

UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

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

Civil Action No. _____

Petitioner,)

v.)

UNION PACIFIC RAILROAD)
COMPANY,)

Defendant.)

**SMART-TD’S VERIFIED COMPLAINT FOR DECLARATORY RELIEF AND
PETITION TO IMPEACH OR REVIEW AWARD UNDER THE RAILWAY LABOR ACT**

INTRODUCTION

1. This is a petition to review and set aside an arbitration award issued by Special Board of Adjustment (“SBA”) No. 1208 in Case No. 1 (hereinafter referred to as “the Award”) under Section 9 Third of the Railway Labor Act (“RLA”), 45 U.S.C. § 159 Third. The International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division (“SMART-TD”) and SMART-TD General Committees of Adjustment (“GCA”) GO-569, GO-577, GO-887, GO-927, and GO-953 (hereinafter collectively referred to as “SMART-TD” or “the Union”) are entitled to the relief sought pursuant to Section 9 Third(b) because the Award does not conform, nor confine itself, to the stipulations of the agreement to arbitrate entered into by Union Pacific Railroad Company (“UP” or “the Carrier”) and SMART-TD. A true and correct copy of the Award is enclosed herewith as Exhibit A.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this civil action under 28 U.S.C. §§ 1331 and 1337(a), in that federal questions arising under the RLA are presented. The RLA and the Declaratory Judgment Act authorize the relief requested.

3. As the Award was filed in this District on December 19, 2025, venue properly resides in this Court pursuant to 45 U.S.C. § 159 First and Second, which permit the Petitioners to seek vacatur in the federal district court in which the Award has been filed.

PARTIES

4. SMART-TD is the duly authorized representative for the purposes of the RLA of the crafts or classes of train service employees employed by Union Pacific and is a “representative” as defined by Section 1 Sixth of the RLA, 45 U.S.C. § 151 Sixth. SMART-TD is located at 6060 Rockside Woods Blvd., Ste. 325, Independence, Ohio 44131.

5. SMART-TD’s GCAs are semi-autonomous mid-level bodies responsible for negotiating and policing the collective bargaining agreements (“CBA”) under their jurisdiction. SMART-TD GCA GO-577, the GCA with jurisdiction over the former International-Great Northern Railroad (“IGN”) and portions of the Texas & Pacific Railway (“T&P”), is located at 1776 Woodstead Court, Ste. 202, The Woodlands, TX 77380. The General Chairperson (“GC”) of GCA GO-577 is R.E. Davis. SMART-TD GCA GO-569, the GCA with jurisdiction over the Missouri Pacific Upper Lines, is located at 161 W. Van Asche Loop, Ste. #2, Fayetteville, AR 72703. The GC of GCA GO-569 is J.H. Cornelius Jr. SMART-TD GCA GO-887, the GCA with jurisdiction over the former Southern Pacific West, is located at 500 Menlo Drive, Ste. 130, Rocklin, CA 95765. The GC of GCA GO-887 is W.T. Campbell. SMART-TD GCA GO-927, the GCA with jurisdiction over portions of the former T&P, is located at 11260 Fox Trail, Flint, TX

75762. The GC of GCA GO-927 is J.S. Chelette. SMART-TD GCA GO-953, the GCA with jurisdiction over the UP Eastern District, the former Chicago & Northwestern, and the Pacific Northwest is located at 5990 S.W. 28th Street, Ste. F, Topeka, KS, 66614. The GC of GCA GO-953 is L.V. Edington.

6. UP is a corporation engaged in interstate transportation by rail and is a “carrier” as defined by the RLA, 45 U.S.C. § 151 First. UP has its principal operating office at 1400 Douglas Street, Omaha, Nebraska 68179, and operates through this district.

CLAIM FOR RELIEF

Collective Bargaining under the Railway Labor Act

7. Collective bargaining between railroads and their employees’ representatives over rates of pay, rules and working conditions is governed by the RLA. Collective-bargaining agreements thereunder exist in perpetuity unless stated otherwise and are only amended through the service of written notice of intended changes in agreements affecting rates of pay, rules or working conditions, pursuant to Section 6 of the RLA, 45 U.S.C. § 156. Such proposals, called “Section 6 Notices,” are negotiated in conferences between representatives designated and authorized by the carrier or carriers, and by the collective bargaining representative(s) of their employees. 45 U.S.C. §§ 152 Second, 156. If these conferences fail to result in an agreement, the dispute is subject to mediation by the National Mediation Board (“NMB”). 45 U.S.C. § 155 First. If mediation then fails, the President of the United States may appoint an emergency board, referred to as a Presidential Emergency Board (“PEB”), to investigate and issue recommendations for settlement of the dispute. 45 U.S.C. § 160. Until these procedures are exhausted, and for thirty days thereafter, parties must maintain the status quo established by

existing agreements at all times and are forbidden from exercising self-help during this period.
45 U.S.C. §§ 152 First, 152 Seventh, 156, 160.

8. SMART-TD has a tripartite structure: (1) the International, which functions as the administrative head of the union; (2) GCAs, which are semi-autonomous mid-level bodies that are responsible for negotiating and enforcing the respective collective-bargaining-agreements under their jurisdiction, which consists of specific portions of a railroad carrier, usually comprised of a smaller former railroad; and (3) locals, where membership is held.

9. As part of their duties, GCs have authority to make local or system agreements covering rates of pay, rules, or working conditions with representatives of the railroads over which their respective GCA has jurisdiction. These local or system agreements govern the territory within that jurisdiction, and are subject to ratification in accordance with the SMART Constitution.

10. When negotiating agreements concerning rates of pay, rules, or working conditions, the major railroads in the United States, including UP, frequently bargain as a multi-employer group in what is referred to as “national handling.” At all relevant times, UP’s national handling agent has been the National Carrier Conference Committee (“NCCC” or “the Carriers”), a third-party negotiating committee that specializes in representing railroads in national handling.

11. National railroad unions, including SMART-TD, have historically established national negotiating committees comprising of various union officers that engage in bargaining with the railroad’s national handling representative. GCAs delegate their authority to enter into agreements with railroads to this committee, much like the railroads delegate their authority to the NCCC or other national handling agents.

12. As opposed to local or system agreements, national handling negotiations result in “national agreements,” which are CBAs between the railroads participating in national handling and the various unions representing their employees.

13. While national agreements can govern wages, health and welfare benefits, and certain work rules, some items are outside the scope of such agreements and can only be handled locally by GCAs and individual railroads, respectively.

14. “Crew consist” is the makeup of train crews. Crew consist agreements between UP and SMART-TD required a conductor on the train, and in some cases, a second train service employee, frequently classified as a brakeman. These employees work with engineers who are members of another labor organization, the Brotherhood of Locomotive Engineers & Trainmen, and are not governed by SMART-TD agreements.

15. It is well established that crew consist is a local issue as a matter of law (*see Bhd. of Railroad Trainmen v. Atlantic Coast Line R.R.*, 383 F.2d 225 (D.C. Cir. 1967), *cert. denied*, 389 U.S. 1047 (1968); *see also United Transp. Union v. Alton & Southern Ry. Co.*, No. CIV. 05-190-GPM, 2006 WL 664181, at *3-6 (S.D. Ill. Mar. 10, 2006)), and changes to crew consist provisions must be negotiated with the respective SMART-TD GCA on the appropriate railroad property. In other words, the issue of crew consist is unequivocally *not* subject to national handling.

16. Accordingly, while an agreement on wage increases can be subject to national handling and result in its inclusion in a national agreement, crew consist cannot. Crew consist can only be negotiated at the local level between GCAs and individual railroads, absent express agreement from both parties otherwise.

2019 Round of Bargaining

17. On November 1, 2019, the NCCC, acting on behalf of Defendant UP and the other railroads in national handling, served a Section 6 notice (“National Section 6 Notice”) on SMART-TD with respect to typical national handling issues (*i.e.* wages, health and welfare, and work rules). This notice also included an “invitation” to negotiate changes to crew consist agreements in national handling, as opposed to in local negotiations, where such are required to be held.

18. Concurrently, on November 1, 2019, the NCCC, on behalf of Union Pacific served local Section 6 Notices (“Local Crew Consist Section 6 Notices”) on each of the SMART-TD UP GCAs seeking to negotiate changes to crew consist at the local level.

19. The parties promptly commenced national negotiations with respect to the Carriers’ National Section 6 Notice, discussing wages, health and welfare issues, and certain work rule changes. While these negotiations commenced, SMART-TD exercised its authority to decline the NCCC’s “invitation” to bargain over crew size in national handling, as such bargaining is improper in that forum.

20. Accordingly, the parties were in national handling over wages, health and welfare, and work rules, while the matter of crew consist was subject to local negotiations.

21. In lieu of commencing local negotiations over crew consist, SMART-TD asserted that the Local Crew Consist Section 6 Notices were in violation of moratorium agreements in the existing crew consist agreements. SMART-TD asserted that these moratoria limited when future Section 6 notices on the issue of crew consist could be served absent mutual agreement, and that the necessary conditions had not yet occurred, rendering the notices improper.

22. The Carriers disagreed and pursued previously filed litigation in the Northern District of Texas for declaratory and injunctive relief. They argued, in part, that because the dispute involved the interpretation or application of the moratoria contained in the local crew consist agreements, it constituted a “minor” subject to mandatory arbitration under Section 3 of the RLA. The railroads sought to compel SMART-TD to arbitrate whether the moratorium provisions foreclosed the service of the Local Crew Consist Section 6 Notices, and further sought to require SMART-TD to bargain over crew consist pending arbitration.

23. In response, SMART-TD asserted that the issue presented constituted a major dispute as the notices were barred by the existing moratoria, that crew consist has always been held to be an issue subject to local and not national handling, and that it was not required to bargain over crew consist prior to any arbitration decision determining whether the moratoria barred the service of the Local Crew Consist Section 6 Notices.

24. The District Court granted the railroads’ motion in part, finding the dispute to be minor and enjoining SMART-TD from refusing to bargain over the Local Crew Consist Section 6 Notices locally while arbitration proceeded on the moratorium issue. While it granted the railroad’s motion, the District Court correctly noted that crew consist is an issue for local negotiations only, and SMART-TD was not compelled to negotiate crew consist in national handling. *BNSF Ry v. SMART-TD*, 439 F.Supp.3d 832, 839 (N.D.Tex. 2020).

25. Thereafter, SMART-TD timely appealed. The Fifth Circuit Court of Appeals vacated the opinion in part. While the Fifth Circuit found the dispute was minor, it additionally held that the Union did not have to negotiate with the Carriers pending the arbitral determination regarding the moratoria. *BNSF Ry. v. SMART-TD*, 973 F.3d 326, 342 (5th Cir. 2020), thus permitting SMART-TD to refuse to negotiate crew consist locally while the arbitration

proceedings occurred. Like the District Court, the Fifth Circuit recognized that crew consist is an issue subject to local bargaining only and improper in national handling.

26. When the parties were unable to otherwise resolve the crew consist moratoria issue, the matter was eventually progressed to arbitration in accordance with Section 3 of the RLA before Public Law Board No. 7960. By award dated July 28, 2021, Neutral LaRocco found that the existing moratoria contained in the crew consist agreements applicable to the former International Great Northern (“IGN”) and the former Texas and Pacific Railway (T&P) properties of UP’s network foreclosed any service of crew consist Section 6 notices in perpetuity, rendering UP’s Local Section 6 Crew Consist Notices for those properties invalid. Neutral Larocco found that the other Local Crew Consist Section 6 Notices on the remaining portions of UP’s network were valid.

