

EXHIBIT 10

Arbitration Transcript

Case Number: 1208

Date: January 21, 2025

In the matter of:

UNION PACIFIC v SMART-TD, National Mediation Board Case No. 1208

ARBITRATION

Reported by:
MACY THOMPSON

Steno
Official Reporters

1100 Glendon Avenue
Suite 1850
Los Angeles, CA 90024
concierge@steno.com
310.573.8380

1 THE ARBITRATION BETWEEN
2 UNION PACIFIC AND SMART-TD
3 NATIONAL MEDIATION BOARD CASE NO. 1208
4
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6 Report of Proceedings had the
7 Arbitration before ARBITRATOR EARLENE BAGGET-HAYES,
8 taken in the above-entitled cause before Macy
9 Thompson, a court reporter, on the 21st day of
10 January, 2025, commencing at the hour of 9:30 a.m.
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1 A P P E A R A N C E S

2 JONES DAY

3 BY: MR. DONALD MUNRO / MR. TOM CHIAVETTA
4 51 Louisiana Avenue, N.W.
5 Washington, D.C. 20001
6 (202) 626-1700,

7 On behalf of the Union Pacific;

8 SMART TRANSPORTATION DIVISION

9 BY: MR. LUKE EDINGTON / SEAN MCKINLEY
10 5990 S.W. 28th Street, Suite F.
11 Topeka, KS 66614
12 (785) 273-7737,

13 On behalf of Smart-TD.

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1 ARBITRATOR: Good morning, everyone.
2 My name is Earlene Baggett-Hayes. I am the assigned
3 arbitrator in this matter, and we are currently on the
4 record. I have met with the executive board and we
5 mapped out a process. I will probably say in two or
6 three sentences what took us 30 minutes to come up
7 with, but luckily we did have guidance. But before I
8 do that, I'd like for the advocates to introduce
9 themselves. Record. Let's begin with the carrier.

10 MR. MUNRO: Good morning, Madam Chair.
11 My name is Don Munro.

12 MR. CHIAVETTA: Good morning. My name
13 is Tom Chiavetta.

14 MR. EDINGTON: Good morning. My name
15 is Luke Edington.

16 MR. MCKINLEY: Good morning. My name
17 is Sean McKinley.

18 ARBITRATOR: Thank you very much. So,
19 in terms of the process, again, for your information,
20 for the record, and briefly, we're going to begin with
21 oral openings, after which there will be direct
22 examination. There will be no cross examination, nor
23 will there be objections accepted. After the case in
24 chief by the carrier is going to present first. So
25 after the case in chief presented by the carrier, of

1 course we'll hear from. --

2 So again, oral openings, direct
3 examination, no cross examination, and oral closings.
4 Witnesses who are brought will be asked to swear or
5 affirm that they are telling the truth, the whole
6 truth and nothing but the truth.

7 Okay. And with that, I believe we're
8 beginning. We're ready to begin with carrier's oral
9 statement.

10 MR. MUNRO: Good morning. Thanks
11 again, Madam Chairman and members of the board. My
12 name again is Don Munro, and I am lead counsel for
13 Union Pacific in this proceeding. I was also the lead
14 counsel for the railroad industry in the proceedings
15 before Presidential Emergency Board Number 250. So
16 I've been involved in the issues that you have before
17 you for many years, along with a number of the other
18 folks in this room on both sides. I am joined by my
19 partner, Tom Chiavetta, who was also industry council
20 before PEB250.

21 And what I'd like to do today is just
22 walk through a roadmap or summary of what you're going
23 to hear from the carrier in its presentation today.
24 This is the issue before this Court, whether and how
25 to implement three articles, Articles 5, 6 and 7 from

1 the 2022 National Agreement that was the product of
2 the proceedings before PEB250. And as we suggested in
3 our written materials, we are proposing a three-part
4 rubric to address that question and it's laid out here
5 on this slide.

6 The first is the scope of what this
7 board has before it. What's the range of proposals
8 that are legitimately before you? Do the union's
9 proposals fit within that scope? And do the carriers.

10 Second, what is equity? How do you
11 cost each side's proposal. Is it a win-win if either
12 side is getting tens or hundreds of millions of
13 dollars more in value than the other side?

14 And third, is it workable? PEB250,
15 which was the original source of this deal,
16 recommended something that would give the railroads
17 both efficiency, operational benefits, and cost
18 savings, while at the same time giving employees more
19 control over their schedules. How do we achieve that
20 in practice?

21 I'm going to outline both the argument
22 and the evidence that you will hear from the carrier
23 on each of these issues. And I'm also going to
24 briefly address some of the secondary points, which
25 are more legal in nature and less evidentiary that

1 have been debated by the parties in their written
2 submissions.

3 Before I do that, though, just one
4 threshold point. This is really complicated subject
5 matter. It is dense and it is at times a little hard
6 to follow. I admit that I've been doing railroad work
7 now for 30 years, and I struggle at times with how to
8 piece all this together. We're going to do our best
9 to explain it, but I think that this will be easier
10 for everyone if -- if the Chair has any questions, we
11 invite them, of course, during this proceeding.

12 Okay, so let me then turn to these
13 three issues. The first is this threshold question
14 about scope. And I say this is a threshold question
15 because this board doesn't need to decide issues that
16 aren't legitimate before it. If you can that any of
17 the matters that the parties have raised are not
18 within the scope of your jurisdiction, then, of
19 course, you shouldn't move on to address the merits.

20 And so I think this is the first issue,
21 both logically and legally to start with. All right.
22 So what is the scope? In contract interpretation, we
23 start, as always, with the text of the agreement. And
24 again, all three articles have the same format. They
25 say the issue is whether and how to implement a set of

1 very specific topics that are referenced in that
2 article. Okay. So it's the rules referenced in the
3 article that are the issue.

4 And there's three sets of rules.
5 Article 5 says, "voluntary assigned days off and proof
6 rate service." That's the first set of rules we're
7 talking about. The second set of rules are carrier
8 specific implementation matters in Article 6, which
9 provides a very specific set of rules to be
10 implemented. And then the Same with Article 7,
11 carrier specific implementation of a set of particular
12 scheduling, vacancy, and assignment rules.

13 If it's not encompassed within those
14 rules, it's not before you. The arbitration agreement
15 that established this board says this board shall have
16 jurisdiction "only over changes necessary to implement
17 rules referenced in those three articles." It's
18 consistent with the terms of the national agreement.
19 That scope is further clarified by the bargaining
20 mystery, the PEB250 bargain.

21 We know from that proceeding the trade
22 here was assigned rest in exchange for scheduling and
23 vacancy efficiencies. Now, the union, in its reply
24 submission, says that we've argued to this board that
25 it was a trade of wages for efficiencies. And just to

1 clarify, that is not our argument. The wage increases
2 that were provided by PEB250 is context. The one
3 thing that we got out of that proceeding was
4 Articles 6 and 7.

5 That was in the context of an agreement
6 that provided for historic wage increases, but what we
7 paid, in addition, the specific trade for Article 6
8 and 7 was Article 5. It was assigned rest. That's
9 the quid pro quo. The union has suggested to this
10 board that we now have to pay, again, with a whole
11 bunch of other benefits that are not assigned -- And
12 our response to that is, no, this is very narrow.

13 They get Article 5 scheduling for
14 assigned days off, whether it's a four and one, five
15 and one, five and two of various work REST schedules
16 that the parties have discussed in their submissions.
17 And we get Article 6 and 7. That's it. There's
18 nothing else. There's only been three other
19 arbitrations under these agreements. And we've quoted
20 those awards in the written materials. They all
21 confirm this very same limited scope of jurisdiction
22 that I've outlined.

23 Two of those awards involved a
24 different union, the BLET, the engineers, who
25 represent -- the union that represents the engineers

1 on the other side of the locomotive cap. But it's the
2 same language; it's identical word for word. And
3 Arbitrator Moreland, in those two cases, provides this
4 guidance in his award, which is summarized here on the
5 screen and also discussed in the written materials.

6 And he says that for Article 6 and 7 in
7 particular, the carrier controls a limited dialogue.
8 And what he means by that is we propose the
9 implementation. The union can raise questions about
10 that. They don't propose their own implementation.
11 And the other award, the third award, the more recent
12 award, is with this very same union. It's with SMART
13 TD. It also supports the same limited approach.

14 There's two things I want to highlight
15 from that award. First, none of the extras that the
16 union is demanding here were awarded in that case.
17 There's no differentials, there's no overtime, there's
18 no pay increases, there's no change in penalty pay,
19 there's no vacation, no personal leave, anything like
20 that. Nor is there any change in guarantee, and
21 you're going to hear a lot about guarantee payments.
22 This is the amount that employees receive for being
23 available on the extra board.

24 And the union asked to change those
25 rules to be paid the guarantee on the rest days, which

1 would be a dramatic and fundamental shift in how
2 guarantee is handled. And Arbitrator Phillips said,
3 no. Okay. So you have a collection of materials that
4 all points toward a very limited jurisdictional scope
5 with this board. Let's apply it to this case.

6 All right. Here's the list of all the
7 things that the union has asked for. Most of these
8 items have nothing to do with assigned rest or the
9 implementation of Article 6 and 7. Just to highlight
10 a few of them, for self-supporting pools, for example,
11 while that is one of the subjects, at least, in
12 Article 7, they're asking for a payment for
13 self-supporting pools.

14 Well, there's no provision for payment
15 in Article 7. And then once you get beyond that,
16 Items 5 through 16, these aren't referenced at all.
17 Items 5 through 9 are just more different kinds of
18 time off. They're not assigned rest days. They're
19 not voluntary assigned rest days for through freight
20 service. They're completely different, separate forms
21 of paid leave. And then Items 10 through 16, these
22 are just pay increases. This is just more
23 compensation.

24 Now, the union, I predict, will argue
25 to this board, but all of these things are justified.

1 We need it. It's deserved. The rules that currently
2 exist are unfair, they're inadequate, they haven't
3 been changed often enough. People are hurting. There
4 are lots of good reasons why we should get all these
5 things.

6 Well, we've heard those arguments in
7 multiple other forums, some of them before PEB250 and
8 suffice it to say that we take a different view. But
9 the main point is it doesn't matter because this is
10 not a presidential emergency board. It is not a board
11 tasked with writing an agreement broadly stated for
12 the parties on all subjects. It's limited to the
13 items in Articles 5, 6, and 7; not this.

14 The other point that I'd like to
15 emphasize here is that, in addition to these items
16 that the union has asked for that go well beyond the
17 scope of this board's jurisdiction, their agreement
18 language, their Appendix B, which is attached to their
19 opening submission, and is their -- the form of the
20 agreement that they're asking this board to impose has
21 various hidden traps in it, various items that they're
22 asking for that they don't discuss in their submission
23 but that are nevertheless very significant.

24 And our witnesses are going to review
25 things like except extending the rest days into the

1 day before and the day after so that what may
2 nominally appear to be a four and one schedule is
3 really more like a 4:2. Their proposal to do away
4 with the offset of guarantees so that they're paid
5 over and above, is the phrase they use, all other pay.
6 The idea that you would have to maintain at least 30%
7 employees on the extra board.

8 So even though they say you can abolish
9 the extra boards, they give it with one hand and take
10 it away with the other. There's a lot of that kind of
11 stuff in their Appendix B. Our witnesses are going to
12 explain why that language is riddled with items that
13 exceed the scope of this board's jurisdiction to
14 impose. Now, to be fair, the union is making the
15 same -- Excuse me a moment -- the union is making the
16 same argument about our proposal.

17 They say you've proposed lots of things
18 that go beyond the scope of this board's jurisdiction.
19 Here's the list of what they say is not included. On
20 the left, you see the items that they object to, and
21 on the right is the language of the agreement. Each
22 of the items that we've proposed is in fact a direct
23 outgrowth of Article 5, 6, or 7. I'm not going to run
24 through all of these, but let me just highlight three
25 examples.

1 These are all by the way addressed in
2 our reply submission. But just to take a couple of
3 examples, the first one incorporating irregular
4 service into proof-rate service. This is the --
5 regular service is things like hours-of-service
6 relief. You're going to hear a fair amount about that
7 over the next few days. This is the concept that
8 employees who hit a limit that is imposed by federal
9 law must stop working regardless of where they are.

10 And so as a consequence, sometimes
11 trains are left outside the terminal before they get
12 to their destination. And the question is whether
13 that can be done by the pool when you establish a
14 self-supporting pool. So the question is if you can
15 establish a self-supporting pool and abolish the extra
16 boards, who would otherwise perform that work, is that
17 encompassed within Article 7?

18 Well, we think hours-of-service work is
19 pool work. And we're going to make the argument to
20 you that because it's a process of recovering pool
21 trips, in other words, work that pool employees were
22 doing, they're pool trains that need to be moved into
23 the terminal, that that is pool work. But regardless
24 of how you come out on that, whether you think we're
25 right or the union's right, it's a question of

1 implementation of Article 7.

2 Because in order to establish or
3 implement self-supporting pools and to abolish extra
4 pools, you have to understand what kind of work
5 they're going to be doing. It's not outside the scope
6 of this proceeding. Another example is the
7 elimination of daily preference. It's Item Number 3.
8 Article 6 says the carrier can implement a revised
9 approach to filling vacancies.

10 And the union is saying, well, maybe
11 so, but we still get to keep our existing systems,
12 including these daily preference rules. Whether or
13 not a new rule, Article 6, displaces or overrides
14 existing rules on the same subject is a question of
15 implementation. It's not outside the scope of this
16 Court's jurisdiction. The same is true of
17 displacement time. The last item on this list.
18 Again, Article 6 provides for this new system, for
19 filling vacancies. You have to determine, as part of
20 that, what the time will be for people to move between
21 jobs.

22 Both sides have a proposal on this
23 subject. Ours is 24 hours. We're not entirely sure
24 what the union's is, but it could be, effectively,
25 instantaneous. And again, you can debate which side's

1 rule is better, but what's not debatable is that that
2 particular question of displacement time is a direct
3 outgrowth of Article 6. It's a question of
4 implementation. So the bottom line here is simple.
5 Most of the union's proposals, 13 out of 16, are not
6 within the scope of what's before this board. You
7 don't even need to reach the merits of those
8 proposals. By contrast, all of the union's proposals
9 do concern matters of implementation.

10 Let me move on then to the second of
11 the three questions that we posed. This one is
12 whether the party's proposals are equitable. Is the
13 value trade balanced? Are we getting roughly equal
14 value in efficiencies and operational benefits to pay
15 for the cost of assigned days off? Now, we agree with
16 the union that the PEB did not recommend a particular
17 outcome.

18 They did not say, for example, that the
19 union members must get a five and two schedule or six
20 and three or any other particular schedule. They also
21 didn't say exactly what the carrier was supposed to
22 receive, but they did say it had to be a win, win.
23 And more importantly, the union agrees with us on this
24 point. Both sides have said to this board, it needs
25 to be a fair and equitable quid pro quo. Quid pro quo

1 means something for something. It does not mean one
2 side gets something and the other side gets nothing.
3 And equitable means balanced, it means fair, it means
4 equal, at least roughly equal.

5 And so the real question then is how do
6 we determine what is fair? What is equal? Now, you
7 can just put a finger in the wind and guess. But
8 fairness, like beauty, is in the eye of the beholder.
9 So we need some sort of objective, empirical approach,
10 not a subjective assessment of fairness. And so what
11 we have suggested is costing. The union agrees to
12 some extent, but they have a very, very different
13 methodology for costing.

14 And in some respects, this is the heart
15 of this case. How do you value each of the items that
16 the parties have proposed? What we're going to show
17 today is that the union's methodology is not accurate.
18 It is based on that do not have a basis in reality, or
19 when they have a cost that doesn't work for them, they
20 just don't include it. They just leave it out. In
21 explaining our costing, I just want to highlight a
22 couple of basic principles.

23 This case -- and you're going to hear
24 this several times because it's critical. This case
25 is not about how much work is going to be performed by

1 the Union Pacific workforce. It's about who does that
2 work. The work stays constant, and it's about
3 allocating that work among different groups of
4 employees. And that has a couple of different
5 consequences.

6 First, earnings, the first of these
7 boxes, is not relevant. Why? Because if you have a
8 constant amount of work, we're going to be paying
9 someone to do it anyway. It's just a question of who.
10 So there's no cost and there's no savings associated
11 with earnings. The amount of pay that you receive for
12 the amount of work that you've done; that's staying
13 constant.

14 The second item, carrying cost, does
15 change. It is important to this because the carrying
16 cost is a function of how many employees you have on
17 hand to do the work. If you have to add people to do
18 the same amount of work, you've increased your
19 carrying costs. Health insurance is a good example of
20 this. If you receive your health insurance benefits,
21 so long as they're paid to all employees, then it
22 doesn't matter whether you work 1500 hours or 1700
23 hours or 2000 hours, it's a carrying cost.

24 The third item is also a significant
25 element of costing here. And again, the guarantee is

1 paid to employees on the extra board, not on the pool,
2 for the most part. And so the extra board, as you'll
3 hear, is the source of workers who cover vacancies.
4 They're being paid to be available, not just for
5 working, and so, as a consequence, it's expensive.
6 There's a guaranteed cost associated with maintaining
7 the extraordinary.

8 So if you are allocating more work to
9 the pool and less work to the extra board, that
10 affects your costs. Our methodology, which you're
11 going to hear from Mr. Janke this afternoon, measures
12 how each proposal will change, add or subtract head
13 count. So that's the main driver. Then the second
14 thing that we're doing is measuring whether that work
15 is going to be done by the pool or the extra board.
16 More people in the pool, transferring more from the
17 extra board, you're paying less in guarantee.

18 Again, for the most part, there's some
19 nuance to this that Mr. Janke will get into, but those
20 are the main elements, carrying cost and guarantee,
21 not earnings. So let me just show you an example of
22 this. This is what the parties have proposed in terms
23 of work rest. Different models. So a 6:3 means six
24 days of availability followed by three days of rest,
25 etc.

1 All of the party's proposals, all of
2 them, for assigned rest days, require adding
3 employees. So they all have a cost. How much depends
4 on how much time off you're providing. Now, we
5 disagree about some of the assumptions here. As
6 you're going to hear, we're assuming that, if you give
7 people a rest day, they're going to use it. And the
8 union is assuming that that's not necessarily the
9 case. But we do agree that the more days you add, the
10 more expensive it is.

11 So, for example, a 5:1, which is the
12 pink bar, the Union Pacific proposal, is -- costs less
13 than the union's proposals. And as we're going to
14 show, there's a way to assess that. Mr. Janke will
15 walk you through this calculation and how we arrive at
16 the value, the cost of each of these items. Now, this
17 is the five and one; this is the Union Pacific
18 proposal. So five days of availability, one day off.
19 That proposal, the least expensive one of the options
20 that have been proposed, still costs \$18 million per
21 year, additional cost to the carrier.

22 So if we're going to have an equitable
23 trade, we need to find something approaching \$18
24 million in savings. That balancing can be done in one
25 of two ways. You can reduce head count through

1 efficiencies and how we call people, how the jobs are
2 assigned, how fast the pool works, and how the work is
3 apportioned. Or you can reduce the guarantee by
4 moving work from the extra board to the pool. Our
5 proposal, and this is just a graphic representation of
6 Mr. Janke's testimony in our Exhibit 42 finds about
7 \$16 million in savings to counteract the blue and red
8 bar, which is the cost.

9 So everything on the left there, that's
10 the additional cost associated just with assigned days
11 off. And then everything else is what we get out of
12 Article 6 and 7. And as you can see, a big chunk of
13 that is the abolishing extra boards, which we
14 undeniably have the right to do under Article 7. The
15 various other Mr. Janke will run through as well.
16 Now, we fine tuned this, our proposal, so that we're
17 not getting an advantage.

18 The employees still come out ahead, as
19 you can see on this bar graph, but it's pretty close.
20 It's within two and a half million, roughly. The
21 union's proposal, by contrast, is not close. Now,
22 they've omitted costing of any kind for all of those
23 items that you see in the red box. They don't have --
24 they just don't mention those costs. And it's a
25 really big omission because that set of items, the red

1 box, and these are all the things that I've described
2 as being outside this board's jurisdiction, but if
3 they were, the cost of all those exceeds \$200 million
4 per year.

5 Now, to be sure, some of those items
6 are much more expensive than others. And this slide
7 just is a graphic representation of our costing of the
8 various items that the union has proposed. The two
9 items on the left in red are items that we all agree
10 are legitimately items within this Court's
11 jurisdiction. So the question of scheduled rest, the
12 question of self-supporting pools, we don't agree that
13 this is the proper approach or that this is the proper
14 outcome, but we at least agree that those are
15 questions before you.

16 Everything else, all the black bars are
17 those what we've called the extraneous or extra items.
18 And as you can see there's -- some of them are
19 comparatively huge. Some of them, the small bars, are
20 only millions of dollars per year. The bigger ones
21 are tens of millions of dollars. And there isn't any
22 quid pro quo for any of this. So you leave aside the
23 fact that some of these items are not properly before
24 you. Again, it's not close to equitable.

25 What about the cost of rest days, the

1 item, as I said in the red bars. This is the --
2 again, this is from Exhibit 42, which Mr. Janke will
3 review. The blue on the top is the union's costing,
4 and the gray on the bottom is that same set of
5 proposals using our assumptions. We're going to show
6 that for their work-rest proposal, they are making a
7 number of errors and omissions. We're going to run
8 through some of those.

9 One of the big ones is that they left
10 out of their costing the extra boards, despite the
11 fact that their proposal covers those employees. They
12 are proposing rest days for everyone, including people
13 who are not in proof-rate service, therefore outside
14 the scope of Article 5. But nevertheless, if you're
15 going to cost their proposal in an honest way, you
16 have to include those individuals. They conclude that
17 their proposal would cost tens of millions of dollars.

18 If you add the extra board, as we think
19 you would need to do, it would add at least 35 million
20 more per year. Now, this is complicated by different
21 assumptions about head count and benefits and
22 assumptions about the usage of rest days that I
23 mentioned earlier. We're going to walk through all of
24 them. But the bottom line is their proposals would
25 cost at least 50 million and probably up to \$90

1 million per year, just the rest days. So how do they
2 justify that? How do they get to an equitable
3 agreement?

4 Their core argument on equity is that
5 we're going to abolish 80% of the extra boards and
6 that that will save a third of a billion dollars for
7 year, 333 million. So they say, all right, problem
8 solved. You've got this huge savings in abolishing
9 the extra boards. Well, there's two problems with
10 that. First of all, it's not true. It is not true.

11 We are going to show through witness
12 testimony that we are not proposing to abolish
13 anything close to 80% of the extra boards. What they
14 heard in bargaining, intentionally or not, has been
15 misunderstood to put it -- And we're going to explain
16 why it is that we can't abolish 80% of the extra
17 boards. But the second point, and the one that I want
18 to emphasize, is that this idea doesn't make sense
19 from a costing perspective because even if we did
20 abolish 80% of the extra boards, the work doesn't go
21 away.

22 This is the point I made earlier. It's
23 about allocation, not amount. So as you -- so this
24 graph shows there's about 600,000 crew starts per
25 year. That's the amount of times that people have

1 what we call a work event. That's not going to change
2 based on the implementation of these variables.
3 Someone is still going to be doing it. So that's why
4 the bars of each of these options is the same. What
5 changes, depending on how many extra boards you
6 abolish, is the allocation.

7 So it moves from the current here,
8 where you've got about roughly 60% in the pool and 40%
9 in the extra board. If we abolish 60% of the extra
10 boards, the pool will do more. Likewise, if we
11 abolish 80% of the extra boards, again, the pool will
12 do even more and the extra board will do less. But
13 the work is just moving from the extra board to the
14 pool. We have to pay for it either way.

15 And so a huge chunk of their proposed
16 savings, or 333 million, is the earnings that would go
17 from the extra boards to the pool. That's not a
18 savings. It's also true with respect to their
19 calculation of benefits, where they've included a
20 bunch of railroad retirement taxes that are going to
21 be paid regardless of who does the work. So the total
22 savings from abolishing the extra boards, if you
23 calculate it out, is about 9 million, not 333. Now,
24 this is, again, just a graphic representation of what
25 we've said in the party's different costing exhibits,

1 including their Exhibit 43 and our Exhibit 42.

2 The total head count savings from the

3 implementation of our Article 6 and 7 is not 1500

4 people; it's more like 200. That's just from the

5 number of people that are going to be added or

6 subtracted based on the abolishing the extra boards.

7 So that's incorporated in these bars. It's not broken

8 out as a separate map. But what this shows then is if

9 you do incorporate those changes into the larger set

10 of proposals, including the addition of assigned rest

11 days, the net effect is that you add head count either

12 way. So this is head count here on the left. Sorry.

13 This is head count. Okay. The union's proposal would

14 add about 1500 people to the workforce.

15 ARBITRATOR: You're rounding out the

16 1452?

17 MR. MUNRO: Yes, 1450.

18 ARBITRATOR: Okay.

19 MR. MUNRO: About 1500. Yeah.

20 Roughly. 1,452. Our proposal adds about 250. So

21 even under our proposal, the workforce is going to

22 increase in size. What our proposal does is it's not

23 going to increase as much. So our proposal would add

24 about 480 people as a function of assigned rest.

25 That's how many additional employees will be needed to

1 fill in for the fact that now people are taking
2 assigned rest days.
3 We've reduced that by about 200 and
4 change through the abolishing of extra boards and
5 other savings under Article 6 and 7. But it's
6 about -- like I said, it's a savings of about 200, 233
7 people. So that number would be 480. But for the
8 savings under Article 6 and 7. We're not saving this
9 number, which is what the union is suggesting, because
10 we're not getting rid of 1,500 -- or 1,452 people.
11 We're just not because, again, the work stays the
12 same. Now, this 250, of course, has a cost. It has a
13 carrying cost.

14 One of the things that we've talked
15 about in preparing for this proceeding is the idea
16 that the union proposal essentially means that we have
17 to build a church for Easter Sunday. We have to build
18 a system that is large enough to accommodate the
19 maximum amount of size of people you might need, and
20 there's a cost associated with that. So we have to
21 bring in all these people to cover the assigned rest
22 days. There's a substantial cost associated with that
23 change.

24 All right. Let me turn to the third
25 question, which is workability. Which size proposal

1 is workable? Which will achieve the goals laid out by
2 the PEB? And the reason -- one of the reasons why
3 this case is so complicated is that there are multiple
4 overlapping and competing interests. I've tried to
5 just summarize what you've read in the submissions on
6 the slide. The items on the left are the carrier's
7 interest. We want to improve efficiency, we want to
8 improve availability.

9 So we want to be able to operate
10 efficiently, but we also want employees to be
11 available when they need to be called. The items on
12 the right are in the union's interests. They want to
13 control time off, they want more time off, they also
14 want to maintain the earnings that employees are
15 currently paid. And the thing to note about this is
16 that, while there's an obvious tension between the
17 carrier's goals and the union's goals, there's also a
18 tension within the union's own goals.

19 So, of course, there's a tension
20 between availability and time off. You increase time
21 off; you reduce ability. That's obvious. But the
22 other problem here is that the union wants to increase
23 payoff, but be paid the same or actually more. And
24 that is very difficult to achieve without getting
25 paid -- without a pay increase. Which is not the

1 purpose of Articles 5, 6, and 7. This is not an
2 exercise in increasing pay. It's an exercise in
3 balancing scheduling interests, not increasing their
4 compensation.

5 Now, these competing interests are
6 reflected in where the parties agree and where they
7 don't agree. Let me just quickly review those. On
8 work rest, we both agree. There needs to be some
9 voluntary assigned rest days. Now, we have different
10 proposals. We've proposed a five in one. They've
11 proposed, among other things, a four and one. For
12 Articles 6 -- Okay, for Article 6, we agree that there
13 should be some new system for filling vacancies is
14 actually not that different from what we currently
15 have in place.

16 It's a form of enhanced standing bid
17 similar to what the carrier party uses. Where we
18 disagree are in the details. Things like displacement
19 time, the forcing rules, exceptions like whether this
20 will apply system wide or whether it will supplant the
21 daily preference boards, and, of course, in the cost.
22 For self-supporting pools under Article 7, again, we
23 agree that there should be self-supporting pools.
24 Where we disagree is what it means when we convert to
25 self-supporting pools.

1 We think that when you have a
2 self-supporting pool, it means the work that can can't
3 be performed by the pools because at the same time the
4 extra board is being abolished. Now, there's a sort
5 of philosophical question that underlies these issues.
6 The union seems to be saying, yeah, we can have these
7 new rules, but we also keep our existing rules. You
8 can abolish the extra board, but the extra board still
9 has to be used to perform the work. So, yeah, you
10 can't really abolish them.

11 Our view is that if you have a new, it
12 supplants the existing rules. It's not a nullity.
13 And the addition of self-supporting pools plus the
14 right to abolish extra boards means that we're not
15 keeping extra boards. Same thing is true of the pool
16 regulation. We both agree there needs to be pool
17 regulation. We both have proposed something. Again,
18 the difference is in the details.

19 So in order for these rules to improve
20 efficiency, to provide the sort of operational
21 benefits that the PEB recommended, our position is the
22 board cannot adopt the form of the rules that the
23 union has proposed because they include dozens of
24 exceptions, caveats, pay increases, preservation of
25 existing rules, and the subtle attempts to add

1 advantages in their Appendix B. Appendix B is not
2 workable. It cannot be implemented. Exhibit 7, by
3 contrast, which is the carrier's proposed language,
4 will fulfill the roles set out by the PEB250.

5 ARBITRATOR: Mr. Munro, your voice is
6 fading at the end of the sentences. I hope you're not
7 tiring.

8 MR. MUNRO: I hope not. I will try.

9 ARBITRATOR: Thank you.

10 MR. MUNRO: Okay, let me turn now to
11 the last section, which is these what the other issues
12 or secondary arguments. These are more sort of legal
13 points, less about the evidence that's before the
14 board and more about, sort of, how to interpret the
15 agreements.

16 The first of these issues concerns the
17 other carriers. So there's two other major carriers,
18 Class 1 -- three other Class 1 carriers that have
19 reached agreements under Articles 5, 6, and 7. And
20 the parties are pointing to different agreements as
21 comparators. The union has pointed to BNSF, Norfolk
22 Southern. And as we've outlined in our submission,
23 there are several reason reasons why those are not
24 appropriate comparators.

25 The first is this point about voluntary

1 versus imposed. We all agree that there is a lot in
2 those other agreements that is not contained in
3 Articles 5, 6 and 7. That's fine if you want to reach
4 a voluntary agreement. I mean, this is one of the
5 Q and A's from the national agreement, and it's
6 specifically says you can go ahead and bargain over
7 additional work rules if you want to. But that's a
8 voluntary approach. It can't be imposed through
9 arbitration.

10 And the union agrees with us on this
11 point. In their opening brief, at page 37, they note
12 that while voluntary bargaining allows the parties
13 more latitude, the board must "ensure provisions for
14 each article are limited to those that are necessary
15 for implementation." Well, we agreed. Those carriers
16 included lots of extras for different reasons. On
17 Norfolk Southern, for example, they already had
18 differentials for their engineers. That's not true
19 here. So the rationale doesn't apply. They had
20 reasons to do what they did voluntarily; we do not.

21 The second reason those other carrier
22 agreements are not comparable is because of the
23 purpose and design of Articles 5, 6, and 7. The whole
24 point was to allow each carrier to do this differently
25 at the local level, to have different agreements,

1 carrier specific. And the union never suggested
2 before PEB250 that it should be a nationally uniform
3 rule. It wanted these deals to be local, meaning
4 carrier specific. And they have no response to this
5 argument.

6 Third, BNSF and Norfolk Southern are
7 not good comparatives. They have different rules,
8 different pre-existing rules, different norms,
9 different operational issues. We think that, for
10 example, on BNSF, there is a debatable question about
11 how their implementation has gone. We've said, based
12 on the public, record that it has not gone well. The
13 union says no. It says no. The implementation has
14 gone fine. But note that it is not proposing adoption
15 of the BNSF agreement. It wants to pick and choose
16 something from it, something from BNSF, something from
17 elsewhere. The only agreement that has been imposed
18 by arbitration is the CPKC agreement with this union
19 that was imposed by Mike Phillips. And that one has
20 no guarantee for rest days. None of the extras that
21 I've outlined. It's limited to Articles 5, 6, and 7.

