

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

International Association of Sheet Metal
Air, Rail and Transportation Workers –
Transportation Division

Plaintiff,

vs.

Union Pacific Railroad Company

Defendant.

CASE NO. 25-CV-0740

HON. ROBERT F. ROSSITER JR.

The following attorneys conferred to prepare the Report of Parties' Planning Conference for the above-captioned case:

For Plaintiff International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division:

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For Defendant Union Pacific Railroad Company:

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The parties discussed the case and jointly make the following report:¹

¹ Counsel are advised to use caution in filing this report as well as other documents so there is no disclosure of information required by the E-Government Act of 2002 to be kept non-public, such as addresses, phone numbers, social security numbers, etc. If such

I. INITIAL MATTERS:

A. Jurisdiction and Venue: As to the defendant(s) (mark all boxes that may apply).

- Jurisdiction is contested because _____.
- Venue is contested because _____.
- Neither jurisdiction nor venue are contested.

B. Immunity: As to the defendant(s) (mark all boxes that may apply).

- An immunity defense has been raised by a defendant.
- An immunity defense will be raised, such defense to be raised on or before **Click here to enter a date.**
- No immunity defense has or will be raised in this case.

C. Either jurisdiction or venue is being challenged, or a defense of immunity has or will be raised, and:

- Not applicable.
- The parties agree that discovery and case progression can begin before the jurisdiction, venue, and/or immunity issues are decided.
- Any or all parties believe that case progression and discovery should be stayed pending a ruling on those issues, and
 - before any motion(s) to resolve jurisdiction, venue, and/or immunity issues can be filed, initial discovery limited to those issues will be necessary, and such discovery can be completed by: **Click here to enter a date.**
Explain: _____.

identifiers are required to be disclosed to opposing parties, you may wish to file redacted versions for the public court file and serve opposing parties with unredacted versions. See NECivR 5.3, available on the court's Website at www.ned.uscourts.gov.

If the case alleges an action for forfeiture, complete only sections **IV: Settlement**; **V. Consent to Final Resolution by a Magistrate Judge**; and **VI: Case Progression**.

- a dispute exists as to whether and to what extent discovery is needed to resolve jurisdiction, venue, and/or immunity issues. A conference with the court is requested.
- motion(s) to resolve jurisdiction, venue, and/or immunity issues can be filed on or before [Click here to enter a date.](#)

II. CLAIMS AND DEFENSES:

- A. Claims:² Provide a brief statement of the alleged facts and a succinct summary of the alleged federal or state theories of recovery, citing any relevant statutes which provide the basis for any statutory claims. You do not need to list the elements of each claim.

Plaintiff seeks to impeach an arbitration award that is the result of a mutual agreement to arbitrate under Section 7, 45 U.S.C. § 157, of the Railway Labor Act. The agreement to arbitrate and subsequent award occurred pursuant to a collective bargaining agreement that required the parties to bargain over certain topics and authorized either party to submit the matter to final and binding interest arbitration if those negotiations were unsuccessful. Plaintiff contends that the award should be vacated pursuant to 45 U.S.C. § 159 Third(b) on the grounds that the award does not conform nor confine itself to the stipulations of the agreement to arbitrate. Defendant maintains that the arbitration award was within the Board’s jurisdiction and is properly enforceable.

- B. Defenses:³ List each alleged affirmative defense to the claims, and for any defenses based on a statute, cite the relevant statute.

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

- 1. Plaintiffs’ Complaint fails to state a claim upon which relief can be granted.**
- 2. The Award conforms to both the substantive requirements for interest arbitration under the Railway Labor Act and to the stipulations of the parties’ agreement to arbitrate.**

² The category “Claims” includes any claims raised by any party, including not only those raised by the party(s) who filed the lawsuit, but any crossclaims, counterclaims, or third-party claims raised in the operative pleadings.

³ The category “Defenses” includes any defenses raised in any pleading filed in response to the operative complaint, any crossclaims, counterclaims, or third-party claims.

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

III. **METHOD OF RESOLUTION:** Please indicate below how the parties anticipate that this case will be resolved.

- Administrative record review:
 - A party will request discovery.
 - A party will not request discovery.
Note: If no party is requesting discovery, the parties need not complete the **Section VI: Case Progression** portion of this report. Instead, contact the assigned magistrate judge to schedule a conference for entering an administrative review scheduling order.
- A dispute exists as to whether and to what extent discovery is needed. The parties need not complete the **Section VI: Case Progression** portion of this report at this time. Instead, contact the assigned magistrate judge to set a case progression conference.

X Cross-motions for summary judgment and/or resolution on stipulated facts:

- A party will request discovery.
- A party will not request discovery. **In lieu of formal discovery, the Parties will agree to a stipulated record on or before May 15, 2026. The Parties request that the Court's deadline for required initial disclosures of March 31, 2026 be stricken as unnecessary given the nature of this case.**

The parties' cross-motions for summary judgment will be filed on or before **July 14, 2026.**

The Parties further agree that opposition briefs will be filed by August 28, 2026. The parties do not presently anticipate the need for reply briefs. In the event a party determines a reply brief is necessary, said party will notify opposing counsel and a motion for leave to file such brief will be filed within 10 days of when the response brief was filed. Any reply brief will be due within 14 days of any order granting leave to reply.