27. Following the arbitrator’s decision, UP and SMART-TD began negotiations over the remaining valid Local Crew Consist Section 6 Notices, excluding the IGN and T&P properties.

28. While local negotiations were ongoing with respect to crew consist, the parties continued national handling separately with respect to wages, health and welfare, and work rules, but were unable to achieve progress on an agreement. As a result, SMART-TD invoked the mediation services of the NMB on January 24, 2022. Following the application for mediation, SMART-TD participated in sessions with the NCCC, NMB mediators, and NMB Board Members in an effort to reach an agreement. Various proposals for settlement were discussed, considered, and rejected.

29. On June 14, 2022, the NMB submitted its proffer of arbitration to the parties in accordance with Section 5, First, of the RLA, urging the parties to enter into agreements to

submit their collective bargaining disputes to arbitration as provided in Section 8 of the RLA. On June 15, 2022, SMART-TD declined the NMB's proffer of arbitration.

30. On June 17, 2022, the NMB served notice that its mediation services had been terminated pursuant to Section 5, First, of the RLA. Accordingly, self-help would become available 30 days later at 12:01 a.m. on Monday, July 18, 2022.

31. Following the termination of mediation services, and pursuant to Section 10 of the RLA, the NMB advised the President that, in its judgment, the disputes substantially threatened to interrupt interstate commerce to a degree that would deprive portions of the country of essential transportation services.

Presidential Emergency Board No. 250

32. In response, by Executive Order dated July 15, 2022, then-President Biden established Presidential Emergency Board No. 250 ("PEB 250") pursuant to Section 10 of the RLA, 45 U.S.C. § 160, to investigate and report its findings and recommendations regarding a collective bargaining dispute between the NCCC and all of the rail unions representing the employees of those carriers, including SMART-TD, effective July 18, 2022. President Biden appointed a three-member panel consisting of: Ira Jaffe (Chairperson), Barbara Deinhardt, and David Twomey.

33. Before PEB 250, both the unions and the railroads were required to submit proposals they sought in a national agreement for the panel's consideration in issuing a final recommendation on the matter.

34. SMART-TD and another union, the Brotherhood of Locomotive Engineers & Trainmen, submitted a proposal regarding "work/rest scheduling." The proposal would allow employees to observe regular, planned rest, with the goal of creating more predictable time off

for employees who are frequently required to work a completely unpredictable schedule that significantly degraded their quality of life.

35. The railroads, including UP, submitted a proposal that pertaining to “automated bidding and scheduling,” which would eliminate the existing process for how employees bid on assignments based on their seniority and how those employees get placed to assignments. Essentially, railroads create job assignments based on needs of service. Employees are able to bid on available assignments and are awarded the assignments based on seniority. The Carriers wished to create a new, automated, electronic process for employees to submit bids that would run automatically to place employees to assignments. This is in contrast to previous procedures that were often done manually and were more labor-intensive to perform.

36. The railroads, including UP, also submitted a proposal concerning “pool/extra board regulation” that would alter how vacant assignments are filled. While assignments are ordinarily filled through the bidding process described above, vacancies commonly arise when an assigned employee is unavailable for various reasons, such as sickness or vacation leave. Across the railroad industry, vacant assignments typically would be filled by employees on an “extra board,” which is simply a list of employees who do not otherwise hold a regular work assignment and serve as a fill-in employee for vacant assignments. The railroads’ proposal would make certain changes to extra boards, including abolishing some, and create so-called self-supporting pools” for certain assignments. These pools consist of a rotating list of employees who operate trains from one location to another, usually over a long distance. The employees in this pool will fill assignments as they are called on a first-in/first-out basis, based on the needs of service. Vacancies within the pool would be protected by the pool employees. The extra board

would become a supplemental source of manpower and only used for pool assignments when manpower within the pool is exhausted.

37. In addition to their proposals with respect to automated bidding and scheduling along with pool/extra board regulation, the railroads also proposed that PEB 250 recommend an arbitration “backstop” should the local crew consist negotiations fail to produce a mutual agreement. Meaning that if local bargaining was unsuccessful, the respective railroad could force the matter to final and binding arbitration.

38. PEB 250 held hearings on July 24, 25, 26, 27 and 28, 2022, in Washington, DC.

39. On August 16, 2022, PEB 250 issued its report and recommendations. In its recommendations, the unions’ proposal with respect to work/rest scheduling became known as “Article V,” while the Carriers’ proposals with respect to automated bid scheduling and pool/extra board modifications became known as “Article VI” and “Article VII,” respectively.

40. With regard to Articles V, VI, and VII, the Board recommended:

We remand for further negotiation both the Carriers’ requests regarding automated bidding and scheduling, self-supporting pools, pool regulations, and extra boards, and those of the BLET and SMART-TD relative to the issues of scheduling (including the scheduling of scheduled days off for unassigned road service). If no agreement can be reached, those disputes are to proceed to binding arbitration. The Board hopes that this may prove to be a “win-win” in which the Carriers obtain a more efficient and reliable system for manning the locomotives, with both operational benefits and cost savings, and employees will obtain preferred schedules with more control over their personal lives when not otherwise scheduled. This, too, is difficult to quantify in terms of GWI equivalence, but is a “plus” when viewed in the context of the overall package.

41. Regarding the Carriers’ request for an arbitration backstop pertaining to the crew consist negotiations going on locally, PEB 250 declined to do so, noting:

There are multiple reasons why the Board is unpersuaded that it should grant the Carriers’ request in this case. First, there are significant questions about whether the Board has the authority to address Crew Consist process at all. The matter is clearly one that, while of great importance, has time and time again been recognized

to be a local issue under the RLA. Second, no persuasive basis has been shown to supplant the customary RLA process. Under the RLA, the NMB is responsible for determining when parties engaged in Section 6 negotiations are to be released from that process. The negotiations are currently in active mediation under the direction of the NMB and further mediation sessions have been scheduled. Those discussions at the local level were described during the hearings as ongoing, detailed, and robust. No reason exists for this Board to make a recommendation that would alter the statutory process by mandating binding arbitration. Under the RLA, the Parties have the ability to agree or to decline to agree to binding arbitration at the time of release by the NMB. It is not necessary to discuss why the Board in PEB 219 chose to establish a process ending in binding arbitration with respect to the particular Crew Consist dispute that existed at the time. It is sufficient to note that the situation existing today is wholly unlike that which existed at the time that the Board issued its Report and Recommendations in PEB 219 and no valid justification for such an extraordinary recommendation exists in this case. The Board recommends that the Carriers withdraw their proposal with respect to Crew Consist. The Board further recommends that the moratorium in a new national agreement should not apply to bar or terminate the Carriers' separate local Section 6 notices concerning crew consist and the Parties' ongoing negotiations on that issue at the local level, where the Organizations agree that it must be handled and resolved. As noted, these local negotiations are currently in mediation under the direction of the NMB, and we expect that statutory process to continue its course.

National Agreement Negotiations and Congressional Action Following PEB 250

42. Following the report and recommendation of PEB 250, a second 30-day cooling off period went into effect, with self-help prohibited during that period. The parties chose to reconvene negotiations during this time.

43. These negotiations resulted in a Tentative National Agreement dated September 15, 2022. Before becoming effective, this agreement was subject to ratification by membership vote in accordance with the SMART-TD constitution. Under this tentative agreement, Articles V, VI, and VII required negotiation and, if needed, interest arbitration to implement rules regarding automatic bidding and scheduling, pools/extra board regulation, and work/rest scheduling.

44. The parties mutually agreed to delay the self-help period pending the ratification vote.

45. Ultimately, the tentative agreement failed the ratification vote by SMART-TD membership. Before the parties were released to engage in self-help, however, Congress intervened and imposed the tentative agreement on the parties as a new National Agreement. Pub. Law No. 117-26.

46. The National Agreement consists of the final version of Articles V, VI, and VII, binding the parties to the processes therein.

47. Article V, entitled “Scheduled Days Off,” states:

Any General Committee seeking to establish rules creating voluntary assigned days off in thru freight road service shall serve a written Notice on the Carrier of its desire to establish voluntary assigned days off agreement rules. The Notice shall specify the rules the Union proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such rules. The Carrier may respond with its own Notice specifying the rules that the Carrier proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such rules.

The General Chairman, or their designee, and the Carrier’s designated official will meet within thirty (30) days of the initial Union Notice to negotiate the terms and conditions of the proposed assigned days off agreement rules. Should the parties reach a tentative agreement, it will be subject to ratification pursuant to the Union’s ratification requirements, to the extent applicable.

If the parties are unable to reach a ratified agreement on assigned days off rules within one hundred eighty (180) days of the initial Union Notice, then either party may submit the matter to final and binding, party paid interest arbitration at any time thereafter by written request to the other party. The Arbitration Board shall have jurisdiction to determine whether and how the rules referenced in this Article will be implemented.

The Arbitration Board shall consist of one (1) member appointed by the Union, one (1) member appointed by the Carrier, and a neutral arbitrator, who shall serve as chair of the Board. The neutral arbitrator shall be mutually selected by the parties within ten (10) days of the request for arbitration, and a hearing shall be held within sixty (60) days thereafter, subject to the availability of the arbitrator. If the parties are unable to agree on an arbitrator within ten (10) days of the request for arbitration, then a list of nine (9) arbitrators shall be obtained from the National Mediation Board and the parties shall strike such list until an arbitrator is chosen with the first strike determined by coin flip or another random method.

The terms of the Board's decision shall be issued within thirty (30) days following the hearing or submission of post-hearing briefs, if any, and will be final and binding.

If agreements are reached pursuant to this Article either by ratification or arbitration where none previously existed, the Union will have exhausted all rights to serve any notices pursuant to this Article.

48. Relevant here, included in the National Agreement were Questions and Answers ("Q&As") that explain the parties' intent with respect to the agreement's terms. Q&A 7 specifically states, "Article V applies to all thru freight road service, including extra boards that protect thru freight road service."

49. Article VI, entitled "Automated Bid Scheduling," states:

Each carrier may serve a notice of its intent to implement the Automated Bid Scheduling Agreement described in (a) (d), below, and, in doing so, may identify any carrier specific implementation matters that it believes must be addressed in connection with such implementation. The organization may respond with its own list of carrier-specific implementation issues that it believes must likewise be addressed.

The General Chairman, or their designee, and the Carrier's designated official will meet within thirty (30) days of the initial Carrier Notice to negotiate the terms and conditions of the proposed agreement rules. Should the parties reach a tentative agreement, it will be subject to ratification pursuant to the Union's ratification requirements, to the extent applicable.

- (a) Automated Bid Scheduling (ABS)
 - (1) Automated Bid Scheduling (ABS) will serve as the primary method to assign employees on a regular basis, based on seniority, qualifications and job preferences.
 - (2) Carriers will maintain a system containing all employees' assignments, including pools and extra boards, which will be updated as necessary. Employees may update their assignment preferences at the designated time. New assignments will be bulletined or posted.
 - (3) Employees will be responsible for accessing the system to determine if their assignment has changed.
- (b) Submitting Preferences
 - (1) All employees will be required to electronically file their individual preferences for their assignment(s) on their Automated Bid Application and will specify a sufficient number of preferences to ensure a selection will be granted.