22 The other issue that the union has
23 raised that we've addressed in our written materials
24 is this question of bad faith. Look, I find the
25 arbitration boards rarely want to delve into finger

1 pointing about who was in bad faith and who was in
2 good faith. This is often the last refuge of a party
3 with nothing to say about the merits. If you can't
4 win on the merits, you attack the process. You accuse
5 the other side of bad faith.

6 Our witnesses will explain that at the
7 June 3rd to 5th meeting in Las Vegas, the union was
8 unambiguous that it viewed bargaining as over. Union
9 Pacific stayed in case the union changed its mind but
10 sat there alone on June 5th. Now, the union says,
11 well, you needed to show up in Dallas after we gave up
12 on June 5th in Vegas. Well, that's not how it works.
13 It's not how it works in dating. It's not how it
14 works in collective bargaining. The other person
15 dumps you. You don't just assume that your plans
16 remain in place.

17 We're also going to address the related
18 allegations about changing the bargaining team and
19 some of the other things that they've accused us of.
20 But the point is there's no bad faith. And by the
21 way, we're not saying the union was operating in bad
22 faith. Both sides tried, but they failed. Bargaining
23 failed. And that's exactly why there is a provision
24 in the national agreement that provides for this
25 proceeding. It cannot be bad faith to invoke a

1 process, an arbitration process, that the agreement
2 expressly provides.

3 Finally, let me just touch on this
4 question of the IGN and the Texas and Pacific. What
5 this boils down to is the union is saying, yeah, you
6 can implement Articles 5, 6, and 7, but you can't
7 implement the parts of it that we don't like. On two
8 of the properties that -- subsections of Union
9 Pacific. There's two problems with their argument.

10 The first is that the language in the
11 old local agreements that they're relying on does not
12 bar changes to extra board rules. It doesn't. If you
13 walk through the language of the agreements that
14 they're citing, starting with their Exhibit 72,
15 the 1988 Crew Consist Agreement provides that changes
16 may be made by mutual consent. And then it has
17 various restrictions on whether you can serve notices
18 to change certain parts. And it's important to
19 understand what those different parts are.

20 The agreement had different sections.
21 It had a section Article 1, which is excerpted here
22 for crew consist. Now, crew consist is the term that
23 both sides have used for many, many years to describe
24 the size of a train group and in particular whether
25 you need a brakeman, two brakemen, conductor, et

1 cetera. It's a rule about the size of your workforce.

2 There's a separate article for extra boards,

3 Article 2.

4 If you go on in this agreement, you'll

5 see that there's a completely separate article, and

6 the moratorium in this provision, what the union is

7 relying on, says that you can't make changes to a

8 limited set of provisions of this agreement, including

9 crew consist but not extra boards. It doesn't mention

10 the extra boards.

11 This is that moratorium. As you see,

12 it limited you to making changes in the specific

13 provisions governing peer attrition, protecting

14 employees, car limits. Extra boards are not listed

15 there. And then it goes on to say that you can make

16 changes by mutual agreement. Okay. Fine. That

17 appears to mean that you can continue to make changes

18 by mutual agreement in the extra boards.

19 Then in 1993, there's a new agreement

20 on crew consist with a moratorium that says the

21 parties cannot serve notices to change it. That's

22 Exhibit 67. It doesn't contain anything about extra

23 boards. Again, has no bearing on this. And then you

24 get to this 1996 agreement that they cited, and it

25 says that moratorium provisions currently in place

1 pertaining to crew consist provisions will remain in
2 full force and effect. Well, that's just saying that
3 that moratorium back in this 1988 agreement remains in
4 place.

5 It doesn't say anything about extra
6 boards. There's no moratorium on changing extra board
7 rules. It has nothing to do with this. And the
8 LaRocco Award, which they cite over and over again
9 also has nothing to do with this case. I was lead
10 counsel for the industry in that case, and it
11 concerned a completely different issue. The issue in
12 that case was whether the carriers could serve a
13 notice to change the size of crews. This Language
14 that we were looking at a moment ago about how many
15 people you have to have on the train. And the union
16 said, look, we have a provision that says you can't
17 change that rule. This is special. This is different
18 than all the other agreements that are out there. And
19 they won on that point, but it was about changing the
20 size of the crew. It had nothing to do with extra
21 boards.

22 The second problem with their argument
23 is that they did agree to change this. There is
24 mutual consent. That's what the 2022 agreement is.
25 It is mutual consent to change existing rules. This

1 union is a party to that agreement that makes changes
2 in extra board rules. That would modify those
3 existing rules absent some exception. And there isn't
4 anything in Article 7 that carves out these two
5 properties. In the absence of that kind of exception,
6 a new agreement changes an old agreement.

7 Now, they say, well, but that wasn't
8 really what we meant to do. And these general
9 committees weren't really consulted. And we thought
10 we had this whole agreement. Well, then put in an
11 exception. They didn't. And in fact, there was a
12 process to put in exceptions. That's what side
13 lettered is. There was an express negotiation for
14 carve outs. They didn't ask to include the IGN and
15 the TNP. Others did. They're not included.

16 The carrier was prohibited from serving
17 notices on some other properties. But these
18 committees had an opportunity to exclude their
19 properties and they chose not to, presumably because
20 they wanted the other benefits associated with the
21 national agreement. Side letter five is unequivocal
22 that the 2022 articles apply to all of Union Pacific.

23 Okay. Let me just now introduce you to
24 what the rest of our presentation looks like. We're
25 going to begin with an introduction to railroad

1 operations. Doug Svatos from Crew Management Services
2 at Union Pacific is going to explain how this all
3 works. Then we're going to turn to a brief
4 explanation of our view of the bargaining history.
5 Jennifer Powell, who was on the Union Pacific
6 bargaining team and was at all of these sessions, will
7 explain our view on that.

8 Then Doug and Jennifer together are
9 going to go through the exercise of comparing the
10 parties' proposals under each of these articles.
11 We're then going to wrap up the day with a discussion
12 of costing by Grant Janke. He will walk us through
13 the methodology for costing both the union's items and
14 the carrier's.

15 And then at some point to be
16 determined, I hope to be able to present a limited,
17 very short testimony by Brendan Branon, who was the
18 lead negotiator for the carriers during the national
19 bargaining round. Mr. Branon has left the industry
20 but has agreed to appear remotely. He also has a
21 declaration, which has already been submitted. He
22 will essentially be testifying to the subject
23 identified in that declaration. Absent any questions,
24 or if we're in need for a break, we are prepared to
25 proceed with our case in chief.

1 (Brief Discussion.)

2 ARBITRATOR: Is ten minutes sufficient?

3 MR. MUNRO: Sure.

4 ARBITRATOR: Okay. We will take a

5 ten-minute break. Thank you.

6 (Whereupon, a break was taken at 10:26

7 a.m.)

8 MR. CHIAVETTA: Thank you. Just to

9 begin, I just want to address the point of timing just

10 to give everybody an overview of where we're going

11 with this first part of the presentation.

12 ARBITRATOR: Before you say that, let

13 me just indicate that the technicians -- and this is

14 for everyone -- if there is a desire or a need to

15 remove the microphone from the stand, you can

16 certainly do it, anyone who's at the podium. And

17 also, if you'd like to move away from the podium, feel

18 free to do that as well.

19 MR. CHIAVETTA: Okay, thank you.

20 ARBITRATOR: Okay.

21 MR. CHIAVETTA: All right. Just from a

22 timing standpoint so everybody has this on the radar.

23 We anticipate that these first two sections will begin

24 with an overview of the train operations, and then

25 we'll discuss the local bargaining history. Those two

1 pieces combined should take about an hour. We then
2 plan to address Article 7, 6 and 5 in that order. And
3 I anticipate Article 7 will take about 45 minutes. So
4 that may put us around the lunch hour. And we're
5 happy to, obviously, stop and take breaks as anybody
6 needs to.

7 So we'd like to start just with a
8 general overview of train operations. And for that
9 I'm going to turn to Doug Svatos.

10 Doug, would you please introduce
11 yourself.

12 MR. SVATOS: Good morning. My name is
13 Doug Svatos. I'm the general director of crew
14 management services. I've been with Union Pacific for
15 about 12 years. In my role, I oversee our 24x7
16 dispatching of our train engine and yard crews. I am
17 responsible for our crew lodging, our crew
18 transportation, and our contact for the FRA for hours
19 of service as it relates to crews.

20 MR. CHIAVETTA: Thank you. And Can
21 everybody hear Doug okay? Because I can -- I can give
22 him the -- I understand we're gonna have more
23 microphones.

24 ARBITRATOR: I have more of these.

25 MR. CHIAVETTA: Doug, why don't I give

1 you the mic and then I'll project. I understand we're
2 gonna have more microphones tomorrow.

3 EXAMINATION

4 BY MR. CHIAVETTA:

5 Q. Okay. So, Doug, you were saying you're
6 the general director for crew management services.
7 And let's start just by doing a general overview of
8 Union Pacific's operations?

9 A. Yeah. So just a quick overview of
10 Union Pacific. Just Union Pacific it -- route miles.
11 We have about 32,000 miles of track that cross 23
12 states across the western United States. We employ
13 just shy of 33,000 employees. Of that 33,000
14 employees, roughly 28% is represented by SMART, who's
15 here today. Our annual payroll is about \$4.2 billion.
16 And we serve roughly 10,000 customers across the
17 United States.

18 Q. Thanks, Doug. And why don't we go
19 ahead and talk about the assignments that the trainmen
20 perform?

21 ARBITRATOR: May I interrupt? I think
22 it's only because you didn't take the stand, but since
23 you're a testifying witness, perhaps. I should swear
24 you in.

25 MR. SVATOS: Okay.

1 ARBITRATOR: Please raise your right
2 hand. Do you swear or affirm that you will tell the
3 truth, the whole truth, nothing but the truth?

4 (Witness sworn.)

5 MR. SVATOS: I do.

6 ARBITRATOR: Thank you very much. And
7 again, your name for the record, Doug Svatos. Okay.
8 Third try.

9 EXAMINATION

10 BY MR. CHIAVETTA:

11 Q. Go ahead, Doug.

12 A. Yeah. So a brief overview of our
13 assignments across Union Pacific. I always compare
14 this just for sake of most people are familiar with
15 how post office mail system works. So you have your
16 yard. Think of your yard. When we're talking about
17 our yards, that's your sort facility. That is where
18 our freight cars or tank cars are taken to be sorted
19 to be determined which customer they would go to or if
20 they need to get sent to another location across our
21 system to be sent to a customer.

22 When we think about our yard crews,
23 it's best to think about them as these are employees
24 that have a schedule. So they know, day in and day
25 out, what time they go to work. They have scheduled

1 off days. Generally it's a five and two schedule. So
2 five working days followed by two off days. And
3 employees in yard service are paid, basically, for the
4 work they do. So when they're at work, they get paid;
5 on their days off, they're not compensated.

6 When we think about local service, the
7 best analogy there is think of that as your local mail
8 person. They're the ones that are delivering the cars
9 to the customers or picking up the cars from the
10 customers to get sent to another customer. Local
11 service, very similar to yard service. They're
12 scheduled -- they have assigned days off. They
13 typically work a five and two schedule. Five work
14 days and two days off. They have a known start time,
15 and they generally go to work at the same location and
16 tie up or finish their work at the same location.

17 Similar to yard service, they're paid
18 for the work that they perform. So when they go to
19 work, they get paid. They get compensated for that.

20 Q. And Doug, at the top of the slide, we
21 see that these two categories, yard service and local
22 service, fall under the rubric of assigned service.
23 What does assigned service refer to?

24 A. Yeah. So think of assigned service as
25 the employees that have a set schedule. Every single

1 day they know when they're going to go to work.

2 That's how we think about assigned service in this
3 context.

4 Q. So it's essentially shift work, more or
5 less?

6 A. Correct. Next, we'll talk about
7 unassigned service. So that differs from the assigned
8 service as these employees do not have a set start
9 time. They do not have a set days off. This first
10 category here is our unassigned through freight
11 service. So using that same postal analogy, think of
12 our through freight crews as they're the ones that
13 would be moving the mail across the country.

14 So you're sending a letter from Chicago
15 to Los Angeles. Our through freight crews are 24/7,
16 365. We are moving trains every single day of the
17 week. Like I said, they have variable start times.
18 These crews have a designated on-duty point, So they
19 go on duty at the same location every day. They take
20 a train to what we call an away-from-home terminal.
21 So an example would be I am stationed out of West
22 Colton, California. That is where I go on duty every
23 day. I would take a train to Yuma, Arizona. Once the
24 train's there, I would tie up. So that's where tie-up
25 is, when I finish working for the day. I would get

1 rest, and then upon being rested, I get called -- work
2 back from Yuma, Arizona to West Colton, California.

3 Q. So Doug, let me just stop you there.

4 So in that example that you gave, West Colton would be
5 the home terminal, Yuma would be the away from home
6 terminal?

7 A. That's correct.

8 Q. And you would call somebody from a pool
9 that is on call 24/7, unless they're marked off,
10 right?

11 A. Correct.

12 Q. And that person would report to duty at
13 the home terminal, take a train to the away-from-home
14 terminal.

15 A. Correct.

16 Q. All right. Thanks.

17 A. So when we think about these employees
18 in yard service, local service, and unassigned through
19 freight service, those are the employees that own
20 those positions. So that's their job. We have a
21 group of people that are the extra board. It's best
22 to think the extra board as the employees that cover
23 the vacancies. When these employees are unavailable
24 for work. Could be unavailable for a multitude of
25 reasons, personal leave, vacation, sick.

1 The extra board would cover the vacancy
2 that pool employee creates. The extra board differs
3 relative to our unassigned through freight service,
4 our local service, and our yard service because they
5 are compensated based on a guarantee. So unlike the
6 employees in those prior services, they are paid for
7 their availability first. So an example would be, an
8 employee on an extra board, in that pay half, they go
9 to work zero times. They have a set amount of money
10 that they would get paid for their availability.

11 If that same situation happened to an
12 employee in pool freight service or unassigned freight
13 service, they would not get compensated. The way it
14 works for employees on an extra board is every single
15 time they go to work, they start to offset that
16 guarantee. So an example would be, just for strictly
17 round numbers, if their guarantees \$5,000 a half, they
18 work enough to earn \$2,500, they would earn \$2,500 of
19 earnings plus the \$2,500 there's a guarantee to.

20 ARBITRATOR: What's a half?

21 WITNESS SVATOS: A half. Think of it
22 as when you break up a month. The first 15 days
23 followed by the last 15, 16.

24 BY MR. CHIAVETTA:

25 Q. And Doug, we'll talk about this in more

1 detail as we go on, but for employees on an extra
2 board who receive a guarantee, if they mark off or are
3 unavailable, how does that affect the guarantee?

4 A. Yeah. So there's rules that govern how
5 that exactly works. But generally speaking, when an
6 employee marks off in a non-compensated status, they
7 are not paid guaranteed for that day. If they mark
8 off in excess of whatever CBA rules govern them, in
9 excess of that, they would forfeit their guarantee for
10 that paid half.

11 Q. We'll just pause here, and if the board
12 has any questions. I'm sorry, Chairman Baggett-Hayes,
13 if you --

14 ARBITRATOR: I have none. Thank you.

15 BY MR. CHIAVETTA:

16 Q. Okay, thank you. What we plan to do
17 next is have Doug illustrate using a whiteboard, the
18 way in which the pools operate.

19 A. So I'm going to cover three different
20 topics here. First, how the pool operates today, what
21 happens when there's a vacancy in the pool, and then
22 what happens when there's no employees available in
23 the pool to work.

24 So to walk through this demonstration
25 for the demonstration's sake, this will be our home

1 terminal. So in the example, think of this as West
2 Colton, California. This would be the away from home
3 terminal, Yuma, Arizona. When we're looking at this,
4 these are labeled as positions, position one through
5 six, position one meaning you're the first employee
6 that would get called to work. This would be the
7 employees' names and this is the turn.

8 So when we think about this on a pool
9 freight operations, employees bid to a pool turn. So
10 what that means is, I apply, that is the position that
11 I own. When Pool Turn A goes to work, the employee
12 that is working that pool turn would be called to work
13 with that. So that is their job is the pool turn on
14 that pool. That differs a little bit down here when
15 we start to look at the extra board.

16 Extra board employees don't own a turn
17 in the same sense that employees on a pool do. They
18 own a position on the extra board. They work up
19 basically in a line of first in, first out type
20 operation. And when it's their turn to go to work,
21 they would be called next.

22 So in practice, what happens is -- I'm
23 going to kind of walk through a couple examples
24 here -- is you think of this, basically, in a line.
25 Employee Allen on Pool Turn A, there's a train that

1 needs to get called. Mr. Allen gets called to work on
2 his pool term. He works to the away-from-home
3 terminal. He will tie up, finish working that day.
4 He will go first out at the away-from-home terminal on
5 his pool turn. Everybody else that's at the
6 away-from-home terminal will move up one position with
7 their pool turn.

8 Until now in this example, Mr. Brown's
9 first out. So if we followed that again, what would
10 happen is a train is getting ready to be called Pool
11 Turn B. It's first out. Mr. Brown on Pool Turn B
12 would be called to work. He'd work the away-from-home
13 terminal. He would tie up on his pool turn, get
14 mandatory rest. Everybody at the home terminal would
15 move up one position, and the same works for the
16 away-from-home terminal.

17 A train needs to get prompted be called
18 Pool Turn A is first out. Mr. Allen on Pool Turn A is
19 called from the away-from-home terminal to tie back up
20 at the home terminal. Since he was the first one, he
21 would go to the bottom of the board. Much like the
22 home terminal, what you would see happen, the next
23 employee up would get called to work on his pool turn.
24 He works back on his turn, ties back up, and then --
25 they would work up the board.

1 In this next example, what I'll show is
2 when one of these employees on a pool turn is
3 unavailable. So in the example I used, this employee
4 could be on a personal leave day or vacation day.
5 What happens is they would lay off. They'd be come
6 unavailable at the home terminal. So for
7 demonstration purposes, I put them down here where it
8 says unavailable.

9 Now we have Pool Turn C that is vacant
10 with no employee on it. Mr. Carter's unavailable for
11 work, and we have a train that needs to be called. As
12 we talked about, the extra board is who covers the
13 vacancies on these pool terms when the employees
14 aren't available. So what would happen is Pool Turn C
15 would be called to work. Mr. Smith, who was first out
16 on the extra board, would be called on Pool Turn C on
17 Mr. Carter's turn, and he would work that pool turn to
18 the away-from-home terminal, tie up, and get rest.
19 And just like in the prior example, everybody else
20 would move up one position on board.

21 Q. And Doug, when they're at the
22 away-from-home terminal, you said they would tie up
23 and get rest. Would they typically go to a hotel?

24 A. Yes. When they tie up, they would go
25 to a lodging facility that is approved. Generally,

1 it's the exact same lodging facility every single
2 time.

3 Q. And how much rest would there be in
4 between getting called to work?

5 A. So FRA mandates at least 10 hours of
6 rest. If you work over 12 hours, it's minute per
7 minute rest. So much like the pool, when they work up
8 the extra board does the exact same.

9 For demonstration purposes, we'll say
10 Mr. Davis is unavailable and Pool Turn D needs to be
11 called the work. Mr. Jones, who was first on the
12 action board, very similar as the last example, would
13 work Pool Turn D out of town and tie up. And then the
14 next employee would work up the board. Employee
15 Garcia would now move to first out. Much like the
16 pool, employees on the extra board can become
17 unavailable, vacation, personal leave, days, sick.

18 So for this example, we'll show
19 Mr. Garcia as unavailable. And next, what we'll say,
20 we refer to it in our submission as waiting on turn.
21 So an example would be Mr. Carter, he laid off. He
22 was unavailable for 24 hours. It takes the pool turn,
23 and for demonstration sakes, longer than 24 hours to
24 make it back to the home terminal.

25 So Mr. Carter is now available to work,

1 but his pool turn is not at the home terminal. So
2 he's kind of -- he's unavailable in a sense. So what
3 we see happen is another train gets prompted.
4 Mr. Smith goes back. Once he ties up, because
5 Mr. Carter is available again, even though his pool
6 turn is gone, Mr. Smith goes back to the extra board
7 and Mr. Carter goes back to his turn. Pool Turn D
8 works up the board. In this next example --

9 Q. Let me just stop you there. So in that
10 example that you just gave, after the employee marked
11 up for work, I believe it was employee Carter, he was
12 available for work at that point, but he was not in
13 the pool rotation because his turn was not yet back in
14 the home terminal; is that correct?

15 A. Correct. So in this next example, what
16 we'll see happen is Mr. Davis, unlike Mr. Carter, he
17 will extend his unavailable time and continue to be
18 unavailable. So what happens in practice is the train
19 gets called, Pool Turn D. Mr. Jones ties back up at
20 the home terminal on Pool Turn D. He goes back to the
21 extra board, though, while Mr. Davis remains
22 unavailable. And then the normal vacancy -- or the
23 process would continue until Mr. Davis became
24 available and the extra board would fill that position
25 until he was available again.

1 For this next example, we'll talk about
2 what a made-up turn is. And that's what happens when
3 the pool becomes exhausted. So let me reset the board
4 here real quick. I'm just going to create a situation
5 to show what that looks like here. So now for
6 purposes of this example, the entire pool is
7 exhausted. Just for demonstration purposes, we'll
8 show them all at the away-from-home terminal right
9 now.

10 In practice, what you would see happen
11 is there could be employees working to the
12 away-from-home terminal, there could be employees
13 working back to the home terminal, but just to make it
14 easy for the demonstration. So now we run into a
15 situation where we need another turn call. There's
16 nobody available in the pool. All the pool turns are
17 out of town on duty. So this is what we talked about
18 in our submission as a made-up turn.

19 A made-up turn is actually added to the
20 board. The first out employee on the extra board
21 would be called to work on that made-up turn. He
22 would work to the away-from-home terminal on the
23 made-up turn. All these employees would work back.
24 Just to make the demonstration easy, we'll pretend
25 that's the home terminal now. Everyone's back at the

1 home terminal. As soon as Mr. Jones ties back up, the
2 made-up turn gets removed from the board, and they
3 would go back to the extra board. That's what happens
4 when your pool is completely exhausted.

5 MR. CHIAVETTA: Any other questions
6 from the chairwoman? No?

7 Thank you. Thanks.

8 So the carrier will call its next
9 witness. Jennifer Powell.

10 ARBITRATOR: Good morning.

11 (Witness sworn.)

12 MS. POWELL: I do.

13 ARBITRATOR: Thank you.

14 EXAMINATION

15 BY MR. CHIAVETTA:

16 Q. Jen, would you please introduce
17 yourself.

18 A. Sure. My name is Jennifer Powell. I
19 am the general director of labor relations, and I am
20 responsible for negotiations and dispute resolutions
21 under the Section 3 and Section 6 process of the RLA
22 for all the TY&E crafts, which are our engineers and
23 our train persons. I've got 20 years of railroad
24 experience and 14 of those spent in labor relations.

25 Q. Jen, were you involved in the local

1 bargaining over Articles 5, 6, and 7?

2 A. Yes. I was a member of the core
3 negotiating team.

4 Q. And who else was a member of the
5 carrier's negotiating team?

6 A. We had Maqui Parkerson, who's our board
7 member. She was the lead negotiator. There was
8 myself, and Doug Svatos.

9 Q. Is that who you would refer to as the
10 core team?

11 A. Yes.

12 Q. There's been some criticism from the
13 union. They've suggested that Union Pacific
14 frustrated the bargaining process by frequently
15 changing out who was at the table. What's your
16 response to that criticism?

17 A. The core negotiating team never did
18 change throughout the entire negotiation process. We
19 did bring in some directors from our labor relations
20 team, periodically, who also handled those territories
21 for the agreement which we were negotiating, so they
22 would be involved in that. And we also brought in
23 various operating partners as well to provide their
24 perspective on operations and to ensure that the
25 things that we were talking about in negotiations were

1 going to meet their operational needs.

2 Q. Jen, we have -- pulled up here on the
3 screen, we've got a bargaining timeline on the
4 PowerPoint, and it identifies different events that
5 happen throughout bargaining, different meetings.
6 Were you at all of those meetings?

7 A. Yes, I was.

8 Q. And so it looks like the bargaining
9 began December 28, 2023, when the union serves its
10 Article 5 notice.

11 A. Correct.

12 Q. And then the carrier countered with
13 notice under Articles 6 and 7 in January of 2024.

14 A. Yes. We provided notice on 5, 6 and 7.

15 Q. And as you said, you were at all of
16 these bargaining sessions. There's been a suggestion
17 by the union -- they've indicated that during
18 bargaining the carrier said repeatedly that adapting
19 the self-supporting pools, which is something we'll
20 explain next, would allow it to cut extra boards
21 by 80%. Did the carrier ever say that during
22 bargaining?

23 A. No, we did not say that. We said that
24 we would, potentially -- if 80% of the
25 hours-of-service work could go to the pool, come off

1 of the extra board and go to the pool. But we did not
2 say we were going to cut 80% of the extra boards.

3 Q. Okay. In what approximately what
4 percentage of the extra board's work is the
5 hours-of-service work that was referred to?

6 A. It's approximately 14% of the total
7 work that they cover.

8 Q. So the carrier never suggested -- So
9 the 80% was said in relation to that 14% of the extra
10 board's total work.

11 A. Correct.

12 Q. And is there any doubt in your mind
13 about that?

14 A. No. When that issue was raised, I did
15 go and review our meeting notes, and I also discussed
16 with colleagues who were part of that meeting, and
17 that is exactly what we were talking about.

18 Q. And when you say, "when that issue was
19 raised," when you saw that in the --

20 A. Yes. Yes.

21 Q. All right. I want to jump ahead here.
22 And we see that there was a meeting on June 3rd
23 and 4th, 2024, in Las Vegas, Nevada. Were you at that
24 meeting?

25 A. Yes, I was.

1 Q. And how long was that meeting initially
2 scheduled to last?

3 A. It was scheduled for three days, a half
4 a day on that last day.

5 Q. Did the bargaining session actually
6 last all three days?

7 A. No, it did not.

8 Q. Why not?

9 A. On the 4th, the organization said that,
10 basically, we were not coming to an agreement, that we
11 would go to arbitration, that they would see us in
12 arbitration.

13 Q. And so in the carrier's mind, when the
14 union made that statement on June 4th, was the
15 bargaining effectively over at that point?

16 A. Yes.

17 Q. And you testified that there was a
18 third day or a half day of negotiations scheduled for
19 June 5th, correct?

20 A. Correct.

21 Q. Was the carrier there on June 5th?

22 A. Yes, we were.

23 Q. Was anybody from the union there on
24 June 5th?

25 A. No.

1 Q. And what did you conclude based on the
2 union's absence from that last day of negotiations?

3 A. Based on what their comments were and
4 the fact that we did not meet the next day, we
5 concluded that negotiations were over.

6 Q. As of that meeting in Las Vegas, did
7 the parties have any additional bargaining sessions
8 scheduled to going into that meeting?

9 A. We did. We typically would schedule a
10 few meetings, you know, at the same time. So we had
11 another meeting scheduled June 17th in Dallas.

12 Q. And what happened with respect to the
13 Dallas meetings? Did the carrier attend those?

14 A. No, we did not. We cancelled our
15 travel arrangements.

16 Q. Why did you cancel your travel
17 arrangements?

18 A. Because we did not think that the
19 negotiations were going to continue.

20 Q. And in between June 4th, 2024, when the
21 union walked out of the negotiations, and when the
22 meetings in Dallas had been scheduled to start, did
23 you hear anything further from the union?

24 A. We did. We received a counter proposal
25 on June 14, which I believe was that Friday before we

1 were scheduled to meet with them.

2 Q. And did that -- is that the June 14th
3 proposal, you said, from the union? Did the union's
4 June 14th proposal do anything to advance the
5 negotiations from the carrier's point of view?

6 A. No, it did not.

7 Q. And how did it compare to the proposals
8 that had been exchanged during the meeting in Las
9 Vegas?

10 A. Their counter proposal actually brought
11 us further apart than we were at the point where we
12 left negotiations earlier that month, so.

13 Q. And Jen, you've testified that you were
14 at all of the bargaining sessions. You saw all the
15 proposals, correct?

16 A. Yes.

17 Q. In your mind, what were the sticking
18 points that prevented a voluntary deal?

19 A. There was -- one of the main things was
20 paying guarantee for unavailable days. So paying
21 guarantee for those rest days. We were preferring a
22 mandatory rest schedule while the union was wanting a
23 voluntary rest schedule. And then the other issue was
24 CSF guarantee. I'm sorry.

25 Q. Was the union asking for things that,

1 from the carrier's perspective, were outside the scope
2 of Articles 5, 6 and 7?

3 A. Yes. Well, in their June 14th
4 proposal, there was a number of things in there. Yes.

5 Q. And what was the effect of those things
6 that the union was adding?

7 A. It was just added all additional cost
8 to -- and they weren't related to the PEB.

9 Q. Okay. Thank you.

10 We'll pause there and I'll open the
11 opportunity for questions to the chairwoman. If not--

12 ARBITRATOR: I have none. Thank you.

13 MR. CHIAVETTA: Thank you. Unless
14 anybody needs a break, then we'll plan to move into
15 the next topic, which is Article 7.

16 ARBITRATOR: You can continue.

17 BY MR. CHIAVETTA:

18 Q. All right, thank you.

19 All right. Doug, you've explained
20 using the whiteboard the way in which pools work
21 today. In one of the carrier's proposals, which is
22 found in Article 7A, is to establish self-supporting
23 pools. What is a self-supporting pool?

24 ARBITRATOR: And all the testifying
25 witnesses continue to be under oath.

1 WITNESS SVATOS: I'm sorry.

2 ARBITRATOR: And that includes you.

3 BY MR. CHIAVETTA:

4 Q. She said you continue to be under oath.

5 A. Okay, thank you. A self-supporting
6 pool, very much what it sounds like. So instead of
7 first going to the extra board to fill the vacancy,
8 what you would see happen is the employee, in their
9 pool turn, would be pulled off the board and the next
10 employee in their pool turn would move up to the next
11 spot.

12 Q. So Doug, using the whiteboard, can you
13 just show us just what that would look like it?

14 A. So in our prior examples where we
15 talked about the employee would become unavailable and
16 their pool turn would remain on the board, what would
17 happen in a self-supporting pool is, when this
18 employee becomes unavailable, both the employee and
19 their pool turn would come off the board. And then
20 the next employee on the board and their pool turn
21 would move up a slot. So it would not first be filled
22 by an extra board; it would just be the next employee
23 on the pool.

24 Q. And Doug, earlier you talked about this
25 concept of waiting turn where somebody from the extra

1 board is called to protect my vacancy. That person
2 works for the away-from-home terminal. In the
3 meantime, I mark up, but I'm, essentially, caught in
4 limbo. I'm not moving up the rotation with the
5 opportunity to make money. The carrier is not going
6 to call me in the normal course of things, right?
7 What happens in this scenario with self-supporting
8 pool once somebody who had marked off from the pool is
9 now available for work?

10 A. Yeah. So like we talked about in the
11 prior example, where the pool turn may be out of town,
12 the employee is available, what would happen in a
13 self-supporting pool, as soon as this employee becomes
14 available, the employee and their pool term gets added
15 back to the board at the bottom of the board, and they
16 would continue to work up the board until their turn
17 is called to work.

18 Q. Doug, earlier you talked about this
19 scenario where the pool board is exhausted, and you
20 talked about how, in that instance, the carrier would
21 add a made-up turn to the pool board. What would
22 happen if -- with self-supporting pools under the
23 carrier's proposal if the pool were exhausted?

24 A. It would actually be the exact same
25 scenario. So if the pool was exhausted, a made-up

1 turn would be added to the board, and an extra board
2 employee would be called on that made-up turn to work
3 from the home terminal to the away-from-home terminal.
4 Once they get back to the -- from the away-from-home
5 terminal to the home terminal, the made-up turn would
6 be removed from the board, and the employee would go
7 back to the extra board.

8 Q. Doug, are there instances where both
9 the pool is exhausted and the extra board that
10 protects the vacancies on that pool are also
11 exhausted? Meaning nobody's available to come to
12 work.

13 A. Yes, those instances do happen.

14 Q. And that happens today?

15 A. Correct.

16 Q. What happens today when those two
17 circumstances exist?

18 A. Yeah. So when both the pool and the
19 extra board are exhausted, there's a set of vacancy
20 procedures. So call it call-in rules that would
21 generally call other employees at that location, pool
22 service, other extra boards at that location, maybe
23 yard or local employees as well.