Documents outside the stipulated record may be included solely to rebut factual allegations made in the brief which the response or reply is addressing.

Note: If no party is requesting discovery, the parties need not complete the **Section VI: Case Progression** portion of this report.

- A dispute exists as to whether and to what extent discovery is needed. The parties need not complete the **Section VI: Case Progression** portion of this report at this time. Instead, contact the assigned magistrate judge to set a case progression conference.
- Trial:
 - No party has timely demanded a jury trial.
 - A party has timely demanded a jury trial and does not anticipate waiving that demand, and the parties agree that all or part of the claims in this case must be tried to a jury.
 - A party has demanded a jury trial, and the parties disagree on whether trial by jury is available for all or part of this case. A motion to strike the jury demand will be filed no later than: **Click here to enter a date.**
 - The party who previously demanded a jury trial now wishes to waive that right. Any other party who will now demand a jury trial will file that demand within 14 days of the filing of this report, in the absence of which jury trial will be deemed to have been waived.

IV. SETTLEMENT:

Counsel state (mark all boxes that may apply):

- To date, there have been no efforts taken to resolve this dispute.
- Efforts have been taken to resolve this dispute
 - prior to filing this lawsuit. Explain: **The Parties have a high degree of familiarity with each other and have had preliminary discussions on resolving the matter without reaching any agreement.**
 - after filing this lawsuit, but before the filing of this report. Explain: _____.
- Counsel have discussed the court's Mediation Plan and its possible application in this case with their clients and opposing counsel, and:

- It is agreed:
 - Mediation is appropriate at this time, and pending the outcome of those efforts,
 - case progression should be stayed.
 - case progression should not be stayed.
 - Mediation may be appropriate in the future. Please explain when you believe mediation may be useful: **The Parties believe that mediation may be appropriate following the filing of cross-motions for summary judgment and opposition briefs.**
 - Mediation will not be appropriate. Explain: _____.
 - Counsel believe that with further efforts in the future, the case can be settled, and they will be prepared to discuss settlement, or again discuss settlement, by **Click here to enter a date..**
- At least one party is not interested in exploring options for settling this case.

V. CONSENT TO FINAL RESOLUTION BY A MAGISTRATE JUDGE:

As explained more fully in the Civil Case Management Practices, in accordance with the provisions of 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, the parties in this case may voluntarily consent to have a United States Magistrate Judge conduct all further proceedings in the case, including the trial, and order the entry of final judgment. The consent must be unanimous, and any appeal must be taken to the United States Court of Appeals. If the parties do not presently consent, they may do so later. Absent consent, the case will remain with the assigned United States District Judge or, if not previously assigned to a District Judge, it will be randomly assigned to a District Judge.

- All parties hereby voluntarily consent to have the United States Magistrate Judge conduct all further proceedings in this case including the trial and entry of final judgment.
- At least one party does not currently consent.

VI. CASE PROGRESSION:

A. Initial mandatory disclosures required by Rule 26(a)(1).

- Have been completed.
- Will be completed by [Click here to enter a date.](#)

B. Motions to amend the pleadings or to add parties.

- A plaintiff [Choose an item.](#) anticipate a need to amend pleadings or add parties. Motions to amend pleadings or add parties will be filed by Plaintiff(s) on or before [Click here to enter a date.](#)
- A defendant [Choose an item.](#) anticipate a need to amend pleadings or add parties. Motions to amend pleadings or add parties will be filed by Defendant (s) on or before [Click here to enter a date.](#)

If more than 90 days are needed, explain why: _____.

C. Discovery.

1) As to written discovery under Rules 33, 34, 36, and 45:

a. The parties have discussed currently anticipated number of interrogatories, document production requests, and requests for admissions. Based on those discussions:

- The parties do not anticipate any disputes over the number of discovery requests served.
- The parties believe a dispute may arise over the number of (mark all boxes that may apply):
 - Interrogatories.
 - Requests for Production.
 - Requests for Admission.

If the parties anticipate a possible dispute over the number of written discovery requests, when completing **Section VII** below, indicate when a conference with the court may be useful to avert or resolve that dispute.

