

EXHIBIT 11

Arbitration Transcript

Case Number: 1208

Date: January 22, 2025

In the matter of:

UNION PACIFIC v SMART-TD NATIONAL MEDIATION BOARD CASE NO. 1208

ARBITRATION

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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 at the
7 Arbitration before ARBITRATOR EARLENE BAGGET-HAYES,
8 taken in the above-entitled cause before Macy
9 Thompson, a court reporter, on the 22nd day of
10 January, 2025, commencing at the hour of 9:00 a.m.
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1 A P P E A R A N C E S

2 JONES DAY

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1 ARBITRATOR: Good morning. Just by way
2 of review, today we're going to be hearing -- again,
3 my name is Earlene Bagget-Hayes. I don't know if any
4 newcomers are here today or not. I'm the assigned
5 arbitrator.

6 By way of our agenda today, we're going
7 to be hearing from the Organization. They'll be
8 putting on their case in chief; after which, sometime
9 this afternoon I believe we're going to be -- after
10 you complete it, we will hear from a Carrier witness
11 late this afternoon as planned. And outside of that,
12 we will take appropriate breaks as needed.

13 Appropriate is the operative word.

14 So whenever you're ready.

15 MR. EDINGTON: Thank you.

16 Madam Chair, members of the Board, good
17 morning.

18 My name is Luke Edington. I'm general
19 chairman for GC 953 out of Topeka, Kansas. My
20 seniority lies. I started in 1998 up in North Platte,
21 Nebraska. That seniority zone covers all the way to
22 Cheyenne, Wyoming -- and council, plus Iowa,
23 Marysville, Kansas. Throughout my tenure on the road,
24 17 years before becoming a union officer, I worked
25 every part of that. Every pool run, every local, east

1 to west. Seniority permitting, that's how it worked.

2 I got forced around a lot. So I'm very intimate with
3 the details and how these things operate.

4 I do want to introduce also the other
5 members of our bargaining team that are here and our
6 council that's with us. We have Associate General
7 Counsel Sean McKinley, President Jeremy Ferguson,
8 General Counselor -- Counsel Erica Gibbons-Diehl. And
9 we have Scott Chalet, General Chairperson;
10 Todd Campbell, General Chairperson; and Roy Davis,
11 General Chairperson. Those were the GCs that were
12 involved in this as well.

13 On behalf of all of us and the
14 thousands of members that we represent, I want to say
15 thank you for accepting this case. This is a big
16 endeavor. It's complicated and it will have a big
17 impact on these employees' lives. We all know --
18 intimately know how the board's decision will impact
19 their life. We've lived it. And we know how it can
20 change them in the future for those employees.

21 Now, over the course of today, we're
22 going to explain why our proposed remedy would give
23 them an improved quality of life and a well-deserved
24 balance quid pro quo. You know, give the carry the
25 efficiencies that they're desiring.

1 Now, in quality of life, we've got to
2 look at what brought us to this point. You know, poor
3 quality of life, fatigue-related issues. They plagued
4 the industry for decades in the railroad. It wasn't
5 until the previous round of national bargaining that
6 occurred during the pandemic that it was brought to
7 center stage. That round of bargaining was
8 contentious. It exhausted all avenues under the
9 Railway Labor Act going after the
10 Presidential Emergency Board, a tentative agreement
11 that failed ratification, and ultimately being imposed
12 by Congress in Public Law 117216.

13 Now, while this was occurring, the
14 pandemic was still present. Record inflation was
15 going on. And then the Carrier was implementing
16 precision scheduled railroading, which is doing more
17 with less in a more efficient railroad. Now, these
18 all led to manpower shortages. Thousands of employees
19 were cutoff, furloughed; extra boards were continually
20 exhausting causing our pool freight to make up that
21 work in addition to their pool turns.

22 Now, this brought even more attention
23 under the surface transportation work. They wanted to
24 know why supply chain issues were going on. So the
25 quality of life got center stage before the STB as

1 well. That made our employees' cries for time off,
2 that's predictable, even louder.

3 Now, in their submission, Carrier
4 claims or proposal would improve predictability. They
5 do that by shifting the work from the extra boards
6 into pool freight. Well, let's just remember that's
7 exactly what occurred during the pandemic, during the
8 PEB, during the tentative agreement. We don't want to
9 go backwards to that again. Our proposal takes us a
10 step forward, helps reimagine what these assignments
11 could be and how we could finally fix these issues.

