

**UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA
OMAHA DIVISION**

INTERNATIONAL ASSOCIATION OF
SHEET METAL, AIR, RAIL AND
TRANSPORTATION WORKERS,
TRANSPORTATION DIVISION

Petitioner,

v.

UNION PACIFIC RAILROAD COMPANY,

Defendant.

CASE NO. 8:25-CV-00740

DEFENDANT'S ANSWER TO COMPLAINT

Defendant Union Pacific Railroad Co. (“Union Pacific”), by and through undersigned counsel, hereby answers the Verified Complaint for Declaratory Relief and Petition to Impeach or Review Award under the Railway Labor Act (“Complaint”) filed by Plaintiff International Association of Sheet Metal, Air, Rail and Transportation Workers, Transportation Division (“SMART-TD” or “the Union”). Union Pacific denies all of the allegations contained in the Complaint unless expressly admitted herein. Union Pacific answers the allegations in the like-numbered paragraphs of the Complaint as follows:

INTRODUCTION

1. Union Pacific admits that SMART-TD has filed a petition under Section 9 Third of the Railway Labor Act (“RLA”), 45 U.S.C. § 159 Third, to review and set aside an arbitration award issued by Special Board of Adjustment (“SBA”) No. 1208 in Case No. 1, and that a copy of the Award is attached as Exhibit A to the Petition. Union Pacific denies SMART-TD’s claim

that the Award fails to conform or confine itself to the arbitration agreement. Union Pacific otherwise denies the allegations in Paragraph 1.

JURISDICTION AND VENUE

2. Union Pacific admits that this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1337(a) over SMART-TD's claims insofar as this case presents federal questions arising under the RLA. Union Pacific further admits that Section 9 of the RLA, 45 U.S.C. § 159, authorizes courts to set aside interest arbitration awards in certain very limited circumstances, but denies that such circumstances exist here. Union Pacific also admits that the Declaratory Judgment Act authorizes courts to grant injunctive relief in some circumstances but denies that such circumstances exist here. Union Pacific otherwise denies the allegations in Paragraph 2.

3. Union Pacific admits that the Award was filed in the U.S. District Court for the District of Nebraska on December 19, 2025, and that venue is proper in this Court pursuant to 45 U.S.C. § 159 Second. Union Pacific otherwise denies the allegations in Paragraph 3.

PARTIES

4. Union Pacific admits the allegations in Paragraph 4.

5. Union Pacific admits that SMART-TD purports to maintain various "general committees" within the union's internal organizational structure and that such committees are the ones identified in Paragraph 5, avers that the union is required to bargain on a craft-wide, system-wide basis and therefore lacks a legal right to insist on separate representation of portions of Union Pacific corresponding to former railroads that were merged into Union Pacific, and otherwise denies the allegations in Paragraph 5.

6. Union Pacific admits the allegations in Paragraph 6.

CLAIM FOR RELIEF

Collective Bargaining under the Railway Labor Act

7. Paragraph 7 states legal conclusions to which no response is required. To the extent a response may be deemed required, Union Pacific admits that collective bargaining between railroads and their employees' representatives over rates of pay, rules, and working conditions is governed by the RLA, avers that the terms of the Act speak for themselves, and otherwise denies the allegations of Paragraph 7.

8. Union Pacific admits that SMART-TD purports to maintain various "general committees" and other subordinate bodies within the union's internal organizational structure, avers that the union is required to bargain on a craft-wide, system-wide basis and therefore lacks a legal right to insist on separate representation of portions of Union Pacific corresponding to former railroads that were merged into Union Pacific, and otherwise denies the allegations in Paragraph 8.

9. Union Pacific admits that the parties have negotiated various agreements, some of which cover all of Union Pacific and others which cover only portions of the railroad. Union Pacific further admits that the union maintains internal procedures for ratification of agreements by its members. Union Pacific otherwise denies the allegations in Paragraph 9.

10. Union Pacific avers that the proper name of its bargaining representative in national handling was the "National Carriers' Conference Committee." Union Pacific otherwise admits the allegations in Paragraph 10.