24 Q. Under the carrier --

25 ARBITRATOR: Can you say that again? I

1 think the question was, if the pool and the extra
2 board are both designated based on the ones that they
3 would be available.

4 WITNESS SVATOS: Yeah. So there's a
5 set of calling proceeds -- so each property has
6 different calling procedures that govern -- or when
7 the pool's exhausted, the extra board is exhausted,
8 that we would call other. So most locations have more
9 than one pool item. So you may see two, three, four
10 pools at one home terminal that would operate
11 different directions out of that home terminal.

12 So you would generally -- This is kind
13 of -- it's all -- it varies by agreement, but you
14 generally call other employees on other pools to work
15 off their turn to go work in this pool. Or if there's
16 other extra boards at that home terminal, you would
17 call employees generally -- off that extra board to go
18 work in that pool. Does that --

19 ARBITRATOR: Yeah. That's fine.

20 WITNESS SVATOS: Okay.

21 BY MR. CHIAVETTA:

22 Q. Doug, under the carriers Article 7
23 proposal, going forward, what would happen if both the
24 pool and the extra board were exhausted?

25 A. In practice, generally, very similar to

1 what would happen today. You would call a set of
2 vacancy procedure rules that would likely call other
3 extra boards at that location or other employees in
4 pool or yard or local service.

5 BY MR. CHIAVETTA:

6 Q. Okay. I think we'll turn the
7 microphone over to Jen Powell just to talk through
8 some of the differences between the two side's
9 Article 7 proposals.

10 So Jen -- and these are -- by the way,
11 we have the PowerPoint that talk -- that walks through
12 in further detail some of the concepts that Doug has
13 explained using the whiteboard.

14 So Jen, under Article 7, the union has
15 its own Article 7 proposal, correct?

16 A. Correct.

17 Q. And under that Article 7 proposal,
18 would up also be establishing self-supporting pools?

19 A. Yes.

20 Q. And would you please let us know where
21 we can find the union self-supporting pool proposal?

22 A. Yes. It's under their Article 1B1 and
23 it's 1 through 4.

24 Q. So Article 1B1 through 4 of Appendix B.

25 A. Yes. Yes.

1 Q. Jen, are there any important
2 differences between the carrier's self-supporting pool
3 proposal and the union's?

4 A. Yes, there's approximately five major
5 differences between the two proposals. The first
6 difference is that -- and you see here, they do say
7 that the turns removed from the board, just like Doug
8 was talking about, at the time of layoff. However,
9 it's silent as to who's going to fill that vacancy.
10 So, I mean, we can make an assumption there. They're
11 talking about it the same way we are, but we aren't.
12 It's just unclear. So that's one big difference.

13 The second difference. Sorry about
14 that. There it goes. Okay. Their second difference,
15 you'll see here. There's really -- this is like the
16 second and third difference here. So the proposal
17 would also -- it differs on how we fill a vacancy when
18 that pool is exhausted, so that means when there's no
19 rested available employees in the pool anymore, and
20 now we have to fill that vacancy, they are calling the
21 first out and rested train person. I'm sorry.

22 Our proposal is that we're going to
23 call the first out, rested and available train person
24 from a -- at the extra border location. And so
25 they're limiting -- I'm sorry. They're limiting us to

1 the fact that we can only call from the extra board at
2 the location, and then the next step is we have to go
3 to the pool -- another pool at that same location. So
4 for example, if we have an extra board at a location
5 and it's exhausted, then we have to go to a pool at
6 that location versus potentially utilizing another
7 extra board at a closer location that we're also
8 paying guarantee for.

9 Q. So Jen, is it fair to say, with respect
10 to the second difference -- and by the way, going back
11 to the first difference, so who fills the vacancy.
12 There may or may not be disagreement on that point; is
13 that correct?

14 A. It's unclear. Yeah. It's just
15 unclear.

16 Q. Okay. And then with respect to the
17 second difference that you're talking about, is the
18 scenario where both the pool and the extra board are
19 both exhausted. Is it fair to sum up the dispute as
20 the carrier's proposal would allow them to draw from a
21 broader pool of employees to fill that vacancy than
22 the union's.

23 A. Yes. Exactly.

24 Q. So the union's is more restrictive on
25 who can be called.

1 A. Yes. Yes. Exactly. And you'll see it
2 says from the protecting -- I'm sorry. One more
3 point. So from the protecting extra board at that
4 location, another point I would like to make was we
5 could have other extra boards at that location that
6 protect other work as well. Maybe they aren't
7 protecting that specific pool, but the way that this
8 is written is that we would be restricted from using
9 those employees as well.

10 Q. Even though they would generally be
11 reporting to work at the exact same place as --

12 A. Correct.

13 Q. -- employees --

14 A. Correct.

15 Q. On the extra board that protects them.

16 A. And the third -- we'll stay on this
17 one. And the third difference is the fact that when
18 we do not have an extra board, the protecting extra
19 board at that location, when we do go to another pool,
20 we then have to pay a 65-mile penalty for doing that,
21 which is a half a day of pay is what that equates to.

22 So they're limiting who we can call off
23 of a guaranteed pool, and then requiring us to go to
24 another pool at that location and then having to pay a
25 penalty for doing that.

1 Q. And so, Jen, just to set the stage
2 again, we're talking about the scenario where both the
3 pool board and the extra board is exhausted. And as
4 Doug was saying, even today, there's situations where
5 somebody from another pool or another extra board
6 could be called to fill that vacancy, correct?

7 A. Correct. Correct.

8 Q. And if that happens today, does that
9 employee get an extra 65-mile payment?

10 A. No.

11 Q. So this union's proposal in that
12 respect would be giving the employees more pay than
13 they would receive today for doing that same work.

14 A. Correct. Correct.

15 So the fourth difference which further
16 exacerbates the cost of using the other pool is that
17 there's also a provision in Smart's proposal that if
18 we do use a different pool more than four times during
19 a weekly regulation period, we have to add a position
20 to the extra board. So -- and as you'll hear multiple
21 times, I mean, employees on the extra board are
22 receiving guarantee and that's a cost to the carrier.

23 And really, it doesn't make -- this
24 doesn't make sense because it really doesn't fix the
25 problem of having a pool exhausted. It would likely

1 fix the issue maybe at that exact instance of having
2 that vacancy. But it's similar to fixing a leaky
3 pipe. You're just mopping up the water instead of
4 actually fixing the pipe itself. So, you know, if
5 there's not enough people in the pool to do the pool
6 work, really, what we should be doing is adding to the
7 pool and not just adding people to the extra board.

8 Finally, the fifth difference --

9 ARBITRATOR: That's in the event that
10 more than four starts in their conditions, they're
11 correct?

12 WITNESS POWELL: So if we use
13 another -- a different pool to protect the pool that's
14 exhausted more than four times -- four starts. And
15 now, let's be clear, I mean, we define a start as, it
16 could be, the trip from the home terminal to the
17 away-from-home terminal and then another start back.
18 So that's essentially two round trips. So if we do it
19 two round trips, the carrier must add a position to
20 the protecting extra board. Which, again, doesn't fix
21 the issue in the pool.

22 BY MR. CHIAVETTA:

23 Q. In how long -- it talks about the
24 regulation cycle. So how long would the regulation
25 cycle typically --

1 A. It's done weekly. So yeah, we would
2 have that person that, essentially, we don't really
3 need on an extra board for a whole week and paying
4 that guarantee.

5 Q. So you were essentially short staffed
6 on the pool one week. And the union says, if that
7 happens for two round trips, you've got to add
8 somebody to the extra board. Our position is that, in
9 that scenario, maybe we have a shortage on the pool,
10 and the solution would be to add somebody to the pool,
11 not to the extra board where you're going to be
12 earning the guarantee making money, potentially, for
13 not working, correct?

14 A. Correct. Correct.

15 Q. So now, let's talk about the -- I think
16 we're up to the fifth key difference here between the
17 two proposals.

18 A. Okay. So the fifth difference is that
19 the carrier is proposing that -- and I think Don
20 briefly mentioned the hours-of-service relief work
21 that the pool, under our self-supporting pool model,
22 that hours-of-service relief work would be done by the
23 pool. So that work is, again, when a pool train
24 doesn't make it because the crew only has so much time
25 to work. They may have to stop work midway through

1 their run, so they could be, you know, 50 miles from
2 their destination terminal, home terminal,
3 away-from-home terminal. So that train just has to
4 sit there. So that's what we call that train died on
5 hours of service.

6 Today we would call -- we would
7 typically go to the extra board first, call the extra
8 board employee to go perform hours-of-service relief,
9 so they would go pick up that dead train and bring it
10 back into this destination that it was intended to get
11 to.

12 So the carrier's proposing -- typically
13 this work is pool service that just doesn't make it.
14 So the carrier is proposing that the pool just
15 continues to do this pool freight work to get that
16 train to the destination it was intended to do. The
17 union's proposal makes that work essentially exclusive
18 to the yard that only -- or sorry -- to the extra
19 board. That only the extra board can do that or work.

20 Q. And what is the maximum on-duty period
21 under the Hours of Service Act?

22 A. 12 hours.

23 Q. So we're talking about the scenario
24 where the train leaves the home terminal on its way to
25 the away-from-home terminal and that trip ends up

1 taking more than 12 hours.

2 A. Correct. Correct.

3 Q. And so once you hit that 12-hour limit,
4 that train's got to stop moving, and you need to send
5 somebody to go relieve that train.

6 A. Yeah. We would -- the train would
7 stop. We would have to send a van to go get that crew
8 that can no longer do any work, and then send another
9 crew out to bring the train in that has -- that is
10 rested and available to do that work.

11 Q. Okay. So that's the hours-of-service
12 relief work.

13 A. Yes.

14 Q. And you testified that typically today
15 that would be done by the extra board.

16 A. Typically.

17 Q. Why is it that that's typically done by
18 the extra board?

19 A. So generally, our agreements require us
20 to go to the extra board first to protect that
21 service. We have many agreements that talk about
22 that, but it's not necessarily exclusive to the extra
23 board. We do have provisions in the national
24 agreement that allow yard assignments to relieve
25 trains that have died on hours of service as long as

1 it's within 25 miles from their switching limits of
2 the yard that they work in. So they can only go up
3 to 25 miles outside.

4 We also can use road switchers. I
5 mean, there's many different types of service. And
6 the pool can also do hours-of-service relief as well.

7 Q. And so, that scenario that you
8 described with the switching limits, can you think of
9 that as almost a circle, that it circles the yard and
10 you've got a 25 mile zone where, if the train -- if
11 the train hits the 12-hour limit within that 25-hour
12 zone -- I'm sorry. 25-mile zone, you could call
13 somebody other than the extra board to bring that
14 train to the home terminal?

15 A. Correct. And we actually have. It
16 varies across the system. We don't have it on every
17 location, but there's also agreement provisions that
18 provide for a pool -- called in pool service. We call
19 it a 25-mile zone. And they would go out, get the
20 train, and run it through their terminal to their
21 destination point. So they could go pick up that
22 train that died on hours of service outside of the
23 terminal. So I mean we have agreement provisions that
24 provide for that type of work.

25 Q. So most of the time, the train's coming

1 into the terminal and then it's getting switched, but
2 some of the time you've got these through freight
3 trains that just continue on unchanged, Correct?

4 A. Correct. Correct.

5 Q. And you're saying in those scenarios,
6 as long as they're, basically, dying within a 25-mile
7 limit of the yard, you could send a pool crew to
8 actually do that hours-of-service relief work?

9 A. They would go pick up the train that's
10 really intended to go maybe another 500 miles, you
11 know, down the track. And so they'll take -- they'll
12 pick it up and continue taking it on to its
13 destination.

14 Q. Okay.

15 ARBITRATOR: And that's the existing
16 procedure?

17 WITNESS POWELL: We have agreements
18 that provide for that, essentially. So that train
19 wouldn't have to be stopped at that terminal. That
20 you'll get in run it on to their final terminal.

21 ARBITRATOR: So it's more than -- I
22 thought you were going after, when it is more than 25
23 miles and extra boarding space.

24 WITNESS POWELL: Sorry, I couldn't
25 hear.

1 ARBITRATOR: I thought you were going
2 after, If it's more than 25 miles, what's the process?
3 And what are you proposing?

4 WITNESS POWELL: If it's more than 25
5 miles, we typically would call an extra boarder to
6 perform that hours-of-service relief. But there's
7 no -- if the extra board is exhausted, we'd use pool
8 crews to do that work as well.

9 BY MR. CHIAVETTA:

10 Q. In the proposal, then would be we're
11 not going to turn to the extra board in the first
12 instance we would be having the pool do that work.

13 A. Correct.

14 Q. That hours-of-service relief work. So
15 they would be the first people to call as opposed to
16 the actual board?

17 A. Correct.

18 Q. And that's the proposal?

19 A. That is our proposal, yes.

20 Q. And that's a change from existing
21 practice --

22 A. Yes.

23 Q. -- as you just described.

24 And why does the carrier believe that
25 it's appropriate for employees from self-supporting

1 pools to do that hours-of-service relief work?

2 A. Well, we're trying to put pool work --

3 I mean, those were pool through freight trains. So

4 we're trying to put that work into the pool. And if

5 we put it in the pool, it also frees up the extra

6 board to do what -- really what it does is to fill

7 vacancies. It protects those vacancies in assigned

8 service, and it protects the pool when it's exhausted.

9 So we're not using up our extra board as much to do
10 that hours-of-service relief.

11 Meaning we have them when we do have a
12 need because of a vacancy or other things to use them
13 to protect a regular job, which typically are the ones
14 that are servicing our customers and things like that.

15 So those are the types of jobs we can't,
16 necessarily -- if we don't run those jobs, there's an
17 impact to our customers on those, so...

18 BY MR. CHIAVETTA:

19 Q. Thanks, Jen.

20 I'm going to direct this next question
21 to Doug.

22 Doug, we've heard about the extra board
23 and how it protects vacancies in the pool. Today it
24 also does the hours-of-service relief work. And what
25 percentage of the extra board's work today is this

1 hours-of-service relief work that we're talking about?

2 A. Yeah. So we're talking -- looking at
3 from 2024, we average about 7 to 8% re-crew rate. So
4 that's when we're talking about hours-of-service
5 relief. That comes out to about 120 starts a day.

6 Q. So about 120 starts a day that crew
7 doesn't make it to the away-from-home terminal in less
8 than 12 hours, so you've got to send some sort of
9 hours-of-service relief.

10 A. That's correct. And that's spread out
11 across the system. So you don't generally see -- you
12 won't see tens or hundreds of them at one location.
13 That's a system number.

14 Q. So this hours-of-service relief work is
15 a small percentage of the extra board's overall work;
16 is that right?

17 A. Correct.

18 Q. So by reassigning the hours-of-service
19 relief work from the extra board to the pool, would
20 you be able to eliminate extra boards altogether?

21 A. No. We will not be able to eliminate
22 extra boards by moving hours-of-service relief into
23 the pool.

24 Q. Would you be able to cut extra boards
25 by 80% by doing that?

1 A. No.

2 Q. Doug, the union has expressed concern
3 about ensuring that employees receive adequate time at
4 home between starts. They talk in their submission
5 about this concept of home cycle time. Would
6 assigning hours-of-service relief to the pool have any
7 effect on the amount of time that employees in the
8 pool are at home?

9 A. So in our proposal, because employees
10 that would work hours-of-service relief would tie back
11 up at the home terminal and they wouldn't be working
12 all the way to the away-from-home terminal, they would
13 get more time at home.

14 Q. And is that because, if you're
15 typically getting called from a pool, and you're
16 taking a train to the away-from-home terminal, you're
17 spending the night at some hotel somewhere out of town
18 as opposed to being home?

19 A. That's correct.

20 Q. Whereas, if you're doing the
21 hours-of-service relief, you're starting and ending
22 the workday in the same location.

23 A. Correct.

24 Q. Doug, the union, in general, has
25 advocated for changes that would result in additional

1 predictability and stability for its members. Would
2 adding hours-of-service relief to do anything to
3 further those goals?

4 A. So adding hours-of-service relief --
5 and you look at it in the context of kind of looking
6 at the system. What we actually see is employees on
7 an extra board today, kind of, in my example that I
8 showed earlier, they have to go look at vacancies that
9 are on a pool. That extra board may cover multiple
10 pools. So they would have to go see when they get
11 called to work on Pool A, Pool B, they cover assigned
12 service, they may have to see if there's vacancies on
13 that assigned service, and since they cover the
14 hours-of-service relief, they have to look at a
15 multitude of different areas to see when they would
16 get called to work.

17 By moving hours-of-service relief with
18 self-supporting pool into the pool, it actually
19 decreases the variability for an extra board employee.

20 Q. And so Doug, is it fair to sum it up by
21 saying by moving the hours-of-service relief work into
22 the pool, as you said, it's going to decrease the
23 variability for extra board employees. There might be
24 a slight increase to variability for pool employees;
25 is that fair?

1 A. Yeah, that's fair. And because, when
2 you look at it across the system, we're talking
3 about 120 starts a day spread out. You're not talking
4 about a large increase typically at one location.

5 Q. And by moving that work, you would also
6 be generating additional work opportunities for
7 employees in the pool.

8 A. Correct.

9 BY MR. CHIAVETTA:

10 Q. Another part of the proposal that we
11 saw -- that we see on the screen here, in addition to
12 referring to hours-of-service relief and having that
13 work being done by the self-supporting pools, there's
14 a reference to having turnaround service and
15 work-train service done by the -- done by the
16 self-supporting pool, at least under the carrier's
17 proposal.

18 Correct, Jen?

19 A. Correct.

20 Q. So could you just explain what is
21 turnaround service and what is unassigned work-train
22 service?

23 A. Turnaround service really is what it
24 sounds like. It's basically taking a train to a
25 nearby location, turning around, and tying back up at

1 home. You could be taking it to a customer, you could
2 be taking it out to a siding, multiple things. But
3 essentially it's, they take a train out, they come
4 back, tie up, and are back at home that day.

5 Unassigned work-train service is,
6 essentially, that unplanned work. That is where we
7 would transport ballasts or equipment to some point
8 between the terminal -- from the home terminal to the
9 away-from-home terminal.

10 Q. At some point in between the home
11 terminal and the away-from-home terminal?

12 A. Yes, typically.

13 Q. And today, who does this work that you
14 describe? The short turnaround service, where you're
15 operating a train -- you're going out. You're
16 operating a train to some fixed point and then back to
17 the home terminal and then the work-train service.

18 Who primarily does that work today?

19 A. The extra board.

20 Q. And under the carrier's proposal for
21 self-supporting pools, who would primarily be doing
22 that work tomorrow?

23 A. The pool.

24 BY MR. CHIAVETTA:

25 Q. Doug, I'll ask you the same question

1 that I asked with respect to the hours-of-service
2 relief work. Would doing -- having the employees in
3 the self-supporting pool do the turnaround service and
4 the work-train service, would that have any effect on
5 the amount of time that employees in the pool spend at
6 home?

7 A. Yeah. So very similar to
8 hours-of-service relief. Since they wouldn't be
9 working to the away-from-home terminal and getting
10 rest there, they'd be tying up back at home. They
11 would get more time at home.

12 Q. So we've proposed that there's three
13 buckets of work that, today, are done primarily by the
14 extra board that, tomorrow, would be done by the
15 self-supporting pool. That hours-of-service relief
16 work, the turnaround service, and the work-train
17 service. And by the way, Doug, I believe your
18 testimony was the hours-of-service relief is about 14%
19 of the extra board's work today.

20 By adding the short turnaround service
21 and the work-trained service, are you substantially
22 increasing that percentage?

23 A. No.

24 Q. So somewhere around 14%?

25 A. Correct. Correct.

1 Q. So you'd be moving about 14% of the
2 work that's primarily done by the extra board to the
3 self-supporting pool. Would that allow the carrier to
4 eliminate extra boards?

5 A. It would not.

6 Q. Why would the carrier still need extra
7 boards, even if you're moving this work that's a small
8 percentage of its overall work to the self-supporting
9 pool?

10 A. So you're still going to have
11 circumstances where employees on a self-supporting
12 pool become unavailable. You're still going to have
13 situations where there's an increase in train demand,
14 and extra boards still will need to cover assigned
15 service.

16 BY MR. CHIAVETTA:

17 Q. Thanks, Jen. In closing -- the article
18 proposals, Jen, can you just sum up where things
19 stand, what we view as the key differences between the
20 two sides?

21 A. Yeah. So the key differences that we
22 have identified here is, one, that the union's
23 proposal adds a cost to the carrier. We have
24 the 65-mile payment to pools that they want to spread
25 across the system. And I do want to clarify, they

1 have one territory that does get this payment for
2 pools, but what they want to do is take that one
3 provision and spread it across the entire system.

4 Q. Hey, Jen --

5 A. I think I said earlier that -- that
6 this was new, so I wanted to clarify that.

7 ARBITRATOR: Yes, you did.

8 BY MR. CHIAVETTA:

9 Q. Oh, sorry. Yeah, I was just going to
10 say, Jen, so when we're talking about territories. So
11 Union Pacific system has different territories where
12 different collective bargains agreements apply?

13 A. Correct. Yes.

14 Q. So you're saying that --

15 A. We have one area out of all of the
16 agreements that has a payment provision if they're
17 called off another pool, but what the union wants to
18 do is to spread that across the entire system. So I
19 just wanted to clarify that.

20 The other piece that adds cost to the
21 carrier is that it would require us adding to the
22 extra board, which, again, guarantee, it doesn't
23 really fix the problem. We'd have to keep them on the
24 board for an entire week. Another main issue is that
25 it restricts us from using the pool to protect that

1 hours-of-service relief, that short turnaround, and
2 work-trained service that we provide in our proposal.

3 It also preserves some guaranteed
4 income at the expense of efficiency and productivity
5 by, kind of, restricting the process in which we fill
6 those assignments. And Union Pacific's proposal is an
7 efficient way to fill those vacancies and decreases
8 the reliance on the extra board.

9 Q. Jen, when we talk about preserving
10 guaranteed income, are we essentially saying that the
11 union's proposal would funnel more people to the extra
12 board?

13 A. Correct. Correct.

14 ARBITRATOR: Would you repeat that
15 question?

16 BY MR. CHIAVETTA:

17 Q. Sure. Yeah. When we talk about
18 preserving guaranteed income as one of the differences
19 between the two sides' proposals, my question to Jen
20 was does that essentially mean that the union's
21 proposal is, more or less, funneling more of the work
22 to the extra board, whereas the carrier would be
23 funneling more of the work to the pools, which, for
24 the most part, are not guaranteed?

25 A. Correct. Yes. You're correct. And

1 again, the purpose of that is to utilize those extra
2 boards for those vacancies that we really need to use
3 them for.

4 Q. And from a cost standpoint, that
5 matters because on the extra board, assuming you're
6 available, you going to get paid even if you're not
7 working, whereas that's not true on the pool, right?

8 A. Yes. Correct.

9 Q. Are there are any further questions on
10 the self-supporting pool proposal? We're happy to
11 take.

12 ARBITRATOR: No.

13 MR. CHIAVETTA: So the next topic is
14 pool regulation. I can either keep going, or if
15 people would like a break, I am happy to take one.

16 ARBITRATOR: Is there a need for a
17 break?

18 How are the witnesses.

19 Are you okay, Macy?

20 Okay, let's keep going.

21 BY MR. CHIAVETTA:

22 Q. Okay. All right. So now we'll turn to
23 the topic of pool regulation. Article 7 of the
24 national agreement authorizes the carriers to do
25 several things including regulating pool by starts.

1 Doug, to begin with, would you please
2 explain what we're talking about when we're talking
3 about regulating the pool?

4 A. Yeah. So in the most simple terms,
5 regulating the pool is the process that determines how
6 many employees, based on the train volume, are needed
7 to staff that pool.

8 Q. And what is the goal of pool regulation
9 or what are the goals?

10 A. Yeah. So there's really two main
11 goals. It's the equitable distribution of work to
12 employees in the pool. And, two, it's to make sure
13 there's enough employees to protect the demand of the
14 trains that run in that pool.

15 Q. Doug, would you please explain how
16 pools are regulated today?

17 A. Today, pools are regulated based on a
18 historical look-back period. So the way that looks is
19 you generally look at a 15-day or 20-day look-back to
20 say, over the last 20 days, here's the amount of
21 demand or trains that ran in that pool. From there,
22 there's agreement rules that govern how many starts or
23 miles an employee will work within that period of
24 time. So what we would see in practice is there's a
25 range when employees are above the range that are

1 governed by that agreement, we would add employees to
2 the pool to make sure the pool employees worked less.
3 If you were below the range, you would subtract
4 employees from that pool so each employee would have
5 an opportunity to work more often.

6 Q. And when you're talking about adding or
7 subtracting employees, are you talking about those
8 turns that we saw on the whiteboard?

9 A. Correct.

10 Q. Today, when you're regulating pools,
11 are there instances where you're doing it by mileage?

12 A. Correct.

13 Q. So you would be looking within a
14 look-back period of, say, 20 days; is that fair?

15 A. Yep, that's fair.

16 Q. In this example that we have on the
17 PowerPoint where you've got the terminal at Fort Worth
18 and then the away-from-home terminal in Sweetwater,
19 Texas, over that 20-day period, you would look and you
20 would see how many miles did trains operate between
21 those two points during that period?

22 A. You would see how many miles each pool
23 turn operated over that 20-day look-back period to
24 make that determination on how many employees are
25 needed for that pool.

1 Q. And there would be some range where, as
2 long as it's within this range, we're going to leave
3 the pools alone. If it's below the range, we would
4 reduce the number of turns in the pool, correct?

5 A. Correct.

6 Q. So that the employees who are left in
7 the pool would then get called to work faster?

8 A. Correct.

9 Q. And if it's above the range, you would
10 add turns to the pool to essentially slow it down?

11 A. Correct.

12 Q. Doug, under the carrier's proposal, and
13 under the union's proposal, going forward, pools would
14 be regulated by starts. And what is a start?

15 A. A start, just to, kind of, making it
16 very simple, is basically anytime an employee is
17 called to work in that pool.

18 Q. And so under the carrier's proposal, we
19 talked with self-supporting pools about having that
20 hours-of-service relief work done by the pool. If the
21 pool were called for that hours-of-service relief
22 work, would that be considered a start?

23 A. Yes.

24 BY MR. CHIAVETTA:

25 Q. All right. And Jen, Article 7B1

1 through 4 of the 2022 National Agreement establishes
2 the general contours of what a method for regulating
3 pools by starts would look like. And Jen, would you
4 please just walk us through each of these four
5 contours?

6 A. Sure. So first, again, you mentioned
7 the start. So the pools would be regulated based on a
8 target number of starts versus some that aren't
9 regulated by mileage today. But it's essentially the
10 same number of starts would equate to the same number
11 of miles that they operate. There's also a --

12 Q. Let me stop you there, Jen. Just -- so
13 with respect to the first point, it says "Pool service
14 will be regulated based on a target number of starts
15 that takes the length of run into consideration."

16 A. Yes.

17 Q. What is the length of run?

18 A. That's the mileage. That's the miles
19 of the run, which is today how we calculate it in some
20 areas.

21 Q. Okay. The distance between the home
22 terminal and the away-from-home terminal.

23 A. Yes.

24 Q. Okay. Please move on.

25 A. Next will be a predetermined period of

1 time, a look-back period. Typically, today in our
2 agreements, we look back 20 days to see how many
3 starts were made by an employee over that period of
4 time. So that gives the carrier a good idea of how
5 the pool would work in the future.

6 It also allows us to now look into the
7 future. So we have a look-ahead provision where we
8 can look ahead seven days to see what our known
9 vacancies are. So we have people on vacation, we have
10 people that arrange to take a personal leave day,
11 things like that. We can account for those absences
12 and fill those vacancies. So we can take a -- take
13 that into account when we make the determination of
14 how many people we would need on the pool to protect
15 that work.

16 And then finally, there's a process for
17 adjusting the pool to ensure it's properly staffed.
18 So it's never, you set it one time and then it's done.
19 It's a continued -- we propose weekly adjustment that
20 is done. So we'll continually, every week, look back,
21 and then we will also look forward at our known
22 vacancies. And then do the calculation to determine
23 how many individuals we would need on the pool to
24 protect those vacancies and protect the work that
25 needs to be done.

1 Q. All right. So Jen, just to sum up, so
2 under -- in these, by the way, as we said, this is the
3 language from the national agreement.

4 A. Yes.

5 Q. So the big changes under the national
6 agreement would be, we're regulating pools by starts
7 rather than mileage. The look-back is the same,
8 right? We have a look-back period today --

9 A. Yes, we do that today.

10 Q. -- tomorrow. The look-ahead, that
11 item 3, that's something that's new.

12 A. That's new. That's new.

13 Q. And that's where we're looking at to
14 see, you know, are employees in the pool going to be
15 off sick? Well, not sick, right? But for planned
16 vacancies like --

17 A. Known vacancies. Yes.

18 Q. -- vacation. Okay. And if --
19 presumably with that look-ahead factor, you know,
20 there's going to be employees off, the regulation
21 formula would account for that by saying we've got to
22 add people to the pool, right?

23 A. Correct, correct.

24 Q. And then this last part, the process
25 for automatic pool adjustment, is that something

1 that's done today?

2 A. That is. That is done today.

3 Q. And the reference there to the Rail

4 Safety Improvement Act. What is that?

5 A. So that's just to determine -- so if
6 someone -- Rail Safety Improvement Act provides that
7 if you have six consecutive starts, consecutive starts
8 being that there's not a 24-hour period of time in
9 between each start to break that consecutive period.

10 So if there's six consecutive starts, an employee
11 would get 48 hours off, and they would be in what we
12 call federal rest.

13 And they're unavailable at that time.
14 If Doug was to see a number of people going into that
15 federal rest on a particular board, he would know he
16 would probably need to make some adjustments to
17 prevent that because that means they're working very
18 quickly, and we need more people on the board.

19 Q. Okay. So you would want to slow the
20 pool down and add people?

21 A. Yes. So the automatic pool adjustment,
22 this weekly adjustment, allows us to also take that
23 into account.

24 Q. Jen, does each sides' pool regulation
25 proposal fit within these four general contours?

1 A. Yes, it does.

2 Q. Are there any important differences
3 between the two sides' proposals?

4 A. Yeah, there's a few.

5 Q. Would you please walk us through those
6 differences?

7 A. Sure.

8 If you want to pull up.

9 So the big difference that you'll see
10 is that these are called start ranges. So we have a
11 low range and a high range, and that's the number of
12 starts that can be done in that adjustment period of
13 time. And the starts may differ based on the length
14 of run or the pool mileage of that run. And so you'll
15 see on the left we have, we call them our short pools,
16 which are, you know, 150 miles or less to what we
17 would consider a long pool, which we could operate 291
18 miles or more.

19 So as you can see, the shorter the
20 pool, typically the more starts an employee is going
21 to get versus a longer pool because it takes them
22 longer to get to point A and point B and back. They
23 usually make people starts.

24 The big difference between Union
25 Pacific's proposal and SMART TD's proposal is that

1 since we have the ability to do that, to look forward
2 for known vacancies, we've accounted for the known
3 vacancies of what now is the introduction of rest days
4 into our starts. So our start range is lower because
5 we are including -- we would include not only the
6 known vacancies, but we would also include this now
7 rest day that would be introduced into the pools. And
8 that our proposal was a five in one rest-day model,
9 which is essentially -- almost 17%. We'll say 16%
10 unavailability. It introduces 16% of unavailability
11 into that pool now because of those rest days. So
12 we're taking that into account in the starts here.

13 Q. And Jen, let me ask you, so that 16.7%
14 number, is that because the carrier has proposed a 5:1
15 available rest schedule. So by definition you would
16 be unavailable then one out of every six days, and
17 that's equivalent to 16.7%.

18 A. Yes. Exactly, exactly.

19 Q. All right. And so when we look at
20 these two proposals side by side, that low number and
21 the high number, that's saying that when we do this
22 look-back, let's use the 150, the pool that's 150
23 miles long as an example. So under the union's
24 proposal, they would be saying, during that lookback
25 period, we want employees to be getting somewhere

1 between 22 and 24 starts; is that right?

2 A. That's correct.

3 Q. And under Union Pacific's proposal,
4 we've basically taken the numbers that they have, the
5 same range, and we've just multiplied that by 16.7% to
6 account for the voluntary rest days.

7 A. That's correct. Yes. We're
8 essentially -- I don't think we're far apart on what
9 the starts should be. It's just how we're calculating
10 it and whether or not the rest days are being included
11 in that calculation, which we do in ours.