12 Now, as we go through this, I want you
13 to be aware that curious analysis, please consider on
14 the financial aspect, please consider that such gains
15 in manpower reduction are undervalued, and they're
16 hidden throughout that proposal. And their analysis
17 was done in a very biased interpretation of the
18 Organization's proposal in an attempt to hide those
19 cases. And we will address that.

20 Now, this Board has the authority to
21 look through all those discrepancies and fix the
22 system that's broken once and for all. Give these
23 employees the quality of life that they sought before
24 the PEB and were given in a public law.

25 Now, throughout this day I'll explain

1 how our proposed remedy, our agreement, would work,
2 how it compares to the carriage proposal through each
3 aspect and how it's a balanced solution.

4 Now, it'll also allow the carry to be
5 competitive, efficient, and have the right size of
6 manpower they need so we don't have those shortages
7 again, their service isn't interrupted, and our people
8 get their time off that they need for their families.

9 So to begin, we're going to start with
10 some information about PEB 250, some of the awards
11 Carrier mentioned. Then I'll start into a general
12 overview of the work/rest models. I'll get into some
13 specific differences in the proposals. Talk about
14 vacancy procedures, comparing the two proposals and
15 how they will actually function in real application.
16 We're going to speak with President Jeremy Ferguson,
17 he'll testify as a witness. He's going to talk about
18 the national negotiations, fatigue-related issues.
19 Then we'll discuss regulation, how the two proposals
20 differ, how they will function as well in real world.
21 Then we'll discuss the quid pro quo data, and we'll
22 have a little presentation on how the Organization
23 compiled this data with Senior Vice General
24 Chairperson Kurt Christensen. We'll talk about what
25 other roads have done. The BNSF NS, they've realized

1 the quid pro quo. We'll discuss those. General
2 Chairperson Roy Davis will speak to those as a
3 witness.

4 And then lastly, we'll close up with
5 the T&P and I-GN properties, similar to what the
6 Carrier had done yesterday. That was the last item
7 they discussed. Charles Piland, Vice General Chairman
8 and General Secretary of this committee will speak to
9 that. So with that, if you're ready, we'll begin.

10 MR. MCKINLEY: Madam Chair, members of
11 the Board, my name is Sean McKinley. I'm
12 Associate General Counsel here at Smart TD, and I just
13 wanted to address an issue before we -- I think we get
14 into the more heavy details of the proposal that I've
15 presented here today.

16 I want to start because this is how we
17 got here is PEB 250. The parties that were
18 unsuccessful in negotiating a national agreement. We
19 went to a presidential emergency board. The PEB
20 issued these recommendations that formed the basis of
21 what was a tentative agreement that was not ratified
22 but was then imposed by Congress and public law -- by
23 public law.

24 And the reason to address this, to kind
25 of set the framework here, is in response -- I

1 shouldn't say in response, but it addresses things
2 mentioned in the Carrier's submission with respect to
3 the quid pro quo that's involved in this case.

4 Now, the Carrier -- I should say for
5 the record, when it comes to PEB 250 like Mr. Munro, I
6 was present; I was counsel for Smart TD during those
7 proceedings; I presented testimony on Drew Ganza
8 before PEB 250. I'm intimately familiar with the
9 submissions and the outcome and all that, just like
10 Mr. Munro is.

11 Now, the issue that comes that I want
12 to address specifically here involves the wage
13 increases that occurred. The Carrier in its opening
14 submission mentions that the 22 percent wage increase
15 that was recommended by PEB 250 that was subsequently
16 enacted by the public law was more than the Carrier
17 proposed, and that the only thing in value of PEB 250
18 that the Carrier received was articles -- a process
19 for Articles 6 and 7. That's in their opening
20 submission on Page 25.

21 Also, in the Carrier submission, they
22 cite two recent awards issued between BLET and ACCP.
23 They were offered by Sidney Moreland. And the
24 important point about those is that the Carrier is --
25 has suggested that this wage increase, which it deems

1 to be very high, was in exchange the quid pro quo for
2 implementation of Articles 5 through 7, specifically 6
3 and 7 with respect to them. That is clearly not the
4 case.

5 If you look at the history of the
6 proposals there, it's the Union proposed a 28 percent
7 wage increase. The Carrier proposed a 16 percent wage
8 increase. PEB 250 landed on 22 percent. It's right
9 in between. That's a classic splitting of the baby
10 when it comes to that.