- (2) Employees may make changes or update their individual preferences on their Automated Bid Application.
- (c) Job Assignments
- (1) Assignments awarded will be posted electronically for employees. All employee assignments will be assigned based upon the individual preferences employees submitted on their Automated Bid Applications, qualifications and seniority permitting. It is the employee's responsibility to be aware of the new assignment (if applicable) and be rested and available to report when required.
 - (2) Employees changing assignments will protect their assignment until the designated date and time. Employees who are at their home terminal (and not working) will be placed on their new assignment at the designated date and time. Employees on- duty or not at their home terminal at the start of a new assignment will remain on their previous assignment until returning to their home terminal.
 - (3) Employees newly assigned to an extra board or pool freight service will be placed at the bottom of the board/pool at the start of a new assignment or when they return to their home terminal in accordance with their tie up time. If two or more employees have the same tie- up time, they will be placed on the board in accordance with their last on- duty time.
- (d) Vacation
- (1) Weekly vacations will commence and end at a designated date and time. Employees scheduled to be off for weekly vacation will not have their Automated Bid processed and will not be assigned to a new assignment. Employees returning from weekly vacation will have their Automated Bid Application processed by the system.
 - (2) Weekly/block vacation will begin at 12:01 a.m. and will end at 11:59 p.m., unless otherwise authorized.

If the parties are unable to reach a ratified agreement on the rules referenced in this Article within one hundred eighty (180) days of the initial carrier notice, then either party may submit the matter to final and binding, party paid interest arbitration at any time thereafter by written request to the other party. The Arbitration Board shall have jurisdiction to determine whether and how the rules referenced in this Article will be implemented.

The Arbitration Board shall consist of one (1) member appointed by the Union, one (1) member appointed by the Carrier, and a neutral arbitrator, who shall serve as chair of the Board. The neutral arbitrator shall be mutually selected by the parties within ten (10) days of the request for arbitration, and a hearing shall be held within sixty (60) days thereafter, subject to the availability of the arbitrator. If the parties are unable to agree on an arbitrator within ten (10) days of the request for arbitration, then a list of nine (9) arbitrators shall be obtained from the National Mediation Board and the parties shall strike such list until an arbitrator is chosen with the first strike determined by coin flip or another random method.

The terms of the Board's decision shall be issued within thirty (30) days following the hearing or submission of post-hearing briefs, if any, and will be final and binding.

If agreements are reached pursuant to this Article either by ratification or arbitration where none previously existed, the Carrier will have exhausted all rights to serve any notices pursuant to this Article.

50. Article VII, entitled "Pools and Extra Board," states:

Each carrier may serve a notice of its intent to implement some or all of the items below and, in doing so, may identify any carrier- specific implementation matters that it believes must be addressed in connection with such implementation. The organization may respond with its own list of carrier- specific implementation issues that it believes must likewise be addressed.

The General Chairman, or their designee, and the Carrier's designated official will meet within thirty (30) days of the initial Carrier Notice to negotiate the terms and conditions of the proposed agreement rules. Should the parties reach a tentative agreement, it will be subject to ratification pursuant to the Union's ratification requirements, to the extent applicable.

- (a) Self supporting pools
 - (1) Pools will be converted to a system under which pool vacancies are primarily protected within that pool
 - (2) Pools will operate on a first in/first out basis unless otherwise agreed to by a carrier and labor organization
- (b) Pool and extra board regulation
 - (1) Pool service will be regulated based on a target number of starts that takes the length of run into consideration
 - (2) There will be a predetermined time period during which the number of starts is tabulated
 - (3) There will be a predetermined time period for predicting the future number of pool starts utilizing technology
 - (4) There will be a process for automatic pool adjustment to ensure consistency with the requirements and intent of the Rail Safety Improvement Act (RSIA), full time employee availability and fatigue abatement
 - (5) Pools will operate on a first in/first out basis, unless otherwise agreed to by the parties
 - (6) The carrier may abolish or establish road, yard or combination extra boards which will be regulated by the carrier based on the needs of service
- (c) Workforce predictability and flexibility
 - (1) In conjunction with adoption of the above listed in Paragraph A and/or Paragraph B above, new agreements will provide for one or more of the following:

- (a) Opportunity for employees to observe rest outside the requirements of the Rail Safety Improvement Act
- (b) A procedure under which employees may trade assignments
- (c) A procedure under which employees may receive a pre-arranged layoff

If the parties are unable to reach a ratified agreement on the rules referenced in this Article within one hundred eighty (180) days of the initial carrier notice, then either party may submit the matter to final and binding, party-paid interest arbitration at any time thereafter by written request to the other party. The Arbitration Board shall have jurisdiction to determine whether and how the rules referenced in this Article will be implemented.

The Arbitration Board shall consist of one (1) member appointed by the Union, one (1) member appointed by the Carrier, and a neutral arbitrator, who shall serve as chair of the Board. The neutral arbitrator shall be mutually selected by the parties within ten (10) days of the request for arbitration, and a hearing shall be held within sixty (60) days thereafter, subject to the availability of the arbitrator. If the parties are unable to agree on an arbitrator within ten (10) days of the request for arbitration, then a list of nine (9) arbitrators shall be obtained from the National Mediation Board and the parties shall strike such list until an arbitrator is chosen with the first strike determined by coin flip or another random method.

The terms of the Board's decision shall be issued within thirty (30) days following the hearing or submission of post-hearing briefs, if any, and will be final and binding.

If agreements are reached pursuant to this Article either by ratification or arbitration where none previously existed, the Carrier will have exhausted all rights to serve any notices pursuant to this Article.

51. While the national handling process was ongoing and after the imposition of the National Agreement by Congress, SMART-TD continued local negotiations over UP's Local Crew Consist Section 6 Notice.

52. SMART-TD GCAs 953, 569, and 887 eventually reached separate crew consist agreements with UP on June 7, 2023, November 4, 2024, and June 3, 2025, respectively. These agreements retained a SMART-TD-represented conductor/foreman in the cab of the train and eliminated the requirement of a brakeman/switchman position under certain circumstances in exchange for additional pay for conductors/foremen. As the moratoria in agreements regarding

IGN and T&P remained in effect, these crew consist agreements have no application to those properties. With this agreement reached, the matter of UP's Local Crew Consist Section 6 Notices was resolved with finality.

53. Importantly, these crew consist agreements continued in effect longstanding agreement language that prohibited "Carrier supervisor, official, or non-craft employees (including yardmasters) [from being] used to supplant or substitute in the exclusive work of any train or yard crew." These agreements were the result of *quid pro quo* collective bargaining, wherein both SMART-TD and UP benefited equally.

Article V, VI, and VII Negotiations and Arbitration

54. Per the terms of Article V, on December 28, 2023, SMART-TD served notice to commence bargaining over its terms.

55. Per the terms of Articles VI and VII, on January 15, 2024, Union Pacific served notice to commence bargaining over their terms.

56. Thereafter, the parties exchanged proposals and engaged in negotiations for the purpose of reaching an agreement on Articles V, VI, and VII.

57. After the parties were unable to reach an agreement as to whether and how to implement the rules referenced in Articles V, VI and VII, the parties agreed to submit the dispute to arbitration.

58. On September 16, 2024, the parties entered into an agreement to arbitrate, specifically agreeing to limit the scope of the Board's jurisdiction to "only over changes necessary to implement the rules referenced in Articles V, VI and VII of the National Agreement."

59. The arbitration agreement established SBA 1208, an arbitration board consisting of three members: a union member, a carrier member, and a neutral member. The union member was SMART-TD Vice President Gary Crest. The carrier member was Union Pacific Vice President of Labor Relations Maqui Parkerson. The parties mutually agreed to Earlene Baggett-Hayes (“Neutral Baggett-Hayes”) to serve as the neutral member and chairperson of the Board.

60. On January 2, 2025, the parties submitted opening submissions to the Board consisting of their respective proposals regarding the implementation of Articles V, VI, and VII, including the rationale for such.

61. On January 13, 2025, the parties submitted rebuttal submissions to the Board.

62. An arbitration hearing was thereafter held on January 21 – 24, 2025, in Phoenix, AZ.

63. Before and during arbitration, neither UP nor SMART-TD requested the elimination of so-called “extra rest” provisions in existing agreements. These provisions allow employees performing road service to observe extra rest/time off between assignments at their option when they work a pre-determined requisite number of hours. This extra rest is critical to SMART-TD members who are frequently overworked. During the arbitration hearing, UP witness Jennifer Powell directly confirmed that the Carrier was not seeking the elimination of existing extra rest provisions.

64. UP’s proposed agreement language included a provision that would allow it to use non-SMART-TD-represented employees to operate trains. The proposed language stated as follows: “The parties recognize that in order to meet a customer’s immediate service need, or to meet operation exigencies at a time a protecting crew is not present and available in the terminal

for such service, and time will not permit calling a rested extra employee, a qualified employee may be used, without penalty, to perform such service.”

65. This language could potentially permit the Carrier to use non-craft employees holding Conductor certification to perform such duties in direct contradiction to existing crew consist agreements in effect across the Carrier’s system, which explicitly prohibit any “Carrier supervisor, official, or non-craft employees (including yardmasters) [from being] used to supplant or substitute in the exclusive work of any train or yard crew” working under SMART TD Agreements.

66. Following arbitration, the parties agreed to allow Neutral Baggett-Hayes additional time to consider the parties’ arguments.

67. On March 17, 2025, Neutral Baggett-Hayes issued her “Preliminary Findings and Order to Provide Post-Hearing Submissions.” In this order, Neutral Baggett-Hayes found: “[t]he Board’s jurisdiction is limited in scope to items that are legitimately before it,” and further found that “[t]he Board lacks jurisdiction over a number of the specified Union requests.” The order then listed requests by SMART-TD that were within the scope of the Board’s jurisdiction and further identified certain SMART-TD requests that it deemed outside the Board’s jurisdiction, stating, “the Board is not authorized to rule on these matters that are outside of its jurisdictional scope.”

68. The order made no mention of proposals by UP that were outside the scope of the Board’s jurisdiction, solely identifying proposals by SMART-TD. The order then requested “best and final” offers to be submitted in post-hearing briefs within 60 days. Importantly, the order also stated, “[t]he proposals may not exceed parameters or topics already presented and argued.”

69. On May 13, 2025, the parties submitted their best and final offers and supporting post-hearing briefs. For the first time, UP requested the elimination of extra rest in its best and final offer, proposing the following agreement language: “Any existing extra 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 or undisturbed rest required by the 2008 Rail Safety Improvement Act) prior to this Agreement will be eliminated.”

70. The Carrier additionally retained its proposal regarding using non-SMART-TD-represented personnel on trains, proposing: “Without prejudice to either party’s position regarding the ability of the Carrier to take appropriate actions to protect service during periods of extraordinary unavailability, if the Carrier is unable to fill assignments due to lack of personnel and time will not permit calling a rested extra employee, a qualified employee may be used without penalty to perform such service upon providing notice to the General Chairperson. The Carrier will evaluate the need to exercise its rights under this provision on an assignment-by-assignment basis.”