12 Q. And by multiplying all of these numbers
13 by the full 16.7%, are we effectively assuming that
14 all of the employees are going to take their rest
15 days?

16 A. Yes.

17 BY MR. CHIAVETTA:

18 Q. And Doug, can you just explain why is
19 the carrier making that assumption?

20 A. We're making that assumption because we
21 need to have the correct number of employees to
22 protect the service to our customers.

23 Q. So Doug, is it fair to say that even if
24 employees don't take -- even if all employees don't
25 take their rest days, we've got a plan for the

1 possibility that they will because we have to protect
2 service and we just don't know.

3 A. Correct. With them being voluntary, we
4 do not know if they will take the rest days.

5 Q. And how would that affect operations if
6 you ended up in a scenario where you were not
7 accounting for rest days, and then you have a surge in
8 employees taking their rest days? What would that do
9 to operations?

10 A. Yeah. So what you would see in
11 practice is, if one week we went from a large number
12 of employees taking their off days, what we'd see is
13 we'd end up being short employees in the pool. You'd
14 have to supplement that with the extra board. What
15 you'd also see is mass -- big swings in our workforce
16 week to week. So if you think about it, looking at
17 one pool at one location, that might be three, four
18 people. When you look at it across their seniority
19 hubs where they can work, that turns into tens of
20 people. Across the system, we're talking -- you'd be
21 moving hundreds of people into pool service and out of
22 pool service week to week. So it creates more
23 variability and instability for the employees.

24 Q. Doug, by -- so just to sum that up, in
25 some sense, by having the lower ranges, there's an

1 advantage to the carrier because you're staffed for
2 the possibility that employees are all going to take
3 rest days, right?

4 A. Correct.

5 Q. And there's also an advantage to
6 employees because there's not as much variability in
7 their assignments from week to week. They're not
8 bouncing back and forth from the pool to the extra
9 board, getting furloughed?

10 A. Correct.

11 Q. And Doug, so when we look at these
12 regulation factors with lower ranges proposed by the
13 carriers, what would that mean for the work
14 opportunities for employees in the pool?

15 A. That would mean the work opportunities
16 would decrease for the employees in the pool, but
17 would provide them the voluntary rest days.

18 ARBITRATOR: Can you repeat that?

19 WITNESS SVATOS: It would be less work
20 opportunities for each individual employee in the
21 pool, but it would grant them the voluntary rest days.

22 BY MR. CHIAVETTA:

23 Q. And the overall amount of work is not
24 changing, right? It's just a matter of which
25 employees are doing it?

1 A. Correct. This would not affect the
2 amount of work in the pool.

3 Q. And as we heard in the opening
4 statement, any rest-day proposal would require us to
5 add employees to account for additional time off,
6 correct?

7 A. Correct.

8 Q. So under the carrier's pool regulation
9 proposal, individual employees in the pool might be
10 working less, but they're going to be getting more
11 time off than they do today.

12 A. Correct.

13 BY MR. CHIAVETTA:

14 Q. So Jen, we've talked about the
15 difference between the pool -- the two parties'
16 proposals when it comes to these ranges. Are there
17 any other key differences between the carrier's and
18 the union's pool regulation proposal?

19 A. Yes, there are.

20 Q. Actually. I'm sorry, Jen. But before
21 we get to that, just one more point that I want to
22 make on the regulation piece.

23 A. Sure.

24 Q. So is it clear to you whether or not
25 the union is proposing to take into account rest days

1 when regulating the rules and determining those
2 ranges?

3 A. It is unclear. So their proposal --
4 their Appendix B does not mention a rest date. We
5 call it a rest-day factor or taking into account rest
6 days as we did -- as you saw in our regulation starts
7 ranges. They do not take it into account in their
8 starts ranges. And they do not have it in their
9 proposal, but in their exhibit, they are taking a
10 rest-day factor.

11 As you can see there, they have an
12 example in their Exhibit 43 that shows the 5:2 model
13 that they're proposing on an extra board, which is
14 essentially they get two days off out of seven days a
15 week. That's your 0.29 of unavailability because of
16 the rest. They're taking that into account when they
17 calculate the number of positions that are needed on
18 the board.

19 Q. So this Slide 24, just so we're clear,
20 this is exactly from SMART Exhibit 43.

21 A. Yes.

22 Q. And when we talk about the rest-day
23 factor, we're referring to whatever multiplier we're
24 using to adjust the starts ranges?

25 A. Yes. Yes.

1 Q. And so for the example where it's a
2 5:1, because that's one out of every six days, the
3 multiplier is going to be 16.7%; is that right?

4 A. Correct. Correct.

5 Q. And in this example From Union
6 Exhibit 43, they've got the 5:2 model, where employees
7 are available five days and then two days of work.
8 I'm sorry. Two days of rest. So there, two of the
9 seven days you're unavailable, and they appear to be
10 saying you should take that into account by
11 multiplying the ranges by 0.29 or 29%?

12 A. Yes. So here they do appear to be
13 taking rest days into account and taking the entire
14 rest-day period into account in their formula to
15 calculate the number of spots on a board, but then in
16 their proposal, they do not have the rest-day piece in
17 there. They do account for known vacancies in that
18 forward period, but they do not account for rest days
19 in their calculation in their proposal, which is
20 Appendix B.

21 Q. Thank you. So let's move on to the
22 next key difference between the two sides proposal.
23 So just to sum up, the first difference, we're not
24 really sure, right? We think that there may be a
25 difference between the two sides as to whether or not

1 to take rest into account, but we're not sure because
2 of this SMART Exhibit 43. Is that fair to say?

3 A. Correct. And our proposal does take
4 rest days into account, and we make the assumption
5 that they are going to take their rest days.

6 Q. All right. So Jen, let's turn to the
7 next key difference between the two sides' pool
8 regulation proposals.

9 A. So the next -- the next difference is
10 that the union has proposed that if we don't obtain
11 the target starts that they propose, the employee will
12 be compensated a trip rate for each start up to the
13 mid-range target, which is that middle road. So it's
14 not even if we meet the low part of the range. We
15 have to pay this trip rate until they hit the
16 mid-range.

17 So that, again, is an additional cost
18 to the carrier. We're going to have to pay an
19 employee a trip rate for every time, and then that
20 might not always be -- you know, if someone's outside
21 of the starts, that might not always be something that
22 the -- the carrier can control either.

23 Q. And Jen, is the trip rate -- is that
24 basically the payment that you get for going to work
25 and taking a train to the away-from-home terminal?

1 A. Yes. Pool freight employees are
2 typically paid miles, so if their pool freight run in
3 the example we had before was 198 miles, they'd be
4 paid on a mileage basis, but we have things called a
5 trip rate now that is basically a flat rate that takes
6 into account those miles and other things. So,
7 essentially, they're getting paid the same rate for
8 every trip. It's a flat rate of pay that they get for
9 every trip. That's what a trip rate is. So they're
10 essentially requiring the carrier to pay a one way
11 trip every time we're outside of those starts.

12 Q. And today we heard from Doug that
13 there's pool regulation today, and we've got a lower
14 range and an upper range, right?

15 A. Yeah.

16 Q. And so there's a midpoint today. It
17 might be expressed in miles as opposed to starts,
18 right?

19 A. Correct.

20 Q. And today, if somebody in the pool
21 doesn't hit that mid-range target, does the carrier
22 have to pay that person?

23 A. No.

24 Q. So under the union's proposal then --
25 let's just go back to look at the factors. So the

1 union is essentially saying -- again, let's use the
2 pool mileage of 150 as an example. The union is
3 proposing that if an employee in the pool doesn't work
4 at least 23 starts, they're going to be compensated
5 some trip rate, right?

6 A. Yes. Yes. Exactly.

7 Q. So it's a new payment that employees
8 wouldn't be getting today?

9 A. Correct.

10 Q. And Jen, are there any other key
11 differences between the two sides' proposal -- pool
12 regulation proposals?

13 A. Yeah. There's another difference in
14 the guidelines that they're proposing that we use to
15 regulate the pool. So in their Appendix B, it's
16 Article 5F Numbers 3 and 4, they're proposing that we
17 provide the employees with sufficient home-cycle time
18 between trips in comparison to the current, previous
19 methods of regulating the pool. So basically, the
20 employees will get more time as -- they want employees
21 to have more time at home in addition to the voluntary
22 rest days, but that's not what the pool regulation
23 provision requires in PEB250.

24 The other difference in Number 4 there
25 is that the union proposes that we ensure the earnings

1 are no less than what can be achieved through the
2 respective mileage agreements in place at the time of
3 this agreement is made effective. So essentially,
4 they're guaranteeing the pool. Again, we're
5 introducing rest into these pools and they're
6 requiring the carrier to keep the earnings the same as
7 it is today, where they have no rest in their pool.
8 So we're going to have to pay for availability is
9 essentially what that's -- or pay for unavailability
10 is what that's doing.

11 Q. So, Jen, is it fair to say that the
12 carriers not opposed to periodically adjusting the
13 pool. In fact, that's going to happen as part of the
14 pool regulation process, right?

15 A. Yes. Yes.

16 Q. It's just that the carrier takes
17 exception to these two specific guidelines that the
18 union says will be used to regulate pools as a measure
19 of whether regulation is working, right?

20 A. Correct.

21 Q. And today, is there any type of
22 guideline that says you've got to regulate pools so
23 that employees in the pools get sufficient, what the
24 union calls, home-cycle time?

25 A. Home-cycle time. No.

1 Q. And is there anything in the
2 agreements -- well, 4, by definition, refers to the
3 money that employees make today, correct?

4 A. I mean, the intent of the mileage
5 regulation is to just maintain that the employees are
6 getting their trips to have -- to make their earnings,
7 you know. So I mean, that's just the intent of having
8 a pool regulation factor to ensure that employee has
9 the number starts to make their earnings.

10 Q. But with 4, is it correct that the
11 union is saying that, look, we're going to get these
12 additional date -- time off, but you still have to
13 regulate the pool.

14 A. Yes.

15 Q. So we make just as much money as we do
16 today with less time off today?

17 A. Yes. That's exactly what Number 4 is
18 doing.

19 BY MR. CHIAVETTA:

20 Q. Doug, is it important to make sure that
21 we get the pool regulation factors correct?

22 A. Yes, it's very important. Making sure
23 we have the correct pool mileage regulation ensures we
24 have the right number of employees to staff the trains
25 on the pool. Having it too low could potentially risk

1 service, or having it in the wrong range may lead to
2 employees going from pools to extra boards and causing
3 large swings and variability of manpower week to week.

4 BY MR. CHIAVETTA:

5 Q. Jen, could you just please sum up the
6 key takeaways when it comes to the two parties' pool
7 regulation proposals.

8 A. So the carrier is including a rest-day
9 factor to account for that additional unavailability
10 that we're introducing into the pool. It's unclear if
11 the unions are including the rest-day factor in that
12 calculation. As I talked about earlier, their
13 proposal, their Appendix B does not have a rest-day
14 factor, so that is a big difference.

15 Then the union's imposing some
16 penalties for falling short of the required starts
17 that they propose. So if we don't hit that mid-range
18 point, we have to pay a penalty of a trip rate or
19 additional day's pay for that.

20 And then finally there's guidelines
21 that are guaranteeing time at home and maintaining
22 their past level of earnings. So they want to
23 extend -- you know, maintain their existing pay while
24 getting additional time off with the rest days. So
25 in -- our proposal is minimizing the variability by

1 including those rest days and it's putting people in
2 the right place for where the work is.

3 Q. And Jen, just so it's clear, so on this
4 takeaway slide, I think on that third piece, "maintain
5 existing pay notwithstanding additional time off,"
6 that's actually something that Smart's proposing and
7 not something Union Pacific's proposing, correct?

8 A. Correct. Correct.

9 Q. So that should be reversed, just so the
10 record is clear. That brings us to the end of the
11 pool regulation piece. And actually let me just make
12 one more point here. With the pool regulation piece,
13 are there some pools that are guaranteed?

14 A. We do have some pool service that is
15 guaranteed on Union Pacific.

16 Q. And under the two sides' pool
17 regulation proposals, which pools would they apply to?

18 A. This regulation factor only applies to
19 non-guaranteed pool freight service.

20 Q. And the parties are in agreement on
21 that?

22 A. Yes.

23 Q. All right. Thank you.

24 Unless the chairwoman has any
25 questions, that brings us to the end of the pool

1 regulation piece.

2 ARBITRATOR: I do not.

3 MR. CHIAVETTA: So the next topic that
4 we'll talk about is extra board regulation. This one
5 is a little bit shorter. Happy to keep going. If
6 anybody needs a break, and also, I'm happy to stop.

7 ARBITRATOR: Do we know what time?

8 WITNESS SVATOS: Lunch was here at
9 noon, which is -- but I don't know how long this will
10 take.

11 ARBITRATOR: How long did you say this
12 is?

13 MR. CHIAVETTA: I think this one's
14 about 15, 20 minutes.

15 ARBITRATOR: How long did you say?

16 MR. CHIAVETTA: This one's about 15 to
17 20 minutes.

18 (Whereupon, Arbitrator discusses with
19 board members.)

20 MR. CHIAVETTA: Yeah. So -- well, we
21 have an extra board regulation, and then we have turn
22 trading and pre-arranging layoffs. I guess when you
23 add in those last two pieces, the turns trading and
24 then the prearranged layoffs. That really, I guess,
25 brings us to the complete end of Article 7, and,

1 probably, that may actually be closer to 30 minutes.

2 ARBITRATOR: Okay. Okay. We'll take
3 a 45-minute break for lunch.

4 MR. CHIAVETTA: Okay. Thank you.

5 (Whereupon, a break was taken
6 at 12:08 p.m.)

7 (On the record at 12:52 p.m.)

8 ARBITRATOR: The witnesses continue to
9 be under oath. Please feel free to begin.

10 BY MR. CHIAVETTA:

11 Q. Thank you. So now we'll turn to
12 another part of the carrier's Article 7 proposal which
13 has to do with extra board regulation. And Article 7
14 of the 2022 National Agreement, which we see on the
15 screen, has language authorizing the carrier to
16 abolish or establish road, yard, or combination extra
17 boards, which will be regulated by the carrier based
18 on the needs of service.

19 Jen, would you please walk us through
20 what the carrier has proposed in terms of extra board
21 regulation?

22 A. Sure. So what the carrier proposes is
23 almost identical to what the PEB language that you
24 just saw previously provides for. Our proposal
25 proposes that we'll have full discretion on the

1 regulation of extra boards. And that is found in our
2 Article 7B, Number 3 there. And also that it may
3 establish, abolish, or combine any yard -- any road,
4 yard, or combination extra boards based on the means
5 of service.

6 Q. And there's references in both sides'
7 submissions to supplemental extra boards. First of
8 all, what is a supplemental extra board?

9 A. A supplemental extra board is another
10 form of an extra board, and it, essentially, protects
11 when an extra -- regular extra board is exhausted,
12 that supplemental board will back up that board.

13 Q. So the supplemental extra board is
14 essentially an extra board for the extra board.

15 A. Correct.

16 Q. And are supplemental extra boards
17 covered under the carrier's proposal in terms of what
18 they could establish or abolish?

19 A. Yes. Yes.

20 Q. In its rebuttal, the union does not
21 challenge the carrier's right to abolish supplemental
22 extra boards, but they question the wisdom of doing
23 so. They argue on page 24 of their rebuttal that "the
24 outright abolishment of supplemental extra boards as
25 proposed by the carrier is unnecessary and would cause

1 harm to the carrier's ability to protect the needs of
2 service or predict future manpower hiring needs." End
3 of quote.

4 BY MR. CHIAVETTA:

5 Q. Doug, what's the carrier's response to
6 that criticism?

7 A. Supplemental boards across the system
8 are very underutilized. We'll have some detailed
9 slides showing the amount of usage on supplemental
10 boards in our costing exhibit this afternoon.

11 Q. And I believe we saw during the
12 opening, abolishing supplemental boards accounts for a
13 large group portion of the cost savings associated
14 with the carrier's proposal, correct?

15 A. Correct.

16 Q. And we've got a witness who will
17 provide more detail on that. And Doug, practically
18 speaking, in the carrier's proposal, when it says the
19 carrier will have full discretion on regulation of
20 guaranteed pools and extra boards, what does that
21 mean?

22 A. Today, the way extra boards are
23 regulated, there's a minimum percentage -- a minimum
24 percentage of the number of jobs that get protected.
25 So using just an easy round number here, if the extra

1 board covers 100 positions and the minimum percent is
2 20%, you would have to have a minimum of 20 people on
3 that extra board. In our proposal, what that would
4 mean is we would staff based on the needs of service.
5 So if it would be less than whatever that minimum is
6 today, we would have less individuals on that extra
7 board.

8 Q. So just to use an example, in today's
9 world, and I'll just use round numbers, say the extra
10 board protects a pool where there's 100 turns on the
11 pool. If the threshold were 20%, or the regulation
12 piece were 20%, that would mean the extra board would
13 have to have 20 people on it?

14 A. Correct. At least 20.

15 Q. Okay. And under the -- under the
16 carrier's proposal going forward, it could regulate
17 those boards just based on the needs of service, just
18 like Article 7 of the national agreement says,
19 correct?

20 A. Correct.

21 BY MR. CHIAVETTA:

22 Q. In terms of regulating the extra
23 boards, how does what the carrier proposed differ from
24 what the union proposed, Jen?

25 A. So what the carrier, again, proposed

1 was full discretion on how to regulate the extra
2 board. Where the union's proposal differs is that
3 they're requiring the carrier to maintain a minimum
4 number on the extra board, 30%. This dilutes our
5 rights that we were afforded in the PEB to have
6 exclusive rights to regulate our extra board based on
7 the needs of service.

8 Q. In that 30% figure they've proposed,
9 are there minimums today for extra boards?

10 A. Yes, there are.

11 Q. And those are expressed in percentage
12 terms?

13 A. Correct.

14 Q. How do the minimums today compare to
15 the 30% threshold proposed by the union?

16 A. We do have some locations that do have
17 a 30%, some that have a lower percentage rate. It
18 varies across the system. So this is the most
19 aggressive.

20 Q. Okay. Do you have any locations
21 currently on your system where the threshold -- the
22 number is greater than 30%?

23 A. No.

24 Q. And so by increasing that percentage,
25 is the union effectively increasing the amount of

1 people the carrier would have to have on the extra
2 board?

3 A. Correct.

4 Q. And those employees get the guarantee,
5 which means, as long as they're available, you're paid
6 regardless of whether you work, right?

7 A. Correct.

8 Q. Is there any other difference between
9 the two proposals when it comes to extra board
10 regulation?

11 A. Yeah. So the other difference is,
12 again, going back to the right that we have under the
13 PEB to establish or abolish extra boards. In the
14 union's proposal, they request the carrier to
15 provide 30 days advance notice with our intent to
16 establish an extra board, and then, with that, we must
17 set reasonable terms with the union on that extra
18 board. And then to further complicate things, they're
19 not allowing the carrier to fill necessarily that
20 extra board except for only if people bid to it. So
21 they're restricting who we could even have on that
22 extra board should we -- have a need for a new extra
23 board.

24 Q. So in the carrier's view, does what the
25 union propose impinge on the carrier's right under

1 Article 7 of the National Agreement to establish or
2 abolish extra boards and to then regulate them based
3 on needs of service?

4 A. Correct. Yes.

5 Q. Jen, what are the key takeaways when we
6 talk about this topic of extra board regulation?

7 A. So again, under the PEB we have -- the
8 carrier has the right to regulate the extra board
9 based on needs of service. And that's what is in our
10 proposal versus the union's proposal, which requires a
11 minimum of a 30% to have on that extra board. We also
12 have the ability to establish and abolish extra boards
13 without limits. And that includes supplemental boards
14 as well.

15 Again, the union actually didn't have
16 any language in their proposal that addressed
17 abolishing extra boards, but they did provide some
18 conditions around what we would need to do if we
19 established an extra board and how we could fill that
20 extra board.

21 Q. Just to go back to illustrate that last
22 point you made about the union lacking -- the union's
23 proposal lacking that language about abolishing extra
24 boards. So to go back to the national agreement
25 language. So again, this is Article 7 of the National

1 Agreement. In Article 7 of the national agreement
2 specifically uses the term abolish and gives the
3 carrier that right, correct?

4 A. Correct.

5 Q. Then if we scroll ahead to SMART TD's
6 proposal, you refer to the fact that their Section C
7 talks about establishing boards, but it doesn't say
8 anything about abolishing boards.

9 A. I found no provision in their proposal
10 that provided for abolishing the extra board.

11 MR. CHIAVETTA: If there's any
12 questions on this topic, we're happy to take them.

13 ARBITRATOR: No. Thank you.

14 BY MR. CHIAVETTA:

15 Q. All right. We will move on to
16 Article 7C. And we've titled this section "Workforce
17 Predictability and Flexibility." That's language that
18 comes right from the 2022 National Agreement. And the
19 2022 National Agreement says that, "In conjunction
20 with the adoption of self-supporting pools and/or the
21 pool and extra board changes that are authorized by
22 the agreement, new agreements will provide for one or
23 more of the following: The opportunity for employees
24 to observe rest outside the requirements of the Rail
25 Safety Improvement Act, the RSIA, a procedure under

1 which employees may trade assignments, or a procedure
2 under which employees may receive a prearranged
3 layoff."

4 So the national agreement effectively
5 guarantees that if the carriers get these changes in
6 Article 7, employees will get one of those three
7 things, additional rest, the ability to trade turns,
8 or prearranged layoffs.

9 And Jen, then under the carrier's
10 proposal for Article 7, do employees get any of those
11 three things?

12 A. Yes. Our proposal includes all three
13 of those.

14 Q. And we'll talk through the first piece,
15 which is the rest days, when we get to Article 5. So
16 that will be later in the day. So let's talk about
17 the second piece where the agreement -- the national
18 agreement says that employees could get a procedure
19 under which employees may trade assignments. What has
20 the carrier proposed in that respect?

21 A. The carrier's proposal includes a
22 mechanism to allow employees on a non-guaranteed pool
23 freight. So again, remember, we have some pools that
24 have a guarantee where they get that minimum earnings
25 per pay half. So this would only apply to

1 non-guaranteed pool freight. But under certain
2 conditions they can swap or trade a term.
3 So if they are in that first-out
4 position -- going back to Doug's demonstration, if
5 they are in that first-out position, they could ask
6 another employee that maybe is in the 10th position to
7 trade turns with them, so now they don't have to work
8 as quickly. Maybe they want to go to, you know, their
9 child's baseball game or something. They only need a
10 few hours off. This allows them to do that. Maybe
11 the other employee wants to work quicker so they can
12 get home for the next day for some other event. So
13 this allows employees to have a -- you know, make the
14 decision on their own to swap their turns and their
15 board position in order to accommodate things in their
16 life that they need to take care of.

17 Q. And Jen, the carrier's proposal refers
18 to this right being given to train persons in OK
19 status. What does it mean to be in OK status?

20 A. OK status means you are available and
21 rested to work.

22 Q. And Jen, you just talked through the
23 benefits of the ability to trade turns, the fact that
24 it affords employees more time off between work if
25 they want it. Or as you said, if an employee actually

1 wants to go to work faster, then they can potentially
2 trade turns with another employee and do that. Does
3 the union's proposal also include a provision that
4 allows employees to trade turns?

5 A. Yes, it does.

6 Q. And I scrolled ahead. So now I've
7 pulled up text from SMART TD's proposal, which says,
8 "Train persons assigned to guaranteed pool freight
9 boards who utilize the turn swap option will not have
10 guarantee reduced in any manner."

11 Jen, is there any -- what are the key
12 differences between the two sides' proposals when it
13 comes to trading turns?

14 A. The biggest difference here is that,
15 again, we are only applying this mechanism to trade
16 turns to non-guaranteed pool freight service. SMART
17 TD's proposal affords it to get non-guaranteed and
18 guaranteed pool freight. And so, again -- and then
19 with that, they're saying if a guaranteed pool freight
20 employee uses that option, they're not going to have
21 their guarantee reduced.

22 Q. And why does the carrier care about
23 whether or not employees on guaranteed boards have the
24 right to trade terms?

25 A. Again, so we pay guarantee for

1 availability, and if we have a person in a first-out
2 position that could be called for work in the next two
3 hours, move themselves down to a -- some boards have,
4 you know, 50 people on them, they can move themselves
5 down pretty far where they don't work for quite a
6 while. That is just allowing them to continue to have
7 guarantee for time that we're not going to call them
8 to work.

9 Q. Jen, could you foresee a scenario
10 where, if employees on guaranteed boards had the
11 ability to trade turns, you would have this constant
12 swapping of turns so that employees are moving down
13 and, you know, they're having limited availability.
14 They're technically still available, I should say,
15 correct, when they trade down, but they're not getting
16 called to work?

17 A. They would be at -- towards, you know,
18 a lower position in the board waiting to get back to
19 the top of the board in order to be called. And
20 during that time period, which could be, you know, it
21 could be a day, two days, they could be waiting for
22 that to happen, they're going to be receiving
23 guarantee for that entire time.

24 Q. And under the union's proposal, is
25 there any cap on the number of times that employees

1 can trade turns?

2 A. No, there's not. One similarity we do
3 have is that the employees have to work after they
4 make the trade turn, but the union's proposal provides
5 for an unlimited number of turns, while the carrier's
6 proposal provides for 12 per year.

7 Q. All right. Let's turn to the next
8 aspect. So as we saw with that language in the
9 national agreement that talks about workforce
10 predictability and flexibility, there are the rest
11 days, which we'll get to, the term trading, which we
12 just discussed, and then the last thing is the
13 procedure to allow employees to take prearranged
14 layoffs.

15 Jen, does each side's proposal include
16 procedures for prearranged layoffs?

17 A. Yes. Carrier's proposal here in
18 Article 7C, Number 1 here.

19 Q. And are there any major differences
20 between the two parties' proposals on this issue?

21 A. The prearranged -- the percentage of
22 employees that are allowed to take prearranged is very
23 different. The carrier is providing for a minimum of
24 5% of employees allowed to take a prearranged day
25 versus the unions, which is 25%. So five times higher

1 than that.

2 Q. And so if you have a pool of 100
3 employees, and the existing prearranged layoff
4 threshold is 4%, then what would that mean in
5 practice?

6 A. That four individuals can take a
7 prearranged day on any -- in each day.

8 ARBITRATOR: Could you repeat your
9 response, please.

10 WITNESS POWELL: Four individuals could
11 take a pre -- a layoff. So they would have
12 essentially four positions open each day for a person
13 to put in for a day off. Usually it's vacation,
14 single day vacation, or personal leave day.

15 BY MR. CHIAVETTA:

16 Q. And you testified that the carrier's
17 proposal is to increase the thresholds to 5%?

18 A. Correct.

19 Q. And what are the thresholds today?

20 A. We, generally, are around 4%.

21 Q. And what is the union's proposal when
22 it comes to the threshold?

23 A. On the pool, they're proposing 25%, and
24 on an extra board, they're proposing 20%.

25 Q. So six times higher than existing

1 prearranged thresholds at least with respect to pools?

2 A. Yes. Yes.

3 Q. Five times higher than existing

4 prearranged thresholds with respect to extra pores.

5 A. Correct.

6 Q. And the more -- the higher those

7 thresholds, what does that mean for availability?

8 A. That is just opening more positions for

9 people to be able to take time off. So on any given

10 day, we could have up to 25% of the pool employees off

11 on a compensated day.

12 BY MR. CHIAVETTA:

13 Q. And Doug, what purpose do these

14 thresholds serve?

15 A. Yeah. Union Pacific operates -- like I

16 talked about earlier -- 24 hours a day, 7 days a week.

17 And we have commitments to our customers to make sure

18 they're trains are moving. Having a threshold is what

19 allows us to make sure we have enough crews to meet

20 the train demand.

21 Q. Doug, what would be the operational

22 impact of increasing the existing prearranged

23 thresholds, either fivefold or sixfold, as you would

24 be doing under the union's proposal?

25 A. Yeah. So if you think about this in

1 context with the pool mileage rate regulation, what
2 you would see, because we all have the seven-day
3 look-ahead, you can see swings of manpower from 25%.
4 Going on extreme side where 25% of the pool wants to
5 be off for one week, the next week, what you would see
6 is the exact opposite, where maybe it's a low
7 percentage. When you think about that across one
8 pool, it may be a handful of people, but you start to
9 expand that across an entire employee seniority hub or
10 across the system, we're talking big swings of
11 manpower week to week.

12 Q. And so you're referring back to the
13 pool regulation proposals where both sides are saying,
14 in addition to the look-back, we're going to have a
15 look-ahead, right?

16 A. Correct.

17 Q. We're going to look at the known
18 vacancies. And if you increase the number of
19 employees who could be off a single day, then that's
20 going to cause people to be added to the pool under
21 either side's pool regulation proposal, right?

22 A. Correct.

23 Q. And then if that drops the following
24 week, there's going to be a big swing; is that right?

25 A. Correct.

1 Q. And as of today, we heard that the
2 thresholds are typically around 4%. Are there days
3 now where you don't come close to hitting that 4%
4 threshold?

5 A. Correct. We generally see it the
6 thresholds getting at about 4% on the weekends is when
7 we see our peak prearranged demand today.

8 Q. And then what happens during the week?

9 A. Usually, it's a lower if anybody uses
10 them.

11 Q. So the higher thresholds also would
12 create more unavailability on weekends and holidays
13 when the carrier might already be short staffed.

14 A. Correct.

15 Q. Doug, one of the union's criticisms of
16 UP's proposal is that by proposing to increase the
17 threshold by only 1% that, you know, in some boards
18 you would effectively just be increasing the number of
19 employees who could be off by one. What's your
20 response to that?

21 A. When you look at it in context with
22 also granting voluntary time off, so we're giving an
23 extra percentage on prearranged. But on top of that
24 there will be voluntary rest days for employees to
25 also use.

1 BY MR. CHIAVETTA:

2 Q. Jen, could you just walk us through the
3 key takeaways as we close this section?

4 A. Sure. We'll point out that the biggest
5 difference on the prearranged is the percentage of
6 minimum requirements that we have. We're -- we're
7 proposing a 5% minimum on prearranged days while the
8 union has a 25% and 20% prearranged threshold. So
9 that's a significant difference there.

10 In regard to the ability to swap or
11 trade turns, the union's proposing that that's also
12 applied to the guaranteed pools, which the carrier
13 expressly removes the guarantee pools from that
14 opportunity to trade. By providing it to guarantee
15 pools, it just adds existing costs and an opportunity
16 for some gamesmanship. And then finally, the carrier
17 is proposing a limited number of trades per year
18 versus the union, which has an unlimited number.

19 MR. CHIAVETTA: That brings us to the
20 close of that section, unless the chairwoman has any
21 questions.

22 ARBITRATOR: I do not. Thank you.

23 MR. CHIAVETTA: So we'll turn next to
24 Article 6, which in the national agreement is titled
25 "Automated Bid Scheduling."

1 BY MR. CHIAVETTA:

2 Q. Jen, what general topics are covered by
3 each side's Article 6 proposal?

4 A. The three main topics under the
5 automated bid scheduling proposals are how you
6 bulletin and bid to an assignment, displacement -- and
7 a displacement is when an employee is removed from an
8 assignment for various reasons that Doug will explain
9 that more -- and also how you notify an employee that
10 they have been displaced, and then, finally, how to
11 fill assignments if we have no bid assignments and are
12 forcing roles to those assignments.

13 Q. So let's take each of those three
14 topics in order. Let's start with the bulletining.
15 What does it mean to bulletin an assignment?

16 A. Bulletin is just the carrier, if we
17 have a new assignment, we would put up a bulletin that
18 employees could see that would have -- agreements
19 vary -- but it would have things like what days of the
20 week does it work, if it has any off days, whether
21 it's -- you know, starting time, how many miles does
22 it operate. Those types of -- that type of
23 information. And then an employee can review and
24 determine if that's something they would want to work.
25 They put in a bid to that assignment and it's all

1 based on their seniority. The most senior person
2 would be awarded that assignment.

3 Q. Jen, what are the differences between
4 the two parties' proposals or I should say the key
5 differences when it comes to bulletining assignments?

6 A. The carrier is proposing a 72-hour
7 standardized bulletin period for all new assignments.
8 The SMART TD's proposal, it provides that assignments
9 are awarded every day at 10:00 a.m. It's also -- it's
10 unclear if really those are just for the new
11 assignments or quite -- or really how that -- how that
12 would work. But the carrier's proposal is providing
13 we would put up a three-day bulletin and employees
14 would put up -- they would have bids on file for those
15 assignments.

