have written unequivocal language in Article IX, Section 5 to the effect that an extension or rearrangement of present interdivisional service could never be construed as new interdivisional service within the meaning of Article IX. Moreover, Article IX, Section 3 clearly evinces the parties' intent that the Carriers could legitimately extend existing interdivisional service. Section 3 refers expressly to "...previously existing runs which are to be extended..." The parties would not have set up a trial basis procedure for implementing an extended run if the Carriers, in the first instance, lacked the authority to propose an extended interdivisional service. Thus, Section 5 of Article IX does not restrict the Carriers from rearranging or extending existing interdivisional service.

The second question is what shall be the terms and conditions that apply to interdivisional service which is extended or rearranged pursuant to Article IX. The Carriers

argue that Section 5 only applies to interdivisional service which remains absolutely intact. The Organization stresses that the conditions in the existing interdivisional service agreement must be preserved and automatically apply to the extended or rearranged service. In our view, the Carriers' construction of Article IX, Section 5 is too narrow while the Organization seeks an overly broad interpretation of Section 5.

Article IX, like its predecessor contract provision, grants a Carrier the right to serve a notice seeking to establish interdivisional service. The Carrier may subsequently establish or refrain from establishing the proposed service. An arbitrated interdivisional run agreement might apply conditions so onerous the Carrier is deterred from instituting the interdivisional service. Since the discretion is vested in the Carrier, a Carrier may not use Article IX as a pretext for taking advantage of the more favorable conditions set forth in Section 2 of Article IX. Section 5 of Article IX bars a Carrier from proposing only a minor modification in an existing interdivisional run with the motive of procuring the more favorable conditions. Thus, Section 5 preserves conditions on existing interdivisional runs or any proposed extended run that is substantially the same as the existing run where the purposeful objective of the extension is to procure the more beneficial conditions in Article IX, Section 2. In resolving the Southern Pacific dispute, Arbitration Board No. 468 should examine the surrounding circumstances and apply Article IX, Section 5 in a manner consistent with our Opinion.

The Committee concludes that the parties must reach a balanced application of Article IX. The Carriers have the right to establish extended or rearranged interdivisional service and it constitutes new service within the meaning of Article IX unless it is a substantial re-creation of the prior interdivisional service designed solely to obtain the more favorable conditions in the 1986 National Agreement.

Answer to Issue No. 3: Yes to the extent consistent with the Committee's Opinion.

DATED: March 31, 1987

Larry D. McFather
Organization's Member

Charles I. Hopkins, Jr.
Carriers' Member

John B. LaRocco
Neutral Member

ISSUE NO. 4

Is the engineers extra board a guaranteed amount of money or a guaranteed number of miles per day when prorated, and per month when protected for entire month?

Pertinent Agreement Provision

SIDE LETTER 20 - GUARANTEED EXTRA BOARDS, SECTION 2(e).

> "(e) While on an extra board established under this rule, each employee will be guaranteed the equivalent of 3000 miles at the basic through freight rate for each calendar month unless the employee is assigned to an exclusive yard service extra board in which event the guarantee will be the equivalent of 22 days' pay at the minimum 5-day yard rate for each calendar month. All earnings during the month will apply against the guarantee. The guarantees of employees who are on the extra board for part of a calendar month will be pro rated."

Discussion

Expressing the guarantee in mileage terms actually operates to decrease the amount of the guarantee by effectively cancelling out wage increases. From the relevant negotiating history as well as the purpose of a guaranteed extra board, we conclude that the parties did not intend to reduce the guaranteed earnings of an engineer assigned to a guaranteed extra board.

The Organization contends that Section 2(e) is a thirty day guarantee. The agreed upon answer to Question No. 4 conceptually supports the Organization's argument. In the answer to Question No. 4 (which dealt with non-duplicate time payments), the parties concurred that:

> "Where the obvious intent of the parties was to apply a percentage of a basic day (e.g., 50 miles equals 50 percent), such intent shall be continued (50 percent equals 52, 53, or 54 miles depending on effective date of change.)"

Under the Carriers' interpretation, the percentage of basic day compensation accruing to engineers under the guarantee would be equivalent to just 27.78 days of pay when basic day mileage reaches 108 miles. Thus, the overriding intent of Section 2(e) was to fix a guarantee premised on thirty days' basic pay and not to gradually reduce the guarantee through increases in the basic day mileage. Also, extra board engineers protect many classes of service aside from through passenger and through freight service. Yet, those miles are not subject to the increase in the basic day. Our conclusion is slightly at variance with a very literal interpretation of the language in Section 2(e) but the terms must be reasonably applied in light of the parties' intent as well as the agreed upon application of similar contract provisions.

Like Issue No. 2, the Committee emphasizes that it is not adjusting or indexing the 3,000 mile figure to take into account changes in basic day mileage. Rather, the Committee's interpretation of the money equivalent of 3,000 miles at the basic through freight rate is derived from the parties' intent. In essence, the guarantee will be the money equivalent of 3,240 miles at the end of the contract term. We recognize that an engineer on the guaranteed extra board protects all classes of service. Despite the practical effect of our decision, an engineer may not claim the difference in miles between the basic day miles in through freight service and basic day mileage in the

class of service protected.[1] Our decision should not undermine the productivity benefits gained through raising basic day mileage. Similarly, our resolution of this matter is expressly restricted to guaranteed extra boards established under Side Letter 20.

Answer to Issue No 4: See Opinion.

DATED: March 31, 1987

Larry D. McFather
Organization's Member

Charles I. Hopkins, Jr.
Carriers' Member

John B. LaRocco
Neutral Member

[1]The guarantee is still money as demonstrated by the following example. Assume a guaranteed extra board engineer works five days (during one month) in local way freight service with a fireman in the 200,000 lbs. weight on driver bracket. The engineer's actual earnings total $567.00 (5 x $113.40/day). In accord with our disposition of Issues Four and Five, his monthly guarantee amounts to $3,367.20 (30 x $112.24/day). Assuming he does not have any other earnings and was properly on the board all month, the amount due the engineer is $3,367.20 - $567.00 = $2,800.20 as opposed to the money equivalent of 3,120 miles less 500 miles (2,620 miles or $2,827.32).

ISSUE NO. 5

What is the rate of pay to be allowed for the guarantee?

Pertinent Agreement Provisions

SIDE LETTER 20 - GUARANTEED EXTRA BOARDS, SECTION 2(e)

"(e) While on an extra board established under this rule, each employee will be guaranteed the equivalent of 3000 miles at the basic through freight rate for each calendar month unless the employee is assigned to an exclusive yard service extra board in which event the guarantee will be the equivalent of 22 days' pay at the minimum 5-day yard rate for each calendar month. All earnings during the month will apply against the guarantee. The guarantees of employees who are on the extra board for part of a calendar month will be pro rated."

ARTICLE I - SECTION 1(b) - GENERAL WAGE INCREASES

"(b) In computing the increase under paragraph (a) above, one (1) percent shall be applied to the standard basic daily rates of pay applicable in the following weight-on-drivers brackets, and the amounts so produced shall be added to each standard basic daily rate of pay:

Passenger	- 600,000 and less than 650,000 pounds
Freight	- 950,000 and less than 1,000,000 pounds (through freight rates)
Yard Engineers	- Less than 500,000 pounds
Yard Firemen	- Less than 500,000 pounds (separate computation covering five-day rates and other than five-day rates)"

Discussion

Historically, the reason for using the 950,000 to less than 1,000,000 weight-on-driver bracket when calculating the fixed amount of the percentage wage increases in national agreements was to maintain the pre-existing differentials among the various brackets. Thus, Article I, Section 1(b) is merely a formula for

converting a single percentage increase into a uniform money increase for each bracket.

In some schedule agreements, the parties referred to a specific bracket when they desired to apply a higher rate than the minimum through freight rate. Indeed, some local contracts governing guaranteed extra boards provide for a money guarantee based on equivalent miles and the parties expressly agreed to a rate associated with a particular weight-on-driver bracket.

Thus, the words "...basic through freight rate..." means the basic daily through freight rate without any weight-on-driver-additive.

Answer to Issue No. 5: The basic daily through freight rate without any weight-on-driver-additive.

DATED: March 31, 1987

Larry D. McFather
Organization's Member

Charles I. Hopkins, Jr.
Carriers' Member

John B. LaRocco
Neutral Member

ISSUE NO. 6

May a carrier establish Guaranteed Extra Boards at locations where non-guaranteed extra boards presently are in place?

Pertinent Agreement Provisions

SIDE LETTER 20 - GUARANTEED EXTRA BOARDS - SECTIONS 2(a) AND 2(h)

> "(a) Carriers that do not have the right to establish additional extra boards or discontinue an extra board shall have that right."

* * * *

> "(h) No existing guaranteed extra board will be supplanted by a guaranteed extra board under this rule if the sole reason for the change is to reduce the guarantee applicable to employees on the extra board."

A reading of Section 2(a), more particularly the term "additional," reveals some ambiguity. However, paragraph (h) is unambiguous. It limits the Carriers' right to supplant an existing guaranteed extra board only if the underlying reason for the substitution is to reduce guarantees. Paragraph (h) is silent regarding the establishment of guaranteed extra boards at points where non-guaranteed extra boards have already been instituted. Thus, the paragraph (h) limitation is inapplicable to supplanting an existing non-guaranteed extra board with a guaranteed extra board.

We must interpret the adjective "additional" in Section 2(a) to comport with paragraph (h). As the Organization argues, one of the primary purposes of allowing Carriers to establish more extra boards was to set up guaranteed extra boards at

outlying points remote from a supply source. The purpose was consistent with changes in the deadheading rules which made it less desirable for employees to reside at one location and drive to protect sporadic work at an outlying point. From the Organization's viewpoint, the word "additional" means points other than where Carriers already had a right to establish guaranteed extra boards. The Organization specifically contests the Carriers' ability to replace a non-guaranteed extra board with a new guaranteed extra board at supply points. However, only express limits on the Carriers' right to establish additional guaranteed extra boards are in paragraphs (g) and (h). The Organization seeks to amend Section 2(h) to prevent the establishment of guaranteed extra boards at locations where any extra board, either guaranteed or non-guaranteed, presently exists. The most reasonable interpretation of "additional" in Section 2(a) is that Carriers may add guaranteed extra boards restricted only by the express provisos in Paragraphs (g) and (h).

Answer to Issue No. 6: Yes.

DATED: March 31, 1987

Larry D. McFather
Organization's Member

Charles I. Hopkins, Jr.
Carriers' Member

John B. LaRocco
Neutral Member

ISSUE NO. 7

May a carrier establish a Guaranteed Road Extra Board and a Guaranteed Yard Extra Board at a single location where only joint seniority is held?

Pertinent Agreement Provisions

SIDE LETTER 20 - GUARANTEED EXTRA BOARDS, SECTIONS 2(e) AND 2(h)

> "(e) While on an extra board established under this rule, each employee will be guaranteed the equivalent of 3000 miles at the basic through freight rate for each calendar month unless the employee is assigned to an exclusive yard service extra board in which event the guarantee will be the equivalent of 22 days' pay at the minimum 5-day yard rate for each calendar month. All earnings during the month will apply against the guarantee. The guarantees of employees who are on the extra board for part of a calendar month will be pro rated."
>
> * * * *
>
> "(h) No existing guaranteed extra board will be supplanted by a guaranteed extra board under this rule if the sole reason for the change is to reduce the guarantee applicable to employees on the extra board."

Discussion

Section 2(e) permits a Carrier to assign an employee to an exclusive Yard Service Guaranteed Extra Board. The question at issue concerns points where employees hold both yard and road seniority. The first part of our answer presupposes that there is an existing guaranteed extra board at the location.

Severing seniority through the utilization of separate extra boards effectively reduces the earnings of employees who hold joint seniority. If road engineers are required to protect an exclusive Yard Guaranteed Extra Board as well as the

guaranteed extra board covering other classes of service (to maintain joint seniority), they suffer a wage cut contrary to the specific proviso contained in Section 2(h).

The Committee understands that Section 2 of Side Letter 20 gave the Carriers wide discretion in the establishment and operation of guaranteed extra boards in exchange for an acceptable disposition of the long festering dispute over intercraft pay relationship. Nonetheless, the Organization persuasively argued that the exclusive Yard Extra Board alluded to in Section 2(e) was intended to apply primarily to terminal railroad companies where engineers do not hold any road seniority.

To give full force and effect to Section 2(h), the establishment of an exclusive Yard Guaranteed Extra Board is inherently limited to locations where employees do not hold combination road/yard seniority.

The second portion of our resolution to this issue assumes that there is not a presently existing guaranteed extra board at the location where engineers hold joint seniority.

Besides terminal companies, railroads often operate a closed yard where, even though employees are in a joint seniority district, all the assignments at the location are for yard service. If there is not an existing guaranteed extra board at such a yard, there is no problem with establishing an exclusive Yard Guaranteed Extra Board because not only is Section 2(h) inapplicable but also the exclusive board could hardly operate to the detriment of the employees.

Similarly, Section 2(h) does not preclude the establishment of an exclusive Yard Guaranteed Extra Board at joint seniority locations where there is both yard and road work. Nonetheless, it is assumed both boards would be properly and adequately staffed so that the yard board would protect yard work and the road board would protect road work. It is recognized that there may be times when unexpected mark offs or other unpredictable circumstances require even a properly staffed yard board to protect road work and vice versa. However, it is not contemplated that, for example, a road board be persistently understaffed so as to have the effect of reducing guarantees.

Answer to Question No. 7: See Opinion.

DATED: March 31, 1987

Larry D. McFather
Organization's Member
I Dissent

Charles I. Hopkins, Jr.
Carriers' Member

John B. LaRocco
Neutral Member

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

Dissent to Neutral Member J. B. LaRocco's Opinion to Issue No. 7

This issue submitted by the Brotherhood of Locomotive Engineers to Neutral LaRocco asked the following question:

> "May a carrier establish a Guaranteed Road Extra Board and a Guaranteed Yard Extra Board at a single location where only joint seniority is held?"

The whole purpose of the question was to prevent the carrier from restricting an engineer's seniority if such engineer had joint seniority in both yard and road service. The above-quoted question never asked if there was a guaranteed extra board or a non-guaranteed extra board in place. We were concerned about the establishment of a yard board at locations where joint seniority was held. To do so would only restrict the earnings of engineers that hold dual seniority and violates Section 2(h). He even stated this in the decision and I quote, "Severing seniority through the utilization of separate extra boards effectively reduces the earnings of employees who hold joint seniority." He further goes on to state, "To give full force and effect to Section 2(h), the establishment of an exclusive Yard Guaranteed Board is inherently limited to locations where employees do not hold combination road/yard seniority." Neutral LaRocco never answered the question as it was presented.

However, in the second half of Neutral LaRocco's Opinion, he then reverses himself and allows the carrier to establish a road and yard extra board at locations where no guaranteed board exits. The organization fails to see any difference in the two situations. He states that at terminal railroads or railroads that operate closed yards, the establishment of a guaranteed yard extra board would not adversely affect the engineers working thereon, as they have no joint seniority. The organization cannot disagree with this point. However, in the closing paragraph of Mr. LaRocco's Opinion, he contradicts his previous rulings by stating that Section 2(h) of Side Letter 20 "...does not preclude the establishment of an exclusive yard Guaranteed Extra Board at joint seniority locations where there is both yard and road work.", and further goes on to state that under certain conditions it is even proper to use engineers assigned to the lesser guaranteed yard extra board to supplant an exhausted guaranteed road extra board. This is not acceptable to the organization, because it encourages the carrier to keep the road board short and the yard board long.

It is the organization's opinion that Neutral LaRocco clearly went outside of the perimeters of the question asked of him in issuing his Opinion in Issue No. 7. As previously stated, the question was can the carrier establish both a guaranteed road board and guaranteed yard extra

board at a single location where only joint seniority is held. This question clearly did not presuppose any guaranteed extra boards or non-guaranteed extra boards at locations where extra boards are presently established.

In summary, the organization feels the question was sufficiently answered in paragraph 4 of Neutral LaRocco's Opinion which states in part: "...the establishment of an exclusive yard guaranteed extra board is inherently limited to locations where employees do not hold combination road/yard seniority."

Larry D. McFather
BLE Organization Member

rules related to starting times and yard limits for yard crews which are at variance with existing agreements.

(c) A Joint Committee, comprised of an equal number of carrier representatives and organization representatives, shall be constituted to determine whether a bona fide need exists to provide the service. If the Joint Committee has not made its determination by the end of the 14 day advance notice period referenced in Paragraph (b), it shall be deemed to be deadlocked, and the service will be allowed on an experimental basis for a six-month period. If, after the six months have expired, the organization members of the Joint Committee continue to object, the matter shall be referred to arbitration.

(d) If the parties are unable to agree upon an arbitrator within seven days of the date of the request for arbitration, either party may request the National Mediation Board to appoint an arbitrator. The fees and expenses of the arbitrator will be shared equally by the parties.

(e) The determination of the arbitrator shall be limited to whether the carrier has shown a bona fide need to provide the service requested or can provide the service without a special exception to the existing work rules related to starting times and yard limits for yard crews being made at a comparable cost to the carrier.

- - - - - - - -

Nothing in this Article is intended to restrict any of the existing rights of a carrier.

This Article shall become effective November 17, 1991 except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before such date.

ARTICLE X - INTERDIVISIONAL SERVICE

Article IX - Interdivisional Service of the May 19, 1986 Award of Arbitration Board No. 458, is amended as follows:

Section 4(b) of Article IX is renumbered Section 4(c) and a new Section 4(b) is hereby adopted:

> (b) The carrier and the organization mutually commit themselves to the expedited processing of negotiations concerning interdivisional runs, including those involving running through home terminals, and mutually commit themselves to request the prompt appointment by the National Mediation Board of an arbitrator when agreement cannot be reached.

ARTICLE XI - GENERAL PROVISIONS

Section 1 - Court Approval

This Implementing Document is subject to approval of the courts with

PUBLIC LAW BOARD NO. 3965

Parties: Brotherhood of Locomotive Engineers
and
Union Pacific Railroad Co. - Eastern District

Statement of Issue: "Is the Notice dated October 2, 1984, served by the Carries on the BLE under Article VIII of the May 13, 1971 National Agreement proper in view of the fact that an Interdivisional Service Agreement dated December 16, 1971 covering this territory already exists?"

Background: This dispute was precipitated when the Carrier, on October 2, 1984, served a notice on this Organization as well as the UTU that it wished to establish, as of January 1, 1985, interdivisional service between Fremont, Nebraska and North Platte, Nebraska.

The Organization informed the Carrier on October 4, 1984 that its Notice was out of order because engineer interdivisional service already existed in this territory by virtue of a December 16, 1981 Interdivisional Run Agreement. Between November 1, 1984 and September 20, 1985, the parties corresponded and conferred in an effort to resolve the dispute but were unsuccessful. They then agreed to submit this dispute to a public law board for final and binding adjudication.

The contractual antecedents of the dispute are the following:

A. Article VIII of the May 13, 1971 National Agreement captioned "Interdivisional, Interseniority District, Intradivisional and/or Intraseniority District Service (Freight or Passenger) states in part:

> "1. Where an individual carrier not now having the right to establish interdivisional ... freight service, considers it advisable to establish such service, the carrier, shall give at least thirty days written notice to the General Chairman ... of the Brotherhood of Locomotive Engineers ... of its desire to establish such service, specifying the service it proposes to establish and the

"conditions, if any, which it proposes shall govern the establishment of such service.

The parties will negotiate in good faith on such proposal and fair arrangements shall be made in the interests of both parties. Such rights and arrangements shall include but not be limited to the following:

...

3. In the event the carrier and such committee or committees cannot agree on the matters provided for in Section 1(a) ... the parties agree that such dispute shall be submitted to arbitration under the Railway Labor Act, as amended, within 60 days from the date of notice by the carrier of its intent to establish services pursuant to this Article VIII."

B. December 16, 1971 Agreement between Union Pacific Railroad Company - Eastern District and the Brotherhood of Locomotive Engineers pursuant to Article VIII, Interdivisional Service of the National Agreement dated May 13, 1971, which states in part:

"Part I - Establishment of Interdivisional Service.

Section 1. In accordance with Section 1 of Article VIII of the National Agreement dated May 13, 1971 and subject to the provisions of this Part 1, the company may establish interdivisional service as set forth below:

(a) Grand Island, Nebraska will be eliminated as an away-from-home terminal, and engineers on the First and Second Seniority Districts will operate between Council Bluffs, Iowa and North Platte, Nebraska.

i. These runs will be manned by First and Second District Engineers on the basis of the ratio of miles ...

ii. The home terminal for First District engineers assigned to these runs will be Council Bluffs; the home terminal for Second District engineers will be North Platte.

iii. Engineers operating from Council Bluffs to North Platte will be allowed 278 road miles; engineers operating from North Platte to Council Bluffs will be allowed 278 road miles.

Part XII - This agreement shall become effective January 1, 1972 and will remain in full force and effect until changed in accordance with the provisions of the Railway Labor Act .."

C. Interchange Agreement of June 13, 1960 dealing with interchange of complete trains of traffic between the C&NW and Union Pacific at Fremont, Nebraska.

"(3) The crew operating Council Bluffs-Fremont or Fremont- Council Bluffs may handle cars in and out of Council Bluffs or Fremont and may set out or pick up cars at any intermediate point, however, they will not be required to perform any local switching in making such pick-ups or set-outs.

(4) Trains interchanged between the Union Pacific and C&NW will not be handled on a turn-around basis Grand Island-Fremont-Grand Island by pool or assigned crews."

The parties had negotiated the Interdivisional Run Agreement on December 16, 1971, pursuant to the authority of the May 13, 1971 National Agreement, wherein Grand Island was eliminated as the away-from-home terminal for engineers on the First and Second Seniority Districts, and established a 278 mile interdivisional run between Council bluffs and North Platte. A few years earlier, in June 1960, the parties had negotiated an interchange agreement dealing with the interchange of traffic between the C&NW and the UP.

The First District Seniority extends from Council Bluffs to Grand Island, a distance of 145 miles. The Second District Seniority extends from Grand Island to North Platte for a distance of 138.3 miles. Fremont is approximately 39 miles northeast of Council Bluffs and is an intermediate point between Council Bluffs and North Platte.

Carrier's Position

The Carrier stresses that Article VIII of the May 1971 National Agreement did not prohibit it from issuing its October 2, 1984 Notice. It issued the Notice because of the rapid growth of interchange traffic at Fremont. Initially in late 1950 and early 1960's, both the C&NW and it recognized that the schedule between Chicago and the West Coast could be improved by interchanging traffic at Fremont rather than the customary point of Council Bluffs. The parties accomplished this objective by negotiating the 1960 Interchange Agreement. The 1960 Agreement was revised in 1963 dealing with delivery of eastbound traffic to C&NW, and it provided that if the UP road crews delivered complete trains to

the C&NW, they would be allowed five miles.

The Carrier states after the December 1971 Interdivisional Run Agreement, abolishing Grand Island as the away-from-home terminal, crews in service from North Platte to Council Bluffs would deliver their entire train to the C&NW at Fremont, and continue light to Council Bluffs. This crew received the five mile allowance provided for by the May 1963 Agreement. If the train contained cars for Council Bluffs, they were left on the main line while the crew delivered the C&NW portion of the train to the C&NW. Thereafter they took the remaining cars to Council Bluffs.

The Carrier states as a result of work rules relaxation, the C&NW was able to use its roadmen more effectively. In 1980 it was agreed to change the Fremont operation, and rather than deliver trains to the C&NW, the Carrier designated its east and west main lines as exchange tracks. The cars would be left on these designated tracks and then they would be picked up by the interdivisional run crews operating between Council Bluffs and North Platte. The Carrier states the interchange traffic has so increased at Fremont that it is equal to the traffic levels through Council Bluffs.

The Carrier adds that in order to remain competitive with other modes of transportation, it served its October 2, 1984 Notice. It states there is no valid basis to the Organization's objections. The Carrier asserts that the background and history leading to the consummation of Article VIII of the 1971 National Agreement reveals that the Carriers could initially unilaterally establish, arrange or re-arrange interdivisional service subject only to the requirement that mileage be equitably apportioned. However, they lost this right to establish such services without agreement as a result of several NRAB awards.

The Presidential Railroad Commission studied the subject and made its recommendations, and from these recommendations, flowed Article VIII of the 1971 National Agreement.

The Carrier asserts that Article VIII embodies the concept that carriers have a broad latitude to establish interdivisional service and the purpose of Article VIII was to eliminate any restrictions on establishing such service. An examination of Article VIII reveals that the Carrier obtained the relief it sought.

The Carrier stresses that under Article VIII there are no limitations or restrictions imposed upon it as to the service it was seeking to establish by its October 1984 Notice. The Notice was a proper exercise of the contractual rights it possessed under Article VIII.

The Carrier notes that by the December 16, 1971 Agreement, made pursuant to the grant of authority of Article VIII, it established interdivisional service between Cheyenne and Rawlins, eliminating Laramie as a home terminal. However, in 1975 it served notice to establish interdivisional service between Cheyenne and Hanna, a point between Cheyenne and Rawlings. The Carrier asserts that this situation is virtually identical to the instant case. It maintains in that case it was able to enter into an agreement for that purpose even though interdivisional service had been previously established in that territory.

The Carrier denies that the 1960 Interchange Agreement in any way affects its right to establish interdivisional service. The Carrier states that if the 1960 Agreement in any way limited its right to do so, that Agreement was abrogated by the 1971 National Agreement. It stresses that Section 1 of Article VIII granted the Carrier the contractual right to establish interdivisional service.

It notes that the Interchange Agreement was negotiated in 1960, eleven years prior to the 1971 National Agreement. When it served notice to establish the service between Council Bluffs and North Platte, the question of the 1960 Interchange Agreement was not interposed as a bar. The Carrier asserts the parties recognized that its right to establish interdivisional service took precedence over the Interchange Agreement and the latter was abrogated to the extent it interferred with the establishment of the interdivisional service.

The Carrier states that, notwithstanding the fact that the 1960 Interchange Agreement has no legal impact on its October 1984 Notice, the proposed operation at Fremont will have no significant impact on the interchange rule. It asserts that to the extent it will continue to make complete interchange of traffic with C&NW at Fremont, it will continue the agreed-upon mileage allowance. Consequently, the basic intent of the Interchange Agreement will be maintained.

The Carrier urges the Board to uphold its right to establish this service because the historical background and the language of Article VIII of the May 1971 National Agreement permits the Carrier to establish multiple interdivisional service within the same district.

Organization's Position

The Organization states that the Carrier's October 2, 1984 Notice to establish interdivisional service between Fremont and North Platte and return, is improper for two reasons. The first is that there is already an agreement in effect establishing interdivisional service over this same territory, and the second is that the proposed operation would be in conflict with the 1960 Interchange Agreement involving the C&NW RR.

The Organization asserts that the Carrier initially served it with a Notice September 1, 1971, pursuant to Article VIII of the May 13, 1971 National Agreement. This September 1971 Notice initiated negotiations which culminated in the December 16, 1971 Interdivisional Run Agreement. The Organization stresses that a review of the December 16, 1971 Agreement will reveal that it incorporated Section 1a,b,c, of the September 1, 1971 Carrier Notice, and these Sections became Part I, Section 1(a) i, ii and iii of the December 16, 1971 Interdivisional Run Agreement.

The Organization states the cardinal objective which the Carrier sought in this aspect of the Agreement, was to be able to run through from Council Bluffs to North Platte and return, eliminating Grand Island as the away-from-home terminal for both the First and Second Seniority Districts. Since July 1, 1972, the Carrier has operated this particular service as it sought.

The Organization asserts that the Carrier cannot properly utilize the May 1971 National Agreement to change the December 16, 1971 Interdivisional Run Agreement which is now in effect on this property. The December 1971 Agreement clearly established a specific interdivisional run between Council Bluffs and North Platte and return, and the Carrier agreed in Part XII of the December 1971 Agreement that those runs which were specifically provided for in this Agreement, could only be changed in accordance with the requisite provisions of the Railway Labor Act.

The Organization adds the Carrier has recognized this principle in the past. For example, on June 12, 1975, the Carrier wanted to establish interdivisional service between Denver and Rawlins, eliminating Laramie as the away-from-home terminal. The Carrier proposed such service and the Organization agreed. The run became an addendum to the December 16, 1971 Agreement.

However, the Organization notes that the Carrier's action did not constitute a change or alteration to any existing established run, in the manner as did the proposal of the Carrier's Notice of October 2, 1984. The Organization notes furthermore that it voluntarily agreed to the Carrier's action in the Denver-Rawlins run.

The Organization adds the Carrier's reference to the establishment of Hanna-Cheyenne interdivisional service is inapposite to this case. The Organization states that when the coal business developed, the employees wanted a separate coal pool established and it was done with the consent of all the parties. It adds that it was not even necessary for the Carrier to serve a notice to establish this pool but the Carrier did.

The Organization asserts a situation more in point is when the Carrier, in implementing Part I, Section 1(i) of the December 1971 Agreement, had eliminated Beatrice as the home terminal for the 15th Seniority District and moved the home terminal to Marysville. In June 1975, the Carrier proposed to the Organization to move the home terminal to Council Bluffs as a result of a consolidation of the 15th and First Seniority Districts. The engineers in both of these Districts objected to the proposal and the Carrier dropped its proposal.

The Organization states that no where in the December 1971 Agreement is station Fremont mentioned. Since Fremont is located in the territory encompassed by Section 1(a) of Part I of aforementioned Agreement, it follows that trains received in interchange at Fremont from C&NW RR must be manned by crews called and operating from Council Bluffs to North Platte and from North Platte to Council Bluffs.

The Organization states the proper and only means available to the Carrier to move the terminal of these runs from Council Bluffs to Fremont is to utilize

Section 6 of the Railway Labor Act, as provided for in Part XII of the December 1971 Agreement. The Carrier was not served such a Section 6 Notice, and it cannot invoke Article VIII of the May 1971 Agreement as a valid basis to make this change.

The Organization states the second reason why the Carrier's action is contractually improper is that the 1960 Interchange Agreement prohibited the move proposed by the Carrier. The Organization asserts that Section 4 of the Interchange Agreement specifically states that the trains interchanged will not be handled on a turn around basis, Grand Island-Fremont-Grand Island by pool or assigned crews. The Organization stresses that the western terminus that was mentioned in Section 4 was Grand Island, but that became North Platte on July 1, 1972 when interdivisional service Council Bluffs-North Platte was instituted and Grand Island eliminated as the away-from-home terminal. The Organization adds that making North Platte the western terminal of the Interdivisional Run did not change Section 4 of the Interchange Agreement. The Carrier cannot operate trains North Platte to Fremont to North Platte without modifying Section 4, and to date no change has been made. Such a change would require mutual agreement or action under Section 6 of the RLA. It states that crews called from North Platte must continue from Fremont to Council Bluffs after making their interchange to C&NW crews at Fremont.

The Organization states by virtue of the Agreements currently in effect, i.e., Part I, Section 1(a) and Part XII of the December 1971 Agreement, and the June 1960 Interchange Agreement, the Carrier's Notice dated October 2, 1984 is improper and out of order and is not sanctioned by Article VIII of the May 1971 National Agreement. The only vehicle available to the Carrier is Section 6 of the Railway Labor Act, and therefore the Board should sustain the position of the Organization.

Findings:

The Board, on the entire record and all the evidence, finds that employees and Carrier are Employees and Carrier within the Railway Labor Act; that the Board has jurisdiction over the dispute and the parties to the dispute were given due notice of the hearing thereon.

The Board finds from its review of the record that there are no contractual prohibitions against the Carrier establishing an interdivisional run from Fremont to North Platte and North Platte to Fremont. Accordingly, we find no contractual defect in the Carrier's Notice dated October 2, 1984.

The Board finds from the weight of the probative evidence that the parties covenanted by virtue of the May 13, 1971 National Agreement that Carriers could establish interdivisional runs at the discretion of management, subject to the Organization's right to challenge whether these runs were unreasonably long or were encompassed with burdensome conditions of work. But the entire tenor and principal thrust of the 1971 National Agreement was that no existing rules, regulations and agreements should hereafter constitute or be a bar to a carrier establishing interdivisional runs when, in its judgment, the operating exigencies required such runs.

The Board finds that it was pursuant to the May 1971 National Agreement that the parties negotiated the December 16, 1971 Agreement and implemented that Agreement on July 1, 1972 by a Notice dated May 1, 1972. These Agreements established the interdivisional service between Council Bluffs and North Platte and eliminated Grand Island as the away-from-home terminal for Engineers of the First and Second Seniority Districts.

The Board finds no provision in the appropriate terms of the December 16, 1971 Agreement and Implementing Notice of May 1, 1972 that indicates or sug-

gests that the Carrier could not, or was in any way prohibited from or limited in, establishing another interdivisional run within the territorial confines of Council Bluffs and North Platte, subject to the requisite Agreement provisions. If the Carrier could establish an interdivisional run between Council Bluffs and North Platte under approriate conditions, it is difficult to hold analytically that there was any contractual prohibition against establishing a run within those confines but not quite as extensive, i.e., Fremont to North Platte and return.

The Board finds no contractual bar to the proposed Carrier's action by virtue of the 1960 Interchange Agreement. Since the interdivisional run was established on July 1, 1972 abolishing Grand Island as an away-from-home terminal ofr this run, then North Platte was substituted by operation as the western terminal and Engineers on that run operated from Council Bluffs to North Platte and return. The 1971 National Agreement and the other implementing agreements negotiated purusant to the National Agreement, to the extent it is held that these Agreements contravened the terms of the 1960 Interchange Agreement, it must be held the terms of the Interchange Agreement have been superceded by the 1971 National Agreement.

The Board finds, however, that the basic purpose of the 1960 Interchange Agreement is not undermined or adversely affected by the proposed establishment of the Fremont-North Platte interdivisional run. The affected employees will still receive the allowance of the five constructive miles. For those Engineers who might reside some distance from Fremont, their situations might be handled by negotiations. In any event job mobility is one of the recognizable aspects of this industry.

In summary since the Board finds no probative evidence in the record to

show that the Carrier's October 2, 1984 Notice was contractually proscribed, it has no recourse but to conclude that the aforesaid Notice was proper, notwithstanding the December 16, 1971 Agreement provided for interdivisional service on the territory covered by the October 2, 1984 Notice, and notwithstanding the 1960 Interchange Agreement.

Award: Carrier's October 2, 1984 Notice is proper.

Jacob Seidenberg, Chairman
and Neutral Member

W. E. Naro, Carrier
Member

R. E. Dean, Employee
Member

Dissenting. Dissent Attached

December 3, 1985

LABOR RELATIONS

DEC 19 1985

EASTERN DISTRICT

DISSENT FROM AWARD I OF

PLB NO. 3965

In Award I, it is our opinion that one of the most renowned and respected arbitrator in the industry has erred.

On Dec. 16, 1971, the parties to this dispute entered into a voluntary agreement for the establishment of Interdivisional Service persuant to Art. VIII of the May 13, 1971 National Agreement, in the same territories covered by the carriers improper notice of Oct. 2, 1984.. Part XII of the Dec. 16, 1971 agreement reads as follows:

> " This agreement shall become effective January 1, 1972 and will remain in full force and effect until changed in accordance with the provisions of the Railway Labor Act .."

When the carrier became desirous of changes rather than serve notice under the provisions of the Railway Labor Act as required by agreement of Dec. 16, 1971, notice was served under ART. VIII of the May 13, 1971 national agreement.

Award I allows the carrier to renege on an important portion of an agreement they voluntarily made. Award I further proves the old adage - To err is human. The arbitrator in this case is extremely human.

R. E. Dean

EMPLOYEE MEMBER

Dated: Dec. 15, 1985

In the Matter of an Arbitration Between

SOUTHERN PACIFIC TRANSPORTATION COMPANY (EASTERN LINES)

- and -

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

Subject: Interdivisional Service Arbitration Under Article IX of the May 19, 1986 Agreement

ARBITRATION BOARD NO. 468

R. P. Guidry, SP Member
E. L. Hayden, BLE Member
Dana E. Eischen, Neutral Member

APPEARANCES

For the Organization: D. M. HAHS, General Chairman
E. K. REYNOLDS, Local Chairman

For the Carrier: R. P. GUIDRY, Labor Relations Officer
C. R. HUNTINGTON, Senior Manager, Labor Relations

PROCEEDINGS

In June and October of 1986 Carrier served notices of proposed establishment of certain interdivisional runs to operate between San Antonio and Dallas-Fort Worth, Texas and between Hearne and Dallas-Fort Worth, Texas. Following receipt of these notices the BLE proposed terms and conditions for establishment of this service and the Parties met briefly in negotiations. This Arbitration Board was established by the National Mediation Board on request of Carrier on December 4, 1986, pursuant to Article IX, Section 4 of the May 19, 1986 BLE National Agreement.

Upon due notice to the Parties, the Board convened a hearing at Dallas, Texas on January 15, 1987 at which both Parties were represented and afforded full opportunity to present evidence and argument in support of their positions. During the course of that hearing, it became evident to the Neutral Chairman that the Parties had engaged in virtually no direct negotiation after exchanging opening proposals before Carrier invoked the instant arbitration. This left the entire Interdivisional Run Agreement to be written for the Parties by this Board. In the considered judgment of the Chairman, such abdication of responsibility for their own collective bargaining agreements is fraught with peril for both Parties. No Arbitration Board, however well intentioned and well informed, can write for the Parties an entire agreement superior to one which they negotiate for themselves. Moreover, to place an entire open agreement before an interest arbitration board without even attempting serious direct negotiations is an abuse of process which this Board should not condone or

encourage. At the conclusion of the hearing, the Chairman so advised both Parties and remanded the entire dispute back to them with instructions to engage in serious efforts to at least narrow the gap, if they could not achieve closure on some of the issues in dispute.

It also developed at the hearing that the threshold procedural/jurisdiction which the Parties were contesting before this Board was being litigated simultaneously as part of Issue No. 3 before the Informal Disputes Committee (Committee) established under the BLE and NCCC 1986 National Agreement. With this in mind, the Chairman advised the Parties that Board No. 486 would not render a decision until after the Informal Disputes Committee had answered the threshold question. In the meantime, the Parties were urged to engage in direct negotiations and to keep the Chairman informed of their progress.

The record does not reveal to what extent the Parties engaged in further negotiations. We do know that they made very little progress in further narrowing the scope of the present dispute. Under date of April 3, 1987 Carrier furnished the Board with a copy of the Committee determination of March 31, 1987 on Issue No. 3. Carrier also requested the Board to reconvene hearings to take additional evidence and argument on that point. By letter of April 16, 1987 BLE opposed reopening the hearings but requested right of rebuttal if further evidence was received from Carrier. The Chairman determined there was no cause shown to reconvene the Board but he did hold the record open for additional written memoranda and exhibits from each Party relative to the determination of the Informal Disputes Committee. When

submission and exchange of these additional materials was completed, the record was declared closed.

BACKGROUND

The present dispute is the most recent chapter in an ongoing saga of controversy over the terms and conditions of interdivisional service between designated terminals on this property. Some 30 years of industry bargaining, including intervention by several Presidential Emergency Boards, finally yielded agreement in 1971 upon machinery and criteria for establishing interdivisional runs. The BLE National Agreement of May 13, 1971 provided that Carrier would serve notice upon the Organization of intent to establish interdivisional runs between designated terminals and the Parties thereafter would engage in direct negotiation to seek agreement upon terms and conditions for such service. If Agreement was not forthcoming in a certain number of days, the creation and services of an Arbitration Board could be requested from the National Mediation Board to review the positions of the Parties and determine the terms and conditions upon which interdivisional runs might be established. The National Agreement provided, among other things, that the award of such an Arbitration Board would be final and binding if Carrier elected to implement the contested interdivisional run. However, if Carrier elected not to put the requested interdivisional runs into effect under the terms of the Award (or other terms and conditions mutually agreeable to the Parties) then Carrier was barred for one (1) year from resubmitting that proposal and invoking arbitration (unless

the Parties voluntarily chose to waive that limitation).

Between 1972 and 1985 the Parties to the present dispute engaged in arbitration of interdivisional run disputes before three (3) different Arbitration Boards under the above-described machinery of the May 13, 1971 BLE National Agreement. The handling and results before Board No. 315 (Chairman Howard Johnson, May 13, 1973), Board No. 436 (Chairman David Dolnick, May 8, 1984), and Board No. 449 (Chairman Jacob Seidenberg, May 8, 1985) are described in greater detail below. The present case is the fourth interdivisional run arbitration on this property since the arbitration machinery initially was established in the May 13, 1971 National Agreement. But significantly it is the first on this property under the superceding interdivisional run arbitration machinery established in Article IX of the May 19, 1986 National Agreement.

The governing language of Article IX of the May 19, 1986 National Agreement, effective June 1, 1986, reads in pertinent part as follows:

ARTICLE IX - INTERDIVISIONAL SERVICE

Note: As used in this Agreement, the term interdivisional service includes interdivisional, interseniority district, intradivisional and/or intraseniority district service.

An individual carrier may establish interdivisional service, in freight or passenger service, subject to the following procedure.

Section 1 - Notice

An individual carrier seeking to establish interdivisional service shall give at least twenty days' written notice to the organization of its desire to establish service, specify the service it proposes to establish and the conditions, if any, which it proposes shall govern the establishiment of such service. .

Section 2 - Conditions

Reasonable and practical conditions shall govern the establishment of the runs described, including but not limited to the following:

(a) Runs shall be adequate for efficient operations and reasonable in regard to the miles run, hours on duty and in regard to other conditions of work.

(b) All miles run in excess of the miles encompassed in the basic day shall be paid for at a rate calculated by dividing the basic daily rate of pay in effect on May 31, 1986 by the number of miles encompassed in the basic day as of that date. Weight-on-drivers additives will apply to mileage rates calculated in accordance with this provision.

(c) When a crew is required to report for duty or is relieved from duty at a point other than the on and off duty points fixed for the service established hereunder, the carrier shall authorize and provide suitable transportation for the crew.

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

(d) On runs established hereunder crews will be alloved e $4.15 meal allovance after 4 hours at the away from home terminal and another $4.15 allovance after being held an additional 8 hours.

(e) In order to expedite the movement of interdivisional runs, crews on runs of miles equal to or less than the number encompassed in the basic day will not stop to eat except in cases of emergency or unusual delays. For crews on longer runs, the carrier shall determine the conditions under which such crews may stop to eat. When crews on such runs are not permitted to stop to eat, crev members shall be paid an allovance of $1.50 for the trip.

(f) The foregoing provisions (a) through (e) do not preclude the parties from negotiating on other terms and conditions of work.

Section 3 - Procedure

Upon the serving of a notice under Section 1, the parties will discuss the details of operation and working conditions of the proposed runs during a period of 20 days following the date of the notice. If they are unable to agree, at the end of the 20-day period, with respect to runs which do not operate through a home terminal or home terminals of previously existing runs which are to be extended, such run or runs will be operated on a trial basis until completion of the procedures referred to in Section 4. This trial basis operation will not be applicable to runs which operate through home terminals.

Section 4 - Arbitration

(a) In the event the carrier and the organization cannot agree on the matters provided for in Section 1 and the other terms and conditions referred to in Section 2 above, the parties agree that such dispute shall be submitted to arbitration under the Railway Labor Act, as amended, within 30 days after arbitration is requested by either party. The arbitration board shall be governed by the general and specific guidelines set forth in Section 2 above.

(b) The decision of the arbitration board shall be final and binding upon both parties, except that the award shall not require the carrier to establish interdivisional service in the particular territory involved in each such dispute but shall be accepted by the parties as the conditions which shall be met by the carrier if and when such interdivisional service is established in that territory. Provided further, however, if carrier elects not to put the award into effect, carrier shall be deemed to have waived any right to renew the same request for a period of one year following the date of said award, except by consent of the organization party to said arbitration.

Section 5 - Existing Interdivisional Service

Interdivisional service in effect on the date of this Agreement is not affected by this Article.

Section 6 - Construction of Article

The foregoing provisions are not intended to impose restrictions with respect to establishing interdivisional service where restrictions did not exist prior to the date of this Agreement.

Section 7 - Protection

Every employee adversely affected either directly or indirectly as a result of the application of this rule shall receive the protection afforded by Sections 6, 7, 8 and 9 of the Washington Job Protection Agreement of May 1936, except that for the purposes of this Agreement Section 7(a) is amended to read 100% (less earnings in outside employment) instead of 60% and extended to provide period of payment equivalent to length of service not to exceed 6 years and to provide further that allowances in Sections 6 and 7 be increased by subsequent general wage increases.

Any employee required to change his residence shall be subject to the benefits contained in Sections 10 and 11 of the Washington Job Protection Agreement and in addition to such benefits shall receive a transfer allowance of four hundred dollars ($400.00) and five working days instead of the "two working days" provided by Section 10(a) of said agreement. Under this Section, change of residence shall not be considered "required" if the reporting point to which the employee is changed is not more than 30 miles from his former reporting point.

If any protective benefits greater than those provided in this Article are available under existing agreements, such greater benefits shall apply subject to the terms and obligations of both the carrier and employee under such agreements, in lieu of the benefits provided in this Article.

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This Article shall become effective June 1, 1986 except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before such date. Article VIII of the May 13, 1971 Agreement shall not apply on any carrier on which this Article becomes effective.

Just a few months before the present case was initiated, an interdivisional run arbitration award was issued by Board No. 449 on this property (Chairman Jacob Seidenberg). In the Opinion accompanying the May 8, 1985 Award, Dr. Seidenberg reviewed the course of interdivisional service arbitration on this property between 1972 and 1984. That summary, a history lesson which bears repeating in the present case, reads as follows:

The record reveals that on May 16, 1972 the parties on this property established Arbitration Board No. 315 with Judge Howard Johnson as the Neutral Member for the purpose of establishing terms and conditions of work for nine (9) interdivisional runs, including the two runs involved in this dispute.

On May 17, 1973 that Board rendered its Award and proposed implementing agreement. The Carrier chose not to execute the Award and did not implement its terms and it never became operative. The Carrier contended it would be too costly to effectuate the Award and the proposed interdivisional runs were not formally established. It must be noted however, that before Board No. 315 rendered its award, the Carrier in 1972 negotiated interdivisional

agreements with the Firemen's and Trainmen's Organizations, which included the San Antonio-Ennis and the El Paso-Sanderson runs. It had to abandon these runs because it was too expensive to operate them. The Organization, on the other hand, contends that the limited success of the runs was due to the fact that the Carrier utilized them to do local freight work, thus causing the crews to run afoul of the Hours of Service Law and be tied up at both ends of the runs.

In 1983 after a lapse of ten years, the Carrier attempted to reinstate interdivisional runs between Houston and San Antonio and between Houston and Lafayette. Although negotiations were conducted intermittently between January and September 1983, the parties were not able to reach agreement.

In January 1984 the Carrier again invoked the provisions of the May 1971 National Agreement. The National Mediation Board, on February 10, 1984, established Arbitration Board No. 436, with David Dolnick as the Neutral by selection of the parties. After a duly noticed hearing, Board No. 436 rendered its Award and draft implementing agreement on May 8, 1984. Initially, the Carrier did not adopt the Award, but finally did so on September 4, 1984 and implemented the interdivisional run between San Antonio and Houston.

Board No. 449 went on to explain how Carrier served notices for interdivisional service from San Antonio to Ennis and El Paso to Sanderson in November 1984; Board No. 449 was established in January 1985; it held hearings in March 1985; and it issued its Award on May 8,1985. The Award of Board No. 449 was virtually identical to the Award and Implementing Agreement which had issued from the interdivisional arbitration proceedings held before Board No. 436 (Chairman David Dolnick) only one year earlier.

Dr. Seidenberg explained on behalf of Board No. 449 his rationale for adopting and endorsing as authoritative precedent the May 1984 Dolnick Decision, as follows:

In view of the fact that the Award of Arbitration Board No. 436 has been implemented by the parties in September 1984 and the implementing agreement covering the San Antonio-Houston interdivisional run, and in view of the fact that the parties advanced basically the same proposals before Arbitration Board No. 436 which resulted in the executed Award of that Board, we do not find it necessary to replow the same ground and analyze in detail the specific proposals advanced and discussed at the Board session held on March 27, 1985. Despite the requests of the respective parties for this Board to render a materially different Award and accompanying Implementing Agreement, we find that the Award and Implementing Agreement of Arbitration Board No. 436 to be a well reasoned, balanced and fair resolution of the issues in dispute, and in the draft Implementing Agreement attached to this Award, we have basically adopted the provisions of that Award. We have also been guided by the provisions of the implementing agreement which was ultimately negotiated by the parties between May and September 1984.

We are, however, constrained to note a few general principles as well as some general guidelines on some of the major issues.

We believe that the parties should accept in principle the Award of Board No. 436 as well as the Award of this Board as the basis for establishing the terms and conditions of work for interdivisional runs on this property. We think the time has come for the Carrier to stop seeking to invoke different arbitration boards each time it determines to establish an interdivisional run. The ultimate, and regretable result of such Carrier action, is

that it is likely to cause variant or different conditions of work to be established on the various runs. We find unpersuasive the Carrier's plea that it cannot afford the allowances, the arbitraries, and costs of the working conditions set forth in the predecessor awards. It is unrealistic for the Carrier to expect to institute an operational activity that will result in increased productivity, and not be prepared to share with the affected employees some of the benefits of the increased productivity to which these employees have contributed. We find that nothing in the prescribed guidelines of Article VIII of the May 1971 National Agreement that proscribes any sharing of the productivity gains derived from the establishment of interdivisional runs.

It is because we conclude that working conditions should be uniform on this property, that we are not inclined to invest too much significance to interdivisional agreements which have been negotiated on other properties, be they the Sante Fe, the former Lehigh Valley or the Cotton Belt Railroads.

* * *

We have dealt with all the proposals of the parties in the attached draft of the Implementing Agreement. In the few instances of departure from Award No. 436, in the implementing agreement, it was the result of a decision that it was more appropriate to adopt the proposal of one of the parties in whole or in part, such as the Organization's proposal on housing at Valentine and Hearne, or that it was appropriate not to include a given proposal. However, a review of the attached Implementing AGreement will disclose that it is congruent with the Implementing Agreement resulting from the Award of Arbitration Board No. 436, and it should be a model for use in subsequently established interdivisional runs on this property.

Following issuance of the Seidenberg Decision in May 1985 the Parties negotiated an Implementing Agreement which varied in only minor details from the Award of Board No. 449. On March 21, 1986 Carrier implemented interdivisional service in accordance with the Award of Board No. 449 on the territory between San Antonio and Ennis and also between El Paso and Sanderson. As of January 1987 Carrier still was operating I. D. service between those terminals under the terms and conditions of the Award of Board No. 449.

Approximately three (3) months after implementing the Award of Board No. 449, Carrier served notice under Article IX of the newly effective BLE National Agreement of May 19, 1986 to extend I.D. service to operate and/or deadhead between the following terminals:

(1) Between Houston and Shreveport

(2) Between Dallas and Hearne

(3) Between Dallas and Houston

(4) Between Fort Worth and Hearne, going on and off duty at Dallas.

(5) Between Fort Worth and Houston, going on and off duty at Dallas.

During conferences with the Organization in September 1986, Carrier backed away from the I.D. runs proposed in Items 1, 3 and 5 of its June 23, 1986 letter, above. By letter of October 17 Carrier served another notice of intent to establish I.D. service to operate and/or deadhead between Dallas and San Antonio and also between Fort Worth and San Antonio. Thus, the present case involves interdivisional service proposed in Items 2 and 4 of Carrier's

June 23, 1986 letter and in Items 1 and 2 of its October 17, 1986 letter, to wit: 1) San Antonio and Dallas; 2) San Antonio and Fort Worth going on and off duty at Dallas; 3) Hearne and Fort Worth going on and off duty at Dallas; and 4) Hearne and Dallas.

When the Parties did not reach agreement upon terms and conditions for such service after one or two prefunctory negotiating sessions, Carrier petitioned the NMB on November 7, 1986 to establish Arbitration Board No. 468 (Chairman Dana E. Eischen). The Board was officially established on December 4, 1986 and charged with resolving the present dispute between the Parties, pursuant to Article IX of the BLE National Agreement of May 19, 1986.

POSITIONS OF THE PARTIES

Organization

BLE raised a threshold jurisdictional argument in a letter of December 12, 1986 from President Robert E. Delaney to NMB Executive Directors Charles R. Barnes, as follows:

It is noted this Arbitration Board is allegedly established under the provisions of Article IX, Section 4 of the May 19, 1986 National Agreement.

It is the BLE's position that the establishment of this Board is inappropriate at this time insofar as there is presently a question before the Informal Disputes Committee made up of the Brotherhood of Locomotive Engineers and the National Railway Labor Conference regarding the changing of existing interdivisional runs (rearranging/extension, etc.) under the provisions of Article IX, Section 5 of Arbitration Award No. 458 dated May 19, 1986.

Therefore, it is the BLE's position, that this Arbitration Board is premature and proceedings should be suspended.

With this protest on the record, the Organization appeared at the Board hearing and presented its position relative to the merits of the case.

BLE's fundamental position is that the terms and conditions for I.D. service awarded by Board No. 449 are controlling in the present case under the terms of Article IX, Section 5 of the 1986 National Agreement. In that connection, the Organization points out that approximately ninety percent (90%) of the territory covered by Carrier's notices of June 23 and October 17, 1986 is territory where the conditions of work for interdivisional runs were mandated by Board No. 449 on May 8, 1985. This I.D. service was established under an Implementing Agreement based almost entirely on the Award of Board No. 449 on March 21, 1986. The language of Article IX, Section 5 upon which the Organization relies is as follows:

> Interdivisional service in effect on the date of this Agreement is not affected by this Article.

BLE therefore urges this Board to find the Award of Board No. 449 and the Implementing Agreement negotiated thereunder to be res judicata and governing. The Organization's original position on this latter point was set forth in the General Chairman's letter of October 29, 1986 as follows:

> **The terms and conditions of work in this territory were set by Award 449 which was accepted by Carrier when the Award was implemented March 21, 1986.**
>
> **This Committee recognizes Carriers right to serve notice to establish other Interdivisional runs within this territory, subject to requisite agreement provisions set by Arbitration Award 449. Given the fact Carriers re-arrangement in this territory now involves operating through home terminal Ennis on the H & TC prior right seniority district to Dallas, consideration will have to be given to changes in the distribution of mileage**

between the H &TC seniority district and the GH & SA seniority district on a percentage basis. Also, in view of the fact Carrier proposes to move the existing on and off duty point for engineers some twenty eight (28) miles, the employees believe Carrier should provide transportation between the present and newly established on and off duty points as a reasonable condition of work.

This Committee is agreeable to making an agreement to re-arrange Interdivisional service as proposed by Carrier in the territories covered by Arbitration Award 449, under the terms and conditions of the Award, with the understanding Carrier will give consideration to the employees position transportation should be furnished by Carrier between the old and new on and off duty points.

In its post-hearing submission to this Board dated May 7, 1987, the BLE restated its general position on Proposal No. 1 as follows:

It remains the position of the employees that conditions of work mandated by Arbitration Award No. 449 are controlling on the Carrier proposed extended territory. In addition to Arbitration Award No. 449 condition, the employees respectfully request the board, as a reasonable condition of work, give consideration to our proposal regarding:

1. Transportation to and from the present on and off duty point at Ennis to any new on and off duty point at Dallas.
2. Changing the Ennis home terminal guaranteed extraboard to proposed new home terminal at Dallas.
3. Lodging that caters to the general public at all away-from-home terminal locations.

The relocation of home terminal Ennis some twenty eight (28) miles to Dallas, necessitates consideration of these additional issues.

In addition to the language of Article IX, Section 5 of the 1986 National Agreement the BLE relied upon the admonition of Dr. Seidenberg in the decision of Board No. 449, quoted above, for support of its Proposal No. 1. In post-hearing submission, the Organization urged that the March 3, 1987 decision of the

Committee (Chairman John LaRocco) supported its primary position in this case.

On November 1, 1986 the BLE submitted to Carrier a proposed Agreement reflecting the Organization's primary position. According to BLE that proposed Agreement is identical to that mandated by Board No. 449, as modified by the Parties, plus a new provision in Article I, Section 1(b) for transportation between Ennis and the new on/off duty point at Dallas, reading as follows:

> **"Engineers in service prior to the effective date of this Agreement whose assignments have Ennis as the home terminal shall be furnished transportation by the Company between the present reporting point at Ennis and the newly established on and off duty point at Dallas."**

After Carrier rejected its Proposal No. 1 on November 19, 1986 the BLE submitted an alternative, Proposal No. 2 on December 5, 1986. In essence Proposal No. 2 calls for major revision of the March 21, 1986 Implementing Agreement established on the basis of the Award by Board No. 449. Substantial improvements are proposed by the BLE on several subjects including the following: on & off duty points; lodging facilities; initial terminal delay; hours of service - expediting transportation allowance; deadhead by train - deadhead rate; extra-board guarantee; transportation to lodging; pool freight guarantee; meal period on road; call and release; run-around; held-away-from-home terminal time; learning the road; control locomotive; parking I.D. crews; I.D. engineers performing other service; the limiting of pick-ups, set-outs and switching.

BLE Proposal No. 2 appears to contain many of the provisions which the Organization advanced in proceedings before Board No. 449 but which that Board did not accept in its final decisions; as well as new benefits and compensation for Engineers in the proposed extended interdivisional service. In that connection, the Orgranization rejects as totally inappropriate or inadequate any terms or conditions which may have been mandated upon other operating employees on the property or accepted by them. BLE argues that the terms and conditions specified in Article IX, Section 2(a) to (e) are only minima and not limitations or mandates upon this Board. In that connection the BLE relies especially on the provisions of Article IX, Section 2(f):

> The foregoing provisions (a through e) do not preclude the parties from negotiating on other terms and conditions of work.

Carrier

At the outset of our proceedings Carrier also advanced procedural, jurisdictional and/or substantive arbitrability objections. Carrier stated that it would be "governed by the decision" of the Informal Disputes Committee on Issue No. 3 concerning whether the interdivisional runs proposed before this Board must be covered by terms and conditions established by Board No. 449 under the 1971 BLE National Agreement or may be considered as new service for purposes of Article IX, Sections 2 and 4 of the 1986 National Agreement.

With respect to the merits of the case, Carrier points out that its notices for I.D. service, at issue in this case, propose

"reasonable and practical conditions" precisely as specified in Article IX, Section 2 of the 1986 National Agreement. Thus, the terms and conditions for I.D. runs proposed by Carrier are taken verbatim from Article IX, Section 2(a) through (e), as follows:

> Reasonable and practical conditions shall govern the establishment of the runs described, including but not limited to the following:
>
> (a) Runs shall be adequate for efficient operations and reasonable in regard to the miles run, hours on duty and in regard to other conditions of work.
>
> (b) All miles run in excess of the miles encompassed in the basic day shall be paid for at a rate calculated by dividing the basic daily rate of pay in effect on May 31, 1986 by the number of miles encompassed in the basic day as of that date. Weight-on-drivers additives will apply to mileage rates calculated in accordance with this provision.
>
> (c) When a crew is required to report for duty or is relieved from duty at a point other than the on-and-off duty points fixed for the service established hereunder, the carrier shall authorize and provide suitable transportation for the crew.
>
> Note: Suitable transportation includes carrier owned or provided passenger carrying motor vehicles or taxi, but excludes other forms of public transportation.
>
> (d) On runs established hereunder crews will be allowed a $4.15 meal allowance after 4 hours at the away-from-home terminal and another $4.15 allowance after being held an additional eight (8) hours.
>
> (e) In order to expedite the movement of interdivisional runs, crews on runs of miles equal to or less than the number encompassed in the basic day will not stop to eat except in cases of emergency or unusual delays. For crews on longer runs, the carrier shall determine the conditions under which such crews may stop to eat. When crews on such runs are not permitted to stop to eat, crew members shall be paid an allowance of $1.50 for the trip.

Carrier points out that Article IX, Section 4(a) of that Agreement from which the present Arbitration Board derived its existence and authority, contains the following mandate from the Parties:

> The arbitration board shall be governed by the general and specific guidelines set forth in Section 2 above.

Carrier maintains that this language of Article IX, Section 2 and Section 4, when read together, comprise a contractual bar or limitation upon the jurisdiction or authority of this Board to award terms and conditions which impose any financial obligation beyond those expressly stipulated by the Parties in Article IX, Section 2. Thus, Carrier contends that the jurisdiction and authority of this Board are limited solely to consideration of proposals and counterproposals relating to Article IX, Sections 2(a) and (c), but only to the extent that terms and conditions in these two areas do not require Carrier to pay additional benefits or compensation not expressly stipulated in Article IX, Sections 2(b), (d) and (e) or elsewhere in the 1986 National Agreement. In essence therefore, Carrier maintains that this Board has no authority or jurisdiction to consider, let alone grant, any BLE proposals which would engender cost or benefits beyond those already granted in the 1986 National Agreement. As noted, Carrier's primary source document for this asserted limitation upon the Board's authority is Article IX, Sections 2 and 4, but Carrier also relies upon the moratorium provisions of Article XVIII, Section 2 of that Agreement. In support of its interpretation of that language, Carrier cites a myriad of decisions by Arbitration Board No. 419 (Caboose

Removal), authored by many different neutral arbitrators, all of whom construed Article X, Section 2 of the October 15, 1982 UTU National Agreement to restrict the Arbitration Board from awarding "additional compensation". To emphasize the asserted intent of the Parties in that regard, Carrier points out the substantive differences in the I.D. service arbitration provisions of the May 13, 1971 BLE National Agreement and the January 27, 1972 UTU National Agreement, when compared to the language of Article IX, Sections 2 and 4 of the BLE 1986 National Agreement.

Based upon the foregoing, Carrier urges this Board to find that the Award of Board No. 449 is not res judicata of the present case. For that reason and because it involves compensation and benefits beyond those specified in the specific "guidelines" of Article IX, Section 2, Carrier urges this Board to reject BLE Proposal No. 1. With respect to BLE Proposal No. 2, Carrier stated its position is a post-hearing submission dated April 30, 1987 as follows:

In narrowing issues, the following is a summary of those provisions the Carrier is not opposed to.

Article I

Section 1(a)
Section 1(c)

Article II

Section 1
Section 2

Article III

Section 1(a)
Section 1(c)
Section 1(f)
Section 2
Section 3(a)

Article IV

Section 1(a)
Section 1(b)

The following is a summary of issues that the Carrier is not opposed to with its requested modifications.

Article I

Section 1(b)
Section 1(d)

Article III

Section 1(b)
Section 1(d)
Section 1(e)

Article IV

Section 3

Article VI

Section 1
Section 2(a)

Article VII

Section 2

Article VIII

Section 1
Section 2

The following summary involves issues the Carrier submits are procedurally barred for reasons contained in its initial presentation.

Article III

Section 3(b)
Section 4(a)
Section 4(d)

Article IV

Section 2

Article V

Section 1
Section 2
Section 3(a)
Section 3(b)
Section 4

Article VII

Section 1

Article IX

Article X

Article XI

DISCUSSION

1. The Effect of Article IX, §5 of the 1986 BLE National Agreement

This Board deferred decision on this aspect of the case because both Parties pointed out that an issue was pending before the Informal Disputes Committee (Neutral Member J. B. LaRocco) as Issue No. 3: "Can established Interdivisional Service be extended or rearranged under Article IX of the 1986 BLE National Agreement?" On March 31, 1987 the Committee issued its Opinion

on Issue No. 3, reading in pertinent part as follows:

> The threshold question is whether Carriers may extend or rearrange interdivisional service established prior to the effective date of Article IX of the 1986 Arbitrated National Agreement. It should be noted that the Article IX, Section 2 conditions attached to interdivisional service are more favorable to the Carriers than the terms and conditions in Article VIII of the May 13, 1971 National Agreement. The second but related issue is whether the conditions under which the interdivisional service was previously established are carried forward with the extended or rearranged interdivisional service made pursuant to notice under Section 1 of Article IX.
>
> * * *
>
> The Committee concludes that the parties must reach a balanced application of Article IX. The Carriers have the right to establish extended or rearranged interdivisional service and it constitutes new service within the meaning of Article IX unless it is a substantial re-creation of the prior interdivisional service designed solely to obtain the more favorable conditions in the 1986 National Agreement.

To the extent that the Parties in the case before us have stipulated deference to the Committee on this issue, we will of course treat the Opinion as authoritative precedent. In that connection, dicta by the author of that Opinion instructing this Arbitration Board to "apply Article IX, §5 in a manner consistent with" the Committee

is superfluous as well as presumptuous.

Application of the standard enunciated by the Committee to the facts of record before us compels a conclusion that the extended or rearranged interdivisional service Carrier seeks to establish in this case, in the words of the Committee, "constitutes new service within the meaning of Article IX". According to the Committee Opinion, Carriers have the right to establish such extended or rearranged service (and implicitly to have terms and conditions of such interdivisional service governed by Article IX, §2 of the May 1986 National Agreement rather that Article VIII of the May 1971 National Agreement), unless two conditions subsequent apply: 1) It is a substantial recreation of the prior interdivisional service and 2) It is designed solely to obtain the more favorable conditions of the 1986 National Agreement. (Emphasis added.) As the Party seeking to divest Carrier of a right which the Committee held to be vested under Article IX, but for application of two conditions subsequent, the burden is upon the Organization to prove the existence and application of both of these conditions subsequent. Careful review of the record evidence persuades a majority of this Board that the Organization has not met that burden in this case.

BLE has persuasively shown that in quantitative terms of track and mileage covered, the proposed new I.D. service arguably is "a substantial recreation of prior I.D. service", i.e., San Antonio to Ennis. Carrier points out, however, several qualitative differences in the runs and also that the two-pronged extension from Ennis to Dallas and Fort Worth is not a recreation and has independent good business reasons to justify its creation.

Analysis shows that these arguments deal more with the question of motivation than the threshold question whether the new inter-divisional service is a substantial recreation per se. In any event, however, even if argendo BLE prevailed on the recreation aspect, that is only one part of the two-part test developed by the Committee. To divest Carrier of its divested rights under Article IX of the 1986 National Agreement and bind it on the extended or rearranged run to terms and conditions for inter-divisional service established under Article VIII of the 1971 National Agreement, the Organization must also show that the recreation was "designed solely to obtain the more favorable conditions of the 1986 National Agreement".

It is self evident to any sentient being that part of Carrier's motivation, in proposing establishment of the extension or rearranged service was to avail itself of the "more favorable" conditions of Article IX. But Carrier has presented prima facie evidence that this was not its sole motive, that the extension or rearrangement was not merely a cosmetic minor modification, and that it had arguably bonafide reasons to justify the extension and rearrangement of the existing interdivisional service, other than solely to get out from under Article IX of the 1971 National Agreement and under Article IX of the 1986 National Agreement. The test enunciated by the Committee puts the Organization in a very difficult evidentiary position, but speculation, conjecture and suspicion regarding Carrier's motives cannot substitute for preponderating evidence. Carrier has made out a colourable showing that the extension or rearrangement of the existing interdivisional

service was not designed solely to escape from the coverage of the 1971 National Agreement. Under the test developed by the Committee, therefore, this Board must find that Carrier has the right to establish this extended or rearranged interdivisional service under terms and conditions prescribed in Article IX, §2 and §4 of the 1986 National Agreement.

2. The Effect of Article IX, §2 and §4 of the 1986 BLE National Agreement

Throughout handling of this case, the Board has been impressed by the logic and equity of Dr. Seidenberg's admonition to these Parties in the Opinion accompanying the Award of Board No. 449:

> We believe that the parties should accept in principle the Award of Board No. 436 as well as the Award of this Board as the basis for establishing the terms and conditions of work for interdivisional runs on this property. We think the time has come for the Carrier to stop seeking to invoke different arbitration boards each time it determines to establish an interdivisional run. The ultimate, and regretable result of such Carrier action, is that it is likely to cause variant or different conditions of work to be established on the various runs. We find unpersuasive the Carrier's plea that it cannot afford the allowances, the arbitraries, and costs of the working conditions set forth in the predecessor awards. It is unrealistic for the Carrier to expect to institute an operational activity that will result in increased productivity, and not be prepared to share with the affected employees some of the benefits of the increased productivity to which these employees have contributed. We find that nothing in the prescribed guidelines of Article VIII of the May 1971 National Agreement that proscribes any sharing of the productivity gains derived from the establishment of interdivisional runs.

Logic, equity, bargaining history, practice and arbitral authority all must yield, however, to the extent they are superceded by clear and unambiguous contract language. For reasons discussed above, in the present proceeding we are governed by the language of Article IX of the 1986 National Agreement not by Article VIII of the 1971 National Agreement. Comparison of those interdivisional service interest arbitration provisions leaves no room for doubt that the scope of arbitral authority under the 1986 Agreement is considerably circumscribed from what it was under the 1971 Agreement.

Article IX, §4(a), from which this Board derives its jurisdiction and authority, mandates that we "shall be governed by the general and specific guidelines set forth in §2". According to §2(f) the parties are "not precluded" from negotiating on other terms and conditions besides those set forth in §2(a) through (e). By clear implication, however, if the Parties cannot agree upon such terms and conditions §2(a) through (e) govern. In the event arbitration under §4 is invoked, §2 and §4 construed together do preclude the Arbitration Board from awarding "other terms and conditions of work" in conflict with those set forth at §2(a) through (e). Even though the Parties granted local negotiators latitude to discuss and agree to conditions which might vary from the express guidelines of §2, they expressly withheld from Arbitration Boards authority to award terms and conditions which conflict with those set forth in §2(a) through (e). Therefore, we recognize and are bound by the very real express limitations imposed upon our authority

by the Parties to the 1986 National Agreement.

With respect to compensation for extra miles set forth in §2(b), provisions for transportation set forth in §2(c), meal allowances set forth in §2(d) and meal stops or payments in lieu thereof set forth in §2(e), this Arbitration Board is without authority to award contradictory terms or conditions. Further, we find persuasive Carrier's argument that the Board should not award terms or conditions which conflict with the express provisions of Side Letters 9A or 20 to the 1986 National Agreement. However, we do not find persuasive Carrier's additional argument that Article IX and Article XVIII necessarily bar the Board from even considering, let alone awarding, any term or condition for interdivisional service which might generate financial costs beyond those expressly agreed to in Article IX, §2. In that regard, at least on the evidence of record presently before us, the asserted analogy between arbitration of interdivisional service terms and conditions under Article IX of the BLE 1986 National Agreement and arbitration of caboose removals under the 1982 UTU National Agreement is not persuasively demonstrated. Accordingly, we do not take the decisions of Arbitration Board No. 419 as authoritative precedent on the issues before us.

At bottom line we remain convinced that the Implementing Agreement emanating from the Award of Board No. 449 remains a viable, logical and equitable formula for interdivisional service on this property. We are not mandated to do so by Article IX, §5 of the 1986 National Agreement but neither are we forbidden from doing so by Article IX, §2 or §4 of that Agreement. After

full consideration of the record we find no good reason in fact, law or contract not to use the Implementing Agreement of Board No. 449 as the framework for our Award, except and unless it is superceded or in conflict with the express terms of Article IX, §2 and §4 of the 1986 National Agreement, in which case the latter govern.

CONCLUSION

The Award and Implementing Agreement emanating from Board No. 449 is the work product of two experienced and distinguished arbiters (Jacob Seidenberg on Board No. 449 and David Dolnick on Board No. 436). Even more important, when finally executed in March 1986 that modified Implementing Agreement was the product of additional direct negotiations and settlement between these Parties. As indicated at the outset of this Opinion, the Board believes that give and take in collective bargaining between the Parties must produce a far better agreement than the ministrations of even the most well intentioned neutral third person. We recognize that the Award of Board No. 449 is not carried forward and controlling as a matter of law or contractual mandate under Article IX, §5 of the 1986 National Agreement. We also recognize that the Parties agreed in Article IX, §§2 and 4 to curtail the authority of this Board and we will adhere faithfully to the mandates of Article IX, §§2 and 4 in that regard. On the other hand, we are not persuaded that Article IX precludes us from giving full consideration and weight to the Implementing Agreement emanating from Board No. 449 as prime evidence of "reasonable and practical conditions to govern the establishment

of the runs described" in this case. This Board is of the considered opinion that the terms and conditions established in the Implementing Agreement of March 21, 1986 should be controlling in the new I.D. service involved in the present dispute except to the extent those terms and conditions are superceded by Article IX, §2(a) through (e) and/or other express provisions of the 1986 National Agreement. Thus, it is our purpose and intent to award terms and conditions for I.D. service premised upon the Implementing Agreement executed on March 21, 1986, which in turn emanated from the Award of Board No. 449, except to the extent that Award and Agreement are in conflict with Article IX or other express provisions of the 1986 National Agreement mentioned above. Any further modifications in our proposed Implementing Agreement which are agreeable to the Parties in negotiations are welcomed and encouraged by this Board. As indicated elsewhere, we feel strongly that it is not our proper role to make quid pro quo decisions for Parties which they should properly make for themselves in collective bargaining negotiations. For example, even though objectively we find substantial merit in the Organization's plea for additional transportation and lodging benefits in Article I, §§1(b) and (d), as well as in Carrier's plea to delete the requirement of air conditioning from Article VII, §1, the linkage, negotiation and trade-off of such matters are left for the Parties to work out for themselves in their discretion. For our part, we adhere to the Implementing Agreement emanating from Board No. 449 except where it is superceded by express provisions of Article IX or elsewhere in the 1986 National

Agreement, or where the Parties jointly agree before this Board to modify their March 21, 1986 Implementing Agreement. To the best of our ability the attached Award and Implementing Agreement reflect that intent and purpose.

AWARD

1. This Board has jurisdiction to consider the proposals of the Parties under Article IX, §§2 and 4 of the 1986 National Agreement.

2. The attached Implementing Agreement is made an integral part of, and is hereby incorporated into, this Award, based upon reasons stated in the foregoing Opinion.

3. In the event the Carrier executes this Award, the terms and conditions of the Implementing Agreement will become effective and binding on both Parties.

Dana E. Eischen, Chairman
and Neutral Member

R. P. Guidry, Carrier Member

E. L. Hayden, Organization Member

Date:

Implementing Agreement Pursuant to Award of Arbitration Board No. 468

SOUTHERN PACIFIC TRANSPORTATION COMPANY
(Eastern Lines)

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

Relating to the establishment of "Interdivisional", Through and Irregular Freight and Passenger Service to operate (or deadhead) between the following terminals pursuant to Article IX of the May 19, 1986, Agreement:

1. San Antonio and Dallas.
2. San Antonio and Ft. Worth going on and off duty at Dallas.
3. Hearne and Ft. Worth going on and off duty at Dallas.
4. Hearne and Dallas.

As provided in Section 2(a) of that Article IX.

> "Runs shall be adequate for efficient operations and reasonable in regard to the miles run, hours on duty and in regard to other conditions of work."

Therefore it is AGREED:

ARTICLE I.

Section 1. (a) Pool turns for engineers known as Long Pool Turns to handle Through Freight Service between pairs of terminals will be established upon ten (10) days written notice from the Carrier to the Organizations.

(b) On all interdivisional runs the on and off duty point for engineer is the Engineers' Register Room at the respective terminals, except that the Carrier may change these points in the interest of operation efficiency.

established on and off duty point at Dallas.

(c) When an engineer in Long Pool Service arrives at his away-from-home terminal, he will, when rested, stand for call for a trip to his home terminal behind other long pool engineers from his home terminal and ahead of long pool engineers at their home terminal.

(d) Lodging facilities at all away-from-home terminal points will comply with the mandatory provisions of the current BLE Agreement.

Section 2. Passenger service will be operated by either Long Pool Engineers or by regularly assigned Passenger Engineers between the aforementioned terminals, in accordance with existing agreements and the rate of pay not affected by the provisions herein.

ARTICLE II.

Section 1. Long Pool lists will be regulated at intervals specified in Article 22 of the BLE Engineers Mileage Limitation Agreement as amended by Mediation Agreements, A-5391 and A-6401.

Section 2. It is understood that at the inception of the Long Run that the assignments will be bulletined seven (7) days prior to the beginning of the Long Run to avoid loss of time to the sucessful engineer applicants to such an assignment.

ARTICLE III.

Section 1. (a) Engineers in Through Freight Service may be operated, San Antonio to Dallas through Hearne and Ennis, and mileage for pay purposes will be 324 miles. Mileage will be distributed on a percentage basis between the districts: (73% to H&TC Seniority District and 27% to the Houston-Victoria-Del Rio Seniority District.) Dallas will be the away-from-home terminal for San Antonio home terminal crews and San Antonio will be the away-from-home terminal for Dallas home terminal crews. The operation San Antonio to Hearne, Hearne to Ennis and Ennis to Dallas is not changed for crews called to operate

on those districts.

(b) Engineers in through freight service may be operated San Antonio to Ft. Worth, through Hearne and Ennis, thence via company conveyance to home terminal Dallas, and mileage for pay purposes will be approximately 386 miles. Mileage will be distributed on a percentage basis between the districts: 77% to H&TC Seniority District and 23% to the Houston-Victoria-Del Rio Seniority District.) Dallas will be the away-from-home terminal for San Antonio home terminal crews and San Antonio will be the away-from-home terminal for Dallas home terminal crews. The operation San Antonio to Hearne, Hearne to Ennis and Ennis to Ft. Worth is not changed.

(c) Engineers of the H&TC Seniority District may be operated Hearne to Dallas, through Ennis, and mileage for pay purposes will be 140 miles. Dallas will be the home terminal and Hearne will be the away-from-home terminal for crews called to operate on those districts.

(d) Engineers of the H&TC Seniority District may be operated Hearne to Ft. Worth through Ennis, thence via company conveyance to home terminal Dallas, and mileage for pay purposes will be 202 miles. Dallas will be the home terminal and Hearne will be the away-from-home terminal for crews called to operate on this district. The operation Hearne to Ennis and Ennis to Ft. Worth is not changed for crews called to operate on those districts.

(e) Subsequent to notification set out in Article I, Section 1.(a), Carrier will meet with the Organization and establish a method to obtain proper equalization. The method agreed upon, be it a rotation or table, must contain provision to equalize total trip miles paid for and to equalize working and deadhead trips, recognizing the need for operational efficiency.

(f) After each payroll period, the Carrier will make available a statement showing the trips working and deadhead commenced by crews in each interdivisional service operation during that payroll period and the accumulated mileage. Copy of these statements will be available to the BLE Local and General Chairmen. The above statements will be used as the basis for determining whether or not the proper rotation and/or equalization is being maintained. If the report indicates that it is not, the proper adjustment will be made.

Section 2. Present short Pool lists for engineers may be retained where such lists now exist, depending upon the nature and volume of available work. Effective with the initial assignment of engineers to a Long Pool at any terminal set forth therein. The Short Pool list at that point will be reduced by the BLE Local Chairmen, commensurate with the shift of the work to the Long Pool, and thereafter both the Long and Short Pool lists will be regulated in accordance with Article 22 of the BLE Engineers' Mileage Limitation Agreement as amended by Mediation Agreements A-5391 and A-6401.

Section 3. (a) All miles run in excess of the miles encompassed in the basic day shall be paid for at a rate calculated by dividing the basic daily rate of pay in effect on May 31, 1986, by the number of miles encompassed in the basic day as of that date. Weight-on-drivers additives will apply to mileage rates calculated in accordance with this provision.

(b) Initial Terminal Delay Delay-Freight Service. Article 3 of the current BLE Agreement is amended to read as follows:

> "Initial terminal delay shall be paid on a minute basis to engineers engaged in interdivisional freight service for all time in excess of sixty (60) minutes computed from the time of reporting for duty up to the time the train leaves the terminal at one-eighth (1/8) of the basic daily rate according to the class of engine used, in addition to all other earnings for the trip.
>
> NOTE: The phrase, 'train leaves terminal' means when the train actually starts from the track where it is initially made up; provided further, however, if the train does not actually depart from the yard track where first made up, and is stopped and held in the same yard track for reasons other than the lining the switch for continuous movement, initial terminal delay shall continue to be paid until the train again actually starts on its road trip from the yard track where the train was first made up. If the train subsequently makes "a pick-up within yard limits of the initial terminal, initial delay shall continue until train departs after making such pick-up."

(c) Overtime will be paid for in accordance with Side Letter 9A of the May 19, 1986 National Agreement.

Section 4. (a)

(a) Engineers overtaken by the Hours of Service limitation will be allowed the miles of their assignment (terminal to terminal) and will be paid a continuous time basis until reaching their off duty point at their final terminal.

(b) When engineers are deadheaded by automobile vehicle, such vehicle will have a good clean seat for the engineer and the capacity will not exceed that recommended by the manufacturer of the vehicle. Such vehicle will be seasonably air-conditioned and heated. A vehicle that does not meet the requirements herein stated, will not be used to transport engineers except in extreme emergencies.

ARTICLE IV.

Section 1. (a) Engineers in Long Pool service will lay-off at home terminal only, except in cases of emergency, and will report at home terminal only.

NOTE: When a regular Long Pool Freight engineer lays off and an extra engineer is assigned to his run, the regular engineer will be held off until the extra engineer returns, unless the time consumed exceeds twenty-four (24) hours from the time his turn departs the terminal. In such a case, the regular engineer may report and will be placed at the bottom of the regular list at the home terminal.

(b) Vacancies at the home terminal will be protected by engineers from the home terminal extra board. Vacancies resulting from emergency lay-offs at the away-from-home terminal will be protected by engineers from the away-from-home terminal extra board. Such extra men so used will be deadheaded to their extra board terminal after completion of trip. It is understood such engineer may request legal rest prior to returning to his home terminal.

Section 2. An extra list may be established at each home terminal specified herein to protect Long Pool service. Such Long Pool extra list will be separate and distinct from an extra list protecting all other service. "All other service" extra list engineers may be used to fill Long Pool vacancies in an emergency.

NOTE: Such a Long Pool extra list will receive guarantee as specified in Side Letter No. 20 to the May 19, 1986 National Agreement.

Article V.

Section 1.(a) On runs established hereunder crews will be allowed a $4.15 meal allowance after 4 hours at the away from home terminal and another $4.15 allowance after being held an additional 8 hours.

(b) In order to expedite the movement of interdivisional runs, crews on runs of miles equal to or less than the number encompassed in the basic day will not stop to eat except in cases of emergency or unusual delays. For crews on longer runs, the carrier shall determine the conditions under which such crews may stop to eat. When crews on such runs are not permitted to stop to eat, crew members shall be paid an allowance of $1.50 for the trip.

Section 2.(a) When engineers in Long Pool service are called and released after the engine has moved from the roundhouse or ready track, a minimum allowance of 100 miles will be made and they shall stand first out when rested.

(b) When engineers in Long Pool service while awaiting a call, will be handled under the provisions of the current BLE Agreement, except that payment will be 100 rather than 50 miles. All other runarounds will be handled in accordance with the applicable BLE agreements.

Section 3. Engineers in Long Pool service held at other than the home terminal will be paid continuous time for all time so held after the expiration of 16 hours from the time relieved from previous duty at the regular rate per hour paid them for the last service performed.

Section 1. All turn-around service (including tie-ups under the Hours of Service), affiliated with the Long Pool will be protected by the Short Pool or the Long Pool extra list if no Short Pool exists at the point where the train will terminate. Article III- Combination Road-Yard Service Zones of the July 26, 1978, BLE Agreement, will not be affected by the provisions in this section and will remain in full force and effect.

Section 2. (a) In the application of Article XI, Section 8, of the current BLE Agreement, it is understood:

> "Excepting because of main line blockage and in the absence of extra engineers, demoted engineers and Short Pool engineers, Long Pool engineers will not be used in work, wreck or construction service. When it becomes necessary to use a Long Pool engineer in such service, the first out engineer on the active board at the terminal where the service originates will be used and the engineer will, if possible, continue either on to the opposite terminal where he/she will be placed last out on the inactive board, or will be returned to the terminal where his/her service originated, and will be placed first out, subject to the rest rules on the active board."

Section 3. (a) Crews in interdivisional service on this territory will be alternated on a 1-on-1 basis (e.g., 1 El Paso crew then 1 Sanderson crew, then 1 El Paso crew, etc.) out of both terminals of this territory. It is recognized that crews may have to be used out of turn when a crew (whose turn it is) is not rested, but when this is necessary, an offsetting adjustment (in number of crews from the unrested crew's district) in the alternation of the crews will be made (as soon as rested crews are available) in order to restore the balance.

(b) An interdivisional crew will not be considered "runaround" when the runaround is because of equalization, rest or other reasons specified in this Agreement.

(c) An interdivisional crew, at their away-from-home-terminal, may be called to deadhead at any time after their arrival, regardless of their standing in relation to at-home crews and the normal crew rotation, except they must be called first-in/first-out in relation to other crews from the same seniority district. When two away-from-home interdivisional crews are to be called for the same train (one to work and one to deadhead), if one of the crews is not rested and the other one is rested, the rested crew will work the train and the unrested crew will deadhead.

Article VII

Section 1. Lead locomotives used in interdivisional service will be furnished or equipped for such service, including but not limited to:

1. a clean cab
2. sanitary drinking water, and ice where needed
3. sanitary toilets
4. seasonal air conditioner and heater

Section 2. No locomotive shall be operated from a terminal without the lead unit headed in the direction of movement.

Article VIII

Section 1. Hard-surfaced, well lighted, parking facilities sufficient to accommodate automobiles of engineers will be provided at all home terminals of interdivisional runs.

Section 2. In cases where it is necessary to use interdivisional pool engineers in other service, they will be paid no less than they would have earned had they been used in turn in interdivisional service or service assigned, whichever is greater. The lost earnings of said engineers will be limited to the date the other service was performed.

Article IX

Section 1. Engineers in interdivisional service may be required to make three pick ups, set outs or perform three instances of station switching (including any combination of three pick ups, set outs or instances of station switching) without additional compensation. If required to perform more than what is specified herein, the affected engineers herein, will be alowed one (1) hour regardless of the number of additional instances.

NOTE: The setting out of a bad order call will not be considered a set out.

Article X

Section 1.(a). Every employee adversely affected either directly or indirectly as a result of the application of this rule shall receive the protection afforded by Sections 6, 7, 8 and 9 of the Washington Job Protection Agreement of May 1936, except that for the purposes of this Agreement, Section 7(a), is amended to read 100% (less earnings in outside employment) instead of 60% and extended to provide payment equivalent to length of service not to exceed five (5) years and to provide further allowances in Sections 6 and 7 be increased by subsequent general wage increases.

(b) Any employee required to change his residence shall be subject to the benefits contained in Sections 10 and 11 of the Washington Job Protection Agreement, and in addition to such benefits shall receive a transfer allowance of four hundred ($400) dollars, and five (5) working days instead of two (2) working days provided by Section 10(a) of said Agreement. Under this Section, change of residence shall not be considered required if the reporting point to which the employee is changed is not more than 30 miles from his former reporting points.

NOTE: The provisions of Article X, Section 1(b) shall apply to engineers who maintain their own lodging facility at former intermediate points, Valentine and Hearne.

Article XI

Section 1. All Agreements, rules and provisions not specifically modified or cancelled by this Agreement, will remain in full force and effect.

Section 2. This Agreement, signed at Houston, Texas this _____ day of _____ 1988, will become effective as specified in Article I, Section 1(a) of this Agreement and will remain in effect unless changed in accordance with the terms and provisions of the Railway Labor Act.

ARBITRATION BOARD NO. 493

PARTIES	BROTHERHOOD OF LOCOMOTIVE ENGINEERS	
TO	AND	AWARD PURSUANT TO ARTICLE IX, SECTION 4 OF THE AWARD OF ARBITRATION BOARD NUMBER 458
DISPUTE	SOUTHERN PACIFIC TRANSPORTATION COMPANY (WESTERN LINES)	

QUESTION AT ISSUE:

Under what conditions may Carrier establish interdivisional pool freight service between Roseville and Bakersfield, California and between Tracy and Bakersfield?

HISTORY OF DISPUTE:

Pursuant to Article IX, Section 1 of the Award of Arbitration Board No. 458, May 19, 1986 (Dennis, Neutral), hereafter referred to as the May 19, 1986 Award, the Carrier gave notice by letter of April 5, 1988 for establishment of interdivisional ID service as follows:

1. Interdivisional service in all classes except assigned passenger operating or deadheading between Roseville, California and Bakersfield, California through Fresno, California with home terminal at Roseville.

2. Interdivisional service in all classes except assigned passenger operating or deadheading between Tracy, California and Bakersfield, California through Fresno, California with home terminal at Tracy.

The letter also stated that concurrent with the establishment of the foregoing ID service existing freight pools between Bakersfield and Fresno, California and between Roseville and Fresno would be discontinued. That service involved two pool freight districts with a common away-from-home terminal at Fresno. One pool between Bakersfield and Fresno had its home terminal at Bakersfield and was operated by San Joaquin Seniority District engineers. The other pool was a triangular pool operating between Tracy, Roseville and

Fresno. That pool had two away-from-home terminals, and Tracy was the home terminal. It was operated primarily by Stockton Seniority District engineers. Some Sacramento Seniority District engineers were involved in the Roseville-Fresno portion of the run for purposes of mileage equity.

As provided in Article IX, Section 3 of the May 19, 1986 Award, the Carrier attempted to implement the ID service which involved the elimination of a home terminal in the Roseville-Bakersfield pool. The Organization threatened a work stoppage. In response the Carrier agreed first on a temporary basis and eventually on a permanent basis to a double-ended operation in the Roseville-Bakersfield pool with a home terminal for Stockton District engineers at Roseville and a home terminal for San Joaquin District engineers at Bakersfield. In May 1988 the Carrier implemented ID service between those two locations as well as between Tracy and Bakersfield on a trial basis pursuant to Article IX, Section 3 of the May 19, 1986 Award. Such service continues in effect.

Also pursuant to Article IX, Section 3 of the May 19, 1986 Award the parties met on numerous occasions to discuss the details of the operation as well as the working conditions of the proposed runs. Those negotiations resulted in a proposed agreement which received tentative approval by the by the Organization but eventually failed membership ratification. Accordingly, pursuant to Article IX, Section 4 of the May 19, 1986 Award the Carrier submitted the dispute to arbitration under the Railway Labor Act, 45 U.S.C. §§151, et seq. This Arbitration Board was created in accordance with the Act, and the dispute is now before it for final and binding determination.

FINDINGS:

The Board finds that the Carrier's notice of April 5, 1988 complies with the requirements of Article IX, Section 1 of the May 19, 1986 Award. The Board also finds that the Carrier and the Organization have complied with the procedural requirements of Article IX, Section 3 of that Award. The Board further finds that the dispute in this case is properly before it pursuant to Article IX, Section 4 of that Award.

Inasmuch as the parties' negotiations did not produce a final agreement dispositive of the Carrier's April 5, 1988 notice, this Board is required by Article IX, Section 4 of the May 19, 1986 Award to establish the terms and conditions under which the ID service proposed by the Carrier will operate if and when the Carrier establishes such service on a permanent basis. Attached hereto is a complete enumeration of such terms and conditions. It contains provisions with respect to which the parties reached accord during negotiations or agreed in written or oral presentations to this Board. Other provisions in the attachment are in dispute, and this Award deals primarily with them.

1. The Amount of Allowance to be Paid to Engineers Operating in This Service Who Are Not Permitted to Stop to Eat.

The Organization seeks one hour's pay for ID service engineers who are not permitted to stop to eat. The Organization points out that such an allowance is contained in an interim agreement applicable to this service as well as in agreements applicable to other service on the Division. Accordingly, urges the Organization, the one-hour allowance is sanctioned by Article IX, Section 2(f) of the May 19, 1986 Award which guarantees the parties the right

to negotiate terms and conditions applicable to ID service. Having negotiated such an allowance, argues the Organization, the Carrier is now precluded from reneging on the deal.

The Carrier argues that the subject has been preempted by Article IX, Section 2(e) of the May 19, 1986 Award which provides in pertinent part that "[W]hen crews on such runs are not permitted to stop to eat, crew members shall be paid an allowance of $1.50 for the trip." The Carrier contends that under Article IX, Section 4(a) of that Award this Board must be ". . . governed by the general and specific guidelines set forth in Section 2 above." The Carrier maintains that the $1.50 allowance is a specific guideline which this Board may not alter or ignore. The Carrier emphasizes that the interim agreement relied upon by the Organization was negotiated by local supervision and as such is not binding upon the Carrier. In any event, argues the Carrier, no such agreement can contravene the specific provisions of Article IX, Section 2(e).

We believe the Carrier has the stronger position on this issue. Article IX, Section 2(e) of the May 19, 1986 Award specifically establishes $1.50 as the allownace which will be applicable to engineers who are not permitted to stop to eat. The Award is tantamount to a national agreement the terms of which may not be varied or contravened by inconsistent agreements on individual carriers, except to the extent authorized by the Award. Article IX, Section 2(f) of the May 19, 1986 Award authorizes the Organization and individual carriers to negotiate only with respect to ". . . other terms and conditions of work . . ." which are not the subject of Sections 2(a) through (e). Consequently, Section 2(f) is no support for the Organization on this point.

Accordingly, the provision sought by the Organization will not be included in the Attachment.

2. The Threshold of Overtime (How Overtime Will be Calculated)

The Organization seeks a provision guaranteeing overtime for engineers in this service after twelve hours on duty. Pointing to its experience with the ID service instituted by the Carrier on a trial basis, the Organization argues that in numerous instances the Carrier has allowed the crews to die under the Hours of Service Law before completing their runs resulting in an excessive amount of time on duty for the crews. The Organization argues that this situation contravenes Article IX, Section 2(a) of the May 19, 1986 award which provides that "[R]uns shall be adequate for efficient operations and reasonable in regard to the miles run, hours on duty and in regard to other conditions of work." The Organization maintains that it is neither efficient nor reasonable for the Carrier to operate ID runs repeatedly in such a manner that the crews do not complete their run in less than twelve hours and must remain on duty substantially longer than that in order to be transported to an off-duty point. The Organization argues that the overtime provision it seeks is necessary to guarantee the efficiency and reasonableness of the operation mandated by Article IX, Section 2(a) of the Award.

The Carrier maintains that this Board has no jurisdiction to impose overtime for ID crews after twelve hours in service inasmuch as Article IV, Section 2(c) of the May 19, 1986 Award specifies the time at which overtime shall begin for engineers in ID service as provided in Side Letter No. 9A

to the Award. The Carrier cites the awards of three other arbitration boards in support of its argument and emphasizes that time on all ID service on the Carrier's property is calculated on the same basis as Article IV, Section 2(c) of the May 19, 1986 Award.

Article IV, Section 2(c) of the May 19, 1986 Award specifically defines "[T]he number of hours that must elapse before overtime begins on a trip in through-freight or through-passenger service. . ." and details a calculation to arrive at that time. Side Letter No. 9A to the Award makes Article IV, Section 2 applicable to ". . . interdivisional runs established subsequent to June 1, 1986." The May 19, 1986 Award specifically preempts the subject matter of the provision sought by the Organization. Although the Organization raises several persuasive equitable arguments with respect to the inclusion of such a provision, we have no authority to accede to the Organization's request.

Accordingly, the provision sought by the Organization will not be included in the Attachment.

3. The following two items regarding the application involving Section 7 of Article IX of the May 19, 1986 Award of Arbitration Board No. 458:

   a. In this instance, the meaning of the word "required" contained in Section 10(a) of WJPA?

   b. In this instance is "comparable housing" involved?

Article IX, Section 7 of the May 19, 1986 Award provides in pertinent part that "[A]ny employee required to change his residence shall be subject to the benefits contained in Sections 10 and 11 of the Washington Job Protection Agreement . . . ." Both Sections 10 and 11 of WJPA apply to

an employee who is ". . . required to change the point of his employment as the result of such coordination (interdivisional service in this instance) and is therefore required to move his place of residence. . . ."

The Organization seeks a provision from this Board which would in effect hold that all employees on the Stockton Seniority Roster of engineers are "required" to change their point of employment within the scope of Sections 10 and 11 of WJPA regardless of whether they voluntarily decide to work with the home terminal in Roseville or are assigned positions at Roseville. The Organization emphasizes that under the Carrier's ID service proposal the reporting point in Roseville would eighty-seven miles from the previous reporting point for these employees. The Organization also emphasizes that the severe ground fog which is prevalent in the area for several months of the year will force engineers working Roseville assignments to relocate in or near Roseville.

The Carrier charges that the Organization seeks a premature determination as to qualification of engineers for benefits under Sections 10 and 11 of WJPA which must await adjudication on a case by case basis. Moreover, urges the Carrier, this Board would have no jurisdiction to adjudicate such a question even if ripe for consideration. The Carrier contends that an interpretation of the term "required" in Sections 10 and 11 of WJPA is one exclusively for the Section 13 Committee established to interpret that agreement. Additionally, the Carrier argues, to accede to the Organization's request would constitute an amendment to the terms of the May 19, 1986 Award which also is beyond the jurisdiction of this Board.

Once again we find ourselves in agreement with the basic position of the Carrier. In effect, the Organization seeks certification of a particular group of engineers as being entitled to the benefits of Sections 10 and 11 of WJPA. Had it been the intent of the May 19, 1986 Award to afford such broad brush protection the Award would have so specified. Instead the Award appears to contemplate a case by case approach. Moreover, we believe the Carrier's point is well taken that by seeking an interpretation from this Board of Sections 10 and 11 of WJPA the Organization asks us to infringe upon the jurisdiction of the Section 13 Committee established to interpret WJPA.

Accordingly, the provision sought by the Organization will not be included in the Attachment.

The Organization seeks a provision or provisions concerning comparable housing. Specifically, the Organization seeks an allowance for engineers moving from Tracy to Roseville. As a threshold matter the Carrier opposes such a provision or provisions on the basis of real estate appraisals it has procured showing that the cost of real estate in Tracy is more expensive than in Roseville.

Both parties recognize that as a condition precedent to any provision concerning comparable housing there must be a determination that employees will be moving from a lower to a higher cost real estate area. The evidence furnished by the Carrier would seem to indicate that Roseville is a lower cost real estate area than Tracy.

However, in the award of Arbitration Board No. 492, Jan. 26, 1989 (LaRocco, Neutral), the most recent arbitral pronouncement dealing with the

subject of comparable housing, the Board emphasized the lack of expertise of the parties and the Board with respect to the value of real estate in a particular area. The Board opted for a provision, among others dealing with comparable housing, directing the parties to select an expert in real estate for the purpose of determining the respective cost of real estate at both locations. The results of such determination would govern the question as to whether there would be additional provisions governing comparable housing.

We believe the approach of Arbitration Board No. 492 should be followed in this case. However, despite the Organization's request for a full panoply of provisions relating to comparable housing, at this time we will include only a provision to determine whether in fact comparable housing in Roseville is higher or lower than that in Tracy. We will retain jurisdiction of this case so that in the event it is determined that Roseville is a higher cost real estate area than Tracy we may determine what additional provisions relating to comparable housing are warranted.

Under the circumstances of this case, particularly the fact that the Carrier already has gone to the expense of securing appraisals of property in Tracy and Roseville, the Organization should share equally in the expense of the real estate appraisals necessitated by this ruling.

Accordingly, a provision relating to comparable housing consistent with the foregoing determination will be included in the Attachment.

4. The Organization's request that engineers operating in this service be restricted to not more than three pick-ups or set-outs (or a combination of not more than three), and whether engineers who perform more than three should receive an allowance of one hour's pay.

In an argument similar to that advanced with respect to the threshold for overtime for ID crews the Organization contends that the foregoing

provision is necessary in order to assure that the Carrier will operate ID service in such manner as to assure that the crews will not exceed twelve hours on the job. Citing statistics showing that forty-one percent of the ID service crews on the Bakersfield-Roseville run exceed twelve hours on the job, the Organization contends that the ID service is not efficient and reasonable as mandated by Article IX, Section 2(a) of the May 19, 1986 Award. The one-hour allowance, urges the Organization, is necessary to correct that situation.

The Carrier opposes the Organization's request on the grounds that it would unduly interfere with the Carrier's managerial prerogatives and is inconsistent with Article IV, Section 5 of the May 19, 1986 Award which freezes duplicate time payments for all employees and eliminates them for employees establishing seniority after November 1, 1985. The Carrier disputes the Organization's allegation that the proposed ID runs are of unreasonable length or will be operated inefficiently. The Carrier cites statistics covering all ID runs on the property for the last eight months of 1988 showing that during any one month little more than fifteen percent of the ID crews failed to reach their objective terminal.

Both parties recognize that it is not desirable for an ID crew to expire under the Hours of Service Law. Such an eventuality results in increased transportation costs to the Carrier and longer hours on the job for the crew. However, we fail to see where another hour's pay would constitute such a significant additional expense as to be a decisionally significant factor in whether an ID crew expires under the Hours of Service Law. Moreover, we believe the Carrier's point is well taken that such payment

is inconsistent with the obvious intent of the May 19, 1986 Award to eliminate or drastically reduce such payments.

Nor can we agree with the Organization that the evidence establishes that the ID runs are or will be unreasonable or inefficient within the meaning of Article IX, Section 2(a) of the May 19, 1986 Award. From the inception of ID service on a trial basis in May 1988 through the end of the year no more than 15.4 percent of the total starts failed to reach their objective terminals and 95 percent of all such failures were on the Roseville-Bakersfield run. While it is true that from June 1, 1988 to February 5, 1989 41 percent of the starts on the Roseville-Bakersfield run failed to reach their objective terminal that factor alone does not render the number of hours on the run unreasonable. It must be borne in mind that the Roseville-Bakersfield run is 294 miles long. The Organization does not challenge the length of the run as unreasonable.

Accordingly, the provision sought by the Organization will not be included in the Attachment.

5. The Organization's request that a San Joaquin Seniority District engineer operating in the Tracy-Bakersfield pool for the purpose of mileage equalization have Bakersfield as a home terminal.

Inasmuch as three seniority districts will be affected by the implementation of the ID service proposed by the Carrier, the parties necessarily devised a scheme for division of the equity among the three districts. However, a dispute has arisen involving the mileage equity arrangement as to whether a San Joaquin district engineer working an assignment in the Tracy-Bakersfield pool should have Tracy or Bakersfield as a home terminal. The Organization seeks Bakersfield as the home terminal for the

assignment. However, pointing to the fact that Tracy would be the home terminal for the Tracy-Bakersfield pool the Carrier contends such an arrangement would be extremely difficult to manage and seeks Tracy as the home terminal for the engineer.

The arguments advanced by the parties effectively demonstrate some merit to their respective positions. However, we believe the best way to resolve the differences over this issue is to allow the San Joaquin engineer to be home terminaled at Tracy under certain conditions. The Carrier will provide continuous lodging for the engineer at Tracy during the three to four month period of mileage equalization. In the alternative the Carrier may pay the engineer an allowance equal to the Carrier's actual costs of lodging in Tracy. We recognize that neither party is completely satisfied with such an arrangement. However, we believe it comes closest to the achievement of the objectives of both parties.

Accordingly, a provision implementing the foregoing determination will be included in the Attachment.

6. The Organization's request that the allocation of turnaround Hours of Service relief for northbound trains between Bakersfield and Roseville be split between the Roseville and Tracy extra lists depending upon where the crew expires under the Hours of Service Law.

This dispute arises when a train from Bakersfield proceeding north to Roseville expires under the Hours of Service Law and the Carrier desires to use turnaround relief. There was an existing extra board at Tracy, and the Carrier has established a guaranteed extra board at Roseville. The question is from which extra board the turnaround relief service should come.

The Organization challenges the Carrier's right to establish a guaranteed extra board at Roseville. In the alternative, the Organization seeks a provision which would draw the relief from both extra boards depending upon the geographic location where the crew expires under the Hours of Service Law.

The Carrier contends that it should have the right to utilize only the Roseville extra board regardless of the location where the crew expires. The Carrier maintains that due to the logistics of the situation its costs incident to the transportation of expired and relief crews will be significantly less if only the Roseville extra board is utilized. Moreover, the Carrier emphasizes, the parties' arrangement guarantees that the Roseville extra board will not gain work at the expense of the Tracy extra board inasmuch as the parties have agreed for the Tracy extra board to "backup" the Roseville extra board. The Carrier also argues that the consistent use of the Roseville extra board will result in fewer delays for crews which has been the source of constant complaints from the Organization.

We find nothing in Side Letter No. 20 to the May 19, 1986 Award which would restrict the Carrier from establishing a guaranteed extra board at Roseville. On the contrary, we believe that document supports the Carrier's right to do so. Moreover, Section 2(c) of Side Letter No. 20 relied upon by the Organization does not appear to restrict the jobs protected by an extra board to those exclusively within the seniority district where the extra board is created. Section 2(c) provides that coverage of jobs by an extra board created under Side Letter No. 20 may extend beyond the seniority district if the General Chairman is so notified. Obviously the Carrier

notified the General Chairman in this case that the Roseville guaranteed extra board would protect jobs beyond the seniority district in which the Roseville board lies.

In the final analysis we believe Side Letter No. 20 to the May 19, 1986 Award authorizes the Carrier to establish a guaranteed extra board at Roseville and to use that board as the exclusive source for protecting the disputed turnaround work. We are sympathetic to the Organization's contention that the Carrier's actions may well adversely impact the extra board at Tracy. However, we do not believe we have the authority to interfere with any right guaranteed to the Carrier by the May 19, 1986 Award.

Accordingly, the provision sought by the Organization will not be included in the Attachment.

Other Issues

In addition to the items enumerated above the Carrier and the Organization have raised other provisions for inclusion in the Attachment as conditions applicable to the ID service proposed by the Carrier. The Carrier and the Organization argued vigorously in support of their respective positions on all such issues. However, the Board is persuaded by the fact that the tentative agreement reached by the parties appeared to have laid those issues to rest. This Board believes that the best evidence of how those issues should be resolved is reflected in the tentative agreement. Accordingly, the Board adopts the parties' tentative agreement with respect to those issues, and such provisions as were effectively agreed to by the parties are included in the Attachment.

AWARD

In the event the Carrier establishes interdivisional pool freight service between Roseville and Bakersfield, California and between Tracy and Bakersfield on a permanent basis the conditions set forth in the Attachment to this Award shall to such service.

William E. Fredenberger, Jr.
Chairman and Neutral Member

W. E. Loomis
Carrier Member

J. L. Dayton
Employee Member

DATED:

A T T A C H M E N T

MEMORANDUM OF AGREEMENT

BY AND BETWEEN THE

SOUTHERN PACIFIC TRANSPORTATION COMPANY (WESTERN LINES)

AND ITS ENGINEERS REPRESENTED BY THE

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

* * * * * * * * * * * * * *

Pursuant to Article IX of the May 19, 1986 Award of Arbitration Board No. 458, IT IS AGREED:

1. (a) An interdivisional freight pool will be created to operate or deadhead between Roseville, California, and Bakersfield, California, through Fresno, California. Roseville will be the home terminal for Stockton Seniority District engineers and Bakersfield will be the home terminal for San Joaquin Seniority District engineers assigned to or filling vacancies in this pool.

   (b) An interdivisional freight pool will be created to operate or deadhead between Tracy, California, and Bakersfield, California, through Fresno, California. Tracy will be the home terminal for Stockton Seniority District engineers assigned to or filling vacancies in this pool.

2. All miles run in excess of the miles encompassed in the basic day shall be paid for at a rate calculated by dividing the basic daily rate of pay in effect on May 31, 1986 by the number of miles encompassed in the basic day as of that date. Weight-on-drivers additives will apply to mileage rates calculated in accordance with this provision.

3. Engineers in these interdivisional freight pools held at other than the home terminal will be paid continuous time for all time so held after the expiration of sixteen (16) hours from the time relieved from previous duty at the regular rate per hour paid them for the last service performed.

4. Except in cases of wrecks, floods, washouts, storms or other occurrences which cause main track to be out of service, preventing movement of the train, an engineer in interdivisional service will not be tied up at an intermediate point and thereafter required to resume trip after obtaining legal rest.

5. An engineer operating on pooled freight runs established under the provisions of this agreement, when called to operate from one terminal to the other, will not be required to exchange positions with the engineer of an opposing train at the meeting point.

6. When an engineer is required to report for duty or is relieved from duty at a point other than the on and off duty points fixed for the service established hereunder, the Company shall authorize and provide suitable transportation for the engineer. Suitable transportation includes Company owned or provided passenger carrying motor vehicles or taxi, but excludes other forms of public transportation.

7. In order to expedite the movement of interdivisional runs, the Company shall determine the conditions under which the engineers may stop to eat. When engineers on this run are not permitted to stop to eat, engineers shall be paid an allowance of $ 1.50 for the trip.

8. Engineers in this interdivisional service will be allowed a $4.15 meal allowance after four (4) hours at the away-from-home terminal, and another $4.15 allowance after being held an additional eight (8) hours.

9. The provisions of Section 1(f), Article 30 of the agreement covering engineers, are modified in their application to engineers assigned to runs established under the provisions of this agreement, as follows:

   (a) An engineer who is called and then released prior to the on-duty time will be allowed two (2) hours at the rate specified in the current rate table; if called and not used and is released at any time between the on-duty time and four (4) hours thereafter, the engineer will be allowed four (4) hours at the rate specified in the current rate table; if called and not used and is released after four (4) hours from the on-duty time, the engineer will be allowed actual time with a minimum of eight (8) hours at the rate specified in the current rate table.

   (b) When call is annulled and no instructions given engineer with respect to further duty, the first call shall be paid for in accordance with this Section 9, depending upon whether service was begun. Registering, comparing time, and examining bulletins are not service under this rule.

   (c) An engineer who is called and not used and is released or an engineer who is called and used and released before departing the terminal shall stand first out, but shall not be subject to call for service (deadheading is not service) until he is fully rested under the Hours of Service Law. If released, the engineer will have the option, at the time of release, of marking 8, 10 or 12 hours rest.

(d) When an engineer is not released but is instructed to come on duty at a later time for the service originally called for, or for some other service, or if the service called for is changed while on duty and the engineer departs in service other than that originally called for, the time of service in which used shall be computed from the time coming on duty on original call.

(e) The paragraph next above does not apply to an engineer instructed while on duty and after having performed service at a terminal to deadhead from terminal to terminal, except when engineers are required to exchange trains to avoid being run around as provided in Section 5, Article 30.

10. An engineer returning to his home terminal after completion of a trip in interdivisional service will be permitted to mark 8, 10, 12 or 24 hours rest at the time he registers his arrival.

11. (a) Work in the Roseville-Bakersfield interdivisional pool will be allocated to the Stockton Seniority District and the San Joaquin Seniority District, with an equal number of engineers assigned at each home terminal. Work in the Tracy-Bakersfield pool will be allocated to Stockton Seniority District engineers, except that a San Joaquin Seniority District engineer may hold an assignment in the Tracy-Bakersfield pool for mileage equity purposes during periods of time determined by the Organization.

(b) Sacramento Seniority District will obtain equity in the Roseville-Bakersfield interdivisional pool by working assignments allocated to Stockton Seniority District engineers under a procedure determined by the Organization. The Company will not incur any cost as the result of a shift between Stockton and Sacramento Seniority District engineers.

(c) Work allocated to the Tracy-Bakersfield pool may include not more than one train per day to be handled from Stockton (or a point compass south thereof) by an engineer deadheaded from Tracy.

(d) Stockton and San Joaquin Seniority District engineers assigned to or filling vacancies in the Roseville-Bakersfield pool will be called for service or deadhead in alternating order, with the understanding two engineers from one seniority district may be called consecutively if an engineer from the other seniority district is not available.

(e) An extra list of Stockton Seniority District engineers will be established in Roseville for the purpose of protecting vacancies and new assignments in the Roseville-Bakersfield pool allocated to Stockton Seniority District engineers (including those being filled by Sacramento Seniority District engineers). This extra list will also protect service between Roseville and Tracy originating at Roseville and may perform turnaround service handling trains from Roseville to an intermediate point between Roseville and Fresno, including Fresno, and/or handling trains from such intermediate point to Roseville.

(f) When the Stockton Seniority District extra list at Roseville is exhausted, the Stockton Seniority District extra list of engineers at Tracy will be used. Such use of a Tracy extra engineer will be considered as service allocated to the Tracy extra list. Similarly, when the Tracy extra list is exhausted, the Stockton Seniority District extra list of engineers at Roseville will be used. Such use of a Roseville extra engineer will be considered as service allocated to the Roseville extra list.

(g) An engineer assigned in the Roseville-Bakersfield pool or the Tracy-Bakersfield pool used in turnaround service from either terminal will, when returned to that terminal, be placed:

~~either (1) to the bottom of the pool list~~ JFD 6/5/89 aw ER 5/19/89
~~or (2)~~ to the top of the pool list but will not be subject to call again until fully rested.

An engineer called for turnaround service will not be called for a second consecutive turnaround service unless all other engineers available on the pool list have also been used for turnaround service. No runaround penalties shall arise from the application of this section.

(h) Except to perform Hours of Service relief as set forth in Item 12, an engineer in this service at the away-from-home terminal will not be used to perform non-interdivisional service, except in cases of emergency.

(i) Engineers assigned to or filling vacancies in this interdivisional service will be expected to lay off at the home terminal only. If, due to illness or other compelling reason, an engineer in this interdivisional service lays off at the away-from-home terminal, such engineer will be required to next report for service at the home terminal. A vacancy created by layoff at the away-from-home terminal may be deadhead to the home terminal or filled from the extra list at that away-from-home terminal at the option of the Company. If filled, the extra engineer so used will be deadheaded back to the extra list upon arrival at the opposite terminal.

(j) Upon the effective date of this agreement, Fresno shall be eliminated as a pool freight terminal and the term "Fresno" shall be removed from the list shown in Section 1, Article 13. The listings "Roseville and Tracy-Fresno" and "Fresno and Bakersfield" shall be deleted from Section 2, Article 31. In their place, "Tracy and Bakersfield" and "Roseville and Bakersfield" shall be added to Section 2, Article 31.

12. Hours of Service relief in the Roseville-Bakersfield and Tracy-Bakersfield pools will be performed as follows:

(a) If the relieving engineer will perform turnaround service, an extra engineer will be used, unless no extra engineer is available at that terminal, in which case an interdivisional engineer will be called from the pool for the service.

(b) If the relieving engineer will go through to the opposite terminal, an interdivisional engineer from the pool will be called for the service, unless no such engineer is available, in which case an extra engineer will be called.

(c) The relieved engineer will be deadheaded to the terminal in direction of train by the most expeditious means of transportation available.

13. Deadhead between Roseville and Bakersfield or between Tracy and Bakersfield, or immediate points, will be by the fastest and most efficient means available, including air when cost-effective.

14. (a) An engineer required to change his residence shall be subject to the benefits contained in Sections 10 and 11 of the Washington Job Protection Agreement, and in addition to such benefits shall receive a transfer allowance of $400.00 and five (5) working days instead of the "two working days" provided by Section 10(a) of said agreement. Change of residence shall not be considered "required" if the reporting point to which the employee is changed is not more than 30 miles from his former reporting point.

(b) An engineer required to change his residence will have an option of electing a lump sum allowance in lieu of the benefits provided in Sections 10 and 11 of the Washington Job Protection Agreement and relieving the Company of any and all responsibility in connection therewith, as follows:

1 - In lieu of the benefits of Section 10(a)..... $ 2,000

2 - If elects to retain his residence ... in lieu of
items 1 or 2 of Section 11(a)..... $12,500
- May also elect in lieu of Section 10(a)..... $ 2,000

3 - In lieu of item 3 of Section 11(a) ..... $ 1,000
- May also elect in lieu of Section 10(a)..... $ 2,000

(c) An engineer required to change his residence as a result of implementation of this agreement shall be given the opportunity to sell his home to the Company at fair value within sixty (60) days of implementation of this agreement. Fair value shall be determined by an appraisal made sufficiently in advance of implementation to be unaffected thereby. Should a dispute arise over the appraised value of the home, the procedures contained in Section 11(d) of the Washington Job Protection Agreement shall be used to resolve the dispute.

(d) Should an engineer decline to accept the Company's offer to purchase his home, he shall be reimbursed for the actual usual and customary costs (not to exceed 6% of the sales price) associated with selling his home, with no protection against loss from sale, provided such sale takes place within three (3) years of implementation of the Agreement. This would not be construed as to keep the employee from accepting the lump sum offer if he elects to decline the Company's offer to purchase his home.

15. Engineers adversely affected either directly or indirectly as a result of the application of this agreement shall receive the protection afforded by Sections 6, 7, 8 and 9 of the Washington Job Protection Agreement of May, 1936, except that for the purposes of this agreement Section 7(a) is amended to read 100% (less earnings in outside employment) instead of 60%, and extended to provide period of payment equivalent to length in service not to exceed six (6) years, and to provide further that allowances in Sections 6 and 7 be increased by subsequent general wage increases.

16 (a) In making a determination whether or not engineers moving to Roseville from Tracy, California will be required to move to a higher cost real estate area and will be entitled to a comparable housing allowance, a qualified third party expert, selected and compensated by the parties shall select a standard type of home to use for cost comparison purposes in both locations. The third party expert will then develop the average sales price of homes in comparable socio-economic areas at both locations for the previous twelve months. If either location has an insufficient base upon which to make a fair determination of the average, the third party expert will apprise a sufficient number of homes meeting the agreed-to standards to establish a larger base for the average.

(b) The Carrier will furnish the Organization the information developed and the method used to make the determination.

(c) If it is determined the average cost of housing in Roseville does not exceed the average cost of housing in Tracy, no comparable housing allowance will be due.

(d) If the average cost of housing in Roseville is greater, the parties will inform this Board which will make further determinations regarding the extent of the comparable housing allowance.

17. With respect to Section 11(a) of this agreement, the San Joaquin Seniority District engineer holding an assignment in the Tracy-Bakersfield pool for mileage equity purposes will be home-terminaled at Tracy. The Carrier will provide continuous lodging at Tracy for this engineer during the times he holds the assignment. In lieu of such lodging expense the Carrier may pay the engineer an amount equal to the actual lodging expense.

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

Side Letter #1

Dear Sir:

This is in connection with the agreement effective today which provides for the establishment of interdivisional service between Roseville and Bakersfield and between Tracy and Bakersfield. My understanding is we have reached agreement as follows:

In the application of Items 12(c) and 13, the Local Chairman-BLE may, at his request, meet with the Superintendent, or his representative, for the purpose of reviewing the methods of transportation used to deadhead engineers, with a view toward establishing a list of transportation which fulfills the intent of Items 12(c) and 13. This side letter is subject to cancellation by fifteen (15) days' written notice by one party on the other.

If the above correctly reflects our understanding, please signify with your signature below.

Sincerely,

CONCUR:

_____
General Chairman
Brotherhood of Locomotive Engineers

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

Side Letter #2

Dear Sir:

This is in connection with the agreement effective today which provides for interdivisional service between Roseville and Bakersfield and between Tracy and Bakersfield. My understanding is we have reached agreement as follows:

It is the intention of the parties to permit an engineer who is called for deadhead from the home terminal to the away-from-home terminal, but who has already performed such a deadhead during the current pay period, to pass such call to the next-out engineer on that pool freight list who has not yet performed such a deadhead during the pay period. It will be the responsibility of the engineer desiring to pass such a call for deadhead to inform the Crew Dispatcher when called. The Company, by honoring such a request to pass the call, will not be subjected to any additional compensation in the form of runarounds, earnings or any other penalty. This aspect of the agreement providing for passing calls for deadhead is subject to cancellation by fifteen (15) days written notice by one party on the other.

If the above correctly reflects our understanding, please signify with your signature below.

Sincerely,

CONCUR:

General Chairman
Brotherhood of Locomotive Engineers

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

Side Letter #3

Dear Sir:

This is in connection with the agreement effective today which provides for interdivisional freight pools between Roseville and Bakersfield and between Tracy and Bakersfield. My understanding is we have reached agreement as follows:

Item 1(a) of the agreement notwithstanding, the parties understand that if the operation with two home terminals results in a significantly higher cost for deadhead and HAHT than would be expected by a single-ended operation, the parties reserve their respective rights under applicable agreements to serve or oppose a notice seeking to change the Roseville-Bakersfield pool to a single-ended operation.

If the above correctly reflects our understanding, please signify with your signature below.

Sincerely,

CONCUR:

General Chairman
Brotherhood of Locomotive Engineers

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

Side Letter #4

Dear Sir:

This is in connection with the agreement effective today which provides for the establishment of interdivisional pool freight service between Roseville and Bakersfield and between Tracy and Bakersfield. My understanding is we have reached agreement as follows:

Item 14 of the agreement provides for the benefits under Sections 10 and 11 of the Washington Job Protection Agreement to those engineers who are required to change their residence in connection with the establishment of this service. If during the first three years following the effective date of this agreement the average number of assignments (during any three month period) allocated to the Stockton Seniority District of engineers in the Roseville-Bakersfield pool (and the extra list established at Roseville) exceeds the number of assignments initially (following the effective date of this agreement) established, the increased number of assignments will be considered in providing benefits under Sections 10 and 11. Any engineer who is assigned to one of the increased number of assignments who is required to change his residence shall be considered eligible for the benefits of Sections 10 and 11.

If the above correctly reflects our understanding, please signify with your signature below.

Sincerely,

CONCUR:

_____
General Chairman
Brotherhood of Locomotive Engineers

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

Side Letter #5

Dear Sir:

This is in connection with the agreement effective today which provides for the establishment of interdivisional service between Roseville and Bakersfield and between Tracy and Bakersfield. My understanding is we have reached agreement as follows:

To aid in the Organization's regulation of the number of engineers assigned in the Roseville-Bakersfield pool and in the Tracy-Bakersfield pool, the Company will make available information on starts and deadheads which can be obtained from existing reports. It is understood the Company is not required to develop or produce special reports for this purpose.

If the above correctly reflects our understanding, please signify with your signature below.

Sincerely,

CONCUR:

_____
General Chairman
Brotherhood of Locomotive Engineers

MEMORANDUM OF AGREEMENT

by and between the

SOUTHERN PACIFIC TRANSPORTATION COMPANY (WESTERN LINES)

and its employees

represented by the

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

* * * * * * * *

In accordance with and pursuant to the provisions of Section 10, Article 30, agreement covering engineers, it is agreed by and between the parties hereto that the allocation of work to the extra list of engineers at Tracy, Stockton District, as referred to in the second paragraph of Section 3(a), Article 30, agreement covering engineers, shall be as follows:

1. Fill vacancies and newly-advertised positions in the Tracy-Bakersfield pool.

2. Augment the Tracy-Bakersfield pool.

3. Fill service allocated to the Stockton District extra list at Roseville when that list is exhausted.

4. Fill vacancies and newly-advertised positions in local freight service, roustabout service, and work train service (including pile drivers, weed burners, burro cranes, and rail detector cars) on the Stockton District, except for assignments with home terminal at Roseville.

5. Fill positions in unassigned work train service (including pile drivers, weed burners, burro cranes, rail detector cars, and supply trains) on the Stockton District, except service originating at Roseville.

6. Fill vacancies, newly-advertised positions in and perform unassigned yard service at Tracy and Stockton.

7. Fill positions in relief outfit service originating at Tracy and operating on the Stockton District.

8. Fill positions in unassigned turnaround freight service originating at Tracy and turning at any point between Tracy and Roseville, including Roseville, and/or Tracy and Fresno, including Fresno, via either Lathrop or Los Banos, when call is placed for and stipulates such turnaround service.

9. Effect Hours of Service Law relief of Tracy-Bakersfield pool freight engineers operating trains destined Tracy when such relief will be performed on a turnaround basis.

10. Coincident with the effective date of this agreement, Memorandum of Agreement covered by Company File E&F 1-963, effective November 15, 1967, is cancelled.

ARBITRATION BOARD NO. 507

PARTIES	UNITED TRANSPORTATION UNION	)	
		)	DECISION PURSUANT
TO	AND	)	TO ARTICLE IX,
		)	SECTION 4 OF THE
DISPUTE	SOUTHERN PACIFIC TRANSPORTATION	)	OCTOBER 31, 1985
	COMPANY -- EASTERN LINES	)	NATIONAL AGREEMENT

QUESTION AT ISSUE:

Under what conditions may Carrier establish interdivisional service between Houston, Texas and Shreveport, Louisiana?

BACKGROUND:

The Carrier served notice pursuant to Article IX, Section 1 of the October 31, 1985 UTU National Agreement (hereafter October 31, 1985 National Agreement) to establish interdivisional (ID) service between Houston, Texas and Shreveport Louisiana through the home terminal of Lufkin, Texas. The parties met on several dates in an attempt to reach agreement concerning the details of the operation and conditions applicable thereto. However, negotiations were not fruitful, and the Carrier invoked the arbitration procedures of Article IX, Section 4. This Board was created pursuant to Article IX, Section 4(a), and the parties selected the undersigned to serve as Chairman and Neutral Member. Hearing in this matter was held in Houston, Texas at which both the Carrier and the Organization made oral presentations to the Board. Additionally, both parties have furnished the Board with extensive written submissions.

FINDINGS:

At the outset the Organization challenges the sufficiency of the Carrier's notice under Article IX, Section 1. The Organization points to a

number of notices served by the Carrier to establish ID service between Houston and Shreveport which the Organization maintains are conflicting, confusing and misleading. Moreover, the Organization contends, many of the notices do not set forth the conditions the Carrier proposed to be applicable to such service and none specifies the service proposed to be established as required by Article IX, Section 1 because none designate the trains or runs to be placed in ID service.

While we agree with the Organization that the manner in which the Carrier has handled notices for the establishment of the ID service at issue in this case has been confusing, we cannot agree with the Organization that the Carrier has committed fatal error. The fact that there was an outstanding notice for the same ID service served under an earlier ID service agreement did not bar the Carrier from serving notice under Article IX of the October 31, 1985 National Agreement. Two of the notices, one served on May 27, 1987 and another served April 20, 1988 and clarified by letter of May 3, 1988, set forth what the Carrier proposed to be the conditions applicable to the service. While those statements of conditions are no more than a recitation of the provisions of Article IX, Section 2 we believe they suffice to meet the requirements of Section 1 pertaining to notice in that they were sufficient to prompt negotiations as contemplated by Section 3. Moreover, during such negotiations the Carrier made clear that with few exceptions it intended to operate all freight and passenger service between Houston and Shreveport through Lufkin on an interdivisional basis.

While the Organization maintains that the Task Force Rule of September 27, 1972 governing ID service through home terminals remained viable after the October 31, 1985 National Agreement, the ID service agreement the

Organization cites to support this argument states that it was entered into pursuant to Article IX of the October 31, 1985 National Agreement. Moreover, the record contains no evidence of any election and notice thereof to Organizations under Article IX to preserve existing rules and practice. The Organization's reliance upon Article IX, Section 5 is misplaced. That provision applies only to preexisting ID service and the implementing agreements applicable to such service but not to the preservation of existing rules and practices pursuant to which ID service is created. Again, under Article IX of the October 31, 1985 National Agreement the preservation of such rules and practices would require an election to do so and notice of that election to interested Organizations of which there is no record evidence in this case.

Accordingly, we find that the Carrier complied with the requirements of Article IX, Section 1 of the October 31, 1985 National Agreement governing notice.

We also find that the Carrier and the Organization have complied with the requirements of Article IX, Section 3 governing negotiations for the establishment of conditions applicable to the proposed ID service. We further find that the Carrier and the Organization have complied with the requirements of Article IX, Section 4 pertaining to arbitration and that this dispute is properly before this Board.

At the outset the Carrier objects to any term or condition proposed by the Organization which in the Carrier's view represents increased compensation for employees. The Carrier maintains that, negotiated implementing agreements notwithstanding, this Board has no jurisdiction under Article IX, Section 4 of the October 31, 1985 National Agreement to grant increased

compensation to employees. It requires this Board to be ". . . governed by the general and specific guidelines set forth in Section 2 . . ." of Article IX. The Carrier argues that although broad latitude may have existed under the 1972 UTU National Agreement, Article IX, Section 4 severely limited that latitude. Pointing to the similarity of language between Article X of the October 15, 1982 UTU National Agreement dealing with cabooses and the language of Article IX, Section 4 of the October 31, 1985 National Agreement the Carrier cites numerous arbitration awards under Article X holding that arbitrators have no authority to grant requests for additional compensation in Article X proceedings. By analogy, urges the Carrier, the same conclusion should apply with respect to Article IX, Section 4. Pointing to identical language in Article IX of the May 19, 1986 agreement with the Brotherhood of Locomotive Engineers (BLE), the Carrier cites the decision of Arbitration Board No. 468 (Eischen, Neutral) on this property which after consideration of the same arguments advanced by the Carrier in this case ruled that the Board had no jurisdiction to impose conditions on ID service which would result in increased compensation for employees.

The Carrier urges that the moratorium provisions of Article XVII of the October 31, 1985 National Agreement barred any change in the agreement which would result in increased compensation for employees prior to July 1, 1988 and that on July 25, 1988 the Organization served notice pursuant to Section 6 of the Railway Labor Act, 45 U.S.C. §156, to change the agreement to include many of its proposals made in this case which would result in increased compensation for employees. The Carrier also points out that on

January 19, 1990 the ~~Carrier~~ Organization filed an action in Federal District Court to require the Carrier to negotiate such provisions on a national level. The Carrier contends that the Organization is attempting to achieve in this arbitration what it is attempting to achieve through its Section 6 notice and court action and that such attempt is improper.

We believe the Carrier makes a strong case on this point that as a general rule a Board such as this has no authority under Article IX, Section 4 to award or impose provisions which would result in increased compensation to employees. However, as with any general rule there may be exceptions warranted by particular circumstances. Arbitration Board No. 468 so recognized. Accordingly, we believe a determination should be made individually with respect to each provision with respect to which the issue is raised.

Turning to the merits of this dispute, analysis of the final proposals by each party to settle the dispute clearly establishes that there are substantial disagreements. Clearly, this Board must examine each proposed condition with respect to which there is disagreement and render a determination. In view of that task the Board believes it will be most efficient to state the provision sought by the Organization and its arguments in support thereof followed by a statement of the Carrier's position, arguments and proposal with the Board's analysis and conclusions at the end.

1. Sprint Service

The Organization seeks a provision which would include ". . . all current sprint train service currently running in interdivisional service between (Houston and Shreveport)." The Carrier objects to such a provision

on the ground that no ID service currently operates between Houston and Shreveport through Lufkin and that it is the exclusive province of the Carrier to designate which trains shall operate an ID service. The Carrier's proposal makes no reference to sprint train service.

The Carrier's notice pertaining to the ID service in this case clearly establishes that initially all trains operating between Houston and Shreveport will be operated in ID service. That would include any sprint trains operated between Houston and Shreveport. We believe the Carrier's proposal on this point is more reflective of the nature of the ID service in this case than is the Organization's proposal. Accordingly, the Carrier's proposal will be adopted.

2. Designation of ID Service

The Organization objects to the fact that the Carrier has not specified which trains will operate in ID service either in its notice or during negotiations. Moreover, urges the Organization, the Carrier improperly has designated local service on the districts between Houston and Shreveport as ID service. Accordingly, the Organization proposes a provision which would require the Carrier to give twenty days notice of any ID service it proposes and specify such service in terms of the particular trains to be operated and the proposed conditions to be applicable to such service. The Carrier objects to the Organization's proposal on the ground that it would result in duplicitous proceedings with respect to each train the Carrier operates in ID service, matters which the parties intended under Article IX of the October 31, 1985 UTU National Agreement to be resolved in a single proceeding such as the one before this Board. The Carrier also contends that

the establishment of local freight service as ID service is well within its discretion under Article IX. The Carrier's proposal reflects its objections.

We believe the Organization's objection is answered by the fact that the Carrier has designated virtually all service between Houston and Shreveport as ID service. We believe the Carrier's point is well taken that Article IX does not contemplate duplicitous proceedings which would result from the Organization's proposal. The Carrier's proposal provides for ten days' notice prior to the establishment of ID service, but the terms and conditions applicable to such service would be those determined in this proceeding. We recognize, as the Organization contends, that the nature of local freight service is such as to give the appearance of being inconsistent with the expediency contemplated by ID service. Nevertheless, there is no showing on the record before us that local freight service to be operated interdivisionally between Houston and Shreverport would not meet the criteria of Article IX, Section 2(a). We find that the Carrier's proposal more clearly reflects our conclusions on this point, and for that reason it will be adopted.

3. Retention of Lufkin as a Terminal

The Organization proposes to discontinue Lufkin as a terminal. The Carrier objects on the ground that this Board has no authority to do so under Article IX of the October 31, 1985 National Agreement and would preclude the Carrier from exercising its right to reestablish short pool service, a right which is included in every ID service agreement on the Eastern Lines. Moreover, urges the Carrier, the Organization's proposal would result in the relocation of employees who are not necessary to protect newly established

ID service. The Carrier's proposal would retain Lufkin as a terminal and allow the Carrier to reestablish short pool service at its discretion.

We find the Carrier's arguments persuasive. Article IX contemplates that interdivisional service may be established to run through a home terminal. Nothing in that Article mandates the extinction of the terminal, particularly where, as in the instant case, there appear to be legitimate reasons for retaining it. Elimination of Lufkin as a terminal would result in needless relocation of employees, a consequence to be avoided where possible. The Carrier should have the right to reestablish short pool service out of Lufkin where operating needs dictate. Accordingly, we believe the Carrier's proposal should be adopted.

4. Deadheading

The Organization proposes that crews in ID service called to deadhead in excess of two times in a month be paid all deadhead miles in excess of the second deadhead. The Organization maintains that such provision is necessary to prevent and cure the abuses it has suffered under the deadheading provisions of the October 31, 1985 National Agreement. The Carrier opposes such a provision as being beyond the jurisdiction of this Board to award.

The problem with the Organization's argument, quickly pointed out by the Carrier, is that this Board has no authority to modify the deadhead rules of the 1985 National Agreement. Whatever complaints the Organization has for any abuses employees may have experienced must be addressed to a different forum. The deadheading provisions of the October 31, 1985 National Agreement control in this instance. Accordingly, the Organization's proposal will be rejected.

5. Held-Away-From-Home Terminal Pay

The Organization seeks a provision for pay for any employee held at the away-from-home terminal beginning after ten hours and continuing until the employee returns to the home terminal. In support of its request for such provision the Organization cites an ID service agreement on the Missouri Pacific Railroad which includes such a provision. The Carrier opposes the Organization's request on several grounds. First, the Carrier maintains that no such provision ever has been negotiated on this property and that while such pay has been provided for employees in ID service after sixteen hours the quid pro quo for those agreements involved considerations of work equities, double ended pools and the like none of which apply to the ID service in this case. Moreover, urges the Carrier the Organization's proposal parallels conditions set forth in a notice served pursuant to Section 6 of the Railway Labor Act, 45 U.S.C. §156, July 25, 1988. The Carrier maintains that the held-away-from-home terminal provisions of Article 38 of the applicable schedule agreement apply in this case and bar any award to the contrary by this Board.

We believe the Carrier has the superior argument on this point. Article 38 of the applicable schedule agreement provides for pay after an employee is held sixteen hours at other than the home terminal. While the Organization apparently has served a Section 6 notice to change that provision, the fact remains that the parties have not agreed to the Organization's proposal. Were we to adopt the Organization's proposal we would be altering the parties' existing agreement to increase significantly the pay of

employees and thus the economic costs to the Carrier. We see no exception in this record to the general prohibition against such an award by this Board. Accordingly, the Organization's proposal is rejected.

6. Relief of Crews Expiring Under Hours of Service Act

The Organization proposes that any relief for ID crews expiring under the Hours of Service Act be provided by an extra crew from the nearest point of supply. The Carrier objects on the ground that the Organization's proposal would eliminate numerous options to deal with hours of service relief and turn around service available to the Carrier under Article VIII of the October 31, 1985 National Agreement as well as under provisions of other applicable agreements which the Carrier maintains are more economically advantageous. For example, urges the Carrier, if such relief service must be provided from the Lufkin extra list the Carrier would be required in each instance to deadhead the crew back to Lufkin from Shreveport or Houston. The Carrier's proposal reflects its position.

On the record before us it would appear that the Organization's proposal would unduly restrain the Carrier's flexibility in handling hours of service relief and turn around service and thus would impair the efficient operation of ID service. Article VIII of the October 31, 1985 National Agreement affords the Carrier the latitude of utilizing yard crews under certain circumstances for hours of service relief. Moreover, provisions of other applicable agreements on this property allow the Carrier to utilize trainmen in pool or irregular freight service out of their home or away-from-home terminals under specified conditions. Additionally, under existing agreements the Carrier may use a following train to pick up and/or consolidate

an hours of service train. All such options will mitigate the Carrier's costs in operating ID service. Inasmuch as operational efficiency and reduced costs are important criteria under Article IX of the October 31, 1985 National Agreement, we find the Carrier's arguments on this point persuasive and adopt its proposal.

7. Establishment of Guaranteed Extra Boards

The Organization seeks a provision which would establish guaranteed extra boards at Houston to protect the ID service in this case and would set the guarantee at $4,400 per month. The Carrier objects on the ground that existing extra boards at Houston can protect the service. Moreover, urges the Carrier, the Organization's proposal would divest the Carrier of its right to regulate guaranteed extra boards and would constitute a twenty-five percent increase in guarantee costs as well as an increase in the cost of protection for employees adversely affected by institution of the ID service in this case. The Carrier argues that the Organization's proposal violates the moratorium provision of Article VI of the November 28, 1988 agreement which is applicable to the creation and regulation of guaranteed extra boards. Additionally, the Carrier contends, inasmuch as the Organization's proposal is an attempt to gain increased compensation it is beyond the jurisdiction of this Board to grant the request.

Article IX of the October 31, 1985 National Agreement is not intended to be a device for substantial revision or alteration of existing agreements between the parties. We find the Organization's proposal would accomplish such a result. Accordingly, we reject the proposal.

8. Mileage Rates -- Overtime

The Organization proposes that all miles in excess of those encompassed in the basic day be paid for at a rate subject to specific calculation and that overtime commence after an ID crew has been on duty ten hours. The Organization emphasizes that such a provision appears in an existing ID service agreement. The Carrier objects to the Organization's proposal on the ground that the subject matter is encompassed by Article IV, Section 2 of the October 31, 1985 National Agreement and that inasmuch as the Organization's proposal runs contrary to that provision it is beyond the jurisdiction of this Board to grant the Organization's request. In support of its argument the Carrier cites a decision of the Joint Interpretation Committee interpreting Article IV, Section 2(c) as well as the decision of Arbitration Board No. 493 on this property with the undersigned as Chairman dealing with identical language in the current BLE National Agreement and finding that such language preempted a proposal by one of the parties to that proceeding covering the same subject matter.

The Organization's proposal specifically deals with matters governed by Article IV, Section 2 of the October 31, 1985 National Agreement. The Organization's proposal contains significantly different benefits than those in Article IV, Section 2. To grant the Organization's request would render inapplicable to this ID service the terms of Article IV, Section 2, and we agree with the Carrier that we may not do so. The fact that the parties may have agreed to such a provision in an ID service agreement does not alter our conclusion. Such an agreement cannot vest jurisdiction or authority in this Board not otherwise vested by Article IX, Section 4 of the October 31, 1985 National Agreement.

9. Eligibility for Change of Residence Benefits -- When A Change of Residence is "Required"

The Organization seeks a provision which would include within the definition of an "employee required to change his residence" set forth in Article XIII, Section 9 of the January 27, 1972 UTU National Agreement, specifically made applicable to employees adversely affected by implementation of Article IX of the October 31, 1985 National Agreement by Section 7 thereof, all employees who voluntarily accept assignments in interdivisional service as well as all employees having a seniority date in train service on the date of implementation of this arrangement and who relocate thereafter to Houston. The Organization emphasizes that such a provision was included in an ID service agreement on another property. The Carrier objects to the Organization's proposal on the ground that it constitutes an impermissible expansion of the protective benefits provided in Article IX, Section 7. The Carrier proposes that Article XIII be made applicable to the ID service in this case without an expansion of the benefits therein.

Whatever Carriers and the Organization may have agreed to voluntarily under Article IX of the October 31, 1985 National Agreement, particularly on other properties, the fact remains that the Organization in this case seeks the imposition of a provision which would contravene the clear intent of Article XIII, Section 9 of the January 27, 1972 National Agreement to limit eligibility for relocation benefits to employees actually required to change their residence as the result of implementation of ID service. Under the Organization's proposal any employee who voluntarily relocates to Houston without regard to whether such relocation actually is

forced by the implementation of ID service in this case would receive relocation benefits. Arbitration Board No. 482 on another property dealing with the language of Article XIII, Section 9 at issue in this case and Arbitration Board No. 493 on this property dealing with virtually the identical language in the BLE National Agreement, both of which had the same Neutral Member as this Board, rejected similar efforts by the Organizations in those cases. We believe the same result is compelled in this case. Accordingly, the Carrier's proposal will be adopted.

10. Lump Sum and Travel Allowances in Lieu of Relocation Benefits

The Organization proposes that all employees holding seniority in the territory covered by this arrangement have the option of accepting a lump sum payment of $20,000 in lieu of all other relocation benefits provided in Article XIII, Section 9 of the January 27, 1972 National Agreement. The Organization also proposes that all employees who relocate from Lufkin to Houston receive an interim travel allowance of two hours at the prorata rate applicable to the service last performed and that employees who continue to reside at Lufkin receive a one-hour allowance. Again, the Organization cites the inclusion of such provisions in an agreement under Article IX of the October 31, 1985 National Agreement on another property. The Carrier interposes the now familiar objection that the Organization's proposals would constitute an impermissible expansion of the level of protection afforded by Article IX, Section 7. The Carrier proposes that Article XIII be made applicable to the ID service in this case without any expansion of the level of benefits therein.

We believe the Carrier's point is well taken. Article IX, Section 7 of the October 31, 1985 National Agreement specifically provides that the protective benefits of Article XIII of the January 27, 1972 National Agreement shall apply to employees adversely affected by the application of Article IX providing for ID service. Article XIII provides that the benefits of Sections 10 and 11 of the Washington Job Protection Agreement (WJPA) of 1936 shall be applicable to those employees required to change their residence as a result of the implementation of ID service. While Sections 10 and 11 detail significant benefits available to employees so affected, nothing therein provides for the benefits proposed by the Organization in this case. While it may be true that on another property the parties have included such a provision in a voluntary agreement, that fact does not persuade us that such provision should be imposed upon the parties in this proceeding. Article IX, Section 4 of the October 31, 1985 National Agreement clearly reserves to the parties the right to negotiate substantially greater levels of protection then afforded by Article IX, Section 7. However, as we have found with respect to other proposed provisions, the power of an arbitrator under Article IX, Section 4 is much more circumscribed. In the end we must agree with the Carrier that we should not impose the level of protection sought by the Organization. Accordingly, the Organization's proposal is rejected, and the Carrier's proposal is adopted.

11. Comparable Housing

The Organization seeks a provision affording any employee ". . . required to move to a higher cost real estate area, . . . an allowance to cover the move to comparable housing in the new area." The Organization also

seeks a provision which would fix the time for determination of such allowance as of the date of the letter of intent to establish ID service. Additionally, the Organization proposes that the method for determining such allowance be agreed upon by the Organization and the Carrier, and in the event the parties cannot agree the Organization proposes that the dispute be referred to a board of real estate appraisers consisting of three members certified by the SRA or MIA two of whom are to be chosen by the parties and the third or neutral appraiser to be selected by the other two appraisers. The Organization additionally proposes that there be a single proceeding before the board of real estate appraisers rather than a determination upon a case by case basis.

Initially, the Carrier interposes the jurisdictional objection that Article IX of the October 31, 1985 National Agreement does not contemplate any allowance for comparable housing. The Carrier argues that even if this Board has jurisdiction to impose a comparable housing allowance it may do so only if it is determined that an employee is moving from a lower cost real estate area to a higher cost real estate area which the Organization has not demonstrated in this case because Lufkin is a higher cost real estate area than Houston. However, in the event this Board finds a comparable housing allowance appropriate the Carrier proposes that each dispute be arbitrated under Article IX, Section 4 of the October 31, 1985 National Agreement and that in any event such dispute should not delay implementation of the ID service in this case.

We reject the Carrier's argument that this Board lacks jurisdiction to impose a comparable housing provision. By decision of March 20, 1987 the Joint Committee established to interpret the October 31, 1985 National Agreement

specifically addressed the question of whether such conditions ". . . should contain a provision that special allowances to home owners should be included because of moving to comparable housing in a higher cost real estate area." Despite the Carrier's arguments to the contrary, we find that decision dispositive of the issue as did Arbitration Board No. 482 with the same Neutral Member as this Board in its decision of June 6, 1988. While it is true that decision was on another property, Arbitration Board No. 493 on this property with the same Neutral Member found that virtually identical language in the 1986 BLE National Agreement as that appearing in Article IX of the October 31, 1985 UTU National Agreement warranted the inclusion of a comparable housing provision.

The rationale utilized by Arbitration Board No. 493 also leads us to reject the Carrier's argument that a comparable housing provision is inappropriate simply because the Carrier's research indicates that Houston is a lower cost real estate area than Lufkin.

In the case before Arbitration Board No. 493 the Carrier furnished similar evidence indicating that the area to which employees would transfer was a lower cost real estate area than the one from which they would transfer. While the Board recognized a determination that the area to which employees would transfer was in fact a higher cost real estate area was a condition precedent to substantive provisions concerning comparable housing, the Board also recognized the determination of that question was best left to real estate appraisers with far greater expertise than members of the Arbitration Board. Accordingly, the Board ordered the threshold question submitted to a board of real estate appraisers and pending the decision of

that panel retained jurisdiction to determine, if necessary, what substantive provisions concerning comparable housing should be made applicable to the institution of ID service in that case. While the decision of Arbitration Board No. 493 dealt with ID service established under the 1986 BLE National Agreement the pertinent language of that agreement has the same meaning as identical language in the October 31, 1985 UTU National Agreement. The Informal Disputes Committee established to interpret the 1986 BLE National Agreement so held in its Decision of May 16, 1988.

We are persuaded by the logic of Arbitration Board No. 493 that in the instant case the question of whether employees transferring from Lufkin to Houston will in fact be transferring to a higher cost real estate area should be submitted to a panel of real estate appraisers selected in accordance with the Organization's proposal. We have reviewed the allegations advanced by the Organization that the manner in which the Carrier has performed real estate appraisals unfairly discounts the value of an employee's home. While we express no opinion on those allegations, we believe the Organization's proposal for selecting a panel of real estate appraisers will reduce the possibility that either the Carrier or the Organization may exercise undue influence over the panel.

Should the panel decide that Houston is a lower cost of housing area than Lufkin no further proceedings will be necessary. However, should the panel reach the opposite conclusion, there will be additional proceedings to determine substantive questions with respect to allowances for comparable housing including but not limited to the issue of whether there should be a single allowance applicable to all transfers or whether each case

should be resolved on its individual facts. This Board will retain jurisdiction to hear and determine any such questions and in so doing may utilize the services of a panel of real estate appraisers, selected in the manner proposed by the Organization, with the expense of the neutral appraiser to be borne equally by the Carrier and the Organization, to advise this Board with respect to any questions it deems are beyond its expertise to determine without such assistance.

Accordingly, a provision concerning comparable housing effectuating the foregoing findings will be adopted.

12. Exchanging Trains

The Organization proposes that the Carrier be prohibited from requiring ID crews to yard their train at an intermediate point and depart with another train to either the home or away-from-home terminal and from requiring such crews to exchange positions with other employees of an opposing train at the meeting point. The Organization points to the fact that such provisions have been included in ID agreements negotiated on this property. The Carrier opposes such a provision on the ground that it would restrict unduly its latitude to operate ID service efficiently.

We believe the Carrier's position is the correct one on this point. Efficient operation of ID service is of primary importance. Any provision which would hamper efficiency is contrary to that goal. Moreover, we have found the authority of a Neutral under Article IX, Section 4 of the October 31, 1985 National Agreement is more limited than the authority of the parties to agree voluntarily to conditions applicable to ID service. We view the Organization's proposal as hampering efficiency, and it will not be adopted.

13. Transportation of Crews Expiring Under Hours of Service Act

The Organization's proposal would require the Carrier to transport crews expiring under the Hours of Service Act to their destinations within forty-five minutes of expiration with overtime to be paid after ten hours. The Organization emphasizes that such provisions are contained in negotiated ID service agreements on this property. The Carrier's proposal on this point would allow it one hour to transport crews depending upon the availability of public transportation and would not provide for overtime.

As we have held provisions in voluntary ID service agreements are not binding on this Board. Nor are they persuasive on this point. We believe the Carrier's point is well taken that an hour rather than forty-five minutes is most appropriate in view of the fact that the availability of transportation apparently cannot be guaranteed by the Carrier. The Organization's overtime proposal would appear to conflict with the overtime provisions of Article IX, Section 2 of the October 31, 1985 National Agreement. Accordingly, the Carrier's proposal will be adopted.

14. Extra Payments For ID Crews Which Perform Station and/or Industrial Switching or Which Are Required to Set Out and/or Pick Up Cars at More Than Two Intermediate Stations

The Organization proposes that ID crews be allowed additional compensation if they are required to perform station or industrial switching or if they are required to make in excess of two set outs and/or pick ups en route. Once again the Organization emphasizes that such a provision is included in negotiated ID service agreements on this property. The Carrier opposes the Organization's position on the grounds that it would unduly interfere with its managerial prerogatives and would be inconsistent with

Article IV, Section 5 of the October 31, 1985 UTU National Agreement freezing duplicate time payments for all employees and eliminating them for employees establishing seniority after October 31, 1985.

For reasons set forth earlier in this Decision the Organization's reliance upon voluntary ID service agreements is misplaced. We believe the Carrier's argument is sound. The Organization's proposal is inconsistent with the obvious intent of Article IV, Section 5 to eliminate or drastically reduce duplicate time payments. Accordingly, the Organization's proposal will not be adopted.

15. Use of ID Crews in Work, Wreck or Construction Service

The Organization proposes that ID crews be barred from work or construction service and be restricted to wrecker service to help clear a main track and then only until the crews can be relieved by a regular crew from the proper point of supply. The Carrier maintains that the Organization's proposal would result in considerable inefficiency inasmuch as the Carrier would be forced to pay two crews without regard to whether the ID crew still could perform service under the Hours of Service Law. Instead, the Carrier proposes that the use of ID crews for work, wreck or construction service be restricted to situations involving blockage of the main line and unavailability of extra trainmen and short pool crews and that if ID crews are utilized for such service they will continue to the opposite terminal where they will be placed last out for service or will return to the terminal where service originated and be placed first out for service.

Once again operating efficiencies militate in favor of the Carrier. The Carrier's proposal would appear to allow flexibility and yet, as the

Carrier urges, treat ID crews equitably. Accordingly, the Carrier's proposal will be adopted.

16. Carrier Transportation of ID Crews -- Condition and Operation of Vehicles

The Organization's proposal on this point would set minimum standards of capacity and operation with respect to vehicles used by the Carrier to transport ID crews. By inference the proposal also would restrict the Carrier's use of taxis for such transportation to emergency situations. The proposal additionally would restrict the number of employees deadheaded on a caboose or engine to that which does not exceed seating accomodations.

The Carrier argues that much of what the Organization proposes is beyond the jurisdiction of this Board to award. The Carrier objects to the Organization's proposal on the ground that its subject matter is specifically preempted by Article IX, Section 2(c) of the October 31, 1985 National Agreement which is one of the ". . . general and specific guidelines . . ." which Article IX, Section 4(a) of that agreement mandates this Board to follow. Additionally, urges the Carrier, the subject matter of the Organization's proposal is governed by the June 24, 1964 UTU Agreement as implemented by an agreement of August 29, 1972. The Carrier emphasizes that the Organization has served a notice under Section 6 of the Railway Labor Act, 45 U.S.C. §156 seeking therein much of what is contained in its proposal. The Carrier's proposal includes some of the conditions sought by the Organization but confines the scope of such provision to employees deadheaded by automobile and confines transportation for lodging to those employees who qualify therefor under Article II, Section 1 of the June 24, 1964 Agreement. The Carrier's

proposal also provides for unrestricted alternative use of Carrier vehicle or commercial taxi.

Without regard to the Carrier's jurisdictional arguments, we must agree with the Carrier that the Organization's proposal would restrict unduly the latitude of the Carrier in the day-to-day operation of ID service and potentially could result in undue expense to the Carrier. Under current agreements the Carrier has the option of utilizing commercial taxi service to transport crews. If such use was restricted to emergency situations in ID service the Carrier might have to acquire additional vehicles. On the other hand, the Carrier's proposal provides flexibility to the Carrier while at the same time includes many of the items sought by the Organization in its proposal. Moreover, while the Carrier's proposal does not so specify the Carrier clearly states it is understood that each crew member is to have a place to sit on locomotives. Accordingly, we adopt the Carrier's proposal on this point.

17. The Amount of Allowance to be Paid to ID Crews Not Permitted to Stop to Eat

The Organization proposes that the allowance set forth in Article 40 of the UTU (C&T) schedule agreement of May 1, 1979 for through non ID train crews not permitted to stop to eat be made applicable to ID crews not permitted to stop to eat. In support of its proposal the Organization cites the award of Arbitration Board No. 436, Sept. 4, 1984 (Dolnick, Neutral) on this property involving the BLE which imposed the same meal allowance on ID service as that received by non ID freight crews on the ground that there was no rational basis for a differentiation.

The Carrier objects to the Organization's proposal on the ground that it conflicts with Article IX, Section 2(e) of the October 31, 1985 National Agreement which provides in pertinent part that ID crews not permitted to stop to eat shall receive $1.50 for a meal allowance. The Carrier also emphasizes that Article 40 of the schedule agreement by its terms has no applicability to ID service. In support of its argument the Carrier cites the award of Arbitration Board No. 493 on this property involving the BLE in which the undersigned participated as Neutral Member interpreting the identical language at issue in this case rejecting the BLE's proposal for a meal allowance greater than that provided in the National Agreement.

The award of Arbitration Board No. 493 was subsequent to the award of Arbitration Board No. 436 and dealt with language in the ID service provisions of the current BLE National Agreement identical to the language of the October 31, 1985 UTU National Agreement at issue in this case. We find the rationale of that award highly persuasive and on that basis conclude that the Organization's proposal on this point should be rejected in favor of the Carrier's proposal.

18. Initial Terminal Delay

The Organization proposes that ID service crews receive initial terminal delay payment after one hour to be calculated from the time the crew reports for service until the train starts from the track where it is made up initially and to include all delays in the yard for reasons other than lining the switch for continuous movement of the train. The Organization points out that this provision is included in an ID service agreement on the property and was part of the award of Arbitration Board No. 436.

The Carrier objects to the Organization's proposal on the ground that it contravenes the October 31, 1985 National Agreement. First the Carrier contends that it is beyond the jurisdiction of this Board to award such a provision inasmuch as it constitutes additional compensation not provided for in the guidelines of Article IX, Section 2 of that agreement which under Article IX, Section 4 this Board is bound to follow. Additionally, the Carrier contends that the Organization's proposal would violate Article IV, Section 5 of the National Agreement inasmuch as it would expand rather than restrict duplicate time payments as intended by that provision. Moreover, urges the Carrier, the Organization's proposal would contravene Article VIII, Section 1(b) of the National Agreement which allows the Carrier to require road crews to make two straight pick-ups at other locations in the initial terminal in addition to picking up their trains without additional compensation for such work.

Once again we are compelled to agree with the Carrier. To grant the Organization's request would require us to apply the schedule agreement to ID service, contrary to its specific terms, with the result that there would be a substantial increase in expense to the Carrier. Without question the Organization's proposal would constitute a significant expansion of duplicate time payments obviously intended to be restricted by the National Agreement,and it would eradicate with respect to ID service relief to the Carrier from burdensome rules granted under the National Agreement. For reasons heretofore stated the Award of Arbitration Board No. 436 is not binding or persuasive. Accordingly, we must reject the Organization's proposal.

19. Conditions on Locomotives Used in ID Service

The Organization seeks a provision which would make Article 42 of the trainmen's agreement governing the conditions on cabooses pooled in through freight service applicable to locomotives used in ID freight service. The Organization's proposal also would require that in any engine consist used exclusively in ID service containing a unit equipped with operable air-conditioning that unit must be placed in the lead. The Organization points out that its proposal is included in a neogitated ID service agreement on this property.

The Carrier opposes the Organization's proposal on the ground that it contravenes the conditions determined by Arbitration Board No. 419, June 9, 1984 (Edwards, Neutral) under Article IX of the 1982 UTU National Agreement concerning the equipping, cleaning and supplying of locomotives on caboose-less trains and the various arbitraries applicable thereto. The Carrier maintains that the parties thus have established by arbitrated agreement the "reasonable and practical conditions" for all cabooseless freight service, including ID service, for purposes of Article IX, Section 2 of the October 31, 1985 National Agreement. The Carrier offers a proposal confined to the perameters of the award of Arbitration Board No. 419.

We believe the Carrier has the stronger position on this point. The Carrier's proposal implements the parties agreement on this property specifically applicable to cabooseless operations. On the other hand the Organization's proposal would make applicable to locomotives provisions of an agreement pertaining to cabooses. While the Carrier and Organization may have agreed to do so voluntarily with respect to other ID service, for reasons

stated above it is improper for this Board to impose such a provision. Therefore, the Carrier's proposal will be adopted.

20. Change of On and Off Duty Points

The Organization proposes that there be no change in on or off-duty points without agreement between the Carrier and the Organization. The Carrier, opposing such restriction, proposes that any such changes be within the unilateral discretion of the Carrier. The Carrier cites the award of Arbitration Board No. 436 which imposed the provisions the Carrier seeks here.

We believe the Carrier's point is well taken that it is essential to the efficient operation of ID service that it be able to change the on and off duty points without becoming embroiled in negotiations which might never result in an agreement permitting it to do so. Under the Organization's proposal the Carrier could not make such changes absent agreement. We do not believe such eventuality is consistent with the efficient operation of ID service intended by Article IX of the October 31, 1985 National Agreement. Moreover, the Carrier's proposal specifies that "[I]t is not intended such changes will be made indiscriminately for short periods of time or for other than valid operating reasons." Thus, the Carrier's proposal will be adopted.

21. Lodging Facilities at Away-From-Home Terminal

The Organization's proposal on this point would afford overtime for ID crews not transported from the on and off-duty point to the lodging facility within thirty minutes of the off-duty time, grant a twenty dollar allowance in lieu of lodging and require agreement by the Organization to

all lodging. The Carrier objects to the Organization's proposals on the ground that the request for overtime is beyond this Board's jurisdiction to grant and the remaining requests conflict with the lodging provisions of the June 25, 1964 UTU National Agreement governing that subject. The Carrier proposes that lodging facilities ". . . comply with the mandatory provisions of the current UTU Agreement."

We believe the Carrier's point is well taken. Overtime of any kind for ID service crews is a matter governed by Article IX, Section 2 of the October 31, 1985 National Agreement, and it is beyond the jurisdiction of this Board to expand upon that provision. The other proposals of the Organization are governed by the June 25, 1964 UTU National Agreement and the amendments thereto. To grant the Organization's request would constitute a significant expansion of such benefits. As the Carrier points out the award of Arbitration Board No. 482 dealt with the same issue as here finding that the terms of the existing agreement prevailed. We reach the same result and adopt the Carrier's proposal.

22. Payment of a Basic Day to Long-Pool Crews For Call and Release and Run Around

The Organization seeks payment of a basic day to employees in long pool ID service when they are called and released after the engine has moved from the round house or ready track or has been on duty in excess of three hours as well as a basic day when such employees are run around while awaiting a call. The Organization emphasizes that such a provision appears in negotiated ID service agreements on this property with the BLE and the UTU. The Carrier objects to the proposal on the ground that it would result in additional

compensation to employees and require modification of existing rules or agreements both of which are beyond the jurisdiction of this Board to grant.

Once again, we must look beyond the provisions of negotiated ID service agreements for guidance. The subject matter of the Organization's proposal is governed by existing agreements, and the Organization's proposal would significantly expand the benefits of those agreements. Such a result is beyond the jurisdiction of this Board to implement. Accordingly, the Organization's proposal is rejected.

23. Meal Allowances for Off-Duty ID Service Crews

The Organization seeks an $8.50 meal allowance for ID service crews tied up under the Hours of Service Act as well as three meal allowances of $4.15 each after ID crews are held four, eight and twelve hours respectively at the away-from-home terminal. The Organization emphasizes that such a provision is contained in negotiated UTU and BLE ID service agreements on this property. The Carrier opposes the Organization's proposals on the grounds they conflict with Article IX, Section 2 of the October 31, 1985 National Agreement and thus are barred by Article IX, Section 4 of that agreement.

Article IX, Section 2(d) of the October 31, 1985 National Agreement provides a $4.15 meal allowance for ID service crews held at the away-from-home terminal for four hours and another $4.15 allowance after such a crew is held an additional eight hours. Accordingly, we believe the Carrier is correct that the Organization's proposals conflict directly with Article IX Section 2(d). This Board has no jurisdiction to implement such a provision. The fact that such provisions are included in ID service agreements negotiated

on this property is not determinative or persuasive. Accordingly, the Organization's proposals will not be adopted.

24. Calling Time for Trainmen Who Elect to Reside in Lufkin

The Organization proposes that trainmen who elect to reside in Lufkin and who furnish a written request receive a three hour call for assignments assuming duty at Houston. The Carrier objects on the ground that the proposal embellishes substantially upon the one and one-half hour calling time provided in Article 78 of the trainmen's schedule agreement and would create an impractical situation likely to produce calling errors and delays to ID service.

The Carrier makes a compelling argument. As the Carrier points out, if trainmen are called one and one-half hours before departure and it is determined that for some reason a trainman residing in Lufkin must be called the train would have to be delayed in order to give the Lufkin trainman a three-hour call. Moreover, as the Carrier emphasizes, the proposal would protect employees who voluntarily elect to reside at Lufkin and work in Houston. We do not believe the Carrier should bear the cost of inefficiency and delay for such individuals. Accordingly, the Organization's proposal is rejected.

25. Personal Leave Days for ID Service Employees

The Organization proposes that employees in ID service due to observe personal leave days be allowed to compact and be paid for up to seven such days from the time the employee's turn is ordered at the home terminal until his turn is again due to be ordered at the home terminal. The Carrier does not oppose the proposal so long as it is not construed to alter

existing agreement interpretations that the right to personal leave days is not a demand right to lay off and that employees who lay off for reasons other than to observe personal leave days are not qualified for retroactive personal leave earnings.

We believe the Carrier's points are well taken, and the Organization's proposal will be adopted with the understanding sought by the Carrier.

26. Rates of Pay for Sprint Train Assignments

The Organization seeks a provision specifying that rates of pay for regular sprint train assignments are governed by the various sprint train agreements. The Carrier has no opposition to this proposal so long as it is made subject to modifications contained in this agreement. The Carrier's proposal reflects such a caveat.

We believe the Carrier's point is well taken, and the Carrier's proposal is adopted.

27. Reduction in Pool Assignments

The Organization proposes that there be no reduction in the number of pool assignments for thirty days following the implementation of ID service and that during such period pool assignments will be made whole based upon the performance of preexisting pools during the ninety days preceeding implementation of ID service. The Carrier argues that it is beyond the jurisdiction of this Board to adopt the Organization's proposal. The Carrier argues that the proposal constitutes a significant expansion of the protection afforded ID service employees under Article XIII of the January 27, 1972 National Agreement as implemented by Article IX, Section 7 of the October 31, 1985 National Agreement.

Article XIII, of the January 27, 1972 National Agreement provides protective benefits only for individual employees who are adversely affected by the institution of ID service. The Organization's proposal would make such benefits available without regard to whether an employee is adversely affected. As the Carrier points out under the Organization's proposal protective payments would be increased significantly. We believe the Carrier's point is well taken that the Organization's proposal runs counter to the intent of the October 31, 1985 National Agreement, and for that reason should not be adopted.

28. Application of Protective Benefits Contained in Article XIII of the January 27, 1972 UTU National Agreement

The Organization proposes that all employees on the districts through which ID service will operate be subject to the protective benefits of Article XIII of the January 27, 1972 UTU National Agreement. The Organization also proposes that qualification for benefits under Article XIII not be conditioned upon moving to a district unaffected by the implementation of ID service unless notified to do so by the Carrier or upon protecting the 1983 consolidated seniority districts or any future consolidated districts. The Carrier opposes the Organization's proposals on the ground that they constitute an effort to secure the benefits of Article XIII for employees without regard to whether they are adversely affected. The Carrier also argues that the proposals contravene provisions of the March 31, 1983 system seniority agreement. The Carrier emphasizes that as a condition to obtaining benefits under Article XIII an employee must exercise his seniority to any position available to him and that under the March 31, 1983 system seniority

agreement an employee would be required to exercise seniority to a position on any consolidated seniority district. The Carrier proposes a provision stipulating no more than that the benefits of Article XIII apply to adversely affected employees.

The Organization's proposal certainly is susceptible of the interpretation that all employees on a district through which ID service operates would be entitled to the benefits of Article XIII without regard to whether those employees are adversely affected. Such an interpretation runs totally contrary to the scheme of Article XIII. Additionally, the March 31, 1983 system seniority agreement clearly affords employees subject thereto seniority on numerous consolidated districts. The Carrier is entitled to reduce its costs with respect to protective benefits by insisting upon an employee affected by the implementation of ID service exercising his seniority to such a position. Accordingly, the Carrier's proposal will be adopted.

29. Mileage of Assignment

The Organization proposes that the mileage for pay purposes of the ID assignments between Houston and Shreveport be 245 miles. The Carrier objects to the Organization's proposal on the ground that it contains ten constructive miles. The Carrier points out that actual mileage measured from the center of the Houston Yard to the center of the Shreveport Yard is 235 miles. The Carrier contends that the Organization's proposal violates Article IX, Section 2(b) of the October 31, 1985 National Agreement providing pay only for all miles actually run in excess of the miles encompassed in the basic day. The Carrier also contends that the Organization's proposal

violates Article XIII, Section 1(a) of the National Agreement which in pertinent part allows the Carrier to require road crews to "[G]et or leave their trains at any location within the initial and final terminals. . ." without additional compensation for such work. The Organization's proposal, urges the Carrier, effectively would eradicate that provision.

The Carrier's arguments are convincing. The actual mileage is 235 miles. The addition of ten additional constructive miles at the very least increases the cost of the ID service which is inconsistent with Article IX of the October 31, 1985 National Agreement. The Carrier's proposal reflects 235 miles for the assignment and contains other provisions consistent with the ID service in this case. Accordingly, the Carrier's proposal will be adopted.

30. Extent of Benefits Under Article XIII of the January 27, 1972 National Agreement

The Organization proposes a provision that nothing in the ID service agreement shall be construed as depriving employees of any "additional protection" to which they would be entitled under Article XIII of the January 27, 1972 National Agreement. The Carrier is opposed to the use of the term "additional."

We believe the use of the term "additional" implies that employees would be entitled to protections under Article XIII of the January 27, 1972 National Agreement in addition to those which are available to them by virtue of the fact that they are adversely affected employees due to the implementation of ID service in this case. Such a broad brush implication is not warranted. Accordingly, the Organization's proposal will not be adopted.

Attached hereto and made an integral part hereof is a Determination of the terms and conditions applicable to the ID service in this case. It is intended that this Determination encompass all matters which have been or reasonably could have been raised during negotiations for an implementing agreement. It is intended that this Determination settle any dispute between the parties concerning what terms and conditions should apply to the ID service in this case.

William E. Fredenberger, Jr.
Chairman and Neutral Member

C. R. Huntington
Carrier Member

P. C. Thompson
Employee Member

DATED: 9/9/90

DETERMINATION

ARBITRATED IMPLEMENTING AGREEMENT

Between the

SOUTHERN PACIFIC TRANSPORTATION COMPANY
(Eastern Lines)

and

UNITED TRANSPORTATION UNION (C&T)

Relating to the establishment of "Interdivisional", Through and Irregular Freight, including Local and Passenger Service to operate (or deadhead) between the following terminals pursuant to Article IX of the October 31, 1985 Agreement.

1. Houston and Shreveport

As provided in Section 2(a) of that Article IX.

> "Runs shall be adequate for efficient operations and reasonable in regard to the miles run, hours on duty and in regard to other conditions of work."

Therefore it is AGREED:

ARTICLE I

SECTION 1. (a) Pool turns for trainmen known as Long Pool Turns to handle Through Freight Service between the above terminals may be established upon ten (10) days' written notice from the Carrier to the Organization.

(b) Local Interdivisional Service as necessary may also be established on the districts covered by this agreement.

(c) The on and off duty point for trainmen is the Trainmen's Register Room at the respective terminals, except that the Carrier may change these points within the terminal to accommodate changes in operation. It is not intended such changes will be made indiscriminately for short periods of time or for other than valid operating reasons.

(d) Trainmen in Long Pool Service will be handled in accordance with existing first-in, first-out rules, out of both home and away-from-home terminals.

(e) Lodging facilities at all away-from-home terminal points will comply with the mandatory provisions of the current UTU Agreement.

SECTION 2. Passenger service may be operated by Long Pool Trainmen or by regularly assigned Passenger Trainmen between the aforementioned terminals, in accordance with existing agreements and the rate of pay not affected by the provisions herein.

ARTICLE II

It is understood that at the inception of the Long Run that the assignments will be bulletined seven (7) days prior to the beginning of the Long Run to avoid loss of time to the successful trainmen applicants to such an assignment.

ARTICLE III

SECTION 1. Trainmen in Through Freight Service may be operated Houston to Shreveport through Lufkin, and mileage for pay purposes will be 235 miles. Houston will be the home terminal and Shreveport the away-from-home terminal. The operation Houston/Lufkin and Lufkin/Shreveport is not changed for crews called to operate on those districts.

SECTION 2. Present Short Pool and Extra Lists for trainmen may be retained where such lists now exist, depending upon the nature and volume of available work. Effective with the initial assignment of trainmen to a Long Pool at Houston set forth therein, the Short Pool list at that point will be reduced by the UTU Local Chairmen, commensurate with the shift of the work to the Long Pool, and thereafter both the Long and Short Pool and Extra lists will be regulated in accordance with applicable agreement provisions.

SECTION 3. When trainmen are deadheaded by automobile vehicle, such vehicle will have a good clean seat for the trainman and the capacity will not exceed that recommended by the manufacturer of the vehicle. Such vehicle will be seasonably air conditioned and heated. A vehicle that does not meet the requirements herein stated will not be used to transport trainmen except in extreme emergencies.

ARTICLE IV

SECTION 1. Trainmen in Long Pool service will lay off at home terminal only, except in cases of emergency, and will report at home terminal only.

SECTION 2. Vacancies at the home terminal will be protected by trainmen from the home terminal extra board. Vacancies resulting from emergency layoffs at the away-from-home terminal may be protected by stepping up pool trainmen at the away-from-home terminal until an extra trainman arrives to fill the vacancy,.

SECTION V

SECTION 1. In order to expedite the movement of interdivisional runs, crews on runs of miles equal to or less than the number encompassed in the basic day will not stop to eat except in cases of emergency or unusual delays. For crews on longer runs, the Carrier shall determine the conditions under which such crews may stop to eat. When crews on such runs are not permitted to stop to eat, crew members shall be paid an allowance of $1.50 for the trip.

ARTICLE VI

SECTION 1. All turnaround service (including tie-ups under the Hours of Service), affiliated with the Long Pool will be protected by the Trainmen's extra list if assigned at the point where the train will terminate. Article VIII of the October 31, 1985 UTU Agreement will not be affected by the provisions in this section and will remain in full force and effect. When away-from-home terminal crews are called for turnaround service, they will be allowed the actual turnaround mileage with the minimum of a basic day, shall stand first out subject to rest, and will not be required to make a second turn out of the away-from-home terminal.

SECTION 2. It is understood excepting a blockage of the main line and in the absence of extra trainmen and Short Pool crews, Long Pool crews will not be used in work, wreck or construction service. When it becomes necessary to use a Long Pool crew in such service, the first-out crew on the board at the terminal where the service originates will be used and the crew will, if possible, continue either on to the opposite terminal where the crew will be placed last out on board, or will be returned to the terminal where service originated, and will be placed first out, subject to the rest rules on his respective board.

ARTICLE VII

SECTION 1. Occupied locomotives used in interdivisional service will be furnished or equipped for such service, including but not limited to:

1. a clean cab
2. sanitary drinking water, and ice where needed
3. sanitary toilets

SECTION 2. No locomotive shall be operated from a terminal without a lead unit headed in the direction of movement.