Arbitration Award

71. As noted above, the parties’ agreement to arbitrate entered into on September 16, 2024, limited the scope of the Board’s jurisdiction to “only over changes necessary to implement the rules referenced in Articles V, VI and VII of the National Agreement.”

72. Despite that limitation on the Board’s jurisdiction as found by Neutral Baggett-Hayes, by Award transmitted to the parties on August 5, 2025, the Board ran afoul of those limitations.

73. In Article VII(E), the Board granted the Carrier's request to use employees not working in the conductor craft and not represented by SMART-TD to perform conductor work.

In doing so, the Board stated:

In order to protect the Carrier's ability to provide service, the final Award adopts the Carrier's proposed language that allows it to protect service by using any qualified employee in limited circumstances that could result in unavoidable harm to the customer. The Arbitrator acknowledges the Organization's vehement opposition to this provision, but appreciates that Carrier's need to protect service in the face of periods of extraordinary unavailability. The intent of the provision is to provide narrowly tailored relief to the Carrier in limited circumstances. The Parties should develop questions and answers to illustrate the boundaries of this provision during their implementation discussions.

74. The Award references no language within Article V, VI, or VII that explains or supports any authority for the Board to modify the longstanding local crew consist agreements that expressly forbid the use of non-craft employees to perform conductor work. These provisions protect the employees' rights to the work and duties they perform, and ensure staffing levels are properly maintained to protect the needs of service. Staffing levels have consistently decreased with every modification to crew consist, making this provision more and more crucial to employees.

75. The Award fails to provide extra board employees with assigned days off, despite extra board employees specifically being included in Article V under Q&A 7. In lieu of assigned days off, the Award imposed so-called "smart rest" for extra board employees, which requires extra board employees to work five consecutive days before receiving a day off. Frequently, employees do not work five consecutive days and their "clock" resets, leaving employees with no assigned days off. As a result, employees remain subject to erratic scheduling and are unable to predict when they will have time

off, a problem that was central to PEB 250's recommendations and to the purpose and text of Article V.

76. The Award also eliminated extra rest provisions in Article V(D) in direct contradiction to the parties' submissions, live testimony, and the Board's own order foreclosing the inclusion of proposals that exceeded the parameters or topics already presented and argued. In doing so, the Board merely copied and pasted the Carrier's proposed language verbatim, without providing any supporting rationale.

77. The Parties thereafter engaged in interpretation discussions concerning the Award in its entirety. Among the issues in dispute were the elimination of extra rest, the use of non-craft employees to perform conductor duties, and the elimination of additional allowances and penalty payments from employees performing certain work.

78. When the parties were not able to reach agreement, questions regarding these items were presented to Neutral Baggett-Hayes during an executive session of the Board. Thereafter, a written decision was issued confirming that extra rest provisions were eliminated, and that the Award "does not differentiate between Union and non-Union employees... when it refers to 'a qualified employee.'" Neutral Baggett-Hayes also confirmed that additional allowances and penalty payments were not eliminated. A true and correct copy of this decision is attached as Exhibit B.

79. SMART-TD submitted its dissent to several aspects of the Award, including that it failed to provide extra board employees with assigned days off, it eliminated extra rest provision, and it permitted the Carrier to use "any qualified employee" to perform conductor duties. A true and correct copy of the dissent is attached as Exhibit C.

80. Section 9 Third, the section governing the method and scope of judicial review of Section 7 arbitration awards, states:

Such petition for the impeachment or contesting of any award so filed shall be entertained by the court only on one or more of the following grounds:

- (a) That the award plainly does not conform to the substantive requirements laid down by this chapter for such awards, or that the proceedings were not substantially in conformity with this chapter;
- (b) That the award does not conform, nor confine itself, to the stipulations of the agreement to arbitrate; or
- (c) That a member of the board of arbitration rendering the award was guilty of fraud or corruption; or that a party to the arbitration practiced fraud or corruption which fraud or corruption affected the result of the arbitration: Provided, however, That no court shall entertain any such petition on the ground that an award is invalid for uncertainty; in such case the proper remedy shall be a submission of such award to a reconvened board, or subcommittee thereof, for interpretation, as provided by this chapter: Provided further, That an award contested as herein provided shall be construed liberally by the court, with a view to favoring its validity, and that no award shall be set aside for trivial irregularity or clerical error, going only to form and not to substance.

45 U.S.C. § 159 Third.

COUNT I

81. Petitioners reallege and incorporate paragraphs 1 through 80 as if fully set forth herein.

82. By permitting the Carrier to use “any qualified employee” to work an assignment without penalty, such is outside the scope of Articles V, VI, and VII and the Board’s jurisdiction. The Crew Consist Agreements in effect across the Carrier’s system explicitly prohibit any “Carrier supervisor, official, or non-craft employees (including yardmasters) [from being] used to supplant or substitute in the exclusive work of any train or yard crew” working under SMART TD Agreements.

83. Nowhere in Articles V, VI, and VII did the parties contemplate using non-craft and/or management employees to fill vacancies.

84. By including a provision that allows the Carrier to use any qualified employee, including potentially UP management, to perform conductor work, the Award does not conform, nor confine itself, to the stipulations of the agreement to arbitrate.

85. As a result, the Award should be set aside in its entirety pursuant to Section 9 Third and Fourth.

COUNT II

86. Petitioners reallege and incorporate paragraphs 1 through 85 as if fully set forth herein.

87. The failure of the Award to provide extra board employees with scheduled days off is in direct contradiction of Article V and Q&A 7, which specifically included extra board employees within the scope of Article V.

88. By “giving” employees smart rest in lieu of scheduled days off, the Award fails to provide employees with predictable, scheduled time off. Instead, extra board employees’ time off is totally dependent on factors outside of their control, the very system they operated under before.

89. The Board’s failure to provide extra board employees with assigned days off does not conform, nor confine itself, to the stipulations of the agreement to arbitrate.

90. As a result, the Award should be set aside in its entirety pursuant to Section 9 Third and Fourth.

COUNT III

91. Petitioners reallege and incorporate paragraphs 1 through 90 as if fully set forth herein.

92. Article V(D) of the Award eliminated existing provisions that provide for extending, additional, or extra rest on existing pools and extra boards,

93. Such is contrary to arguments advanced by both parties at the hearing, where neither party sought the elimination of extra rest.

94. Further, the elimination of these provisions is contrary to the Board's jurisdictional limitation wherein the parties were forbidden from introducing new proposals in their post-hearing submissions.

95. The Board's elimination of extra rest provisions does not conform, nor confine itself, to the stipulations of the agreement to arbitrate.

96. As a result, the Award should be set aside in its entirety pursuant to Section 9 Third and Fourth.

WHEREFORE, Petitioners respectfully requests that this Court grant the following relief:

- A. Issue declaratory and injunctive relief:
 - (a) vacating and setting aside the Award of SBA No. 1208 pursuant to RLA Section 9 Third and Fourth on the ground that the Award fails to conform, or confine itself, to the stipulations of the agreement to arbitrate;
 - (b) vacating and setting aside the Award pursuant to RLA Section 9 Third and Fourth to the extent that the Award has the effect of modifying or eliminating any language in the parties' Local Crew Consist Agreements on the ground that the Award fails to conform, or confine itself, to the stipulations of the agreement to arbitrate;
- B. Grant final judgment in this civil action in favor of Petitioners and against UP;
- C. Grant such temporary and preliminary injunctive relief as may be appropriate;

D. Grant Petitioners such other and further relief, which this Court deems to be just and proper.

Respectfully submitted,

s/Shawn M. McKinley

Shawn M. McKinley

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SPECIAL BOARD OF ADJUSTMENT No. 1208

CASE NO. 1

SMART Transportation Division

vs.

Union Pacific Railroad

Board of Arbitration

Maqui Parkerson

Carrier Member

Vice President Labor Relations
Union Pacific Railroad Company
1400 Douglas Street, Room 710
Omaha, Nebraska 68179

Gary Crest

Union Member

SMART-TD Vice President
20396 Woodbury Dr.
Grass Valley, CA 95949

Earlene R. Baggett-Hayes

Neutral Arbitrator and Board Chair

110 North Perry Street
Pontiac, MI 48342

PRELIMINARY INFORMATION

The parties were unsuccessful in reaching an agreement on whether and how to implement the rules referenced in Articles V, VI, and VII of the NCCC-SMART-TD tentative National Agreement (Sept. 15, 2022)-Implemented by Public Law No. 117-216 (the “National Agreement”). In this case, the parties’ agreement provided for final and binding arbitration to resolve the matter and provided the arbitration board with the “jurisdiction to determine whether and how the rules referenced in the National Agreement will be implemented” pursuant to Sections 7 and 8 of the Railway Labor Act (“RLA”) 45 USC Sections 157 and 158.

Pursuant to the National Agreement and the Agreement signed on the 16th day of September, 2024, by and on behalf of the Union Pacific Railroad Company (hereinafter called “Carrier”) and SMART Transportation Division (hereinafter called “Union”), the Board process was invoked to establish a backstop to resolve the designated outstanding issues.

The Board’s responsibility was to render decisions which were within the scope of the three (3) disputed Articles of the National Agreement:

Article V. Scheduled Days Off for Thru Freight Road Service

Article VI. Automated Bid Scheduling

Article VII. Pools and Extra Boards

The Board was provided jurisdiction solely over changes necessary to implement the rules referenced in those articles, and in doing so, was charged with the task of making findings and rendering an Award. The Board’s primary conclusions were to be based on workability and equitable considerations, or quid pro quo.

The Board held a hearing on the disputed provisions of the National Agreement on January 21-23, 2025. The advocates who presented during the hearing were (in alphabetical order):

1. Tom Chiaveta
2. Luke Edington
3. Sean McKinley
4. Donald Munro

Both prior to and during the arbitration hearing, the advocates timely tendered and presented submissions and rebuttals, which were duly exchanged and provided to the Board. At the hearing, the parties were afforded the full opportunity to present testimony and evidence and to put forth arguments in support of their respective positions. After oral rebuttals and surrebuttals were presented, the hearing was closed.

At the hearing, both parties acknowledged that they recognized and understood the significance and importance of each other's position. They also concurred that the topics of flexibility, efficiency, certainty, and fairness of work schedules were intermingled.

The Organization relied heavily on the importance of predictive time off for the employees. In the Organization's view, its work/rest pool freight models include predictable time-off, increased availability, a proper work/rest model for each individual pool, and improved quality of life for employees. Also, according to the Organization, its proposed work/rest model for extra boards provides predictability, rewards employees for outstanding attendance, and provides consideration for life events. The Organization also propounds that voluntary assigned days off in through freight road service are appropriate. The Organization sought a manageable work-life balance for employees through approved and consistent time off to manage personal affairs and increased opportunities to observe rest days beyond RSIA-regulated rest periods.

The Carrier acknowledged the value of providing more predictable work schedules for employees, but emphasized the need for operational efficiencies to offset the increased costs associated with voluntary

scheduled rest days. The Carrier focused on the need for improved availability of employees to support service and the value of standardized, streamlined processes and rules to improve operating efficiency.

Both parties presented extensive costing analyses. The parties were significantly at odds over the anticipated costs associated with the proposal items. It is notable that removal of the non-jurisdictional items proposed by the Organization, which were determined to be beyond the scope of this matter, significantly impacts and decreases potential costs for the Carrier. It is also notable that voluntary rest days for through freight employees require increased headcount and introduce uncertainty over required workforce levels as employees decide whether or not to observe rest days.

The Board was present for the entire hearing and has duly considered all admitted evidence, whether oral or documentary. The Board conducted several executive sessions between January 23, 2025, which was the date of the initial hearing, and the date of the final Award. The Board has considered only the evidence made known in the parties' presentations and submissions prior to and during the hearing, except for the Board's request for additional information.

On March 17, 2025, the Arbitrator issued a Preliminary Order. In that Order, the Arbitrator concluded that some of the Organization's proposal requests had exceeded the Board's jurisdiction. The Arbitrator specifically determined that the Board's jurisdictional scope did not include Self Supporting Pool (65 Mile Payment), Earned Days Off, Vacation (Jan/Feb), Vacation (New Hire), Personal Leave Days, Bereavement, Held Away Home Terminal Pay (12 Hours), Away From Home Terminal Meal Allowance (\$25 per meal), Pay Differentials, Overtime After Eight (8) Hours, Step Rates, Penalty for Delayed Lodging (after 30 minutes), and Certificate and RCL Allowance Increases. As a consequence, the Board was not authorized to rule on those matters as they were outside of the Board's jurisdictional scope.

In the Preliminary Order, the Arbitrator determined that the Board's jurisdictional scope does include Scheduled Rest, Self-Supporting Pool, and Prearranged Layoffs. The Preliminary Order

encouraged the parties to advance additional discussions in an attempt to reach an agreement and to otherwise submit their best and final proposals which “adhere to the appropriate jurisdictional scope,” and “specifically address compliance with the quid pro quo and workability mandates.” Both parties submitted their best and final proposals on or about May 13, 2025.

The Board has now reviewed all submissions and proceeds to render an Award, attached hereto as Exhibit A. Notwithstanding this fact, the Board recognizes the need for subsequent discussions by the parties to facilitate a smooth and satisfactory implementation of the Award. Doing so is crucial in ensuring the workability and practical operation of the Award’s terms. To ensure an effective execution of the final Award, the Board has highlighted below in summary fashion those implementation issues that may be critical to accomplishing this goal, although they are not explicitly stated in the verbiage of the final Award.

IMPLEMENTATION OF ARTICLES V, VI, and VII

ARTICLE V. Scheduled Days Off for Thru Freight Road Service

Article V was adopted by PEB 250 for the benefit of the Organization. Article V introduces voluntary rest days for through freight employees working in pool or road extra board assignments. The final Award assigns a work-rest model of six (6) workdays, or available for workdays, followed by two (2) voluntary rest days (6/2) for through freight pools, including guaranteed pools. This model is significantly similar to the requirements of the RSIA and is likely to enhance the quality of life for employees, who will have the certainty of time off, as promoted by the Organization. This model better supports the objective of providing a better quality of life for employees than the work-rest model proposed by the Carrier, which contemplated four (4) workdays, or available for work days, followed by one (1) voluntary rest day (4/1). The final Award allows the parties to agree upon different work-rest models that address workability and quid pro quo objectives for particular pools, if desired.

In order to balance additional costs associated with a 6/2 work-rest model, the final Award adopts the Carrier’s proposal of implementing voluntary “smart rest” for extra board employees. This mechanism

allows employees to take a 24-hour rest period after working five (5) consecutive starts and addresses the Organization's desire for voluntary rest days. Additionally, it is consistent with the workability and quid pro quo mandates of the Board. As with work-rest models for through freight pools, the parties can agree to implement different work-rest models for extra boards, if desired.

During implementation discussions contemplated in the final Award, the Parties should discuss the implementation of the process for electing voluntary rest days once technology is developed for the administration of the voluntary scheduled days off for pool freight service. The parties should also discuss the implementation of smart rest for road extra boards. Where appropriate, the parties are encouraged to develop questions and answers to demonstrate their understanding of certain provisions in the Award, such as situations involving special circumstances such as Acts of God or other unforeseen events that may be addressed on a case-by-case basis.

ARTICLE VI. Automated Bid Scheduling

Article VI was adopted by PEB 250 for the benefit of the Carrier. The final Award relies heavily on the language that was common to both parties' respective last best proposals. The objective behind Article VI is to streamline notification, bidding and vacancy procedures to achieve operating efficiencies that offset costs incurred due to voluntary scheduled rest days. Other than two items, the last best proposals submitted by the Parties were not significantly in conflict regarding Article VI. The Parties disagreed over whether daily preference boards should be eliminated. The final Award calls for the elimination of daily preference boards, which allows the Carrier to recognize the benefits associated with the implementation of standardized and streamlined processes related to job bidding. Additionally, the Parties disagreed over what pass-up rule to adopt. The Organization supports the ability to "pass-up" assignments every 30 days, which is in place in certain places, while other places have no pass-up rights at all. The Carrier's proposal includes a quarterly "pass-up" rule, which is currently in place for employees in engine service. The final Award adopts a quarterly "pass-up" rule, which provides "pass-up"

rights to areas that did not previously have them, and preserves the benefit of standardization of this process for the Carrier.

Instead of adopting the Organization's Ready Work Board proposal, Article VI.Q of the final Award adopts the Carrier's proposal that requires employees in a furlough status for fourteen (14) days or less to accept recall within forty-eight (48) hours with one modification. The Arbitrator acknowledges the Carrier's desire to exert some control over its workforce levels, but is concerned that the Carrier's proposed provision could present unique challenges for newer employees. Accordingly, the final Award includes language that would require employees recalled under this provision to remain on a working board for fourteen (14) calendar days following recall. This modification is intended to encourage the Carrier to be thoughtful about how it manages its workforce levels. The Parties are encouraged to consider the workability of alternatives to this provision in their implementation discussions.

The implementation of standardized processes to bid jobs and fill vacancies requires a very technical understanding of these processes. During the implementation phase, the parties should discuss how the Carrier will fill a position when it goes no-bid, including access to resources within seniority districts, qualification requirements, and displacement rules. The parties should also discuss the appropriateness of the elimination of existing agreement provisions listed in Article VI.L.

ARTICLE VII. Pools and Extra Boards

Article VII was adopted by PEB 250 for the benefit of the Carrier. As with Article VI, the final Award relies heavily on the language that was common to both parties' respective last best proposals. The final Award implements self-supporting pools, which was a benefit identified by PEB 250 as a way for the Carrier to offset costs associated with scheduled rest. Accordingly, the final Award confirms the elimination of additional allowances or penalty payments for drop turns, step-up, make whole, and any provisions when working in the assigned pool.

The final Award declines to adopt the Carrier's proposed vacancy procedure language in Article VII.A.3, but the Parties are encouraged to discuss uniform vacancy procedures during their implementation discussions. The final Award also declines to adopt the Carrier's proposal that would expand normal service performed by through freight pools to include hours of service relief/short turnaround service and work train service. Such a provision goes beyond the scope of Article VII because it changes the nature of through freight pool service. The final Award is not intended to disturb any existing practices that permit the Carrier to use pool employees to perform hours of service relief/short turn around service in certain circumstances.

The final Award adopts the Organization's approach to regulation for non-guaranteed pools and declines to adopt the 100% rest day factor proposed by the Carrier. While the Carrier's proposed provision would allow the Carrier to shift more employees from a guaranteed extra board to a non-guaranteed pool freight board than might be necessary, padding through freight pools could result in decreased earnings for pool employees. Instead, the final Award allows the Carrier to regulate non-guaranteed through freight pools to cover only those rest days actually observed by employees. During implementation discussions, the parties should determine the process by which employees who wish to observe rest days must provide notice to the Carrier.

The Carrier vociferously maintains that it should "own" regulation on all guaranteed boards, including guaranteed through freight pools and extra boards. Because such positions are guaranteed, the Carrier argues that it should be able to determine how many resources are required to maintain service. The Organization adamantly opines that the Carrier can neither abolish nor combine extra boards. It is both persuasive and critical that increased costs result when employees remain on extra boards and earn a guarantee that involves collecting pay for availability when they are not needed to work. This is contrary to the Organization's contention that guaranteeing the extra boards does not constitute an additional expense. As contemplated in PEB 250's recommendation, the final Award provides the Carrier with full

discretion to regulate guaranteed pools and extra boards. It also allows the Carrier to establish, abolish or combine any road, yard or combination extra boards to best support its service, including the elimination of supplemental extra boards.

The final Award adopts rules that provide employees with additional flexibility to manage their schedules by adopting the Carrier's proposed language regarding the Prearranged Layoff Systems (PALS) and Trade Turns. First, the award adopts the Carrier's Prearranged Layoff System (PALS) proposal, which increases the thresholds for compensated time off (vacation and personal leave) to 8% of each respective board per day. Although not as generous as the Organization's proposed thresholds of 25% for pool board and 20% for extra boards, the adopted rule doubles the existing percentage of 4%, resulting in 8%, which should provide ample opportunity for employees to schedule compensated leave. Second, the Award adopts the Carrier's proposal on Trade Turns, which allows employees on non-guaranteed through freight pools to initiate up to 12 trade requests per year. The Organization contended that guaranteed pools should have access to trade turns and maintained that trades should be unlimited.

In order to protect the Carrier's ability to provide service, the final Award adopts the Carrier's proposed language that allows it to protect service by using any qualified employee in limited circumstances that could result in unavoidable harm to the customer. The Arbitrator acknowledges the Organization's vehement opposition to this provision, but appreciates the Carrier's need to protect service in the face of periods of extraordinary unavailability. The intent of the provision is to provide narrowly tailored relief to the Carrier in limited circumstances. The Parties should develop questions and answers to illustrate the boundaries of this provision during their implementation discussions.

Conclusion

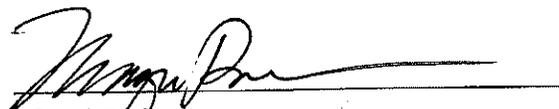
By their signatures below, the Board Members attest and acknowledge that, while there is not necessarily a consensus, the contractual terms in the Award (Exhibit A) represent a majority opinion on each item.

This Award is final and binding upon both Parties to the dispute, as provided by the Railway Labor Act, as amended. Should any conflict exist between the pre-existing Agreement and the language of this Award, the language of this Award shall prevail. The Board shall retain jurisdiction for sixty (60) days from the date of this Award solely to resolve any issues related to the interpretation of the Award. Unless otherwise agreed between the parties or determined by the Board, the Board shall retain jurisdiction for 180 days from the date of this Award to resolve any disputes arising out of the implementation of this Award. Upon disposing of the dispute submitted to the Board, the Board is hereby dissolved, except for interpretation and implementation matters as otherwise allowed.

We wish to thank the parties for their thorough presentations, patience, and assistance, which enabled the Board to tender an Award.

A Dissent

Gary Crest
Board Member
SMART-Transportation Division



Maqui Parkerson
Board Member
Union Pacific Railroad Company



Earlene Baggett-Hayes
Board Chairperson, Neutral
Arbitrator

(Exhibit A)

AWARD

Consistent with the recommendation of PEB 250 and the National Agreement, and as a result of the January 21-23, 2025, hearing, including all testimony and evidence, this Award, Exhibit A, is issued.

Article V – Scheduled Days Off for Thru Freight Road Service

A. Pool Freight Service

- A. The work/rest schedule for all pool freight boards will be six (6) workdays or available for workdays, followed by two (2) voluntary rest days (6/2).

NOTE 1: Employees electing to observe a rest day may request to be paid a compensated day by making an electronic request to Timekeeping.

NOTE 2: Any agreement provisions providing for “turn rest” will be eliminated.

B. Existing Guaranteed Pool Provisions

1. Guaranteed pool boards will be paid at their current guarantee rate of pay on a per half basis pursuant to existing agreements.
2. A trainperson observing their 48-hour voluntary rest period (or any portion thereof) will be considered unavailable during that time, and the per-half guarantee will be reduced for the applicable rest day period. However, the rest day will not be considered for forfeiture purposes.
3. In the event a trainperson is unavailable in non-compensated status prior to or after a voluntary rest period and no service is performed between the layoffs, the voluntary rest period will be counted towards forfeiture.
4. An employee assigned to a guaranteed pool board laying off in a non-compensated status, for more than one (1) occurrence, or being unavailable in a non-compensated status for more than 48 hours, per pay period, will have their guarantee and bonus day, if applicable, forfeited for that pay period.
5. For all other compensated layoffs, the guarantee will be treated for guarantee purposes pursuant to existing agreements, interpretations, and practice.

B. Road Extra Boards

1. A trainperson assigned to a road extra board or combination extra board may activate voluntary undisturbed rest (24 total hours between consecutive trips) upon tie up to break consecutive RSIA starts at their home terminal after working five (5) consecutive trips/tours of duty as defined below.
 - a. A single or continuous trip/tour of duty under FRA interpretation of the freight Hours of Service Laws pursuant to the 2008 Rail Safety Improvement Act (RSIA) will similarly constitute a single or continuous trip/tour of duty under the terms of this agreement. Consecutive trips/tours of duty are defined as initiated back-to-back starts without being separated by at least a twenty-four (24) hour rest period between the off-duty time of the previous trip/tour of duty and the on-duty time of the next trip/tour of duty. The time encompassed in normal layover/rest time between trips, as well as layoffs (compensated and/or uncompensated) or any other time of (i.e., missed call, no show, etc.) totaling

twenty-four (24) hours or more in the aggregate, will serve to reset the consecutive trip counter.

- b. When a trainperson completes their fifth consecutive trip/tour of duty at other than the home terminal, the employee will work or deadhead to their home terminal and then the required rest period will begin in accordance with Section B.1 or pursuant to federal requirements (RSIA), whichever is applicable.
 - c. While a trainperson is at the home terminal observing undisturbed rest time off they will continue to move/advance in the rotation until they become available or the turn will be held in the first-out position until the trainperson is rested and called for service.
 - d. Extra trainpersons observing the undisturbed rest will not be considered "unavailable" for guarantee purposes.
 - e. For all other compensated layoffs, the guarantee will be treated for guarantee purposes pursuant to existing agreements, interpretations and practice.
- C. Other work/rest schedules may be mutually agreed upon provided the work/rest schedule addresses quid pro quo and workability mandates provided in PEB 250.
- D. 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.
- E. Without prejudice to either party's position regarding the ability of the Carrier to take appropriate actions during emergencies, during periods of prolonged service interruptions caused by Acts of God (including downstream system impacts) or other similar unforeseen events, the Carrier will work with the affected General Chairperson(s) or their designees to meet manpower needs and limit the impact on employees prior to suspension of any scheduled rest days. Accommodations will be made for special circumstances on a case-by-case basis. Such suspension shall be limited to only a period necessary to restore service. The Carrier will provide updates to the General Chairperson throughout the duration of the suspension. If employees are observing their rest days when the suspension begins, they will be allowed to observe their full rest period.

Article VI – Automated Bid Scheduling

- A. Newly created pool and extra board positions and existing assigned service vacancies that become vacant will be filled by the senior trainperson with an application on file with Crew Management.
- B. Applications may be changed or withdrawn until assigned. Once assigned, the trainperson must remain thereon unless displaced by a senior trainperson, awarded a new bid by application, or obtains displacement rights.
- C. Newly established yard, local, assigned road, and/or unassigned road assignments will be bulletined for a period of 72 hours. At the expiration of the bulletin, the position will be awarded to the senior trainperson with an application on file with Crew Management.
- D. This section will apply when an assignment is re-bulletined due to a change in assignment as set forth below:

Yard Assignments

- 1) Change in start time of 1 hour or more;
- 2) Location of yard assignment change; or
- 3) Assigned rest days change.

Assigned Road Service

- 1) Change to the starting time of two hours or more;
- 2) Any change to the mileage of the assignment;
- 3) Any change in the number of days per week scheduled to work;
- 4) Any change in the terminal point or points; or
- 5) Assigned rest day(s) change.

- E. Trainpersons are responsible for maintaining their bids and applications for regular assignments. Applications will include the priority of an assignment if more than one application/bid is being filled. Once an assignment is awarded, lower priority applications (lower than the one awarded) will be removed from the system, and it will be incumbent on the trainperson to reapply for those positions should they so desire. The following will be included in the bulletins for assignments:

Regular Yard Assignments

- (a) Starting time;
- (b) On-duty and off-duty point;
- (c) Rest days; and
- (d) Days per week.

Regular Local Freight and Road Switcher (TSE) Assignments

- (a) Type of service;
- (b) Territory of the assignment (including mileage);
- (c) Days per week
- (d) The terminal or terminals of the assignment; and
- (e) The time to report for duty.

- F. When a regular assignment is abolished, trainpersons will be advised upon tie-up or while on duty on the day previous to the discontinuance of the assignment.
- G. A senior trainperson who is absent from service for the life of the bulletin for newly established bulletined positions will be permitted to displace the assigned junior trainperson so long as they declare "non-access" to the advertised position by the end of their first tour of duty after returning to service.
- H. Permanent vacancies that are created by what is known to be an extended absence (excluding vacation) of fifteen (15) days or more may be filled by the senior trainperson with application/bid on file. Employees absent without proper authority in excess of thirty (30) days will forfeit their seniority. The Carrier will immediately notify the Organization in writing of an employee's absence and forfeiture of seniority. The Organization will have sixty (60) days from the issuance of Carrier's letter to conference and appeal Carrier's decision. Such appeals will be handled in accordance with the discipline agreements in effect on each property.
- I. Should an employee not exercise seniority within twenty-four (24) hours after being properly notified, their permanent bid sheet is blank, or they do not have the seniority to hold any of their choices, they will be placed in the following manner:
- 1) Any open assignment at the location
 - 2) Displace the junior trainperson at the location.
 - 3) No bid/open position at the next closest location via highway miles.
 - 4) Displace the most junior trainperson in the hub/zone.
- J. If a position goes no bid, Crew Management will fill the position in the following manner:
1. Trainperson at the location that failed to exercise their seniority within 24 hours (EA/LB).
 2. Trainperson at the next closest location via highway miles that failed to exercise their seniority within 24 hours (EA/LB).

3. The most junior trainperson in the hub/zone or the junior trainperson assigned to an extra board at the location.

NOTE: If a trainperson is forced in accordance with section I or J, the trainperson must be qualified to work the assignment (e.g., RCO, FBY, TWIC, etc.). If they are not qualified, the next junior qualified employee will be forced in accordance with Section I or J. Familiarization is not considered as a qualification for purposes of Section I or J.

- K. Trainpersons forced to a position in accordance with Sections I and J above will be allowed travel time as follows:

- 1) None, if the position is 0-100 miles from their previous assignment.
- 2) 24 hours, if the position is 101-200 miles from their previous assignment.
- 3) 48 hours, if the position is more than 201 miles from the previous assignment.

NOTE 1: For purposes of this section, a trainperson will be considered "forced assigned" when by virtue of their seniority, they would otherwise be forced to displace a junior trainperson at another location based on the mileage parameters listed above.

NOTE 2: Trainpersons forced must request travel time within four (4) hours of successful notification of new assignment.

NOTE 3: There may be special circumstances for a trainperson to receive additional travel time. In these cases, the General Chairperson and the Director of Crew Management may mutually agree to permit travel time beyond the limitations outlined in Section J.

- L. Any existing agreement provisions allowing for "temping" or "oldheading" of vacancies, as well as any existing rules pertaining to "pass-up" or "giving-up" of any assignment, riding a bulletin, and "force bumping" are eliminated.

- M. A trainperson will be allowed to pass up their assignment once per quarter, which will be administered by the organization. A trainperson will not be allowed to pass up and place into the board they are currently assigned. They will assume the conditions of the assignment immediately.

NOTE: In the application of this rule, a request to vacate an assignment shall not be granted if the trainperson has made a request to give up their assignment within the preceding 30 days.

- N. Employees called to fill a vacancy on an assigned job at an outlying point must remain on the assignment for the duration of the vacancy or until their off day begins, if applicable. Employees will be automatically released.

- O. Displaced trainpersons must exercise their seniority within twenty-four (24) hours of proper notification by Crew Management of their displacement. In the event a trainperson cannot be immediately contacted, proper notification will be considered as having been accomplished eight (8) hours from the time CMS calls all contact numbers listed in the trainperson's personal file in the crew management system, one time each, and leaving a message, if possible. Such attempts will be documented in the trainperson's work history, as well as CMS placing an electronic message in the trainperson's crew management system screen portal. CMS speaking with the trainperson, receiving a call back from the trainperson, or the trainperson's acknowledgement will not be necessary to satisfy this requirement.

NOTE: Alternative electronic methods of contact (i.e. phone text, portal message, et.al, excluding email) may be used in lieu of phone contact and considered as proper notification pursuant to this paragraph. It is understood that trainpersons may accept notification prior to the eight (8) hour period referred to above.

1. For trainpersons displaced while on duty or at the away-from-home terminal, the twenty-four (24) hour displacement period will begin at final tie-up/final release at the home terminal without the need for additional phone notification by CMS.
 2. For trainpersons displaced while unavailable (e.g., compensated, non-compensated, HOS rest, rest period extensions, if applicable, vacation extensions, assigned rest days, RSIA rest period, company business, union business, etc.), the twenty-four (24) hour displacement period will begin upon completion of such unavailability period.
- P. When a trainperson is displacing to a pool, [they must place to an open turn] the most junior on the pool must be displaced. If a trainperson is displacing to an extra board, the most junior trainperson on the extra board will be displaced. The trainperson will assume the rest days of the position, if applicable.
- Q. Employees in a furlough status for 14 calendar days or less must accept recall notification within forty-eight (48) hours; provided that any employee recalled under this provision must remain on a working board for 14 calendar days. If furloughed for greater than 14 calendar days, existing furlough recall rules will continue to apply. Employees failing to accept recall in accordance with this section will be subject to existing agreement provisions (e.g., forfeiture of seniority, etc.).
- R. Any existing provisions in yards locations providing for "daily preference" seniority moves are eliminated and the provisions of this Article VI govern.

Article VII – Pools and Extra Boards

A. Self-Supporting Pool:

1. All pool freight will be self-supporting and operate in a first in/first out basis at the home and away from home terminal, based on tie-up time. In the event two trainpersons tie up at the same time, the board will be ordered based on the last on duty time.
2. When the owner of a pool turn lays off, either in compensated or non-compensated status, or if on another assignment (OA), their turn will be removed from the board at the time of layoff and the next rested and available trainperson on the board will rotate up. Upon mark up, the turn will be placed at the foot of the board and work up the board in the normal order. Pool turn employees observing mandatory rest (RSIA) will rotate up the board and remain first out until rested.
3. When a pool board is exhausted, a made-up turn may be added to the board at the home terminal. The made-up turn will take its turn to the away-from-home terminal and will be removed from the pool upon tie-up at the home terminal. The made-up turn will be protected by the first out and the rested trainperson on the protecting extra board.
4. When working in the assigned pool, drop turns, step-up make whole, or any other provisions providing for additional allowances/penalty payments (i.e., performing hours of service relief) if applicable, are hereby eliminated.

B. Non-Guaranteed Pool Regulation

1. Beginning the effective date of this Agreement, pool freight service will be regulated on starts rather than mileage. The following start table applies to all pool freight:

Pool Mileage	Pool Factor
Up to 150	Between 22 and 24

151-180	Between 20 and 22
181-230	Between 19 and 21
231-260	Between 17 and 19
261-290	Between 15 and 17
291 or greater	Between 14 and 16

NOTE 1: The determined monthly starts target listed in the table may be modified by mutual agreement.

NOTE 2: To ensure the successful application of this provision, within three (3) months of the implementation of this provision, the monthly start regulation range of a specific pool will be reviewed by the parties. Thereafter, either party may request a review of the regulation range of a specific pool.

2. All non-guaranteed pool adjustments will be made every Wednesday. The monthly starts of a pool shall be calculated by multiplying the number of starts during the 20-day check period by 1.5 and then dividing this number by the pool factor to calculate the total prorated monthly starts. Next, multiply the prorated monthly starts by a 'look ahead' factor that accounts for known vacancies (LV, PL, observed rest days, etc.) that are scheduled in the upcoming seven (7) days (Wednesday through Tuesday). The 'look ahead' factor will be calculated by adding the total number of known days and dividing them by seven (7) will equal the number of turns added for the 'look ahead' factor.
3. If the average monthly starts per turn are outside the parameters, the pool will be adjusted so the average number of monthly starts per turn is within the applicable range for the pool. Resulting turn fractions of .50 or greater will be rounded up, and .49 or below will be rounded down, unless mutually agreed upon by CMS and the General Chairperson or their designee (Local Chairperson).

Example: A pool has 224 starts in the 20-day look back and has a mid-range of 18. There are 25 days of scheduled time off (LV, PL, etc.) in the 7 day look ahead.

$224 \times 1.5 = 336$ projected starts for the month.

336 starts divided by the mid-range factor of 18 = 18.66 or 19 positions.

The board has 25 total days of time off (LV, PL, etc.) scheduled in the upcoming 7 days.

25 divided by 7 = 3.57 or 4 positions.

19 positions + the 4 positions to account for scheduled time off = 23 positions.

4. A start is defined as any outbound start made in a pool (from the home or away-from-home terminal), including deadhead, turnaround trips, hours of service, made by either a pool turn, or make-up turn in a pool.
 5. Due to an abnormal influx (or absence) of traffic operating over a particular pool's run, the parties may mutually agree to use a 10-day check period (look-back) to minimize the long-term effect of the traffic variability. Should this occur, the multiplier will be 3 versus 1.5.
 6. All pool freight service will operate on a first in/first out basis. When marking up from a compensated or non-compensated layoff, the trainperson will be placed at the bottom of the board.
- C. Guaranteed Pool and Extra Board Regulation
1. The Carrier will have full discretion on the regulation of guaranteed pools and extra boards.

2. The Carrier may establish, abolish or combine any road, yard or combination extra boards based on the needs of service.

D. Prearranged Layoff System (PALS)

1. All pool and road extra board prearranged layoff system (PALS) thresholds for compensated time off (vacation and personal leave) will be increased to no less than eight percent (8%) of each respective board per day.

- a. Employees will have the ability to schedule prearranged days 180 days in advance but no later than the Sunday before the regulation date to observe a pre-arranged day the following week. Once scheduled, the days cannot be taken away or denied by the Carrier.

Example: All non-guaranteed pool regulation is administered on Wednesdays. Employee Jones would like to take a prearranged vacation day on Thursday, June 27th. request for June 27th must be made no later than Sunday, June 23rd.

- b. Employee cancellation of prearranged days must be no later than the Sunday prior to regulation day of the upcoming week.

Example: Building off the example above, Employee Jones successfully entered a prearranged day on June 20th to use on Thursday, June 27th; however, on Monday, June 24th, Employee Jones decided they no longer needed the day of and wants to remove the prearranged vacation day. Since the prearranged day must be removed the Sunday before the regulation day, or Sunday, June 23rd, Employee Jones may not remove the prearranged vacation day.

2. Unless advanced or deferred, all prearranged days will begin at 00:01. Prior to being called to work, trainpersons assigned to pool freight service and extra boards will be allowed to advance or defer their prearranged days up to sixteen (16) hours. Assigned jobs will not advance or defer their prearranged day.

- E. Without prejudice to either party's position regarding the ability of the Carrier to take appropriate actions to protect service during periods of extraordinary unavailability, if the Carrier is unable to fill an assignment due to lack of rested and available personnel and the blanking of such assignment would result in unavoidable harm to the customer, a qualified employee may be used without penalty to perform such service upon providing notice to the General Chairperson. The Carrier will evaluate the need to exercise its rights under this provision on an assignment-by-assignment basis.

F. Trade Turns

To increase employee work schedule flexibility, trainpersons in OK status on the same non-guaranteed freight pool board may elect to swap positions/turns utilizing the following terms and conditions:

1. Both trainpersons must be available and fully rested at the home terminal at the time the trade is requested and executed. The trainperson who is advancing in the pool must be rested at the time of the trade request.
2. Such trade must be mutually agreed upon by both trainpersons involved. Trainpersons will utilize the computer system to request and accept the trade. By doing so they both agree to the trade, and no claims will be filed by any party because of the trade.
3. Once a trade between two trainpersons has been completed, a subsequent trade by either of the involved trainpersons will not be allowed until they have performed compensated service.

4. Trainpersons may initiate up to 12 trade requests per year. However, trainpersons have an unlimited amount that they can accept from requests.

General Provisions

- A. Except as specifically set forth herein, no other Agreement rules, practices, or interpretations are changed by the terms of this Agreement. In the event there is a conflict, the terms of this Agreement will prevail.
- B. Within 30 days of the date of the Award issued by SBA 1208, the parties will discuss a plan to implement the Award. Such discussion will include a reasonable timeline for system-wide implementation which contemplates the development and implementation of technology to support the administration of the voluntary work-rest model, hiring actions required to provide a sufficient train crew base to support system-wide implementation of work-rest schedules, and any other reasonable actions required by parties to implement the Award.

SPECIAL BOARD OF ADJUSTMENT No. 1208

CASE NO. 1

SMART Transportation Division

vs.

Union Pacific Railroad

Responses to Interpretation Questions

Board of Arbitration

Maqui Parkerson

Carrier Member

Vice President Labor Relations
Union Pacific Railroad Company
1400 Douglas Street, Room 710
Omaha, Nebraska 68179

Gary Crest

Union Member

SMART-TD Vice President
20396 Woodbury Dr.
Grass Valley, CA 95949

Earlene R. Baggett-Hayes

Neutral Arbitrator and Board Chair

110 North Perry Street
Pontiac, MI 48342

Preliminary Information

On Wednesday, September 17, 2025, the Board, in accordance with SBA 1208, received interpretative questions to be answered for clarification purposes. The Board Neutral elected to call an Executive Committee meeting for further discussion and elaboration. That meeting was conducted on Tuesday, September 23, 2025, to discuss the inquiries in significant detail. The Neutral Chair provides her responses below.

Responses to Interpretation Questions

- 1. Does Article V.D eliminate extra rest provisions on pools and extra boards on the Eastern District?

Answer: Yes

- 2. Are existing additional allowances/penalty payments, as listed in Article VII.A.4., if applicable, payable to pool freight employees when they are called to perform irregular service the extra board is required to protect?

Answer: Yes

- 3. What is the definition of "a qualified employee" in Article VII.E?

Answer: A qualified employee is any employee who meets the requirements of the job, whether it is the skills level, certification(s), training, and/or experience.

Note regarding Question # 3: The Award does not differentiate between Union and non-Union employees in Article VII.E when it refers to "a qualified employee." It is anticipated that through the implementation phase and the Questions and Answers, the parties will discuss and agree upon terms consistent with the specific conditions set out in Article VII.E of the Award.

By their signatures below, the Board Members acknowledge receipt of these responses to the interpretation questions.

Gary W. Crest

Gary Crest
Board Member
SMART – Transportation

Maqui Parkerson

Maqui Parkerson
Board Member
Union Pacific Railroad Company

Earlene Baggett-Hayes

Earlene Baggett-Hayes
Board Chairperson, Neutral
Arbitrator

Date 9-29-2025

UNION MEMBER'S DISSENTING OPINION

To

SPECIAL BOARD OF ADJUSTMENT NO. 1208, CASE NO. 1

(Neutral Earlene R. Baggett-Hayes)

The Organization respectfully dissents from the Majority's findings because the final Award (Exhibit A) exceeded the scope of Articles V-VII (along with the corresponding questions and answers), set forth in Public Law No. 117-216, and therefore falls outside the neutral's jurisdiction. The Neutral demonstrated a substantial preference toward the Carrier by removing a significant portion of the Organization's proposal in the Preliminary Findings and Order to Provide Post-Hearing Submissions, on the grounds that such provisions were beyond the Board's jurisdiction. In contrast, the following provisions that are outside of the Board's scope and jurisdiction were nevertheless incorporated into Exhibit A of the Award. The Neutral offered no analysis or rationale for establishing jurisdiction with respect to the provisions below, nor explained how their inclusion fell within the scope of Articles V-VII.

Article V – "SMART REST" on Road Extra Boards

SBA 1208, Exhibit A, Article V, B. fails to provide employees assigned to road extra boards with voluntary **assigned** days off, as required in Article V of Public Law No. 117-216, which states, in pertinent part:

*Any General Committee seeking to establish rules creating **voluntary assigned days off** in thru freight road service shall serve a written Notice on the Carrier of its desire to establish **voluntary assigned days off** agreement rules*

The Arbitration Board shall have jurisdiction to determine whether and how the rules referenced in this Article will be implemented.

Q4. Will the Union be permitted to serve Notice on the Carrier of its desire to establish rules for voluntary assigned days off for extra boards (including combination road/yard extra boards, if applicable,) covering thru freight road service?

A4. Yes, pursuant to the timeline in Article V, except as limited by Side Letter #5.

Q7. Does Article V apply to extra boards?

A7. Article V applies to all thru freight road service, including extra boards that protect thru freight road service.