11 And when it comes to justification for
12 the Union's proposal, it's important to note that as
13 Mr. Edington rephrased, this was during COVID. There
14 was also at the same time record high inflation. The
15 Union did propose 28 percent. The Carrier proposed
16 16 percent, which was significantly even under the
17 rate of inflation. And PEB 250 recognized these
18 factors and issued the recommendation they did at
19 22 percent. But this was not in exchange for anything
20 else, as far as the recommendations of PEB 250.

21 Next slide.

22 The quid pro quo that we're talking
23 about here, and that phrase is thrown about a lot. It
24 was thrown about a lot yesterday, it'll be thrown
25 about a lot today. But the quid pro quo that exists

1 is within Articles 5 through 7.

2 Article 5, you know, relates to a
3 work/rest cycle that was proposed by the Organization,
4 specifically Smart TD and BLET who are the ones who
5 are most affected by high volume, working more.
6 They're the employees that operate on a train crew.

7 Now, 6 and 7 are obviously the
8 proposals. The pool regulation, extra boards,
9 operational efficiencies of the Carrier seeking. The
10 quid pro quo that exists, it was stated by PEB 250
11 that these topics are all directly heavily related.
12 They are -- they touch on a lot of the same subjects,
13 though, sometimes there is a tension between them when
14 you're talking about time off versus operational
15 efficiency; you know, you have to draw a line there of
16 how that actually works. But the issues in dispute
17 are related to each other.

18 And importantly, PEB 250 did not make
19 any statement whatsoever that it was recommending the
20 adoption of any of these proposals. It said, go
21 bargain and then you can arbitrate it. And I wanted
22 to emphasize that, that PEB 250, they didn't just not
23 say that they were recommending. They came directly
24 out and explicitly said, we have no opinion on what an
25 agreement should look like. So that's the bounds that

1 this Board is working under.

2 Next Slide. Oh, no; we're right there.

3 So to the extent the Carrier is trying

4 to tie wage increases by mentioning it in their

5 submission and citing through other awards that

6 discuss wage increases in exchange for Article 6 and

7 7, that's simply not reality. This is contained

8 explicitly in PEB 250; You can read the

9 recommendations. We also cite to that in our

10 submission and rebuttal. And that's important to note

11 here as we move forward.

12 The task here for this Board is to

13 examine these interrelated issues and come to an

14 agreement that takes into account the substance of

15 Articles 5, 6, and 7, and reaches what is an equitable

16 overall quid pro quo. It's not an exchange of one

17 thing for another or something like that. It's

18 important to examine the whole as we move forward

19 here. And the Union's proposals today that you'll

20 hear from Mr. Edington and our witnesses will

21 emphasize that and explain in clarity why the Union's

22 proposals I think best achieve the result that was

23 envisioned by PEB 250.

24 And with that, I will turn things back

25 over to Mr. Edington, unless there are any questions.

1 Thank you.

2 MR. EDINGTON: Okay. We're going to
3 jump into this. And I've got to build in for brakes.
4 We shouldn't go more -- at any time more than about an
5 hour 20. Some breaks might be at 45 minutes. So I do
6 have brakes built in throughout on a regular basis.

7 ARBITRATOR: I'm sorry. You do have
8 breaks built in?

9 MR. EDINGTON: Yes, I do.

10 ARBITRATOR: Okay. Fine.

11 MR. EDINGTON: Yep. So I'll make sure
12 that we hit those.

13 Smart TD WordPress models for pool
14 freight. What do they provide?

15 So the pools, Smart TD presented
16 several different options for pools to choose from.
17 Now, the 4 in 1, 5 and 1 model is a default. The pool
18 freight out there varies in line. We have the longer
19 run pools. When we talk about the consistency in
20 which they work, you acquire the same number of miles
21 in a long pool versus a short pool. Long pools, they
22 obviously accumulate those miles quicker because they
23 may be running 300 miles at a time versus a short pool
24 that only collects them 130 miles at a time. So
25 there's natural time off in between.

1 So we looked at those pools and
2 thought, let's create models that will fit in with the
3 time off. That pool can select the time off they
4 already acquired. It really doesn't add to days off
5 in the pool, because they already get these natural
6 days off; they're just unpredictable as to when they
7 can observe them. So it's very important for our
8 members that we represent, they make their money.
9 They want to be able to have those trips there. So
10 when it comes to selecting the proper work cycle,
11 they're going to fit one that allows them to get the
12 starts that are in the regulation table they want.