ARTICLE VIII

SECTION 2. Hard-surfaced, well lighted, parking facilities sufficient to accommodate automobiles of trainmen will be provided at all home terminals of interdivisional runs.

SECTION 2. A trainman who occupies a regular assignment in any class of service and who is called to protect extra or emergency service on other assignment in any class of service will be paid not less than he would have earned had he remained on his regular assignment.

A trainmen so used who subsequently misses a call or refuses a call for a second tour of duty off his assignment will not have earnings of such tour of duty included in computation of earnings made while off regular assignment, and such computation of earnings to be made on a trip basis.

SECTION 3. A pool freight trainman in interdivisional service will be permitted to advance the starting date of a scheduled vacation period to coincide with the start of layover days, but not to exceed three (3) days.

SECTION 4. An interdivisional employee who is due to observe Personal Leave Days may be allowed to compact and be paid for up to seven (7) Personal Leave Days from the time his turn is ordered at the home terminal until his turn is next again due to be ordered at the home terminal. This Section does not change or amend any part of the Crew Consist Agreement dated November 28, 1988.

SECTION 5. Investigations involving an employee who is engaged in interdivisional service will be held at the employee's home terminal.

NOTE: This Section 5 is applicable only to the employee under charge, will not prejudice the assessment of discipline, if any, when entenuating circumstances require the investigation be held elsewhere and will not result in additional cost to the Carrier.

SECTION 6. Crews overtaken by the Hours of Service will be transported to destination within one (1) hour of the expiration of Hours of Service providing public transportation is available to reach the crew within the one-hour period. Crews will be allowed the miles of their assignment (terminal to terminal) and will be paid on a continuous time basis until reaching their off duty point at their final terminal.

ARTICLE IX

SECTION 1. The provisions of Article XIII of the January 27, 1972 Agreement shall apply to employees adversely affected by the implementation of this service.

SECTION 2. In the event the parties fail to agree on the issue of whether Houston, Texas is a higher cost of housing area than Lufkin, Texas the issue may be referred by either party to a Board of Real Estate Appraisers, consisting of three (3) members certified by either the SRA or MIA as recognized bonafide appraisers, selected in the following manner:

One member will be appointed by the Organization and one member by the Carrier. The partisan members within ten days after their appointment shall select the third and neutral appraiser by mutual agreement. The Board of Appraisers will be bound by the pronouncements of Arbitration Board No. 507 at pages 15 through 19 of its Decision. 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 neutral appraiser shall be borne equally by the Carrier and the Organization.

ARTICLE X

SECTION 1. All Agreements, rules and provisions not specifically modified or cancelled by this Agreement, will remain in full force and effect. This Agreement does not change or modify the current Crew Consist Agreement.

Side Letter No. 2

Reference agreement relating to the establishment of the Interdivisional service between the following terminals:

1. Houston to Shreveport

All employees working at Lufkin on the date this Agreement is implemented who are adversely affected, and employees displaced thereby as a result of this implementation, shall be considered as affected for protection purposes under the provisions of Article XIII of the January 27, 1972 National Agreement providing they meet their obligations under such protective conditions. It is understood that the date of implementation shall establish the beginning of the protective period for all employees on the affected seniority districts.

Side Letter No. 1

Reference agreement relating to the establishment of the Interdivisional service between the following terminals:

1. Houston to Shreveport

Carrier shall provide transportation one (1) round trip each lay-over period for crews who qualify for lodging under provisions of Article II, Section 1, of the June 25, 1964 Agreement, from on and off duty point to lodging facility.

Transportation is defined to be a Carrier-provided passenger vehicle or commercial taxi that meets vehicle specifications set out in Article III, Section 3, of this agreement. Such transportation will be provided as promptly as practicable and not to exceed thirty (30) minutes after the crew goes off duty. Such transportation shall be timely furnished so as to enable the crew to report for duty on time.

Trainmen qualified may be required to travel with other members of the crew as a unit.

PUBLIC LAW BOARD 6761
AWARD NO. 1

Parties to Dispute: The Burlington Northern and Santa Fe Railway Company
and
The United Transportation Union

Question at Issue:

Does the agreement proposed by the Carrier to govern the establishment and operation of interdivisional freight service with home terminal at Stockton, California, to operate between Stockton and Bakersfield, California, satisfy the requirements of Sections 1 and 2 of Article IX of the November 1, 1985, UTU National Agreement? If not, what conditions are deemed to be reasonable and practical?

Findings:

The right to establish interdivisional service has been bargained nationally. That same National Agreement provides guidance regarding what "conditions" are appropriate when the desired interdivisional service is implemented. Article IX of UTU's 1985 National Agreement addresses the procedure to be followed and the conditions to be included when a Carrier desires to establish interdivisional service. Section 1 of Article IX reads:

> "An individual carrier seeking to establish interdivisional service shall give at least twenty days' written notice to the organization of its desire to establish service, specify the service it proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such service."

On September 8, 2003, BNSF gave notice to UTU concerning the interdivisional service desired and appended thereto a document that set forth the conditions that would govern the proposed interdivisional service. Pivotal to the case at hand is the language under Section 4(a) of Article IX, reading:

"In the event the carrier and the organization cannot agree on the matters provided for in Section 1 and the other terms and conditions referred to in Section 2 above, the parties agree that such dispute shall be submitted to arbitration under the Railway Labor Act, as amended, within 30 days after arbitration is requested by the carrier."

This Board is limited by Section 4(a) regarding any conditions included in an arbitrated interdivisional service agreement. The Section 2 conditions are the only required conditions, and the National Agreement recognizes those conditions to be both general and specific in nature. Section 2 of the National Agreement begins with the general requirement that:

"Reasonable and practical conditions shall govern the establishment of the runs described, ..."

The Organization has not suggested at any time throughout the handling of this dispute that the proposed run was either unreasonable or impractical. As far as the specific conditions under Section 2, subsection (a) reads:

"Runs shall be adequate for efficient operations and reasonable in regard to the miles run, hours on duty and in regard to other conditions of work."

The proposed run is 235 miles long. This is not an excessive distance for interdivisional service. There are many ID runs on the Coast Lines that are in excess of 235 miles. The actual on-duty time (hours worked) between Stockton and Bakersfield should be well under eight hours. Subsection (b), Section 2 of the National Agreement states:

"All miles run in excess of the miles encompassed in the basic day shall be paid for at a rate calculated by dividing the basic daily rate of pay in effect on October 31, 1985 by the number of miles encompassed in the basic day as of that date. Car scale and weight-on-drivers additives will apply to mileage rates calculated in accordance with this provision."

The Carrier has satisfied the interdivisional service "conditions" contained under Section 2 of Article IX.

Section 2 of BNSF's proposal grants equity to the "prior rights" seniority district trainmen, even though most truly "prior-righted" trainmen have either left the service of BNSF or will do so in the future. Section 12 allows trainmen to advance their vacations so as to coincide with layover days at the home terminal, and Section 13 allows trainmen to mark up during the final 24-hours of their vacation so as to avoid missing a round trip because their turn was called shortly before they returned from vacation, if the trainman desires to so do. Section 14 precludes the trading of trains in opposite directions, and Section 15 provides for a pre-85 switching allowance to trainmen.

We conclude that the protective conditions attendant to interdivisional service are more beneficial than those within the Washington Job Protection Act, New York Dock Conditions, or any other protective conditions recognized nationally in this industry, and the employees affected by the implementation of interdivisional service are protected.

PLB 535 offers us guidance. In a case on the former Union Pacific, the Carrier argued that since the negotiated proposal failed ratification, the earlier and less "Carrier expensive" proposal should be adopted. The Board reasoned:

> "Notwithstanding the vehement argument advanced by the Carrier, this Board is convinced that the agreement which the parties themselves reached in March 1993, should govern interdivisional service between Portola and Elko. When the BLE, UTU and the Carrier reached a mutual understanding after intensive negotiations, it was their collective judgement that the conditions for interdivisional service outlined in that agreement would be fair and reasonable for train and engine service employees who would protect the interdivisional service and would also allow the Carrier to operate its interdivisional trains effectively between Portola and Elko.
>
> It is reasonable to assume that the Organizations and the Carrier all made compromises in order to fashion a satisfactory resolution of the Carrier's proposal for interdivisional service between Portola and Elko. Presumably, neither the

Organizations nor the Carrier were entirely pleased with the final settlement. However, it was the product of experts in train and engine service and this Board feels compelled to defer to their expertise. These parties had years of experience in train operations, and the agreement which they eventually reached simply cannot be ignored by this Board."

The Stockton to Bakersfield BLE ID Agreement failed ratification. The parties, BLE and BNSF, listed that question before Referee Robert M. O'Brien who rendered his decision in PLB 6740 Award No. 2. Referee O'Brien rejected the BLE's arguments that the ID Notice was improper and recognized that BNSF's original ID proposal exceeded the reasonable and practical conditions required by Article IX Section 2 of the BLE 1986 National Agreement. In addition, the BLE requested that Referee O'Brien impose the more lucrative ID proposal. Referee O'Brien refused stating:

"A compelling argument can be made that employees should not receive benefits in arbitration that they expressly rejected during negotiations. This Board agrees with that logic. This is particularly so in the present case where the Carrier specifically informed the BLE that the modified proposal that was agreed to on October 16, 2003, contained benefits that were expressly contingent on ratification of this proposal and these enhancements would be withdrawn if the proposal were not ratified. Nevertheless under the unique circumstances extant in this case, we find that Locomotive Engineers in the proposed interdivisional service between Stockton and Bakersfield are entitled to the conductor-only overmile rate even though overmiles are entirely unrelated to this new interdivisional service.

In 1990, the former Santa Fe Railway Company asked its Locomotive Engineers for financial relief in order to avoid bankruptcy. The Engineers agreed to freeze their wages for five years to help the Santa Fe avoid a potential bankruptcy. Because of this concession, their basic daily rate of pay is below the national average for Locomotive Engineers. As a *quid pro quo* for this concession, the Santa Fe agreed to allow Engineers in Riverbank ID service the conductor-only overmile rate for all miles in excess of those encompassed in the basic day. Engineers earned that benefit and it should be continued for employees in the Stockton-Bakersfield ID service, in this Board's opinion. Other than this, the agreement proposed by the Carrier for this interdivisional service shall be adopted. That agreement is appended hereto and made part of this Award."

The question at issue is answered in the affirmative. The Carrier, BNSF, has complied with the terms and conditions associated with the establishment of interdivisional service pursuant to the terms of the National Agreement. The "conditions" attendant to interdivisional service that are included in the National Agreement are part of the final proposal before this Board.

FRANCIS X. QUINN
Chair and Neutral Member

R.L. MARCEAU
Organization Member

GENE SHIRE
Carrier Member

July 62, 2004
Fort Worth, Texas

ARBITRATION BOARD NO. 580
ESTABLISHED UNDER THE PROVISIONS OF
ARTICLE IX OF ARBITRATION AWARD 458
EFFECTIVE MAY 16, 1986

Union Pacific Railroad	)	
	)	**PARTIES TO DISPUTE**
Brotherhood of Locomotive Engineers	)	

BACKGROUND

On January 23, 2002, the Carrier served an interdivisional/intradivisional service notice on the Organization in accordance with Article IX of the May 19, 1986 BLE National Agreement as revised. The notice proposed establishment of three (3) new freight pools, all of which had Dolores/ICTF (International Container Transfer Facility) in the Los Angeles Basin as their home terminal.

Item #1 in the proposal contemplated creation of an "intradivisional" turnaround freight pool to handle traffic in the terminal area defined by the Ports of Los Angeles and Long Beach on the south and City of Industry on the east with the home terminal at Dolores/ICTF located between those limits.

Item #2 in the proposal contemplated creation of a new freight pool operating between Dolores/ICTF and Yermo, California, with Dolores/ICTF as home terminal.

Item #3 in the proposal contemplated creation of a new freight pool operating between Dolores/ICTF and Yuma, Arizona, with Dolores/ICTF as home terminal.

At this time traffic originating at the Ports of Los Angeles and Long Beach (usually about three trains per day) and traffic originating at Dolores/ICTF (usually about six trains per day) is handled by crews from Los Angeles or West Colton to either Los Angeles (LATC) or to West Colton. The trains are then handled from those points by through freight crews to Yermo, California or Yuma, Arizona. Movement of traffic between the Ports and Dolores/ICTF has historically been a slow and time-consuming process. Train tracks in the area were intermixed with streets and there were literally hundreds of street crossings. Trains would be lucky to make 10 miles an hour in working their way through this territory. It was not unusual for trains to take three hours to traverse this territory.

Creation of this new service headquartered at Dolores/ICTF was made possible by a municipal project in which 20 miles of track was relocated into a subsurface trench with no road crossings. This eliminated in excess of 200 road crossings between the Ports and Dolores/ICTF. Trains are now able to make this run at a steady 45 miles per hour. This improvement in running time makes possible single crew operations from the Ports and/or DoloresllCTF to Yuma, Arizona and Yermo, California. It is this interdivisional service that is created by items no. 2 and 3 in the interdivisional/intradivisional service notice.

The parties met on several dates, exchanged proposals, negotiated changes and clarified understandings relating to functioning of the new interdivisional/intradivisional service operation.

The negotiations reached a successful conclusion on all three proposed operations and a basic agreement was initialed. The parties intended to add final clarifying Side Letters and/or notes before finalizing the deal. Pursuant to the bylaws of the Brotherhood of Locomotive Engineers, the General Chairman submitted the basic agreement to each of the involved local committees for a ratification vote. The Agreement failed ratification. Accordingly, the parties jointly requested the appointment of this Arbitration Board in accordance with Section 4 of Article IX, and the parties now come before this Board seeking closure of this matter.

FINDINGS

The Organization, which filed a voluminous submission, argues that the Agreement failed ratification because the employees wanted three items. These items are:

1. Away from home terminal hours of service relief performed by the pool that needed relief. In other words, long pool patch the long pool and the short pool patch the short pool. No co-mingling of away from home terminal crews for hours of service relief.

2. Three (3) hour call to report to duty.

3. Basin trip rates on the proposed service to Yermo, CA.

In Item number 1 the Organization wants each pool to do its own dog catching for crews that die under the Hours of Service Law. The Agreement proposed in Section 9d) that the West Colton Yuma Pool perform all Hours of Service Relief at Yuma if the Yuma Extra Board is exhausted. The Organization argues that the Engineers in the West Colton Yuma Pool will be stuck at Yuma.

The Carrier counters the argument by stating the crews established by the Agreement are in a longer run service and will be hauling the "hottest" commodities. Also, the Collective Bargaining Agreement limits the crews at Yuma to one short trip per time at Yuma.

The provision agreed to by the parties is not unreasonable, ergo it will not be changed.

The Organization argued vigorously because of the traffic around Los Angeles that engineers should be given a three hour call for work. The Carrier argues it cannot anticipate the readiness of a train by more than two hours, and that nobody presently has a three hour call in the Los Angeles area.

The Protective Conditions for Interdivisional Service provide for moving assistance if an employee is required to move because of the implementation of this service. A two hour call should be sufficient.

Finally, the Organization requests that assignments working on the West Colton to Yermo service be covered under the "Basin Trip Rates" established in a July 1, 1991 Agreement with the then Southern Pacific.

This Board lacks any authority to change rates of pay.

AWARD

After listening to the vigorous arguments of the Organization on all issues as well as Carrier's strong resistance to change the tentative agreement, this Board believes the tentative agreement adequately handles all issues. Accordingly, this Board adopts the parties tentative agreement, including the rates and such provisions as were effectively agreed upon by the parties which are included in the Attachment A to this Award. The Attachment will serve as the Implementing Agreement for the Carrier's proposed Interdivisional Service.

Robert G. Richter
Chairman

Bill Hannah
Employee Member

Al Hallberg
Carrier Member

Dated May 27, 2003

ATTACHMENT A

ARBITRATION AGREEMENT

between the

UNION PACIFIC RAILROAD COMPANY

and its engineers in the Los Angeles HUB represented by

BROTHERHOOD OF LOCOMOTIVE ENGINEERS (UP Western Lines)

ALAMEDA CORRIDOR INTERDIVISIONAL SERVICE

Pursuant to the Company's notice dated January 23, 2002, served under the provisions of Article IX of the May 1986 BLE National Agreement, as amended, three new freight pools will be created subject to the following conditions:

IT IS AGREED

Except as specifically provided herein the provisions of the Union Pacific Western Lines Collective Bargaining Agreement, as modified, including the Los Angeles Hub Implementing Agreement shall prevail.

Section 1: Terminals

All Engineers assigned to and filling vacancies, in this service will report at Dolores/ICTF. (The on/off duty point has not yet been constructed and the precise location remains to be determined.)

Section 2: New Pool Freight Operations at Dolores/ICTF operating to Yermo and Yuma

a) Dolores/ICTF shall be home terminal for a freight pool with Yermo as the away-from-home-terminal.

b) Dolores/ICTF shall be home terminal for a freight pool with Yuma as the away-from-home-terminal.

c) Engineers in these pools may be used on any of the routes in the Basin and can receive or leave their trains anywhere on their respective assignments (including on Dock locations).

Section 3: Multiple Trip Turnaround Pool Freight Service

a) Unassigned turnaround pool freight service will be established to operate between ICTF/Dolores and Spadra and Walnut, via any route and return. Crews in this service can get or leave their trains anywhere in the territory covered by this pool.

b) This also includes the territory south of ICTF/Dolores. These moves shall be made only in connection with their own trains for traffic to and from dockside, and to handle trains as necessary within the territory covered by this pool. It is recognized that the dock may be expanded and such expansions shall automatically be included as part of this agreement.

c) Engineers shall not be required to depart the terminal limits on a subsequent trip after ten (10) hours on duty. Specifically no engineer can go east of C.P. Alameda after 10 hours on duty in the Alameda Corridor. Engineers will be under pay until returned to their on duty points. This Section 3(c) also applies to the engineers in the Colton Pool working at Dolores.

d) This service will NOT operate beyond the following points:

1) Walnut - MP 506.8

2) Spadra -MP 27.8

3) LATC - MP 482.9 (Including Taylor Yard, and including movements on the Alhambra Subdivision.)

e) Engineers operating in this service may be required to pick up or set out en route, but will not perform industrial switching.

Note: This is subject to the "Road/Yard" provisions of applicable National Agreements.

f) All engineers in violation of item 3(e) above will be compensated a basic day at Engineer Road Switcher rate of pay, in addition to and without deduction, from their earnings for this trip.

g) All engineers in violation of item 3(d) above who are required to go beyond the limits of this assignment, or who exceed the 10 hour provision in Section 3(c), will be compensated a payment of a new day at the rate identified in Section 4, below, in addition to and without deduction from their earnings for their trip. Engineers who properly stood for this service will be compensated in accordance with Section 1 (e) of Article 12.

Section 4: Rates of Pay.

a) All Pool engineers in this Section 3 Turnaround Pool service (excluding Yuma/Yermo) shall be paid in accordance with Sections 1, 2, 5, and 6 of the flat rate road switcher agreement effective September 16, 1996. (Currently identified in Los Angeles Hub Agreement VI Agreement Coverage B 2.d.)

b) Made up assignments and/or extra assignments called to operate within the scope of this agreement will qualify for the trip rate created by this agreement.

Section 5: Transportation

Engineers who are required to report for duty or are relieved from duty at a point other than the on duty and off duty points fixed for the service established hereunder, the Carrier shall authorize and provide suitable transportation for the crew.

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

All Engineers destined to Yuma covered by this agreement who are relieved en route will be deadheaded to the far terminal, except in cases of emergency, but will be allowed full mileage/earnings of assignment in either case. This language does not prohibit the Carrier from staging trains, (in the same direction).

Section 6: Separation of Service

The assignments established pursuant to this agreement are not intended to supplant or be supplanted by road switcher or local freight assignments.

Section 7: Rest

a) In lieu of any other agreement provisions governing rest, engineers assigned to West Colton Yuma Pool will be permitted to mark eight (8), ten (10), or (12) hours of undisturbed rest at the away from home terminal.

b) West Colton/Yuma Pool engineers deadheading back from Yuma, either separate and apart, or after completing service, will be allowed to mark eight (8), ten (10), twelve (12), or eighteen (18) hours UNDISTURBED rest at the home terminal, without any offset of New York Dock Protection. Engineers who mark additional rest will not have their protection offset if they are

available for and accept the next call tendered following expiration of the undisturbed rest.

Note: This paragraph is based on and is subject to the May 23, 1998 agreement titled "Action Plan for West Colton".

Section 8: Call

a) Engineers assigned to or filling vacancies in this service shall be called two (2) hours prior to the on-duty time and will be placed to their respective board at ICTF/Dolores in the order of their tie-up time at the location where they reported for duty.

b) Engineers called for a separate and apart deadhead will not be required to work back, until getting required rest, when reaching the far terminal, if there are other engineers rested and available.

Note: This paragraph (b) applies to the Dolores/ICTF/Yuma and the Dolores/ICTF/Yermo pools only.

Section 9: Away from home terminals

a) Engineers arriving at the away from home terminal shall be placed on the bottom of the pool list at tie-up time.

b) Engineers shall be allowed to voluntarily "blueprint" at their home terminals.

c) Yuma shall operate as two away from home terminal pools (long and short) and crews shall be called on a first in/first out basis. Dolores/ICTF and LA engineers will be in the "long" pool. West Colton engineers will be in the "short" pool.

d) The West Colton Yuma Pool (the short pool) will perform all hours of service relief not covered by the Yuma Extra List, (Side Letter #2, dated November

6, 1998, paragraph 2, of the Los Angeles Hub Implementing Agreement). This language creates a calling order for said service.

e) It is not the intent of this Section to circumvent the provisions of Section 3(b) of Article 6 of the current agreement covering engineers.

f) The Carrier shall work with the Local Chairmen to insure that the train identifiers are properly coded at the away from home terminals.

Note: This paragraph (f) does not limit the right of the Company to operate any train in any pool.

Section 10: Lodging

All engineers will be paid in lieu lodging if so requested.

Note: This applies in the Dolores/ICTF/Yuma-Yermo Pools only.

Section 11: Familiarization.

a) Engineers covered by this Agreement whose assignments require performance of duties of a new geographic territory not familiar to them will be given familiarization opportunities as quickly as possible. Engineers will not be required to lose time or ride the road on their own time in order to qualify for these new operations.

b) Engineers will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualification shall be handled with local operating officers. The parties recognize that different terrain and train tonnage impact the number of trips necessary and an operating officer will be assigned to this new operation that will work with the local managers of Operating practices in implementing this Section. If disputes occur under this Agreement they may be addressed

directly with the appropriate Director of Labor Relations and the General Chairman for expeditious resolution.

c) It is understood that familiarization required pursuant to this agreement will be accomplished by calling a qualified engineer, peer engineer, (or qualified Manager of Operating Practices) to work with an engineer called for service on a geographical territory not familiar to the engineer.

d) Engineers who work their assignment accompanied by an engineer taking a familiarization trip shall be paid one (1) hour at the pro rata rate, in addition to all other earnings for each tour of duty. This payment shall not be used to offset any extra board payments. The provisions of 3 (a) and (b) Training Conditions of the System Instructor Engineer Agreement shall apply to the regular engineer when the engineer taking the familiarization trip operates the locomotive.

e) Locomotive Engineers will not be required to make the decision on whether or not an engineer being familiarized is sufficiently familiarized for the territory.

Section 12: Protection

a) The provisions of Section 7 of Article IX of the May 19, 1986 Agreement shall apply to employees adversely affected by the application of this Agreement for wage protection and relocation benefits.

b) Employees with New York Dock merger salary protection will be permitted to retain that protection while at the same time opting for relocation benefits pursuant to Section 7 of Article IX of the May 19, 1986 National Agreement.

c) Section 3 of New York Dock permits engineers to elect which labor protection they wish to be protected under. By agreement between the parties, engineers may elect the protection governing this agreement and then switch to the number of years remaining under New York Dock or remain under New York Dock and switch to the remainder of the protection that this

agreement provides. Pursuant to New York Dock and Washington Job protection provisions an engineer may not receive duplicate benefits or count protection payments under another protection provision toward their test period average.

Section 13: Temporary Lodging

If, as a consequence of this transaction an employee is unable to hold a position at the original location, and is required to relocate to follow the work to Dolores, temporary lodging at the Company lodging facility in Long Beach will be provided for a period of up to ninety (90) calendar days. This benefit is intended to apply only to those employees who actually relocate.

Section 14: Savings Clause

The parties recognize that this Agreement was reached pursuant to Article IX of Arbitration Award 458, effective May 16, 1986, and agree that all agreements, side letter agreements, moratoriums, and understandings of the December 1, 1997, Southern Pacific Western Lines Modification Agreement, will remain in full force and effect subject to their terms unless specifically changed and/or modified by this Agreement and shall be subject to change pursuant to the Railway Labor Act, as amended.

Section 15: Effective Date

The Carrier will give the General Chairman fifteen (15) days' written notice of its intent to implement this agreement.

MEMORANDUM OF AGREEMENT
#7112011248
(920.40-35)

Between

UNION PACIFIC RAILROAD COMPANY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS & TRAINMEN

SANTA TERESA INTERDIVISIONAL SERVICE

In connection with Union Pacific Railroad Company's Notice dated December 23, 2011, wherein it advised its intent to establish new interdivisional unassigned (pool) through freight service between Tucson, Arizona and Santa Teresa, New Mexico – Santa Teresa, New Mexico and Vaughn, New Mexico, and Santa Teresa and Alpine and Pecos, Texas pursuant to Article IX, "Interdivisional Service", of the 1986 BLE National Agreement, the parties agree the following shall apply to this new service:

Section 1. Interdivisional Service. Union Pacific may establish the following new pool freight operations:

1. Tucson, Arizona - Santa Teresa, New Mexico and El Paso, Texas.

   A. Home terminal for this run will be Tucson, Arizona.

   B. Away-from-home-terminals for this run will be:

      i. Santa Teresa, New Mexico; and
      ii. El Paso, Texas.

   C. Length of runs.

      1. Tucson - Santa Teresa: 288 miles.
      2. Tucson - El Paso: 310 miles.

2. Santa Teresa, New Mexico - Vaughn, New Mexico.

   A. Home terminal for this run will be Santa Teresa, New Mexico.

B. Away-from-home-terminal for this run will be: Vaughn, New Mexico.

C. Length of run will be: 251 miles.

3. Santa Teresa, New Mexico - Alpine and Pecos, Texas.

A. Home terminal for this run will be Santa Teresa, New Mexico.

B. Away-from-home-terminals for this run will be:
   i. Alpine, Texas; and
   ii. Pecos, Texas.

C. Length of runs.
   1. Santa Teresa - Alpine: 242 miles
   2. Santa Teresa - Pecos: 232 miles

Section 2. Terminals for Run. (a). Tucson, Arizona, shall be the home terminal for employees working between Tucson and Santa Teresa or between Tucson and El Paso. This pool shall operate as one (1) pool, unless the Carrier elects to separate this operation and operate it as two (2) separate pools. Santa Teresa, New Mexico and El Paso, Texas shall be the away-from-home terminals for Tucson based crews.

(b). Santa Teresa, New Mexico shall be the home terminal for employees working between Vaughn, New Mexico. Vaughn, New Mexico shall be the away-from-home terminals for Santa Teresa based crews.

(c) Santa Teresa, New Mexico shall be the home terminal for employees working between Santa Teresa and Alpine, Texas or between Santa Teresa and Pecos, Texas. This pool shall operate as one (1) pool, unless the Carrier elects to separate this operation and operate it as two (2) separate pools. Alpine, Texas and Pecos, Texas shall be the away-from-home terminals for Santa Teresa based crews.

(d) The Santa Teresa terminal limits will be designated as Mile Post 1267.50 on the west end and Mile Post 1285.50 will be the designated limits on the east end of Santa Teresa.

Section 3. Miles of Run. Crews working in this interdivisional service will be allowed the following miles:

A. The miles run between Tucson – Santa Teresa/El Paso is 288/310 miles.

B. The miles run between Santa Teresa – Vaughn is 251 miles.

C. The miles run between Santa Teresa – Alpine/Pecos is 242/232 miles.

Section 4. Rates of Pay, Rules and Working Conditions. Except as set forth herein, applicable provisions of the Agreement between the Union Pacific Railroad and the Brotherhood of Locomotive Engineers & Trainmen covering the UP/SPWL and provisions of National BLE/BLET Agreements shall apply.

(a) A trip rate will be developed in accordance with Article V of the December 16, 2003 BLE National Agreement for engineers working on runs established pursuant to this Agreement.

Section 5. Overtime. Employees operating in this freight service will be allowed overtime after actual miles run divided by 16.25 overtime divisor pursuant to Article IV, Section 2 of the November 1, 1991 PEB 219 BLE National Agreement.

Section 6. Transportation. Transportation will be provided in accordance with Section (2) (c) of Article IX of the May 19, 1986 BLE National Agreement.

Section 7. On and Off Duty Points. The Carrier will designate the on- and off-duty points for crews in this service pursuant to Article VI, Section A, 2 of the 1999 BLE Southwest Hub Agreement and Article IX, Section 2 (c) of the 1986 BLE National Agreement. Such on and off duty points will have appropriate facilities as currently required by the controlling collective bargaining agreement.

Section 8. Meal Allowance and Eating En Route. Meal allowances at the away from home terminal will be governed by Article IX, Section 2 (d) of the 1986 BLE National Agreement. Meals enroute for not stopping to eat enroute will be governed by Article IX, Section 2 (e) of the 1986 BLE National Agreement.

Section 9. Suitable Lodging. Suitable lodging will be provided by the Carrier in accordance with Section 1 of Article II of the June 25, 1964 National Agreement.

Section 10. Extra Boards. The Carrier may establish guaranteed extra board(s) at Santa Teresa, New Mexico pursuant to Attachment "A" of the BLE and UP/SPWL November 3, 1997 Modifications Agreement.

Section 11. Hours-of-Service Relief. Turnaround service/hours of service relief shall be handled by the extra board, if available, prior to using pool crews. Employees used for this service may be used for multiple trips in one tour of duty in accordance with the designated collective bargaining agreement. Nothing in this agreement prevents the use of other crews to perform work currently permitted by prevailing agreements, including, but not limited to yard crews performing hours of service relief within the road/yard zone, ID crews performing service and

deadheads between terminals, road switchers handling trains within their zones and using a crew from a following train to work a preceding train.

Section 12. Employee Protection. Employees adversely affected by the initial implementation of this interdivisional service will be afforded the protection benefits provided in Section 7 of Article IX of the May 19, 1986 BLE National Agreement.

Section 13. Implementation & Effective Date. (a) The construction of the Santa Teresa run through fueling and intermodal facilities are anticipated to be completed in various stages in the calendar years of 2013 and 2014. Accordingly, this agreement will be effective upon completion and opening of the operations at Santa Teresa. The Carrier shall give the General Chairman at least thirty (30) days advance notice of its desire to implement this Agreement.

(b) CMS will pre-advertise the assignments for the newly established pools for seven (7) days so that employees may submit their application/bid and the assignments and notifications can be made in advance of implementation of the service. Thereafter, employees who have a standing application on file with CMS for this interdivisional service will be assigned in accordance with the applicable seniority assignment rules.

Signed at ROSEVILLE, CA, this 1st day of DECEMBER, 2012.

FOR THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS & TRAINMEN

D.W. Hannah
General Chairman

M.D. Twombly
National VP BLET

FOR THE UNION PACIFIC RAILROAD COMPANY:

F.A. Tamisiea
Director Labor Relations

R.P. Guidry
General Director
Labor Relations

Side Letter No 1
December 1, 2012

Mr. D.W. Hannah
General Chairman BLET
404 North 7th Street, Suite A
Colton, CA. 92324-2941

Dear Sir:

This has reference to our negotiations relative to the Santa Teresa Interdivisional Service Agreement to establish unassigned (pool) through freight service between Tucson - Santa Teresa/El Paso, El Paso - Vaughn, El Paso - Alpine/Pecos.

Provisions contain in this Side Letter No. 1 are contingent upon a successful ratification and execution of this Interdivisional Agreement on or before December 1, 2012. The signing of the Interdivisional Agreement by all parties on or before December 1, 2012 is considered successful execution thereof. However, in the event the parties do not reach a voluntary accord and arbitration becomes necessary, it is understood that the Carrier reserves the right to revert to and argue that the arbitrator must impose the terms set forth in its original ID proposal (January 5, 2012) and so doing will not prejudice the position of either party.

Consistent with the terms, conditions and timeliness outlined above, the following is agreed to in connection with and will modify Section 4 of the Santa Teresa Interdivisional Agreement as follows:

Section 4. Rates of Pay, Rules and Working Conditions. Except as set forth herein, applicable provisions of the Agreement between the Union Pacific Railroad and the Brotherhood of Locomotive Engineers & Trainmen covering the UP/SPWL and provisions of the National BLE Agreements shall apply.

(a) In lieu of developing current data for a trip rate test period, or by the permissibility to use a comparable run/pool, if any, in accordance with Article V - "Pay System Simplification" of the December 16, 2003 BLE National Agreement, a trip rate may be established for each of the new pools as follows:

(i) Crews operating between Santa Teresa - Vaughn and Santa Teresa - Alpine/Pecos an additional twenty-two (22) miles will be added to the trip rates of the existing pools El Paso - Vaughn and El Paso - Alpine/Pecos and these new trip rates will be used for the new runs established between Santa Teresa - Vaughn and Santa Teresa - Alpine/Pecos.

(ii) The existing Tucson - El Paso trip rate will correspondingly be reduced by twenty-two (22) miles and this new trip rate will be used for crew operating on the new run between Tucson - Santa Teresa.

(iii) Crews operating between Tucson - El Paso will continue to receive the existing trip rate when operating to/from El Paso.

(b) It is understood the development of trip rates under this Section 4 for the new runs is without prejudice to Article V of the 2003 BLE National Agreement and without prejudice to taking into account the pay elements that were included in the previous trip rates for the existing pools between Tucson - El Paso, El Paso - Vaughn and El Paso - Alpine/Pecos. Accordingly, either party may request review and adjustment of said trip rates pursuant to Section 8 - "Material Changes", of Part B of Article V of the 2003 BLE National Agreement.

It is understood and agreed this Side Letter No. 1 is limited to Interdivisional Service established pursuant to this Agreement in connection with Carrier's January 5, 2012 Notice as provided by Article IX of the May 19, 1986 BLE Award/National Agreement.

If you agree with the terms and conditions outlined above, please indicate by affixing your signature in the space provided below.

Agreed:

D.W. Hannah
General Chairman BLET

Yours truly,

F.A. Tamisica
Director - Labor Relations

Side Letter No 2
December 1, 2012

Mr. D.W. Hannah
General Chairman BLET
404 North 7th Street, Suite A
Colton, CA. 92324-2941

Dear Sir:

This has reference to our negotiations relative to the Santa Teresa Interdivisional Service Agreement to establish unassigned (pool) through freight service between Tucson - Santa Teresa/El Paso, El Paso - Vaughn, El Paso - Alpine/Pecos.

Provisions contain in this Side Letter No. 2 are contingent upon a successful ratification and execution of this Interdivisional Agreement on or before December 1, 2012. The signing of the Interdivisional Agreement by all parties on or before December 1, 2012 is considered successful execution thereof. However, in the event the parties do not reach a voluntary accord and arbitration becomes necessary, it is understood that the Carrier reserves the right to revert to and argue that the arbitrator must impose the terms set forth in its original ID proposal (January 5, 2012) and so doing will not prejudice the position of either party.

Consistent with the terms, conditions and timeliness outlined above, the following is agreed to in connection with and will modify Section 5 of the Santa Teresa Interdivisional Agreement as follows:

Section 5. Overtime. (a) Employees will be allowed overtime pursuant to Article II, A, G, 4, 5 & 6 of the May 13, 2004 BLE/UP Agreement Modifications and June 3, 2004 BLE/UP Understanding which reads as follows:

> **"4. Effective May 16, 2006, engineers who have an engineer/train service seniority date subsequent to October 31, 1985, and prior to July 2, 2004, or were in engineer training class on July 1, 2004, and are assigned to or working on through freight runs that payment of overtime governed by Section G, Paragraph 3.b. of this Article V shall have their overtime commence when their on-duty time is in excess of 12 hours."**
>
> **"5. Employees hired after July 1, 2004, shall be paid overtime in accordance with the National Rules governing same in and in the same manner previously paid on the Union Pacific prior to the merger."**
>
> **"6. When overtime, initial terminal delay and final terminal delay accrue on the same trip, allowance will be the combined initial and final terminal delay time, or overtime, whichever is the greater."**

During the August 7, 2012 meeting we discussed the July 1, 2004 engineer eligible seniority date for purposes of calculating overtime for engineers noted in the above BLE May 2004 Agreement. In conjunction with these discussions engineers who have a seniority date on or before October 1, 2004 shall be allowed the overtime set forth in Article II, A, G, 4, 5 & 6 of the May 13, 2004 BLE/UP Agreement Modifications and the June 3, 2004 BLE/UP Understanding concurrent with the effective date of this interdivisional agreement. Engineers who have a seniority date after October 1, 2004 shall be paid overtime in accordance with the National Rules.

It is understood and agreed this Side Letter No. 2 is limited to Interdivisional Service established pursuant to this Agreement in connection with Carrier's January 5, 2012 Notice as provided by Article IX of the May 19, 1986 BLE Award/National Agreement.

If you agree with the terms and conditions outlined above, please indicate by affixing your signature in the space provided below.

Agreed:

D.W. Hannah
General Chairman BLET

Yours truly,

F.A. Tamisiea
Director - Labor Relations

Side Letter No 3
December 1, 2012

Mr. D.W. Hannah
General Chairman BLET
404 North 7th Street, Suite A
Colton, CA. 92324-2941

Dear Sir:

This has reference to our negotiations relative to the Santa Teresa Interdivisional Service Agreement to establish unassigned (pool) through freight service between Tucson - Santa Teresa/El Paso, El Paso - Vaughn, El Paso - Alpine/Pecos.

Provisions contain in this Side Letter No. 3 are contingent upon a successful ratification and execution of this Interdivisional Agreement on or before December 1, 2012. The signing of the Interdivisional Agreement by all parties on or before December 1, 2012 is considered successful execution thereof. However, in the event the parties do not reach a voluntary accord and arbitration becomes necessary, it is understood that the Carrier reserves the right to revert to and argue that the arbitrator must impose the terms set forth in its original ID proposal (January 5, 2012) and so doing will not prejudice the position of either party.

Consistent with the terms, conditions and timeliness outlined above, the following is agreed to in connection with and will be included in the negotiated Santa Teresa Interdivisional Agreement as follows:

(a) Calling Time. Both home terminal El Paso and Santa Teresa road crews and away from home terminal Tucson crews, except for El Paso yard engineers, will be allowed a two (2) hour call, if practicable, prior to the required on duty time irrespective if called to duty at Santa Teresa or El Paso respectively.

It is understood and agreed this Side Letter No. 3 is limited to Interdivisional Service established pursuant to this Agreement in connection with Carrier's January 5, 2012 Notice as provided by Article IX of the May 19, 1986 BLE Award/National Agreement.

If you agree with the terms and conditions outlined above, please indicate by affixing your signature in the space provided below.

Agreed:

D.W. Hannah
General Chairman BLET

Yours truly,

F.A. Tamisiea
Director - Labor Relations

Side Letter No 4
December 1, 2012

Mr. D.W. Hannah
General Chairman BLET
404 North 7th Street, Suite A
Colton, CA. 92324-2941

Dear Sir:

This has reference to our negotiations relative to the Santa Teresa Interdivisional Service Agreement to establish unassigned (pool) through freight service between Tucson - Santa Teresa/El Paso, El Paso - Vaughn, El Paso - Alpine/Pecos.

Provisions contain in this Side Letter No. 4 are contingent upon a successful ratification and execution of this Interdivisional Agreement on or before December 1, 2012. The signing of the Interdivisional Agreement by all parties on or before December 1, 2012 is considered successful execution thereof. However, in the event the parties do not reach a voluntary accord and arbitration becomes necessary, it is understood that the Carrier reserves the right to revert to and argue that the arbitrator must impose the terms set forth in its original ID proposal (January 5, 2012) and so doing will not prejudice the position of either party.

Consistent with the terms, conditions and timeliness outlined above, the following is agreed to in connection with and will be included in the negotiated Santa Teresa Interdivisional Agreement as follows:

(a) El Paso Zone 2 engineers shall be afforded prior rights to the home terminal Santa Teresa - Vaughn and Santa Teresa - Alpine/Pecos pool assignments which shall be filled from the common dovetail Zone 2 roster pursuant to Article II, D, 4 of the BLE Southwest Hub Agreement dated Jun 15, 1999.

It is understood and agreed this Side Letter No. 3 is limited to Interdivisional Service established pursuant to this Agreement in connection with Carrier's January 5, 2012 Notice as provided by Article IX of the May 19, 1986 BLE Award/National Agreement.

If you agree with the terms and conditions outlined above, please indicate by affixing your signature in the space provided below.

Agreed:

D.W. Hannah
General Chairman BLET

Yours truly,

F.A. Tamisiea
Director - Labor Relations

Side Letter No 5
December 1, 2012

Mr. D.W. Hannah
General Chairman BLET
404 North 7th Street, Suite A
Colton, CA. 92324-2941

Dear Sir:

This has reference to our negotiations relative to the Santa Teresa Interdivisional Service Agreement to establish unassigned (pool) through freight service between Tucson - Santa Teresa/El Paso, El Paso - Vaughn, El Paso - Alpine/Pecos.

Provisions contain in this Side Letter No. 5 are contingent upon a successful ratification and execution of this Interdivisional Agreement on or before December 1, 2012. The signing of the Interdivisional Agreement by all parties on or before December 1, 2012 is considered successful execution thereof. However, in the event the parties do not reach a voluntary accord and arbitration becomes necessary, it is understood that the Carrier reserves the right to revert to and argue that the arbitrator must impose the terms set forth in its original ID proposal (January 5, 2012) and so doing will not prejudice the position of either party.

Consistent with the terms, conditions and timeliness outlined above, the following is agreed to in connection with and will be included in the negotiated Santa Teresa Interdivisional Agreement as follows. The following does not waive UP's position or arbitration precedent, nor will it be cited or set any precedent in future interdivisional runs established pursuant to Article IX of the 1985 National Agreement regarding non-payment of transportation miles/allowances when crews are transported to/from their on- and off-duty points.

(a.) A Tucson pool freight crew who works (including combination work and deadhead) into one of the dual away-from-home terminals (either Santa Teresa or El Paso), is relieved at that point and thereafter called for a return working/service trip to Tucson at the other dual away-from-home terminal (Santa Teresa/El Paso) will be compensated one (1) hour at the pro rata rate of pay.

(b.) The one (1) hour allowance outlined herein is not payable when a Tucson crew reports for duty at the same away-from-home terminal (Santa Teresa/El Paso) that he/she was previously relieved for the return working/service trip to Tucson.

Example 1 - Payment of one (1) hour allowance:

A Tucson crew operates a train from his/her home terminal to Santa Teresa, and goes off duty at Santa Teresa. After obtaining rest, the Tucson crew is then called to operate a train out of El Paso to Tucson. This Tucson crew will be allowed the one (1) hour at the pro rata rate for reporting at El Paso.

Example 2 - Non-payment of one (1) hour allowance:

A Tucson crew operates a train from his/her home terminal to Santa Teresa, and goes off duty at Santa Teresa. After obtaining rest, the Tucson crew is then called to operate a train out of Santa Teresa to Tucson. This Tucson crew is not allowed the one (1) hour payment.

Example 3 - Non-payment of one (1) hour allowance:

A Tucson crew deadheads separate and apart from his/her home terminal to Santa Teresa, and goes off duty at Santa Teresa. After obtaining rest, the Tucson crew is then called to operate a train out of El Paso to Tucson. This Tucson crew is not allowed the one (1) hour payment.

(d.) The one (1) hour arbitrary allowance set forth herein will be subject to future cost of living and wage increases.

It is understood and agreed this Side Letter No. 5 is limited to Interdivisional Service established pursuant to this Agreement in connection with Carrier's January 5, 2012 Notice as provided by Article IX of the May 19, 1986 BLE National Award/Agreement. Accordingly, this Side Letter No. 5 will not apply at any other location nor considered a precedent in any other discussion or dispute resolution.

If you agree with the terms and conditions outlined above, please indicate by affixing your signature in the space provided below.

Agreed:

D.W. Hannah
General Chairman BLET

Yours truly,

F.A. Tamisiea
Director - Labor Relations

DRAFT 3
(10-18-2013)

MEMORANDUM OF AGREEMENT
#71_ _ _ _ _ _48
(920.40-35)

Between

UNION PACIFIC RAILROAD COMPANY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS & TRAINMEN

YERMO – WEST COLTON
YUMA – WEST COLTON
INTERDIVISIONAL SERVICE

In connection with Union Pacific Railroad Company's Notice dated July 17, 2013, wherein it advised its intent to establish new unassigned (pool) through freight service between Yermo, California and West Colton, California and Between Yuma, Arizona and West Colton, California pursuant to Article IX, "Interdivisional Service", of the 1986 BLE National Agreement, the parties agree the following shall apply to this new service:

Section 1. Interdivisional Service. Union Pacific may establish the following new pool freight operations:

1. **Yermo, California – West Colton, California.**

   A. Home terminal for this run will be Yermo, California.

   B. Away-from-home-terminal for this run will be West Colton, California.

   C. The length of this run is 97 miles (Basic Day).

2. **Yuma, Arizona – West Colton, California.**

   A. Home terminal for this run will be Yuma, Arizona.

   B. Away-from-home-terminal for this run will be West Colton, California.

C. The length of this run is 198 miles.

Note: As in the 1986 BLE National Agreement and this Agreement, the term interdivisional service includes interdivisional, interseniority district, intradivisional and/or intraseniority district service.

Section 2. Terminals for Run (a) Yermo, California, shall be the home terminal for employees working between Yermo and West Colton and manned by employees from the Los Angeles Hub. West Colton shall be the away-from-home terminals for Yermo based crews.

(b) Yuma, Arizona shall be the home terminal for employees working between Yuma and West Colton and manned by employees from the Los Angeles Hub. West Colton shall be the away-from-home terminal for Yuma based crews.

Section 3. Miles of Run Crews working in this interdivisional service will be allowed the following miles:

A. The miles run between Yermo – West Colton is 97 miles for which a Basic Day is paid.

B. The miles run between Yuma – West Colton is 198 miles.

Note: The mileages specified above are subject to final verification by the parties.

Section 4. Rates of Pay, Rules and Working Conditions. Except as set forth herein, applicable provisions of the Agreement between the Union Pacific Railroad and the Brotherhood of Locomotive Engineers & Trainmen covering the UP/SPWL and provisions of National BLE/BLET Agreements shall apply.

(a) The existing trip rates currently established for the West Colton/Mira Loma to Yermo and West Colton/Mira Loma to Yuma pool freight runs shall be applied to the new runs established under this agreement.

Note: This Agreement shall not serve to modify, amend or restrict any existing rights of the Carrier including, but not limited to, Article III (A.) of the UP/SP BLET Los Angeles Hub Merger Implementing Agreement concerning trains originating or terminating at Mira Loma, California.

Section 5. Overtime. Employees operating in this freight service will be allowed overtime after actual miles run divided by 16.25 overtime divisor

pursuant to Article IV, Section 2 of the November 1, 1991 PEB 219 BLE National Agreement.

Section 6. Transportation. Transportation will be provided in accordance with Section (2) (c) of Article IX of the May 19, 1986 BLE National Agreement.

Section 7. On and Off Duty Points. The Carrier will designated the on- and off-duty points for crews in this service pursuant to Article VI, Section A, 2 of the 1998 BLE Los Angeles Hub Agreement and Article IX, Section 2 (c) of the 1986 BLE National Agreement. Such on and off duty points will have appropriate facilities as currently required by the controlling collective bargaining agreement.

Section 8. Meal Allowance and Eating En Route. Meal allowances at the away from home terminal will be governed by Article IX, Section 2 (d) of the 1986 BLE National Agreement. Meals enroute for not stopping to eat enroute will be governed by Article IX, Section 2 (e) of the 1986 BLE National Agreement.

Section 9. Suitable Lodging. Suitable lodging will be provided by the Carrier in accordance with Section 1 of Article II of the June 25, 1964 National Agreement.

Section 10. Extra Boards. The Carrier may establish and/or consolidate guaranteed extra board(s) pursuant to Attachment "A" of the BLE and UP/SPWL November 3, 1997 Modifications Agreement.

To maximize and maintain efficiencies, extra boards may be established or combined with existing extra boards at Yermo, Yuma and Colton to protect vacancies, etc. in the newly established Yermo to Colton and Yuma to Colton interdivisional corridors in addition to other work protected from that source of supply.

If a single/combined engineer's extra board is established at Yuma, Arizona said extra board will be manned from both the Los Angeles and Southwest Hubs on a 50/50 percentage basis.

Section 11 . Hours-of-Service Relief. Turnaround service/hours of service relief shall be handled by respective extra boards (Yermo, Yuma or Colton), if available and based on efficiency, prior to using pool crews. Employees used for this service may be used for multiple trips in one tour of duty in accordance with the designated collective bargaining agreement. Nothing in this agreement prevents the use of other crews to perform work currently permitted by prevailing agreements, including, but not limited to yard crews performing hours of service relief within the road/yard zone, ID crews performing service and deadheads between terminals, road switchers handling trains within their zones and using a crew from a following train to work a preceding train.

Section 12. Employee Protection. Employees adversely affected by the initial implementation of this interdivisional service will be afforded the protection benefits provided in Section 7 of Article IX of the May 19, 1986 BLE National Agreement.

Section 13. Implementation. On the effective date of this agreement, the Carrier will post a bulletin for this interdivisional service. Thereafter, employees who have a standing application on file with CMS for this interdivisional service will be assigned in accordance with the applicable seniority assignment rules.

Section 14. Effective Date. The Carrier shall give the General Chairman seven (7) days' written notice of its desire to implement this Agreement.

Signed at _____, this ____ day of _____.

FOR BROTHERHOOD OF LOCOMOTIVE ENGINEERS & TRAINMEN	**FOR UNION PACIFIC RAILROAD COMPANY:**
D. W. Hannah **General Chairman**	**D. B. Foley** **Director Labor Relations**

UNION PACIFIC RAILROAD COMPANY

Building America

----------, 2013

Side Letter 1 – Overtime
File #71_ _ _ _ _ _48
(920.40-36)

Mr. D. W. Hannah
General Chairperson
Brotherhood of Locomotive Engineers
And Trainmen
1902 Orange Tree Lane, Suite #120
Redlands, CA 92374

Dear Sir:

This refers to our August 13, 2013, conference wherein we discussed Union Pacific's July 17, 2013, notice to establish interdivisional service between Yermo and West Colton, California, and between Yuma, Arizona and West Colton, California, pursuant to Article IX of the May 19, 1986 BLE National Agreement.

The following modification of Section 5 contained in the aforementioned interdivisional service agreement will not prejudice the position of either party will not be referred to in connection with any other case, agreement (Local and/or National) and/or dispute resolution in any forum.

Section 5. Overtime.

(a) Employees will be allowed overtime pursuant to Article II, A, G, 4, 5 & 6 of the May 13, 2004 BLE/UP Agreement Modifications and June 3, 2004 BLE/UP Understanding which reads as follows:

> **4. Effective May 16, 2006, engineers who have an engineer/train service seniority date subsequent to October 31, 1985, and prior to July 2, 2004, or were in engineer training class on July**

1, 2004, and are assigned to or working on through freight runs that payment of overtime governed by Section G, Paragraph 3.b. of this Article V shall have their overtime commence when their on-duty time is in excess of 12 hours."

5. Employees hired after July 1, 2004, shall be paid overtime in accordance with the National Rules governing same in and in the same manner previously paid on the Union Pacific prior to the merger."

6. When overtime, initial terminal delay and final terminal delay accrue on the same trip, allowance will be the combined initial and final terminal delay time, or overtime, whichever is the greater.

During the August 13, 2013, meeting we discussed the July 1, 2004, engineer eligibility seniority date for purposes of calculating overtime for engineers noted in the above BLET May 2004 Agreement. In conjunction with these discussions engineers who have a seniority date on or before October 1, 2004, shall be allowed the overtime set forth in Article II, A, G, 4, 5 & 6 of the May 13, 2004 BLET/UP Agreement Modifications and the June 3, 2004 BLET/UP Understanding concurrent with the effective date of this interdivisional agreement. Engineers who have a seniority date after October 1, 2004 shall be paid overtime in accordance with the National Agreement Rules.

It is further understood and agreed nothing in this **Side Letter 1** or Interdivisional Agreement is intended to restrict any existing rights of the Carrier including, but not limited to, assignments, rates of pay, incidental work, combining deadhead and service, hours of service relief, overtime divisors, training, etc. as outlined in controlling agreements. Further, the terms outlined herein are limited to Interdivisional Service established pursuant to this Agreement in connection with Carrier's July 17, 2013, notice served under Article IX of the May 19, 1986 BLET National Agreement.

If you agree with the terms and conditions outlined above, please indicate by affixing your signature in the space provided below.

Agreed: **Yours truly,**

Bill Hannah
General Chairman BLET

D. B. Foley
Director – Labor Relations

UNION PACIFIC RAILROAD COMPANY

Building America

----------, 2013

Side Letter 2 – Reverse Lodging
File #71_ _ _ _ _ _48
(920.40-36)

Mr. D. W. Hannah
General Chairperson
Brotherhood of Locomotive Engineers
And Trainmen
1902 Orange Tree Lane, Suite #120
Redlands, CA 92374

Dear Sir:

This refers to our August 13, 2013, conference wherein we discussed Union Pacific's July 17, 2013, notice to establish interdivisional service between Yermo and West Colton, California and between Yuma, Arizona and West Colton, California pursuant to Article IX of the May 19, 1986 BLET National Agreement.

During this discussion you indicated some employees currently residing in the West Colton/Los Angeles Metroplex may be averse to moving to Yuma, Arizona. Respecting your constituency's wants but not relinquishing its right to require employees to relocate consistent with Article IX of the 1986 BLET National Agreement, Union Pacific will provide "reverse lodging" at the Yuma home terminal to employees who are regularly assigned to the Yuma/West Colton pool living in the West Colton/Los Angeles area for a period of two (2) years following the date this service is implemented. Thereafter, lodging will no longer be provided as outlined herein. Reverse lodging at Yuma will only be provided to regularly assigned pool employees assigned to the Yuma/West Colton Pool who would otherwise qualify for away from home lodging at West Colton.

It is understood such reverse lodging will not be provided when the employee's residence is closer to Yuma than West Colton and/or on days the regular pool employee lays off (compensated and/or non-compensated) or is otherwise unavailable to perform service. The purpose of this arrangement is to

give employees time to determine their interest in permanently relocating to Yuma and/or for Union Pacific to hire and train employees from the Yuma, area to staff this service.

It is further understood and agreed nothing in this **Side Letter 2** or Interdivisional Agreement is intended to restrict any existing rights of the Carrier including, but not limited to, assignments, rates of pay, incidental work, combining deadhead and service, hours of service relief, overtime divisors, training, etc. as outlined in controlling agreements. Further, the terms outlined herein are limited to Interdivisional Service established pursuant to this Agreement in connection with Carrier's July 17, 2013, notice served under Article IX of the May 19, 1986 BLE National Agreement.

If you agree with the terms and conditions outlined above, please indicate by affixing your signature in the space provided below.

Agreed:

Bill Hannah
General Chairman BLET

Yours truly,

D. B. Foley
Director – Labor Relations

UNION PACIFIC RAILROAD COMPANY

Building America

----------, 2013

Side Letter 3 – Work Allocation
File #71_ _ _ _ _ _48
(920.40-36)

Mr. D. W. Hannah
General Chairperson
Brotherhood of Locomotive Engineers
And Trainmen
1902 Orange Tree Lane, Suite #120
Redlands, CA 92374

Dear Sir:

This refers to our October 15, 2013, conference wherein we discussed Union Pacific's July 17, 2013, notice to establish interdivisional service between Yermo and West Colton, California and between Yuma, Arizona and West Colton, California pursuant to Article IX of the May 19, 1986 BLET National Agreement.

This will clarify Union Pacific's proposal on how work should be allocated at Yuma, Arizona upon the establishment of the Yuma to West Colton Pool.

Regular assignments on the Yuma to West Colton pool would be staffed by Los Angeles Hub employees.

In the event a single combined extra board is established at Yuma, 50% of the assignments would be allocated to Los Angeles Hub employees and 50% of the assignments would be allocated to Southwest employees. Extra employees assigned to this single combined Extra Board will, in addition to the work outlined in the respective Los Angeles and Southwest Hub Agreements, also protect vacancies and made up turns in the Yuma to West Colton pool, hours of service relief/turnarounds, etc. on a first in first out basis and consistent with controlling agreements.

It is further understood and agreed nothing in this **Side Letter 3** or Interdivisional Agreement is intended to restrict any existing rights of the Carrier including, but not limited to, assignments, rates of pay, incidental work, combining deadhead and service, hours of service relief, overtime divisors, training, etc. as outlined in controlling agreements. Further, the terms outlined herein are limited to Interdivisional Service established pursuant to this Agreement in connection with Carrier's July 17, 2013, notice served under Article IX of the May 19, 1986 BLE National Agreement.

If you agree with the terms and conditions outlined above, please indicate by affixing your signature in the space provided below.

Agreed:

Bill Hannah
General Chairman BLET

Yours truly,

D. B. Foley
Director – Labor Relations

Clarification on work allocation - Yuma/Yermo to West Colton Interdivisional Service Proposal

David B. Foley to: dwh, Kristeen L. Clough, Doreen Coffman 10/18/2013 11:09 AM

Cc: Randy P. Guidry, Michael D. Phillips, Patrick G. Kenny, Vanessa L. Warren, Rebecca L. Cates

Bill

Reference our October 15, 2013 meeting wherein we discussed the Carrier's July 17, 2013 Interdivisional Service Notice. Please note the inclusion of Side Letter No. 3 clarifying work allocation. If you have any questions, please feel free to contact me or Mr. Guidry at your convenience.

1 attachment

20131018090725839.pdf

Dave Foley
Director - Labor Relations

(916) 789-6345
(402) 639-1443 - Cell

BLET - Yuma/Yermo - West Colton
IP Meeting - October 15, 2013

Randy Guidry - LR - Omaha

Larry Keith	LA 54	WC
Don Carroll	LC 660	LA.
Bill Hannah	GC	Redlands
[illegible]	BLET	ND
Paulo Terkovic	BLET	LC 5
Lee Pruit	BLET	ND
Kent Richards	BLET	LC56
Tom Williams	LA54	W. Colton
Pat Kenny	OMA-CMS	OMAHA
DB Foley	LR	Roseville
J Reutsler	1st VGC	Sparks

BOARD OF ARBITRATION No. 598

CARRIER'S REBUTTAL

* * * * * * * * *

A thorough reading of BLET's Submission will show that it actually supports UP. BLET's reference to Article IX and related precedent eviscerates any New York Dock argument with respect to how "new runs" are defined. With such reference, BLET acknowledges that Article IX, not New York Dock, is the contractual authority defining what is considered "new service" under that Article. Notwithstanding, whether this decision is an interpretation of Article IX or an interpretation of the New York Dock Implementing Agreement is not material to the outcome of the matter before this Board. Either way the issue is whether these runs are new as defined by Article IX.

Side Letter 3 to the Los Angeles Hub Agreement is quite clear. It permits UP to create *"new pool operations not covered"* in that Hub Agreement *"per Article IX of the 1986 National Arbitration Award."* It is undisputed that UP has not had pool operations with home terminals in Yerma, California, or Yuma, Arizona, and with away from home terminals in West Colton, California. Given that UP has not had these proposed new pool operations previously, it is difficult to understand BLET's position that the proposed operations are not new. By definition, something is new if it is different than what

presently exists. To argue that these new pool operations are not new is to ignore the reality that they do not exist at this time.

Even so, BLET's "terminal flipping" argument has been soundly defeated. Arbitrators Zusman and Radek found that when the Carrier changes the home terminal of an existing Interdivisional run, it is a material change in service and constitutes **"new service"** within the meaning of Article IX. Clearly, *new service* as defined by Article IX is likewise *new service* in the Los Angeles Merger Agreement context. As discussed on pages 26 through 28 of the Carrier's Submission, Arbitrator Zusman held:

> **Public Law Board 7318, Award 20 (Carrier's Exhibit 17)**
>
> " … However, the Board finds, as does the most recent Award on this property (Public Law Board 7463, Radek), **that when the Carrier changes the home terminal of an existing ID service it is a material change in service and constitutes new ID service**. Such change is permissible under Article IX of the 1985 Agreement. The Organization's arguments throughout this dispute of the Carrier's ID service are not persuasive. The Carrier has not violated the Agreement between the parties. The Board is convinced from the full record and arguments presented that this is a "rearrangement" which is a materially different ID service from the service that existed prior. **While the Board notes that in some prior awards additional adjustments were made to add a river route or expand train types, the central issue is that of fundamental removal of a home terminal. This is not a substantial recreation, but new service; a permissible rearrangement' a materially different ID service than existed prior. …"**

As in the case at hand, Award 20 of Public Law Board 7318 dealt with employees on separate seniority districts. Employees on the seniority district working one end of a "double-ended pool" out of Nashville, Tennessee, were consolidated into the opposite pool of employees from the other seniority district working out of Birmingham, Alabama. Afterward, employees on both seniority districts operated from the single consolidated

Birmingham pool to Nashville on a first in first out basis. Their work allocation was traditionally based and so assigned. They operated ***"on the same track"*** as before, had ***"the same mileage"*** payments as before and went into and ***"out of the same two terminals"*** as before. Award 20 of Public Law Board 7318 could not be more on point. Having clearly established that UP's proposed service is in fact "new service," all other citations by BLET become moot or supportive of UP's actions.

A BLET reference that directly supports UP's position is the "Fredenberger Award" (PLB 3800, Award 1) showcased on page 22 of its submission. UP could argue the Fredenberger Award did not interpret the 1971 BLET National Agreement. Rather it dealt with the January 27, 1972 UTU National Agreement. And as Article IX of 1986 BLET and 1985 UTU National Agreements superseded the 1971 BLET and 1972 UTU National Agreements in this regard, the Fredenberger Award would have no bearing on this case. UP could further argue that the situation presented in PLB 3800, Award 1, involved no change whatsoever in the run involved, including no change in home terminals. Those would be true and valid arguments. **However, a better argument for UP would be to use BLET's Exhibit (BLET Appx. 87) as direct support for UP's position.** BLET fails to mention that Arbitrator LaRocco actually upheld BNSF's position in the corresponding **BLET** dispute while interpreting and applying the corresponding 1971 **BLET** National Agreement. Contrary to Arbitrator Fredenberger's determination, Arbitrator La Rocco held in Arbitration Board No. 446 **(Carrier's Exhibit 39)** that the BNSF Notice dated January 16, 1984, was indeed intradivisional service as contemplated in the 1971 BLET National Agreement and BNSF was compliant therewith. The fact that Arbitrator LaRocco was Chairman and Neutral Member of the

1986 BLET National Agreement Disputes Committee issuing the Issue 3 interpretation is noteworthy when considering the weight of his Arbitration Board No. 446 Award. In any event, while UTU may purport to have an argument (and UTU would be wrong), BLET certainly does not, given that its own contract language lost on the same set of facts and issues.

BLET's submission also cites the decisions of Arbitrators Kenis and Perkovich relating to the interplay between the St. Louis, North Little Rock, Kansas City, and Houston Hub Implementing Agreements and Article IX. Those Awards held, based on the specific language of those hub implementing agreements, UP had given up its right to utilize the procedures of Article IX in those hubs if the new interdivisional service would nullify or modify any provision of the Hub Implementing Agreement. (BLETAppx.169.)

While Union Pacific continues to disagree with the Kenis and Perkovich Awards, they are completely irrelevant to the dispute before this Board. As BLET acknowledges in its Submission (at page 13), the language of the Los Angeles Hub Implementing Agreement relevant here is ***not*** the same as those under review in the Kenis and Perkovich Awards. Thus, as recognized by both Arbitrators Binau (BLET Appx.129-32) and Perkovich (BLET Appx.138-39), the reasoning of the Kenis and Perkovich Awards does not apply to the Los Angeles Hub Agreement.[1] The Binau Award therefore

[1] Similarly, Arbitrator Zusman found in Public Law Board No. 7577, Award No. 2, that the San Antonio Hub Implementing Agreement did not preclude UP from utilizing its rights under Article II of the 1971 National Agreement to extend switching limits in Laredo, Texas, even though doing so would change the terms of the San Antonio Hub Implementing Agreement **(Carrier's Exhibit 40)**

rejected BLET's argument that UP could not extend switching limits in West Colton under Article II of the 1971 National Agreement, despite the fact that doing so would change the switching limits contained in the Los Angeles Hub Agreement. Moreover, while the Binau Award arose under Article II of the 1971 National Agreement, BLET is wrong to claim that its analysis is limited to UP's Article II rights. After examining the Los Angeles Hub Agreement language, Arbitrator Binau broadly concluded that "Article VI, Section C of the Los Angeles Hub Agreement preserves ***all national agreements*** that existed prior to the creation of the Los Angeles Hub." (BLET Appx.132 (emphasis added)).

BLET cannot seriously contend that UP gave up its Article IX rights when it entered into the Los Angeles Hub Agreement. Not only does the Binau Award reject that argument, Side Letter 3 expressly preserves all of UP's Article IX rights in the Los Angeles Hub. Under Side Letter 3, UP has the absolute right to use Article IX to establish new pool operations in the Los Angeles Hub not covered by that Agreement. As shown above, UP's proposed new pool operations are clearly not covered by the Los Angeles Hub Agreement and may therefore be created under Article IX.

The next question is whether UP has met its burden under the Issue 3 "two part test." Under this test, UP can establish its new pool operation so long as it is not: (1) "a substantial recreation of the prior interdivisional service [(2)] designed solely to obtain the more favorable conditions of the 1986 National Agreement." (UP Exhibit 8, at 5.) As shown above, the change in home terminals that would be worked by UP's proposed

new pool operations is not a substantial recreation of existing service under PLB 7318, Award 20, and PLB 7463, Award 1.

Thus, UP has met its burden under Question 3 without even looking at whether the new service is "designed solely to obtain the more favorable conditions in the 1986 National Agreement." This is the precise holding of Arbitrator Dana Eischen in **Arbitration Board 468** (BLET vs. Southern Pacific now UP) **(Carrier's Exhibit 32)** which ruled as follows:

> **Arbitration Board 468**
>
> "…In any event, however, even if arguendo BLE prevailed on the recreation aspect **that is only one part of the two-part test developed by the Committee.** To divest Carrier of its divested rights under Article IX of the 1986 National Agreement and bind it on the extended or rearranged run to terms and conditions for interdivisional serve established under Article VIII of the 1971 National Agreement, **the Organization must also show that the recreation was "designed solely to obtain the more favorable conditions of the 1986 National Agreement."**
>
> "It is self evident to any sentient being that part of Carrier's motivation, in proposing establishment of the extension or rearranged service was to avail itself of the "more favorable" conditions of Article IX. **But Carrier has presented prima facia evidence that it had arguably bonafide reasons to justify the extension and rearrangement of the existing interdivisional service,** other than solely to get out from under Article IX of the 1971 National Agreement and under Article IX of the 1986 National Agreement. **The test enunciated by the Committee puts the Organization in a very difficult evidentiary position, but speculation, conjecture and suspicion regarding Carrier motives cannot substitute for preponderating evidence.** Carrier has made a colorable showing that the extension or rearrangement of the existing interdivisional service was not designed solely to escape from the coverage of the 1971 National Agreement. **Under the test developed by the Committee, therefore, this Board must find that Carrier has the right to establish this extended or rearranged interdivisional service under terms and conditions prescribed in Article IX, Section 2 and 4 of the 1986 National Agreement.'**

Moreover, even if a "substantial recreation" existed, BLET would still have to prove that the new service was "designed solely to obtain the more favorable conditions in the 1986 National Agreement." Such an argument is impossible to make for at least two reasons. First, UP is not obtaining "the more favorable conditions in the 1986 National Agreement." As BLET concedes, the pay rates for the new service are identical to the old service. Nor is UP changing meal allowances or other items covered by Section 2 of Article IX. Because UP is not "obtaining the more favorable conditions in the 1986 Agreement," the answer to Issue 3 allows it to establish the proposed new pool operations.

Finally "substantial recreations" of prior Interdivisional service are permissible even if they yield the "more favorable conditions" contained in the 1986 BLET National Agreement providing that obtaining those conditions is not the **sole** motivation of a Carrier. A "bona fide" business case can meet that test and another of BLET's citations (BLET Appx. 88) confirms that fact.

In Award 1 from Special Board of Adjustment 6741 BNSF's Article IX motive was premised on a need to address competition and increasing traffic over its limited line capacity. Arbitrator O'Brien summarized BNSF motive as follows:

> "… The portion of BNSF between Wellington and Kansas City is part of BNSF's "racetrack." The racetrack is the high-speed corridor **between the California shipping points and Chicago. BNSF**, under then existing agreement provisions and traditional operating initiatives, is surpassing this line's capacity, and the traffic levels continue to increase. Therefore, BNSF feels obligated to evaluate available options and prepare for increasing traffic in the existing track configuration. …"

The traffic described above is the same competitive port traffic UP mentions in its business case. The "racetrack" analogy by BNSF depicts UP's Sunset Route. Arbitrator O'Brien rightly granted BNSF's proposed service and terms and conditions on that basis. UP's motivation is no different and no less *"legitimate".* If BNSF's business case met the "two part" test, UP's should as well.

In the instant case, UP did more than just consider agreement options. Learning from previous attempts to operate *"long runs"* following completion of the Alameda Corridor, UP invested heavily in its infrastructure and made huge capital improvements in conjunction with its current Article IX initiative. Besides recognizing the need to increase track capacity and velocity, how *long and short runs* unproductively interacted was also a lesson learned. Those lessons have been the driving factor in our Article IX discussions since February of this year. In UP's view, its business case is made stronger by that fact.[2]

Instead of supporting UP in this endeavor, BLET belittles any and all efficiency pursuits even to the point it argues against an engineer's own interest. For example, BLET argues that it favors more time away from home. Because UP's operating plan will reduce held away from home time, BLET argues pay is reduced. To make such an

[2] BLET's submission, citing excerpts of the court testimony of Randy Guidry, asserts that UP's only basis for wishing to begin the proposed new pool operations are to save on labor costs, specifically, unnecessary pilot pay and held away from home terminal time. Of course, eliminating the need for unnecessary engineers and reducing held away from home terminal pay does enhance the efficiency of UP's operations, meaning that these changes are contemplated by Article IX. Moreover, BLET's entire argument is a mischaracterization of Mr. Guidry's testimony. In fact, Mr. Guidry repeatedly testified that, in addition to reducing pilot and held away time, UP's proposal would improve velocity on the route between Yuma and West Colton (BLET Appx. 282-85) because the new pools will better mesh with the overall Los Angeles operation (BLET Appx. 285-289).

argument, BLET must view held away from home terminal payments (blood money as BLET describes) as a “more favorable condition.” Such an argument is ill-conceived on its face and inconsistent with the held away rule itself. The same holds true with BLET wanting two engineers on every train, i.e., the pilot issue. BLET is simply trying to construct an issue where none exist.

UP’s proposal compensates engineers their trip mileage, overtime, held away from home terminal, etc, at the same rate of pay as it does today. When a pilot is used, his or her rate of pay is not diminished.

Lacking any sound contractual basis for its position, BLET hopes to influence this Board with the speculative angst from one employee (Local Chairman Tortoricie) who, in all probability, would not be required to work out of Yuma or Yermo and has not had to work east of West Colton for some time. Moreover, given Mr. Tortoricie’s union employment he works as an engineer only two or three days per month (BLET Appx. 223-224).

In any event, BLET's arguments regarding the relative residential desirability of Yermo, Yuma, and West Colton are not relevant to the issues before this Board. The only issue is whether the Carrier retains its rights under Article IX to institute the proposed interdivisional service, and those rights are not dependent on BLET's subjective opinion about which city is more desirable as a home or away-from-home terminal. There is no question that railroad operations traverse the entire gamut of real estate types, but nothing in the agreements which confirm carriers the rights to implement their operations require that some nebulous level of residential desirability be met before the operations can be utilized.

In fact, BLET's arguments are really an improper attack on Article IX as a whole. The national collective bargaining agreements that created the Carrier's right to create new interdivisional service by unilateral notice to the Organization worked a balance between the rights of the two parties. As explained in UP's Opening Submission, railroads gained the right to create new interdivisional service without having to get agreement from the Organization in exchange for large pay increases and for the protection required by Section 7 of Article IX. Article IX, by its inherent nature, means that carriers like UP will create new runs that require employees to relocate or to change their work assignments. In exchange for UP having those rights, BLET receive protection against wage loss and financial reimbursement of any relocation expenses. This is the bargain struck by Article IX; BLET's arguments are really just its way of complaining about the national agreement that this Board can obviously not rewrite.

Complaints about where home terminals must be located are not new. For example the United Transportation Union (UTU) made identical type complaints in Board of Arbitration Board No. 482 **(Carrier's Exhibit 41)** Rejecting UTU's pleading in that case and implementing the Carrier's proposed terms and conditions, Arbitrator Fredenberger held:

> "… **Moreover, urges the Organization, Winslow is a town which has experienced little or no growth in the last thirty years and offers a much narrower range of goods, services and facilities compared to Belen which essentially is a suburb of Albuquerque.** Employees contend that when the Carrier served its notice August 15, 1986 Notice designating Winslow as the home terminal for the ID service it sought to punish the employees for insistence upon a comparable housing allowance when it was anticipated employees would move to Belen. The Organization urges this board not to permit the Carrier to inflict such injury upon the employees. …

"… **We believe the Carrier's point is well taken that the purpose of the October 31, 1985 UTU National Agreement is to promote ID service which is more efficient and less costly to the Carrier than existing service. In our opinion the Carrier's designations of Winslow as the single home terminal is wholly consistent with that objective. …"**

BLET's negative assessment of Yermo and Yuma, i.e., high crime rates, inferior housing, poor education, etc., is quickly discredited. Yuma, Arizona (population 95,429 in 2012) was ranked by Money Magazine as one of the top places to live in the United States. Many visiting the community return to retire in comfort or simply take advantage of being part of one of America's fastest growing cities with a variety of recreational activities and cultural attractions[3]. Arizona Western College in Yuma attracts diverse populations of students on a local, national and global level[4]. As well, there is a strong real estate market in Yuma with many high-end and mid-range homes[5] for sale. BLET's description of Yuma, Arizona is simply untenable given the City's estate-style, multi-million dollar homes in this market. The fact many UP employees choose to live closer to Yermo than West Colton speaks favorably to Yermo as a home terminal.

Turning to BLET's proposed "Appendix A – Conditions," the Board is respectfully reminded of the standards outlined in Article IX used in developing terms and conditions for Interdivisional Service. UP has not missed the irony and pretense of BLET's belated attempt to enter into this discussion in the way it has. Damaging to BLET is the fact that it did not engage in any meaningful way when it had the opportunity. More damaging is

[3] Yuma, Arizona Chamber of Commerce, City Events, Performing Arts Internet Publications are attached as **Carrier's Exhibit 42** .

[4] Internet Publications attached as **Carrier's Exhibit 43**.

[5] Internet Publications attached as **Carrier's Exhibit 44.**

the fact BLET has not explained why or how any term or condition that UP proposes fails to meet the requirements or intent of Article IX even though that is BLET's primary role in an Article IX arbitration. Instead, BLET curiously accuses UP bad faith bargaining even though its proposal does not work to obtain any more favorable conditions than are currently applied to other Interdivisional Service.

Again, the standards used in determining whether the Carrier's proposal is proper starts with Section 1 of Article IX:

> "Section 1 – Notice
>
> An **individual carrier** seeking to establish Interdivisional Service shall give at least twenty days' written notice to the organization of its desire to establish service, specify the service it proposes to establish and the conditions**, if any,** which it proposes shall govern the establishment of such service."

Read in context, because there are required conditions which the carrier must include, the **"if any"** language can only refer to any additional conditions the **carrier** wishes to include. So long as the additional conditions proposed by the carrier satisfy the reasonable and practical standard of Section 2, including the requirement that *"runs be adequate for efficient operations,"* they are appropriate and are to be accepted by the Arbitrator. However, the "if any" language makes clear the Carrier is under no obligation to propose any additional conditions except for those referenced by Section 2; particularly if any intended efficiency is lost with that offering.

Nothing contractually mandates the inclusion or consideration of additional terms and conditions. The Agreement permits the **Carrier** to propose additional terms and

conditions it deems necessary in keeping with the dominant intent of the rule - - **efficiency.** While BLET can offer suggestions - - which the Carrier may consider if they add to efficiency **(and if it does so in good faith at the appropriate time)** - - BLET cannot insist upon terms and conditions that make the operation inefficient or include pay elements beyond those specified in Article IX.

Paragraph (f) of Section 2 provides the parties may negotiate on other terms and conditions of work. From a contract construction perspective, this language is critical. It is only permissive. The carrier ***may or may not*** negotiate additional terms beyond those required by Section 2, Paragraphs (a) through (e) and proposed by the carrier under the "if any" language of Section 1. Though UP has made every effort to solicit input in its on-property discussions, no constructive suggestions were put forth by BLET during the several meetings held on this subject. Beyond what was contained in UP's last proposal, the parties did not agree upon any other terms and conditions. Therefore, BLET is precluded from seeking other terms and conditions in this forum. Because BLET has not taken specific exception to any term and condition specified in UP's October 18, 2013 proposal (Carrier's Exhibit 38), one must conclude by BLET's silence that UP's proposal meets Article IX requisites. BLET's Appendix simply asks for "more."

In the event the parties cannot agree on matters relating to a proposed Interdivisional Service, as here, Section 4(a) of Article IX governs:

> **"Section 4 – Arbitration**
>
> "(a) In the event the carrier and the organization cannot agree on the matters provided for in Section 1 and the other terms and conditions

> referred to in Section 2 above, the parties agree that such dispute shall be submitted to arbitration under the Railway Labor Act, as amended, within 30 days after arbitration is requested by either party. **The arbitration board shall be governed by the general and specific guidelines set forth in Section 2 above."** (Emphasis added)

As Section 4 stipulates, the arbitration board shall be governed by the general and specific guidelines set forth in Section 2. The primary role of the arbitrator is to determine whether the Interdivisional Service, and the governing terms and conditions, proposed by the Carrier comply with the requirements set forth in Article IX.

As outlined in UP's Submission, a host of respected Arbitrators have held that Arbitrators are contractually precluded as a general rule from granting additional terms and conditions other than those outlined in Section 2. For ready reference these Awards are again referenced.

Arbitrator Dana Eischen, in **Arbitration Board 468** (BLET vs. Southern Pacific now UP) **(Carrier's Exhibit 32),** states:

> "… Article IX, Section 4 (a), from which this Board derives its jurisdiction and authority, mandates that we "shall be governed by the general and specific guidelines set forth in Section 2. …"
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> "… Even though the Parties granted local negotiators latitude to discuss and agree to conditions which might vary from the express guidelines of Section 2, they expressly withheld from Arbitration Boards authority to award terms and conditions which conflict with those set forth in Section 2 (a) through (e). **Therefore, we recognize and are bound by the very real express limitations imposed upon our authority.** …" (Emphasis added)

Arbitrator William Fredenberger, in **Arbitration Board 493** (BLET vs Southern Pacific now UP) **(Carrier's Exhibit 33),** states:

"… The Carrier contends that under Article IX Section 4 (a) of that Award this Board must be "… governed by the general and specific guidelines set forth in Section 2 above. …"

"… **We believe the Carrier has the stronger position on this issue**…" (Emphasis added)

Arbitrator William Fredenberger, in **Arbitration Board 507** (UTU vs Southern Pacific now UP) **(Carrier's Exhibit 34),** states:

"…The Carrier maintains that a negotiated implementing agreement notwithstanding, this Board has no jurisdiction under Article IX, Section 4 of the October 31, 1985 National agreement to grant increased compensation to employees. It requires this Board to be "… governed by the general and specific guidelines set forth in Section 2…" of Article IX …"

"… **We believe the Carrier makes a strong case on this point that as a general rule a Board such as this has no authority under Article IX, Section 4 to award or impose provisions which would result in increased compensation to employees**…." (Emphasis added)

Arbitrator Francis Quinn, in **Public Law Board No. 6761 Award No. 1 (UTU vs. BNSF) (Carrier's Exhibit 35)**, states:

"… **This Board is limited by Section 4(a) regarding any conditions included in an arbitrated Interdivisional Service agreement.** The Section 2 conditions are the only required conditions and the National Agreement recognizes these conditions to be both general and specific in nature." (Emphasis added)

Arbitrator Robert Richter in Board of Arbitration 580 **(BLET vs. UP) (Carrier's Exhibit 36)** states:

"… This Board lacks authority to change rates of pay."

Notwithstanding the fact BLET's "Appendix A" is procedurally improper, many items therein far exceed any pay and/or working condition currently applied to Interdivisional Service. BLET Appendix A creates significant inefficiencies and/or fails to deliver on intended Article IX efficiencies. In addition, BLET seeks to embellish relocation and protection benefits which are likewise beyond this Boards authority to grant. More importantly, BLET's Appendix A endorses a safety hazard that it has already railed against. BLET's proposed terms and/or conditions should not be considered because it does not keep with the stated intent of Article IX, i.e., efficiency. Moreover it conflicts with the parties Board Agreement. For ready reference, pertinent parts of the Board Agreement read:

> (a) Pursuant to Article I, Section 11 of New York Dock and Article IX, Section 4 (a) & (b) of the May 19, 1986 BLET National Arbitration/Agreement, as amended by Article IX, Section 4 (b) of the November 1, 1991 BLET National Agreement, a Board of Arbitration (hereinafter called "Board") is hereby established.
>
> (g) The Board shall not have jurisdiction over disputes growing out of requests for changes in rates of pay, rules and working conditions, and shall not have authority to change existing agreements governing rates of pay, rules and working conditions, nor to grant new rules.

One example of BLET overreach is how it proposes overtime should be calculated. Side Letter 1 of UP's October 18, 2013, proposal **(Carrier's Exhibit 38)** grants enhanced overtime provisions currently applied to pre-October 1, 2004 engineers. This same overtime provision was included in the recent Santa Theresa Interdivisional Agreement **contingent on BLET's ratification** of this Interdivisional Agreement **(Carrier's Exhibit 37, Side Letter 1).** Yet, BLET now demands that

overtime be further enhanced for post-October 1, 2004 engineers contrary to overtime divisors contained in Article IV, Section 2 of the November 1, 1991, BLET National Agreement **(Carrier's Exhibit 45).** As Arbitrator Fredenberger, held in **Arbitration Board 507 (Carrier's Exhibit 34)** and as other well respected Arbitrators have likewise held, such a pay demand is beyond the Board's jurisdiction. This consideration is likewise precluded by the parties Board Agreement.

Another example of overreach and a safety concern by BLET is its demands for permanent reverse lodging and a four (4) hour call. Side Letter 2 of UP's October 18, 2013 proposal **(Carrier's Exhibit 38)** clearly states the intent and purpose of its temporarily offering of reverse lodging. The relative sentence from Side Letter 2 it is quoted below for ready reference:

> "… The purpose of this arrangement is to give employees time to determine their interest in permanently relocating to Yuma and/or for Union Pacific to hire and train employees from the Yuma, area to staff this service.

While UP is permitted to make this temporary offering (for practical and accommodating reasons), BLET's demand for *"permanent reverse lodging"* far exceeds the protection and relocation benefits contained in Section 7 of Article IX. As such, it cannot be considered. As well, demands for unreasonably long calls have been ruled beyond the Boards authority. For example, Arbitrator William Fredenberger, in **Arbitration Board 507 (Carrier's Exhibit 34),** held:

> "… The Organization proposed the **trainmen who elect to reside in Lufkin** and who furnish a written request receive a **three hour call for assignments assuming duty at Houston.** The Carrier objects on the ground that the proposal embellishes substantially upon the one and one-

> half hour calling time provided in Article 78 of the trainmen's schedule agreement and would create an impractical situation liked to produce calling errors and delays to ID Service.
>
> The Carrier makes a compelling argument…. Moreover, as the Carrier emphasizes, the proposal would protect employees who voluntarily elect to reside at Lufkin and work in Houston. We do not believe the Carrier should bear the cost of inefficiency and delay for such individuals. Accordingly, the Organization's proposal is rejected."

Additionally, Arbitrator Richter in Board of Arbitration 580 **(Carrier's Exhibit 36)** rejected an extended call demand by BLET.

Furthermore, the combined demand for reverse lodging and extended call time does not make sense. Employees who spend time at the home terminal in company provided lodging will not need the longer call time, and those who would choose to return to Los Angeles when at the home terminal would not need the reverse lodging.

Moreover, the four (4) hour call may be a safety hazard. Along with UP wanting to assist in the transitioning of employees to Yuma and as well have time to hire and train at that location, another reason for providing temporary lodging was to prevent engineers from unsafely attempting to commute 200 miles and then immediately work a train. By design, this would create a fatigue and safety concern which BLET should not want to be a party to. In fact, BLET complained about the time commitments that would ensue with UP's February 11, 2013 Notice. This would be no different. While BLET's contradiction is puzzling, both demands are beyond the Boards authority to grant.

Another example of overreach by BLET is its attempt to restrict UP's efficient management of extra boards. The undisputed purpose of an extra board is to have an

efficient, reliable supply of employees to protect temporary vacancies (vacations) and/or unanticipated vacancies (sickness, personal, bereavement, etc.) or for unanticipated service requirements (hours of service relief, surge capacity, etc.) Section 10 and Side Letter 3 from UP's October 18, 2013 proposal **(Carrier's Exhibit 38)** outlines how extra boards will operate:

> **Section 10. Extra Boards.** The Carrier may establish and/or consolidate guaranteed extra board(s) pursuant to Attachment "A" of the BLE and UP/SPWL November 3, 1997 Modifications Agreement.
>
> To maximize and maintain efficiencies, extra boards may be established or combined with existing extra boards at Yermo, Yuma and Colton to protect vacancies, etc. in the newly established Yermo to Colton and Yuma to Colton interdivisional corridors in addition to other work protected from that source of supply.
>
> If a single/combined engineer's extra board is established at Yuma, Arizona said extra board will be manned from both the Los Angeles and Southwest Hubs on a 50/50 percentage basis.
>
> **Side Letter 3**… In the event a single combined extra board is established at Yuma, 50% of the assignments would be allocated to Los Angeles Hub employees and 50% of the assignments would be allocated to Southwest employees. Extra employees assigned to this single combined Extra Board will, in addition to the work outlined in the respective Los Angeles and Southwest Hub Agreements, also protect vacancies and made up turns in the Yuma to West Colton pool, hours of service relief/turnarounds, etc. on a first in first out basis and consistent with controlling agreements."

As outlined on Pages 31 and 32 of UP's Submission, a 50/50 extra board at Yuma is consistent with respective Hub Agreements:

C. The extra boards at Yuma will be consolidated on a 50/50 basis with the LA Hub entitled to prior rights to the even numbered assignments 2, 4 and 6. The Southwest Hub zone 1 shall have prior rights to all other extra board assignments. There will then be one extra board at Yuma and the extra board at Yuma will be used to fill short term vacancies on all assignments that have Yuma as a home terminal (whether LA Hub or Southwest Hub vacancies) and EL Centro as a home terminal. This extra board shall protect hours of service relief/turnaround service as far West as Niland (MP 667) in the LA Hub and as far East as is provided elsewhere in this agreement.

Because the Yuma and Yermo extra boards will now be required to protect new service, UP must specify how these boards will operate, i.e., terms and conditions. Before citing precedent supporting this prerequisite, it is important the Board sees that UP's Article IX proposals actually do conform to existing extra board agreements. Attachment "A" of the BLE and UP/SPWL November 3, 1997 Modifications Agreement **(Carrier's Exhibit 46)** reads in pertinent part:

ATTACHMENT A
GUARANTEED EXTRA BOARD

Guaranteed engineers' extra boards may be established in the territory subject to the SP-West BLE collective bargaining agreement subject to the following:

1. **OPERATION.** At the carrier's discretion, guaranteed extra boards may be established, upon thirty (30) days' written notice to the General Chairman, at any location where deemed necessary. Likewise, in the event there is insufficient work to justify an extra board(s), the extra board(s) may be suspended upon thirty (30) days' written notice to the General Chairman.

The engineers' guaranteed extra board will operate on a rotary basis. Any engineer displacing on or marking up for service will be placed on the bottom of the board at the time of such displacement or mark-up. Engineers returned to the board after working will be placed at the bottom of the extra board per tie-up time. If more than one tie-up at the same time, previous board standing will govern.

It is clear from BLET's Appendix A that it seeks to change agreements and management rights by attempting to omit terms such as ***"at the Carrier's discretion,"***

"at any location" and ***"in the territory subject to the SP-West BLE collective bargaining agreement."***

Outlining how extra boards will function in an Article IX circumstance is not new and has been held to be proper. For example, a Special Arbitration Board **(Carrier's Exhibit 47)** established pursuant to Article IX dealt with this very issue in a post-merger Interdivisional Service Notice in the Houston Hub. That Award parallels this case in many respects. On August 17, 1998, UP served notice to establish and rearrange Interdivisional Service train operations from a new home terminal at Beaumont, Texas. The proposed *"short run"* service out of Beaumont to away from home terminals Livonia, Lafayette, Alexandria, Houston and Hearne underpinned "long run" service over the same territory, i. e., home terminal Houston to away from home terminals Livonia, Lafayette and Alexandria. UP's proposal moved the "short run" home terminal from De Quincy, Louisiana to Beaumont, Texas. As usual, UP outlined how the consolidated Beaumont engineer's extra board would work. BLET argued, as here, "… *the Carrier has not properly recognized and given weight to certain circumstances unique to the BLE. Accordingly, he [BLET] argues that these elements, as explained in his brief and as argued at the arbitration hearing, should be incorporated in the final Award.*" BLET "elements" were not incorporated. Arbitrator Muessig sanctioned UP's terms and conditions - - including how the extra board would function as follows:

> **D. Beaumont Extra Board.** The existing engineer extra board at Beaumont shall protect vacancies in this new Interdivisional Pool Freight Service, other miscellaneous service the board currently protects, as well as all other service previously protected by the DeQuincy extra board. The Carrier will have the right to eliminate the DeQuincy extra board.

UP again respectfully request the Board answer the Carrier and Organization's Questions at Issue No. 1 affirmatively and impose the terms and conditions outlined in UP's modified proposal transmitted October 18, 2013. An original copy of UP's October 18, 2013 proposal that is free of exhibit markings is attached should the Board rule as requested and wish to include its Award.

Respectfully Submitted

R. P. Guidry
General Director Labor Relations

ARBITRATION BOARD NO. 446

In the Matter of:	
BROTHERHOOD OF LOCOMOTIVE ENGINEERS,	National Mediation Board Administrator
Organization,	
and	The Kelly Lake Dispute
BURLINGTON NORTHERN RAILROAD COMPANY,	Case No. 1 Award No. 1
Carrier.	

Date of Hearing: February 1, 1985
Place of Hearing: Saint Paul, Minnesota
Date of Award: January 16, 1986

MEMBERS OF THE BOARD

Employees' Member: C. V. Monin
Carrier Member: W. A. Bell
Neutral Member: John B. LaRocco

QUESTION AT ISSUE

Whether the service specified in Carrier's Notice dated January 16, 1984, is intradivisional seniority district service within the ambit of Article VIII?

OPINION OF THE BOARD

This Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act as amended; that this Board has jurisdiction over the parties and the subject matter of the dispute herein; that this Board is duly constituted by an Agreement dated May 7, 1984; and that all parties were given due notice of the hearing held on this matter.

I. BACKGROUND AND SUMMARY OF THE FACTS

The Carrier currently maintains two unassigned through freight services (with headquarters at Duluth-Superior) which operate trains to the Mesabi Iron Range: an ore pool and a box car pool. Engineers in the ore pool operate trains on the Wisconsin Division to serve three major taconite plants. To service the Hibbing Taconite Plant (Hib-Tac) north of Kelly Lake, trains operate from Duluth-Superior on the sixth subdivision to Brookston; then on the ninth subdivision through Kelly Lake and onto the tenth subdivision to Hib-Tac. After loading is completed, the train returns to Duluth-Superior on the same route (again going through Kelly Lake). Trains servicing the Nashwauk Butler Steel and Keewatin National Steel Plants travel from Duluth-Superior on the sixth subdivision and fifth subdivision; up the ninth subdivision at Brookston; through Kelly Lake; and remain on the ninth subdivision until reaching the plants. The trains usually return by continuing on the ninth subdivision to Gunn and then back to Duluth-Superior on the fifth subdivision. These trains could return to Duluth-Superior via Kelly Lake and Brookston (same as the outbound trip). Engineers in the box car pool usually operate a straight trip from Duluth-Superior to Cass Lake on the fifth subdivision (of the Wisconsin Division) and

return on the same line. Sometimes, trains either going to or returning from Cass Lake are diverted to the ninth subdivision between Gunn and Brookston but taking the loop route substantially increases the miles travelled between Duluth-Superior and Cass Lake.

The Carrier notified the Organization, on January 16, 1984 that it desired to institute, "...intradivisional seniority district service for engineers in the existing pool freight service, i.e., ore pool and the box car pool, headquartered at Duluth-Superior when run through Kelly Lake, Minnesota." In addition, the Carrier represented that the, "...trains involved will be operated by the same pools as presently constituted."

In essence, the Carrier's proposal would eliminate Kelly Lake as an automatic release point. Kelly Lake has not been utilized as a crew change point. Evidently, the Carrier intends to retain Kelly Lake as a tie up point for ore pool engineers.

The specific issue before us is whether or not the Carrier's proposed service falls within the scope of Article VIII of the May 13, 1971 National Agreement.

II. THE POSITIONS OF THE PARTIES

A. The Organization's Position

The Organization asserts that the Carrier's proposed service is not within the intended scope of Article VIII of the May 13, 1971 National Agreement. Kelly Lake is an automatic release point with the consequential separation of trips. Except for eliminating Kelly Lake as an away from home terminal for ore pool engineers, the Carrier's January 16, 1984 notice calls for

trains to be operated to the taconite plants, in turnaround service, in exactly the same fashion as the ore pool trains have been run for the last twenty years. Turnaround service is not intradivisional service.

Similiarly, the box car pool operates exclusively turnaround runs. If trains operated by the box car pool engineers ran through Kelly Lake on a regular basis, the Carrier's proposed service could arguably fall within the ambit of Article VIII. However, the Carrier conceded that the existing unassigned service would remain the same aside from abolishing Kelly Lake as a terminal for engineers in the pool.

Article VIII only covers straight through freight service when the change to intradivisional service requires engineers to run through a former home or away from home terminal to a distant terminal (either a home terminal or a newly designated home terminal). In such instances, crew changes occur at the point which will be run through after the inauguration of intradivisional service. While the Carrier periodically tried tying up crews at Kelly Lake in the past, the point is not currently utilized as a crew change point for either pool.

Inasmuch as the ore and box car pools will remain essentially unchanged under the Carrier's proposal, the Carrier's motive for issuing the January 16, 1984 notice was to abrogate former Great Northern schedule Rule 13(a) (automatic release points) and Article VI, Paragraph 3(a) (preservation of pre-existing terminals in unassigned freight service) of the February 4, 1971 Implementing Agreement. By attempting to circumvent the

two above cited contract provisions, the Carrier failed to recognize each party's "...fundamental rights..." as mandated in Section 1 of Article VIII. Thus, the service the Carrier intends to institute is beyond the scope of Article VIII.

B. The Carrier's Position

Although it acknowledges that the effect of implementing the service specified in its January 16, 1984 proposal would eliminate Kelly Lake as an automatic release point, the Carrier contends that it has proposed intradivisional seniority district service within the definition of Article VIII.

The express, broad language contained in Article VIII covers any and all types of service. No limitations are set forth in the May 13, 1971 National Agreement. The Board should not carve out any implied exceptions. The purpose of Article VIII was to grant the Carrier the unfettered discretion to serve any notice concerning service which the Carrier, alone, deems advisable to establish. The actual implementation of the service is another matter.

In spite of agreeing to permit the Carrier to seek to establish intradivisional seniority district service, the Organization, without any contractual or arbitral support, wants to exclude turnaround service or service through terminals other than a pre-existing crew change point from Article VIII. Again, such constraints do not appear in the 1971 National Agreement. Extended trips often run through non-crew change points. Exempting turnaround service would impermissibly narrow the scope of Article VIII to straight runs on the Carrier's main lines.

Since turnaround service is prevalent on the Carrier's branch lines, excluding turnaround runs would prevent the Carrier from proposing intradivisional service on a substantial portion of its trackage. Even if the Board excludes turnaround service from the scope of Article VIII, the exception would only bar the proposed runs which go through Kelly Lake and return via Gunn. A train operating past Kelly Lake and coming back through the turnaround point is more akin to going from point A to point C through Point B which the Organization concedes is covered by Article VIII.

However, Article VIII allows the Carrier to, at least, propose any type of service.

III. DISCUSSION

This dispute is governed by Article VIII, Section 1 of the May 13, 1971 National Agreement which reads:

> "1. Where an individual carrier not now having the right to establish interdivisional, interseniority district, intradivisional or intraseniority district service, in freight or passenger service, considers it advisable to establish such service, the carrier shall give at least thirty days' written notice to the General Chairman or Chairmen of the committee(s) of the Brotherhood of Locomotive Engineers involved, of its desire to establish service, specifying the service it proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such service.
>
> "The parties will negotiate in good faith on such proposal and shall recognize each others fundamental rights, and reasonable and fair arrangements shall be made in the interest of both parties. Such rights and arrangements shall include, but not be limited to the following:
>
> > "(a) Runs shall be adequate for efficient operations and reasonable in regard to the miles run, hours on duty and in regard to other conditions of work.

"(b) All miles run over one hundred (100) shall be paid for at the mileage rate established by the basic rate of pay for the first one hundred (100) miles or less.

"(c) When an engine crew is required to report for duty or is relieved from duty at a point other than the on and off duty points fixed for the service established hereunder, the carrier shall authorize and provide suitable transportation for the engine crew.

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

"(d) On runs established hereunder engine crews will be allowed a $1.50 meal allowance after 4 hours at the away from home terminal and another $1.50 allowance after being held an additional 8 hours."

Absent an express contractual restriction or a compelling justification for inferring a limitation, Article VIII, Section 1 applies to the proposed service described in the Carrier's January 16, 1984 notice.

The Organization's objections to the Carrier's proposed intradivisional intraseniority district service are premised on the alleged failure of the Carrier to recognize its fundamental rights. However, the reference to "fundamental rights" is found in the second paragraph of Article VIII, Section 1 following the provision requiring the parties to negotiate, in good faith, over a proposal issued in accord with the first paragraph. Thus, the drafters of Article VIII manifested their intent that the parties would fairly consider and "...recognize each others fundamental rights..." within the context of bargaining and, if unable to reach an agreement, arbitration. The matters raised by the

Organization with respect to Great Northern schedule Rule 13(a) and Paragraph 3(a) of Article VI of the February 4, 1971 Implementing Agreement are separate and distinct from the Carrier's privilege to issue a notice proposing the establishment of one of the four types of service enumerated in the first sentence of Article VIII, Section 1. The proposed service might not be established. Accommodating or preserving what the Organization asserts are its fundamental rights is best left to the negotiating process. Thus, even though the Carrier's notice envisions the retention of ore and box car pools as presently operated, the Carrier has nonetheless proposed intradivisional seniority district service within the scope of Article VIII. Arbitration Board No. 368 (Schoonover).

At the February 1, 1985 arbitration hearing, the parties stipulated that Case No. 2 would be held in abeyance pending the outcome of this case. Since the Board answers affirmatively to the Question at Issue, the parties shall commence negotiations (for at least sixty days from the date of this Award as specified in Article VIII, Section 3) on the Carrier's proposal. If the parties are unable to reach an agreement on the matters set forth in Sections 1(a) and 2 of Article VIII, the outstanding issues in dispute may be submitted to this Board for a final resolution.

AWARD

QUESTION AT ISSUE: Whether the service specified in Carrier's Notice dated January 16, 1984, is intradivisional seniority district service within the ambit of Article VIII?

ANSWER TO ISSUE: Yes.

Dated: January 16, 1986

C. V. Monin
Employees' Member

W. A. Bell
Carrier Member

John B. LaRocco
Neutral Member

PUBLIC LAW BOARD NO. 7577

Case No. 2
Award No. 2

PARTIES TO DISPUTE: (Union Pacific Railroad Company
(
(vs.
(
(Brotherhood of Locomotive Engineers
(And Trainmen (UP Southern Region)

STATEMENT OF CLAIM:

Shall the Carrier's proposal as set forth in Notice dated June 15, 2012 notifying the Brotherhood of Locomotive Engineers and Trainmen of its desire to extend switching limits to the extent indicated at Laredo, TX be granted?

FINDINGS:

This Board, after hearing upon the whole record and all the evidence finds that the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and, that the parties were given due notice of hearing thereon.

The facts of this case are that the Carrier served notice pursuant to Article II of the BLE National Agreement to change the North switching limits on the Laredo Subdivision at Laredo, Texas from mile post 400.9 to mile post 397. The Carrier argued that the extension was necessary to have the designated on and off duty reporting point for the crews operating in the San Antonio – Laredo (Port Laredo) pool to be within the Laredo switching limits. The Carrier maintained this was needed to "improve operational efficiencies and facilitate switching operations at Laredo, Texas." It based its argument on Article II, "Switching Limits", of the BLE National Agreement of May 13, 1971.

The Board has reviewed this case carefully, reading fully the arguments and issues raised by the Organization. The Organization maintains that these limits have been in existence for decades without change. They were the

terminal limits of the former Missouri Pacific Railroad. These same limits were accepted when the 1999 San Antonio Hub Merger Implementing Agreement went into effect and the Agreement prevented the Carrier from such action. There is no justification to alter these switching limits and none contemplated by Article II of the 1971 BLET National Agreement. The Organization raises these arguments, as well as others. All of these have been considered and discussed in our prior Award No. 1 of this Board.

Accordingly, the Board has again reviewed these arguments and carefully studied the history of this dispute on the property, the facts of record, and the governing Agreements. The Board reaches the following conclusions. Article II of the 1971 BLE National Agreement specifically states in pertinent part that:

> Where an individual carrier not now having the right to change existing switching limits where yard crews are employed, considers it advisable to change the same, it shall give notice in writing to the General Chairman . . . of such intention, specifying the changes it proposes . . . carrier and the General Chairman . . . shall . . . endeavor to negotiate an understanding . . . In the event the carrier and the General Chairman . . . cannot so agree . . . the dispute shall be submitted to arbitration . . .

The Board has studied this language and concludes that the Carrier has properly provided proof that it followed the above notice on-property in an attempt to negotiate; and then moved to arbitration when negotiation failed.

The Board has studied the language of the 1999 San Antonio Hub Merger Implementing Agreement and prior history. There is nothing in the negotiated Agreement that precludes changes to the existing switching limits of Laredo, Texas. There is nothing in the history or Agreements that either restrain or prohibit the Carrier from invoking Article II, *supra*. There is nothing in the language of any Agreement that supersedes, supplants or negates the Carrier's rights to invoke Article II.

As such, the Board turns to the Organization's position on property and before this Board that there is no justification, no proof, and no record presented by the Carrier that would violate the historical interpretation of Article II and its applicability to the desire to change switching limits so that

the on/off duty point would be within the Laredo Switching Limits. The Organization argues that there is no valid justification made by the Carrier (Public Law Board No. 354, Award 1). Failing to show any such justification, the Carrier cannot be permitted to simply request a change and receive it.

The Board finds no language in Article II that constrains a change in switching limits under the arguments raised on property. In fact, the language clearly permits the notice to be submitted when the Carrier "considers it advisable to change" the switching limits. Such change must be proven. Throughout this dispute, the Carrier has argued that the changes would increase operational efficiency i.e. "the crews would have their designated on/off duty reporting point within the Laredo Switching Limits". The Carrier has maintained that the changes would allow the crews to be located within the terminal/switching limits; that is they would have an on duty point within the limits, where at the present time, they did not. On point, the Carrier has shown that the change improves efficiency and under these circumstances is properly advanced to this Board. The Organization has not shown that such arguments lack factual proof.

Accordingly, having reviewed the numerous prior Awards that have considered Carrier requests, the facts of this record convince this Board that the Carrier's proposed change is justified (Public Law Board No. 5269, Award 1; Public Law Board No. 5832, Award 1; Arbitration Board Nos. 318, 338, 372, 378, 404, 511, 512). In short, the Board is not persuaded by the Organization's objections and the General Chairman's strong arguments. Due to the unique circumstances of this instant case, the Board upholds, sustains, and grants the Carrier's extended switching limits put forth in this Arbitration.

AWARD:

The Question at issue in the Statement of Claim must be answered in the Affirmative. The Carrier's proposal as set forth in the 2012 Notice to extend switching limits as indicated at Laredo, Texas from Mile Post 400.9 to Mile Post 397 shall be granted.

Marty E. Zusman
Marty E. Zusman
Chair and Neutral Member

T. G. Taggart
Carrier Member, UP

W. Dent
Organization Member, BLET

Date: 11-5-2013

ARBITRATION BOARD NO. 482

PARTIES TO DISPUTE	UNITED TRANSPORTATION UNION (CT&Y) AND ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY	DECISION PURSUANT TO ARTICLE IX, SECTION 4 OF THE OCTOBER 31, 1985 NATIONAL AGREEMENT

QUESTION AT ISSUE:

Under what conditions may Carrier establish interdivisional freight service between Winslow, Arizona and Belen, New Mexico?

HISTORY OF DISPUTE:

The dispute in this case involves a portion of the Carrier's main line on the Albuquerque Division. The first subdivision consists of approximately 144 miles of track between Belen, near Albuquerque, and Gallup, New Mexico. The second subdivision consists of approximately 127 miles of track between Gallup and Winslow, Arizona. Gallup is the home terminal for the first subdivision and Winslow is the home terminal for the second subdivision. Conductors and trainmen on the Albuquerque Division Seniority Roster protect work in both the first and second subdivision as well as other subdivisions.

On August 15, 1986 the Carrier served notice pursuant to Article IX of the October 31, 1985 UTU National Agreement of its intent to establish interdivisional pool freight service between Belen, New Mexico and Winslow, Arizona (hereafter ID service). The notice set forth several conditions which the Carrier proposed to govern such service.

The parties met several times in an attempt to reach an agreement. However, no accord was reached, and the parties invoked the arbitration

procedures set forth in Section 4 of Article IX. This Board was constituted pursuant to those procedures to determine the conditions which will apply to the interdivisional service if and when the Carrier establishes such service.

FINDINGS:

The Board finds that the Carrier's notice of August 15, 1986 complies with the requirements of Article IX, Section 1 of the October 31, 1985 UTU National Agreement. The Board also finds that the Carrier and the Organization have complied with the procedural requirements of Article IX, Section 3 of that agreement. The Board further finds that the dispute in this case is properly before it pursuant to Article IX, Section 4 of that agreement.

As noted above the parties' negotiations did not produce a final agreement dispositive of the Carrier's August 15, 1986 notice. Accordingly, under Article IX, Section 4 this Board must establish the terms and conditions under which interdivisional pool freight service between Belen, New Mexico and Winslow, Arizona will operate if and when the Carrier establishes such service. Attached to this award is a complete enumeration of such terms and conditions. It contains provisions with respect to which the parties reached accord during negotiations or agreed in written or oral presentations to this Board. Other provisions in the Attachment are in dispute, and this Decision deals primarily with them.

1. Home Terminal

The Carrier's proposal would have Winslow, Arizona as the home terminal for the ID service. The employees vigorously argue for a "two-headed

pool" with both Winslow and Belen as home terminals. This is one of the major points of disagreement between the parties.

The Carrier argues that it has the unilateral right to designate the home terminal or terminals for ID service. Accordingly, the Carrier alleges, this Board has no authority to change the Carrier's designation of Winslow as the single home terminal.

Additionally, the Carrier urges, it designated Winslow for substantial reasons. The Carrier maintains that if both Belen and Wioslow were home terminals the Carrier's liability for protection under the Washington Job Protection Agreement (WJPA) could be substantially greater inasmuch as conductors and trainmen may exercise seniority throughout the Albuquerque Division which allows them to move to Belen or Winslow at will forcing the Carrier not only to protect those employees but also the employees whom they displace. The Carrier contends that there are logistical difficulties with two home terminals such as the calling ratios and active/inactive boards. Moreover, the Carrier argues, assignments, force assignments and seniority make the two-headed pool arrangement complex. The Carrier alleges that by contrast having a home terminal at Winslow would result in a simple one-ended pool with the employees working first in, first out.

The Carriar acknowledges recent agreements negotiated with the Brotherhood of Locomotive Engineers (BLE), the UTU(E) and the UTU(CT&Y), the organization involved in the instant case, which provide for two-headed pools. However, the Carriar points out, each of those situations unlike the case before this Board involved two separate seniority districts which made separate home terminals beneficial to both parties to the agreements.

Pointing to interpretations of Article IX of the October 31, 1985 National Agreement, the Carrier contends that the purpose of the agreement is to facilitate the implementation of ID service so as to promote afficiency and economy in the movement of traffic across the railroad which both parties to the agreement recognize as mutually beneficial.

The Organization advances several arguments in favor of two home terminals. It points out that in the second of two notices for ID service between Winslow and Belen,specifically the Carrier's August 15, 1986 notice,the Carrier designated Winslow as the home terminal. However, although the Carrier's first notice did not specify a home terminal negotiations pursuant to that notice focused upon Belen as the home terminal. The Orgsniza-tion urges that it was in context of those negotiations and in anticipation of the move to Belen that some employees at Gallup purchased land and/or housing in Belen. Moreover, urges the Organization, Winslow is a town which has experienced little or no growth in the last thirty years and offers a much narrower range of goods, servites snd facilities compared to Belen which essentially is a suburb of Albuquerque. Employees contend that when the Carrier aerved its notice August 15, 1986 designating Winslow as the home terminal for the ID service it sought to punish the employees for insistence upon a comparable housing allowance when it was anticipated employees would move to Belen. The Organization urges this Board not to permit the Carrier to inflict such injuty upon the employees.

The Organization contends that a single headed terminal at Winslow will not be more operationally efficient because deadheading and held-away-from-home-terminal payments will increase substantisly. Moreover, the

Organization urges, the operational modifications necessitated by a two-headed pool have been tested for some time and have resulted in no greater expense to the Carrier.

Finally, in response to the Carrier's argument that it has the unilateral right to determine the home terminal for ID service, the Organization urges that this Board has the authority to make such determination. The Organization cites the findings and award of Arbitration Board No. 472, June, 1987 (Peterson, Neutral) in support of this argument. The Organization seeks the same result here.

Whatever may be said of this Board's authority to review a Carrier's designation of a home terminal or terminals for ID service under the October 31, 1985 National Agreement, we believe the Carrier's designation of Winslow was soundly based. Negotiations with respect to Belen as a home terminal convinced the Carriar potential expense to the Carrier of that location would be substantially greater. The record before us supports the Carrier's conclusion. Despite the Organization's contentions to the contrary, in view of the seniority rights of conductors and trainman the Carrier apparently would face greater liability with respect to moving and related expenses if there is a two-headed pool rather than a single-home terminal. Additionally, negotiations for an agreement revealed to the Carrier that the Organization was strongly pursuing a provision for comparable housing which if obtained through negotiations or imposed through arbitration would be higher if Belen was a home terminal because it is generally understood the cost of housing in Belen is higher than the cost of housing in Winslow. We believe the Carrier's point is well taken that the purpose of the October 31, 1985 UTU National

Agreement is to promote ID service which is more efficient and less costly to the Carrier than existing service. In our opinion the Carrier's designation of Winslow as the single home terminal is wholly consistent with that objective.

The Organization's principle objection to Winslow as the single home terminal is that employees will be required to move to Winslow, an area which by comparison to Belen appears to have far less to offer. The employees view the forced move to Winslow as a hardship. We are not unsympathetic to what the employees see as their plight, particularly in view of the fact that some employees in reliance upon the Carrier's earlier indication of Belen as the home terminal purchased housing and/or land in Belen in anticipation of the move. However, as appealing as those considerations are they do not overcome the compelling considerations of efficiency and cost effectiveness of the ID service.

In the final analysis we must conclude that under the circumstances of this case this Board should not interfere with the Carrier's designation of Winslow as the single home terminal for the ID service, even if this Board had the authority to do so. The Carrier's proposal will be adopted.

2. Comparable Housing

The second major issue to divide the parties is whether the conditions which will apply to ID service in this case should include a provision for comparable housing.

In support of such a provision the Organization points to the March 20, 1987 Decision of the Joint Interpretation Committee established pursuant to Article XVI of the October 31, 1985 National Agreement holding

that under Section IX of that agreement an arbitration tribunal such as this Board when determining the conditions for ID service ". . . may give consideration to whether or not such rule should contain a provision that special allowances to home owners should be included because of moving to comparable housing in a higher cost real estate area." The Organization candidly admits that the whether the conditions should include a comparable housing provision turns upon whether the employees will be moving to an area where real estate costs are higher than in the Gallup area. However, the Organization emphasizes that Winslow, when compared to Gallup and Belen, is an area with relatively few existing housing units many of which are inferior in quality. Moreover, urges the Organization, there are relatively few contractors thus limiting new housing. The Organization argues that under these circumstances the increased demand for housing which will result from employees moving to Winslow may increase substantially the cost of housing. In the face of such uncertainty the Organization contends that there should be a joint committee of management and employee representatives to determine whether in fact Winslow will be a higher cost of housing area. The Organization maintains that the committee should ascertain the median price of housing in both Winslow and Gallup and compute the percentage difference between the two areas, then determine the average cost of housing in the two areas and arrive at an average between the median price and average cost.

The Organization contends that in view of the fact there is no comparable housing in Winslow or its environs, the area to be surveyed for purchases of comparable housing should include Flagstaff, Arizona, approximately fifty miles to the west of Winslow. The Organization points out that

Flagstaff, which is the nearest major population center to Winslow, has substantial available housing and would attract many of the transferees.

The Organization contends that comparable housing has been included in several arbitrated ID agreements. Examples cited by the Organization range from a simple provision for ". . . an equitable allowance . . ." to fixed percentages of fair market value and equity of a home in the location from which the employee transfers. The Organization seeks similar protection here.

The Carrier vigorously protests any provision for comparable housing on the ground that conditions precedent for such provision have not been satisfied in this case. Specifically, the Carrier contends that under the March 20, 1987 Decision of the Joint Interpretation Committee a comparable housing provision may be included only where employees are ". . . moving to comparable housing in a higher cost real estate area." Citing evidence it produced before this Board the Carrier argues that Winslow is a substantially lower cost of housing area than Gallup. The Carrier emphasizes that the Organization has produced no contradictory evidence. Accordingly, urges the Carrier, the Organization has failed in its burden to establish the conditions precedent to inclusion of a comparable housing provision.