11. Union Pacific admits that national railroad unions, including SMART-TD, have historically bargained nationally with the National Carriers' Conference Committee through various coalitions. Union Pacific lacks knowledge or information sufficient to admit or deny the remaining allegations in Paragraph 11, and therefore denies those allegations.

12. Union Pacific admits the allegations in Paragraph 12.

13. Union Pacific admits that the parties have historically addressed some bargaining subjects in national agreements and other subjects in system or local agreements. Union Pacific otherwise denies the allegations in Paragraph 13.

14. Union Pacific admits that the term “crew consist” refers to the composition and size of a train crew. The agreements between Union Pacific and SMART-TD that address crew consist speak for themselves. Union Pacific otherwise denies the allegations in Paragraph 14.

15. Union Pacific denies the allegations in Paragraph 15.

16. Union Pacific admits that wage increases can be the subject of national handling and included in a national agreement. Union Pacific otherwise denies the allegations in Paragraph 16.

2019 Round of Bargaining

17. Union Pacific admits that on November 1, 2019, the NCCC served a Section 6 Notice on SMART-TD covering a variety of topics, including wages, health and welfare benefits, and certain work rules. Union Pacific further admits that this Section 6 Notice included a proposal to redeploy conductors from the cab of the locomotive to ground-based positions on certain territories, and, with respect to this proposal, stated:

The railroads maintain that this proposal is subject to bargaining on a multi-carrier basis. However, without prejudice to that position, the railroads do not insist on multi-carrier handling of this proposal, and instead are, by this Notice, inviting SMART-TD to voluntarily address crew consist on [a] multi-carrier basis, without prejudice to any position that the union may wish to take in the future regarding this issue. This proposal is also without prejudice to any similar or identical proposal that any participating railroad may raise in individual or local bargaining.

Union Pacific otherwise denies the allegations in Paragraph 17.

18. Union Pacific admits that, on November 1, 2019, the NCCC on behalf of Union Pacific served on SMART-TD a Section 6 Notice containing a crew consist proposal. Union Pacific further admits that this proposal stated that “this railroad is making the same crew consist proposal in multi-carrier or national handling, as well as in local bargaining, with the caveat that if SMART-TD will not voluntarily agree to national handling, local bargaining will be pursued, albeit without prejudice to our position that crew consist can and should be negotiated at the national level.” Union Pacific otherwise denies the allegations in Paragraph 18.

19. Union Pacific admits that the parties promptly began national negotiations with respect to the Carriers’ National Section 6 Notice, discussing wages, health and welfare, and certain work rule changes, and that SMART-TD declined to bargain nationally over crew size. Union Pacific otherwise denies the allegations in Paragraph 19.

20. Union Pacific admits that, as a result of SMART-TD’s refusal to bargain nationally over crew consist, national negotiations focused on wages, health and welfare benefits, and other work rules, and that crew consist was discussed in local negotiations. Union Pacific otherwise denies the allegations in Paragraph 20.

21. Union Pacific admits that SMART-TD initially refused to negotiate locally over crew consist for the reasons stated in Paragraph 21, but denies that SMART-TD’s position was justified.

22. Union Pacific admits the allegations in Paragraph 22, subject to the caveat that the fourth line of that paragraph is missing the word “dispute” after the word “minor.”

23. Union Pacific admits that SMART-TD made the assertions described in Paragraph 23, but denies that SMART-TD’s position was justified.

24. Union Pacific admits that the Northern District of Texas granted the railroads' request for injunctive relief, finding the dispute to be minor and permanently enjoining SMART-TD from refusing or failing to bargain locally with each railroad over the November 2019 crew consist proposals. Union Pacific further admits that the court did not compel SMART-TD to bargain nationally over crew consist, but avers that neither Union Pacific nor any of the other railroads asked the court to do so. Union Pacific otherwise denies the allegations in Paragraph 24.

25. Union Pacific admits that SMART-TD timely appealed the district court's opinion. Union Pacific further admits that, while finding that the parties' moratorium dispute was properly characterized as minor, the Fifth Circuit vacated the permanent injunction requiring SMART-TD to negotiate crew consist locally pending arbitration. Union Pacific otherwise denies the allegations in Paragraph 25.