13 MR. MUNRO: Ms. Arbitrator, I
14 apologize. I'm sorry to interrupt, Mr. Edington, but
15 I'm not clear on whether this is testimony now;
16 because if it is, I would just request that the
17 witness be sworn as we did yesterday.

18 ARBITRATOR: What is your question?

19 MR. MUNRO: I was just asking if this
20 is testimony? If it is, I would just request that the
21 witness be sworn. But if it's not, that's fine. I
22 just wasn't sure whether you're testifying now or not.

23 ARBITRATOR: Well, I believe that we
24 are accepting narrative testimony as well as your
25 regular Q and A.

1 Is this testimony?

2 MR. EDINGTON: It's just narrative of
3 what we posed. I don't have a problem swearing in. I
4 really don't.

5 (Witness sworn.)

6 MR. EDINGTON: All right. So there is
7 a difference between the length of pools and what rest
8 cycle would be appropriate for that pool. That's why
9 it was presented in the way it was.

10 Now, increased availability. What
11 occurs in a lot of these pools, if you want to
12 increase the availability, you've got to let them know
13 they can take time off. Most of the unplanned
14 vacancies that occur today are because employees can't
15 determine when they will be off. So they end up
16 taking the non-comp, a paid sick day. They use those
17 to acquire days off. That's why scheduled days off
18 are so important to them, so they can actually plan a
19 doctor's visit, or maybe they need a meeting at the
20 school so they gotta be off. But the way the board is
21 working, they're gonna miss that. So they have to
22 call in sick or take a personal day or vacation to be
23 home that day to attend that appointment. So if you
24 can give them planned days where they can plan ahead,
25 you'll eliminate a lot of that unpredictability,

1 unplanned layoffs, which also reduce vacancies in the
2 pool. So it also increases an improved -- or it also
3 gives an improved quality of life. All those things
4 together give them improved quality of life.

5 Carrier's proposal creates
6 unpredictable work/rest schedule. Why does it do
7 that?

8 So in Carrier's proposal, they said
9 they want to take the work that an extra board
10 performs and shift it into the pool. So that pool --
11 and we'll get into this in later slides; I'll show you
12 examples of that in a hypothetical scenario of an
13 employee's work schedule under each proposal.

14 But when they shift that work into the
15 pool, now the unpredictability is with -- and they
16 don't know if they're going to be called for irregular
17 service; they may have them home that night or they'll
18 be going out of town. They don't know are they going
19 to be able to make their rest day, or will they be
20 called out of town again prior to their rest day being
21 observed. That one-size-fits-all approach just
22 doesn't work. It will also drive up the amount of
23 work that the longer pools currently perform.

24 The extra ports. Smart proposed 5 and
25 2 voluntary model. Now, employees, they work very

1 erratic schedules on that export. Irregular service,
2 you don't know if you can't claim for it, you don't
3 know when it's going to occur. The hours of service
4 relief, you don't know what those are day to day. You
5 may have a day with multiple hours of service relief
6 that is called, a day with none. You may have --

7 MR. MCKINLEY: What do you mean by
8 hours of service relief?

9 MR. EDINGTON: So let me clarify.
10 Thank you, Sean.

11 Hours of service relief, that's when a
12 pool train, so they go from point A to point B. You
13 have your home terminal, you're away-from-home
14 terminal. Let's say an away-from-home terminal crew
15 is called at 8:00 in the morning. They get halfway
16 through their trip and it's 8 o'clock at night. You
17 know, there's track issues going on, there's traffic,
18 there's maybe a locomotive issue. Multiple things
19 occur. It's rare. There's numerous pieces of
20 equipment moving together. Things break down, right?
21 So they run out of time. They can only work 12 hours.

22 So you gotta call a crew. Sometimes
23 it's called a patch crew, sometimes it's called a dog
24 catch crew. You call a relief crew, essentially is
25 what they are, hours of service relief. They go out,

1 get on that train. The crew that's expired, dead on
2 their hours of service, then gets off, they get in a
3 van; they go back to their home terminal, tie up, hit
4 the bottom of the board, tie up to end their day.

5 And then that patch crew, they're
6 beginning their 12 hour shift, they'll resume the rest
7 of that, take it on into the home terminal. So those
8 things vary; you just never know what's occurring in
9 traffic each day. Weather has a big impact on this,
10 tends to even blow through a board really quick on
11 that as well. So all those things are impacted,
12 right. So these extra boards, we want to give them
13 some predictable dates.

14 So a 5 and 2 model makes sense, because
15 unless a pool is exhausted for a rare event, they're
16 going to be in town every day. They're going to be
17 able to plan those, know that they have two days off
18 every week if they want to observe them. It provides
19 predictability of those days off. It rewards
20 employees for outstanding attendance. Those employees
21 who don't want to observe their rest days and just
22 stay available for Carrier seven days a week, they get
23 a bonus day. Hey, I'm going to forego my rest days
24 and just remain available for you; you're going to
25 give them something for that. That reduces. You got

1 a board of guys who want that money, they want that
2 bonus day. I mean, they've got families too so they
3 want that money. A lot of them will not observe that
4 rest day because they don't want to lose that bonus
5 day. So it rewards that behavior instead of punitive,
6 and it provides consideration for life events. Our
7 proposal allows for one non-comp layoff up to 48 hours
8 without forfeiting a guarantee, which is important
9 because life does happen. You may be at work and get
10 a call that your wife got in a car wreck and you gotta
11 leave. Well, under the current rules, that's shown as
12 a laying off at work and you would forfeit your
13 guarantee for that.

14 In this instance, we account for those
15 days, but it's also pretty strict. Those employees
16 with a compressed guarantee, which does not increase
17 the guaranteed amount, it just takes the current
18 amount, compresses it into 11 days. That would be the
19 working days they'd have in a pay period. If they do
20 layoff, they're going to lose 1/11th of their pay. So
21 that's a pretty big deterrent to lose 1/11th of your
22 pay every time you take off. That's a lot of money on
23 these extra boards.

24 Any questions elsewhere?

25 ARBITRATOR: No. I'll interrupt when I

1 have a question.

2 MR. EDINGTON: Thank you.

3 ARBITRATOR: Thank you.

4 MR. EDINGTON: Carriage proposed

5 work/rest model on exports, this is interesting

6 because Carriage posted a smart rest as -- alluding to

7 it being a voluntary rest day scenario, when in

8 reality it is not. It is a mandatory system. An

9 employee gets five consecutive starts. Under their

10 proposal, they will be forced to take 24 hours off.

11 Now, when will those five starts occur?

12 They have to be five consecutive, meaning that you

13 don't have a break of more than 24 hours between each

14 time you're called to work. You go one day throughout

15 the middle of your week, you're not going to get

16 Monday, Tuesday I work consecutive; I'm off Wednesday;

17 Thursday, Friday I start over another one, two, three,

18 four, five.

19 Now, if there's consistent breaks in

20 there, when do you have a predictable day off you can

21 observe? There is none. But if you do hit it, you

22 are required to take that day off. And I'll get into

23 the mandatory and voluntary.

24 Their pay provisions. Now, their pay

25 provisions for these extra boards are very similar to

1 the pay provisions under guaranteed pools as well.
2 They want to propose -- or they have proposed that
3 they'd like to implement, is that if you have any
4 non-comp layoff, you forfeit all your guarantee, which
5 doesn't account for those life events that do happen.
6 Very, very punitive toward employees.

7 Now, I'll paint you a picture of what
8 each board will look like underneath each proposal and
9 the efficiencies of care you'll gain, And I'll show
10 why the Organization's is fair and equal.

11 First, we're going to get off on this
12 mandatory versus voluntary. Scheduled days off.
13 Let's see what the public law says. Article 5, pretty
14 simple. It says, Any general committee seeking to
15 establish rules creating voluntary assigned days off
16 and through freight road service shall serve a written
17 notice.

18 It goes on to say, To establish
19 voluntary assigned days off agreement rules.

20 Now, Like I said, theirs is mandatory
21 on the extra boards, and that is strictly prohibited
22 in the public law. Let's get into Q and A's because
23 that's where it's really addressed.

24 MR. MCKINLEY: Luke, what are Q&As?

25 MR. EDINGTON: Questions and answers in

1 the public law. These are points of clarification
2 that the parties agreed to, to clarify the specific
3 articles and provisions contained therein. So they're
4 at the back of the public law.

5 So it asks, first off, May a general
6 committee proposal include multiple versions of
7 voluntary days off rather than a single system?

8 Carrier proposed single system. We
9 propose multiple. Is that allowed? Yeah. General
10 committees may serve notice proposing such agreements
11 which would then be subject on property bargaining,
12 ramification or binding arbitration provisions.

13 What it does not say is that the board
14 is prohibited from adopting the Organization's
15 proposal on any of those. So it is allowed if the
16 Board sees fit and the Organization's proposal proper.
17 Let's get a little bit further into this.

18 What about when agreements are reached
19 pursuant to Article 5; will rest dates be mandatory or
20 optional? Good question.

21 Well, it says that when voluntary rest
22 dates are included in agreement reached, an agreement
23 reached under Article 5, observing the terms of rest
24 days is subject to the voluntary bargaining process,
25 right. So the parties can mutually agree to do so.

1 Now, if they bring the results from
2 interest arbitration, what we're here today, the
3 parties, meaning Carrier and the Organization, agree
4 that Article 5 does not permit an arbitrator to impose
5 mandatory days off. Strictly prohibited. Carrier
6 wanting to combine irregular service into pool
7 freight. What's the intent in the public law? We're
8 going to get into the questions and answers on that.
9 This is more the nuts and bolts of the two proposals.

10 So Carrier's desire to eliminate extra
11 boards for the efficiency savings by shifting all the
12 work from the extra board, would then result in the
13 elimination of those boards. If there's no work left
14 for them, they're not going to need them and they're
15 going to eliminate them. That's a way to do it.
16 That's the tactic that they have chosen.

17 Now, what does the question and answer
18 say? Is the intent of Article 6 to eliminate extra
19 boards?

20 No. No, it's not. So it's talking
21 about abolishing and establishing extra boards. Is
22 the intent of abolishing extra boards eliminating
23 them? No.

24 The only thing Carrier gained, if you
25 look at the next slide, 13, public law, Art. 7, what

1 did they gain in the pools for protecting vacancies?

2 Well, it says that pool vacancies are
3 primarily protected within the pool.

4 It Begs the question: What is a pool
5 vacancy?

6 Well, that's when vacancies only occur
7 when someone on a regular assignment is not available.
8 So if an employee is on vacation, personal leave; laid
9 off, non-comp, that is now a vacancy within that pool
10 that must be filled. So instead of the prior system,
11 under self-supporting, the prior system where an extra
12 board fills that slot, we call them, on a pool, fills
13 that turn, takes it out of town and comes back;
14 instead of that extra board person doing it, it's
15 going to be another pool freight an employee. So it's
16 just all protected within the pools; thus the term,
17 self-support. It's all baked into the language.
18 Let's look at the other side.

19 If extra boards can't be eliminated
20 under the public law, then how can the proof rate
21 employees be used under public law?

22 Well, question and answer, number two
23 prior to seven.

24 Where a self-supporting pool is
25 implemented pursuant to Article 7, will employees on

1 those assignments be expected to protect assignments
2 outside of that self-supporting pool?

3 Remember that; irregular service is
4 always protected under current rules for decades by
5 the protecting extra boards. No. Except, except in
6 the normal course of vacancy procedures running,
7 calling decisions as authorized by existing
8 agreements. Not new agreements, existing agreements.
9 Or what's the last? Mutual agreement. There's no
10 mutual agreement. So to get a little bit on the
11 uncertainty on extra boards.

12 Talk about why is an extra board
13 guaranteed? Because we're talking a lot about
14 guarantee, I thought it might be helpful to understand
15 why they're guaranteed. I hope.

16 Okay. Carrier's opening submission. I
17 felt that they laid this out quite well. They said
18 the issue on extra boards is not so much a lack of
19 adequate rest -- don't agree with that so much -- but
20 the lack of certainty. The nature of extra board
21 service is inherently unpredictable, and some
22 employees do not know in advance whether they will be
23 working a lot or not at all.

24 So when you have -- what they're saying
25 is when you have big fluctuations in work, you may go

1 gangbusters for a week and then have the next three,
2 four days where everything is running smooth again and
3 the board just sits almost idle. Very few people are
4 used. Happens a lot. So that's why it's guaranteed.
5 There's no consistent earnings throughout a pay period
6 for these employees so they guarantee to make sure
7 they have their money and remain available.

8 So taking pool freight vacancies out of
9 that equation does reduce some of that
10 unpredictability. It does help, because they won't be
11 spending nights out of town. It'll just be constant
12 in-town work. So let's look at the agreements prior
13 to this. What did Carrier gain then through Article 6
14 and 7? Truly with the extra boards, what did they
15 gain?

16 So prior agreements -- this is Smart TD
17 Exhibit 44. