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General Chairman

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February 18, 2020  
(R-18-20)

Mr. Rod Doerr  
WR-Labor Relations  
Union Pacific Railroad  
1400 Douglas Street  
Mail Stop 0710  
Omaha, NE 68179

Re: Non-Acquiescence Letter - Union Pacific New TE&Y Attendance Policy

Dear Sir:

Please refer to the Union Pacific's new Attendance Policy, effective March 1, 2020. The Carrier's unilateral promulgation of the amended Attendance Policy constitutes an unlawful attempt to circumvent, defeat, and avoid the existing collective bargaining agreements and working conditions with SMART-TD.

The Union Pacific Railroad has served a Section 6 Notice on this Committee which states:

**“Eliminating or revising other work rules that inhibit efficient operations and modernizing outdated agreement terms to correspond to current standards in American transportation industries, including relaxing arbitrary geographical limits on work performed by train crew, allowing for greater flexibility to timely deploy well-trained teams to critical projects and sunseting excessive forms and lengths of furloughed protections not enjoyed elsewhere in U. S. Industries.”**

This new attendance policy is clearly part of your Section 6 Notice. As you are well aware, Section 2, Seventh, of the Railway Labor Act, 45 U.S.C. 152, prohibits the carrier from changing the “rates of pay, rules or working conditions of its employees, as a class, as embodied in agreements, except in the manner prescribed in such agreements or in Section 156 of this title.” The carrier cannot alter the rates of pay, rules, or working conditions while bargaining and the status quo must be maintained.

The Attendance Policy is in direct conflict with the employees right to lay off pursuant to, Rules 98 and 78 of the collective-bargaining agreement, which state:



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**“Rule 98. PERMISSION TO LAY OFF. Trainmen will be allowed to lay off on account of sickness of themselves or their families, to serve on committees, or for other good and sufficient reasons, provided due notice is given the proper officer.”**

**“Rule 78. PRIVILEGES - CONTINUATION OF. Privileges now enjoyed by trainmen shall not be abrogated. Future privileges that are conceded, to be a matter of accord between the Officer in Charge of Personnel and the General Committee.”**

Further, the Attendance Policy is in direct violation of Section II, (F) (b) of the August 20, 2002 Automatic Mark-up Interpretation, which states:

**“In determining the number of layoff occurrences a trainman/switchman/fireman/hostler makes during a payroll period, a continuous period of unavailability for call shall count as only one occurrence regardless of the number of timely requests (requests made before expiration of the previously authorized or approved time off) that are made by the trainman/switchman/fireman/hostler for extension of the time off.”**

The Policy is also in direct violation of Side Letter No. 2, of the August 20, 2002 Automatic Mark-up Interpretation, which states in pertinent part:

**“During the parties’ discussions UTU voiced concerns that employees laying off could end up in a disciplinary proceeding should the employee fail to be available as prescribed or agreed, through no fault of their own. UTU further explained that consideration must be given to employees that are extremely ill or hospitalized unexpectedly. The same consideration should be extended to employees whose immediate family members become extremely ill or hospitalized unexpectedly.**

**This letter will confirm the parties’ commitment to work together to avoid disciplinary proceedings or abuse of these considerations for employees in the above described dilemmas provided the involved employees provide valid documentation for themselves or their family member(s) regarding the incident(s) or matters(s).”**



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Lastly, the Policy violates Side Letter No. 4 of the December 13, 1991 Crew Consist Agreement, which states in pertinent part:

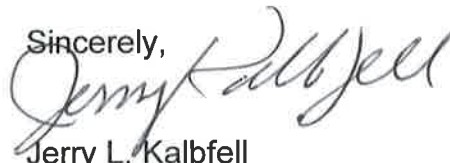
**“In connection with our Agreement signed today, we agreed the Carrier shall maintain a sufficient number of extra board employees to permit reasonable lay-off privileges and to protect the service, including vacations and other extended vacancies.”**

By what authority does the carrier purport to act?

As Section 6 notices have been served and the status quo cannot be changed, the Organization demands that Union Pacific immediately cease and desist from taking any actions that abrogate the above provisions of the CBA.

We request that you respond to this office within 5 business days.

Sincerely,



Jerry L. Kalbfell  
General Chairman, G. C. A.

cc: Jeremy Ferguson - President SMART-TD