16 Q. And just so we're clear, Jen, so the
17 union's Article 6 proposal is a side letter to
18 Appendix B, correct?

19 A. Correct.

20 Q. Side Letter Number 1?

21 A. Yes.

22 Q. And the reference in there under SMART
23 TD proposal where it says award at 10:00 a.m. daily,
24 is that a reference to Section B of Side Letter 1 that
25 says, "New assignments will be advertised. The senior

1 applicant will be assigned at the time the bulletin
2 closes, which will be 10:00 a.m. central."

3 A. Yes.

4 Q. And Jen, each party's proposal also
5 addresses the process for awarding assignments. Just
6 to give us some background. So you talked about
7 bulletining. Can you speak to how assignments are
8 awarded today?

9 A. Our proposal today is actually how we
10 handle a lot of assignments across the system today.
11 It's called a standing bid proposal. And essentially,
12 employees will have a preference of assignments that
13 they have on file, from their first choice to their,
14 you know, tenth choice. And as that job -- new job is
15 bulletined, the carrier will go and see who is the
16 senior person that has that choice highest on their
17 list to be put into that position. So that's called a
18 standing bid. The employee maintains that bid and
19 then they just get picked up and put on that
20 assignment. And we have that process virtually across
21 our system.

22 Q. So basically, you have somebody in a
23 position, and you have other employees who have
24 expressed interest in that position and said, hey, if
25 it opens up, I want to be in that position so that if

1 that position becomes available, it's just
2 automatically awarded to the person with the standing
3 bid who's the most senior?

4 A. Correct.

5 ARBITRATOR: How is it Bulletined?

6 WITNESS POWELL: We would put up the --
7 in our proposal, we would put up the three --
8 the 72-hour bulletin. Today, the rules vary based on
9 the type of assignment it is.

10 ARBITRATOR: I mean, literally, how is
11 it bulletined? Is this -- How do you receive the
12 information?

13 WITNESS POWELL: I'll refer that to
14 Doug.

15 Doug.

16 WITNESS SVATOS: So it gets bulletin in
17 our-- It's our crew management system. So an
18 employee would have -- has access to go in, look at
19 what jobs are up for bulletin. They can put in the
20 standing bids today if they're interested in a
21 position that they can't hold. So it's all
22 electronic.

23 BY MR. CHIAVETTA:

24 Q. And Jen, in the section on bulletins,
25 there's a reference in the carrier's proposal to daily

1 preference. There's talk in the submissions about
2 these daily preferences boards. What's the difference
3 between the two sides in terms of what they propose
4 with respect to daily preference boards?

5 A. The carrier proposes to standardize our
6 bids system across all assignments. So it's a
7 standard process which would eliminate these daily
8 preference boards, which we have at a few locations.
9 The union would like to -- their proposal would like
10 to carve out those assignments and let them retain
11 their existing rules on how they bid and are awarded
12 assignments.

13 BY MR. CHIAVETTA:

14 Q. And Doug, can you just explain what a
15 daily preference board is, how it works in practice?

16 A. Yes. So when we're talking about daily
17 preference boards, going back to the opening, we're
18 talking about yard service. So today, out of the
19 about 100 yards we have across the system, 10 are
20 daily preference boards. So the other 90 boards all
21 operate based on an employee bids a job. That job
22 generally works the exact same work every single day
23 with assigned off days.

24 Where a daily preference board is
25 different is they bid off days. And then every day

1 they go through and they place bids in to say I want
2 to work this job on first shift or this job on second
3 shift or this job on third shift. And then there's a
4 list that they go through based on seniority to award
5 jobs every single day to those employees.

6 Q. So Doug, just so that we're clear, in
7 the current system, where you've got the yard job, as
8 you said earlier, those are assigned jobs, you have
9 three shifts per day at a yard; is that right?

10 A. Correct.

11 Q. So first shift, second shift, third
12 shift.

13 A. Correct.

14 Q. And you would bulletin today -- you
15 would bulletin a position, and it would be a position
16 in a yard for first shift with Friday, Saturday off
17 days; is that right?

18 A. Correct.

19 Q. And if you don't have daily preference
20 boards, the employee who bids on and gets that
21 assignment would just continue in that first-shift
22 roll with Friday, Saturday off days until they're
23 displaced; is that right?

24 A. That's correct. They would work the
25 same job every single day.

1 Q. And the difference is with the daily
2 preference board, you testified that they would be
3 bidding on off days. And first of all, how often are
4 they bidding on off days?

5 A. Up to every single day. Oh, let me
6 rephrase that. When they're bidding on off days, they
7 bid the off day in very similar to a yard board.
8 They're on those off days until they bid a new set of
9 off days.

10 Q. Okay. And by off days, we saw earlier
11 that employees in the yard have a 5:2 work rest
12 schedule now, right? They work five days a week; they
13 have two days off?

14 A. Correct.

15 Q. And so you can't have everybody off on
16 the same day. So is it the case that the carrier will
17 have, you know, some positions in the yard have
18 Friday, Saturday off days, others have Tuesday,
19 Wednesday off days?

20 A. Correct.

21 Q. So the employees, you're saying they
22 bid on, okay, what two off days am I going to get that
23 week. And then what happens on a daily basis for the
24 daily preference boards?

25 A. Yeah. Then on a daily basis we go

1 through and look at all of the individuals that have
2 bids in for every single job that are on the daily
3 preference. So if you think about it like this, if
4 it's a Tuesday job, and employees that have Tuesday
5 off, we don't look at them. We look at every employee
6 that's available to work on Tuesday, and based on
7 their seniority, award them what job they're going to
8 work that individual day. Call them. They get a
9 notification. They work that job that day, and then
10 repeat that process the next day.

11 Q. Doug, why is the carrier proposing to
12 eliminate daily preference boards?

13 A. A few different reasons. So
14 administratively, it is very, very cumbersome. If you
15 look at it relative to our normal yard operations,
16 where employees bid a job, they stay on that job. A
17 daily preference board, you're going back through and
18 reevaluating where everyone works not just on a daily
19 basis, but every single shift. It adds opportunities
20 for employees to maybe one day work a second-shift
21 day, or Tuesday work a second-shift job, the next day,
22 sign up to work a first-shift job, make themselves
23 unavailable because they worked over, and then we're
24 losing productivity and it's more inefficient for us.

25 Q. In that scenario where you have

1 somebody on a daily preference board and let's say
2 they have Friday, Saturday rest day, so the, the rest
3 days are not coming into play. But it's Tuesday,
4 they've worked second shift, and when does second
5 shift run from?

6 A. Yeah. Second-shift usually is about
7 14:00, 2:00 p.m. till 23:00, 11:00 p.m. at night.

8 Q. And under the RSIA or Hours of Service
9 Act, how much rest do those yard employees have to
10 have between on-duty periods?

11 A. So they would still have to have 10
12 hours of rest.

13 Q. So the situation you're describing is
14 one where somebody might work second shift one day and
15 the next day decide, you know, I'm going to work first
16 shift, and there may not have been 10 hours in between
17 those two.

18 A. Correct. They may have worked overtime
19 or bid on an earlier first-shift job than 8:00, could
20 have been 7:00 a.m.

21 Q. And then what -- what happens in that
22 situation from the carrier's perspective?

23 A. Yeah. So what happens is we then fill
24 that because there's a vacancy and that employee is
25 not rested. We have to fill that position with an

1 extra board employee.

2 ARBITRATOR: Do you know that at the
3 time that the employee submits the request?

4 WITNESS SVATOS: No. Because you
5 wouldn't know they're not rested. I'm trying to think
6 how, like, the best way to describe this. So what
7 would happen is you set the boards, basically, that
8 night. The way it would work is you award the
9 positions, they wouldn't be rested, and then you know
10 they're not rested. So you know you have to fill that
11 position with an extra board employee. Does that
12 answer your question?

13 ARBITRATOR: Does that actually happen?
14 Does the employee actually submit for --

15 WITNESS SVATOS: That does happen.

16 ARBITRATOR: It does happen.

17 WITNESS SVATOS: Yes.

18 ARBITRATOR: So they have a second-day
19 job. And they, by virtue of this daily preference
20 board, they indicated interest in working the
21 following day, starting in the morning without the
22 rest period. And you have to basically say, well, you
23 can't do that because it's a violation of, whatever,
24 RSIA.

25 WITNESS SVATOS: No. You would still

1 award that position, and then they would be
2 unavailable to work that day because they're not
3 rested. So then we'd fill that vacancy with an extra
4 board employee.

5 ARBITRATOR: At what point do you do
6 that?

7 WITNESS SVATOS: Once we know they're
8 not going to be rested. So the way it works --

9 ARBITRATOR: Do you know that when they
10 apply?

11 WITNESS SVATOS: No.

12 BY MR. CHIAVETTA:

13 Q. All right. So we've talked about
14 bulletins, bidding and awarding assignments. The
15 second major topic that you've identified, Jen, is
16 displacements and notification.

17 First of all, what is a displacement?
18 Doug, you can take that.

19 A. A displacement occurs when an employee
20 may have their job abolished. When an employee
21 voluntarily passes up their position to go exercise
22 seniority to displace someone else. A displacement
23 also could happen when an employee was on an assigned
24 job, there's a change in their working conditions,
25 whether it be the rest days, a change in pay, a change

1 in start time, potentially.

2 Q. And Doug, what happens today when
3 someone is displaced?

4 A. Yeah. So generally what you see happen
5 when an employee is displaced is they have a set
6 amount of time on the system. It's closer to 48
7 hours. So they have 48 hours to go review and see if
8 there's somebody junior to them that they can go
9 displace on that position. So what would happen is a
10 senior employee would displace somebody, and they
11 would get that position, which would lead to another
12 displacement downline.

13 Q. And the current -- the current time is
14 you get from the time -- is the 48 hours to exercise
15 seniority after getting displaced; is that right?

16 A. That's correct.

17 Q. And when does that 48-hour clock start
18 running?

19 A. That 48-hour clock starts to run after
20 the employee is notified. So a notification would be
21 employee accepts a phone call from crew management,
22 accepts one of the electronic messages sent from crew
23 management.

24 Q. And when you talk about the 48-hour
25 clock starts running from the time the employee is

1 notified, under today's rules, if the carrier calls
2 the employee to tell them that they've been displaced
3 and the employee doesn't answer the phone, does that
4 count as being notified under the existing rules?

5 A. That does not. And what we see in
6 practice is we'll have times where an employee will
7 avoid that notification and they may extend that 48
8 period up to 24, 48 hours at a time because they're
9 avoiding the notification.

10 Q. Okay. And does the carrier have ways
11 that they could electronically communicate with
12 employees?

13 A. Yeah. We send electronic messages to
14 an employee via their portal or crew management system
15 and then automated calls on top of that as well.

16 Q. And if the carrier sends one of those
17 electronic messages to an employee today to notify
18 them of their displacement, but the employee doesn't
19 acknowledge it in any way, does that under today's
20 rules count as proper notice?

21 A. No.

22 Q. So in practice, even though the
23 collective bargaining agreements say you have 48 hours
24 from the time -- you have 48 hours to exercise
25 seniority, that 48-hour period is actually

1 substantially greater.

2 A. That's correct.

3 Q. And while that employee is displaced,
4 are they working anywhere?

5 A. No. When an employee is displaced,
6 they're, lack of better words, are kind of in limbo.
7 They don't own an assignment, they don't own a pool
8 turn, we're waiting for them to exercise their
9 seniority to displace somebody else.

10 Q. Doug, what effect displacements have on
11 UP's operations?

12 A. It renders employees unavailable for
13 the amount of time that they're displaced. The longer
14 or more often a displacement happens, it could have
15 greater effects on the workforce.

16 BY MR. CHIAVETTA:

17 Q. Jen, how do the parties' proposals
18 differ when it comes to this topic of displacements?

19 A. So the parties' proposals differ with
20 the process of notifying employees' displacements and
21 also the number of displacements that would occur.

22 So in regard to notifying the employees
23 of displacements, the carrier's proposal provides that
24 after eight hours -- after the carrier makes it
25 attempts for eight hours to notify the employees,

1 after that eight-hour period, the employee will be
2 considered notified. And then we also, in our
3 proposal, provide for a 24-hour notice period that
4 they have. So today they have 48 hours. Our proposal
5 will reduce that to 24 hours. And so after 8 hours
6 you're considered notified, that 24-hour period will
7 begin.

8 Q. So under UP's proposal, going forward,
9 the amount of time from the point of displacement to
10 the time you would have to exercise seniority would
11 be 24 hours plus the 8 hours, assuming the employee
12 didn't accept notice before the 8 hours?

13 A. Correct. Correct.

14 Q. So it would be effectively capped at 32
15 hours.

16 A. Correct.

17 Q. And in order to start the clock on that
18 eight-hour time, the carrier would have to call all
19 the phone numbers on file for that employee; is that
20 right?

21 A. Yes. That time would start once the
22 carrier made attempts on all of the numbers that the
23 employee provides to us; then the time would start.

24 Q. And how does that compare to the
25 union's proposal when it comes to the process for

1 notifying employees of displacement?

2 A. The union's proposal does not provide
3 any description on what's considered proper
4 notification, so we would have the same issue we have
5 today.

6 Q. And what about the displacement period
7 where it's 48 hours, currently, as we heard. UP is
8 proposing that that be reduced to 24. What is the
9 union -- what has the union proposed with respect to
10 the time to exercise seniority once you're notified of
11 the displacement?

12 A. Sorry. So that is also somewhat
13 unclear in their proposal. Again, they have the
14 process with the 10:00 a.m. daily notification. We
15 are unclear if that includes any displacement time on
16 that.

17 Q. And so, Jen, you testified that, in
18 addition to the process for notifying employees,
19 there's also a difference between the two sides when
20 it comes to the number of displacements that each
21 side's proposal would generate. Can you explain what
22 you mean by that?

23 A. Correct. So the union also provided a
24 provision in their proposal which allows for employees
25 to pass up assignments. Their proposal specifically

1 allows employees, after a 30 day period, if they no
2 longer want to work that assignment, they can pass up
3 or throw up that assignment and decide to go work on
4 work another assignment and potentially displace
5 another employee.

6 Q. Today, Jen, are there pass-up
7 provisions where, once an employee has held a position
8 for a certain amount of time, they can exercise
9 seniority to new position?

10 A. There are. It varies across the
11 system, but there are some rules out there. Then
12 there's some that do not have that rule at all.

13 Q. And you testified that the union has
14 proposed a 30-day pass-up provision where, if you've
15 held the position for at least 30 days, you can
16 exercise seniority to a new position. How does that
17 compare to the length of time under the current
18 pass-up provisions?

19 A. Again, it depends on the territory. We
20 do have some agreements that do provide for a pass-up
21 provision. The timeframe can vary. We also have some
22 locations and territories that have no pass-up
23 provisions. So what the union is proposing is to
24 expand that 30-day provision across the entire system.

25 Q. Next, we're going to talk about the

1 process. I'll go back to the earlier slide where --
2 when you broke down the Article 6 proposal, you
3 identified three high level topics, the bulletins,
4 bidding and awarding, displacements and notifications.
5 And then this last topic, filling no-bid assignments
6 and forcing rules. What sort of things will we be
7 talking about in this section?

8 A. So this particular section is when no
9 one -- if someone does not bid, let's say they have a
10 displacement and they're in this limbo land, but they
11 have no bids on file to go to another assignment, how
12 do you place that person? And where do you place that
13 person? So that is what our forcing rules are. And
14 then we have another scenario where we have
15 assignments -- a new assignment that we don't have any
16 bids for. So who can we put into that assignment? So
17 there's really two scenarios.

18 Q. How do the two parties' proposals
19 differ, Jen, when it comes to filling no-bid
20 assignments.

21 A. So the two parties' proposal differs,
22 basically -- there's four major differences. There's
23 who can be forced, there's the location to which
24 someone can be forced, there's if there's going to be
25 additional time allotted to report to a new position,

1 and is there any compensation owed to that person
2 that's forced to certain positions.

3 Q. So let's take each of those four
4 differences in order. So starting with the first
5 difference, when it comes to filling note bid
6 assignments, you testify that that's the person who
7 can be forced. How do the two parties' proposals
8 differ when it comes to the person who could be forced
9 to an assignment that was not filled through the
10 normal bidding process?

11 A. So the carrier's proposal is much
12 simpler and provides more flexibility. If the
13 position's no-bid, there's really just two steps to
14 fill that assignment, which means we can get that
15 assignment filled quickly. We can go to the -- any --
16 so we can go to the junior person in the hub or the
17 junior -- I'm sorry -- the junior employee with an
18 expired bump or the junior person in the hub.

19 Q. And so you're referring to Article 6H
20 of the carrier's proposal.

21 A. Correct.

22 Q. And that applies not just when there's
23 a position that hasn't been filled through the bidding
24 process, but where somebody has been displaced and
25 then they haven't exercised seniority within 24 hours

1 of being properly notified, correct?

2 A. Yes. If they're junior, they could be
3 forced. Yes.

4 Q. In Section H2, when it refers to the
5 hub, it says, first, you can force them to any open
6 assignment, and then, second, they could displace the
7 junior train person in the hub. What is the hub?

8 A. It's referred to in different terms.
9 So some are called a zone and some are called hubs,
10 but, basically, it's the total territory that an
11 employee holds seniority. So, you know, location or
12 locations where they are required to protect
13 assignments based on their seniority they have.

14 Q. In Section I1 where it says, "if a
15 position goes no-bid, crew management will fill the
16 position in the following manner." "Junior employee
17 with an expired bump." The "expired bump." What is
18 that again?

19 A. The expired bump is when someone was
20 displaced and then they had a certain amount of time
21 to place themselves, but they did not do that. So
22 then their bump expired.

23 ARBITRATOR: I'm sorry. Displaced, but
24 had that amount of time to do what?

25 WITNESS POWELL: So they're displaced,

1 and they're in that limbo. And we properly notify
2 them. They then have 24 hours to go to a different
3 assignment. If they don't have any bids in to go to
4 another assignment, then they're considered -- their
5 bump is expired after that 24-hour period.

6 BY MR. CHIAVETTA:

7 Q. So Slide 42. We saw -- Slide 42 had
8 the carrier's proposal, when it comes to filter
9 filling no-bid assignments. Slide 43 is the SMART TD
10 proposal. And Jen, can you explain how this differs?

11 A. So Smart's proposal on how to fill
12 assignments is much more restrictive to the carrier
13 and would take more time to fill assignments. It
14 requires the carrier to draw from a narrower group of
15 individuals or pool of people. And it's --
16 essentially, we can only grab people from the
17 location. So you see at location displaced or within
18 the terminal, the protecting extra board. And you
19 see, again, in the terminal. It doesn't allow the
20 carrier to go outside, essentially, of the particular
21 location where the vacancy exists into other areas
22 within that same seniority hub or zone.

23 Q. And that's what I was going to ask. So
24 earlier in the carrier's proposal. I'll go back a
25 slide. We saw a reference to the hub, and you

1 testified that that's, basically, the seniority

2 district, right?

3 A. Correct.

4 Q. And then in the union's proposal it

5 talks about the terminal. And is it the case that

6 there could be more than one terminal in a single hub?

7 A. Yes.

8 Q. So the employee would have seniority,

9 not just to hold a job at his terminal, but also at

10 other terminals within the hub?

11 A. Correct. A terminal would be something

12 like Phoenix Yard here, but then they also hold

13 seniority in other locations within their hub, not

14 just in Phoenix.

15 Q. And so is it the case that under the

16 union's proposal, I couldn't be forced outside of my

17 terminal?

18 A. Correct.

19 Q. And would that be a change from the

20 current rules?

21 A. Yes.

22 Q. Given that under the union's proposal,

23 when we look at this language, it doesn't allow the

24 carrier to force somebody to another terminal within

25 their same seniority district. Is there any mechanism

1 in the union's proposal to get employees from a
2 terminal where they don't hold seniority -- I'm
3 sorry -- a terminal where they can't hold a position
4 based on their seniority to another terminal within
5 their seniority district where they could hold a
6 position?

7 A. So, yeah. They provide for a mechanism
8 to, you know, force employees to other locations, but,
9 first -- you know, the carrier, first option is that
10 if we have a need of manpower in a specific location,
11 and we have no individuals to fill at that location,
12 we would put up a bulletin to other locations in order
13 to fill that position. So these are, again, our
14 locations that these employees already hold seniority
15 in, but this requires the carrier to, if someone was
16 to bid -- put in a manpower bid, I guess you would
17 call it, to this, they would get paid auto mileage,
18 travel time, lodging, meals, and then a basic day in
19 addition to guarantee for each day that they're at
20 that location. So, again, this is already an area of
21 seniority they're required to protect. Another
22 option --

23 Q. So, Jen, let me just stop you just
24 there. So in the -- in today's world, if I don't have
25 seniority to hold a position at my terminal, but I

1 could hold -- I do have the seniority to hold a
2 position at another terminal within my same seniority
3 district, the carrier could force me to that other
4 terminal, correct?

5 A. Yes.

6 Q. If that happened in today's world, what
7 if any compensation would I be entitled to?

8 A. So under this scenario, again, going
9 back to the previous, we can't force that employee
10 except for at the location. So then -- but we might
11 have a need at a different location. So we would be
12 posting this manpower bulletin, and then that employee
13 would be able to bid to that and then get additional
14 pay.

15 Q. And so under the union's proposal, it
16 says, with these manpower bullets, you get mileage
17 allowance, you get your travel allowance, you get
18 lodging, and then you get the basic day in addition to
19 guarantee. So in today's world, how does that compare
20 to today's world where, if I don't have seniority to
21 hold a position at my terminal, but the carrier can
22 force me to a position in another terminal where I do
23 have seniority?

24 A. Yeah. And the rules differ across the
25 system, but, typically, you can force them to the next

1 closest location or to an open position at another
2 location.

3 Q. And what, if any, compensation would I
4 get? Would I get a mileage allowance in that case?

5 A. No.

6 Q. Today? No?

7 A. No.

8 Q. Would I get travel time to and from the
9 location, as the language in the union's proposal?

10 A. There are some agreements that do
11 provide for some travel time, but it varies across the
12 system. But in general, no. Unless there's a
13 specific location that has that.

14 Q. So some places I get travel time, other
15 places I get --

16 A. It varies.

17 Q. And then how about the lodging? If I
18 get forced to another terminal today, would I get a
19 lodging allowance like the union proposes?

20 A. There are some. Again, it varies.

21 There are some agreements that do provide lodging for
22 a specific amount of time. So, again, that varies as
23 well, but, typically, you know, they get 75. If
24 it's -- if they're being forced over 100 miles, they
25 would get 75 stays in a hotel, and that's per calendar

1 year. So, again, there's agreements that vary, but
2 majority do not have that.

3 Q. And then how about the last piece
4 where, under the manpower bulletin in the union's
5 proposal, it says if I give forced to another
6 terminal, I would get a basic day in addition to a
7 guarantee for each day assigned at the location.
8 First of all, can you just explain what is a basic
9 day?

10 A. It's their daily rate of pay.

11 Q. It's basically a day's pay.

12 A. A day's pay. Yes.

13 Q. And then when it says "in addition to
14 guarantee for each day assigned at the location," is
15 the guarantee just the guarantee we've talked about?
16 The earnings guarantee?

17 A. I'm assuming that's the extra board.
18 If they're forced to an extra board, they're getting a
19 guarantee off that extra board. So this would be over
20 and above the guarantee that we're paying.

21 Q. And so the net effect of these aspects
22 of the union's proposal where all employees would get
23 mileage allowances, all employees would get travel
24 allowances, all employees would get lodging, and then
25 all employees would get this additional pay. What's

1 the net effect of all those provisions as compared to
2 the current state of affairs?

3 A. That would just all add additional
4 costs.

5 Q. And those are costs that the carrier
6 does not pay today?

7 A. Correct.

8 BY MR. CHIAVETTA:

9 Q. Doug, what about -- we've talked about
10 the cost aspect of the union's proposal. What about
11 the operational side of things? What's your view of
12 the union's proposal? How would that affect
13 operations? The way that they proposed to move
14 employees -- the process, I should say, that they
15 proposed to move employees from one terminal to
16 another.

17 A. Yeah. So operationally, what we would
18 see is this process would take longer than it even
19 does today. It would be more difficult to get the
20 position filled full time to actually get the employee
21 there who would have the seniority to still hold
22 there. It would actually also incentivize employees
23 not to bid to locations because they could utilize
24 these different options to get additional payment,
25 travel time, lodging, that they are not afforded

1 today.

2 Q. So we heard from Jen that the union's
3 proposal would increase costs, and we heard from you
4 the union's proposal would be more cumbersome from an
5 operational standpoint. Is that fair to say?

6 A. Correct.

7 BY MR. CHIAVETTA:

8 Q. And all of this was proposed under
9 Article 6, which is something that the carriers
10 received under the national agreement; is that right,
11 Jen?

12 A. Correct. Yes.

13 Q. Jen, is there any disagreement between
14 the two sides when Article 6 changes would be
15 implemented?

16 A. The carrier proposed -- our proposal is
17 something that could be implemented right away. We
18 have -- again, going back to what we do across the
19 system, we're doing a lot of this today, and, in fact,
20 we're doing a similar agreement on the other side of
21 the cab. So the engineers all have a similar
22 agreement to this. So this is something that we can
23 implement today. On the other hand, the union's
24 proposal proposed, you know, a two year delay in
25 implementing any of these changes. Their proposal

1 would require a lot of programming and things like
2 that. And they did provide us two years to do that,
3 but, again, that delay is unnecessary because our
4 proposal is something we can implement right away.

5 Q. And you said, in terms of what we're
6 proposing, we already have that, UP already has that
7 with respect to the BLET, the union that represents
8 the engineers.

9 A. Yes.

10 Q. So let's close. If you would just
11 please walk us through. What are the key takeaways
12 when it comes to these Article 6 proposals?

13 A. So, again, it standardizes a process
14 across the system and for all types of assignments.
15 So the process would be the same regardless of what
16 assignment you work. It would reduce displacement
17 time and it also simplifies the rules for filling
18 assignments. It gets us employees in those
19 assignments quicker, which is more efficient. The
20 union's proposal does introduce a lot of
21 inefficiencies and cost. Going back to this, you
22 know, the manpower bulletin, forcing people that comes
23 with additional -- additional pay that comes along
24 with that, and it actually incentivizes people, like
25 Doug mentioned, not to bid to assignments.

1 MR. CHIAVETTA: Unless The chairwoman
2 has any -- does the chairwoman have any questions?

3 ARBITRATOR: I do not.

4 MR. CHIAVETTA: Okay. We would then
5 move to the final topic, unless anybody needs a break.

6 ARBITRATOR: Is that a yes out there?

7 No. Okay.

8 Please continue.

9 BY MR. CHIAVETTA:

10 Q. Okay, thank you. All right, so we're
11 now moving to Article 5, which is scheduled days off
12 for through freight road service. This is where we're
13 going to talk about voluntary rest days. Before we do
14 that, Jen, just to give us context for the discussion,
15 would you just please describe at a high level what --
16 what time off do train persons currently get?

17 A. So, yes. Today, this slide here shows,
18 basically, all the time off that's afforded to a train
19 person today for vacation. Train persons have up to
20 five weeks -- again, that's based on the years of
21 service -- but up to five weeks of vacation. They can
22 take up to 11 personal leave days based on -- for road
23 service, based on your, again, seniority. But it's up
24 to five. They are allowed five paid sick days a year.
25 Under the federal rest requirement. Again, we talked

1 about that earlier, but they get 48 hours of rest
2 after working six consecutive starts. So there is a
3 mechanism today that provides for rest if needed. And
4 then, also, the last national agreement provided for
5 what's called an additional day or it's, basically, an
6 additional personal leave day, but they are allowed to
7 take that. We call it on demand, so it can't be
8 denied. And then finally, there is a reasonable
9 amount of unpaid leave that is available to take.
10 Again, we have an attendance policy, but if they keep
11 it at a reasonable amount, they should not run afoul
12 of that.

13 Q. And just as a reminder, I think you
14 refer to this earlier, Jen, but when we talk about the
15 six consecutive starts, is that without
16 the 24-hour period in between those starts?

17 A. Correct. Correct.

18 Q. So, in other words, I work Monday
19 through Saturday, and then at that point, I need to
20 have at least -- under federal law, I need to have at
21 least 48 hours of rest.

22 A. Yes.

23 BY MR. CHIAVETTA:

24 Q. All right. So Doug, Union Pacific has
25 proposed a 5:1 work-rest schedule for through freight

1 pools. And Doug, using the slide, this example, could
2 you just explain how that 5:1 proposal would work in
3 practice?

4 A. Yeah. So using the slide, what we see
5 is, starting on week one, which would be, in this
6 example, February 1st, this employee on their five and
7 one schedule would have to have to be available and/or
8 work, it would be Saturday through Wednesday. On
9 Thursday they would have the option to take their
10 voluntary rest day. Week two, which would begin on
11 Friday, they would have to be available and/or work
12 Thursday through Tuesday with the option to take
13 Wednesday as their voluntary leave day. Then this
14 pattern would continue throughout the year.

15 Q. And under the carrier's proposal, just
16 to be clear, the rest day is voluntary; is that right?

17 A. Correct. The rest day is voluntary.

18 BY MR. CHIAVETTA:

19 Q. Earlier we talked about the difference
20 between guaranteed and non-guaranteed pools, and there
21 is a minority of pools that are guaranteed; is that
22 right, Jen?

23 A. Correct.

24 Q. And under Union specific -- under Union
25 Pacific's proposal with both employees on guaranteed

1 proof-rate pool boards and employees on non-guaranteed

2 proof-rate pool boards get the voluntary rest days?

3 A. Yes.

4 Q. Jen, how has Union Pacific proposed to

5 integrate these new rest days with the existing

6 guarantee on these guaranteed pool boards?

7 A. So a train person on the guaranteed

8 pool board can voluntarily take that rest day, but if

9 they do, that is considered unavailable time and their

10 guarantee would be reduced for that day.

11 Q. And under today's rules, if a trainman

12 takes unpaid leave and they're on a guaranteed board,

13 how would that affect the guarantee?

14 A. It is reduced.

15 Q. And a rest date would also be unpaid

16 under the carrier's proposal, right?

17 A. Correct.

18 Q. Under Union Pacific's proposal?

19 A. Correct.

20 Q. So by saying we're going to adjust the

21 guarantee to reflect the rest days, is the carrier

22 proposing anything different than applying existing

23 rules to the new unavailable time in the form of rest

24 days?

25 A. No.

1 Q. Union Pacific's proposal also provides
2 that an employee assigned to a guaranteed board laying
3 off in any non-compensated status, unavailable time,
4 or unpaid sick status without their guarantee and
5 bonus stay forfeited for the half and will only be
6 paid actual earnings. So we've talked about the
7 unpaid time. What about the paid sick? How does the
8 paid sick leave currently affect the guarantee?

9 A. This would be a change. So today,
10 compensated time, in general, does not reduce a
11 guarantee day. We have carved out the paid sick leave
12 in our proposal to consider that as an available day.
13 We would carve that out, and that guarantee would be
14 reduced for that day.

15 BY MR. CHIAVETTA:

16 Q. And Doug, why has the carrier proposed
17 adjusting the guarantee rules when it comes to paid
18 sick? What does that have to do with voluntary rest
19 days?

20 A. So what it has to do with voluntary
21 rest days is voluntary rest days is going to introduce
22 additional unavailability in the pool. What we've
23 seen since introducing paid sick last August of '23
24 was, at times, employees are not using it for what
25 it's intended for. What this would do is incent

1 employees to use it for what it's intended for, plus
2 still give them the voluntary off days.

3 Q. And when you say "we've seen employees
4 are not using paid sick for what it's intended for,"
5 what are you referring to?

6 A. Yeah. So just -- I mean, just an
7 example from this past weekend. Looking at Kansas
8 City Hub, on Friday the 17th, we saw, call it
9 roughly 12% of the employees laid off -- or 12% of the
10 train persons laid off across the hub. On Sunday, we
11 saw that skyrocket to 22%, which coincided with the
12 Kansas City Chiefs playoff game. We didn't see an
13 additional -- there wasn't weather. There wasn't
14 anything else that could have driven that. We see
15 that across the system.

16 Q. And so when the paid sick agreements
17 were agreed upon, that was in a context or an
18 environment where employees did not get voluntary rest
19 days, correct?