- b. Written discovery will be completed⁴ by [Click here to enter a date.](#)
- 2) As to expert disclosures as required under Rule 26(a)(2):
- The parties do not anticipate calling experts to testify at trial.
 - The parties anticipate calling experts to testify at trial, and
 - a. Counsel agree to at least **identify** such experts, by name, address, and profession (i.e., without the full reports required by Rule 26(a)(2)), by [Click here to enter a date.](#)⁵
 - b. Expert **reports** shall be served by [Click here to enter a date.](#)⁶
 - c. Motions to exclude expert testimony on *Daubert* and related grounds will be filed by [Click here to enter a date.](#)
- 3) As to deposition testimony under Rules 30 and 45:
- a. The maximum number of depositions that may be taken by the plaintiffs as a group and the defendants as a group is _____.
 - b. All depositions
 - will be limited by Rule 30(d)(1).
 - will be limited by Rule 30(d)(1), except as follows:
_____.
 - c. All depositions, regardless of whether they are intended to be used at trial, will be completed by [Click here to enter a date.](#)
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⁴ “Completed” means the discovery answers or responses to written discovery have been served. As such, written discovery must be served sufficiently in advance of the discovery completion deadline to afford the responding party the time permitted under the discovery rules to answer or respond.

⁵ **Note:** The parties may choose to eliminate this expert identification step and propose only an expert disclosure deadline. The parties may agree on separate dates for the plaintiff(s) and the defendant(s).

⁶ **Note:** The parties may agree on separate dates for the plaintiff(s) and the defendant(s), and they may include rebuttal expert deadlines.

4) Protective Order:

- All parties anticipate that a protective order will be needed to complete the exchange of discovery, and
 - the parties hereby move the court to enter the court's standard protective order (see, [Civil Case Management](#) website page,
 - with the court's standard Attorneys' Eyes Only provisions.
 - with the court's standard HIPAA language permitting release of Protected Health Information.
 - the parties hereby move the court to enter the proposed protective order attached to this report.
 - the parties will jointly move, or a party will move for entry of a protective order, emailing a copy of the proposed protective order in Word format to the chambers of the magistrate judge assigned to the case.⁷
- At least one party believes a protective order will not be necessary in this case.

5) Work Product and Privileged Information: The parties have reviewed the **Civil Case Management Practices**, including those provisions discussing discovery of **Privileged Information**, and they have discussed whether certain categories of documents, are presumptively privileged.

- The parties agree that the following categories of documents are presumptively privileged and need not be listed on a privilege log:

⁷ If a dispute exists over the need for a protective order, or the content of that order, the parties shall confer in good faith and if they cannot resolve the issue without court intervention, they shall schedule a conference call with the magistrate judge assigned to the case before engaging in written motion practice.

- Documents between legal counsel and clients created on or after [Click here to enter a date.](#)
- Documents maintained by consulting or testifying experts created on or after [Click here to enter a date.](#)
- The following documents: _____.
- Counsel have discussed the discovery of privileged information, but they have not agreed on what documents are presumptively privileged.

If the parties anticipate a possible dispute over Work Product and Privileged Information discovery, when completing **Section VII** below, indicate when a conference with the court may be useful to avert or resolve that dispute.

- 6) Electronically Stored Information (ESI): The parties have reviewed the Civil Case Management Practices, including those provisions discussing discovery of ESI and,

- the parties do not anticipate a dispute over preservation, scope, and production of ESI.
- the parties anticipate a dispute regarding the preservation, scope, and production of ESI.

If the parties anticipate a possible dispute over ESI, when completing **Section VII** below, indicate when a conference with the court may be useful to avert or resolve that dispute.

- 7) Other special discovery provisions agreed to by the parties include:

_____.

D. Dispositive Motions.

- The parties do not anticipate filing motions to dismiss, for judgment on the pleadings, or for summary judgment as to any claims and/or defenses.
- A party anticipates filing a motion to dismiss, and/or for judgment on the pleadings, and/or or for summary judgment

- a. as to the following claims and/or defenses:⁸ _____;
 - b. such motions to be filed on or before [Click here to enter a date.](#)
- E. Other matters to which the parties stipulate and/or which the court should know or consider: _____.
- F. This case will be ready for trial before the court by: (month, year).
- G. The estimated length of trial is _____ days.

VII. CONFERENCING WITH THE COURT:

- A. Initial Case Conference:
- At least one party requests a conference with the court before the court enters a final case progression order for this lawsuit.
 - All parties agree that the court may enter a final case progression order for this lawsuit without first conferring with the parties.
- B. Interim Status Conference:
- At least one party believes a court conference with the parties may be helpful (e.g., to assist with averting or resolving a dispute over written discovery, ESI, or privilege/work product discovery; following service of mandatory disclosures; after completing written discovery, etc.), and requests a conference be set in: (month/year).
 - The parties do not currently anticipate that a court conference will assist with case progression, and they will contact the assigned magistrate judge to schedule a conference if a problem arises.

Reminder: By signing this document, counsel and any self-represented parties acknowledge that they have reviewed the Civil Case Management Practices, including those provisions discussing discovery of Electronically Stored Information and Privileged Information.

Dated: [March 31, 2026](#).

⁸ As to forfeiture actions, dispositive motions on any “claims and/or defenses” include any motions to suppress.

/s/ Shawn M. McKinley

Plaintiff(s) or Plaintiff(s)' Counsel

/s/ Thomas R. Chiavetta

Defendant(s) or Defendant(s)' Counsel

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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s/ Shawn M. McKinley