26. Union Pacific admits that the parties were unable to resolve their dispute over whether moratoria provisions barred the service of the November 2019 crew consist proposals, and that, pursuant to Section 3 of the RLA, the matter was arbitrated before Public Law Board No. 7960. Union Pacific further admits that, by award dated July 28, 2021, Arbitrator LaRocco found that the moratoria provisions contained in the crew consist agreements applicable to the former International Great Northern ("IGN") and the former Texas and Pacific Railway ("T&P") are "indefinite" and "bar[red] the service and progression of the Carrier's November 1, 2019 Section 6 notice," but avers that the award recognizes that the parties could voluntarily agree to bargain over crew size matters and reach new agreements changing the provisions in the IGN and T&P agreements. Union Pacific further admits that the moratoria provisions in crew consist

agreements applicable on other parts of Union Pacific's system did not bar service of proposals for changes in crew consist. Union Pacific otherwise denies the allegations in Paragraph 26.

27. Union Pacific admits that, following Arbitrator LaRocco's decision, Union Pacific and SMART-TD began negotiating over proposed changes to crew consist agreements applicable to portions of the Union Pacific system other than the former IGN and T&P properties. Union Pacific otherwise denies the allegations in Paragraph 27.

28. Union Pacific admits that, while local negotiations were ongoing regarding crew consist, the parties through their respective representatives continued bargaining nationally over wages, health and welfare, and other work rules, and that the parties were unable to reach agreement. Union Pacific further admits that SMART-TD's bargaining coalition applied for mediation before the NMB on January 24, 2022, and that, following this application, SMART-TD participated in sessions with the NCCC, NMB mediators, and NMB Board Members in an effort to reach an agreement. Union Pacific also admits that, during mediation, various settlement proposals were discussed, considered, and rejected. Union Pacific otherwise denies the allegations in Paragraph 28.

29. Union Pacific admits the allegations in Paragraph 29.

30. Union Pacific admits the allegations in Paragraph 30.

31. Union Pacific admits the allegations in Paragraph 31.

Presidential Emergency Board No. 250

32. Union Pacific admits the allegations in Paragraph 32 of the Complaint.

33. Union Pacific admits the allegations in Paragraph 33 of the Complaint.

34. Union Pacific admits that SMART-TD and the Brotherhood of Locomotive Engineers & Trainmen before PEB 250 proposed voluntary scheduled days off for employees in

unassigned road service, and avers that the terms of that proposal speak for themselves. Union Pacific otherwise denies the allegations in Paragraph 34.

35. Union Pacific admits that the NCCC before PEB 250 submitted a proposal titled “Automated Bid Scheduling” which addressed the process by which operating craft employees are assigned to jobs. Union Pacific further admits that this proposal stated in part that it would “permit carriers to provide employees direct and immediate placement to a job through an automated bid system,” and that assignments would be awarded based on preferences submitted by employees electronically. Union Pacific also admits that job assignments are generally created based on the needs of service; that employees under some circumstances can bid on available assignments; and that assignments are generally awarded based on seniority. Union Pacific otherwise denies the allegations in Paragraph 35.

36. Union Pacific admits that the NCCC before PEB 250 submitted a proposal to change the way in which some temporary vacancies were filled. Union Pacific further admits that pools consist of a rotating list of employees who operate trains from one location to another, sometimes over a long distance, and that extra boards consist of employees who do not hold a regular assignment and who are called to fill temporary vacancies. Union Pacific admits that, in some cases, temporary vacancies – such as those created when employees are sick or on vacation – were historically filled in the first instance by an employee on an extra board. Union Pacific further admits that the NCCC proposed establishing “self-supporting pools” in which pool vacancies would be protected in the first instance by employees in the pool, and that employees from the extra board would be called only if the pool were exhausted, meaning nobody in the pool was available. Union Pacific also admits that the NCCC proposed that self-supporting pools “will operate on a first in/first out basis, unless otherwise agreed to by a carrier and a labor

organization.” Union Pacific further admits that the NCCC proposed changes to pool and extra board regulation and, as part of that proposal, advocated for carriers to have the right to abolish or establish extra boards. Union Pacific otherwise denies the allegations in Paragraph 36.

37. Union Pacific avers that the NCCC proposal to PEB 250 provided for interest arbitration if the parties were unable to agree, meaning that the parties would allow an arbitrator to impose changes to their various agreements. Union Pacific otherwise admits the allegations in Paragraph 37.

38. Union Pacific admits the allegation in Paragraph 38.

39. Union Pacific admits that PEB 250 issued its Report and Recommendations on August 15, 2022, but otherwise denies the allegations in Paragraph 39.

40. Union Pacific admits that the Report of PEB 250 includes the language quoted in Paragraph 40, denies that the Board assigned article numbers to any subjects in its recommendations, and otherwise denies the allegations of Paragraph 40.

41. Union Pacific admits that PEB 250 declined to impose interest arbitration for unresolved negotiations over local crew consist issues (as distinguished from the parties’ work rule proposals referenced in Paragraphs 34-37) and that its reasons included the language quoted in Paragraph 41. Union Pacific otherwise denies the allegations of Paragraph 41.

National Agreement Negotiations and Congressional Action Following PEB 250

42. Union Pacific admits the allegations in Paragraph 42.

43. Union Pacific admits that post-PEB 250 negotiations resulted in a Tentative National Agreement dated September 15, 2022, and that the Agreement was put out for ratification by SMART-TD’s members. Union Pacific further admits that the Tentative Agreement required the parties to negotiate over any changes proposed under Articles V, VI,

and/or VII, and, if those negotiations were unsuccessful, authorized either party to submit the matter to final and binding arbitration in which the Arbitration Board would have “jurisdiction to determine whether and how the rules referenced in th[e] Article will be implemented.” Union Pacific otherwise denies the allegations in Paragraph 43.

44. Union Pacific admits the allegation in Paragraph 44.

45. Union Pacific admits the allegations in Paragraph 45.

46. Union Pacific admits that the National Agreement consists of the final version of Articles V, VI, and VII which had appeared in the Agreement dated September 15, 2022, and that the National Agreement is binding on the parties. Union Pacific otherwise denies the allegations in Paragraph 46.

47. Union Pacific admits the allegations in Paragraph 47.

48. Union Pacific admits that the National Agreement included Questions & Answers with respect to some of the Agreement’s terms. Union Pacific further admits that Q&A 7 states in part that “Article V applies to all thru freight road service, including extra boards that protect thru freight road service.” Union Pacific otherwise denies the allegations in Paragraph 48.

49. Union Pacific admits the allegations in Paragraph 49.

50. Union Pacific admits the allegations in Paragraph 50.

51. Union Pacific admits the allegations in Paragraph 51.

52. Union Pacific admits that SMART-TD GCAs 953, 569, and 887 reached separate crew consist agreements with Union Pacific on June 7, 2023, November 4, 2024, and June 3, 2025, respectively. Union Pacific further admits that these agreements generally continue to provide for a SMART-TD-represented conductor/foreman in the cab of the train, while authorizing Union Pacific to eliminate any second train service position such as brakeman,

switchman, and/or helper. Union Pacific further admits that, as part of these agreements, “[a]ssigned road and yard service crew members working as a reduced crew” received additional pay. Union Pacific also admits that the crew consist agreements referenced in Paragraph 52 do not apply to the former IGN and T&P properties. Union Pacific otherwise denies the allegations in Paragraph 52.

53. Union Pacific admits that the agreements referenced in Paragraph 53 resulted from *quid pro quo* collective bargaining in which each party received benefits, and that those specific agreements did not modify any provisions addressing whether or when Union Pacific was permitted to use a supervisor, official, or non-craft employee “to supplant or substitute in the exclusive work of any train or yard crew.” Union Pacific otherwise denies the allegations in Paragraph 53.

Article V, VI, and VII Negotiations and Arbitration

54. Union Pacific admits the allegations in Paragraph 54.

55. Union Pacific admits the allegations in Paragraph 55.

56. Union Pacific admits the allegations in Paragraph 56.

57. Union Pacific denies the allegations in Paragraph 57 and avers that on July 25, 2024, SMART-TD served a written notice invoking arbitration pursuant to the terms of Articles V, VI, and VII of the 2022 National Agreement.