Moreover, argues the Carrier, the Decision of the Joint Interpretation Committee clearly establishes that it is within this Board's discretion to include a comparable housing provision and that the Board is under no obligation to do so. Pointing to the fact that the language utilized by the Joint Interpretation Committee concerning comparable housing is a direct quote

from Article XII, Section 2(a) of the January 27, 1972 National Agreement and contending that no comparable housing provision based on that section of the 1972 agreement appears in any ID agreements, the Carrier contends that such a provision is archaic and should not be adopted here. The Carrier also points out that during negotiations the Organization came forth with no proposal as to how a comparable housing allowance might be calculated and applied despite the Carrier's request for such a proposal. Accordingly, the Carrier urges this Board should not impose a provision with respect to which the parties have had no substantial bargaining.

At the outset we must address the question of whether Flagstaff, Arizona should be considered part of the "area" for purposes of determining whether the employees will be moving to a higher cost of housing area. The Organization makes several appealing arguments, based primarily upon the fact that Flagstaff would be more attractive to employees than Winslow. However, Flagstaff is approximately fifty miles from Winslow. While the employees easily could commute that distance, that factor alone does not make Flagstaff part of the Winslow area for purposes of determining comparable housing. Winslow, while apparently less attractive than Flagstaff, Gallup or Belen, is a self-contained town. Though goods, services and housing may be in short supply, which may induce transferees to travel or even relocate to Flagstaff for these amenities, eventually they will be sufficient to meet the needs of the town's expanded operation. We find no reason to conclude that housing in Winslow will not improve and expand to meet the needs of new residents albeit at perhaps an increased cost. Accordingly, we find no basis upon which

to expand the area to be surveyed for purposes of comparable housing to include Flagstaff, Arizona.

However, we are not persuaded by the Carrier's arguments that either the Organization has not met the conditions precedent to establish the propriety of a comparable housing provision or that the Organization has failed in its burden of proof with respect to such provision. The record before this Board establishes that in Winslow existing housing is insufficient to meet the anticipated demand and that the capability to expand housing is limited. Under these circumstances it is reasonably foreseeable that the costs of existing housing and constructing new housing will rise. While it is impossible to determine at this point in time whether in fact housing costs will increase to the point where the cost of housing in Winslow will be greater than the cost of housing in Gallup, we believe the record in this case overcomes the Carrier's objections.

The March 20, 1987 Decision of the Joint Interpretation Committee clearly holds, as both the Carrier and the Organization recognize, that this Board has the authority to include a provision concerning comparable housing in the conditions applicable to the ID service in this case if employees will be moved to a higher cost of housing area. It is equally clear that if the Carrier's position on this issue prevails there will be no relief for employees if in fact as a result of their influx into the Winslow area housing costs rise to greater than housing costs in Gallup. In view of the fact that one purpose of conditions negotiated or arbitrated pursuant to Article IX of the October 31, 1985 National Agreement is to protect employees from ecnomic loss incident to the institution of ID service, we believe it is appropriate

to include a provision relating to comparable housing in the conditions applicable to the ID service in this case.

We believe the Organization's suggestion is a good one that in this case a joint committee be established consisting of both Carrier and Organization representatives to determine whether in fact the cost of compareble housing in Winslow, considering not only existing housing but also the construction of new housing, is greater than comparable housing in Gallup. An affirmative determination of that question would be a condition precedent to any allowance for comparable housing. In the event the committee reaches an affirmative determination, it will proceed to consider and determine the nature and extent of such an allowance. We believe that it is better to afford the parties the first opportunity to determine the specifications of such allowance rather than determining that factor in this Decision as sought by the Organization. Any dispute which the joint committee cannot resolve will be submitted to adjustment pursuant to Section 3 of the Railway Labor Act, 45 U.S.C. §§151.

The Attachment to this Decision includes a comparable housing provision implementing the foregoing determination.

3. Moving/Real Estate

The Carrier proposes a provision governing moving expenses for employees who move to Winslow and governing the real estate interests in Gallup held by such employees. The Carrier argues that its proposal implements Article IX, Section 7 of the October 31, 1985 National Agreement by adequately protecting employees against any losses with respect to either

matter while the Organization objects not so much to the wording of the Carrier's proposal but to the Carrier's application of it.

The Organization's principle objection to the Carrier's proposal is its restricted applicability to employees who are "required" to move their residence as the result of the institution of ID service. The Organization vigorously argues that the senior employees at Gallup should have the option for the better jobs. The Carrier does not agree, contending that its proposal is drawn from the Washington Job Protection Agreement (WJPA) as specified by Article XIII, Section 9 of the January 27, 1972 National Agreement. Accordingly, urges the Carrier, the protection afforded by its proposal is standard and should not be enlarged upon by this Board.

The Organization also alleges that the Carrier has not appraised employees' homes in Gallup properly. Specifically, the Organization maintains that the Carrier instructed appraisers to price the homes for sale within ninety to one-hundred and twenty days and to compare those homes to all others on the market. The Organization contends that the sale period is too short and that comparison of a home on the market by virtue of the Carrier's transfer of employees to Winslow to homes of other transferees artificially lowers the value of all such homes. The Organization seeks input with respect to the Carrier's instructions to appraisers.

The Carrier argues that ninety to one-hundred twenty days is the normal sales period for a residence. However, the Carrier represents that it has altered its instructions to appraisers to allow the sales period to run to the date of actual sale and to appraise the value of properties as of a date sufficiently prior to the announcement of the implementation of ID service so the properties will be unaffected thereby.

We believe the Carrier's point is well taken that its proposal tracks the language of WJPA and as such should not be disturbed by this Board. The Organization seeks to embellish employee benefits under WJPA as implemented by the January 27, 1977 National Agreement, and we do not believe it is appropriate for this Board to implement such embellishment.

It is part of the scheme of protection applicable to employees forced to change their residence that such employees not suffer loss on the sale of their residences. However, in view of the Carrier's representations concerning modification of the sale period and instructions to appraisers we find no basis upon which to modify the Carrier's proposal.

Accordingly, we adopt the Carrier's proposal.

4. Protection of Other Than ID Service

There exists the question of how work other than ID service between Winslow and Belen will be protected after the institution of ID service. Presently unassigned and pool freight service between Gallup and Albuquerque/Belen is protected by Gallup home crews and the same service between Winslow and Gallup is protected by Winslow home crews. Conductors' and brakemens' extra boards at Gallup protect vacancies in the Gallup home pool crews as well as coal and work train assignments. When ID service is instituted there will be no pool turns remaining at Gallup, and there will be insufficient work east of Gallup to support the extra boards.

Nevertheless, argues the Organization, inasmuch as the institution of ID service will affect only pool freight service, all other service should continue to be manned as at present with Gallup and Winslow as the sources of supply. The Carrier vigorously disagrees. The Carrier contends that the

arrangement urged by the Organization will result in unnecessary and expensive deadheading of employees from Winslow to Gallup. Instead, the Carrier proposes to retain the present conductors' and brakemens' extra boards at Gallup and call made-up crews from those boards to protect all miscellaneous work which does not run through Gallup. That arrangement, argues the Carrier, would benefit the employees as much as the Carrier. In addition to minimizing deadheading it would require fewer employees to move from Gallup to Winslow. The Carrier estimates that the extra boards would support five to six conductors and ten to twelve brakemen.

The Organization argues the technical point that the Carrier's notice covers only ID service between Winslow and Belen and thus has no application to the noninterdivisional service in that service area. However, as the Carrier points out, the institution of ID service will affect the manning of remaining noninterdivisional service.

We believe the Carrier has the stronger proposal. The Organization repeatedly has represented to this Board that the employees in Gallup generally do not wish to move to Winslow. The Carrier's proposal would allow some employees to remain in Gallup. Additionally, we believe the Carrier's point is well taken that one of the main purposes of the institution of ID service is to increase operating efficiency. Such efficiency will be reduced materially if the Carrier must deadhead employees from Winslow to Gallup to perform work a substantial part of which is located at Gallup.

For the foregoing reasons we adopt the Carrier's proposal on this issue.

5. Use of ID Crews In Turnaround and Hours of Service Relief Work

The Carrier urges that it is necessary for the successful operation of ID service that it have the flexibility of utilizing ID crews in turnaround service and for relief of ID crews tied up under the Hours of Service Law. The Organization opposes the use of ID crews for such work. The Organization argues that inasmuch as the purpose of the Carrier's notice and the agreement resulting from this proceeding is to facilitate ID service, ID crews should be used only in the performance of ID service. Moreover, urges the Organization, Article 44(h) of the Roadmen's Schedule provides an agreed upon method for hours of service relief which should be applicable to ID service.

The Organization's position is inconsistent with certain material facts. Under the Carrier's proposal ID pool freight crews would relieve other ID pool crews tied up under the Hours of Service Law except with respect to westbound trains operating between Gallup and Winslow which would be relieved by extra board crews at Winslow. It seems to us only logical that the use of ID crews to relieve other ID crews tied up under the Hours of Service Law promotes efficiency. Moreover, it may detract from such efficiency to restrict the Carrier from using any ID crews in turnaround service. Article 44(h) of the Roadmen's Schedule would have limited applicability to ID service in this case inasmuch as by its terms it applies only where ". . . relief crews are furnished from the home terminal , . . ." In this case the single home terminal for all ID service between Winslow and Belen will be Winslow.

We must conclude that the Carrier has the better proposal on this issue. Accordingly, we adopt the Carrier's proposal.

6. Handling and Payment of ID Crews Tied Up Under Hours of Service Law

The Organization seeks a provision in the conditions that ID crews tied up under the Hours of Service Law en route will not be held at an intermediate point and required to resume their trip after obtaining legal rest but will be deadheaded or towed expeditiously to the objective terminal. The Carrier maintains that while such a provision might have been appropriate in a negotiated agreement, it should not be included in an arbitrated agreement particularly if other provisions of such agreement result in increased costs to the Carrier. Again, the Carrier argues that such a provision will hamper operating efficiency which is a goal of ID service.

While we are sympathetic to the Carrier's need for latitude in the operation of ID service as well as the Carrier's need to keep operating costs at a minimum, we also must evaluate the impact of ID service upon the employees. The Carrier has made no specific showing as to how the Organization's proposal would decrease operating efficiency or result in increased costs. On the other hand the nature of the Organization's proposal is such as to foster the mutually desirable goal of having employees en route in ID service reach their objective terminal either to return home or to place themselves in a position to return home as quickly as possible.

In the final analysis we believe the Organization has the superior position with respect to this issue. We will include the Organization's proposal in the agreement.

7. Lodging

The Organization seeks lodging for ID crews at Belen/Albuquerque in accordance with the parties' Memorandum Agreement of July 17, 1980 governing

lodging. Under that agreement employees subject thereto have the option of choosing lodging at Carrier facilities under conditions specified in the agreement or accepting an allowance in lieu thereof. The Carrier opposes the option.

We believe the parties' July 17, 1980 agreement governing lodging has served the parties well for eight years. We see no reason to disturb that arrangement, particularly in light of the fact that the Carrier has made no showing as to why employees in ID service requiring lodging at Belen/ Albuquerque should be treated differently.

Accordingly, we will adopt the Organization's proposal on this issue.

8. Exchanging Trains

The gravamen of the dispute over this issue appears to be that ID crews operating west of Winslow receive an arbitrary for exchanging trains which the Carrier is unwilling to grant on the ground that it is contrary to the intent of the October 31, 1985 National Agreement. The Organization, recognizing the Carrier's reluctance to establish arbitraries, argues for a provision that ID crews will not trade off trains between their initial and final terminals. The Carrier seeks a provision which by its specific terms would bar the Carrier from requiring ID crews to exchange trains in opposite directions but by inference would allow the Carrier to require such exchange in the same direction but without an arbitrary.

Clearly the Organization's proposal would hamper the Carrier's flexibility in operating ID service and thus adversely impact the operating efficiency of such service. In view of the limited latitude in this matter

sought by the Carrier, we find little support for the Organization's proposal. As the Organization recognizes, an arbitrary for exchanging trains would be contrary to the intent of the National Agreement and thus inappropriate.

Accordingly, we shall adopt the Carrier's proposal.

9. Held-Away-From-Home Terminal (HAFHT) Time

The Organization seeks a provision that after sixteen hours at their away-from-home terminal the Carrier will call ID employees for service or deadhead them or pay them continuous time. The Organization emphasizes that such a provision appears in other ID agreements with the Carrier. The Carrier emphasizes that there is a HAFHT Rule in the conductors' and trainmen's schedule agreement. The Carrier argues that absent mutual accord by the parties there should be no deviation from that rule.

While the Carrier's argument has certain appeal, its soundness is suspect inasmuch as the parties at least on one previous occasion have included the provision sought by the Organization in an ID agreement. In any event, it is in the mutual interest of the Carrier and employees to return employees to the home terminal as quickly as possible. We do not perceive the provision sought by the Organization as an undue restriction upon the Carrier's latitude in conducting ID service.

For the foregoing reasons we adopt the Organization's proposal.

10. Applicability of Schedule Agreement

The Organization seeks a provision that except as specifically provided in this arbitrated agreement the schedule agreement between the

parties is not modified or amended and that this arbitrated agreement is not to be construed as so doing. The Organization contends that such a provision is standard in ID service agreements. The Carrier opposes such a provision on the ground that it is unnecessary.

We see no sound reason not to include the provision sought by the Organization. The provision makes a clear statement as to the interpretation to be placed upon the schedule agreement in light of this arbitrated agreement and vice versa.

Accordingly, we adopt the Organization's proposal.

11. Payments To Productivity Fund

The Organization seeks to maintain the current practice by which the Carrier pays into the crew consist productivity fund for each one way trip between Winslow and Gallup and one payment for each trip between Gallup and Belen. The Organization contends that by such provision it seeks no increased benefits but merely to retain the benefits it now enjoys. The Carrier seeks to eliminate payments to the productivity funds on the ground that they contravene the purpose and intent of the October 31, 1985 National Agreement. The Carrier argues that to continue the payments would maintain the Carrier's costs with respect to such payments as though there had been no institution of ID service. Moreover, argues the Carrier, by seeking such payments the Organization has violated the moratorium on crew consist.

We fully understand that the Organization seeks to minimize the loss of benefits as the result of the institution of ID service in this case and that this benefit is substantial to the Organization. Nevertheless, we

believe maintenance of the benefit at the current level is contrary to the intent of the October 31, 1985 National Agreement to reduce economic encumbrances upon the Carrier in the operation of ID service.

We find no basis in the record before us for the Organization's proposal on this issue. Accordingly, it will not be adopted.

The Board feels constrained to comment that the Chairman and Neutral Member of the Board has received considerable correspondence from employees and local union officials as well as elected officials of local, state and federal governments concerning the relocation of employees from Gallup to Winslow and other matters relating to this proceeding. Most of that correspondence was received after the close of the proceedings and thus could not be considered. However, we have analyzed all correspondence and find that all issues and arguments raised therein were raised by the parties before this Board either in the written submissions or orally at the hearing. Accordingly, all such issues and arguments were considered by this Board.

DECISION

In the event the Carrier establishes interdivisional freight service between Belen, New Mexico and Winslow, Arizona the conditions set forth in the attachment to this Decision shall apply to such service.

William E. Fredeoberger, Jr.
Chairman and Neutral Member

DATED: June 6, 1988

ATTACHMENT

Pursuant to Article IX, UTU National Agreement of October 31, 1985, The Atchison, Topeka and Santa Fe Railway Company may establish interdivisional (ID) service for pool freight crews between Winslow, Arizona and Belen, New Mexico under the conditions as set forth below:

General Provisions

The provisions of Article IX, Section 2 of the October 31, 1985 UTU National Agreement will apply in their entirety.

Terminals

Interdivisional pool freight crews will operate between the terminals of Winslow, Arizona and Belen, New Mexico. Winslow will be the home terminal and Belen will be the away-from-home terminal.

Calling Crews

Crews in interdivisional service will be called first-in, first-out at each terminal subject to their availability under the Hours of Service Law.

Exchanging Trains

Crews in interdivisional service will not be required to exchange trains in opposite directions.

Meals En Route

In order to expedite the movement of interdivisional pool freight runs, the Carrier shall determine the conditions under which such crews may stop to eat. When crews, working or deadhead, are not permitted to stop to eat, they will be paid an allowance of $1.50 for the trip, unless crews qualify for payment under the meals en route agreement dated October 25, 1984.

Basis of Pay

All miles run in excess of the miles encompassed in the basic day shall be paid for at a rate calculated by dividing the basic daily rate of pay in effect on October 31, 1985 by the number of miles encompassed in the basic day as of that time.

Current actual miles run are as follows:

Eastbound - Conductor/Brakeman	271 miles
Westbound - Conductor/Brakeman	271 miles

Providing Relief for HSL Crews

In connection with relieving interdivisional pool freight crews tied up under the Hours of Service Law, the following will prevail when it is necessary to call a road crew out of the terminal:

WESTBOUND TRAINS

Between Belen & Gallup - including Gallup	-	ID pool freight crew standing first out at Belen
Between Gallup & Winslow	-	Extra board crew at Winslow

EASTBOUND TRAINS

Between Winslow & Gallup - including Gallup	-	ID pool freight crew standing first out at Winslow
Between Gallup & Belen	-	ID pool freight crew standing first out at Belen

Protecting Other Than ID Service

Regular assignments will be protected by regularly assigned employes. Conductors' and brakemen's extra boards will be maintained at Gallup sufficient to take care of service demands in other than interdivisional service, including work/wreck trains originating at Gallup. Made-up crews protecting service from Gallup will be called first in, first out subject to their availability under the Hours of Service Law and can be operated in either direction out of Gallup to the terminals of Winslow, Belen and/or Albuquerque. Upon arrival at such distant terminal crews will be operated independently of crews in ID service and can be used to operate a train back to Gallup.

Service to Albuquerque from Winslow will be protected by interdivisional pool freight crews at Winslow. At Albuquerque, crew may be transported to Belen on a continuous time basis and take its proper standing based on arrival at off duty point for service back to Winslow. Service to Winslow from Albuquerque will likewise be protected by interdivisional pool freight crews at Belen if none available at Albuquerque.

ID Crews Tied Up Under
Hours of Service Act

Crews in interdivisional service will not be tied up en route under the Hours of Service Act and held at such intermediate points and then required to resume their trips after obtaining legal rest, but rather, will be deadheaded or towed to the objective terminal as expeditiously as possible. When a pool freight crew is tied up under the Hours of Service Law and is to be transported to the objective terminal to complete the trip, the following will govern:

1. One (1) hour will be free time.

2. Straight time allowance will be paid for any time in excess of free time calculated from time tied up under the Hours of Service Law and time transportation became available.

HAFHT Time

Held-away-from home terminal time will be allowed under the following condition:

Pool freight crews in interdivisional pool freight service held at their away-from-home terminal for the purpose of this Agreement, will be paid continuous time for all time held after expiration of sixteen (16) hours from the time relieved from previous duty exclusive of any time resulting from the crew or any member of the crew calling for rest, at the rate paid for last service, until called for service or ordered to deadhead, in which case held away-from-home terminal time shall cease at the time pay begins for such service, or when deadheading at the time the train departs on its road trip. If transportation other than train is used for deadheading, held away-from-home terminal time shall cease at the time of departure of the other mode of transportation.

NOTE: If a crew is called and released, held time will not be broken. However, there will be no duplicate payment for held time and time on duty.

Formal Investigations

Applicable schedule rules will apply to pool freight crews required by Carrier to attend formal investigations; however, a crew or member thereof in interdivisional service who is ordered by carrier to appear for a formal investigation at a location other than their home terminal will be compensated for the deadhead in accordance with existing agreements when dismissed or suspended.

To the extent possible, formal investigations will be held at the home terminal of the employe(s) involved.

Schedule Agreement

Nothing herein contained shall be construed as modifying or amending any of the provisions of the Schedule Agreement between the Carrier and the United Transportation Union, except as herein provided.

Lodging

Lodging will be provided at Carrier's expense in Belen/Albuquerque in line with Agreement dated July 17, 1980. Those employees covered by this Agreement will have the choice of being furnished lodging or an allowance in lieu thereof.

Vacations

A pool freight employe in interdivisional service will be permitted to advance the starting date of a scheduled vacation period to coincide with the start of layover days.

Moving/Real Estate

Article XIII, Section 9, of the January 27, 1972 UTU National Agreement, will be applicable to any employe whose principle residence was Gallup on February 1, 1986 and who was required to change his/her residence as a result of the result of the Carrier's establishment of interdivisional service between Winslow, Arizona and Belen, New Mexico.

Comparable Housing

There will be established a joint committee of representatives of the Carrier and the Organization which will determine whether Winslow, Arizona is a higher cost of housing area and if so the nature and extent of any allowance to be afforded employees moving to Winslow from Gallup, New Mexico for comparable housing. In addressing any issue or dispute the committee is to be governed by the Decision of Arbitration Board No. 482 which established the conditions in this agreement. In the event the committee is unable to resolve any dispute before it, such dispute shall be submitted for final and binding resolution under Section 3 of the Railway Labor Act, 45 U.S.C. §§153.

Protection

Article XIII of the January 27, 1972 Agreement will be made a part of this Agreement.

ARIZONA WESTERN COLLEGE

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MISSION STATEMENT

Arizona Western College offers educational, career, and lifelong learning opportunities through innovative partnerships which enhance the lives of people in Yuma and La Paz counties.

To enjoy a comprehensive look at Arizona Western College, please click here: **AWC Viewbook**

Arizona Western College, through its focus on an integrated enrollment management plan, has opened doors to diverse students on a local, national, and global level. Aggressive statewide marketing, coupled with computerized registration, financial aid, retention and articulation programs, has resulted in increased proportions of full-time students in the AWC/NAU partnership. The Arizona Western College/Northern Arizona University in Yuma International Student Partnership represents a student population drawn from over twenty nations world wide making the college a "multi-cultural" learning center.

Performance-based learning connections for men and women involved in athletics, government, music, drama, and leadership demonstrates that Arizona Western College exemplifies excellence in both team building participation and learning. Talent and education are combined to produce service oriented citizens that enhance the quality of life in southwest Arizona. Equal access for men and women in performance-based activities has opened more and more areas for national recognition and achievement for deserving Arizona Western students.

LOCATIONS

Arizona Western College
Main Campus
P.O. Box 929
Yuma, AZ 85366-0929
(888) 293-0392
(928) 317-6000

NAU-Yuma Branch Campus
P.O. Box 6236
Yuma, AZ 85366-0929
(888) 628-9862

Entrepreneurial Center
1351 S. Redondo Center Drive
Yuma, AZ 85365
(928) 317-6150

San Luis Learning Center
1340 N 8th Avenue
San Luis, AZ 85349
(928) 314-9449

Somerton Center
1011 N. Somerton Avenue
Somerton, AZ 85350
(928) 314-9464

Wellton Learning Center
28851 County 12th Street
Wellton, AZ 85356
(928) 785-4175

Parker Learning Center
1109 Geronimo Avenue
Parker, AZ 85344
(928) 669-2214

Quartzsite Learning Center
695 N. Kofa at Quail
Quartzsite, AZ 85346

Carrier's Exhibit 43
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Arizona Western, because of the college's emphasis on community service and performance-based activities, is generating foundation support and access to external financial sources to provide improved facilities, scholarships and learning improvements. Arizona Western College and Northern Arizona University share common campus and delivery sites in a cost-effective manner to provide "seamless" associate-through-graduate degree programs. The Arizona Western College and Northern Arizona University partnership is nationally recognized as a model community college/university partnership. Through creative educational brokering, the AWC NAU/Yuma partnership provides accessible training and learning for Yuma and La Paz residents so that tax dollars and resources continue to enhance the well being of southwest Arizona.

(928) 927-8299

Construction Trades Center
Century Plaza
281 W. 24th Street
Yuma, AZ 85364
(928) 317-7647

Marine Corps Air Station Education Center
Bldg 850
Yuma, AZ 85369
(928) 317-7605

Martin Luther King Jr. Neighborhood Center
300 S 13th Ave
Yuma, AZ 85364
(928) 317-6075

U.S. Army Yuma Proving Ground
USAG Yuma Education Center, Bldg 501
Yuma, AZ 85365
(928) 328-3177

CONTACT AWC

Click here for more information on how to contact AWC

AWC FACTS

Number of students:
13,000 annually, over 4,300 Full Time Student Equivalents

Student ages:
Under 24 = 39%, 25-49 = 41%, 50+ = 20%

Average faculty/student ratio: 1:20

Average student age: 30

Gender ratio:
60% female, 40% male

AWC certificate, degree, and transfer programs:

Carrier's Exhibit 43
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85+

Number of NAU in Yuma bachelor's, master's, doctoral, and certification/endorsement programs: 46 on-site, 29 on-line

Number of U of A in Yuma degrees: 1 on-site

Residence halls on campus: 3

2006-2007 graduates: 1026 AWC degrees and certificates; 237 NAU in Yuma bachelor's and master's degrees; 5 U of A in Yuma bachelor's degrees

Newest programs: Construction Trades and Paralegal Studies

Employees: 350 full-time and 657 part-time and student workers

Annual district-wide economic impact: $103 million Accredited by the Higher Learning Commission and a member of the North Central Association.

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Yuma, AZ
3 Bd | 2 Ba

$178,000
Yuma, AZ
3 Bd | 2 Ba

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Yuma, AZ
3 Bd | 4 Ba

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NO PHOTO
0 Photos

Hwy 95 Ave 10 E, Yuma, AZ 85364
$37,431,240
Land | Brokered by: Era Matt Fischer Realtor
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2601 Araby Rd S Unit 24Th St And Araby, Yuma, AZ 85365
$2,798,296 | 8.03 Acres
Land | Brokered by: Tdg Marketing, Inc
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$2,660,560
Land | Brokered by: Era Matt Fischer Realtor
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12 Photos

2589 S Brandi Ln, Yuma, AZ 85364
$2,250,000 | 5 Bd | 2 Half Ba | 9,665 Sq Ft
Single Family Home | Brokered by: Era Matt Fischer Realtor
Save Listing

5 Photos

7950 32 St E, Yuma, AZ 85365
$2,200,000
Land | Brokered by: Realty Executives 14
Save Listing

5 Photos

3100 S Avenue B, Yuma, AZ 85364
$1,700,000 | 4.93 Acres
Land | Brokered by: Realty Executives 14
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We Pay CASH For Homes
www.payingcashforhouses.com/
Any Condition, Foreclosures, Short Sales, We Can PAY CASH In 24 Hours

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Size of Move: 2-3 Bedroom | Packing: None

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"Infinity-Edge Pool"
10585 S Las Colinas, Yuma, AZ 85367
$1,450,000 | 5 Bd | 1 Half Ba | 6,160 Sq Ft
Single Family Home | Brokered by: Era Matt Fischer Realtor
Save Listing

20 Photos

"Infinity-Edge Pool"
10565 S Las Colinas, Yuma, AZ 85367
$1,450,000 | 5 Bd | 1 Half Ba | 6,160 Sq Ft
Single Family Home | Brokered by: Era Matt Fischer Realtor
Save Listing

12 Photos

3650 S Avenue C, Yuma, AZ 85364
$1,350,000 | 5 Bd | 3 Full, 1 Half Ba | 6,500 Sq Ft
Single Family Home | Brokered by: Lee Real Estate & Investments
Save Listing

NO PHOTO
0 Photos

New Ave Ave 52 E S, Yuma, AZ
$1,120,000
Land | Brokered by: Yuma Foothills Realty
Save Listing

2 Photos

5E N Of 32 St, Yuma, AZ 85364
$990,000 | 5.92 Acres
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ARTICLE IV - PAY RULES

Section 1 - Mileage Rates

(a) Mileage rates of pay for miles run in excess of the number of miles comprising a basic day will not be subject to general, cost-of-living, or other forms of wage increases.

(b) Mileage rates of pay, as defined above, applicable to interdivisional, interseniority district, intradivisional and/or intraseniority district service runs now existing or to be established in the future shall not exceed the applicable rates as of June 30, 1986. Such rates shall be exempted from wage increases as provided in Section 1(a) of this Article. Weight-on-drivers additives will apply to mileage rates calculated in accordance with this provision.

Section 2 - Miles in Basic Day and Overtime Divisor

(a) The miles encompassed in the basic day in through freight and through passenger service and the divisor used to determine when overtime begins will be changed as provided below:

Effective Date of Change	Through Freight Service		Through Passenger Service	
	Miles in Basic Day	Overtime Divisor	Miles in Basic Day	Overtime Divisor
July 29, 1991	114	14.25	114	22.8
January 1, 1992	118	14.75	118	23.6
January 1, 1993	122	15.25	122	24.4
January 1, 1994	126	15.75	126	25.2
January 1, 1995	130	16.25	130	26.0

(b) Mileage rates will be paid only for miles run in excess of the minimum number specified in (a) above.

(c) The number of hours that must lapse before overtime begins on a trip in through freight or through passenger service is calculated by dividing the

miles of the trip or the number of miles encompassed in a basic day in that class of service, whichever is greater, by the appropriate overtime divisor. Thus, effective July 29, 1991, overtime on a trip in through freight service of 125 miles will begin after 8 hours and 46 minutes (125/14.25 = 8.77 hours). In through freight service, overtime will not be paid prior to the completion of 8 hours of service.

Section 3 - Conversion to Local Rate

When employees in through freight service become entitled to the local rate of pay under applicable conversion rules, the daily local freight differential (56 cents for engineers and 43 cents for firemen under national agreements) will be added to their basic daily rate and the combined rate will be used as the basis for calculating hourly rates, including overtime. The local freight mileage differential (.56 cents per mile for engineers and .43 cents for firemen under national agreements) will be added to the through freight mileage rates, and miles in excess of the number encompassed in the basic day in through freight service will be paid at the combined rate.

Section 4 - Duplicate Time Payments

(a) Duplicate time payments, including arbitraries and special allowances that are expressed in time or miles or fixed amounts of money, shall not apply to employees whose seniority in engine or train service is established on or after November 1, 1985.

(b) Duplicate time payments, including arbitraries and special allowances that are expressed in time or miles or fixed amounts of money, not previously eliminated, shall not be subject to general, cost-of-living or other forms of wage increases.

Section 5 - Rate Progression - New Hires

In any class of service or job classification, rates of pay, additives, and other applicable elements of compensation for an employee whose seniority in engine or train service is established on or after November 1, 1985, will be 75% of the rate for present employees and will increase in increments of 5 percentage points for each year of active service in engine and/or train service until the new employee's rate is equal to that of present employees. A year of active service shall consist of a period of 365 calendar days in which the employee performs a total of 80 or more tours of duty.

ATTACHMENT A
GUARANTEED EXTRA BOARD

Guaranteed engineers' extra boards may be established in the territory subject to the SP-West BLE collective bargaining agreement subject to the following:

1. OPERATION. At the carrier's discretion, guaranteed extra boards may be established, upon thirty (30) days' written notice to the General Chairman, at any location where deemed necessary. Likewise, in the event there is insufficient work to justify an extra board(s), the extra board(s) may be suspended upon thirty (30) days' written notice to the General Chairman.

The engineers' guaranteed extra board will operate on a rotary basis. Any engineer displacing on or marking up for service will be placed on the bottom of the board at the time of such displacement or mark-up. Engineers returned to the board after working will be placed at the bottom of the extra board per tie-up time. If more than one tie-up at the same time, previous board standing will govern.

2. GUARANTEE Engineers assigned to the extra board shall receive a semi-monthly guarantee of $2693.70 per pay period (determined by multiplying 18 x $149.65). This rate is subject to future general wage adjustments including COLA. The guarantee shall be computed on a daily basis and shall not apply to any calendar day the extra engineer lays off or otherwise becomes not available for service or any following calendar day on which an extra engineer continues to lay off or to be unavailable past 12:00 Noon.

All earnings received by extra engineers assigned to the extra board will be used in computing such guarantee. Extra engineers laying off on call, missing call or not available for call will have their guarantee reduced by the amount they would have earned had they not laid off on call or missed call with a minimum of a guaranteed day reduction. Extra engineers missing call when other than first-out will have their guarantee reduced by one day only. Extra engineers unavailable more than two (2) occurrences per pay period, or being unavailable more than 96 combined hours per pay period, will have their guarantee suspended for such pay period. This will include any unavailable status including extra rest, but will exclude layoffs for company business and by local chairmen, legislative representatives, vice local chairmen, secretary-treasurer or division president who must lay off for union business. Engineers taking extra rest (UDR) will be handled per questions and answers 17 and 18 of Attachment 2 hereto.

Engineers added to the extra board will be paid guarantee for the day added provided they meet the availability requirement of this Attachment and all earnings made on the day

added will be included in computation of guarantee. Guarantee will not be paid to an engineer on the day reduced from the extra board.

NOTE: See "Attachment 1" for examples of guarantee payment.

3. REST DAY/INCENTIVE PAYMENT. Engineers assigned to the guaranteed extra board for an entire pay period (or who are reduced from the board by the carrier prior to completion of the pay period) shall be entitled to one (1) rest day (a 24-hour period or portion thereof) during the pay period for which no deduction will be made from the guarantee, subject to the following conditions:

(a) At the time of the rest day, the engineer must be other than first out.

(b) The rest day must be taken at any time commencing 12:01 AM Monday and concluding by 11:59 PM Thursday.

(c) The rest day cannot exceed twenty-four (24) hours.

(d) This provision does not affect or modify any provision contained in the paid holiday agreement.

Engineers assigned to the guaranteed extra board for an entire pay period who remain marked-up and available for service during that entire pay period shall be entitled to an incentive payment of one prorated guarantee day representing the one (1) rest day to which entitled under this Item 3 but not taken. This incentive for full availability during the pay period shall be paid regardless of whether an engineer does or does not exceed the guarantee for the period and shall be in addition thereto. Reductions in guarantee due to layoffs/absences do not apply when taking rest day(s) under this Item 3.

4. LAYING OFF OTHER THAN ON CALL (AT HOME TERMINAL) An extra engineer laying off for any reason and at any time other than on call will not be permitted to mark-up for twelve (12) hours from the time he laid off. The engineer must mark-up to resume service.

5. LAYING OFF(ON CALL) AT HOME TERMINAL An extra engineer laying off on call will be held in (will not be permitted to mark-up) until the tie-up of the engineer taking the call or twelve (12) hours from the time of the lay-off, whichever is later, and must mark-up to resume duty. It is understood that this provision does not estop the carrier from administering such discipline as it deems proper for a missed call.

6. MISSING CALL(AT HOME TERMINAL) An engineer missing call at the home terminal

will be automatically marked to the bottom of the extra board at the time of such missed call.

7. MISSING CALL (AT FAR TERMINAL) For guarantee purposes, an extra engineer missing a call or laying off at the far terminal will be treated the same as an extra engineer laying off on call at the home terminal and will not be returned to the extra board until tie-up of the assignment for which the call was missed.

8. OUTLYING VACANCY An extra engineer who misses a call, lays off on call or ties up for extra rest when he stood for an outlying vacancy will, upon reporting for service, be required to relieve the engineer who accepted the call if that engineer is still occupying the outlying vacancy. The engineer's guarantee will be reduced by the amount he would have earned with a minimum reduction of one guarantee day for each day laid off.

9. TYING UP FOR EXTRA REST An extra engineer tying up for extra rest will retain his position on the extra board. If the engineer becomes first-out they shall hold their turn until the rest period is over and then be available for call.

10. REGULATION The carrier shall have the unqualified and unchallenged right to determine the number of engineers to be placed and maintained on a guaranteed extra board. The carrier will, however, ensure there are sufficient engineers on a guaranteed extra board to permit those engineers reasonable absence privileges. Assignments to the guaranteed extra board shall be made in accordance with applicable rules.

NOTE: The Carrier will not be penalized in any way for the application of the above.

Engineers added to the guaranteed extra board shall not be removed therefrom for a period of seven (7) days but may bid off or be displaced sooner.

> EXAMPLE: The guaranteed extra board is added to on May 1. An engineer assigned to the guaranteed extra board on May 1 may not be removed from the board until May 8.

11. DEADHEADING Deadheading which results from the regulation of the guaranteed extra board will not be paid for.

12. SHORT TURNAROUNDS Extra engineers making a short turnaround trip out of the home terminal of the assignment will be placed at the bottom of the extra board.

* SEE MY LOTUS NOTE 03-27-04 WHEN DISPLACEMENT IS EFFECTIVE

ATTACHMENT 1 TO ATTACHMENT A
EXAMPLES FOR PAYMENT OF GUARANTEE

1. An extra engineer when first-out and laying off:

   a. Lays off or lays off on call at 10:30PM on January 3 and marks-up at 12Noon on January 4. The extra engineer will lose guarantee or the amount he would have earned for the calendar day January 3.

   b. If the extra engineer had not marked-up until 12:01PM on January 4, he would have lost guarantee or the amount he would have earned for calendar days January 3 and 4.

   c. If the extra engineer continued to lay-off for greater than 96 hours, he will have his guarantee suspended for the half.

   d. Lays off at 1:00AM on January 3 and marks-up at 1:00PM on January 3. The extra engineer will lose guarantee for the calendar day January 3.

   e. Misses call at 11:00AM on January 3. The extra engineer will lose guarantee for January 3 or the amount he would have earned for January 3.

2. An extra engineer when second out and missing a call:

   a. Misses one call at the home terminal at 11:00AM on January 3. The extra engineer will lose one day's guarantee.

   b. Misses two calls at the home terminal at 11:00AM and 4:00PM both on January 3. The extra engineer will lose guarantee or the amount he would have earned for January 3, whichever is greater.

   c. Misses three calls at the home terminal at 11:00AM, 4:00PM and 10:00PM all on January 3. The engineer will lose his guarantee for the first-half pay period of January.

NOTE: In the examples 1(e) and 2(a), 2(b) and 2(c), above, the extra engineer automatically drops to the bottom of the extra board at the time of the miss call.

ATTACHMENT 2 TO ATTACHMENT A
QUESTIONS AND ANSWERS

Q1. What effect does vacation have on the "incentive" day?
A1. The agreements require an engineer **"remain marked up and available for service during the entire pay period"** and further states **"This incentive for full availability during the pay period..."** Thus, any absence, paid or unpaid, voids the "incentive day".

Q2. What effect does a single day vacation or personal leave day have on the "incentive day"?
A2. Same as A1

Q3. What effect does "OS" status (other service at Carrier's Direction) have on the "incentive day"?
A3. "OS" status is used to denote an individual performing other service at the direction of the carrier. An individual in such status is not "laid off" and is considered available, following proper rest, after being released from "OS" status, thus the "incentive day" is unaffected.

Q4. If an engineer is granted time off without any type of pay, may that employee elect whether or not the "incentive day" is charged?
A4. Any layoff, whether paid or unpaid, voids the "incentive day"

Q5. Does taking a "rest day" as defined in the agreement count toward unavailable time?
A5. Yes. However, if taken within the constraints of the agreement, guarantee is not reduced.

Q6. Does taking a "rest day" count as an occurrence as defined in the agreement?
A6. Yes.

Q7. Must an engineer work 15 days before he/she is entitled to a "rest day" or "incentive pay" in lieu thereof?
A7. There is no requirement to work any specified number of days.

Q8. May an engineer's request for a "rest day" be denied?
A8. Requests for "rest days", like any non-emergency absence, are subject to the needs of the service and manpower availability; however, every reasonable effort is to be made in response to such requests.

Q9. May a "rest day" be requested a day or more in advance?
A9. The agreement does not preclude such; however, approval of the request by CMS would be subject to the needs of the service and manpower availability.
Q10. Once a "rest day" is requested and granted, would a subsequent absence within the same pay period result in a reduction in guarantee for the "rest day"?
A10. No, those reductions in guarantee due to layoffs/absences do no apply to "rest days" taken within the constraints of the agreement.

Q11. Must a request be submitted for payment of the "incentive day"?
A11. Yes. The "Incentive day" may be submitted along with claim for guarantee.

Q12. Will an engineer tying up for "Undisturbed Rest" lose the "incentive day"?
A12. Yes. See A1.

Q13. Is "incentive day" pay used to offset guarantee?
A13. No. "Incentive day" pay is allowed whether an engineer does or does not exceed guarantee for the period; it is paid in addition to guarantee.

Q14. At what rate of pay is the "incentive day" to be paid?
A14. One prorated guarantee day.

Q15. Several of the GEB agreements contain a provision which results in suspension of the guarantee if "unavailable for more than two (2) calls per pay period, or being unavailable for more than 96 combined hours per pay period". Will the GEB allowable 'rest day' function in any manner to activate such agreement provision?
A15. Yes. (See Q&A #5 and #6).

Q16. An Engineer observes "free" lay-off day within the conditions set forth in the Extra Board Agreement. Later, within the same payroll period, the engineer lays off. Do the hours of the "free" lay-off day count in the calculation of the "96 combined hours" of unavailability in the pay period?
A16. Yes. (See Q&A #5).

Q17. Extra board engineer on a pool turn vacancy qualifies for and requests UDR at the away-from-home terminal. Is guarantee affected?
A17. If this is the first UDR in the pay period, guarantee is unaffected.
If this were the second (or greater) UDR in the pay period, engineer will be considered unavailable IF would have been called and the guarantee will be reduced one guarantee day; otherwise, guarantee is unaffected.

Q18. Should a GEB Engineer qualify for and take UDR a second (or successive) time

in a pay period, will his guarantee be reduced?

A18. Yes, if the engineer would have been called had extra rest not been taken; otherwise, no reduction will be made.

Q19. When GEB Engineers are utilizing the 'rest day' provision, must they so advise CMS Crew Dispatcher so that a special status can be initiated in the CMS records for GEB pay purposes?

A19. Yes. Currently such absences are being identified as "LM".

Q20. Do GEB Engineers receive Instructor Engineer pay in addition to (over and above) their GEB guarantee?

A20. No. All earnings, including the instructor allowance, are used as an offset against GEB guarantee.

Q21. Where there is a conflict between a guarantee extra board agreement regarding extra rest and the local rule governing extra or undisturbed rest, which rule will apply?

A21. Where there is such a conflict, the local rule governing extra rest will apply.

Q22. Is an Engineer entitled to a "rest day" with pay if the engineer lays off prior to or after taking a rest day for personal leave, vacation, sick, personal or misses call in the same half?

A22. No. An Engineer must be marked up (other than first out) when requesting a "rest day" which cannot exceed 24 hours.

Q23. Can a "rest day" encompass a portion of a calendar day (example: 10:00AM Tuesday through 10:00AM Wednesday) without any loss of guarantee?

A23. Yes. The agreement provides: "the rest day must be taken any time commencing 12:01AM Monday and concluded by 11:59PM Thursday".

Q24. Is an engineer entitled to "incentive pay" if he/she takes a hold down on another job during the pay period?

A24. No. An engineer who takes a different job takes the conditions of that assignment and is not considered available for purposes of computing guarantee or incentive pay.

Q25. Can you give examples of extra board guarantees when time claims are settled months after the guarantee is paid.

A25. Example 1:

An employee on an extra board collects $200.00 in guarantee for the first half of June 1998. He also filed a claim for final terminal delay in the same period which was denied. The claim, which amounted to $50.00 is

subsequently allowed in December 1998 when the employee is in through freight service. No adjustment will be due since the guarantee paid in June 1998 exceeded the amount of the final terminal delay claim.

Example 2:

An employee in pool freight service files a final terminal delay claim in June 1998. The claim is denied. The employee subsequently moves to an extra board and during the first pay period of December 1998 is allowed $200.00 guarantee. The June 1998 final terminal delay claim which amounted to $50.00 is allowed in the first pay period of December 1998. The $50.00 payment is allowed in addition to the $200.00 guarantee payment because it was for a pay period when not on the guarantee extra board.

LOU #1110513 0730

UNION PACIFIC RAILROAD COMPANY

Labor Relations
1400 Douglas Street
STOP 0710
Omaha NE 68179-0710
Office: (402) 544-4562

RECD
AUG 0 2 2007
Relations

May 15, 2007

MR T J DONNIGAN
GENERAL CHAIRMAN BLET
PO BOX 609
POCATELLO ID 83204-0609

MR D W HANNAH
GENERAL CHAIRMAN BLET
404 N 7TH ST STE A
COLTON CA 92324-2941

MR B D MACARTHUR
GENERAL CHAIRMAN BLET
501 N SECOND ST-SUITE 2
CLINTON IA 52732

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

Gentlemen:

This refers to the Carrier's May 15, 2007 letter, attached hereto, confirming the parties' understanding regarding the calculation of extra board guarantee. Carrier will implement the clarification/understanding on or about August 1, 2007.

Please acknowledge your receipt and acceptance of the clarification/understanding set forth in the Carrier's May 15, 2007 letter by signing in the designated space below and returning a signed copy back to this office. If you have any questions, please do not hesitate to contact me at (402) 544-4562.

For the Brotherhood of
Locomotive Engineers and Trainmen

T.J. Donnigan 071207

M.A. Young 7-23-07

B.D. MacArthur 7/30/07

D.W. Hannah

For the
Union Pacific Railroad

T.G. Taggart

A.L. Weed

T.M. Stone

A.C. Hallberg

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UNION PACIFIC RAILROAD COMPANY

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May 15, 2007

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MR T J DONNIGAN
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MR M A YOUNG
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1620 CENTRAL AVE RM 203
CHEYENNE WY 82001

Gentlemen:

This has reference to our meetings in Kansas City, Missouri on March 21 and in Las Vegas, Nevada April 30, 2007, with BLET Vice Presidents DaleMcPherson and Lee Pruitt, and Vice General Chairman Craig Carstenson. At one or both of these meetings, Labor Relations Directors Gary Taggart, Alan Weed, Terry Stone, Frank Tamisiea, General Director of Crew Management Mike Brazytis and Senior director of Timekeeping, Cliff Johnson represented the Carrier.

This letter will serve as confirmation of our discussions regarding the calculation of extra board guarantee. During our meetings, much of the discussion was centered around the Carrier's March 19, 2007 letter that confirmed our discussions held in Omaha, Nebraska on March 8, 2007.

The parties have consistently recognized the intent of the guaranteed extra board agreement(s) was not designed to provide an avenue to maximize guarantee without providing availability and service. In accordance with that accepted principle, as well as the quid pro quo implicit in such guarantee agreement(s), the parties concur with an interpretation that when taking or when subject to compensated or non-compensated time off, an engineer must perform service following the compensated/non-compensated time off. Where no service is performed between the day(s) of compensated/non-compensated time off, the subsequent lay-off as well as the period between time off will therefore be considered as unavailable time off the guaranteed extra board and will count as an occurrence(s).

It is understood that the forfeiture of guarantee shall not apply for absences due to compensated bereavement leave, jury duty, personal leave, and vacation, provided there is intervening service between layoffs. An extra board engineer's guarantee will be pro-rated for the days he/she is not on bereavement leave, jury duty, personal leave, and/or vacation and that these earnings will not be used in calculating the per-half guarantee.

The following are examples of engineer extra board guarantee calculations under the BLET extra board agreements:

Example 1: An engineer marks off the extra board at 10:00 a.m., on 3/1 for a single day of vacation. He/she is automatically marked up to the extra board at 10:00 a.m. on 3/2. At 8:00 p.m. on 3/2 he/she marks off sick. He/she is marked up to the extra board at 8:00 p.m. on 3/3. He/she marks off the extra board on at 9:00 a.m. on 3/5 for a single day of vacation. In that he/she observed three lay-offs before first performing service and the cumulative time off (10:00 a.m. 3/1 through 9:00 a.m. on 3/6) is greater than 72/96 hours, the engineer will forfeit all guarantee for the pay half.

Example 2: An engineer marks off the extra board at 9:00 a.m. on 3/1 for four (4) personal leave days. He/she is marked up to the extra board at 9:00 a.m. on 3/5. At 9:00 p.m. on 3/7 lays off sick for 24 hours. In that he/she observed another mark off before first performing service and the cumulative time off (9:00 a.m. 3/1 through 9:00 p.m. 3/08) is greater that 72/96 hours, the engineer will forfeit all guarantee for the pay half.

During our discussions, the Carrier agreed with your organization's request that engineers laying off other than first out will have their guarantee reduced by one pro-rated guarantee day for each twenty four hour or portion thereof based on the initial lay off time.

Note: In this regard, Portland Hub extra board engineers remain govern under Section 4 of Memorandum of Agreement 1403159630.

In addition, where only one engineer is assigned to an extra board, such engineer will have his/her guarantee reduced by one pro-rated guarantee day for each layoff of twenty four hour or portion thereof based on the initial lay off time.

Finally, to preserve the quid pro quo for the guarantee and the employee's obligation to remain available for call and to perform service, the parties agree to subsequently meet to provide further preventive guidelines, if necessary, should employees find other avenues to avoid work in order to manipulate guarantee.

This letter and the examples attached herein are intended to confirm our discussions on March 21 and April 30, 2007 relative to engineer extra board guarantees on your respective properties and is not to be cited by either party as it relates to any other collective bargaining agreement.

Yours truly,

T.G. Taggart, Director

A.L. Weed, Director

T.M. Stone, Director

A.C. Hallberg, Director

cc: F.A. Tamisiea
A. T. Olin
R. Orosco
D. L. McPherson
E.L. Pruitt
M. Brazytis
A. A. Zabawa

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BLET Extra Board Guarantee

Example 1: An engineer works January 1 and 2nd. He/she then takes 1 compensated/non-compensated day on January 3rd. Marks up and available January 4th – 8th. Performs service on January 9th. He/she continues to be available and/or performs service through the 14th. On January 15th he/she take 1 compensated /non-compensated day on January 15th.

The guarantee will be pro-rated 13/15th.

Example 2: Same engineer in example 1 above, marks up on January 16th. Performs service on the 17th, takes 1 personal leave/single day vacation on the 18th, performs service on the 19th, takes 2 personal leave/single days vacation on the 20th and 21st, performs service on the 22nd, takes 1 personal leave/single day vacation on the 23rd. He/she marks up and remains in available status through the 31st.

The guarantee will be pro-rated 12/16th because he/she performed service in between layoffs.

Example 3: An engineer lays-off jury duty on January 1st through 5th. Performs service on the 6th. Takes one week of vacation starting January 9th.

The guarantee will be pro-rated 3/15th because he/she performed service in between layoffs.

Example 4: Same engineer in Example 3 above, marks up from vacation on January 16th. He/she is available, but does not perform service between the 16th and 18th. On January 19, he/she lays off compensated/non-compensated for 48 hours. He/she is available/performs service between January 21 through the 31st.

The guarantee is forfeited because there was no service performed between the vacation ending on January 16th and the lay-off ending January 20th. Accordingly, the time between January 16th through the 20th was greater than 72 hours (96 on SPWL).

Example 5: An engineer takes a week of vacation starting January 1st through the 7th. He/she is available, but does not perform service between the 8th and 10th. On the 11th he/she take a compensated/non-compensated lay off for 24 hours. He/she is available/performs service between the 12th and 15th.

The guarantee is forfeited because no service was performed between the vacation ending January 7th and the compensated/non-compensated layoff on the 11th. Accordingly the time between January 1st and 12th is considered unavailable and exceeds 72 hours (96 on SPWL).

Example 6: An engineer is granted a personal leave/single day vacation on the 1st. Marks up on the 2nd after 24 hours off. He/she performs no service between the 2nd and the 5th and he/she is then granted personal leave/single day vacation on the 5th. Marks up after 24 hours on the 6th. Performs service on the 7th through the 15th.

The guarantee is forfeited because the hours are considered cumulative and would therefore count as unavailable time because there was no work event between the personal leave/single vacation day taken between the 1st and the 6th.

Example 7: An engineer is granted a 24-hour personal leave/single day vacation on the 1st. Marks and performs service. On the 7th he/she lays off sick for twenty- four hours. Marks up and performs service. On the 15th, he/she again lays off sick.

The guarantee is pro-rated at 12/15 of the per-half guarantee.

Example 8: An engineer lays off sick 3/1 at 10:00 a.m. Marks up 3/2 at 10:00 a.m. He/she lays off sick again on 3/3 at 10:00 a.m. with no intervening work event. He/she marks up on 3/4 at 10:00 a.m. and remains marked up and performs service during the pay half.

The guarantee is pro-rated at 12/15 of the per-half guarantee. The occurrences and hours are considered cumulative and would therefore count as unavailable time because there was no work event between the lay off.

Example 9: An engineer is laid off compensated jury duty on the 1st to the 5th. He/she marks up on the 5th. No intervening service is performed when he/she is granted a 24 hour personal leave/single vacation day.

The guarantee is forfeited. The hours are considered cumulative and would therefore count as unavailable time because there was no work event between the lay off.

Example 10: An engineer is suspended from the 1st to the 5th. He/she marks up on the 6th. He/she remains marked and performs service through the 15th.

The guarantee is pro-rated at 10/15 of the per-half guarantee.

Example 11: An engineer is suspended from the 1st to the 5th. He/she marks up on the 6th. He/she lays off sick on the 7th with no intervening work event.

The guarantee is forfeited. The hours are considered cumulative and would therefore count as unavailable time because there was no work event between the lay off.

Example 12: An engineer is laid off personal leave on 3/1. He/she marks up on 3/2. On 3/5 he/she is called for service and later given a call and release. Later on 3/5 the engineer lays off for a single day vacation. He/she marks up on 3/6. He/she remains marked up and performs service during the pay half.

The guarantee is pro-rated 13/15. It is understood, call and releases will be considered as performing service relating to engineer extra board guarantee.

FEB 2 6 2003
Labor Relations

SPECIAL ARBITRATION BOARD

PARTIES TO DISPUTE:

Brotherhood of Locomotive Engineers
(UP Southern General Committee of Adjustment)
and
Union Pacific Railroad

STATEMENT OF CLAIM:

The Carrier's proposed Terms and Conditions to be applied to interdivisional train service from a new home terminal at Beaumont, Texas does not conform to the requirements of Section 2-Conditions of Article 1X of the Arbitrated 1986 BLE National Agreement.

BACKGROUND

On August 17, 1998, the Carrier served notice, pursuant to Article 1X of the BLE 1986 National Agreement, to establish interdivisional train operations from a new home terminal at Beaumont, Texas to various away-from-home terminals. On December 3, 1998, the parties agreed to an Interim Beaumont Interdivisional Operation, without prejudice to either parties' position.

Following further negotiations, the parties were unable to reach agreement. Accordingly, the dispute was arbitrated on January 18, 2000.

FINDINGS

The General Chairman has provided a well-reasoned brief which he expanded upon at the arbitration hearing. The General Chairman recognizes that, pursuant to Article 1X and a long-line of Arbitral Awards, the Carrier has the right to establish new interdivisional train service. However, he points out that Section 2-Conditions of Article 1X requires that "reasonable and practical conditions shall govern the establishment" of train runs. Moreover, Section 2 provides

flexability in that it also states that the parties are "not limited" to the guidelines. In summary, he contends that the Carrier has not properly recognized and given weight to certain circumstances unique to the BLE. Accordingly, he argues that these elements, as explained in his brief and as argued at the arbitration hearing, should be incorporated in the final Award.

I have carefully reviewed the position of both parties in this matter. The same Article 1X notice became the subject for arbitration between the Carrier and the United Transportation Union. On November 26, 1999, Arbitration Board No. 570 (Arbitrator John B. Criswell) issued its Award. I have no basis for not abiding my the substance of that Award. Accordingly, as is customary in these matters, there is attached to this Award an Agreement in the form of Terms and Conditions for final settlement of the dispute which is hereby imposed on the parties.

Dated this 25th day of February, 2000, at Arlington, VA.

Eckehard Muessig
Arbitrator

Terms and Conditions

between the

Union Pacific Railroad
and the

Brotherhood of Locomotive Engineers

Interdivisional Service - Beaumont

ARTICLE I

Section 1: Service

A. New Interdivisional Service shall be established from Beaumont, as the new home terminal, to the following points and paid the miles shown below with a minimum of a basic day when performing service or combination deadhead and service:

Home Terminal	Away from Home Terminal	Miles
Beaumont – E. Pool	LIVONIA	161 via Beaumont Subdivision 167 via Lafayette Subdivision
Beaumont – E. Pool	LAFAYETTE	129 via Lafayette Subdivision
Beaumont – E. Pool	ALEXANDRIA	148 via Beaumont Subdivision 153 via Lafayette Subdivision
Beaumont – W. Pool	HOUSTON	88 via Beaumont Subdivision to Settegast 85 via Beaumont Subdivision to Englewood 81 via Lafayette Subdivision to Settegast 82 via Lafayette Subdivision to Englewood
Beaumont – W. Pool	Hearne	195 miles via BN & SP to Hearne 213 miles via BN & Valley Jct. To Hearne

B. Crews may operate via any combination of UP and former SP trackage over the Lafayette or the Beaumont Subdivision between Beaumont and Livonia, Lafayette, Alexandria and Houston. Crews will be paid the miles run if routing is different than identified in Section A.

C. Beaumont pool turns established under this Agreement as well as the east long pool turn at Houston established under the Houston Hub Merger Agreement will operate on a

first in/first out basis at both the home and away-from-home terminals. As such, runarounds en route do not apply. The off duty time of a crew determines the first in conditions. If more than one (1) crew arrives at the same time, the order of first in will be based on the crew's order at time of call for original service.

Section 2: Rates of Pay

The provisions of the 1986 National Arbitration Award as amended by subsequent agreements shall apply.

Section 3: Overtime

Overtime will be calculated in accordance with the National Agreements.

Section 4: Call

All crews headquartered at Beaumont will receive a two (2) hour call for any service.

Section 5: Transportation

When a crew is required to deadhead or is required to take charge of a train or is relieved from duty at a point other than the on and off duty points identified in Section 1, the Carrier shall authorize and provide suitable transportation for the crew.

Section 6: Meal Allowance and Eating Enroute

In order to expedite the movement of interdivisional service, the Carrier shall determine the conditions under which such crews may stop to eat. When crews covered by this agreement are not permitted to stop and eat, such crews will be paid an allowance of $1.50 for the trip in accordance with the provisions set forth in the 1986 National Arbitration Award.

Section 7: Suitable Lodging

Suitable lodging will be provided by the Carrier in accordance with existing Agreements.

Section 8: Seniority / Pools and Extra Boards.

A. Service from Beaumont to Livonia, Lafayette, Alexandria. A new east pool shall be established at Beaumont with multiple away-from-home terminals.

B. Service from Beaumont to Houston. A new west pool shall be established at Beaumont with Houston as the away-from-home terminal.

C. Service from Beaumont to Hearne/Valley Junction. This service will be protected by the new west pool.

D. **Beaumont Extra Board.** The existing engineer extra board at Beaumont shall protect vacancies in this new Interdivisional Pool Freight Service, other miscellaneous service the board currently protects, as well as all other service previously protected by the DeQuincy extra board. The Carrier will have the right to eliminate the DeQuincy extra board.

E. **Force Assigning.** All new positions not filled by employees voluntarily, will be filled by force assigning the junior engineer not working as such in the Houston Hub.

Section 9: Repositioning Crews at the Away-From-Home Terminals

A. The highway miles shown below will govern when crews are repositioned/ deadheaded between the following away-from-home terminals:

Alexandria – Lafayette	=	93 miles
Alexandria – Livonia	=	104 miles
Lafayette – Livonia	=	51 miles.

B. The repositioning conditions set forth in this Section are restricted to the terminals listed above.

C. Article I,B,3,a. of the Houston Hub Merger Agreement regarding repositioning crews from one away from home terminal to another will apply.

D. This is subject to the conditions contained in Side Letter No. 1 of the Houston Hub Agreement.

Section 10: Familiarization

To ensure proper familiarization and compliance with applicable FRA regulations, if any, employees new to the territory will be provided with a sufficient number of familiarization trips over territory where they are not currently qualified. Issues concerning individual qualification shall be handled with local operating officers. Employees will not be required to lose time or "ride the road" on their own time in order to qualify for these new operations. Pay will be made in the same manner as if the employee had performed service. If a dispute arises concerning this process, it will be addressed directly with the appropriate Labor Relations Officer and the General Chairman.

Section 11: Hours of Service Relief

A. The provisions for Hours of Service Relief and the utilization of crews as set forth in the Livonia Interdivisional Agreement and the Houston Hub Merger Agreement for both the Houston east long pool and the DeQuincy Operation (short pools) will continue to apply with the exception the Beaumont extra board will replace the DeQuincy extra board.

Section 12: Mileage Regulation

Pools established by this Agreement shall be regulated in accordance with existing Agreements and practices.

Section 13: Beaumont/Amelia

A. Road crews at Beaumont may get or leave their trains at Amelia.

B. When west pool crews get or leave trains at Amelia, it will not change the road miles established in Section 1 of this Agreement. When east pool crews get or leave trains at Amelia, the Beaumont/Amelia road miles will be added to the trip mileage. The miles shall be both over and back as if in combination service.

C. This clause does not change the Beaumont Terminal limits.

Section 14: Held-Away-From-Home Terminal Payments

Crews covered by this Agreement will receive continuous held-away-from-home terminal payments for all time held at the far terminal after the expiration of sixteen hours.

Section 15: Work Train/Turnaround Service

All unassigned work train and/or turnaround service operating out of Beaumont will be protected by the Beaumont extra board.

ARTICLE II

Section 1: Interim Pool and Extra Board Positions

A. On the date of implementing this Agreement, the existing Beaumont Interim operation pool turns, the additional Interim operation extra board positions at Beaumont and any remaining extra board positions at DeQuincy will be abolished.

B. No less than fifteen (15) days prior to the date of implementing this Agreement, the new Beaumont short pool turns (east and west) along with all new additional Beaumont extra

UNION PACIFIC RAILROAD COMPANY

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1416 DODGE STREET
OMAHA, NEBRASKA 68179

February 29, 2000

VIA FAX AND U.S. MAIL

Mr. L.L. Overton
General Chairman UTU
400 Randal Way, Suite 102
Spring, TX 77388

Mr. W.R. Slone
General Chairman BLE
6207 Airport Freeway
Fort Worth, Texas 76134

RE: Implementation of Arbitrated Beaumont Interdivisional Service Agreements

Gentlemen:

This will serve as the Carrier's notice under Article II of the awards rendered by UTU Arbitration Board No. 570 and BLE Arbitration Board No. 573 (copies attached) to implement Beaumont interdivisional service pursuant to these arbitrated agreements on March 16, 2000.

The Carrier will post notices no later than March 1, 2000, abolishing the interim interdivisional pool and extra board positions and any remaining extra board positions at DeQuincy as well as post notices advertising the new Beaumont pool turns (east and west) along with all new Beaumont extra board positions. Employees must apply for these new positions through this bulletin process.

If you have any questions, please contact me at 281-350-7585.

Sincere regards,

Catherine Sosso

Catherine Sosso
Director Labor Relations

cc: Willie Reynolds
Ray Perry
Scott Hinckley
Harry Straub
Dave Martinez
Tony Zabawa
BobMitchell
Marilyn Ahart

bcc: Barkley
Tholen
Quinley
Rod Richardson
Orosco

AGREEMENT

Between the

UNION PACIFIC RAILROAD COMPANY

And the

BROTHERHOOD OF LOCOMOTIVE ENGINEERS & TRAINMEN

IT IS AGREED by and on behalf of the Union Pacific Railroad Company (hereinafter called "Carrier") and the Union Pacific Western Lines and Harbor Line General Committee of Adjustment of the Brotherhood of Locomotive Engineers & Trainmen (hereinafter called "Organization"), as follows:

(a) Pursuant to Article I, Section 11 of New York Dock and Article IX, Section 4 (a) & (b) of the May 19, 1986 BLET National Arbitration/Agreement, as amended by Article IX, Section 4 (b) of the November 1, 1991 BLET National Agreement, a Board of Arbitration (hereinafter called "Board") is hereby established.

(b) The Partisan Members of the Board shall be as follows:

Carrier Member	Randal Guidry General Director - Labor Relations Union Pacific Railroad Company 1400 Douglas Street Omaha, NE 68179 (Telephone: 402-544-4944)
Organization Member	Michael D. Twombly National Vice President BLET 70 High Street Andover, MA. 01810-3529 (Telephone: 978-474-0670)

(c) Either Partisan Member of the Board may be changed at any time by written notice to the other party, as well as to the Chairman and Neutral Member.

(d) The Partisan Members of this Board have selected Mr. Marty Zusman to serve as Chairman and Neutral Member of the Board:

(e) The Board shall conduct a hearing at Omaha, Nebraska, or at another location mutually agreed to by all parties. The hearing shall commence within thirty (30) days of the date of this Agreement or as otherwise mutually agreed to by all parties.

The Board shall have the authority to employ a secretary and other assistance and incur such other expenses as it deems necessary for the proper conducting of business. The compensation and expenses of the Carrier Member shall be borne by the Carrier. The compensation and expenses of the Organization Member shall be borne by the Organization. The compensation and expenses of the Neutral Member shall be borne half by the Carrier and half by the Organization.

(f) The Board shall have jurisdiction only over the Questions at Issue identified in Attachment "A" hereto. No additional claims, grievances or issues shall be submitted to this Board.

(g) The Board shall not have jurisdiction over disputes growing out of requests for changes in rates of pay, rules and working conditions, and shall not have authority to change existing agreements governing rates of pay, rules and working conditions, nor to grant new rules.

(h) At a mutually agreeable date prior to the hearing, but in no event later than fifteen (15) days prior thereto, the parties shall exchange copies of their respective written submissions containing an ex parte statement of facts, supporting evidence and argument of its positions, and at the same time furnish a copy to the Neutral Member. There will be no page limit on this initial filing.

At a mutually agreeable date prior to the hearing, but in no event later than seven (7) days prior thereto, the parties shall exchange copies of any rebuttal or supplemental submission to the initial filing, and at the same time furnish a copy to the Neutral Member. There will be a thirty (30) page limit on rebuttal/supplemental submissions exclusive of exhibits.

The parties may, by mutual agreement exchange their written submissions (initial and/or reply) electronically or on computer disc.

(i) The Board shall hold hearings on the issues submitted to it identified on Attachment "A." Due notice of such hearing shall be given the parties. At such hearing, the Partisan Members may be heard in person or represented by other duly designated Carrier or Organization representatives, including their attorneys, if they so elect. The parties cannot introduce new evidence or arguments at the hearing and written submissions, but may respond to arguments made in those submissions. The Board shall have the authority to request and require the furnishing of additional information or briefing from either party.

(j) The Board shall make findings and render an award in writing on the matter before it within thirty (30) days after the date of the hearing unless such matter is withdrawn

from the Board by joint request of the Carrier and the Organization. This thirty (30) day period may be extended by agreement of the parties. Such findings and awards shall be in writing and copies shall be furnished to the respective parties. Any two members of the Board shall be competent to render awards. The awards shall be final and binding upon both parties to the dispute subject to the provisions of New York Dock and the Railway Labor Act, as amended by Public Law 89-456.

(k) In case a dispute arises involving an interpretation of any award while the Board is in existence or upon recall within thirty (30) days thereafter, the Board upon request of either party shall interpret the award in light of the dispute.

(l) The Board hereby established shall continue in existence until it has disposed of the issue submitted to it under this Agreement after which it shall cease to exist, except for the interpretation of any award as above provided and, in the event either party institutes legal proceedings pursuant to New York Dock and/or Section 3, First (p) or (q) of the Railway Labor Act with regard to an award issued by the Board, until the conclusion of such proceedings and such time thereafter as is necessary to comply with any order of the Surface Transportation Board or a court related to such award.

Dated this 10th day of October 2013.

FOR THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

General Chairman BLET
Mr. D.W. Hannah

FOR THE UNION PACIFIC RAILROAD

Director – Labor Relations, UP
Mr. D. B. Foley

ATTACHMENT "A"

BOARD OF ARBITRATION
ESTABLISHED PURSUANT TO AGREEMENT
DATED OCTOBER 8, 2013

Referee: Marty Zusman
Organization Member: M.D. Twombly - VP - BLET
Carrier Member: R.P. Guidry – Gen Dir LR UPRR

	Subject Matter		ORG. FILE NO.	CARRIER FILE NO.
	CARRIER'S QUESTIONS AT ISSUE: "Question No. 1" "Do the proposed interdivisional operations between Yermo, California, and West Colton, California, and between Yuma, Arizona, and West Colton, California, set forth in Union Pacific Railroad Company's notice dated July 17, 2013, comport with the provisions contained in Side Letter 3 of the Los Angeles Hub Implementing Agreement and Article IX of the 1986 BLE National Arbitration/Agreement, as amended by Article IX of the 1991 BLE National Agreement?" "Question No. 2" If the foregoing question is answered in the affirmative, and in accordance with the requirements set forth in Article IX, Section 2 & Section 4 (a) of the 1986 BLE National Arbitration/Agreement, what shall be the terms and conditions governing engineers assigned to or working in the interdivisional service between Yermo, California and West Colton, California, and between Yuma, Arizona and West Colton, California?"			

	BLET'S QUESTIONS AT ISSUE **"Question No. 1"** **Does the Carrier's proposal of July 17, 2013 (as modified) create new pool operations not covered in the Merger Implementing Agreement for the Los Angeles Hub?** **"Question No. 2"** **Is the Carrier allowed by Article IX, Section 2 & Section 4 (a) of the 1986 BLE National Arbitration/Agreement, to change or merge seniority districts created by the Merger Implementing Agreement for the Los Angeles Hub and the Merger Implementing Agreement for the Southwest Hub? If the answer is "no," can the Carrier use Article IX, Section 2 & Section 4 (a) of the 1986 BLE National Arbitration/Agreement to remove service from the seniority district created by the Merger Implementing Agreement for the Los Angeles Hub to the Merger Implementing Agreement for the Southwest Hub?** **"Question No. 3"** **If the Carrier's proposal of July 17, 2013 (as modified) is a legitimate good faith exercise of a contractual prerogative, what shall be the terms and conditions governing engineers assigned to or working in the interdivisional service between Yermo, California and West Colton, California, and between Yuma, Arizona and West Colton, California?"**			

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB NO. 45)

IN THE MATTER OF ARBITRATION BETWEEN
UNION PACIFIC RAILROAD COMPANY
AND
BROTHERHOOD OF LOCOMOTIVE ENGINEERS & TRAINMEN

(Arbitration Review)

OPPOSITION OF BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN TO APPEAL FROM ARBITRATION AWARD

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INTRODUCTION

On June 7, 2006, Union Pacific Railroad Company ("UP") served notice on the Brotherhood of Locomotive Engineers and Trainmen, General Committee of Adjustment (Union Pacific-Southern Region) ("BLET GCA") of its intent to establish new interdivisional ("ID") service from its operating hub in Houston Texas, pursuant to Article IX of the May 19, 1986 National Agreement between the Brotherhood of Locomotive Engineers[1] and the nation's Class I rail carriers, including UP ("1986 National Agreement"), governing ID Service. Although BLET GCA engaged in discussions with UP over this proposal, the union steadfastly maintained that UP could not impose ID service as it sought under the 1986 National Agreement. Because UP's proposal conflicted with ID service previously established in Houston under the terms of an implementing agreement reached by the parties in 1997 establishing the Houston Hub -- referred to as the Houston Hub Merger Implementing Agreement ("HHMIA") -- UP was precluded from instituting its proposal without the agreement of the union. When the parties were unable to reach agreement over the terms by which UP would implement the proposed ID service, UP asked the National Mediation Board to appoint a neutral to decide the dispute pursuant to the dispute resolution procedures set forth in Article IX, Section 4 of the 1986 National Agreement. In turn, the NMB established Arbitration Board 589 and appointed Arbitrator Robert Perkovich to serve as the neutral member of the Board. Arbitrator Perkovich sustained BLET GCA's position, concluding that the carrier's ID service proposal conflicted with the HHMIA, and was therefore not procedurally proper under the 1986 National Agreement.

---

[1] In 2004, the Brotherhood of Locomotive Engineers ("BLE") became the Brotherhood of Locomotive Engineers and Trainmen, a Division of the Rail Conference of the International Brotherhood of Teamsters ("BLET").

UP has now appealed Arbitrator Perkovich's award to this Board, arguing that the arbitrator was wrong and that the carrier is entitled under Article IX of the 1986 National Agreement to institute new ID service.[2] This Board, however, lacks jurisdiction to review the Perkovich Award, which was issued under Section 3 of the RLA, 45 U.S.C. § 153. The proper and exclusive forum which may entertain review of the Perkovich Award is a federal district court pursuant to 45 U.S.C. §153, First (q) and Second.

Moreover, even assuming this Board possesses jurisdiction to entertain UP's appeal, there are no "recurring or otherwise significant issues of general importance" meriting review by the Board. Finally, it is clear that Arbitrator Perkovich did nothing more than interpret the relevant agreements between the parties, and sided with BLET's position. While UP may disagree with that interpretation, it cannot establish that Perkovich's award suffers from any "egregious error." As such, the STB should decline to review that award.

STATEMENT OF FACTS

UP initiated this dispute when, by letter dated June 7, 2006 (UP Ex. 53), it notified BLET GCA of its "intent to establish new ID unassigned (pool) freight service with a home terminal at Houston, and away-from home terminals at Angleton, Freeport or Bloomington, Texas." UP asserted a unilateral right to implement such ID service pursuant to Article VIII of the 1971 National Agreement with the BLE ("1971 National Agreement") and Article IX of the 1986 Award of Arbitration Board No. 458 ("the 1986 National Agreement").

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[2] Along with an Appeal Brief, UP has filed a two volume Appendix of Exhibits, which we will cite to as "UP Ex. ___." We will cite to additional exhibits attached hereto as "BLET GCA Ex. ___."

Background

For decades, carriers and the BLET have engaged in disputes concerning the ability of carriers to establish and adjust ID service. Whereas carriers in general have sought unilateral discretion to do so, BLET has sought a voice in such determinations to protect its members by ensuring that the carrier's profit-driven motivations for establishing ID service are not achieved by overriding the existing, bargained for interests of those members.

The UP and the operating craft unions are no strangers to such disputes. In 1950, Presidential Emergency Board No. 81 was established to investigate a rules controversy between several carriers and employees represented by the Order of Railway Conductors and the Brotherhood of Railroad Trainmen. On June 15, 1950, PEB No. 81 submitted its report and recommendations to President Harry S. Truman, excerpts of which are attached as BLET GCA Ex. 1. Within that report, the PEB included the carriers' proposal with respect to its right to establish ID service, which vested the carriers with great discretion:

> The Carrier shall have the right to establish interdivisional, interseniority district, intra-divisional and intra-district runs in assigned and unassigned service with the right to operate any such run, whether assigned or unassigned (including extra service), on either a one way or turnaround basis and through established crew terminals....

Id. at p. 111.[3]

The Presidential Emergency Board ultimately recommended that the carriers and the unions negotiate revisions in rules to permit interdivisional runs. This resulted in a negotiated agreement between BLE and the Eastern, Western, and Southeastern Carriers' Conference Committee ("the 1952 Agreement"), which provided a more restrictive right than the carriers had

[3] Pagination is from the original report of PEB No. 81.

sought by eliminating the Carrier's proposed language allowing for the establishment of interdivisional runs "in assigned or unassigned [service] (including extra service)." The Agreement instead provided, at Article IV, that carriers may establish "interdivisional... runs in passenger or freight service" by serving notice on BLE, negotiating in good faith, and failing successful negotiations, invoking the services of the National Mediation Board. UP Ex. 26. If mediation before the NMB was unsuccessful, the parties agreed that a National Committee would resolve the dispute under the Railway Labor Act. *Id.*

The parties then negotiated an agreement in 1971 ("1971 National Agreement") that provided, at Article VIII, for mandatory arbitration in the event that parties to proposed ID service cannot agree to the terms by which that service will be instituted. UP Ex. 25. Moreover, the parties also amended the 1952 Agreement to define UP's right to amend existing switching limits. That provision, Article II, provides:

> (a) Where an individual carrier not now having the right to change existing switching limits where yard crews are employed, considers it advisable to change the same, it shall give notice in writing to the General Chairman or General Chairmen of such intention, specifying the changes it proposes and the conditions, if any, it proposes shall apply in event of such change.

Id.

In 1985, after the carriers and BLE were unable to reach agreement on the terms of a new national agreement, the parties agreed to final and binding arbitration, resulting in Arbitration Award No. 458, which became the 1986 National Agreement. Article IX of that agreement – "Interdivisional Service" – states in relevant part:

ARTICLE IX - INTERDIVISIONAL SERVICE

Note: As used in this Agreement, the term interdivisional service includes interdivisional, interseniority district, intradivisional and/or intraseniority district service.

An individual carrier may establish interdivisional service, in freight or passenger service, subject to the following procedure.

Section 1 - Notice

An individual carrier seeking to establish interdivisional service shall give at least twenty days' written notice to the organization of its desire to establish service, specify the service it proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such service.

* * * *

Section 4 - Arbitration

(a) In the event the carrier and the organization cannot agree on the matters provided for in Section 1 and the other terms and conditions referred to in Section 2 above, the parties agree that such dispute shall be submitted to arbitration under the Railway Labor Act, as amended, within 30 days after arbitration is requested by either party. The arbitration board shall be governed by the general and specific guidelines set forth in Section 2 above.

UP Ex. 24.[4]

Article X of the 1991 BLE National Agreement added the following language as Section 4(b) of Article IX of the 1986 National Agreement:

The carrier and the organization mutually commit themselves to the expedited processing of negotiations concerning interdivisional runs, including those involving running through home terminals, and mutually commit themselves to request the prompt appointment by the National Mediation Board of an arbitrator when agreement cannot be reached.

UP Ex. 27.

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[4] All references herein to "interdivisional service" encompasses interdivisional, interseniority district, intradivisional and/or intraseniority district service.

UP's Hub Restructuring

In August 1996, the STB approved the common control and merger of the rail carriers controlled by Union Pacific Corporation (Union Pacific Railroad Company and Missouri Pacific Railroad Company) and the rail carriers controlled by Southern Pacific Rail Corporation (Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company) in Finance Docket 32760 (Sub-No. 44). *Union Pacific Corp. - Control and Merger - Southern Pacific Transp. Co.*, 1 S.T.B. 233 (1996). The Board conditioned its approval of this merger by imposing the labor protective conditions set forth in *New York Dock Ry. - Control - Brooklyn Eastern Dist.*, 360 I.C.C. 60, *aff'd sub nom, New York Dock Ry. v. United States*, 609 F.2d 83 (2nd Cir. 1979) ("*New York Dock*").

Following the merger, UP converted its operations to a "hub" system, creating a number of "hubs" across its system consolidating particular former train lines and origination and destination points. Per the requirements of *New York Dock*, UP negotiated implementing agreements with the BLE General Committees of Adjustment corresponding with each hub being created.[5] One such hub was established in Houston, Texas. UP and the BLET committees negotiated three implementing agreements to cover the new Houston Hub operations -- the Houston Hub Standby Seniority Merger Implementing Agreement, the Merger Implementing

[5] BLET General Committees of Adjustment have jurisdiction along former railroad property lines. Consequently, UP negotiates different implementing agreements with different GCAs dependent on the territory the implementing agreement is to cover.

Agreement for Houston Hub Zones 1 and 2, and the Merger Implementing Agreement for Houston Hub Zones 3, 4, and 5.[6]

Under the HHMIA, crews departing from Houston would run to a destination and return to Houston. If a crew was not able to return to Houston before exceeding its maximum hours of service as set forth in the Hours of Service Act, 49 U.S.C. § 21102, the carrier is obligated to transport the crew members back to Houston pursuant to existing collective bargaining agreements, in which case a second crew would be dispatched to continue the run. Upon a crew's return to Houston, existing agreements required a crew change. In other words, a crew could not run through the Houston terminal in order to reach a further destination without a crew change or additional pay. Existing agreements also imposed additional requirements on each run, such as limiting to three the number of moves permitted at a terminal or intermediate point, requiring the carrier to compensate engineers for the actual miles that service was performed, and providing that crews would work on a "first-in, first-out" basis. For example, UP could run a crew from Houston to Angleton or Freeport in turnaround service, or Houston to Bloomington/Victoria, Texas, laying over for a return trip to Houston. If the crew exceeded its hours of service on the return trip to Houston, UP would dispatch a replacement crew and transport the expired crew back to Houston.

In Article II.A. of the HHMIA ("Applicable Agreements"), the parties agreed that the terms of the HHMIA would supersede any conflicting terms in then-existing agreements:

> All engineers and assignments in the territories comprehended by this Implementing Agreement will work under the Collective Bargaining Agreement currently in effect

---

[6] Hereafter, unless otherwise specified, all references to the "HHMIA" are to the Merger Implementing Agreement for Zones 3, 4, and 5.

between the Union Pacific Railroad Company and the Brotherhood of Locomotive Engineers dated October 1, 1977 (reprinted October 1, 1991), including all applicable national agreements, the "local/national" Agreement of May 31, 1996, and all other side letters and addenda which have been entered into between date of last reprint and the date of this Implementing Agreement. ***Where conflict arises, the specific provisions of this Agreement shall prevail.*** None of the provisions of these agreements are retroactive.

UP Ex. 6, p. 11 (emphasis added).

The HHMIA also contained a Savings Clause (Article IV.A.) that provides "[t]he provisions of the applicable Schedule Agreement will apply *unless specifically modified herein.*" Emphasis added. *Id.* at p. 16.

UP's 2006 Notice To Establish ID Service in the Houston Hub

Although UP agreed to these provisions in consideration for BLET's agreement to enter into the HHMIA, the carrier sought to override these provisions through its June 7, 2006 proposal to establish ID service within the Houston Hub. Specifically, the ID service UP proposed would run from Houston to points South, including Angleton, Freeport, and Bloomington, as well as North of Houston to Spring, Texas. The significant changes that UP proposed from existing service included, but were not limited to, the following:

- Existing pools that operate between (1) Houston and Freeport, (2) Houston and Angleton, and (3) Houston and Bloomington, would be eliminated and replaced with a single pool that could be called on to operate between Houston and any of these points, which would each become away-from-home terminals, "via any route, trackage or any combination of routes and trackage." Article I, Section 2.A.2. and 2.B.2. UP could rely on this language to remove existing restrictions, such as the limitation of three moves at terminals and intermediate points.

- The requirement of a crew change in Houston would be eliminated, and crews could be required to run through Houston when coming from or going to Spring, Texas (or any point between Houston and Spring). Article I, Section 2.A.1., 2.B.1, and 2.B.3.

- Crews would also perform turnaround service out of the home or away-from-home terminals to any location on the territory, including multiple trips, without existing mileage limitations provided in Article 4(k) of the BLET UP Southern Region Agreement, and will be paid actual miles worked with a minimum of a basic day. Article I, Section 2.E.

- Crews would no longer necessarily receive their train at Houston or an away-from-home terminal, but could instead be transported to any location within the territory to receive their train, including Spring, Texas (or any point between Houston and Spring). Article I, Section 2.A.1. and 2.B.1.

- UP would eliminate the first-in, first-out order in which employees are called into service pursuant to Article 26(d) of the Schedule Rules, and be permitted to call employees at both the home and away-from-home terminals into service at any other location, "irrespective of other employee standings on other away-from-home terminal boards." Article I, Section 2.D.1.

- Employees would be paid for certain trips originating from away-from-home terminals based on the actual mileage of the runs involved. Employees who are transported from one away-from-home terminal to another in order to receive their train would therefore be paid for less miles than actually traveled because the highway mileage exceeds rail mileage traveled. Article I, Section 3.B.[7]

In response to UP's Notice, BLET GCA agreed to engage in discussions with the carrier in an attempt to reach a mutually acceptable agreement with respect to the proposed ID service. The union, however, did so while steadfastly maintaining that it was not obligated to engage in such discussions because the HHMIA, as discussed below, did not give UP the right to establish the ID service it proposed. The parties met to discuss UP's proposal on July 17 and 26, August 14, and September 7, 2006, but were unable to reach agreement.

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[7] On page 24 of its submission to Arbitrator Perkovich, BLET GCA provided an example of how this would occur. An engineer that goes on duty in Bloomington, is deadheaded to Freeport (122 highway miles), receives his train and runs to Spring (97 rail miles), and deadheads back to Houston (24 miles) travels a total of 243 miles, but is only paid 197 miles under UP's table on page 4 of its proposal, shorting each crew member 46 miles. UP Ex. 54, p. 24.

As a result, on September 29, 2006, UP's Director of Labor Relations S.F. Boone, wrote to BLET GCA's General Chairman Gil Gore to advise Gore that the carrier intended to pursue the matter to arbitration. On December 4, 2006, Boone wrote to Gore and provided a proposed Public Law Board agreement that would govern the arbitration proceeding. BLET GCA Ex. 2. On January 5, 2007, Boone wrote to Gore again with another proposed agreement. BLET GCA Ex. 3. On January 22, 2007, Boone wrote to the NMB, requesting the appointment of a neutral pursuant to Article IX, Section 4 of the 1986 National Agreement to decide the dispute over UP's June 7, 2006 notice to BLET. BLET GCA Ex. 4. On January 31, 2007, the NMB advised the parties that it had established Arbitration Board 589 to hear the dispute, and appointed Arbitrator Robert Perkovich to serve as the neutral member and Chairman of the Board. BLET GCA Ex. 5. The parties filed written submissions and presented oral argument before Arbitrator Perkovich at a hearing on June 18, 2007.

Prior Related Disputes

Before reviewing the award of Arbitration Board 589, it is necessary to examine several prior disputes between UP and BLET involving the interplay between existing collective bargaining agreements and hub merger implementing agreements. In one such case, Arbitration Board 581, chaired by Arbitrator Ann Kenis, held that the merger implementing agreements that established the North Little Rock/Pine Bluff, Kansas City, and St. Louis hubs precluded UP from serving a notice pursuant to Article IX of the 1986 National Agreement to establish ID service that conflicted with the respective hub agreement. UP Ex. 49 ("Kenis Award"). In a subsequent decision, Arbitration Board 590, chaired by Arbitrator John Binau, held that the Los Angeles Hub Merger Implementing Agreement ("LAHMIA") language was substantially different than

the language in the hub agreement reviewed by Kenis and did not preclude UP from serving notice pursuant to Article II of the 1971 National Agreement to extending switching limits in the LA Hub. UP Ex. 52 ("Binau Award").

The Kenis Award

These are the facts underlying the Kenis Award: On May 16, 2003, UP served notice on the BLET, General Committee of Adjustment (Union Pacific-Central Region), pursuant to Article IX of the 1986 National Agreement, of the railroad's intent to establish new ID service between North Little Rock/Pine Bluff and Memphis. BLET's General Committee objected, arguing that UP's notice was defective because the proposed ID service conflicted with the North Little Rock/Pine Bluff hub merger implementing agreement ("North Little Rock/Pine Bluff Hub Agreement"). When the parties were unable to reach agreement on UP's proposal, they progressed the dispute to arbitration. UP then served notice, on August 29, 2003, of its intent to also establish ID service in both the Kansas City and St. Louis hubs, which the same BLET GCA argued were defective under the applicable hub merger implementing agreements in those areas ("Kansas City Hub Agreement" and "St. Louis Hub Agreement"). The parties were unable to agree on whether the disputes should be resolved through the arbitration procedures in Article IX, Section 4 of the 1986 National Agreement, or under the *New York Dock* conditions. As a result, Arbitrator Kenis was designated to adjudicate both matters.

Kenis found that these disputes turned on several provisions that were identical in the three hub merger implementing agreements. The agreements each contained a Savings Clause that provided "[t]he provisions of the applicable Schedule Agreement will apply unless

specifically modified herein."[8] Each agreement also contained an article entitled "Applicable Agreements" that provided "[a]ll engineers and assignments in the territories comprehended by this Implementing Agreement will work under the Collective Bargaining Agreement currently in effect.... Where conflict arises, the specific provisions of this Agreement shall prevail...."[9] Kenis found that based on the Savings Clause, UP did not completely extinguish its rights under Article IX of the 1986 National Agreement. However, based on the "Applicable Agreements" Article, those rights were not "unfettered." Kenis Award, 22. Kenis explained that these provisions are "patently clear":

> Carrier's Article IX rights under the 1986 National Agreement were not expressly modified or nullified under the hub merger agreements, and therefore they still exist and apply. However, when those rights have been exercised in a manner that conflicts with or modifies the provisions of the hub merger implementing agreements, the implementing agreements must be given precedence. In this case, the hub merger implementing agreements prevail.

Id. at 20. Kenis went on to find that a side letter incorporated into the North Little Rock/Pine Bluff Hub Agreement further supported her conclusion:

> To dispel any doubt about the interplay between the pre-existing agreements and the implementing agreements, the side letter incorporated in the hub merger implementing agreements plainly states that, to the extent that there are other applicable collective bargaining agreements that were not expressly modified or nullified, "they still exist and apply." However, the parties expressly acknowledge that "the specific provisions of the Merger Implementing Agreement, where they conflict with the basic schedule agreement, take precedence, and not the other way around."

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[8] *Compare*, UP Ex. 10 (North Little Rock/Pine Bluff Hub Agreement, Art. VIII.A., p. 24), *with* UP Ex. 7 (Kansas City Hub Agreement, Art. VIII.A., p. 24), *and* UP Ex. 18 (St. Louis Hub Agreement, Art. VIII.A., p. 26).

[9] *Compare*, UP Ex. 10 (North Little Rock/Pine Bluff Hub Agreement, Art. IV., p. 19), *with* UP Ex. 7 (Kansas City Hub Agreement, Art. IV.A., p. 19), *and* UP Ex. 18 (St. Louis Hub Agreement, Art. IV.A., p. 21).

Id. at 23.

Kenis also rejected UP's argument that there was a past practice establishing that it could implement ID service in territories covered by a merger implementing agreement without protest by the union. She held that "the parties are entitled to insist on the enforcement of the plain and unambiguous provisions of an agreement, even when a contrary practice exists." *Id.*

Accordingly, Arbitration Board No. 581 held that "the New York Dock UP/SP merger Agreement for the North Little Rock/Pine Bluff hub bar[red] Union Pacific Railroad Company from exercising its right to establish ID service pursuant to Article IX of the May 16, 1986 BLE National Agreement." Kenis Award, 26.[10]

UP sought this Board's review of the Kenis Award but the carrier failed to file a timely appeal. *Union Pacific Corp. - Control and Merger - Southern Pacific Rail Corp.*, Finance Docket 32760 (Sub-No. 43) (S.T.B. 2005). Unable to challenge the Award directly, UP attempted to narrow its reach by serving notice on the same BLET GCA (UP-Central Region) of its intent to establish a run between Kansas City and Labadie, Missouri, which was one of the runs it proposed establishing in the notice that was at issue in the Kenis Award. In response, the GCA filed a civil action in the U.S. District Court for the Northern District of Illinois seeking to enforce the Kenis Award and prevent UP from establishing this new run. The District Court found that the Kenis Award was ambiguous, because Board 581 may have concluded that UP's proposal to only establish the Kansas City to Labadie run may pass muster under the Kansas City

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[10] Kenis noted (fn. 3) that implementing agreements for the St. Louis and Kansas City Hubs had identical language but that Arbitration Board 581 lacked jurisdiction over UP notices to establish ID service in those hubs as there had not yet been any conferences over UP's notices, as required by the 1986 National Agreement.

Hub Agreement, and so remanded the case to the Board. *Brotherhood of Locomotive Engineers & Trainmen v. Union Pacific R.R. Co.*, 2006 WL 2191967 (N.D.Ill. 2006). BLET appealed that decision to the U.S. Court of Appeals for the Seventh Circuit, which rejected UP's arguments. It found that "there [was] nothing in the panel's opinion to suggest that the number of routes combined in a proposal has any bearing on whether requiring an engineer to travel more than 25 miles from his home terminal would violate the applicable Hub Merger Implementing Agreement. That would be a formula for evasion." *Brotherhood of Locomotive Engineers & Trainmen v. Union Pacific R.R. Co.*, 500 F.3d 591, 593 (7th Cir. 2007).

The Binau Award

On September 26, 2006, UP served notice on the BLET General Committee of Adjustment (Union Pacific – Western Lines) of its intent to extend switching limits in West Colton, California, which is within the Los Angeles Hub. UP served its notice pursuant to Article II of the 1971 National Agreement, discussed above at p. 4. BLET objected to UP's proposal, arguing that the terms of the LAHMIA foreclosed the Carrier's right to extend switching limits as proposed, and relied on the Kenis Award to support its position. When the parties could not resolve their differences, the dispute was submitted to arbitration.

Arbitrator Binau rejected the GCA's argument and distinguished this situation from the one that Kenis confronted:

> The first factor [on which Binau based his decision] was that the Award rendered by Arbitration Board No. 581 or Kennis [sic] award does not support the Organization's position. It is clear from the award that Referee Kennis based her decision on specific agreement language not found in the Los Angeles Hub Agreement. The Board agrees with the Carrier that a side by side comparison of Article IV.A. in the Kenis Award with Article VI, Section C of the Los Angeles Hub Agreement clearly shows the phrase

"[W]here conflicts arise, the specific provisions of this Agreement shall prevail" is only in Article IV.A. and not in Article VI, Section C of the Los Angeles Agreement.

Binau Award, 21.

The Perkovich Award

Arbitrator Perkovich upheld the union's position. UP Ex. 1 ("Perkovich Award"). He explained that under the HHMIA, UP operates four freight pools between Houston and Angleton/Freeport/Bloomington/Spring. Perkovich Award, 3. Because the Houston to Angleton/Freeport pool was a turnaround operation with no away-from-home terminals, crews would leave their trains at Houston or, if they exhausted their hours under the federal Hours of Service law, would be transported back to Houston by the carrier. *Id.* Further, he noted that the HHMIA prevented UP from operating between Spring and Angleton/Freeport/Bloomington without changing crews in Houston as UP proposed. *Id.* at 3. Perkovich found that UP's ID proposal would create a single pool that would operate throughout these territories with Houston as the home terminal, and would allow UP to operate through Houston to Spring without changing crews. *Id.*

After making these findings, Perkovich began his analysis by briefly examining his authority under Article IX of the 1986 National Agreement. He determined that the question whether UP's June 7, 2006 notice was "procedurally sound" under Article IX, Section 1, is a "threshold inquiry" which, if answered in the negative, could end his analysis without reaching the question of whether the terms and conditions proposed by UP are appropriate under Article IX, Section 2. *Id.*

With respect to this initial inquiry, Perkovich explained that each party relied on a separate arbitration award in support of their positions. BLET relied on the Kenis Award to argue that because UP's proposed ID service conflicted with the provisions of the HHMIA, UP's notice was defective. UP, on the other hand, relied on the Binau Award to argue that it was entitled to establish ID service under the HHMIA. Perkovich explained that the Board "carefully reviewed the parties' submissions and in particular the decisions of Arbitration Boards 581 and 590 [and found] that they can be reconciled and that... the decision of Arbitration Board 581 must govern this dispute." *Id.* at 3.

Perkovich found that the HHMIA contained the same "Applicable Agreements" provision that was in the agreements before Kenis – "Where conflicts arise the specific provisions of this Agreement shall prevail." HHMIA, Article II.A. He then found that "unlike the merger implementing agreements before Arbitrator Board 590 [Binau], none of those in the record before us provide that 'the system and national collective bargaining agreements,...shall prevail.' In other words the [HHMIAs] are more like those relied on by Arbitration Board 581 [Kenis] rather than those relied upon by Arbitration Board 590." *Id.* at 4. Arbitrator Perkovich therefore determined to follow the Kenis Award – "a decision between these same parties on the very same property...." *Id.* He then completed his analysis by concluding that UP's June 7, 2006 notice of its intent to establish ID service did in fact conflict with the HHMIA:

> As pointed out by the Organization it does so with respect to, *inter alia*, first-in/first-out provisions, terminal limits, and seniority rights. Thus, under the parties' agreement that the Hub Merger Implementing Agreements "shall prevail" we find, and we so order.

Id. at 4-5.

SUMMARY OF ARGUMENT

We show below that UP's request that this Board review the Perkovich Award should be denied. UP's right to seek review of the Award properly lies in federal court under the provisions of the Railway Labor Act. Even were this Board to find that it has jurisdiction, it should deny UP's request because the Award involves no "recurring or otherwise significant issues of general importance" as required by the Board's *Lace Curtain* standard of review. Moreover, the Award is based on a straightforward interpretation of agreements negotiated by these parties, and thus contain no egregious error or other fatal flaw warranting its vacateur.

ARGUMENT

I. This Board Lacks Jurisdiction Because UP's Right is to Seek Review of the Perkovich Award Lies Exclusively Under the Railway Labor Act.

There is no question that Arbitration Board 589 was created pursuant to Section 3, Second of the RLA. Section 3, First (q), 45 U.S.C. §153, First (q) establishes the jurisdictional basis for review of Section 3 arbitration boards:

> If any...carrier...is aggrieved by any of the terms of an award or by the failure of the [Section 3 board] to include certain terms in such award, then such...carrier may file in any United States district court...a petition for review of the [board's] order....The court shall have jurisdiction to affirm the order of the [board] or to set it aside, in whole or in part, or it may remand the proceeding to the [board] for such further action as it may direct. On such review, the findings and order of the [board] shall be conclusive on the parties, except that the order of the [board] may be set aside, in whole or in part, or remanded to the [board], for failure of the order to conform, or confine itself, to matters within the scope of the [board's] jurisdiction, or for fraud or corruption by a member of the [board] making the order.

The Section 3 arbitration process, with its judicial enforcement and review scheme in the federal courts, has been deemed the exclusive method for resolving disputes over the meaning of rail labor agreements. *Union Pacific R.R. Co. v. Price*, 360 U.S. 601, 612-615 (1959); *Andrews v.*

Louisville & Nashville R. Co., 406 U.S. 320 (1972). As the Supreme Court held in another case where a party tried unsuccessfully to add a new term into the Act, "[a] contrary conclusion would ignore the terms, purposes and legislative history of the [RLA]." *Union Pacific v. Sheehan*, 439 U.S. 89, 94 (1978).

Despite this longstanding principle of law, UP asks this Board to inject itself into what is essentially a contract interpretation dispute. And it does so only after consistently handling its dispute with BLET as if it were an RLA matter. At all times before UP petitioned this Board to review the Perkovich Award, UP treated this dispute as arising under a collective bargaining agreement that is subject to and governed by the provisions of the Railway Labor Act. UP has never before even suggested that this dispute should have been heard by a § 11 panel under *New York Dock*, or that review would lie with the STB. By its affirmative conduct, and failure to raise such arguments, UP has consented to resolve this dispute through the procedures set forth in the RLA, which provides no statutory predicate for this Board to review this award. UP has thus waived any right it may have had to utilize the dispute resolution procedures set forth in the *New York Dock* conditions.

A. The Parties Elected to Proceed Under the Arbitration Procedures Established in the Railway Labor Act.

By notice dated June 7, 2006, UP advised the BLET of its intent to establish ID service in its Houston Hub "Pursuant to Article IX 'Interdivisional Service' of the May 19, 1986 BLE National Agreement (Arbitration Award No. 458)." UP Ex. 53. Section 4(a) of that provision states that "[i]n the event the carrier and the organization cannot agree on the matters provided for in Section 1 ["Notice"] and the other terms and conditions referred to in Section 2

["Condition"], the parties agree that such dispute shall be submitted to arbitration *under the Railway Labor Act, as amended....*" UP Ex. 24 (emphasis added). The carrier did not reference either the HHMIA or the *New York Dock* conditions associated with the HHMIA.

Following service of this Notice, the parties entered into voluntary negotiations in an attempt to agree upon terms governing UP's proposed service changes. During those discussions, BLET made UP aware of its position that UP could not unilaterally implement the proposed ID service under Article IX of the 1986 National Agreement because the proposed service conflicted with the terms of the HHMIA. Unable to reach agreement, in letters dated December 4, 2006 and January 5, 2007, UP advised BLET of its intent to progress the dispute to arbitration pursuant to Article IX of the 1986 National Agreement – that is, pursuant to § 3, Second of the RLA. BLET GCA Exs. 3, 4. UP asked BLET to enter into an arbitration agreement to resolve this dispute "Pursuant to Section 3, Second of the Railway Labor Act, as amended by Public Law 89-456, a Public Law Board (hereinafter called "Board") is hereby established." *Id.* The draft agreements further provided, at paragraph (j), that "[t]he awards [issued by the Board] shall be final and binding upon both parties to the dispute, subject to the provisions of the Railway Labor Act...." *Id.*

UP did not ask to invoke arbitration under the *New York Dock* protective conditions in the instant dispute. This is particularly noteworthy given that when the parties progressed the dispute over the North Little Rock/Pine Bluff Agreement to Arbitrator Kenis, by contrast, Kenis was appointed to oversee *both* a *New York Dock* arbitration panel as well as an adjustment board

under § 3, Second of the RLA.[11] Based on the totality of the carrier's actions, and its failure to previously argue either that this dispute should have been resolved by a *New York Dock* panel or that review would be before the STB, UP has waived its right to now argue that this dispute should be resolved in any manner other than the dispute resolution procedures of the RLA.

In *CSX Transp., Inc. v. Transp. Communications Int'l Union*, 413 F.Supp.2d 553 (D.Md. 2006), *aff'd on other grounds, CSX Transp., Inc. v. Transp. Communications Int'l Union*, 480 F.3d 678 (4th Cir. 2007), the District Court provided a detailed explanation supporting its conclusion that a carrier may be deemed to have waived its right to pursue arbitration through the procedures set forth in *New York Dock*, as opposed to under the RLA. That case arose following CSXT's consolidation of its clerical functions performed at service centers throughout its system to a single location in Jacksonville, Florida, which was accomplished pursuant to a *New York Dock* implementing agreement. During the implementation of that consolidation, a number of disputes arose regarding work assignments, and whether or not clerks at the Jacksonville center, covered by the TCU-SCL agreement, were performing work that still belonged to clerks who remained at the various service centers and were covered by agreements that remained in place at those locations.

The parties submitted a first round of disputes to a Public Law Board established pursuant to § 3, Second of the RLA. That PLB sustained TCU's claims (the Dennis Awards). CSXT did not seek review of those awards. TCU then filed additional claims under the TCU-SCL

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[11] While UP's motivation for not progressing the instant dispute to a *New York Dock* arbitration committee cannot be known, its actions raise the specter that it strategically declined to do so in hopes of achieving a better result than it did before the *New York Dock* Section 11 committee Arbitrator Kenis chaired.

agreement, which were presented to the Third Division of the NRAB, to which both parties presented written submissions and oral argument. After the NRAB announced that the majority of the claims were sustained (the Benn Awards), the carrier member of the panel filed a dissent, arguing for the first time that the disputes should have been handled pursuant to the *New York Dock* provisions, such that the NRAB lacked jurisdiction to resolve the disputes. TCU then submitted another claim to the NRAB Third Division. This time the NRAB sustained the claim over CSXT's objection that the Board lacked jurisdiction to resolve the dispute (the Wesman Award).

CSXT petitioned the federal court in two separate cases (later consolidated) to vacate the Benn and Wesman Awards. CSXT argued that the question whether the disputes should have been resolved by a *NYD* panel or a panel established under § 3 of the RLA was an issue of subject matter jurisdiction that could not be waived and could be raised at any time. The Court rejected both arguments.

The Court explained that the Interstate Commerce Act (49 U.S.C. § 11321(a)) exempted carriers from antitrust and other laws as is necessary to allow a carrier to carry out an ICC-approved transaction. The "other laws" have been found to include the RLA, as well as collective bargaining agreements made pursuant to the RLA. *Id.* at 563 (citing *Norfolk & W. Ry. Co. v. American Train Dispatchers Ass'n*, 499 U.S. 117, 133 (1991)). Whether or not the NRAB has jurisdiction to resolve a dispute, however, is not, as CSXT argued, a question of its subject matter jurisdiction that may not be waived, but rather more akin to personal jurisdiction or whether the carrier is immune, under the ICA, from complying with the RLA or existing collective bargaining agreements, each of which can be waived. The Court then concluded that

CSXT had waived its right to argue that the NRAB lacked jurisdiction to resolve the disputes in the Benn and Wesman Awards:

> CSXT's conduct in invoking the power of the NRAB to resolve these claims, and its voluntary participation in the claim initiated by TCU, is entirely inconsistent with an assertion that it is immune from complying with the CBAs in issue. [With respect to the Wesman Award], CSXT did not raise the jurisdictional issue below at all, and [with respect to the Benn Award], raised the issue only after the entire proceeding was complete, but for a decision by the arbitrator. In short, CSXT waived any immunity it might have enjoyed.

413 F.Supp.2d at 667. That same proposition applies here.

In the instant dispute, UP proposed to institute ID service under Article IX of the 1986 National Agreement which expressly provides that disputes arising thereunder "shall be submitted to arbitration *under the Railway Labor Act, as amended....*" UP Ex. 24. When a dispute arose, UP did just that – it invoked arbitration "pursuant to § 3, Second of the RLA," as set forth in the Arbitration Agreements it presented to BLET. BLET GCA Exs. 3, 4. UP then asked the NMB to appoint a neutral member to chair an arbitration panel under the RLA. When that panel - Board 589 - was established, UP submitted a written submission and oral argument. Because UP chose to arbitrate this dispute under the RLA, review of the Perkovich Award lies with the federal court. Only after Perkovich ruled against UP did UP change course and implicitly attempt to exert immunity from the dispute resolution procedure of the RLA by seeking review from the STB. But just as the District Court in *CSX Transp., Inc. v. Transp. Communications Int'l Union*, 413 F.Supp.2d 667, held that CSXT had waived any immunity it enjoyed from the RLA, so has UP. In short, UP arbitrated this dispute under the RLA and is now bound to the RLA's requirement that a party "aggrieved by any of the terms of an award" must

seek review in federal court pursuant to § 3, First (q). 45 U.S.C. § 153, First (q). The federal courts, not this agency, is the exclusive forum to hear UP's appeal.

The Board's lack of jurisdiction is confirmed by the decision of the U.S. Court of Appeals in *Brotherhood of Locomotive Engineers v. Interstate Commerce Commission*, 885 F.2d 446 (8th Cir. 1989). There, the parties had agreed in a merger protective agreement ("MPA") prior to ICC approval of the Burlington Northern-St. Louis-San Francisco Railway merger that disputes "with respect to interpretation, application or enforcement of any provision of this Agreement" would be submitted to an arbitration board established under the provision of Section 3, Second of the RLA. The ICC accepted the MPA as a fair arrangement protective of employee interests as part of its approval of the merger. BN and BLE later established such a board pursuant to the MPA to resolve a dispute over an employee's entitlement to protective benefits. When the board rendered an award favorable to the union, BN sought ICC review. The Commission granted review and vacated the award. The Court of Appeals set aside the ICC's decision, holding that the Commission did not have jurisdiction to review the award.[12]

The Court explained that even though the Commission approved the MPA as a condition of the merger, the MPA itself "specifically adopt[ed] the procedures of the RLA, which, in turn, vest jurisdiction to review arbitral awards in the district courts. The ICC cannot now alter the terms of the parties' negotiated agreement." 885 F.2d at 449. This same proposition applies with even greater force here, as UP's proposed arbitration agreements to create the arbitration board (the 1986 BLE Agreement) and the arbitration itself were all the product of RLA

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[12] The Court also held that even if the Commission had jurisdiction, it violated the *Lace Curtain* standards by substituting its opinion for that of the arbitrator on a question of fact.

bargaining outside the confines of an ICA or ICCTA transaction. The issue before the arbitrator here was whether the carrier could rely on the substantive terms of that RLA agreement to undertake a new ID run without the union's agreement. The fact that the arbitrator was required to consider the union's defense that the HHMIA superseded the RLA agreement so as to restrict UP's right to establish the new run does not change the fact that the question before the arbitrator was whether UP had the right under the RLA agreement to do what it wanted. The arbitrator answered that question in the negative and his award, like the award in *BLE v. ICC*, is subject to review only in the federal courts under RLA standards.

UP relies on two decisions that it asserts warrant this Board's determination that it possesses jurisdiction, despite the requirements of the RLA. Neither is convincing. *Grand Trunk Western R.R. Co. - Merger - Detroit and Toledo Short Line R.R. Co.*. Finance Docket No. 29709 (Sub-No. 1), 7 I.C.C.2d 1038 (1991), presented a question of benefits entitlement under an implementing agreement that was answered by an RLA Section 3, Second Public Law Board. Specifically, GTW and the UTU disagreed over whether employees hired subsequent to the effective dates of the merger and the implementing agreement were entitled to certain equity job assignments which were included in the labor protective conditions. In their implementing agreement, the parties specifically provided for a PLB dispute resolution process to resolve "claims and grievances with respect to the interpretation or application of this [implementing] Agreement." When GTW was dissatisfied with the PLB decision, it sought review by this Board. This Board found it had jurisdiction because the PLB was "established to consider a New York Dock issue... [so it] would properly operate under New York Dock procedures regardless of what it called itself." *Id.* at 1043. The *GTW* case presented a pure protective benefits dispute. "[T]he

implementing agreements in the main were intended to implement the New York Dock procedures, and copies of the New York Dock conditions are appended to each agreement and incorporated by reference." *Id.* at 1042. Unlike the instant case where the force and effect of a collective bargaining agreement is at the heart of the dispute, the *GTW* case presented a simple matter of determining benefits eligibility under the implementing agreement alone. There was no CBA involvement whatsoever in that dispute.

The Board's decision in *Burlington Northern Inc. and Burlington Northern R.R. Co. - Control and Merger - Santa Fe Pacific Corp. and The Atchison, Topeka and Santa Fe Ry. Co.*, Finance Docket No. 32549 (Sub-No. 23) (2002) did not even address this jurisdictional issue. Indeed, the parties in that case chose an arbitrator selected pursuant to *New York Dock* to resolve their dispute, which involved whether their implementing agreements should include certain terms. Not surprisingly, neither party challenged the Board's jurisdiction in those circumstances.

B. STB Should Decline to Exercise Jurisdiction to Resolve this Post Merger Dispute.

Even if this Board determines that it has the authority to assert jurisdiction over UP's appeal, despite UP's waiver of its right to exert immunity from the dispute resolution procedures of the RLA as described above, it should decline to entertain the appeal. In this post-merger dispute, arising years after the creation of the Houston Hub, there is simply no reason to treat this matter as anything more than a dispute over the accommodation of two negotiated contracts. Resolution of the proper interplay between the 1986 National Agreement and the HHMIA is a matter well within the authority of an arbitration panel convened under § 3, Second of the RLA. This is perfectly consistent with the fact that the STB's jurisdiction to resolve disputes arising

under implementing agreements is neither "timeless [nor] limitless." *Delaware & Hudson Ry. Co.-Lease & Trackage Rights Exemption-Springfield Terminal Ry. Co.*, 8 I.C.C.2d 839, 845 (1992) ("*D & H*").

In *CSX Transp., Inc. v. Transp. Communications Int'l Union*, 480 F.3d 678 (4th Cir. 2007), the Court recognized the limited nature of the STB's jurisdiction to resolve post merger disputes. As explained earlier (p. 20), in 1991, CSXT and TCU entered into a *New York Dock* agreement implementing CSXT's establishment of a centralized customer service center in Jacksonville, Florida. That Agreement provided that clerical work transfers would be progressively phased in over a 36-month period ending in March 1994, and that the transferred work would be performed under what was known as the TCU-SCL Agreement. Soon thereafter, TCU alleged CSXT was wrongly assigning to employees who had not yet transferred to the customer service center work that belonged to employees who had transferred and were working under the TCU-SCL Agreement. The parties progressed a series of disputes pursuant to the TCU-SCL Agreement under RLA Section 3 arbitration procedures to a Public Law Board and the Third Division of the NRAB. CSXT filed suit to vacate the resulting awards issued by the Third Division, arguing the NRAB lacked jurisdiction because resolution of the disputes required interpretation of the Implementing Agreement. Specifically, CSXT maintained that before addressing whether the Scope Rule was violated, it was necessary to interpret the Implementing Agreement to determine whether the positions at issue had been transferred to the centralized customer service center and thus brought under the TCU-SCL Agreement. As such, according to the railroad, the disputes should have been submitted to a *New York Dock* arbitration panel, not RLA Section 3 boards.

The Court rejected CSXT's jurisdictional argument.

> [T]he STB has recognized that its exclusive jurisdiction pursuant to the Interstate Commerce Act over disputes arising from approved transactions or implementing agreements may not be "timeless and limitless." *Del. & Hudson Ry. Co.-Lease & Trackage Rights Exemption-Springfield Terminal Ry. Co.*, 8 I.C.C.2d 839, 845, 1992 WL 46807 (1992). At some point, STB jurisdiction over the interpretation of an implementing agreement ceases, and "the parties will be required to resort to the Railway Labor Act to resolve disputes arising under the collective bargaining agreement then in effect." *Id.* at 845-46; *see also Harris [v. Union Pac. R.R.]*, 141 F.3d [740] at 744 [7th Cir. 1998)] (rejecting the railroad's understanding of 49 U.S.C. § 11341 (a), the predecessor to 49 U.S.C. § 11321(a), that the STB is 'forever in charge of all legal disputes related to a merger.').

Id. at 684 (footnote omitted).

The Court also noted that CSXT had not argued how having the STB, rather than the NRAB, resolve the disputes in issue, was necessary to avoid "frustrat[ing] the orderly execution of the terms of the implementing agreement." *Id.* at 685 (quoting *Del. Hudson Ry. Co.*, 8 I.C.C.2d at 845 (footnote omitted)). As such, the Court concluded that the NRAB, rather than the STB, had properly exercised jurisdiction to resolve these disputes.

In *D & H*, the ICC recognized there were limits on its jurisdiction to resolve disputes involving protective conditions. That case involved continuing attempts by the United Transportation Union ("UTU") to insist on RLA arbitration of disputes over provisions of an arbitration award (the Harris Award) issued pursuant to the *Mendocino Coast* labor protective conditions.[13] UTU had argued that an "incidental work rule" and a "crew consist rule" provided in pre-existing collective bargaining agreements that had been modified in the Harris Award continued to apply. Although the Commission ordered that further disputes be resolved under

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[13] *Mendocino Coast Ry.-Lease and Operate-California Western R.R.*, 354 I.C.C. 732 (1978), *modified*, 360 I.C.C. 653 (1980), *aff'd sub nom. Railway Labor Executives' Ass'n v. United States*, 675 F.2d 1248 (D.C.Cir.1982).

the arbitration provisions of the labor protective agreement, rather than the RLA, it recognized "that at some future time [its] jurisdiction [over such disputes] will cease, and the parties will be required to resort to the RLA to resolve disputes arising under the collective bargaining agreement then in effect." *Id.* at 845-46. With respect to the Harris Award, however, the Commission asserted jurisdiction based on its findings that (1) at issue was the proper interpretation of the Harris Award; and (2) the implementing agreement there was less than two years old and thus "[t]he proximity of this dispute to the award cannot be questioned." *Id.* at 846.

By contrast, this dispute arose nearly a decade after the implementing agreement. UP reorganized its operations into a hub and spoke system following the STB's August 1996 approval of the UP/SP merger. To implement the reorganization in Houston, UP signed a hub agreement with BLET on April 23, 1997. UP has not, and cannot, allege that the implementation of the Houston Hub has been delayed by BLET's objection to UP's June 7, 2006 notice proposing to establish ID service pursuant to Article IX of the 1986 National Agreement. In this post-merger dispute, arising years after the Houston Hub was implemented, there is no sound basis for the STB to asserted its discretionary jurisdiction to review the Perkovich Award. This is particularly true given that it was UP who progressed this dispute to RLA, not *NYD*, arbitration.

II. UP's Appeal Does Not Raise Recurring or Otherwise Significant Issues of General Importance.

Under the *Lace Curtain* standard for review of an arbitration award, the ICC generally defers to an arbitration panel's decision and limits its review to "recurring or otherwise significant issues of general importance regarding the interpretation of our labor conditions."

Chicago & N.W. Transp. Co.-Abandonment, 3 I.C.C.2d 729, 736 (1987) ("*Lace Curtain*"), *aff'd sub nom. Int'l Bhd. of Elec. Workers v. ICC,* 862 F.2d 330 (D.C.Cir.1988). A party seeking STB review of an arbitration award bears a considerable burden in satisfying this standard. Not only must the award in question involve an issue that is not unique to agreements between two parties, it also must have an impact felt beyond that property. This generally involves a dispute over the meaning of a standardized labor protection imposed pursuant to a transaction authorized by the STB, such as the *New York Dock* conditions, as is made evident in the following decisions.

In *Delaware and Hudson Co. - Lease Trackage Rights - Springfield Terminal Ry. Co.* ("*D&H - Springfield Terminal*"), Finance Docket No. 30965 (Sub-No. 4), 1994 WL 464886 (I.C.C. 1994), the Commission agreed to review an arbitration award stemming from a dispute that arose pursuant to its approval of a series of transactions allowing Guilford Transportation Industries, Inc. ("Guilford") to restructure its operations. This included allowing the Springfield Terminal Ry. Company ("ST") to conduct Guilford's rail operations, including those of the Boston and Maine Corporation ("B&M"), a Guilford subsidiary. In implementing these transactions, Guilford abolished all B&M train dispatcher positions and offered the affected employees positions as nonagreement ST train operations managers. Two of the former dispatchers refused the offered employment and filed claims for separation allowances, which the carrier denied based on its position that the employees "fail[ed] without good cause to accept a comparable position" and were thus not entitled to the allowances under Article I, section 6(b) of the Mendecino Coast conditions. *Id.* at *6, n.4.

The arbitration board (David Twomey, neutral) issued an award sustaining the claims, finding that the ST train operations manager positions were not comparable to the abolished train

dispatcher positions because although the skills and responsibilities of the two positions were comparable, the working conditions were not.

In deciding to review the award over the objection of the American Train Dispatchers Association, which represented the former B&M dispatchers, the ICC held:

> We accept administrative review of this arbitration decision because it involves a dispute under the Commission's labor protective conditions imposed in D&H Lease, and raises a potentially significant issue of general importance regarding the interpretation of a labor protective condition that rarely has been addressed by the Commission. Rather than resolving any dispute about facts or evidence, arbitrator Twomey, in his decision, is interpreting the term "comparable position" in Article I, section 6(b) of the Mendocino Coast conditions. Because of the lack of a definitive Commission interpretation of the comparable employment requirement in those conditions and the paucity of arbitral decisions on the subject, it is appropriate and consistent with Lace Curtain for the Commission to review the award under our regulations at 49 CFR 1115.8.

Id. at *4. The Commission went on to affirm the Twomey Award, concluding there was no showing of egregious error, that it did not fail to draw its essence from the labor protective conditions, or that the arbitrator exceeded the scope of his authority. *Id.* at *5.

In *American Train Dispatchers Ass'n v. CSX Transp. Inc.* ("*ATDA v. CSXT*"), Finance Docket No. 28905 (Sub-No. 24), 9 I.C.C.2d 1127 (1993), the Commission agreed to review an arbitration award that resolved a dispute arising out of CSXT's consolidation of its train dispatching functions following several mergers approved by the Commission and subject to the *New York Dock* protective conditions. The carrier excluded from its calculation of dispatchers' average monthly compensation "extraordinary overtime hours and associated earnings" that dispatchers received due to manpower shortages and training needs associated with the consolidation. ATDA objected and progressed the matter to an Article I, Section 11 arbitration committee. The union argued that the carrier's method of calculation violated Article I, § 5(a) of

the *New York Dock* conditions, which states a displacement allowance is to be calculated based on the "total compensation received" by the affected employee in the previous twelve months. The arbitration committee rejected ATDA's claim based on a line of arbitral authority excluding such overtime from "total compensation," and based on its finding that this term is "inherently ambiguous." *Id.* at 1131. The ICC granted ATDA's petition to review the award, agreeing with ATDA's position that "this case is appropriate for appellate review... because of the lack of a definitive Commission interpretation of the 'total compensation' requirement of article I, § 5(a) and inconsistencies between arbitral decisions on the subject.." *Id.* at 1130 (footnote omitted).

In *Wisconsin Central Ltd. - Purchase Exemption - Soo Line R.R. Co.*, Finance Docket No. 31922 (Sub-No. 1), 1995 WL 226035 (I.C.C. 1995), the Board agreed to review an arbitration award interpreting a provision in the *New York Dock* conditions in a dispute that arose after Wisconsin Central Ltd. acquired Soo Line's Ladysmith Line. The dispute involved whether a carrier must provide "test period average" earnings information to affected employees upon request, or only upon proof that an employee has been placed in a worse position as a result of the transaction. A Section 11 arbitration committee held that job abolishment alone does not mean an employee is placed in a worse position. According to the committee, only after an employee has exercised seniority and displacement rights can it be determined whether an employee was adversely affected. The Commission agreed to review the award, "find[ing] that the award involves an element potentially present in almost all transactions in which the agency's conditions are imposed, the preparation and delivery of TPAs. Accordingly, our review of the award is proper under that aspect of our standard of review." *Id.* at *5.

The distinctions between these decisions and the instant dispute are obvious. In each of these decisions the ICC agreed to exercise its review authority in order to interpret standard provisions in labor protection conditions imposed in many transactions, such as the "comparable provision" requirement from the *Mendocino Coast* conditions (*D&H - Springfield Terminal*), and the method of calculating TPAs and requirement to furnish TPA information under the *New York Dock* conditions, (*ATDA v. CSXT* and *Wisconsin Central*). Here by contrast, although the parties agreed that affected employees would be covered by the *New York Dock* conditions, no generally applicable provision of *NYD* is involved in the dispute. Rather, what put the parties at odds, and what Arbitrator Perkovich's interpretation resolved, was the meaning of the "Applicable Agreements" provision the parties included in the HHMIA.

The mere fact that the "Applicable Agreements" provision of the HHMIA, which Perkovich relied on in concluding that UP's June 7, 2006 ID notice of intent was procedurally defective, also appears in other hub merger implementing agreements negotiated between UP and BLET, does not establish a "recurring or otherwise significant dispute of general importance...." UP's suggestion otherwise misconstrues this aspect of the *Lace Curtain* standard. *Lace Curtain* contains two distinct requirements: First, it requires a showing that an arbitration panel's decision must involve "recurring or otherwise significant issues." 3 I.C.C.2d at 736. Second, it requires a showing that the recurring or otherwise significant issue be of "general importance regarding the interpretation of our labor conditions." *Id.* UP has failed to establish either prong sufficiently to warrant review.

To date, a single dispute has arisen concerning the extent of UP's right to establish ID service under Article IX of the 1986 National Agreement in light of the HHMIA. In the

Perkovich award, UP now has guidance as to the limitations on its right to establish ID service in the area covered by the HHMIA. Should it choose to serve notice of its intent to establish other ID service in a manner that conflicts with the HHMIA, the union may raise the same response – but it may not. In the instance here, the union voluntarily conferred with UP but the terms UP proposed were not satisfactory. UP would have the Board surmise that the union will never agree in different circumstances. That is not proof of a recurring issue, it is simply speculation. A mere possibility does not establish a legitimate basis for finding a recurring dispute over which the Board should act.

Likewise, a single, unique dispute arose with respect to the Los Angeles Agreement, which Arbitrator Binau resolved in UP's favor, concluding that the specific provisions of *that* Agreement permitted UP to establish its proposed ID service under Article IX in *that* territory. The Binau Award will serve to provide guidance to the parties should UP serve an additional notice to establish ID service in the area covered by *that* agreement language.

The folly of disregarding an award resolving how a particular hub merger implementing agreement impacts UP's rights under Article IX was made quite evident when UP did just that with respect to the Kenis Award. As described above at p. 13, after the STB declined to review the Kenis Award based on UP's untimely appeal, UP served notice on BLET of its intent to establish a run between Kansas City and Labadie, Missouri, which was one of the runs it proposed establishing in the notice that was at issue in the dispute before Arbitrator Kenis. BLET responded by seeking enforcement of the Kenis Award in federal court. While the U.S. District Court for the Northern District of Illinois dismissed the union's suit based on its finding that the Kenis Award was ambiguous with respect to UP's right to establish the newly proposed

ID service, the U.S. Court of Appeals for the Seventh Circuit disagreed. *Brotherhood of Locomotive Engineers & Trainmen v. Union Pacific R.R. Co.*, 500 F.3d 591 (7th Cir. 2007). The Court recognized that permitting UP to establish ID service that was previously rejected in the Kenis Award created a "formula for evasion," and therefore instructed the district court to enter an order enforcing the Kenis Award. *Id.* at 593. In short, UP's attempt to circumvent the Kenis Award in that instance did not create a "recurring issue," but rather was merely a transparent and illegitimate attempt to overturn the Kenis Award.

UP's argument that it "is now confronted with a recurring dispute and an arbitral split of authority" (UP Brief, 25) between the Kenis and Perkovich Awards on the one hand and the Binau Award on the other, also lacks merit. Arbitrator Perkovich quickly disposed of this same argument when he found there was a significant distinction between the language in the implementing agreement governing Houston and that in the LA agreement that was before Arbitrator Binau. The HHMIA, as well as the hub merger implementing agreements before Arbitrator Kenis, both contain the same "Applicable Agreements" Article, providing "Where conflict arises, the specific provisions of this Agreement shall prevail"; the Los Angeles Agreement before Arbitrator Binau did not. Instead, the Los Angeles Agreement provides "except as specifically provided herein the system and national collective bargaining agreements, awards and interpretations shall prevail." That is why Arbitrator Perkovich found, correctly, that "the decisions of Arbitration Boards 581 [Kenis] and 590 [Binau]... can be reconciled and that... the decision of Arbitration Board 581 must govern this dispute." Perkovich Award, 3. UP's suggestion otherwise is little more than a tactic designed to obtain a ruling from the Board that not only overturns the Perkovich Award, but also implicitly reverses the Kenis Award.

That the Perkovich Award does not contain any recurring issue warranting review is further manifested by the fact that were the Board to assert jurisdiction and set aside the Perkovich Award, that would not preclude or be dispositive with respect to disputes that may in the future arise concerning other hub implementing agreements between UP and BLET. While the existing arbitration awards may serve as guidance in the event UP proposes to establish new ID service in other hubs, those disputes would ultimately turn on the interpretation of those specific agreements and the facts and circumstances of those individual matters.

This is evident from an award issued by Arbitrator John LaRocco interpreting the provisions of the St. Louis Hub Merger Implementing Agreement. In that case, LaRocco recognized the limited relevance that the interpretation of one hub agreement has on the interpretation of another:

> The parties bargained separately over the various hub merger implementing agreements and the Carrier implemented each merger implementing agreement at a different time. This bargaining process and environment strongly suggests that the parties contemplated that the provisions of each hub merger implementing agreement would pertain only to employees and property covered by the particular merger implementing agreement. Otherwise, the Carrier and the Organization would have negotiated a master hub agreement, the terms of which would pierce the boundaries of each hub.

BLE and UP, Art. 1, § 11 Committee, I.C.C. Finance Docket No. 32760 (LaRocco, 2001) (BLET GCA Ex. 6), p. 9.

UP has likewise failed to satisfy the second prong of this aspect of the *Lace Curtain* standard – that this case involves no "issues of general importance regarding the interpretation of [the Board's] labor protective conditions." 3 I.C.C.2d at 736. Arbitrator Perkovich's Award provided a simple determination that UP's rights to establish ID service under Article IX of the 1986 National Agreement were limited by the terms of the HHMIA, a determination that is, to

borrow a well worn phrase, grist for the arbitral mill that does not warrant the Board's discretionary review. Unlike in the decisions cited above in which the ICC or this Board chose to review arbitration awards that turned on the interpretation of standard labor protective conditions that have bearing on transactions between other parties in which those same conditions are imposed, the Perkovich Award merely interprets a provision unique to several agreements between UP and BLET. While that interpretation certainly is important to *these parties*, it cannot be said that it is of *general* importance, as required by *Lace Curtain*.

III. Arbitrator Perkovich's Award Is Soundly Based on the HHMIA and Article IX, and is thus Free of Egregious Error.

A. Standard of Review

Even if the Board disagrees with the BLET and concludes that the Perkovich Award encompasses "recurring or otherwise significant issues of general importance regarding the interpretation of our labor conditions," there are no grounds on which to overturn the Award. Under the *Lace Curtain* standard, "[a]wards are not vacated because of substantive mistake, except when there is egregious error, when the award fails to draw its essence from the labor protective conditions, or when the arbitrator exceeds the specific limits on his authority." *ATDA v. CSXT*, 9 I.C.C.2d at 1130-31 (1993) (citing *Loveless v. Eastern Airlines, Inc.*, 681 F.2d 1272, 1275-76 (11th Cir. 1982)(footnote omitted)). "Egregious error means irrational, wholly baseless and completely without reason, or actually and indisputably without foundation in reason and fact." *Id.*

Moreover, under the Supreme Court's "*Steelworkers Trilogy*" of cases[14], "an arbitrator's decision on the merits and his interpretation of the collective bargaining agreement are to be given extreme deference, even though a court could interpret an agreement differently." *Lace Curtain*, 3 I.C.C.2d at 735 (citing *Loveless v. Eastern Airlines, Inc., supra*). The Commission concluded that its standard of review is meant to be consistent with the *Steelworkers Trilogy*. *Id.* at 736.

In *Lace Curtain*, the Commission reviewed an arbitration award to determine whether it was based on a proper interpretation of the standard employee protection conditions established in *Oregon Short Line R. Co. -Abandonment- Goshen*, 360 I.C.C. 91 (1979)("*Oregon III*"), which were imposed in that case to protect employees affected by the Chicago and North Western Transportation Company's abandonment of several rail lines. The IBEW maintained that a displaced electrician was entitled to compensation for three items related to moving expenses and losses incurred from the sale of his home pursuant to Article 1, Sections 9 and 12 of the *Oregon III* conditions. Finding that the displaced employee was entitled to the amounts sought, the arbitration panel sustained the IBEW's claim, which the carrier petitioned the Commission to overturn.

After the ICC established that it had jurisdiction to review the award, and set forth what is now referred to as the *Lace Curtain* standard, the Commission upheld the award, finding that the award did not fail to draw its essence from the *Oregon III* protective conditions. The Commission specified, however, the limited nature of its review:

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[14] *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); and *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

> This is not to say that we would conclude that the Board's denial of any of these three items would be in error. Put another way, so long as the Board is interpreting and applying the *Oregon III* conditions and not dispensing its "own brand of industrial policy"... we would not object to the Board's granting *or* denying awards on these three particular issues.

3 I.C.C.2d at 736 (emphasis in original).

The U.S. Court of Appeals for the District of Columbia further elaborated on the heavy burden a party must overcome in order to establish that the agency should overturn an arbitration award under *Lace Curtain*:

> Since [*Lace Curtain*] the Commission has employed a sliding scale of deference. An arbitrator's judgments about matters of evidence and causation are treated with deference. An arbitrator's interpretations of Commission regulations and views regarding transportation policy are subject to more searching review. *See, e.g., CSX Corp.-Control*, 4 I.C.C.2d 641, 648 (1988); *Lace Curtain*, 3 I.C.C.2d at 736. *See also Brotherhood of Maintenance of Way Employees v. ICC*, 920 F.2d 40, 44-45 (D.C.Cir.1990); *Employees of the Butte, Anaconda & Pacific Ry. v. United States*, 938 F.2d 1009, 1013-14 (9th Cir.1991), *cert. denied*, U.S. 112 S.Ct. 1474, 117 L.Ed.2d 618 (1992).

Railway Labor Executives' Ass'n v. United States, 987 F.2d 806, 812 (D.C. Cir. 1993).

UP's arguments amount to no more than a disagreement with how Arbitrator Perkovich interpreted provisions in the parties' Houston Hub merger agreement. That is not enough to warrant this Board setting aside the award.

B. Arbitrator Perkovich's Award is Based on a Straightforward and Rational Interpretation of the Parties' Agreements.

Arbitrator Perkovich engaged in a straightforward and rational interpretation of the HHMIA to conclude that it rendered UP's June 7, 2006 notice, served pursuant to Section IX of the 1986 National Agreement, defective because the proposed ID service would conflict with the HHMIA. The arbitrator began by examining his authority under the 1986 National Agreement, finding that his "threshold inquiry" was whether UP's notice was procedurally sound under

Article IX, Section 1. Only if it was, would he have had to examine the terms and conditions on which the proposed service would be implemented. Perkovich Award, 3.

The arbitrator then reviewed the relevant arbitral authority each party presented to him in support of their respective positions – namely the decision of Board 581 [Kenis] relied on by BLET, and the decision of Board 590 [Binau] relied on by UP. *Id.* at 3-4. He recounted that Arbitrator Kenis held the merger implementing agreements before her (from the North Little Rock/Pine Bluff, Kansas City, and St. Louis hubs) contained a Savings Clause that "preserved the Carrier's right to invoke Article IX," but that this right was not "unfettered" because under the HHMIA "where conflicts arise, the specific provision of [the HHMIA] prevail." *Id.* at 3. This latter phrase "clearly and unequivocally evinced a mutual intent that compelled the conclusion that the merger implementing agreements governed over Article IX." *Id.* at 3-4. Perkovich then summarized the Binau award, noting that Arbitrator Binau distinguished the previously decided Kenis Award based on differences in the relevant language in the implementing agreement he had to consider (the LAHMIA). *Id.* at 4.

Applying that precedent to the dispute before him, Arbitrator Petrovich determined that the relevant language of the HHMIA was identical to the provisions that Kenis relied on in rescinding an Article IX notice by UP to establish ID service and different from that relied on by Binau to uphold UP's rights to extend switching limits under a corollary provision in the 1971 Agreement. As such, Perkovich held that Kenis's interpretation of those provisions controlled the interpretation of the HHMIA. *Id.* at 4. He then found that because there was a conflict between UP's proposed ID service and the HHMIA "with respect to, *inter alia*, first-in/first-out

provisions, terminal limits, and seniority rights," the Hub Merger Implementing Agreements 'shall prevail.'" *Id.* at 4-5.

In short, Perkovich merely determined the scope of his authority under Article IX of the 1986 National Agreement under which he was appointed, and interpreted the HHMIA in light of the parties' arguments and relevant arbitral authority. Even if this Board were to disagree with that interpretation, or find that the Award contains a "substantive mistake," that would not provide grounds to set it aside. Rather, the Board would need to find egregious error or determine that the award fails to draw its essence from the agreement, or find that Arbitrator Perkovich exceeded the specific limits on his authority. *See ATDA v. CSXT*, 9 I.C.C.2d at 1130-31. UP has failed to demonstrate any such flaws in the Perkovich Award.

C. Arbitrator Perkovich Properly Concluded that the Relevant Language of the HHMIA was Identical to the Agreements Before Arbitrator Kenis, and Distinct From Language in the Los Angeles Agreement Before Arbitrator Binau.

UP argues that distinctions on which Perkovich relied to distinguish the LAHMIA from the HHMIA are "[b]aseless" and "meaningless." UP Brief, 26, 27. This is surprising, given the plain language of each agreement as well as Arbitrator Binau's reliance on that same distinction in the award on which UP relies heavily throughout its Appeal Brief. The HHMIA contains a Savings Clause that provides: "The provisions of the applicable Schedule Agreement will apply unless specifically modified herein." *See supra*, n.7. It also provides, however, that "[w]here conflicts arise the specific provisions of this Agreement shall prevail..." *See supra*, n.8. Perkovich followed Kenis's lead in concluding that when interpreted together, these provisions mean that:

> Carrier's Article IX rights under the 1986 National Agreement were not expressly modified or nullified under the hub merger agreements, and therefore they still exist and apply. However, when those rights have been exercised in a manner that conflicts with or modifies the provisions of the hub merger implementing agreements, the implementing agreements must be given precedence.

Kenis Award, 20.

By contrast, the LAHMIA *does not* contain any parallel language stating that "[w]here conflicts arise the specific provisions of this Agreement shall prevail..." Binau relied on this key distinction when he concluded that the LAHMIA allowed UP to extend switching lines under Article II of the 1971 Agreement:

> The first factor [on which Binau based his decision] was that the Award rendered by Arbitration Board No. 581 or Kennis [sic] award does not support the Organization's position. It is clear from the award that Referee Kennis based her decision on specific agreement language not found in the Los Angeles Hub Agreement. The Board agrees with the Carrier that a side by side comparison of Article IV.A. in the Kenis Award with Article VI, Section C of the Los Angeles Hub Agreement clearly shows the phrase "[W]here conflicts arise, the specific provisions of this Agreement shall prevail" is only in Article IV.A. and not in Article VI, Section C of the Los Angeles Agreement.

Binau Award, 21.

Likewise, Perkovich adopted Kenis's reasoning that it is this "Applicable Agreement" provision that "clearly and unequivocally evinced a mutual intent that compelled the conclusion that the merger implementing agreements govern over Article IX." Perkovich Award, 3.

UP's argument that Perkovich drew a "baseless" distinction between the HHMIA and LAHMIA (UP Brief, 26-27), completely misses the point. UP suggests that Perkovich based his award on a slight distinction between the Savings Clause in the HHMIA and the three implementing agreements before Kenis, and the parallel "Agreement Coverage" language in the LAHMIA. The former provides that "[t]he provisions of the applicable Schedule Agreement will

apply unless specifically modified herein." UP Ex. 6 (HHMIA, Article IV.A., p. 16). The latter provides "[e]xcept as specifically provided herein the system and national collective bargaining agreements, awards and interpretations shall prevail." UP Ex. 8 (LAHMIA, Article VI.C., p. 12). BLET acknowledges the similarity between these provisions. It is clear, however, as explained above, that the distinction lies in the "Applicable Agreement" provision which is absent from the LAHMIA, but appears in exactly the same form in the agreements before Perkovich and Kenis. Accordingly, UP's argument that Perkovich's award should be vacated because it is based on a "meaningless difference in contract language [that is] is 'wholly baseless' and 'without foundation in reason and fact'"(UP Brief, 27) is factually incorrect.

In essence, arbitrator Perkovich resolved a factual issue: whether the HHMIA "fettered" the carrier's rights under the 1986 National Agreement. He compared the provisions of the two agreements and decided that the HHMIA had that effect. This is a traditional exercise of arbitral authority with which a reviewing body does not interfere. UP wants this Board to substitute its opinion for the arbitrator's as to what the facts reveal. *Lace Curtain* and its progeny explicitly declare that the Board will not engage in that kind of second-guessing. *USX Corp. - Control Exemption - Transtar, Inc.*, STB Finance Docket No. 33942 (Sub-No. 1) (S.T.B. 2002); *Union Pacific Corp. - Control and Merger - Southern Pacific Rail Corp.*, Finance Docket 32760 (Sub-No. 42) (S.T.B. 2006); *Brotherhood of Locomotive Engineers v. Interstate Commerce Commission, supra*, 885 F.2d at 450 ("The ICC erred in substituting its judgment as to factual findings.").

D. UP's Attempt to Challenge the Kenis Award Through This Proceeding is Improper.

After Arbitrator Kenis issued her award finding that the notices UP served proposing to establish ID service in the North Little Rock/Pine Bluff Hub procedurally defective, UP failed to perfect a timely appeal before the Board, (*Union Pacific Corp. - Control and Merger - Southern Pacific Rail Corp.*, Finance Docket 32760 (Sub-No. 43) (S.T.B. 2005)) thus making that Award final and binding with respect to those agreements. As described above (pp. 13-14), UP then attempted to narrow the impact of the Kenis Award by proposing to institute ID Service (a run between Kansas City and Labadie, Missouri), that was within the proposal that was at issue before Kenis, which was rejected by the U.S. Court of Appeals for the Seventh Circuit in *Brotherhood of Locomotive Engineers & Trainmen v. Union Pacific R.R. Co.*, 500 F.3d 591, 593 (7th Cir. 2007). Unsatisfied with those results, UP now spends as much time challenging the Kenis Award as it expends seeking to set aside Arbitrator Perkovich's decision. This is readily apparent in UP's argument that "[g]iven that the differences in contract language cannot justify the split in arbitral authority [between the Kenis and Perkovich Awards], the question is whether Arbitrator Kenis's internally inconsistent reasoning, which Arbitrator Perkovich adopted, can survive this Board's review. As shown below, it cannot." UP Brief, 28.[15] While this backdoor approach to challenging Kenis's Award is clever, it should not be tolerated.[16] With respect to the

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[15] Likewise, in the final paragraph of its argument, UP argues "[i]n the end, if the Perkovich *and Kenis* Awards stand, the real victims will be the shippers and the public." UP Brief, 37 (emphasis added).

[16] In the event that the Board concludes that Perkovich's Award suffers some fatal flaw, the Board's decision should make clear that the Kenis Award remains final and binding on the parties.

Perkovich Award, which does adopt the reasoning set forth in the Kenis Award (as well as the Binau Award, contrary to UP's assertion otherwise), a brief review of that reasoning establishes that it is entirely consistent.

UP argues that the Kenis Award is inconsistent in so far as she held that "the Merger Implementing Agreements do not modify UP's rights, but they do modify UP's rights." UP Brief, 28. This characterization is completely inaccurate. Kenis's decision that UP's notice to establish ID service under Article IX of the 1986 National Agreement was defective pursuant to the applicable hub merger implementing agreements was based on a two-part determination. Kenis summarized her decision as follows:

> Carrier's Article IX rights under the 1986 National Agreement were not expressly modified or nullified under the hub merger agreements, and therefore they still exist and apply. However, when those rights have been exercised in a manner that conflicts with or modifies the provisions of the hub merger implementing agreements, the implementing agreements must be given precedence. In this case, the hub merger implementing agreements prevail.

Kenis Award, 20. This first conclusion, that the hub merger implementing agreements "were not expressly modified or nullified," is based on her interpretation of the Savings Clause included in all three merger implementing agreements before her (establishing the North Little Rock/Pine Bluff, Kansas City, and St. Louis Hubs). She relied on that Clause to reject the Organization's argument that "[those] Hub Merger Implementing Agreements should be construed as a deliberate intent to *surrender* Article IX rights under the implementing agreements." Kenis Award, 20 (emphasis added). Although Kenis made this limited finding based on the Savings Clause before analyzing the "Applicable Agreements" provision, UP cites to this portion of the Award to make the broad assertion that "[t]he Kenis Award admits that the Merger Implementing

Agreements **do not modify** UP's Article IX rights to institute new interdivisional service." UP Brief, 28 (citing Kenis Award, 20).[17]

UP then continues in this same vein, premising an entire section of its argument on the following blatant mischaracterization of Kenis's Award:

> In an apparent attempt to explain her inconsistent award, as well as her decision to ignore the parties' past practices, Arbitrator Kenis found that the "plain and ambiguous language" of the Merger Implementing Agreements "affords no other conclusion" than that UP intended to give up its rights under Article IX to modify a Merger Implementing Agreement.

UP Brief, 31.

UP selectively plucked these quoted phrases from this passage near the end of Kenis's Award which, when read in its entirety, exposes the carrier's intended deception:

> To summarize thus far, we conclude that the Hub Merger Implementing Agreements retained Carrier's rights under Article IX of the 1986 National Agreement and, further, that when those rights conflict with the provisions of the merger implementing agreements, they must give way. The plain and unambiguous language of Article IV.A. ["Applicable Agreements"] and the side letter affords no other conclusion.

Kenis Award, 24-25.

The second conclusion from Kenis's summary is that "when those [Article IX] rights have been exercised in a manner that conflicts with or modifies the provisions of the hub merger

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[17] UP also mischaracterizes this portion of the Kenis Award on page 29 of its Brief. UP first states "the Kenis Award (adopted by Arbitrator Perkovich) directly concluded that UP's Article IX rights were not modified or nullified by the Merger Implementing Agreements," noticeably omitting the word "expressly" before the phrase "modified or nullified." UP then states that Kenis held "the language conceived in the merger implementing agreements is **patently clear**. [UP]'s Article IX rights under the 1986 National Agreement were not expressly modified or nullified under the hub merger implementing agreement, and therefore they still exist and apply." UP Brief, 29 (quoting Kenis Award, 20). But UP does not refer to the qualification Kenis placed on this finding, where she stated "[h]owever, when those rights have been exercised in a manner that conflicts with or modifies the provisions of the hub merger implementing agreements, the implementing agreements must be given precedence." Kenis Award, 20.

implementing agreements, the implementing agreements must be given precedence." Kenis Award, 20. She based this conclusion on the "Applicable Agreements" article that was included in each of those three merger implementing agreement (the same as is included in the HHMIA), providing "[w]here conflicts arise, the specific provisions of this [merger implementing] Agreement shall prevail." In other words, as Kenis explains, "[a]lthough Carrier's Article IX rights survive *under the Savings Clause* of the hub merger implementing agreements, their exercise is not unfettered," based on the Applicable Agreements Article. Kenis Award, 22.

Here too UP incorrectly argues that the Kenis Award is internally inconsistent purportedly because, despite her finding that the merger implementing agreements did not modify the Carrier's Article IX rights (which, as established above, is itself not accurate), the *effect* of her Award is to eradicate its Article IX rights. UP based this on its contention that "[i]n all cases, new interdivisional service and extended switching limits necessarily changes existing collective bargaining agreements." UP Brief, 28. But the extent to which UP actually retains any rights under Article IX, if any, was not at issue before Kenis. All she was called on to decide was whether the specific ID service that UP had proposed establishing in those hubs was permissible, and she concluded it was not. Whether or not UP, in negotiating the merger implementing agreements "*effectively* eliminate[d]" its Article IX rights under those Agreements (UP Brief, 30 (emphasis added)), is not a proper basis to reject Kenis's reasoning.

Despite Kenis's careful examination of the impact of UP's Article IX rights under first the Savings Clause, and then the Applicable Agreements provision, UP blatantly recasts her reasoning as akin to concluding "the Merger Implementing Agreements do not modify UP's rights, but they do modify UP's rights." UP Brief, 28. UP then relies on its own

mischaracterization of Kenis's reasoning to argue "[s]uch a fundamental internal inconsistency, by its very nature, constitutes egregious error, requiring that the Award be vacated." UP Brief, 30. When one recognizes that no such inconsistency exists, UP's entire argument vanishes.

E. There is No Past Practice Supporting UP's Position

UP spends considerable time supporting its right to establish ID service based on "longstanding" and "undisputed past practices." UP Brief, 33, 35. It fails, however, to establish any such past practice. Instead, it merely lists several examples of prior negotiation and arbitration that are not relevant to the instant dispute and which fall far short of establishing a true "past practice."

The U.S. Court of Appeals for the Eighth Circuit described what it takes to establish a "past practice" under the RLA in *United Transp. Union v. St. Paul Depot Co.*, 434 F.2d 220 (8th Cir. 1970), *cert. denied*, 401 U.S. 975 (1971):

> An "established practice" under the [Railway Labor] Act should demonstrate not only a pattern of conduct but also some kind of mutual understanding, either express or implied. *Thus, prior behavior by itself, although similar to the acts in dispute, falls short of an "established practice."* Whether prior conduct establishes a working practice under the Act depends upon consideration of the facts and circumstances of the particular case. Among the factors one might reasonably consider would be the mutual intent of the parties, their knowledge of and acquiescence in the prior acts, along with evidence of whether there was joint participation in the prior course of conduct, all to be weighed with the facts and circumstances in the perspective of the present dispute.

Id. at 222-23 (emphasis added). These factors mirror those that are required to establish a past practice, absent a written agreement, in an industrial setting outside the confines of the RLA. As recognized in Elkouri & Elkouri, *How Arbitration Works* (6th Ed., 2003), "[i]n the absence of a written agreement, 'past practice,' to be binding on both Parties, must be (1) unequivocal; (2) clearly enunciated and acted upon; (3) readily ascertainable over a reasonable period of time as a

fixed, and established practice accepted by both parties. *Id.* at 608 (quoting *Celanese Corp. of America*, 24 LA 168, 172 (Justin, 1954), and citing, *e.g.*, *Lake Erie Screw Corp.*, 108 LA 15, 19 (Feldman, 1997); *Grand Haven Stamped Prods. Co.*, 107 LA 131, 137 (Daniel, 1996); *Kansas City Power & Light Co.*, 105 LA 518, 523 (Berger, 1995)).

The examples discussed by UP come nowhere close to establishing a past practice. UP acknowledges that its examples include negotiations and arbitrations that arose *under agreements that are entirely different* from the 1986 National Agreement that was at issue before Kenis and Perkovich. Some involved UP proposals to extend switching limits under Article II of the 1971 National Agreement. Others involved UP proposals to enhance customer service under the 1996 Agreement. These have absolutely no bearing on whether UP can establish ID service under the 1986 National Agreement. Even those examples that did concern the establishment of ID service do not establish a past practice, involving as they did proposals that affected other hubs (or in one case a separate implementing agreement within the Houston Hub, Zones 1 and 2), under different merger implementing agreements, and/or with different BLET General Committees of Adjustment.

The fact that BLET GCAs at times entered into negotiations with UP over proposed ID service despite the existence of potentially conflicting merger implementing agreement provisions, as the Southern Region GCA did after UP served the June 7, 2006 notice initiating the instant dispute, proves nothing. A GCA in those instances may well have decided to focus on obtaining beneficial terms that would accompany resulting changes, rather than to contest the establishment of that particular ID service. That cannot properly be considered relinquishment of

the right to enforce the plain terms of the merger implementing agreements that were before Kenis and Perkovich.

The three specific examples of prior instances in which UP successfully established ID Service despite allegedly conflicting merger implementing agreements (UP Brief, 33-35) likewise do not serve to establish any past practice. In its first example, UP proposed to establish Beaumont, Texas as a home terminal though the HHMIA for Zones 1 and 2 established Houston as the home terminal. While UP now alleges this involved the "exact same" contractual language that was before Perkovich, this was merely an isolated incident that arose under a separate hub merger implementing agreement. UP similarly and unsuccessfully tried to prove the existence of a past practice based on isolated instances in *BLE v. UP*, Art. I, § 11 Committee, Case No. 1, Award No. 1 (LaRocco, 2003) (BLET GCA Ex. 7). There, BLE argued that the carrier violated the Kansas City Hub Merger Implementing Agreement when it attempted to recoup relocation benefits, paid to an engineer *in lieu of* benefits provided under the *New York Dock*. The carrier maintained that the engineer had not actually relocated as required. BLE argued UP was subjecting the engineer to disparate treatment based on evidence that other engineers in similar circumstances were allowed to keep their relocation allowances. Arbitrator LaRocco rejected that argument, concluding "one or two isolated instances where the Carrier failed to recoup improperly paid relocation allowances does not constitute a past practice permitting all engineers to keep monies that were improperly paid to them." *Id.* at 14.

UP's second example involved UP's intent to extend the eastern switching limit for the Longview terminal, covered by the Longview Hub Merger Implementing Agreement, pursuant to Article II of the 1971 National Agreement. BLET agreed to extend the switching limits as UP

proposed. This example also arose under a different merger implementing agreement, after UP attempted to exercise rights under a different National Agreement. The carrier got what it wanted because BLET voluntarily agreed to the proposal. This has no bearing on UP's attempt to exercise rights under the 1986 National Agreement, with respect to the HHMIA, over BLET's objection. It falls far short of a "pattern of conduct" or "some kind of mutual understanding" between the parties. *United Transp. Union v. St. Paul Depot Co.*, 434 F.2d at 222-23. UP's last example is its proposal to establish enhanced customer service for Ameran UE, pursuant to Article IX of the 1996 Agreement, within an area covered by the St. Louis Hub Merger Implementing Agreement. That proposal remains outstanding and has yet to be resolved by the parties.

Finally, UP's reliance on *CSX Corp. -Control- Chessie Sys., Inc.*, 1995 WL 717122 (I.C.C. 1995) also is unavailing. UP's suggestions that this decision "is directly applicable in the present case" (UP Brief, 36) vastly overstates any similarities between these matters. There, CSX announced its intention to utilize Article I, § 4 of the *New York Dock* protective conditions to change the terms of an existing implementing agreement in order to carry out a new coordination. BLET and UTU argued CSX could not do so based on "boilerplate" language in those existing agreements that provided "[t]his agreement shall remain in effect until changed or modified in accordance with the provisions of the Railway Labor Act, as amended." *Id.* at *8. The arbitrator rejected this argument and permitted CSX to proceed under Article I, § 4. The Commission affirmed, basing its decision, in part, on the past dealings of the parties. Specifically, the ICC concluded that "awards cited by CSXT, going back over 30 years, show that neither party had any reason to view this language as restricting CSXT's ability to invoke

New York Dock to implement future operational changes...." *Id.* at *9. Likewise, the Board noted:

> [i]n each of the five implementing agreement cited by CSXT, the union did not object to the expansion of the coordination of operations under New York Dock, notwithstanding the presence of similar language referring to the RLA in the prior implementing agreements establishing the coordinations that were expanded. The unions do not dispute CSXT's position that they did not raise the RLA language as an objection to subsequent expansion.

Id. at *9, n. 22.

Here, by contrast, there are no similarly lengthy and consistent dealings between the parties. As described above, UP can point to no instances prior to the Perkovich Award where UP tried to establish ID service in Zones 3, 4 or 5 of the Houston Hub pursuant to the 1986 National Agreement. Other disputes in other hubs may be instructive, as illustrated by Arbitrator Perkovich's adoption of Kenis's interpretation of other merger implementing agreements before her, but this does not establish a past practice on which this Board can rely in considering whether the Perkovich Award should be set aside.

F. UP Cannot Escape from the Terms of the Hub Agreements it Negotiated Based on General Policy Considerations.

In a last ditch effort to evade the terms of the HHMIA, UP makes a plea on behalf of what it calls "the real victims... the shippers and the public," arguing that if the Perkovich Award is allowed to stand, "commerce will be gravely affected." UP Brief, 37. This argument is so lacking in merit it merits only a brief response. First, UP's suggestion that "in four of its hubs, UP is, for the most part, forced to operate in a manner that it designed in 1997-98" (*id.*), fails to acknowledge that UP remains free to negotiate with BLET in order to establish new ID service. BLET evinced its willingness to doing so immediately after UP served its June 7, 2006 notice.

Second, UP's suggestion that "[t]he Perkovich and Kenis Awards strip UP of its ability to respond to" changes in the rail industry (*id.*) is hard to swallow given statements offered by UP's Chairman, President, and CEO Jim Young to its shareholders in the introduction of its 2007 Annual Report:

> By nearly every measure, 2007 was one of the best years in our Company's history. We achieved this success by fulfilling our commitments to customers, communities, employees and our shareholders.... We increased our value to customers through improved service. Customers recognized these efforts, rewarding us with their highest satisfaction survey marks since our merger with the Southern Pacific.

BLET GCA Ex. 8 (Excerpts).[18] UP's arguments have no place here. Agency review of an arbitration award is not a forum for changing agreements or establishing policy. Having recently completed a national bargaining round with BLET under the RLA, UP is well-aware of how properly to address its labor relations concerns.

Conclusion

For these reasons, UP's appeal should be rejected on jurisdictional grounds. In the alternative, if the Board entertains UP's appeal (which it should not) the appeal should be denied as it fails to satisfy any of the *Lace Curtain* standards.

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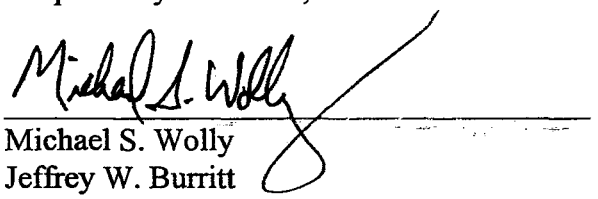
[18] In that same report, UP announced a 2007 net operating profit, after taxes, of 1.86 billion dollars.

Respectfully submitted,



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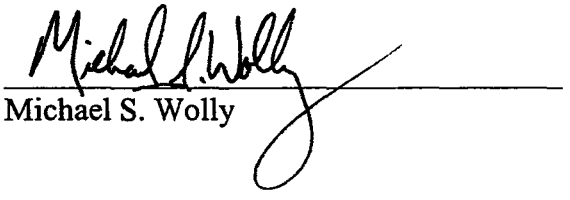
Certificate of Service

I hereby certify that on the 11th day of April, 2008, I sent the foregoing Opposition, by first class mail, postage prepaid, to the attorney for the Petitioner Union Pacific, Clifford Godiner, One U.S. Bank Plaza, St. Louis, Missouri, 63101.



Michael S. Wolly

PUBLIC LAW BOARD NO. 6740

Case No. 2
Award No. 2

PARTIES TO DISPUTE: BROTHERHOOD OF LOCOMOTIVE ENGINEERS

-and-

BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY

QUESTION AT ISSUE

Does the Agreement proposed by the Carrier to govern the establishment and operation of interdivisional freight service with home terminal at Stockton, California, to operate between Stockton and Bakersfield, California, satisfy the requirements of Sections 1 and 2 of Article IX of the May 19, 1986, BLE Arbitrated National Agreement?

ARTICLE IX – INTERDIVISIONAL SERVICE

Section 1- Notice

An individual Carrier seeking to establish interdivisional service shall give at least twenty days' written notice to the organization of its desire to establish service, specify the service it proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such service.

Section 2 – Conditions

Reasonable and practical conditions shall govern the establishment of the runs described, including but not limited to the following:

(a) Runs shall be adequate for efficient operations and reasonable in regard to the miles run, hours on duty and in regard to other conditions of work.

(b) All miles run in excess of the miles encompassed in the basic day shall be paid for at a rate calculated by dividing the basis daily rate of pay in

effect on May 31, 1986 by the number of miles encompassed in the basic day as of that date. Weight-on-drivers additives will apply to mileage rates calculated in accordance with this provision.

(c) When a crew is required to report for duty or is relieved from duty at a point other than the on and off duty points fixed for the service established hereunder, the Carrier shall authorize and provide suitable transportation for the crew.

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

(d) On runs established hereunder crews will be allowed a $4.15 meal allowance after 4 hours at the away from home terminal and another $4.15 allowance after being held an additional 8 hours.

(e) In order to expedite the movement of interdivisional runs, crews on runs of miles equal to or less than the number encompassed in the basic day will not stop to eat except in cases of emergency or unusual delays. For crews on longer runs, the carrier shall determine the conditions under which such crews may stop to eat. When crews on such runs are not permitted to stop to eat, crew members shall be paid an allowance of $1.50 for the trip.

(f) The foregoing provisions (1) through (e) do not preclude the parties from negotiating on other terms and conditions of work. . . .

Section 3 – Procedure

Upon serving a notice under Section 1, the parties will discuss the details of operations and working conditions of the proposed runs during a period of 20 days following the date of the notice. If they are unable to agree, at the end of the 20-day period, with respect to runs which do not operate through a home terminal or home terminals of previously existing runs which are to be extended, such run or rums will be operated on a trial basis until completion of the procedures referred to in Section 4. This trial basis operation will not be applicable to runs which operate through home terminals.

Section 4 – Arbitration

(a) In the event the Carrier and the organization cannot agree on the matters provided for in Section 1 and the other terms and conditions referred to in Section 2 above, the parties agree that such dispute shall be submitted to arbitration under the Railway Labor Act, as amended, within 30 days after arbitration is requested by either party. The

arbitration board shall be governed by the general and specific guidelines se forth in Section 2 above. . . .

Section 5 – Existing Interdivisional Service

Interdivisional service in effect on the date of this Agreement is not affected by this Article.

BACKGROUND:

This Board, upon the whole record and all the evidence, finds as follows:

That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Board has jurisdiction over the dispute involved herein.

The Burlington Northern Santa Fe Railway Company (hereinafter referred to as BNSF or the Carrier) transports substantial international freight that arrives in containers at the ports of Los Angeles and Long Beach, California. BNSF ships this freight east to Chicago via its so-called "*racetrack*" which operates through San Bernardino and Barstow, California and Winslow, Arizona.

After the containers are unloaded at Chicago, the Carrier transports them to ports in Seattle, Washington and Portland, Oregon over its Northern lines. After the containers are loaded onto ships, the trains that transported them, so-called "*buggies*" or "*bare tables*," return to Southern California to pick up loaded containers for the trip to Chicago over the "*racetrack*." The Carrier refers to this as "I-5" traffic since the tracks over which these trains operate parallel highway Interstate 5 on the west coast. Both the Carrier's "*bare table*" traffic operating southward and its "I-5" freight traffic operating northward is growing appreciably.

As a result of the merger of the Union Pacific Railroad (hereinafter referred to as the Union Pacific or the UP) and the Southern Pacific Transportation Company (hereinafter referred to as the Southern Pacific or the SP) the Carrier gained trackage rights between Keddie and Stockton, California.

BNSF has intermodal facilities at the Richmond/Oakland, California ports. On July 20, 1972, the so-called "*Riverbank Run-Through*" Agreement was negotiated with the Brotherhood of Locomotive Engineers (hereinafter referred to as the BLE or the Organization) for engine service employees and the United Transportation Union (hereinafter referred to as the UTU) for ground service employees. This Agreement allows double-ended pool crews to operate in interdivisional service between Richmond (Oakland) and Calwa (Fresno) California. These pool crews operate through the terminal at Stockton and the terminal at Riverbank, California.

As the Carrier's "I-5" traffic began to increase, it was absorbed into the Riverbank run-through pools. According to the Carrier, for several reasons, it soon became obvious that using this interdivisional (ID) pool to handle traffic to and from Stockton, California, was inefficient.

Currently, crews in the Riverbank run-through pools go on duty at Richmond and are transported by highway 76 miles to Stockton where they take charge of the train and operate it the 125 miles to Fresno. Because these ID pool crews are transported over crowded Northern California highways from Richmond to Stockton, travel time is difficult to estimate. Moreover, trains operating south to Stockton operate over Union Pacific tracks that are controlled by the UP. Therefore, the UP determines when BNSF trains will be released to operate to Stockton.

There have been times when a BNSF train has blocked the UP mainline at Stockton waiting for a crew to arrive from Richmond. This adversely affects Union Pacific's operations. At other times, a pool crew arrives at Stockton before the southbound train arrives. This reduces the legal hours of service available to crews and it is not unusual for crews to outlaw before they reach Fresno.

In order to increase the number of trains it may operate on the "I-5" corridor, the Carrier intends to obtain trackage rights over the UP between Stockton and Bakersfield, California, a distance of approximately 236 miles. The Carrier estimates that securing such trackage rights will double its capacity.

On September 8, 2003, the Carrier served notice on the Organization pursuant to Article IX, Section 1, of the May 19, 1986 Award of Arbitration Board No. 458 to establish interdivisional service between Stockton and Bakersfield, California through the terminals of Riverbank and Fresno. Stockton would be the home terminal and Bakersfield the away-from-home terminal for this ID service. The Carrier included a proposal with its September 8, 2003, notice specifying the service it intended to establish and the conditions it proposed to govern this interdivisional service.

On October 16, 2003, the Carrier held a joint meeting with the BLE and the UTU to discuss its notice to establish ID service between Stockton and Bakersfield, California. As a result of discussions at that meeting, the Carrier modified the proposal it had appended to its September 8, 2003, notice. According to the BNSF, its modified proposal included several benefits that exceed the "*reasonable and practical*" conditions required by Article IX, Section 2, of the 1986 Award of Arbitration Board No. 458. For instance, Engineers in this ID service would receive a meal allowance greater than that provided by

the BLE National Agreement; all miles in excess of a basic day were to be paid for at the conductor-only overmile rate; Locomotive Engineers in this service would be allowed to advance their vacations to coincide with layover days at the home terminal; they would be allowed to mark up during the last 24-hour calendar day of vacation to avoid missing a trip; and they would not be required to trade trains moving in the opposite direction.

The Carrier maintains that it made it manifestly clear to the Organization at the October 16, 2003 meeting that the modified proposal was contingent on the proposal being ratified and if the proposal was not ratified the enhanced benefits in the proposed agreement would be withdrawn. The agreement failed ratification. Therefore, the dispute was submitted to arbitration in accordance with Article IX, Section 4, of the 1986 Award of Arbitration Board No. 458. The matter came before this Board for a hearing on March 10, 2004. Based on the evidence and arguments advanced by the Organization and the Carrier at that hearing, this Board hereby renders the following decision.

FINDINGS and OPINION

On February 26, 2004, the Organization advised the Carrier that it does not consider the proposed interdivisional pool freight service between Bakersfield and Stockton "*new*" service. Rather, in the Organization's view, the Carrier is attempting to establish interdivisional service within the current Richmond - Calwa interdivisional run that has been in existence since 1972. According to the Organization, Article IX of the 1986 BLE National Agreement prohibits carriers from establishing interdivisional service within and overlapping an existing interdivisional run.

This Board respectfully disagrees with the Organization's contention that the proposed ID service does not constitute new interdivisional service. In our opinion, the

interdivisional service proposed by the Carrier in its September 8, 2003, notice involves new freight business to and from the Pacific Northwest on BNSF's Northern California Division. There are 236 district miles between Stockton and Bakersfield whereas the ID run between Richmond and Fresno is 194 miles. Moreover, the new ID run will operate through Fresno to Bakersfield while the Riverbank ID pools stop at Fresno.

On the Riverbank interdivisional service, Richmond and Calwa (Fresno) are the home terminals for the pool freight crews. On the interdivisional service proposed by the Carrier, Stockton will be the home terminal for the pool freight crews and Bakersfield will the away-from-home terminal. The new interdivisional service proposed by the Carrier will be separate and distinct from the Riverbank ID run, in this Board's opinion.

The Organization argues that a March 31, 1987 decision rendered by the Informal Disputes Committee that was established pursuant to the 1986 BLE National Agreement supports its position that the Carrier does not have the right under Article IX of the 1986 National Agreement to establish interdivisional service between Stockton and Bakersfield, California, since this proposed interdivisional service is within and overlapping an existing [Riverbank] interdivisional run. However, a careful reading of that the decision actually supports the Carrier's position in the instant dispute, in our opinion.

In the dispute that was before the Informal Disputes Committee, the Southern Pacific Transportation Company had superimposed elongated interdivisional service on preexisting interdivisional service. That, of course, is not what BNSF is proposing. For example, the current 76 miles between Richmond and Stockton that is part of the Riverbank run will not be included in the interdivisional service proposed by the Carrier.

Additionally, the Riverbank run will continue to exist after the proposed interdivisional service between Stockton and Bakersfield is established. Engineers will work in both pools. The proposed Stockton-Bakersfield ID run will not affect the existing Richmond-Fresno ID run.

The Informal disputes Committee went on to find that:

> "*The Carriers have the right to establish extended or rearranged interdivisional service and it constitutes new service within the meaning of Article IX unless it is a substantial re-creation of the prior interdivisional service designed solely to obtain the more favorable conditions in the 1986 National Agreement* " (underscoring added).

In the instant dispute, the Carrier is not proposing a "*substantial re-creation*" of the Richmond-Fresno interdivisional service, in the opinion of this Board. Nor is this new interdivisional service "*designed solely*" to obtain the more favorable conditions in the 1986 BLE National Agreement. Rather, the objective of the new service is to increase freight traffic on BNSF's Northern California Division and to make this operation more efficient by eliminating the deadheading of pool crews from Richmond to Stockton and allowing them to run through Fresno to Bakersfield.

That the proposed interdivisional service will traverse some of the same territory traversed by the Richmond-Fresno ID pools does not make it impermissible under Article IX of the 1986 BLE National Agreement, in this Board's opinion. As explained above, the Carrier is not simply superimposing elongated interdivisional service on preexisting interdivisional service to obtain the more favorable conditions in the 1986 BLE National Agreement. Rather, it is proposing to establish new interdivisional service in Northern California to increase its freight service between the Pacific Northwest and Southern California and to make this service more efficient. The Carrier has the right to establish

this interdivisional service pursuant to Article IX of the 1986 BLE National Agreement, in our judgment, notwithstanding the Organization's objections.

Article IX, Section 2, of the 1986 BLE National Agreement mandates that "*reasonable and practical*" conditions must govern interdivisional service that is proposed by a carrier. Article IX, Section 2, sets forth examples of reasonable and practical conditions, such as the runs must be reasonable regarding miles run and hours on duty. Section 2 also explains how employees are to be compensated when miles run exceed the miles encompassed in the basic day. Further, it requires carriers to provide employees suitable transportation when a crew is required to report for duty or is relieved from duty at a point other than the on and off duty point established for the interdivisional service. It also provides crews a meal allowance and, under some circumstances, an allowance when they are not allowed to stop and eat.

Article IX, Section 2, expressly states that the parties may negotiate other terms and conditions of employment in addition to those set forth in Section 2 (a) - (e). If they are unable to reach an agreement and arbitration is invoked, the arbitration board is governed by the general and specific guidelines set forth in Section 2.

The conditions proposed by the Carrier for the Stockton-Bakersfield interdivisional service exceed the reasonable and practical conditions required by Article IX, Section 2, of the 1986 BLE National Agreement, in this Board's opinion. The proposed run is 236 miles, which is not unreasonable or impractical. Pool crews should be able to complete this run in eight hours, according to the Carrier. Crews will be provided suitable transportation when they are required to report for duty or are relieved

from duty at points other than Stockton or Bakersfield. They will also be allowed meal allowances in accordance with BLE National Agreements.

The conditions that the Carrier proposed for the Stockton-Bakersfield interdivisional service exceed those required by Article IX, Section 2, of the 1986 BLE National Agreement in several respects. For instance, the agreement contains a "*foot of the board*" arrangement that the Organization proposed. Additionally, employees in this service will be allowed to advance their vacations to coincide with layover days at the home terminal. They will also be allowed to mark up during the last 24-hour calendar day of their vacation so as to avoid missing a round trip. Further, if these employees are required to perform local freight work they will receive the pre-1985 switching allowance.

Since pool Engineers on the interdivisional service proposed by the Carrier also will work the Richmond-Fresno ID run they should receive the benefits provided by the Riverbank Run-through Agreement, according to the Organization. Among other benefits, this would include overtime after 10 hours and payment at the conductor-only overmile rate for all miles in excess of those encompassed in the basic day. The Organization contends that these employees are also entitled to continuous held-away-from home terminal pay after the expiration of 16 hours and a monetary allowance if they are required to change trains between their initial and final terminals.

With one exception, this Board does not find the Organization's proposals warranted. It is noteworthy that some of these proposals, such as the overmile rate and a meal allowance in excess of that provided in the BLE National Agreement, were in the tentative agreement that failed ratification.

A compelling argument can be made that employees should not receive benefits in arbitration that they expressly rejected during negotiations. This Board agrees with that logic. This is particularly so in the present case where the Carrier specifically informed the BLE that the modified proposal that was agreed to on October 16, 2003, contained benefits that were expressly contingent on ratification of this proposal and these enhancements would be withdrawn if the proposal were not ratified. Nevertheless, under the unique circumstances extant in this case, we find that Locomotive Engineers in the proposed interdivisional service between Stockton and Bakersfield are entitled to the conductor-only overmile rate even though overmiles are entirely unrelated to this new interdivisional service.

In 1990, the former Santa Fe Railway Company asked its Locomotive Engineers for financial relief in order to avoid bankruptcy. The Engineers agreed to freeze their wages for five years to help the Santa Fe avoid a potential bankruptcy. Because of this concession, their basic daily rate of pay is below the national average for Locomotive Engineers. As a *quid pro quo* for this concession, the Santa Fe agreed to allow Engineers in Riverbank ID service the conductor-only overmile rate for all miles in excess of those encompassed in the basic day. Engineers earned that benefit and it should be continued for employees in the Stockton – Bakersfield ID service, in this Board's opinion. Other than this, the agreement proposed by the Carrier for this interdivisional service shall be adopted. That agreement is appended hereto and made part of this Award.

reasoned that if the parties wanted to preclude any further rearrangement of existing interdivisional runs under a 1985-86 Article IX notice, they certainly had the opportunity to clarify that intent. What they did say was:

> "Interdivisional service in effect on the date of this Agreement is not affected by this Article."

It is clear there is no barrier to serving an Article IX notice to rearrange and/or extend an existing interdivisional run, and the notice would be deemed invalid only if it were shown to be a substantial re-creation of existing service designed to take advantage of the more favorable Article IX, Section 2 conditions.

The record supports BNSF's position in this dispute. There is no substantial re-creation of any existing interdivisional service in question here. BNSF found it necessary to extend and/or rearrange existing interdivisional service in the face of significant operational necessities brought about due to a significant increase in volume. We must conclude that notice was proper and that the proposed conditions meet those required under the National Agreements.

Award:

The questions at issue are answered in the affirmative.

FRANCIS X. QUINN
Chair and Neutral Member

GENE L. SHIRE
Carrier Member

STEPHEN D. SPEAGLE
Organization Member

Fort Worth, Texas
April 12, 2004