The imposition of “smart rest,” which requires an employee to obtain five consecutive RSIA starts before becoming eligible for a 24-hour rest period, effectively creates a system with **no assigned** off days, in contravention of Article V of Public Law No. 117-216. Article V expressly directs the Arbitration Board – to determine *whether and how* the rules referenced in the Article will be implemented, but the plain text denies the Board the authority to substitute assigned days off with a work/rest rule that fails to provide such. Under the “smart rest” system, employees on extra boards may be forced to work for weeks on end before qualifying for the necessary consecutive RSIA starts, meaning they have no assigned days off. This outcome is directly contradictory to both the terms of Article V and the stated purpose of the agreement, *i.e.* to provide employees more predictability in scheduling.

In the Award, the Neutral recognized both the requirement to provide assigned days off, and the benefit of such for pool freight employees. Yet, the decision contradicted the very logic and requirements of Article V when it declined to extend the same protections employees on road extra boards. Evidence of this is found in SBA 1208 Award, page 5:

“This model better supports the objective of providing a better quality of life for employees that the work-rest model proposed by the Carrier, which contemplated four (4) workdays, or available for work days, followed by one (1) voluntary rest day (4/1)”

The failure to provide regular, assigned days off for extra board employees, represents a systemic issue that contravenes the Congressional mandate set forth in Article V and adversely affects thousands of employees who were promised predictability and fairness in their work schedules.

Article V – Elimination of Additional or Extra Rest Provisions

The elimination of existing provisions that provide for extending, additional, or extra rest on existing pools and extra boards, as outlined in Exhibit A, Article V (B) and (D) of Public Law No. 117-216, contradicts the plain terms of Article V and is contrary to arguments advanced by both parties at the hearing. The Organization argued to retain these provisions, as they clearly meet the requirements listed in Article VII(C)(a) which states, in pertinent part:

“Opportunity for employees to observe rest outside the requirements of the Rail Safety Improvement Act”

Carrier witness Jennifer Powell confirmed that the Carrier did not intend to eliminate this provision during her testimony on day three of the hearing, when clarifying their position and intent behind their proposal (Carrier Exhibit 7).

1-23-25 SBA Hearing Transcript (Final Day)

Pages 36-38

WITNESS POWELL. Okay. Okay. We'll move on to SMART's presented this slide in regard to that they want to preserve, you know, certain rules and that we're trying to eliminate certain rules... So in regard to turn rest, now, we have different rules and they have a lot of different names. There's turn rest, there's extra rest, there's extending rest, there's a lot of different things. So I first want to clarify one thing.

*Yesterday Mr. Edington was mentioning a different rule provision **that's called extra rest.** And that is something specific to the territory, UP Eastern District territory, that he is the general chairperson of. **That is not what our proposal is talking about. Our proposal -- and we don't propose to eliminate that provision. Our proposal is talking about something called turn rest which is completely different than extra rest. It only applies to one territory, the MOP upper lines...** So what turn rest is, is when that extra-board person takes that turn out, and then the turn returns back to the board at home. That turn actually gets rest associated with it by agreement, not the person. The extra-board person will go back to the extra board, but that turn -- so when the regular assigned person, those two that turn, they have to wait for that turn itself to become rested. It's a rule, again, that's unique to one specific location. **Our proposal was to clarify that that rule is going to be eliminated.***

Notwithstanding the foregoing, the elimination of this vitally important provision, which neither party sought to eliminate at the hearing, has deprived employees on the affected territories of a critical tool they have relied on for decades to manage rest and would continue to utilize as a means to improve their quality of life going forward.

Article VI – Elimination of Daily Preference Boards

The elimination of daily preference boards, as contained in Exhibit A, Article VI(R), was likewise beyond the Board's authority. Article VI of Public Law No. 117-216 only gave Carriers the ability to seek a process to electronically manage automated bid scheduling, submitting of preferences, and job assignments. Carrier officer Powell testified on day three of the proceedings that administration of daily preference boards involved an outdated, paper process that was inefficient. Ms. Powell testified, in pertinent part:

1-23-25 SBA Hearing Transcript (Final Day)

Pages 50-51

*There is a bid sheet for every single employee that's stored in a binder. **It's all paper, stored in a binder, and the binder is about eight inches thick.***

*Again, **this method is outdated and inefficient and unfortunately this same binder system is used today, two decades later.***

While this inefficiency may warrant modernization through electronic systems, it does not justify eliminating the boards altogether. Public Law No. 1117-216 contains no language authorizing the elimination of daily preference boards, as the Neutral has done, but only allows the administration of such to be conducted electronically.

Article VII – Extra Boards and Supplemental Extra Boards

Exhibit A, Article VII (C)(2), improperly grants the Carrier the ability to eliminate, combine, or otherwise modify extra boards and supplemental extra boards on the IGN and T&P properties. These boards are established under, and governed by, the governing Crew Consist Agreements. Those local Crew Consist Agreements carry indefinite moratoria that bar changes “in any forum,” including this Board, unless both parties consent, making this an item that was not legitimately before the Board.

The Organization served notice to Carrier on July 24, 2024, stating that voluntary discussions over these boards had ceased and would not be included in the binding arbitration. As argued before this Board, this issue had recently been resolved at PLB 7960, where Neutral LaRocco held that the moratorium protecting these agreements is indefinite and that changes can only be made through mutual agreement.

The Carrier responded on August 19, 2024, with an affirmative defense, asserting that such boards were included in negotiations under the Section 6 process. However, the Carrier failed to meet its burden to demonstrate how the local Crew Consist Agreement could be legitimately altered under Public Law No. 117-216 or how the topic of extra boards was permissibly included here in light of the LaRocco award. Further, the Carrier forfeited its right to raise this argument procedurally by failing to progress it to a procedural board prior to signing the Agreement to arbitrate on September 16, 2024.

The Neutral nevertheless ruled on the matter, failing to establish jurisdiction and exhibiting notable partiality towards the Carrier. Such jurisdictional shortcoming, as well as limited understanding of the distinction between the Section 6 process as it relates to National Handling versus local matters of Crew Consist, are readily apparent to any reader of the Award.

The Crew Consist Agreements were carefully crafted and include provisions intended for both employee and Carrier benefit, representing long-established quid pro quos that have remained in place for decades per the parties’ agreement. The provisions that support employees were obtained through significant negotiation efforts. However, these provisions were eliminated when the Neutral unlawfully acted outside the Board’s jurisdiction.

Article VII – Any Qualified Employee

To the extent the provision contained in Exhibit A, Article VII (E) gives the Carrier the ability to use “any qualified employee” to work an assignment without penalty, such is outside of this Board’s scope and jurisdiction. The Crew Consist Agreements in effect across the Carrier’s system prohibit any Carrier supervisor, official, or non-craft employee from being used to supplant or substitute in the exclusive work of any train or yard crew working under SMART TD Agreements. The Organization argued such position at the hearing and provided the Neutral with governing Crew Consist Provisions that prohibit the use of any qualified employee.

1984 Crew Consist Agreement – Eastern District

Section 4. Non-Craft Infringement.

No Carrier supervisor, official, or non-craft employes (including yardmasters) shall be used to supplant or substitute in the exclusive work of any train or yard crew working under UTU (C) and (T) Agreements.

1991 C&NW Crew Consist Agreement

Side Letter No. 7

In connection with our agreement signed today, we agree that no Carrier Supervisor, Official or non-craft employee (including yardmasters) shall be used to supplant or substitute in the exclusive work of any train or yard crew working under UTU Agreements.

1980 Idaho Crew Consist Agreement

Section 4. Non-Craft Infringement

No Carrier supervisor, official or non-craft employes (including yardmasters) shall be used to supplant or substitute in the exclusive work of any train or yard crew working under UTU (C), (TI & (S) Agreements.

1980 Pacific Northwest Agreement

Section 4. Non-Craft Infringement

No Carrier supervisor, official or non-craft employes (including yardmasters) shall be used to supplant or substitute in the exclusive work of any train or yard crew working under UTU (C), (TI & (S) Agreements.

1980 IGN Crew Consist Agreement

Article 4. Rights To Perform Service By Employees In Craft

No Carrier supervisor, official, or non-craft employees (including yardmasters) shall be used to supplant or substitute in the exclusive work of any train or yard crew working under UTU Agreements.

1980 Missouri Pacific Crew Consist Agreement

Article 4.

No Carrier supervisor, official, or non-craft employes (including yardmasters) shall be used to supplant or substitute in the exclusive work of any train or yard crew working under UTU Agreements.

1980 T&P Crew Consist

Article 4.

No Carrier supervisor, official, or non-craft employes (including yardmasters) shall be used to supplant or substitute in the exclusive work of any train or yard crew working under UTU Agreements.

1984 SP West Agreement

Article IX – Section 5

Non-Craft Infringement. In the application of this agreement, **no Company supervisors, officers or non-craft employees (including yardmasters) shall be used to supplant or substitute in the exclusive work of any train or yard service employee.**

The process of modifying these provisions can only be accomplished through a voluntary and mutual agreement, or the Section 6 process, pertaining strictly to Crew Consist Agreements. This was upheld at PEB 250 and in recent arbitration with Neutral LaRocco (PLB 7960). Throughout the process over the instant matter, there were no Section 6 notices sent to the Organization from the Carrier over Crew Consist. It is therefore undeniable that any ruling curtailing this provision would constitute an improper modification to the Crew Consist Agreements in effect across the Union Pacific system.

Furthermore, nowhere in Articles V-VII is it contemplated that a carrier would be permitted to use non-craft employees in such a manner. It is well-established in the public record that the Carrier has engaged in a pattern of voluntary, drastic reductions in its workforce in recent years, creating its own manpower shortages. These self-induced shortages led to numerous documented issues with shippers, including the use of embargoes to reduce congestion and improve velocity. By allowing the Carrier to use “any qualified employee” to work assignments, even under the guise of “limited circumstances” and “without prejudice to either party’s positions,” the Board has exceeded its jurisdiction and granted the Carrier a substantial benefit it has long been unable to obtain through bargaining. The future ramifications may well extend far beyond the narrow scope suggested by the Board.

For the foregoing reasons, the Organization fervently dissents to the Majority’s findings and encourages future reviewers of this award to disregard the Neutral’s decision and rationale as an outlier in this industry and one that’s only aimed at appeasing the Carrier.

Respectfully submitted,

Gary W. Crest

Gary W. Crest
Union Member
Special Board of Adjustment No. 1208, Case No. 1

Roy Davis

Roy Davis
General Chairperson
GO-577

Luke Edington

Luke Edington
General Chairperson
GO-953

Todd Campbell

Todd Campbell
General Chairperson
GO-887

Scott Chelette

Scott Chelette
General Chairperson
GO-927

Joe Cornelius Jr.

Joe Cornelius Jr.
General Chairperson
GO-569

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Int'l Ass'n of Sheet Metal, Air, Rail, and Transportation Workers, Transp. Div., et al.,

(b) County of Residence of First Listed Plaintiff Cuyahoga (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Shawn M. McKinley, Associate General Counsel Erika A. Diehl-Gibbons, General Counsel 6060 Rockside Woods Blvd., Ste. 325, Independence, OH 44131

DEFENDANTS

Union Pacific Railroad Company

County of Residence of First Listed Defendant Douglas (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) Don Munro JONES DAY 51 Louisiana Avenue, N.W., Washington D.C. 20001

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 45 U.S.C. 159

Brief description of cause: Petition to impeach arbitration award under Railway Labor Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 12/29/2025 SIGNATURE OF ATTORNEY OF RECORD s/ Shawn M. McKinley

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.