58. Union Pacific admits that the parties entered into an agreement, effective September 16, 2024, respecting procedural rules for arbitration, avers that the terms of that agreement speak for themselves, and otherwise denies the allegations in Paragraph 58.

59. Union Pacific admits the allegations in Paragraph 59.

60. Union Pacific admits that, on January 2, 2025, the parties submitted opening written submissions to the Board with regard to their respective proposals and the rationale for them. Union Pacific denies that those proposals and arguments were limited to the implementation of Articles V, VI, and VII because SMART-TD's proposal had included numerous additional items outside the scope of those Articles.

61. Union Pacific admits the allegations in Paragraph 61.

62. Union Pacific admits the allegations in Paragraph 62.

63. Union Pacific admits that its initial proposal to the Arbitration Board did not seek to modify existing agreement provisions for "extra rest," avers that its proposals to the Board changed over time in response to various iterations of the union's own changes in its proposals, and otherwise denies the allegations in Paragraph 63, including but not limited to the assertion that SMART-TD members are "frequently overworked."

64. Union Pacific admits that its proposal included the language quoted in Paragraph 64, avers that the terms of that proposal speak for themselves, and otherwise denies the allegations in Paragraph 64. Union Pacific further avers that, despite now claiming that the Arbitrator did not have the jurisdiction to grant this proposal, SMART-TD did not make that objection until after the Award was issued, and, in fact, conceded that this provision was within the Arbitrator's jurisdiction by asking her to interpret it.

65. Union Pacific admits that its proposal, which mirrored language proposed before and discussed during the arbitration hearing, was intended to allow the railroad to use any qualified employee in certain circumstances, and that the Arbitrator properly interpreted this provision to have that effect. Union Pacific otherwise denies the allegations in Paragraph 65.

66. Union Pacific admits the allegations in Paragraph 66, with the caveat that the parties agreed to allow the neutral chairperson additional time to consider the parties' arguments following the arbitration hearing (not "following arbitration").

67. Union Pacific admits the allegations in Paragraph 67.

68. Union Pacific admits that the March 17, 2025 Order did not identify any proposals by Union Pacific that were outside the scope of the Board's jurisdiction, but denies that its proposals were outside the scope of the Board's jurisdiction. Union Pacific avers that the Board's March 17, 2025 Order speaks for itself, and that the arbitration agreement conferred on the Arbitrator the authority to grant all of the proposals made by Union Pacific. Union Pacific denies any remaining allegations in Paragraph 68.

69. Union Pacific admits that on May 13, 2025, the parties submitted their best and final offers, as well as post-hearing briefs. Union Pacific further admits that the Company's best and final offer included the following proposal: "Any existing pools or extra boards that have existing fatigue mitigation programs and/or provisions in place providing for extending, additional, or extra rest (excluding the mandatory extension of undisturbed rest required by the 2008 Rail Safety Improvement Act) prior to this Agreement will be eliminated." Union Pacific otherwise denies the allegations in Paragraph 69.

70. Union Pacific admits that its final proposal included the language quoted in Paragraph 70, avers that the terms of that proposal speak for themselves, and otherwise denies the allegations in Paragraph 70.

Arbitration Award

71. Union Pacific admits that the September 16, 2024 agreement included the quoted language, as well as language acknowledging that the parties were attempting to agree on

whether and how to implement the agreement, avers that the terms of that agreement speak for themselves, and otherwise denies the allegations in Paragraph 71.

72. Union Pacific denies the allegations in Paragraph 72.

73. Union Pacific admits that the Board's Award includes the language quoted, avers that the terms of the Award speak for themselves, and otherwise denies the allegations in Paragraph 73.

74. Union Pacific avers that the Award does explain why use of "any qualified employee" in certain circumstances is necessary in order to implement the terms of Articles V, VI and VII, further avers that such a provision is within the scope of "whether and how" to implement Article V, VI and/or VII, and otherwise denies the allegations in Paragraph 74.