20 A. Correct.

21 Q. And both of those two types of things
22 are forms of unavailability; is that right?

23 A. That is correct.

24 Q. Doug, one of Smart's criticisms of the
25 5:1 work rest proposal has been that it's a one size

1 fits all approach. And we saw earlier when we were
2 talking about regulation that you can have pools of
3 all different lengths. Their rebuttal at page 11
4 says, "Well, it may be a schedule," referring to the
5 5:1. "Well, it may be a schedule that shorter mileage
6 pools elect to utilize as they would need more work
7 opportunities than longer pools. It would not be
8 beneficial to medium or longer mileage pools."

9 Doug, when the union says that the
10 carrier's 5:1 proposal might be appropriate for
11 shorter mileage pools but would not be beneficial to
12 medium or longer mileage pools, what do you understand
13 their concern to be?

14 A. I understand their concern to be that
15 an employee already has time off because of the length
16 of the run or the number of starts that they would
17 have to run based on their mileage regulation.

18 Q. And when you say they have time off,
19 you know, we saw when we were looking at the longer
20 mileage pools, the pools would be regulated under
21 either side's proposal in such a way that the
22 employees would get called to work less often,
23 correct?

24 A. Correct. So if you look at, like, a
25 short pool that has 22 to 24 starts versus a pool that

1 only is going to run 16 to 18 starts, naturally, the
2 short pool that has the 22 to 24 starts would be
3 working more often than the longer pool that has to --
4 that only have 16 to 18 starts.

5 Q. But in those longer pools, even though
6 there might be more time in between when I called to
7 work, in the current world, that employee is still
8 on-call, correct?

9 A. Correct. So that is not necessarily
10 guaranteed time off. That would just be time off that
11 occurs because of how the pool operates.

12 Q. So does the carrier's proposal, a 5:1
13 work-rest schedule, does it give to employees in these
14 medium and longer range pools anything that they don't
15 currently have today?

16 A. Yeah. So what that would give to
17 employees in these medium to long range pools is, if
18 we go back to that calendar example, they'd be able to
19 go look at a calendar and plan when they would
20 actually have that time off. Today, since you don't
21 have that, they have the natural time off, but this
22 gives you the ability to go look at a calendar and
23 plan weeks or months ahead.

24 Q. And when you're on the board, if you're
25 not marked up -- I'm sorry -- if you're not marked

1 off, then you're on-call, correct?

2 A. Correct.

3 Q. And can the board move at different
4 speeds depending on operations?

5 A. Yeah. The board could move at
6 different speeds based on the train demand or on other
7 employees' behavior.

8 Q. And by other employees' behavior, do
9 you mean other employees could lay off and then I'm
10 going to be more likely to get called to work if I'm
11 available?

12 A. Correct. You may move up the board
13 faster. And where you thought you were going to go to
14 work in 12 hours, you're going to work in, say, the
15 next 8 hours.

16 Q. And even if I'm at the bottom of the
17 board, in the current world, if both the pool board
18 and the extra board are exhausted, or another pool
19 board and an extra board are exhausted, could I get
20 called to work to fill a vacancy?

21 A. Correct. You could be called to work.

22 Q. In the current world?

23 A. In the current world, yes.

24 Q. But if I had a voluntary rest day, in
25 that same scenario, I would be off limits from the

1 carrier calling.

2 A. Correct. You would pull yourself off
3 the available list of people to call.

4 Q. Doug, another criticism that SMART
5 makes of Union Pacific's proposal for a 5:1 work-rest
6 schedule is that it leaves employees worse off in so
7 far as under federal law, if they work six consecutive
8 starts, they're required to take 48 hours of rest.

9 Whereas, under the carrier's proposal, you're
10 available five straight days and then you get one day
11 of rest. What's your response to that criticism?

12 A. Today most employees in the pool are
13 not working six consecutive starts. And very similar,
14 this would give the ability for an employee to look
15 weeks ahead to plan that time off. Whereas, today,
16 you can't look downline and assume you're going to run
17 into 48 hours of rest to where you trigger FR.

18 Q. And if you're not working six
19 consecutive starts and you're not getting that RSIA
20 required 48 hours of rest, does that mean you're not
21 working as much? So inherently, you're spending more
22 time at home?

23 A. Yes. That would mean you have time off
24 between trips.

25

1 BY MR. CHIAVETTA:

2 Q. All right. Jen, I want to -- We've
3 talked about the carrier's 5:1 work rest proposal for
4 through freight pools. I want to transition to the
5 union's proposal. What has the union proposed with
6 respect to work-rest schedules for pools?

7 A. So in the union's proposal, they
8 actually have numerous work-rest models that they
9 propose, and, with that, they have the sole discretion
10 to choose which work-rest model they want on each
11 particular board. And then, furthermore, they would
12 have the ability to then change that work-rest model
13 every 30 days. They just would have to provide us
14 notice for that change.

15 Q. And is there any type of default
16 work-rest schedule?

17 A. Yes. They do have a default option
18 that it would be a 4:1 voluntary rest day.

19 BY MR. CHIAVETTA:

20 Q. All right. So let's go back for a
21 second. So we see they have the default 4:1, but
22 their agreement -- their proposed agreement terms
23 would also let them choose from a number of options
24 and then change that decision every 30 days at their
25 own discretion. Doug, how would that impact

1 operations?

2 A. By giving them the ability to
3 continually change the schedule every 30 days. It
4 would at times where we need more employees to support
5 the change in the schedule or potentially less
6 employees, so it could adversely affect employees.
7 When you look at this, maybe on a certain board like
8 we've talked about, it may seem like a small add, but
9 you start to look at this, it starts to compound
10 quickly. When you look at the seniority hub and the
11 entire system where you could be needing hundreds of
12 more employees to support a schedule that provides
13 reduced availability.

14 Q. And with the regulation, you know, we
15 see with the 30-day change, the regulation would be
16 based on whatever work-rest schedule is currently in
17 place; is that correct?

18 A. Correct.

19 Q. But under the union's proposal, if it's
20 changing every 30 days, the regulation is not
21 necessarily going to appropriately reflect the number
22 of rest days for employees in the pool; is that right?

23 A. Correct.

24 BY MR. CHIAVETTA:

25 Q. All right, so let's move forward. Jen,

1 you testified that, in addition to the options that
2 the unit can choose from, there's this default 4:1
3 work-rest schedule. Are there any other differences
4 between the two sides' proposals beyond the sheer
5 number of rest days?

6 A. Yes. So while the -- SMART TD is
7 proposing a 4:1 work schedule, they also have a
8 provision in here where they can elect to extend their
9 rest day up to 16 hours. So that, instead of
10 a 24-hour period, now you're extending it to 40 hours
11 off potentially. So that really becomes a 4:2 work
12 schedule.

13 Q. And then we saw that the carrier's
14 proposal for rest days, it also applied to employees
15 on guarantee boards, correct?

16 A. Yes.

17 Q. And we saw that the carrier had
18 proposed that, when you introduce rest days into those
19 guaranteed pools as part of the implementation
20 process, we're going to treat those rest days just
21 like we do any other period of unavailability under
22 existing rules, right?

23 A. Correct.

24 Q. And what has the union proposed with
25 respect to the guarantee?

1 A. The union proposes that we do not
2 reduce the guarantee for any time that they're
3 observing a rest day.

4 Q. And would that be a change from the
5 existing rules for periods of unavailability?

6 A. Yes.

7 Q. Is that appropriate -- why isn't that
8 appropriate from the carrier's perspective, to
9 essentially give the employment both a rest day and
10 the guarantee?

11 A. Because, well, the carrier has -- we
12 have a long standing arbitral precedent on that fact.
13 In fact, when RSIA, the Rail Safety Improvement Act,
14 came into effect, we started reducing guarantee for
15 that rest period when -- back in 2008. And that was
16 actually arbitrated and continues to be arbitrated
17 today. And we've been successful in the arbitration.
18 So -- I mean, we have established precedent to reduce
19 and pay guarantee only for availability.

20 Q. All right. We've talked about each
21 side's rest-day proposal for pools.

22 Unless the chairwoman has any
23 questions, we would transition now, at this point, to
24 each side's proposal when it comes to rest days for
25 extra boards.

1 ARBITRATOR: You may continue.

2 BY MR. CHIAVETTA:

3 Q. All right. So Jen, what is the
4 carrier's proposal for rest days for employees on road
5 extra boards?

6 A. So on road extra boards, the carrier's
7 proposing a 5 -- we're calling it a SMART rest option,
8 a 5:1. But the 5 starts have to be consecutive. So
9 again, back to the consecutive starts under RSIA
10 rules, which is there's no break in between the
11 starts, a break of greater than 24 hours. So if they
12 hit that 5 consecutive trips or tours of duty, they
13 would have the option to take an additional day off.

14 Q. And is that also what the carrier has
15 referred to as a SMART rest?

16 A. Yes.

17 Q. We see that the carrier's proposal
18 specifies road extra boards. Is it limited to road
19 extra boards?

20 A. Yes.

21 Q. Why is the carrier not proposing to
22 extend rest to yard extra boards?

23 A. PEB250 did not require that we extend
24 rest days to yard extra boards. And in addition to
25 that, yard extra boards are already protecting yard

1 service, which inherently has assigned rest days. So
2 they have some sort of rest already built into their
3 guaranteed board.

4 Q. Okay. Is it true that the yard extra
5 board, there's a little more predictability than on
6 the road extra board already because you're protecting
7 three shifts a day instead of jobs that could be
8 called anytime, 24/7?

9 A. Yes.

10 BY MR. CHIAVETTA:

11 Q. And the national agreement talks about
12 extending rest days to employees in through freight
13 road service. Doug, our employees who work on our
14 yard extra boards, are they in through freight road
15 service like a road employee would be or a road board
16 employee would be?

17 A. No. Employees on a yard extra board
18 would primarily protect the yard.

19 BY MR. CHIAVETTA:

20 Q. Okay. All right. And Jen, going back
21 for a second, so, again, we saw, for pools, the
22 carrier proposed a 5:1 work-rest schedule, for road
23 extra boards, we're proposing SMART rest. Why is
24 Union Pacific's proposal different for extra boards
25 than it is for pool boards?

1 A. So one reason is that employees on the
2 extra board are protecting all of that scheduled
3 vacancy work. So again, remember, we're trying to --
4 the work that the extra board is doing is to protect
5 those vacancies which typically occur on assigned
6 service. So those jobs inherently will have a little
7 bit more predictability, and extroverts also typically
8 don't stay away from home if they're not protecting
9 that pool service anymore. With self-supporting
10 pools, they would no longer be doing that. So they
11 would spend less time on the road, and they would be
12 at home more.

13 BY MR. CHIAVETTA:

14 Q. Doug, SMART has criticized Union
15 Pacific's proposal and said that employees working on
16 extra boards, this is a quote from their submission,
17 "may go weeks before they acquire five consecutive
18 starts, thus preventing them from observing a rest
19 day." What's your response to that criticism?

20 A. Just thinking that through. So if
21 that's happening, that means the employee is naturally
22 getting more time off or a 24-hour break in between
23 their starts to where they would not be triggering
24 that 5:1.

25

1 BY MR. CHIAVETTA:

2 Q. And we talked earlier about how the
3 carrier proposed to integrate rest days and pools with
4 existing guarantee rules. Jen, what has the carrier
5 proposed in that respect for extra boards? How would
6 SMART rest affect the guarantee for extra boards?

7 A. Our proposal is different than the
8 non-guaranteed pool. We would not reduce guarantee
9 board, these extra boards in these SMART-rest model
10 for the day that they're unavailable. So there is a
11 difference there.

12 Q. Why not? Why would the carrier leave
13 the existing rules in place for guarantee boards and
14 reduce it for the unavailability of the rest day on
15 the guaranteed pool board but not dock the guarantee
16 on the extra board?

17 A. A couple of reasons. One, like Doug
18 had mentioned, they don't always -- they won't always
19 hit that five consecutive starts at order to trigger
20 that additional day off, so that day off may be less
21 frequent than if you had a regular schedule.
22 Additionally, if they are not hitting that, they are
23 just naturally getting time off in between their
24 trips.

25 Secondly, from an operational

1 standpoint, we do -- we would rather encourage an
2 employee that is getting those consecutive starts to
3 elect a to take that additional day off versus the
4 potential of them getting the sixth start and then
5 having their federal requirement, getting those 48
6 hours off. So we're gaining some availability,
7 essentially a day of availability, by incentivizing
8 them with the guarantee to take that additional day
9 off.

10 BY MR. CHIAVETTA:

11 Q. So Doug, is it accurate to say that
12 from an operational standpoint, SMART rest for extra
13 board is not as disruptive as rest for pool boards?

14 A. That is correct because it's based on
15 the number of times they have consecutive starts.

16 Q. And Jen, if the unions were to get
17 anything other than SMART rest for extra boards, in
18 the carrier's view, would you need to adjust the
19 guarantee --

20 A. Yes.

21 Q. -- similar to what you're doing for
22 pool boards?

23 A. Yes. Exactly. In any other scenario,
24 if they have a set rest schedule, we would reduce the
25 guarantee. Again, in this case, they don't

1 necessarily have a set rest day every single week like
2 they would under the other proposals.

3 Q. Before turning back to SMART TD's
4 proposal, I want to discuss one additional aspect of
5 the carrier's proposal. So Article 5C of the
6 carrier's proposal, it says that, "In order to meet a
7 customer's immediate service needs or to meet
8 operation exigencies at a time of protecting crew is
9 not present and available in the terminal for such
10 service and time will not permit call calling arrested
11 extra employee, a qualified employee may be used
12 without penalty to perform such service."

13 Who would a qualified employee be in
14 that scenario?

15 A. That would most likely be an engineer
16 that was qualified to work as a conductor, but it's
17 unrestricted.

18 Q. Jen, and why is that proposal important
19 to the carrier?

20 A. Well, voluntary rest days will decrease
21 the availability, and, with that, it makes it more
22 difficult to meet our customers' demands and protect
23 the service that we've agreed to protect for our
24 customers. So by ensuring that we have a safeguard
25 for that provides a little bit more options for us to

1 be able to make sure that those assignments are
2 filled.

3 Q. All right, so we've talked about the
4 carrier's proposal for SMART rest, for extra boards,
5 for road extra boards. Now let's turn to the union's
6 work-rest proposal for extra boards. Jen, can you
7 just walk us through the key differences between the
8 two sides' work-rest proposals?

9 A. So the union's proposing a more
10 scheduled, five day with two days off, work schedule
11 for the extra board. They also provide that it
12 applies to all yard, including hustlers and road extra
13 boards. So that is a big difference between ours as
14 well. We only apply it to the road extra boards. And
15 then the other piece of it is that they have this
16 ability to extend their rest days.

17 Q. And talk about that ability to extend.
18 What -- first of all, what have they proposed? And
19 then I'd like to get yours and Doug's thoughts on what
20 that means in practice.

21 A. So there's a couple of things here. So
22 they propose that they can begin their rest period at
23 18:00. So the day before the rest day -- scheduled
24 rest day is actually going to begin. And then when
25 they -- at the end of their rest days, they're going

1 to mark up at 7:59 in the morning from that rest
2 period. So, essentially, you can see in the chart
3 here, if your off day begins and you don't elect to
4 move it up to 18:00, but it ends at 7:59, that
5 actually instead of 48 hours off, that's actually 56
6 hours off. If they do elect to move their rest up to
7 18:00 hours the night before, that's extending their
8 rest up to 62 hours off.

9 And finally, if there's an assignment
10 where we trespass into the rest day, and by saying
11 trespass means they are working, maybe they're working
12 back to a home terminal when their rest day is set to
13 begin, we call that trespassing into their rest day,
14 they'll be placed into the rest-day status for the
15 two -- for the 48-hour period after their rest is
16 completed at the home terminal. So remember the rest
17 is 10 hours, so we're essentially adding 10 more hours
18 to that to equal 58 hours.

19 Q. So when the union says it's proposing
20 a 5:2 work-rest schedule for extra boards, is it
21 really just two days off?

22 A. No, it's not. It's much more.

23 Q. How does the union propose to integrate
24 the additional rest days with the guarantee for extra
25 boards?

1 A. So the union's proposing what's called
2 a compressed guarantee, essentially taking
3 the 15-day -- a guarantee is paid over
4 a 15-day period. And so today, the average rate of
5 guarantee per pay period, which again is bi-monthly,
6 usually the pay period ends on the 15th of every
7 month, is \$5,700. So today, that's divided out by
8 a 15-day guarantee rate. So that comes out to be \$380
9 a day when you take that divided by 15. So each day
10 you're unavailable, you would have a \$380 reduction
11 for that unavailability.

12 Now, the union's proposal is unclear as
13 to the rate that will be compressed into the 11-days
14 period, but if we make the assumption that they're
15 still talking about the 50 -- their current rate,
16 which, again, is an average of \$5,700. You take that,
17 divided by that compressed period, which is 11 days,
18 and they're going to be getting over \$518 a day in
19 guarantee. So, essentially, they're getting paid the
20 same rate of guarantee for less days of required to be
21 available.

22 Q. And, Jen, other than compressing the
23 guarantee from 15 days into an 11-day period. And I
24 don't mean to minimize the significance of that, but
25 are there other changes to the guarantee as well that

1 they proposed on top of that?

2 A. Yes. You'll see here -- and this is a
3 very messy slide here, but we wanted to point out just
4 how many changes were included in their proposal on
5 the guarantee, many of which does nothing -- are not
6 related to rest days at all. So you see on the right
7 part of the slide the actual agreement, and all the
8 highlighted is the change. But we have it that listed
9 out here.

10 I'm not going to go through every
11 single one at this time, but, you know, there's things
12 like vacation and personal leave days to be paid over
13 and above guarantee. And you'll hear that a lot, the
14 over and above. That means it's paid in addition to
15 the guarantee that they're already getting. Well,
16 today, we include that as earnings in their guarantee.
17 There's no reductions in guarantee. If they have two
18 layoffs with no work events in between, today, we
19 would be able to reduce that entire time in between
20 the two layoffs. They have FMLA does not count
21 towards forfeiture of guarantee.

22 Now, they do have where it would reduce
23 guarantee, but it would not count towards forfeiture
24 of guarantee. Today, the forfeiture rules, and they
25 vary, but, typically, if you have more than two or

1 more than three, depending on the agreement
2 occurrences, you would forfeit your entire guarantee.
3 They don't want us to deduct guarantee for the, again,
4 RSA required rest. So if an employee chooses not to
5 elect to take that additional day off, they could go
6 into federal rest and still receive guarantee. And
7 then there's just a number of other changes as you can
8 see here.

9 Q. And Jen, just to go back for a second,
10 so the provision, like we see in the second line,
11 where it says vacation and personal leave will be paid
12 over and above their guarantee, that's something that
13 the union is proposing that's different than current
14 rules, right?

15 A. Correct.

16 Q. And is it true that today, the way it
17 would work is, let's say you've got the \$5,700
18 guarantee that we'll just use that as the figure. If
19 I take a day of vacation and I paid for that day of
20 vacation, \$700, that would reduce my guarantee down to
21 5,000, right?

22 A. Yes. Exactly.

23 Q. And the union's proposal is, I would
24 get \$700 plus my guarantee would stay at 5,700. So
25 you're increasing my pay by \$700?

1 A. Yes.

2 Q. What would the net effect of all of
3 these proposed adjustments to guarantee rules be?

4 A. This would substantially increase cost
5 to the carrier.

6 Q. All right. And Jen, just to sum up,
7 could you just explain to us what are the key
8 takeaways when it comes to the work-rest schedules --
9 the work-rest proposals for extra boards?

10 A. Sure. So the carrier's proposal is in
11 line with PEB250 as it only applies to road boards.
12 The union's proposal would apply to yard extra boards
13 as well. Another key point and key takeaway is that
14 paying guarantee for unavailability. In the carrier's
15 proposal, we propose, when there's a scheduled rest
16 day, we will not pay guarantee for unavailable time.
17 The union's proposal provides for guarantee for that
18 time unavailable. In addition to that, they included
19 a number of miscellaneous pay increases with that
20 guarantee payment.

21 And finally, this extending their rest,
22 which we talked about earlier, where for each, the
23 pool and the extra board, the employees would be
24 allowed to start that rest earlier or extend it, which
25 it makes the time that they have off actually greater

1 than the 24 or 48 hours that they're proposing.

2 Q. And Jen, just to go back to the first
3 point for a second, when you say that the carrier's
4 proposal in extending rest days only to road extra
5 boards is consistent with PEB250, are you referring to
6 the 2022 National Agreement, which says that you
7 voluntary rest days for employees in through freight
8 road service?

9 A. Yes.

10 BY MR. CHIAVETTA:

11 Q. All right. And Doug, just to close,
12 how would you summarize the union's rest-day proposal?

13 A. Yeah. So in short, it doesn't fully
14 consider the impact that the rest days will add. And
15 then it adds more pay for less time working in the
16 forms of guarantee bonus days and the other various
17 rules changes that Jen walked through.

18 Q. All right, thank you.

19 Unless the --

20 ARBITRATOR: Thank you. I have no
21 questions.

22 MR. CHIAVETTA: Thank you. Yes, I
23 conclude.

24 ARBITRATOR: Okay, is it time for a
25 break?

1 MR. CHIAVETTA: Yes.
2 ARBITRATOR: Okay. Let's take 15
3 minutes, please.
4 (Whereupon, a break was taken
5 at 2:24 p.m.)
6 (On the record at 2:40 p.m.)
7 ARBITRATOR: So it's been commented
8 that it may be warm for some individuals in here. By
9 all means, feel free to reasonably layer down. Like
10 remove your jackets. That's fine. Reasonably.
11 So who wants to be first?
12 (Brief discussion.)
13 Feel free to remove jackets, sweaters,
14 or whatever is comfortable.
15 Mr. Carrier, ready to proceed?
16 MR. MUNRO: Yes, ma'am, we are.
17 ARBITRATOR: How so?
18 MR. MUNRO: We will now turn to the
19 last major element of our case in chief. If you
20 thought the last part was exciting, you're going to
21 love this.
22 We're going to talk about costing. And
23 I'm initially going to introduce the witness, Grant
24 Janke, who is Assistant Vice President for Capital
25 Planning and Finance at Union Pacific.

1 Before you, Madam Chair and members of
2 the Board, I provided a copy of what is Carrier
3 Rebuttal Exhibit 42. It's exactly the same with a
4 couple of title typo corrections as what was submitted
5 previously. It's replicated up on the screen, and I
6 will be scrolling along to keep up with Mr. Janke's
7 testimony. You may find it easier to follow on the
8 page.

9 There's an enormous amount of detail,
10 and I anticipate that, all in, Mr. Janke's testimony
11 will take between an hour and a half and an hour
12 and 45. We have a built in break between the costing
13 of the union's proposal and the costing of the
14 carrier's proposal, but, of course, if the Chair
15 wishes, we would stop at any point. But I think, all
16 in, not including the break, we're looking at
17 something in that ballpark. So I'm hoping to be done
18 by 4:30 or so, including the break time. With that, I
19 will turn it over to Mr. Janke.

20 (Witness sworn.)

21 ARBITRATOR: Please raise your right
22 hand. Good afternoon. Do you solemnly swear or
23 affirm that you will tell the truth, the whole truth
24 and nothing but the truth?

25 THE WITNESS: I do.

1 ARBITRATOR: Okay. Put your hand down.
2 And just for a sake of clarification, my understanding
3 is that this is -- this may be the carrier's final
4 witness for today, but there may be another. There's
5 intended to be another witness so that no one's
6 confused over what the plan is. Okay?

7 MR. MUNRO: Yes, ma'am.

8 ARBITRATOR: Whenever you're ready.

9 WITNESS JANKE: All right. Good
10 afternoon. My name is Frank Janke. I currently serve
11 as Union Pacific's Vice President of Capital Planning
12 and Financing. My team has responsibility for
13 managing and analyzing all the company's operating
14 expenses and capital investments. Prior to working in
15 finance, I spent 10 years in our Network and Capital
16 Planning Group, where my team was responsible for
17 developing and maintaining the company's operating
18 metrics and longer-term resource planning for our five
19 critical resources, including crews.

20 Today, I'm here to walk you through how
21 we developed the head count and financial impact
22 estimates that we provided in our original and
23 rebuttal submissions. The page you see on the screen
24 is a summary of our interpretation of Smart's
25 Appendix B proposal, which they included in their

1 original submission. Over the course of this
2 afternoon, I will walk you through our analysis of
3 those 16 different line items that they propose, line
4 by line. To boil it down for you, based on our
5 interpretation of the proposal, we believe that
6 Appendix B will require Union Pacific to add --
7 approximately 1,450 employees and will cost the
8 company \$310 million per year.

9 To put this in perspective, in order to
10 generate the revenue needed to cover \$310 million of
11 expense, this would require us to add an
12 incremental 110,000 carloads per year, which equates
13 to about 2,150 additional car loads every week above
14 and beyond where we're at today. So it's a
15 significant -- it's a significant hurdle. Upon
16 finishing the review --

17 ARBITRATOR: Mr. Janke, please be sure
18 to keep your voice up as much as possible.

19 WITNESS JANKE: Sorry. Upon finishing
20 the review of Appendix B, I will also walk you through
21 the proposal that Union Pacific offered in our
22 original submission. This proposal offers a different
23 work-rest model and a variety of ways to modify how
24 employees are scheduled relative to today. These
25 variations are offered in an attempt to find a win-win

1 solution that was highlighted as part of the PEB
2 award.

3 Even after factoring in the proposed
4 scheduling variations, our proposal will require us to
5 add a few hundred people and cost us
6 approximately \$2.5 million per year. This additional
7 cost would be in addition to the 24% wage increase
8 that was part of the PEP award. What you will see
9 today in my presentation is that Union Pacific will
10 have to add people to our workforce as a result of
11 implementing any scheduled work-rest model in order to
12 ensure we have the ability to maintain a fluid
13 network.

14 These head count additions are needed
15 even though we will not change the work, the crew
16 starts, that will need to be covered by a SMART
17 employee. We will need more people to cover the same
18 amount of work. Any questions?

19 All right, moving on to Schedule 2 --
20 or excuse me -- page 2. I'm going to talk to you
21 about scheduled rest. So this page has got a lot on
22 it. The page in front of you, it includes three
23 sections. Within each section, we analyze the three
24 different work-rest models that were discussed as part
25 of Smart's original submission, whether in their

1 exhibits or Appendix B itself.

2 Those three work-rest models for pool
3 employees are as follows: A 6:3, a 5:2, Appendix B,
4 which included a 4:1 model for road pool employees,
5 even though SMART did not address a work-rest model
6 for extra boards within the body of their original
7 submission exhibits. When discussing the 6:3 and 5:2
8 models, we have included the 5:2 work-rest model for
9 extra boards that were part of their Appendix B
10 proposal for all three of the employee groups.

11 The top section in blue is our
12 interpretation of Appendix B using SMART's data from
13 their exhibits. The middle section in gray is our
14 interpretation of Appendix B using what Union Pacific
15 believes to be a more representative rest factor for
16 each model and a different fringe benefit cost
17 associated with adding head count.

18 The bottom section in green is our
19 analysis of the scheduled rest for the 5:1 model that
20 Union Pacific proposed in its original submission, and
21 I'll talk about that here later on. Under any
22 scenario, Union Pacific will have to add hundreds to
23 almost 2,000 people, and the company will incur tens
24 of millions of dollars of additional costs annually.
25 Let's walk through the charts starting with smart's

1 proposal using SMART's assumption at the top of the
2 page in blue.

3 You can see the three work-rest models
4 on the left, 6:3, the 5:2, and the Appendix B. Within
5 each model is an analysis of the impact for the road
6 pool, the road extra board, and the yard extra board.
7 The employment numbers on the left you see, the second
8 column in particular, those come directly from SMART's
9 original submission and their exhibits. To the right
10 of the employment numbers are the assumed work-rest
11 models for each of the different groups of employees.

12 Next to the work-rest model is what we
13 call the rest factor. This is the first difference
14 that we have with SMART's analysis. We believe that
15 they have understated the impact of the number of
16 people that will not be available as a result of
17 implementing a scheduled work-rest model and that came
18 in their exhibits. But these are the factors that we
19 pulled from that material.

20 When you multiply the employment for
21 each of the groups by the representative rest factor,
22 you are able to identify the number of additional
23 people that Union Pacific calculated that would need
24 to be added in order to cover the impact of scheduled
25 rest. In the case of SMART's analysis, the three

1 models we evaluated suggest that we would have to add
2 anywhere between 1035 employees to almost 1300
3 employees depending upon the work-rest model.

4 Now, that -- that number of additional
5 people that need to be added as a result of
6 implementing scheduled work rest has been identified,
7 we tried to quantify what that means from a financial
8 perspective. In order to do this, we quantified two
9 impacts. First, what are the fixed carrying costs of
10 an employee on the payroll? Costs such as insurance,
11 pay associated with holidays, vacation, training, just
12 to name a few.

13 Second, because some of the proposals
14 add employees to extra boards, we tried to quantify
15 the potential additional guarantee that would be
16 incurred for those employees as a result of having
17 more people on the extra board. I want to note that
18 the analysis in blue utilizes the employee carrying
19 costs as identified in specific SMART's original
20 submission and as Mr. Munro mentioned earlier today.
21 We disagree with this number, and I will discuss our
22 differences in more details on the next page.

23 However, when you see the fringe
24 benefit provided by SMART in conjunction with Union
25 Pacific's estimate of additional guarantee for the new

1 employees on the extra board, we estimate that the
2 three work-rest models will cost Union Pacific
3 anywhere between an additional \$100 to \$120 million a
4 year if we use SMART's numbers. I want to note that
5 this cost does not include the 24% wage increase that
6 was awarded through the PEB process. The costs
7 considered within this analysis are just the costs
8 associated with scheduled rest and how it is proposed
9 to function.

10 The middle section is a review of the
11 same work-rest models using the same employee counts
12 provided in SMART's original submission, but we
13 utilize the different, we believe, more accurate, risk
14 factor. The math for the risk factor is simple and
15 you heard it a little bit this morning with Doug and
16 Jennifer, in that, when you look at the 6:3 model, as
17 an example, in a 6:3 model, you have nine days. This
18 cycle provides for three days of rest out of those
19 nine total days. As a result, the employee has the
20 ability to rest for 33% of the entire cycle.

21 In order to protect our service and the
22 fluidity of our network, we have to assume that 100%
23 of the proposed voluntary rest days will be utilized.
24 If we plan our workforce with an assumption that
25 assumes a utilization rate that is lower than what is

1 realized, our network will back up and we will not
2 have the ability to run trains that our customers and
3 plans can call for.

4 Why do I believe 100% is appropriate?

5 The best, most recent example we have are paid sick
6 days. Paid sick days were implemented in August
7 of 2023; they've been in effect for 18 months. And if
8 you look at the utilization of paid sick days in 2024,
9 here are some of the pertinent facts. 88% of our TE&Y
10 population rightfully used 100% of the workdays that
11 were allotted. If you look at all of the days that
12 were allotted in totality, almost 95% of the days were
13 utilized. Said another way, 42,343 days -- sick days
14 were used out of the 44,634 days granted.

15 Finally, if you analyze utilization for
16 our 28 crew hubs by hub, the hub with the lowest
17 utilization of sick days still ended up using 90.2% of
18 the days allotted. The hub with the highest
19 utilization ended up using 99% of their allotment.
20 This is why we believe using a rest factor that
21 accounts for 100% of the days is appropriate. When
22 utilizing our rest factor assumptions, this increases
23 the need to add people from 1000 to 1300 that I
24 mentioned before to between 1,360 and just over 1700
25 people.

1 That gap suggests that 350 to 400 more
2 people will be needed when you use what we believe to
3 be the more appropriate factor. We then use the same
4 logic on our calculated head count to develop cost.
5 One variation that we utilized -- what we believe to
6 be a more appropriate carrying costs, which is \$34,333
7 per employee versus the 77,000 used by SMART above.
8 We then applied the same guarantee logic for the
9 additional extra board head count for each respective
10 group of employees. In total, Union Pacific's
11 rest-factor -- using Union Pacific's rest-factor
12 employee carrying costs, we estimate the cost of
13 Appendix B in SMART's original submission to have an
14 annual cost of \$70 to \$85 million.

15 So any questions on any of that?

16 ARBITRATOR: No.

17 WITNESS JANKE: All right. So the
18 final section in green is how we analyze the impact of
19 our proposal. This was on page 50 of our original
20 submission. I'll talk about this in greater detail
21 when I walk through Union Pacific's proposal after the
22 break. But in summary, Union Pacific's scheduled work
23 rest proposal would require us to add over 470 people
24 to the employee base and has an annual cost of \$18
25 million. This cost is comprised of \$16 million of

1 carrying costs and almost \$2 million of additional
2 guarantee for our extra board employees.

3 If you move to page 3, Fringe Benefits.

4 So Don mentioned this earlier, and I talked about on
5 the preceding slide. We view what is included as an
6 employee carrying costs differently than SMART does,
7 and what I want to do is walk you through that. So
8 the snippet at the bottom of the page, the slide, is
9 what SMART included as part of their original
10 exhibits.

11 You see the \$77,000 number on that
12 slide, and you also see it then as you go up to the
13 top. You see the same \$77,000 number in the table.
14 Next to the SMART column within the table are UP's
15 respective numbers for each of those different
16 categories. The largest difference at the top is
17 where SMART has included Railroad Retirement Tier 1
18 and Tier 2 taxes. These taxes are paid on units of
19 work or trips. They are not an employee based cost.

20 The Tier 1 and Tier 2 payments may go
21 to different employees, but they are still going to be
22 paid out by the company. This is a good reminder that
23 our workload is not changing, just the number of
24 people needed to get the work completed. We also see
25 some other slight differences, and I'll walk you

1 through why I think they exist. This is our
2 interpretation.

3 First, Health and Welfare. Union
4 Pacific rolled up our retiree, dental, and vision all
5 into one number. From there, we believe, this is our
6 assumption, that SMART may be including the employee
7 contributions, but we're not sure. So that's what we
8 believe is driving the difference there. For
9 vacations, we are using the average number of days
10 that a SMART employee receives as you prorate the
11 various amount of vacations each of their employees
12 gets.

13 It appears SMART has utilized the
14 maximum vacation days that an employee can earn upon
15 reaching the required years of service. And then for
16 holiday and personal leave, it appears that SMART's
17 assumed 11 personal days for everybody. We prorated
18 the personal leave days similar to what we did on the
19 vacations, based on the years of service and how many
20 they each get. It might seem odd to some that we are
21 utilizing a lower employee carrying cost number than
22 what SMART has suggested. However, it's important to
23 us that we try to use the most accurate numbers
24 possible to give you the best information in order for
25 you to make your decision.

1 Do you have any questions about the
2 carrying costs?

3 ARBITRATOR: I do not.

4 WITNESS JANKE: All right. Okay.

5 Moving on to page 4. This exhibit is a replication of
6 Slide 7 within SMART's exhibits in their original
7 submission. It was part of their supporting material.
8 What we want to try to do here is to just give you a
9 visual -- and a way to think about, kind of, what we
10 view as being different and what we've taken exception
11 with. All of the data that you see on this page is
12 the same as what SMART provided.

13 We have added Union Pacific. We've
14 added the red boxes to highlight where we have a
15 difference, and we've added the red callouts to try to
16 provide some context around what that difference is.
17 And I'll walk you through what that is. So, first
18 off, at the top, the head count, it's not significant,
19 but when you see some of our analysis, you'll see us
20 use a slightly different number than the 2633 that's
21 on this page. That's strictly a function of the time
22 frame that we both selected. So we have a 12 months
23 ending May 31st. I believe they used a June or July
24 timeframe for what the head count was.

25 Second, SMART's data only represented

1 pool employees. So when you look at the pool
2 employees in Appendix B, they applied scheduled rest
3 to, not only the pool, but also their extra boards.
4 So this exhibit is just a portion of the employees
5 that would end up with scheduled rest.

6 Third is the assumption around the
7 impact. And on the prior page within their exhibits,
8 there was some callout boxes talking about a 6:3
9 at 25% and a 5:2 at 22%. It would be the impact. We
10 have applied that logic; we assume that that is how
11 SMART has thought about this issue. And as I
12 discussed earlier, Union Pacific used the straight
13 math for the number of rest days relative to the total
14 number of days in the cycle.

15 Talked about how we did this because we
16 have to maintain the fluidity of the network, and if
17 we make the wrong assumptions about that, it can have
18 significant consequences on our service and take us
19 down for a period of time. Finally, when you get to
20 the bottom of the page, you get the wages in fringe
21 benefit costs at the bottom that Don discussed earlier
22 this morning. I already discussed, on the prior
23 slide, the differences in the 77,000 at the bottom.

24 In addition to the fringe benefit
25 differences, SMART's financial analysis included the

1 use of wages. And we vehemently disagree with this
2 approach. Our crew starts are going to remain the
3 same. We have the same workload. We will not be
4 firing or furloughing employees as part of this deal.
5 In fact, as I mentioned earlier, we are going to need
6 to add to our rosters. Where our analysis suggests
7 the head count savings, that I will talk about here
8 later on this afternoon, this means that we will be
9 able to forego additional hiring to cover the need
10 created by the implementation of scheduled rest. It
11 doesn't necessarily mean that those employees go away.

12 And then lastly, some employees may
13 eventually be working a different assignment, but they
14 will have the opportunity to remain working for Union
15 Pacific because the workload does not change.

16 BY MR. MUNRO:

17 Q. Mr. Janke, before we leave this slide,
18 I understand what you're saying about not including
19 freight earnings and some portion of the benefits in
20 the calculation, but do we agree that the total
21 compensation for train persons at Union Pacific is
22 somewhere in the ballpark of \$200,000 per year?

23 A. I hope. I believe so, yeah. So it
24 might be a little lower. My bad. Probably closer
25 to 150.

1 Q. And that's -- that's prior to the
2 addition of any of the compensation asks in the
3 proposal?

4 A. Yes. Yeah. That would be as of today.

5 Q. Please continue.

6 ARBITRATOR: So I'm looking for that
7 figure on the chart.

8 WITNESS JANKE: The 150 is not on the
9 chart.

10 ARBITRATOR: Okay.

11 WITNESS JANKE: The one -- it would be
12 the -- I think Mr. Munro is referencing the 200 in --
13 in total between the 124 and the 177.

14 All right, moving on to the next slide.
15 This is another exhibit that was provided by SMART.
16 It's page 12 from their supporting materials. I had
17 originally listed that as page 7 up at the top. That
18 was wrong. It's one of the corrections that was made.
19 Once again, this has got a similar format as what we
20 discussed on the prior page, and I'll walk you through
21 the differences here.

22 So besides the differences in the
23 carrying cost and the inclusion of wages down at the
24 bottom, I want to talk about the extra board
25 reduction. So we vehemently disagree with how SMART

1 used the comment about extra board reductions from
2 prior negotiations and reflected them within their
3 original submission. We have no math that supports
4 SMART's suggestions that we would cut our extra boards
5 by 60 to 80% and that's what's reflected in some of
6 their exhibits.

7 Even if the extra boards end up getting
8 cut by some percentage, these employees will still
9 have the opportunity to remain working for the
10 company, and they may need to shift from the pool to
11 cover the additional head count needed to support
12 scheduling -- need to ship to the pool to cover the
13 additional head count to support scheduled rest. But
14 they are still going to be needed to cover the work.
15 As I noted in my kickoff and will discuss in greater
16 detail in the presentation, even our proposal that
17 includes changes in how employees are scheduled still
18 requires that additional head count be added to the
19 employee base.

20 To suggest that wages and employee
21 carrying costs will be a savings to the company
22 because the extra board is getting cut is not
23 appropriate. Instead, we will need to be hiring
24 hundreds of people to cover the impact of any proposed
25 work-rest model that's implemented. The savings

1 associated with reducing an extra board, in this case,
2 the potential to reduce guarantee, there are savings.
3 You will see that in our analysis, for some of the
4 impacts where that -- that actually is true. So
5 you'll be -- when we talk about that, you'll see that
6 reflected in the coming slides.

7 Under no scenario will we save hundreds
8 of millions of dollars by reducing extra boards. We
9 will have the same number of crew starts after work
10 rest is implemented, but we will have a need for more
11 people to cover the same amount of work. Any
12 questions on those two exhibits?

13 ARBITRATOR: No.

14 WITNESS JANKE: All right. Okay.
15 Moving on to Slide 6. This is -- this is just a
16 highlight. So we're going to go through the
17 remaining 15 items. You'll see this page inserted a
18 few times. It's, kind of, a -- to show you what we're
19 going to talk about here in the upcoming -- upcoming
20 slides. So we're going to start by talking about
21 self-supporting pools.

22 BY MR. MUNRO:

23 Q. Mr. Janke, before you do that, I just
24 want to clarify something. So we're talking about
25 number of articles here. These are the union's

1 Appendix B articles, not the national agreement

2 Articles, correct?

3 A. That is correct.

4 Q. Okay. Thank you.

5 A. And the page numbers that are

6 referenced are -- come straight out of Appendix B as

7 well.

8 ARBITRATOR: At the bottom of the page?

9 WITNESS JANKE: No. Right here. The
10 source in the middle. That column.

11 ARBITRATOR: Okay.

12 WITNESS JANKE: So those are meant to
13 reflect where we took them from within the Appendix B
14 of their proposal.

15 All right. Moving on to the next
16 slide. Self-Supporting Pools. So Doug and Jen took
17 you through the nuances and the complexity of
18 self-supporting pools as it was written -- or our
19 interpretation of how it was written in Appendix B.
20 In order to -- and there's -- because of the nuance,
21 what we've done here is we've analyzed self-supporting
22 pools and put it within SMART's Appendix B as to how
23 we would see that it would operate with more of a
24 Union Pacific slant to that.

25 So self-supporting pools is Article 1

1 within Appendix B. When you think about
2 self-supporting pools by themselves, you could
3 potentially have Union Pacific saving on the need to
4 hire an additional 78 people and potentially save the
5 company over \$2.3 million. So how did we get to that
6 conclusion? Let's start at the top of the page.
7 So when we start at the top of the
8 page, you can see the number of starts a pool employee
9 makes in a month. That's the 15.8. We then increase
10 this by half a start per month as a result of being
11 able to eliminate the inefficiencies of the current
12 calling process by simplifying the calling process and
13 eliminating the wait time that Doug displayed on the
14 board, waiting for someone who's waiting for an extra
15 board employee to get their turn back to the home
16 terminal. Our assumption is that we'll get an extra
17 half start out of an employee within the pool. That's
18 the assumption for this.

19 In the middle of the page, we
20 identified the current annual starts that the 2,534
21 pool employees would make if they turn 15.8 times.
22 That's the 480,446 number. That's what it is at
23 a 15.8 turns. If those same employees turned at 16.3
24 times, they would turn -- they would be able to
25 cover 495,650 starts within the year. That

1 incremental 200 -- or 15,200 starts, in order to get
2 to a head count, we divide that 15,000 number by 12 in
3 order to get to a monthly number and then divide it
4 by 16.3 starts per month. And that's how you identify
5 the 78 employees that we think we could potentially
6 forego hiring for.

7 From there -- before I go on from
8 there, do you have any questions about that?

9 ARBITRATOR: No.

10 WITNESS JANKE: Okay. From there we
11 convert head count dollars -- head count to dollars
12 and savings in this case by multiplying the head count
13 saved by the fringe benefit cost, which is the 34,333.
14 And when you take that times the 78, that's how you
15 get to the \$2.7 million. This is partially offset by
16 what we believe will be an increase in guarantee for
17 work that is now performed by the pool and no longer
18 performed by the extra board. That math -- I'll walk
19 you through the math. That math is not on the page,
20 other than the outcome which is the \$514,000.

21 So how we get to that math is, first
22 off, we take the 78 employees and we take the
23 difference between the number of extra board starts
24 that we get today, which is 13.9, you see there on the
25 right hand side, less the 16.3 we get in the future,

1 times 12 for the 12 months in the year, times \$458 for
2 the daily guarantee rate. I think the number you saw
3 earlier was 380. When you tax effect it at 20.75%,
4 that's how you go from the 380 to \$458.

5 And then from there, we reduce that
6 number by 50% because we did not want to overstate --
7 or we did not want to -- we did not want to understate
8 the potential savings that a self-supporting pool
9 could generate. So that would be an understatement
10 had we not reduced that by 50%. In reality, the
11 savings could end up being less than what is
12 identified on this page. But it's our best estimate
13 of what we believe that -- could potentially be saved.

14 We also assumed, at the very bottom,
15 that the current step up pay that is paid today is
16 eliminated, which takes us to the 2.4 you see at the
17 bottom. And I'll cover the 65-mile payment on the
18 subsequent page.

19 Any questions?

20 ARBITRATOR: No.

21 WITNESS JANKE: All right. So Jennifer
22 and Doug talked a lot about the 65-mile payment. This
23 one's much simpler. In order to try to analyze the
24 impact of this. If we were able to utilize
25 self-supporting pools with SMART, we've assumed that

1 we're going to have to make this payment. We
2 used 2023 data to identify that there were 5315
3 instances when we asked an employee to step up
4 in 2023. We then applied that current basic day rate
5 to those employee counts to get to the \$940,000. So
6 when you -- and that would be a cost to the carrier.
7 So when you net the 2.4 million and the 940, that's
8 how you get to the 1.4 million savings for this part
9 of our analysis of Appendix B that you saw on the
10 summary page.

11 All right, moving on to prearranged
12 layoffs. SMART's proposal is looking to increase the
13 percentage of employees that could lay off in advance
14 in conjunction. So we looked at this in conjunction
15 with the look-ahead functionality provided for by
16 Article 5 of Appendix B. Both SMART and Union Pacific
17 have a variation of this proposal, which you heard
18 about earlier. And I'll walk you through what the
19 math looks like for each of those proposals.

20 So on the left hand side in blue is
21 SMART. On the right hand side in gray is Union
22 Pacific. Both SMART and Union Pacific have offered a
23 proposal for modifying prearranged layoffs. SMART's
24 prearranged layoffs was part of Article 1, and as I
25 mentioned, we analyzed this in conjunction with the

1 look-ahead functionality in Article 5. What the
2 look-ahead functionality provides for is the ability
3 to proactively add employees to the pool for known
4 layoffs versus filling those layoffs off of the extra
5 board.

6 And before I get to the math, I'll tell
7 you, this one -- this one is tricky to think about
8 from the standpoint of it's not, like, 25% can be laid
9 off for the entire year. And we don't know -- we
10 don't know what the layoff rates over the course of
11 the year will look like. You know, will there be five
12 weekends or seven or eight or nine or ten events.
13 Where there's 25, and then there'll be significantly
14 fewer with less. So for purposes of trying to
15 quantify this, we have just assumed a straight
16 increase to 25% for the entire year in order to show
17 how the math will work.

18 As you look at this, we've assumed that
19 the incremental pre range layoffs would now be called
20 off the pool with an incremental 20% of the pool
21 workforce laid off at a given time. If you have an
22 additional 20% or 25% in total of the 2,534 employees
23 laid off, the incremental impact is an additional 491
24 employees are going to be needed on the pool to
25 protect service in the event of this -- if this layoff

1 allotment's utilized.

2 And as Doug talked about, that's going
3 to cause a lot of swings and people back and forth,
4 which will create its own problems. Moving people
5 from the extra board to the pool does provide the
6 potential cost savings to Union Pacific of avoided
7 guarantee on the extra board. However, this has to be
8 analyzed simultaneously with the fact that pool
9 employees work almost two more starts per month than
10 an extra board employee does.

11 Over the course of a month,
12 assuming 491 employees were shifted from the extra
13 board to the pool for the entire month, we would
14 expect that the pool would cover 940 starts that would
15 have otherwise been the work for the extra board. We
16 assume a portion of this guarantee saved by having
17 more employees on the extra board would be partially
18 offset by paying additional guarantee to the remaining
19 employees on the extra board because of the improved
20 cycle time for those 490 people being called off of
21 the pool.

22 All of that math nets to a potential
23 cost savings of about 5.2 million potential. If the
24 boards were to be increased -- or excuse me -- the
25 pools were to be increase by 490 people for the entire

1 year. In reality, the adjustments from the extra board to the pool will be dictated by the utilization of the prearranged days. This will result in significant movement and swings week to week between the pool and the extra boards. Ultimately, developing the financial impact for this concept presents a significant number of challenges. And what we've shown you here could be significantly lower than projected.

10 And when you look at the summary slide
11 on the -- on the prior page, what you see is we have
12 listed that as a TBD because we don't necessarily have
13 a great way of giving you an exceptionally accurate
14 cost over the course of the year. That's for the
15 pool. That's for the pool. When you go -- when you
16 go to the bottom of the page, and you can see the
17 thought process around the extra board, increasing the
18 layoff allotment for the extra board is a slightly
19 different animal.

20 The math to identify the population
21 would be the same. However, if an extra board
22 employee is laid off and I end up being short of
23 people on the extra board, this creates a scenario
24 where I don't have -- I don't have another place to go
25 to. And so it creates a scenario where I potentially

1 back up the network and our service product ultimately
2 suffers if you have that much of the population laying
3 off.

4 In order to potentially mitigate this
5 risk, Union Pacific would likely have to hire
6 additional employees. At this time, we do not have an
7 estimate of how many people that would be. And as a
8 result, we are not able to confidently estimate the
9 cost of increasing prearranged layoff percentage on
10 the extra board.

11 Any questions?

12 ARBITRATOR: You can continue.

13 BY MR. MUNRO:

14 Q. Mr. Janke, I do have one clarify --
15 clarifying questions about this.

16 So if I understand what you're saying,
17 we could save money by moving people from the extra
18 board to the pool and guarantee, that's the 5 million
19 number?

20 A. That -- yes. Net of additional
21 guarantee we would pay the remaining employees on the
22 extra board.

23 Q. But then that has to be offset by the
24 potential to hire more employees to cover absences on
25 the extra board. And that's up to 307, is what you're

1 saying?

2 A. So the 5.1 is strictly the potential
3 guaranteed savings of getting 491 people off of the
4 extra board. And then it's offset by the additional
5 starts that are covered by the pool now versus the
6 extra board. We don't have anything on this page that
7 reflects potential hiring to cover elevated layoffs on
8 the extra board, so that is not reflected on here.
9 And it would be above and beyond what is on here. So
10 it would potentially offset any theoretical savings
11 that you see at the top of the page.

12 Q. At what point would the need to hire
13 exceed the projected savings? In other words, how
14 many of the -- let's assume 307 is the maximum.
15 What's the rough number that would carry a cost
16 associated with additional heads that would equal or
17 exceed that?

18 A. Yeah. If you take the 5.2 million and
19 you divide it by 34,333, which is the carrying cost
20 we've been using, that's roughly 150 people. Thank
21 you.

22 ARBITRATOR: I thought I heard you
23 mention that that potential 5.177 -- \$5 million
24 savings is reflected on the following page.

25 WITNESS JANKE: No. No. On the prior

1 page.

2 ARBITRATOR: On the prior page.

3 WITNESS JANKE: It's not on. So you'll
4 see it, if you can scroll up, Don, to the summary.

5 So because of the challenges here, we
6 just put TBDs here on the carrier side on what the
7 head count impact is and what the cost impact is.
8 That's what I was referencing.

9 ARBITRATOR: I understand.

10 WITNESS JANKE: Okay. All right,
11 Moving to Slide 11. Next, we want to cover the 12
12 additional items that we do not believe are covered as
13 part of PEB Articles 5, 6 or 7. Most of the proposals
14 that I'll discuss do not have a head count impact.
15 Some do, but all of them have a significant,
16 significant financial impact. And we estimate -- when
17 you just add up the totals on the right-hand side and
18 what's in red, we estimate that to be about \$220
19 million per year of additional expense for Union
20 Pacific. And that's \$220 million of additional costs
21 without any change in the workload that would need to
22 be completed.

23 First, we'll go to earn days off. This
24 is part of Article 3. This is a proposal that will
25 add head count and cost. The additional head count is

1 needed because this proposal would potentially provide
2 additional time off beyond what is provided today and
3 beyond what is provided for as part of the scheduled
4 work-rest model. This article proposes that pool
5 freight employees in non-guaranteed service be
6 provided a day off if they have perfect attendance for
7 a pay period.

8 This means that a pool employee could
9 be granted 24 additional days off over the course of
10 the year. So a pay period in this case is similar to
11 what Doug described being a pay half. For purposes of
12 this analysis, when we did it, we had evaluated the
13 proposal assuming up to 12 additional days could be
14 granted, but that number actually could effectively
15 double to 24 if Appendix B is implemented as it's
16 written.

17 And so let me walk you through the
18 estimate of this proposal. So we start by identifying
19 the potential population of days where an employee is
20 currently available but may not be available if the
21 proposal were implemented and the days were earned by
22 employees. And so that's the 30,408 additional days
23 off. That's just the 2534 times the 12. We
24 evaluated 2023 employee behavior and identified that
25 employees had perfect attendance for approximately

1 half of the months in 2023. And so you see this, we
2 haircut that number by 50%. So we are -- So we're
3 already --
4 So we wanted to get to a more realistic
5 number of, potentially, how much work is already being
6 done and what could be lost. As a result, this would
7 result in the company granting 15,000 additional days
8 off to a pool workforce employee that they're
9 otherwise working today. In order to convert that to
10 head count, we used our 2023 availability rate of 82%.
11 So 82%, that includes paid and unpaid leave. 82%
12 of 365 is the 299 that you see on the page. And when
13 you take the 15,200 number divided by 299, that's how
14 you get to the 51 employees where we could potentially
15 forego hiring.

16 Any questions on the head count math?

17 ARBITRATOR: No, sir.

18 WITNESS JANKE: All right. We then
19 calculated the ongoing carrying cost for the employee
20 carrying costs for these 51 employees, that's the 1.75
21 million down there at the bottom. That's just the 51
22 times the 34,333. Because these employees would be
23 going to the extra board and SMART's proposal, we have
24 added in the average guarantee that an extra board
25 employee receives in addition to the penalty and

1 arbitrary payments to identify an additional cost
2 of 2.6 million, which you see down at the bottom
3 underneath the incremental cost section.

4 And so when you add that all up,
5 between the two different cost types, that's \$4.3
6 million of additional cost for this earned days off
7 proposal. I also want to discuss and address the
8 claim that this proposal would improve attendance and
9 thus generate additional availability. Our
10 interpretation of SMART's analysis of this proposal,
11 is that they assumed availability would improve
12 by 10%, that was our interpretation of their exhibits.

13 We have no data in our history that
14 supports this assumption. If you look at non-comp
15 layoffs for SMART employees by year since 2019, the
16 average non-comp layoff rate ranges from 1.5% to 2.7%
17 of the active workforce. This is nowhere close
18 to 10%. Another way to think about that is that, on
19 average, SMART employees take 10 unpaid days off per
20 year.

21 If this proposal were implemented, the
22 company would gain 10 days of availability, so those
23 unpaid days would go away. That's from what they took
24 in 2023. And instead of having 10 unpaid days, now
25 the company is granting 12 days off. And so in

1 reality -- and then if, you know, you could -- that
2 reality, that could end up being 24 days off.

3 ARBITRATOR: Excuse me, Mr. Janke, is
4 the narrative that you're reading now included in this
5 report?

6 WITNESS JANKE: No.

7 ARBITRATOR: Okay.

8 WITNESS JANKE: This is -- this is just
9 as we're sitting there thinking about trying to
10 understand and evaluate their proposal. There was
11 a -- there was -- our interpretation was, there is a
12 discussion about we could get additional availability.
13 And so we wanted to factor that into the thinking
14 around -- just so you were aware of how we were
15 thinking about that.

16 So even if we get all of their unpaid
17 days back, with what's being asked for, they would end
18 up receiving anywhere from 2 to 14 additional days off
19 beyond what they take unpaid today. And so that's
20 still going to have a cost for us. We're still going
21 to have -- we're still going to have to hire employees
22 in order to cover -- to cover the work that's still
23 going to be there.

24 ARBITRATOR: Thank you.

25

1 BY MR. MUNRO:

2 Q. Mr. Janke, just to clarify, the 10%
3 reduction in head count due to improved attendance
4 that you're referencing in the union materials, that's
5 in their Exhibit 43, correct?

6 A. Yes. That was our interpretation of
7 what was in there. Yes. So not factored in this
8 analysis are two things. First, Section H of
9 Article 3 provides for days to be paid out as a basic
10 day rate at the last service performed for each earned
11 day off that's not utilized. Because we don't know
12 how many of them would be utilized, that is not part
13 of the 4.3 million of costs, but there is potential
14 risk there that we could have additional cost.

15 And then second, the behavior
16 associated with how these days are used is important.
17 As I'll discuss later on, if all of these days end up
18 getting grouped around peak layoff times -- so think
19 major holidays and weekends -- we may need to hire
20 some amount of people to give us additional capability
21 for these peak layoff times so we don't create a
22 backlog on our network. We're not wanting to build
23 the church for Easter Sunday, but we may -- in
24 reality, we may end up needing to hire slightly more
25 in order to cover these peak times if that is how

1 those days would end up being used.

2 All right. Moving on to page 13. This
3 covers a -- starts to talk about some of the requests
4 on differences in treatment of vacation. It was part
5 of Article 6. This proposal has a financial and head
6 count impact due to how vacation would be use going
7 forward. And it's got three components. It's got an
8 increased use of vacation days as single days. It's
9 got some floating weeks of vacation. And then there's
10 a factor in here for not forcing employees to take
11 vacation in January or February.

12 The impact of this proposal was
13 developed based on our experience with a similar, but
14 not the same, but it's a similar agreement for the
15 BLET on our Missouri Pacific Upper Lines territory.
16 The analysis basically included studying for that
17 territory, studying the relationships of engineers to
18 trainmen and then comparing that to what the
19 relationships of engineers to trainmen are across the
20 rest of our network.

21 We then applied that to the SMART craft
22 and we've identified that we will have an additional
23 need of about 20 people we believe associated with
24 implementing what's being requested. What you can
25 see, on the left-hand side, you can see the different

1 categories. We've tried, to the best of our ability,
2 to allocate what we think the biggest drivers are.
3 You can see here, the largest driver would be the
4 increase use of single days vacation. The cost for
5 those 20 people is estimated to total about \$1.7
6 million. That's calculated by applying our carrying
7 costs to the additional employees. So that's
8 the 34,333 times the 20 additional employees, and then
9 the additional guarantee -- the \$1 million guarantee
10 is the head count times the additional guarantee and
11 over above, down below, times 12. And so that's where
12 you come up with a million dollars.

13 And the reason that you see us talk
14 about the over and above pay, it's noted in there that
15 it would no longer be included in the guarantee-offset
16 calculation. And so that's why we're applying that
17 against the head count when thinking about the total
18 cost.

19 Q. Mr. Janke, could I ask you, you have a
20 reference here to the compressed guarantee there,
21 towards the bottom of the page, the 2794 number. Why
22 are you using a compressed-guarantee number?

23 A. Yeah. We're using the
24 compressed-guarantee number because that's what was in
25 the SMART proposal. And that goes back to the one

1 divided -- you know, rather than a day relative
2 to 15-day cycle, it's -- that 5700 divided by 11.

3 Q. So, is what you're saying that our
4 costing incorporates compressed guarantee where
5 appropriate in costing each of their individual
6 proposals, and that's why there's not a separate line
7 item for compressed guarantee in the summary page?

8 A. It does. So it's all baked within the
9 independent proposals.

10 Any questions?

11 ARBITRATOR: So the union alluded to it
12 as a compressed base monthly-guarantee rate and you
13 adopted that to here?

14 WITNESS JANKE: Yes.

15 ARBITRATOR: Okay.

16 BY MR. MUNRO:

17 Q. And that's because you're costing their
18 proposal?

19 WITNESS JANKE: Correct.

20 ARBITRATOR: Correct.

21 WITNESS JANKE: All right. Moving to
22 page 14. This is vacation for new hires. This is
23 Article 5. I apologize. On the exhibit, it indicates
24 that it was Article 6; it's actually Article 5. So my
25 apologies. This proposal also has a head count and

1 financial impact due to more time off being granted.

2 This is for full vacation immediately for new hires
3 from the time they mark up for train service. This
4 analysis is driven off of the schedule provided by
5 SMART's Appendix B submission on page 96 of their
6 original submission.

7 That 8200 days that's at the top is a
8 proration of additional vacation days that would be
9 granted based on the timing of actual new hire
10 graduates between October '23 and September of '24 and
11 the schedule that's on page 96. These are the
12 additional days that we would have to pay, and so the
13 cost of those additional 8,200 days of vacation, we
14 took them times the average vacation day rate of \$383.
15 And you see the \$3.14 million, that's the cost of
16 paying for additional vacation days.

17 In order to get to the head count
18 impact, we reduced the number of additional vacation
19 days granted by one third to identify a population of
20 employees that will no longer be available to cover
21 train service moves if this concept is implemented.
22 This means we would have an additional 5,422 days that
23 are worked today but will not be worked tomorrow. And
24 we'll need someone to be available for this work
25 because the demand to move the trains is not changing.

1 In order to identify the head count, we
2 divided the days that need to be worked. The 5,422
3 divided by the time an employee is available today
4 adjusted for paid time off. So you go from 365 to 331
5 by removing the paid days that they get, and that
6 takes you to the need for 16 additional employees --
7 or 16 additional employees in this case. The carrying
8 cost of the 16 employees, when you multiply it by
9 the 34,000 fringe benefits number is 560,000. That
10 takes you to the 3.7 million that you see at the
11 bottom of the page. We have not included additional
12 guarantee in the loss of the over and above offset in
13 this calculation, but it's likely an expense that's
14 there that we have not accounted for.

15 ARBITRATOR: "We," referring to whom?

16 WITNESS JANKE: What?

17 ARBITRATOR: You say we have not
18 accounted for it.

19 WITNESS JANKE: Within this analysis,
20 we have not accounted for a potential additional
21 guarantee that may be paid because employees could
22 potentially end up on the extra board.

23 Any other questions on that?

24 ARBITRATOR: No, sir.

25 WITNESS JANKE: All right. Moving to

1 page 15, personal leave days. This is Article 7.
2 Article 7 provides for 11 personal leave days for all
3 crafts and all classes of service and regardless of
4 experience. So once again, this is a proposal that
5 has a head count and financial impact due to employees
6 having more time off while the railroad's workload
7 does not change. And I would mention that all of
8 these items that I've talked about here in the last
9 four pages, all of this is time off. It's over and
10 above scheduled rest. So you've got the scheduled
11 rest model and then the last four items, this is time
12 off in addition to scheduled rest.

13 In order to identify the impact, we get
14 to that 8,860 employees, which is the 2024 SMART
15 employee base. The 53,933 days is what the employee
16 base receives today based on tenure and prorating the
17 personal days that they're eligible to receive. When
18 we analyze the current workforce and our 2023 new
19 hires, including the time of their graduations, we
20 estimate that we will have to provide an
21 additional 34,769 days off to what is worked today.

22 We converted these additional days off
23 by dividing by the days off an employee is available,
24 excluding their paid time off. And that's how -- so
25 it's the 34,789 divided by the 331 gets you to an

1 incremental need of 105 employees. When thinking
2 about the cost components of this proposal, there are
3 two primary categories. One, carrying costs. That's
4 the incremental number of employees, the 105 times
5 the 34,000, gets you to the 3.6 million you see
6 towards the bottom of the page.

7 The second component is the additional
8 cost for the personal leave days. We've applied the
9 SMART 2025 personal leave day cost to the 34,769
10 incremental days that are being asked for. One other
11 thing, you see the \$80,000 there at the bottom. We've
12 also netted out existing holiday pay that is paid on
13 some yard assignments that we make today as a
14 potential savings as employees eligible for personal
15 leave days are not also eligible for holiday pay.

16 So in the end, when you think about the
17 cost of additional personal leave days and everyone
18 going up to 11, that cost totals about \$16.6 million.

19 Okay. All right. Moving on to
20 page 16. Held-away-from-home terminal. This is
21 Article 9. What this proposal does is it modifies the
22 rules -- well, so first off, held-away-from-home
23 terminal. So the way it works today is that when an
24 employee from the time an employee ties up at an
25 away-from-home terminal and if they are not on duty

1 within 16 hours of being tied up, the clock then
2 starts and then we pay a held away-from-home terminal
3 payment.

4 What this does is it modifies the rules
5 as to when the clock starts, and it, ultimately, while
6 not having a head count impact, costs about \$30
7 million. And I'll walk you through how that is. So
8 rather than following the rules that are in place
9 today, what SMART's proposal does is it changes the
10 duration of time before payment starts and it would
11 change when the clock stops. So SMART's proposal
12 would measure from tie up, which is the same thing,
13 but it would start at 12 hours versus 16 hours.