75. Union Pacific avers that the Board's preliminary order instructed the parties that the proposals should be both workable and equitable; admits that the Award provides for "smart rest" for extra board employees; and avers that the Board's Award explained the rationale for adopting this provision. Union Pacific further avers that such a provision is within the scope of "whether and how" to implement Article V, VI, and VII, and otherwise denies the allegations in Paragraph 75.

76. Union Pacific admits that Article V(D) of the Award eliminated extra rest provisions, avers that such a provision is within the scope of "whether and how" to implement Article V, VI, and VII, and otherwise denies the allegations in Paragraph 76. Union Pacific further avers that, despite now claiming that the Arbitrator did not have the jurisdiction to grant this proposal, SMART-TD did not make that objection until after the Award was issued, and, in fact, conceded that this provision was within the Arbitrator's jurisdiction by asking her to interpret it.

77. Union Pacific admits the allegations in Paragraph 77.

78. Union Pacific admits that, in response to questions raised by one or both parties, Neutral Baggett-Hayes issued a further written clarification of certain aspects of her Award, and further admits that a true and correct copy of that clarification decision is attached to the Complaint as Exhibit B. Union Pacific avers that the terms of that decision speak for themselves, and otherwise denies the allegations in Paragraph 78.

79. Union Pacific admits that SMART-TD submitted a dissent to several aspects of the Award, but denies that those objections have merit. Union Pacific admits that SMART-TD's dissent is attached as Exhibit C to the Petition.

80. Paragraph 80 states conclusions of law to which no response is required. To the extent a response may be deemed required, Union Pacific admits that Section 9 Third of the Act contains the quoted language but denies that the union's Complaint satisfies any of the narrow grounds stated therein for judicial review.

COUNT I

81. Union Pacific incorporates by reference its response to Paragraphs 1-80 above.

82. Union Pacific denies the allegations in Paragraph 82.

83. Union Pacific denies that Paragraph 83 accurately characterizes the Board's Award, and further denies that the Award is inconsistent with Articles V, VI, and VII.

84. Union Pacific denies the allegations in Paragraph 84.

85. Union Pacific denies the allegations in Paragraph 85.

COUNT II

86. Union Pacific incorporates by reference its responses to Paragraphs 1-86 above.

87. Union Pacific admits that Q&A 7 provides in part that “Article V applies to all thru freight road service, including extra boards that protect thru freight road service.” Union Pacific denies the remaining allegations in Paragraph 87.

88. Union Pacific denies the allegations in Paragraph 88.

89. Union Pacific denies the allegations in Paragraph 89.

90. Union Pacific denies the allegations in Paragraph 90.

COUNT III

91. Union Pacific incorporates by reference its responses to Paragraphs 1-90 above.

92. Union Pacific admits that the Award contains Article V(D), avers that the terms of that provision speak for themselves, and otherwise denies the allegations in Paragraph 92.

93. Union Pacific denies the allegations in Paragraph 93.

94. Union Pacific denies the allegations in Paragraph 94.

95. Union Pacific denies the allegations in Paragraph 95.

96. Union Pacific denies the allegations in Paragraph 96.

PRAYER FOR RELIEF

Defendant Union Pacific denies that SMART-TD is entitled to the relief requested in the “WHEREFORE” paragraph, or to any relief whatsoever against Union Pacific.

AFFIRMATIVE DEFENSES

Without conceding that it bears the burden of proof as to any issue, Union Pacific asserts the following defenses to Plaintiff’s Complaint:

FIRST DEFENSE

Plaintiffs’ Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The Award conforms to both the substantive requirements for interest arbitration under the RLA and the stipulations of the parties' agreement to arbitrate under Articles V, VI, and VII of the 2022 National Agreement. Therefore, the Union's claim for relief should be denied.

THIRD DEFENSE

The Union waived its jurisdictional objections by failing to raise them until after the arbitration award was issued.

Union Pacific reserves the right to assert and does not waive any additional or further defenses as may be revealed during discovery or otherwise and reserves the right to amend this Answer to assert any such defenses.

Dated: February 26, 2026

Respectfully,

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CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will serve all counsel of record.

s/ Scott P. Moore