14 And then the other thing that it does
15 is it changes when the clock stops. So rather than
16 stopping the clock from when an employee goes on duty,
17 the clock will stop at the time an individual departs
18 on an outbound train. So there's a lot going on in
19 this proposal. So, ultimately, what it does is it's
20 going to increase the hours paid for employees already
21 receiving held-away pay. There's going to be a
22 population of employees in hours that will be paid for
23 now that are not paid for today.

24 That's the population of people who
25 have become rested, and from 12 to 16 hours, today

1 there's no held away pay, tomorrow there would be.

2 And then the standard that stops the clock is pushed
3 out because you're changing it from on-duty time to
4 the time that the deployment -- the train gets out of
5 the terminal.

6 The top of the analysis depicts the
7 instances and hours that we paid in 2023. So we
8 had 134,000 instances where we paid held-away pay, and
9 it was 500 -- almost 600,000 hours that we paid on.
10 We went back and analyzed the 2023 data to identify
11 the incremental hours and instances that we would pay
12 based on the proposed rules. So on the exhibit, I say
13 "future state." That is improperly labeled.

14 And what we are showing you are the
15 incremental hours, not a future state hour. The
16 instances where an employee becomes eligible increases
17 by about 100,000 instances, and we would pay an
18 additional 145,000 hours of held away-from-home
19 terminal pay. And in order to then convert hours to
20 dollars, we assume that the rate that is paid in 2023
21 would remain the same, and so we multiplied the
22 incremental hours by the rate to come up with a \$30
23 million impact.

24 ARBITRATOR: Did you modify the numbers
25 for the incremental hours which was changed from

1 future state?

2 WITNESS JANKE: Help me out here. Did

3 I modify the hours.

4 ARBITRATOR: It says "instances total"

5 and "hours paid."

6 WITNESS JANKE: So -- So -- I -- I

7 incorrectly identified that. As that should be

8 incremental. It's not future state.

9 ARBITRATOR: Okay. But the numbers

10 remain the same?

11 WITNESS JANKE: Yes. Yes. The label

12 is wrong.

13 ARBITRATOR: How do we get to the 30

14 million?

15 WITNESS JANKE: So you get -- to get to

16 the 30 million. So it's the 739,000 hours paid

17 incrementally times the 40 -- No.

18 ARBITRATOR: Hourly rate?

19 WITNESS JANKE: No. No. It's -- it's

20 the seven -- that is wrong. The numbers that you have

21 there, are the 739 minus the 593 times \$40-ish an

22 hour. No. No. No. I'm wrong. 739 times the 4092.

23 That's the 30,000,241. My bad. So it's the, it's

24 the 739 times the 4092 equals the 30.2 million.

25 ARBITRATOR: Thank you.

1 WITNESS JANKE: Sorry about that.
2 Moving on to meal allowances. This is
3 Article 10 of Appendix B. This proposal changes the
4 amount paid for a meal when an employee is in an
5 away-from-home terminal and, potentially, the basis
6 for paying for that meal. So once again, no head
7 count impact, but it does cost the company money, and
8 we use 2023 data.

9 So let me start by, today, an employee
10 gets a meal allowance if they are rested at an
11 away-from-home terminal for more than 4 hours but less
12 than 12 hours. And then they can get a second
13 allowance payment if they are rested in an
14 away-from-home terminal for more than 12 hours. So
15 when you look at the 2023 data, it's the 573,000 meals
16 allowances that we paid times the \$8. That
17 totaled \$4.5 million.

18 We took some liberties with our
19 interpretation of what is being proposed based on
20 discussions during prior negotiations. What's
21 reflected on this page is a \$25 payment for the day.
22 And that's where you see the count of days paid
23 is 293,000 times the \$25. And this means that an
24 employee would only receive one payment while being
25 away from home. So using this methodology, we would

1 pay \$7.4 million of meal allowances, and that would be
2 a \$2.8 million dollar increase from what we paid
3 today.

4 And then we added in a general wage
5 factor that's noted in the proposal that was based on
6 the last five years. That number is elevated with
7 where inflation's been here recently and can very well
8 be lower in the future depending upon what happens
9 with inflation. So this -- what I'm about to say is
10 not on the page. So if I take a literal
11 interpretation of the language in SMART's original
12 submission, and it does not say anything about
13 converting to a daily rate, and I had to pay \$25 for
14 all 573,000 instances, that would increase the cost
15 of 14.3 million or a difference of almost \$10 million
16 from what's paid today.

17 ARBITRATOR: So are you referring to
18 the second portion as future state here?

19 I'm still in 17.

20 WITNESS JANKE: Yeah. So if you see on
21 this "future state," like I said, we use the
22 understanding from the negotiations that have been
23 taking place is that the \$25 rate would be applied on
24 a daily basis. And so you come up with your new cost
25 in a future state of 7.4 million. The 7.4 million

1 less the 4.5 is the 2.7 million there you see at the
2 bottom of the page.

3 The trick is, is that when you go back
4 and read the language in their submission, there is
5 nothing that indicates that the allowance will be paid
6 on a daily basis. And so if -- if the intent is to
7 pay that on an instance basis like it is today -- so
8 the rate would go from \$8 to \$25 -- that's where your
9 new cost is closer to \$14 million. And the potential
10 increase would be upwards of 10. So it's literally a
11 very -- I would encourage you to study that language
12 and look at it relative to what we've got on this
13 page.

14 ARBITRATOR: And the justification
15 behind using the 2023 data?

16 WITNESS JANKE: It's -- So a lot of
17 this analysis has come together over the course of
18 negotiations. And so it was -- when we started this,
19 it was the last full year of data that we had. And so
20 that is ultimately why you see some of this is 2023
21 data. And there are times where you'll see a
22 different time period. And some of that -- you know,
23 it happened. And you know, that concept or proposal
24 probably came about, you know, later on in the
25 negotiation.

1 BY MR. MUNRO:

2 Q. Mr. Janke, if you use 2024 data, do you
3 happen to know whether that would increase or decrease
4 the cost?

5 ARBITRATOR: I'm sorry. I can't hear
6 you.

7 MR. MUNRO: I was just asking to follow
8 up on your question, Madam Chairman --

9 ARBITRATOR: Yes.

10 MR. MUNRO: -- whether Mr. Janke knows
11 whether using 2024 data would increase or decrease the
12 size or the cost of this for both of them?

13 WITNESS JANKE: I don't, but we can
14 get -- get that for you if that's something that you
15 would like to see.

16 ARBITRATOR: I don't have any requests
17 at this time.

18 WITNESS JANKE: Okay. All right.

19 Moving on to page 18. Pay
20 differential. This is Article 11. It's comprised of
21 three components. First component being getting paid
22 for working on the weekend by type of service. The
23 next component, pay for working at night. And the
24 final component would be additional pay for working on
25 the holiday. This is another proposal that does not

1 have a head count impact, but it does have a
2 significant financial impact. Once again, we use 2023
3 data here, and we utilize the counts for each of those
4 different categories and apply the applicable rates
5 that were included within Appendix B. The math's
6 straightforward; it's just counts times the respective
7 rates.

8 When you look at it, the request for
9 weekend pay accounts for about 60% of the total.
10 Nights and holidays, obviously, make up the remainder
11 in almost equal amounts. Once you tax effect this,
12 the cost of this proposal is about \$40 million. This
13 is -- once again, the work hasn't changed. There's
14 not more starts. It's the same amount of work, just
15 more pay for doing what we're doing today. And also,
16 to my knowledge, this isn't asked; it's something that
17 no other crafts currently receive.

18 All right. Moving to page 19.
19 Article 12. Once again, not a head count impact
20 because there's no time off, but we have a change in
21 pay for the same amount of work that's being
22 performed. Today, overtime is paid and starts at
23 various times per each respective agreement. The
24 proposal here is to pay overtime for all classes of
25 time and service after eight hours. Got a similar

1 format here to what we've used on prior slides.

2 At the top of the page. You can see
3 here, we paid 415,000 hours of overtime in 2023. That
4 equated to about \$19.4 million. Based on if we were
5 to start overtime at 8 hours in the future, we
6 estimate that we would pay an incremental 1.1 million
7 hours of overtime. So that's the 1.5 million hours
8 paid in a future state less the 415 hours paid today.
9 When you multiply that by the implied rate, you're
10 looking at an additional \$67 million of cost after
11 including the impact of taxes.

12 In order to make this calculation, what
13 we did is we analyzed each respective territory and
14 then aggregated the results up independently. And so
15 that's how we developed the \$67 million. Because of
16 the language in Article 16, we have assumed that these
17 additional payments would not be allowed to offset
18 guarantee in the future. So this is all added cost to
19 the company.

20 All right. Moving to page 20. This is
21 Article 13. What this one has to do is the rate
22 progression for new employees. This proposal, once
23 again, it's not a head count game here, but it does
24 have to do with what employees are paid and the timing
25 for when an employee is paid a full rate. So when we

1 analyzed the first half of 2023 data and evaluated our
2 total payout for each respective step, and that's
3 here, the second column on the left, 75% of the
4 rate, 88.5 and so forth. We then prorated -- you see
5 what we paid each of those steps. So those were
6 actual wages here in the third column from the left.
7 These are actual wages paid in each respective step
8 in the first half of '23.

9 We then just prorated each of those
10 steps to reflect what we would have paid had we paid a
11 hundred percent rate immediately and gotten rid of
12 these various steps. And so the far right column is
13 just the difference between the two columns to the
14 left. And that difference is 8.8 million tax effected
15 for the first half of '23. In order to develop an
16 annualized number, we multiplied that by 2 to get to
17 the \$17.6 million. So once again, the work being done
18 is not changed, just what employees are being paid for
19 the same amount of work.

20 All right. Moving on to page 21. This
21 is the penalty for being delayed at lodging. This is
22 one that we don't have history with. And so this is
23 an estimate of \$75,000. Effectively, if a crew has to
24 wait for more than 30 minutes for a room at an
25 away-from-home terminal, a clock would start and we

1 would begin paying a penalty payment. And this is
2 something that is not common across our system, and so
3 this is our best guess as to what that cost would be.

4 ARBITRATOR: What does it represent?

5 WITNESS JANKE: This is the penalty
6 payment that's being requested that when an employee
7 ties up and they go to lodging at an away-from-home
8 terminal, if lodging is not ready within 30 minutes,
9 we would begin paying a penalty for that wait time
10 that an employee has until they get a room.

11 All right. Last one before we get to
12 the to the summary. So this is the increase in the
13 certification and RCL allowance that's being
14 requested. This is Article 15. This proposal has two
15 parts, which I just mentioned. The first part, is
16 certification pay. So everyone that gets a start,
17 gets a certification pay today of \$5 per start. What
18 the proposal is here is that we would increase the
19 allowance paid from \$5 to \$20. When we used 2023
20 data, we identified 1.1 million instances where we
21 paid this pay. We multiplied those instances by the
22 incremental \$15 to get to the 16.8 million before
23 tax -- tax affected. Increasing certification pay
24 by -- up to \$20 takes you to a cost of almost \$20
25 million of additional expense for the company.

1 On the remote control allowance, what's
2 requested here is that when you use a remote control
3 device in a yard to operate a train today, there is
4 a 45-minute allowance that an employee will receive
5 based on the hourly rate for the applicable job. The
6 request is to increase that to two hours. And so the
7 incremental hours that we would end up paying on
8 is 321,000 incremental hours paid times the rate tax
9 effected. The proposal for the increased pay for RCL
10 cost the company about \$15 million. So the two
11 proposals on this page is a total of about \$35 million
12 for another instance where the work hasn't changed,
13 just what we would be paying to get the work done
14 would change.

15 All right. So on page 23, I'll just
16 close out our analysis of Appendix B here. So I've
17 walked you through our thought process on how we
18 calculated the head count and financial impacts. From
19 my perspective, here are the key things to remember.

20 ARBITRATOR: Council, is this where you
21 indicated a break would take place?

22 WITNESS JANKE: Right after this slide.
23 No one's more excited than I am.

24 ARBITRATOR: Just checking.

25 WITNESS JANKE: All right. So the key

1 things that I would encourage you to remember. One,
2 Union Pacific would have to add over 1,450 employees
3 to have enough employees available to cover our
4 workload, which will not change. The impact of
5 scheduled rest and the other items being proposed,
6 that would be all inclusive of the 1450. Between
7 scheduled rest and all of the wage increases
8 requested, Union Pacific would incur \$310 million of
9 additional expense each year.

10 As I noted in my opening remarks, in
11 order to cover \$310 million of additional expense, we
12 would need to convert 2,150 carloads of freight each
13 week from the highway to the railroad in order to
14 generate the revenue needed to cover this. The
15 additional expense proposed would reduce our ability
16 to compete with trucks and thus make the conversion of
17 this freight from truck to rail less likely. I also
18 want to reemphasize one last time that the \$310
19 million that I noted above is only the cost of what's
20 in Appendix B. It does not include the impact of
21 the 24% wage increase provided for by the PEB. And so
22 this is above and beyond. So with that, that is all I
23 have for the analysis of Appendix B.

24 BY MR. MUNRO:

25 Q. Mr. Janke, one follow up question.

1 This Appendix B total, does that include all of the
2 cost items that Ms. Powell and Mr. Svatos were talking
3 about this morning with respect to the Appendix B
4 proposal?

5 A. So it includes the main one; it doesn't
6 include some of the ancillary items that they talked
7 about with additional time off and some of the other
8 items that they pointed out in the details of nuances
9 that were being asked for. So this is a higher level
10 overview of what we think those impacts would be.

11 Q. Does it include, for example, the
12 trip-rate penalty for falling outside of the target
13 pool regulation?

14 A. It does not.

15 Q. So while it's 310 million, this could
16 understate the cost of the union's Appendix B
17 proposal?

18 A. That potential definitely exists.

19 ARBITRATOR: So your position is that
20 it doesn't include those things that were described as
21 being -- excuse me.

22 WITNESS JANKE: I'm sorry.

23 ARBITRATOR: It doesn't include those
24 items that were evaluated as being beyond scope?

25 WITNESS JANKE: Yeah. It doesn't

1 include some of those nuanced items like Mr. Munro
2 referenced on paying a trip rate to get up to the
3 midpoint range. It doesn't include some of that.

4 MR. MUNRO: Just to clarify, Ms.
5 Arbitrator, the items that we have contended are
6 beyond the scope of this board are everything except
7 scheduled rest, self-supporting pool, and prearranged
8 layoffs. So what Mr. Janke is talking about, I
9 believe, is additional ancillary or secondary items in
10 Appendix B that we just didn't include because it
11 would extend this analysis beyond what we've already
12 done.

13 WITNESS JANKE: That is correct.

14 ARBITRATOR: Okay. I have nothing
15 further.

16 MR. MUNRO: With the board's
17 permission, then we propose to take a short break.
18 And then come back and we'll finish up with
19 Mr. Janke's costing of Union Pacific's proposal.

20 I estimate that that will take
21 roughly 30 to 40 minutes.

22 ARBITRATOR: Okay. We'll take a
23 ten-minute break.

24 MR. MUNRO: Thank you.

25 (Whereupon, a break was taken

1 at 4:00 p.m.)

2 (Back on the record at 4:15 p.m.)

3 ARBITRATOR: Parties ready?

4 MR. MUNRO: Yes, ma'am.

5 MR. EDINGTON: Yes.

6 ARBITRATOR: Okay. Back to you,

7 Mr. Munro.

8 BY MR. MUNRO:

9 Q. Thank you, Madam Chair. We're going to
10 return to Mr. Janke and the conclusion of the costing
11 testimony.

12 A. All right. So if you -- if you look at
13 page 24, this is just the summary of -- at the bottom
14 is a summary of our proposal. And that's what I want
15 to walk you through and how we analyze this proposal,
16 which was provided on page 50 -- on the table, on
17 page 50 of our original submission. The objective of
18 the proposal is to provide a win-win. Whereby,
19 employees obtain preferred schedules with more control
20 over their personal lives, and the carriers obtain
21 both operational benefits and cost savings.

22 And that's what you'll see in our
23 proposal. You will see that even our proposal
24 requires us to add head count and has an annual cost
25 to Union Pacific Railroad, but it is orders of

1 magnitude less than SMART's Appendix B proposal. Even
2 though you will see it say at particular times that
3 we'll have a reduced need for head count, that does
4 not mean that a particular employee would be
5 furloughed or let go.

6 Effectively, the head count savings
7 associated with our scheduling proposals only reduces
8 our hiring need to cover the impact of scheduled rest.
9 At the end of the day, SMART's employee base will be
10 larger after implementing Union Pacific's proposal
11 than it was before we implemented the proposal. So
12 let's begin walking through the nine items.

13 Page 25, this chart should look
14 familiar. We walked through the top portions of this
15 exhibit earlier when we were talking about our
16 analysis of SMART's proposal. If you look at the
17 bottom section in green, you can see the analysis for
18 Union Pacific's proposal. To start with, we used a
19 base period for the 12 months ending May 31st to
20 establish our head count of 2,535 employees in the
21 pool versus the 2,633 you see above. This is
22 about 100 fewer employees than what SMART used. You
23 can see that we go across on -- to the right. The
24 work-rest model we proposed is a 5:1 work-rest model
25 for the pool and SMART rest for the pool Extra board,

1 which Doug and Jennifer discussed earlier.

2 While we used a slightly different head
3 count number for each respective group, the primary
4 driver of the head count difference is the impact of
5 the proposed models and the fact that we have only
6 offered scheduled rest for the pool and SMART rest
7 for -- for the pool extra board. Within our head
8 count math for the pool boards, we did include an
9 assumption that almost 360 employees would be added to
10 the pool to cover hours-of-service relief and the
11 impact of offering more prearranged layoffs off of the
12 pool versus the extra board.

13 So that's how you end up at the 482.
14 If you just did the 2534 times 16.7%, you end up with
15 a number that's more like 422. But when we factored
16 in with -- behind the scenes in our math, we factored
17 in the impact of having more employees on the pool for
18 hours-of-service work and prearranged layoffs. So
19 that's where you get to the 482. You can also see
20 that there's an impact of about 11 people, we believe,
21 that we could save from the SMART rest. And I'll walk
22 you through that logic on the next page.

23 When we apply the fringe-benefits
24 factor to the 471 additional employees required, this
25 will result in over \$16 million of employee and

1 carrying costs on an annual basis. In addition to the
2 carrying costs, we believe that we have some
3 additional guarantee on our extra boards that adds an
4 additional 1.5 million of cost to the proposal. In
5 the end, the work-rest model proposed by Union Pacific
6 will require us to add 470 employees and cost in
7 excess of \$18 million per year.

8 Any questions on that?

9 Okay. Moving to page 26. SMART rest
10 for the extra board. Our SMART rest proposal is
11 intended to help reduce the chance that employees will
12 trigger federal hours of service mandatory rest by
13 allowing them to choose to take a day off and thereby
14 avoid hitting those limits. Extra board employees
15 will have the option to take that day of rest after
16 working five consecutive starts. By not triggering
17 federal rest, additional availability would be created
18 which means fewer people would be needed. And we've
19 estimated that impact to be approximately 11
20 employees. By utilizing SMART rest and avoiding
21 federal rest, an employee would not lose their
22 guarantee as they would if they triggered federal
23 rest. Because more employees will avoid federal rest,
24 we anticipate that extra board employees will receive
25 approximately 1.9 million more in guarantee, and you

1 can see that on the page.

2 Any questions?

3 All right. Moving to page 27, enhanced
4 standing bids, which Jennifer and Doug talked about.

5 This is the concept that will generate savings by
6 eliminating the need for daily preference boards. In
7 order to identify the savings, we evaluated 326 daily
8 preference assignments across the 10 locations on our
9 network that Doug indicated earlier today. After
10 evaluating the work of those assignments, we
11 believe 286 people, employees, could be shifted to an
12 assigned yard board and complete the work as an
13 assigned yard job.

14 We believe the work rules allow for
15 these jobs that are being called off of the daily
16 preference board to be called off of an assigned yard
17 board. We also have other work currently being
18 performed by employees called off of daily preference
19 boards that we believe would need to be called off of
20 a yard extra board. As a result, 29 employees
21 currently on a daily preference board would need to be
22 added to the respective yard extra board rosters.

23 This leaves us with 11 positions
24 relative to what we started with that could be
25 reassigned and allow us to avoid having to hire more

1 people to cover the impact of scheduled work. By not
2 having 11 additional employees, we save the carrying
3 costs of \$34,000 a year, which is the \$380,000 that
4 you see at the bottom of the page. It's just the 11
5 times the 34,332.

6 All right. Moving on to displacement.
7 This concept is the concept that if we reduce the time
8 an employee is not marked up to work after being
9 bumped from an assignment, employees who are in the
10 process of displacing are not available to work. And
11 if you reduce the displacement time from 48 hours
12 to 24 hours, like was discussed this morning, this
13 would mean that more of the existing workforce would
14 be available.

15 And so when you look at the analysis on
16 the page, we looked at the 12 months ending September
17 of 2024, we had almost 12,048 hour-displacement
18 events. If you reduce the displacement time to 24
19 hours, you've effectively created almost 12,000
20 additional days of availability. We divided those
21 days by the 365, 365 days in a year. We estimate that
22 we would be able to forego hiring up to 32 employees.
23 That's just the 11,680 divided by the 365. And then
24 when you apply the carrying cost to the 32 employees,
25 that equates to the 1.1 million you see at the bottom

1 of the page.

2 It should be noted that this does not
3 assume a change in the notification or the pass-up
4 provisions that were discussed this morning. Neither
5 does it include, they talked about, the travel time
6 and how -- if that would change. Neither does it
7 include any assumptions about change in the behavior
8 of travel time to the new assignment. So this is one
9 of those where there's some nuances in the proposal
10 and we have not included any of that because this is
11 our analysis of our proposal.

12 Moving to hours-of-service relief.
13 Here I'll review the financial benefits of calling
14 hour-of-service relief off of the pool versus the
15 extra board that Doug described earlier. We believe
16 this concept could save almost 900 -- just
17 over \$900,000 per year. When you look back to the
18 table on page 50 of our original submission, this was
19 included within the self-supporting pool category.
20 And so this is really a subset of what you see on that
21 table.

22 Just a quick reminder, on page 7 of the
23 exhibits that I went through earlier, we did review
24 the impact of self-supporting pools. If implemented
25 without the 65-mile penalty payment, that that would

1 save the company about \$2.3 million and allow the
2 company to forego the hiring of 78 people. I tell you
3 all of that, in the event that you're trying to tie
4 this all back to the table that we originally
5 submitted. If you added hours-of-service work to the
6 pool, we believe that 230 people would be transferred
7 from the extra board to the pool.

8 Our logic to develop the 230 people
9 estimate is as follows: First, at the top of the
10 page, you can see the 5 -- almost 52,500 relief jobs
11 that were called for the 12 months ending
12 May 31st, 2024. We divided those relief jobs that
13 would now be called off of the pool versus being
14 called off the extra board by the average SMART rate
15 regulation factor -- pool-regulation factor of 19
16 starts per month. This identifies the 230 people that
17 would be needed to be transferred to the pool. So
18 that's the 52,495, divided by 19, divided by 12. And
19 that's to get -- to get you down.

20 Because the 230 people are now on the
21 pool and not on the extra board, we can avoid the cost
22 of guarantee -- and this is just guarantee as it is
23 today, it's not compressed guarantee -- for the entire
24 year. And that total is a total of about \$4.8
25 million. And you can see that there in the middle of

1 the page. That's the 1756 per month. That's the
2 average base guarantee an employee on the extra board
3 receives, times the 230 employees that have been
4 moved, times the 12 months.

5 The guarantee savings are partially
6 offset by the difference between the trip rate you
7 would get, that we pay an employee if they were called
8 off of the pool board versus the conventional rate
9 paid for hour-of-service relief for employees called
10 off the extra board. That's about \$75 difference.
11 And so we applied that \$75 difference to the 52,500
12 events where we did this to identify the \$3.9 million
13 of additional costs that we would incur.

14 When you net the 4.8 million of savings
15 against the 3.9 million of additional earnings that
16 would be paid to the employee base due to the change
17 in the rate being paid because of where they're being
18 called, this equates to \$934,000 of savings that was
19 included on our -- page 50 of our original submission.

20 Any questions on any of that?

21 ARBITRATOR: No, sir.

22 BY MR. MUNRO:

23 Q. Mr. Janke, I have a question to clarify
24 here. You recall the testimony from earlier today
25 regarding the percentage of work performed by the

1 extra boards that is hour-of-service relief?

2 A. Yes.

3 Q. And what's your recollection as to what
4 that is?

5 A. It was 14%. It's called off of the
6 extra board. And something about 80% of the employees
7 or something like that.

8 Q. So if you take 80% of 14%, what's the
9 math on that?

10 A. It's roughly 12%.

11 Q. And what is roughly 12% of the
12 extra-board population?

13 A. The 230 relative to the extra board
14 population of 1900 is like 12.9. So what we've got
15 here is in line with what you -- was discussed this
16 morning and the math that Doug and Jennifer walked you
17 through.

18 Q. So the carrier's proposal then, as you
19 view it, would require transferring about 230 people
20 from the extra board to the pool to provide the
21 hour-of-service relief?

22 A. Correct.

23 Q. Thank you.

24 A. All right. Moving to page 30. The
25 last two proposals here have to do with abolishing

1 extra boards. This first page here that I'm going to
2 walk you through, this is the opportunity to abolish
3 extra boards. But before I get into this, when you go
4 back and you look at page 50 of the original
5 submission, you will also see a line for pool
6 regulation by starts. That was the math that we
7 discussed on page 10 when we reviewed the impact of
8 changing the prearranged layoff rate and allowing for
9 prearranged layoffs to be called off the pool. So
10 once again, I just wanted to try to tie it all up for
11 you as you go back and look at the original table we
12 provided.

13 On the abolishing the extra boards,
14 this first page is to look at abolishing and combining
15 extra boards where we have more than one extra board
16 at a specific location. And that's what we've
17 depicted here on page 30. In order to identify the
18 impact, we evaluated October of 2024 data for 22
19 locations where we have more than one extra board at a
20 location. Those 22 locations had 805 people assigned
21 to the various road-pool extra boards that currently
22 exist there. Based upon our experience of combining
23 extra boards together at Wichita, Kansas, in 2017, we
24 realized a head count efficiency of about 2.5% when we
25 did something similar.

1 We applied the same efficiency by
2 location to arrive at a head count savings of about 18
3 people. So that's roughly the math of 805 times 2 and
4 a half, but it was literally done by the 22 locations
5 and we aggregated it up. The \$618,000 of carrying
6 costs for this concept is just the 18 times
7 the 34,333. In addition, we've identified savings of
8 about \$491,000 of extra board guarantee because the
9 extra-board workforce will be reduced by 2.5%.

10 In order to do this, we looked at
11 the 22.6 million of annualized guarantee that we
12 actually paid these 22 boards, and we strictly reduced
13 it by the corresponding percentage. So that's -- it's
14 just math on the 22.6 times the approximately 2.5%.
15 Between the two savings buckets, we project that
16 calling hour-of-service relief off the pool could save
17 the company upwards of \$1.1 million.

18 All right. Last one. Abolishing
19 supplemental extra boards. So this is the largest
20 impact item that we have. In 2023, we had, on
21 average, 149 people assigned to supplemental boards
22 across 70 locations that have those assignments.
23 After analyzing the start count by location by board
24 and factoring in the average availability of the
25 workforce, both paid and unpaid, so we assume that

1 they're going to work 299 of the 365 days, we
2 identified the number of additional employees needed
3 on the extra board to protect this work going forward.

4 This means that we believe 66 employees
5 would need to be added to the extra boards to cover
6 the work being done by these supplemental boards.
7 This would result in Union Pacific having the ability
8 to forego hiring 83 employees at some point in the
9 future. We converted this to the financial impact by
10 identifying the employee carrying cost of 2.8 million
11 that you see towards the bottom of the page. That's
12 just the 2.8 times -- or excuse me. The 83 times
13 the 34,333.

14 The second savings component is the
15 reduced guarantee that would be paid even though we
16 are adding employees to an extra board. In 2023,
17 Union Pacific paid the 149 employees on a supplemental
18 board, on average -- on average, \$51,653 per person.
19 So we paid \$7.6 million of guarantee on those boards.
20 So it's \$51,000 -- almost \$52,000 per person. If you
21 assume the additional employees added to the extra
22 board make the system average guarantee rate in 2023,
23 you see a slightly different guarantee rate here
24 because we were analyzing a 2023 data.

25 If you assume that those employees make

1 the system average annual guarantee of 26,628 people,
2 you reduce that from the 7.6 today, and you get a
3 savings of \$5.5 million. When you add those together
4 between the carrying costs, the foregoing hiring, and
5 the guaranteed savings from paying less guarantee per
6 employee, you get the \$8 million of savings by
7 abolishing supplemental extra Boards.

8 Any questions on that?

9 ARBITRATOR: I do not.

10 THE WITNESS: Okay. All right. In
11 summary, that's the overview of Union Pacific's
12 proposal and the logic we used to develop the estimate
13 that we would need to add approximately 250 people at
14 a cost of \$2.5 million per year, which includes a 5:1
15 work-rest model for the pool and SMART rest for the
16 extra board. This factored in, not only the work-rest
17 models, but also all of the additional scheduling
18 concepts that we believe will provide operational
19 benefits and cost savings in order to make this a
20 win-win deal for everyone.

21 I would close with the following
22 thoughts. First, thank you for your time and letting
23 me explain this today. Second, our analysis does not
24 include the impact of the 24% wage increase provided
25 for by the PEB250. Scheduled rest requires Union

1 Pacific to add cost and head count even though the
2 workload does not change. Even though some of the
3 proposed concepts for changing how employees are
4 scheduled indicates that we can save on head count,
5 that does not mean that we will be furloughing or
6 letting go of employees as a result of this
7 implementation. We will just be able to forego a
8 portion of hiring required to cover scheduled rest.
9 Because of the demands of scheduled rest, we will be
10 adding people to the employee base. And then finally,
11 our intent with this proposal is to identify a win-win
12 solution that the PEB provides for, whereby employees
13 obtain a preferred schedule with more control for
14 their personal lives, and the carrier obtains both
15 operational benefits and cost savings.

16 Thank you for your time.

17 MR. MUNRO: Madam Chair, that concludes
18 today's presentation from the carrier. As I had
19 indicated earlier, and I believe the board recognized,
20 we have one additional witness for our case in chief
21 who is not available today, and we will work with our
22 counterparts on the union side to ensure that that
23 individual can be scheduled in at a time that will
24 work for both sides.

25 ARBITRATOR: Okay.

1 Just for clarification purposes, it
2 sounds like the -- your final witness is more than
3 likely -- or the agreement is that that person will be
4 called after the union puts on their case.

5 MR. MUNRO: I believe his availability
6 would most likely fall after their case in chief
7 tomorrow. Tomorrow afternoon would be the most likely
8 window. But again, I'm happy to negotiate that and
9 see what -- what arrangements we could come to. I
10 will note again that Mr. Branon's testimony is
11 essentially limited to what is incorporated in his
12 declaration and will not be responsive to anything
13 that would be in the union's case. And frankly, he
14 won't be present to hear it anyway.

15 ARBITRATOR: In that regard, we'll be
16 starting with the union tomorrow. And that'll be in
17 your opening statement.

18 MR. EDINGTON: Yes.

19 ARBITRATOR: Okay.

20 Are there any further matters today?

21 Mr. Munro.

22 MR. MUNRO: No, ma'am.

23 MR. EDINGTON: No.

24 ARBITRATOR: Okay. Then we will resume
25 tomorrow.

1 (Brief discussion with the board.)
2 ARBITRATOR: For clarification
3 purposes, we will be starting at 9:00 tomorrow. There
4 will be an executive session at 8:30.
5 (Whereupon, proceedings concluded
6 at 4:40 p.m.)
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C E R T I F I C A T E

I, Macy Thompson, a Court Reporter and a Notary Public within and for the County of Maricopa, State of Arizona, do hereby certify that I caused the proceedings in the above-captioned cause to be reported in verbatim shorthand that the foregoing is a true, complete, and correct transcript of said proceedings as appears from my stenographic notes so taken and transcribed under my personal direction.

I further certify that I am not related by blood or marriage to any of the parties to said suit, nor am I an employee of any of the parties or of their attorneys or agents, nor am I interested in any way, financially or otherwise, in the outcome of said litigation.

IN WITNESS WHEREOF I do hereunto set my hand and affix my notarial seal at Phoenix, Arizona, this 4th day of February, 2025.

MACY THOMPSON

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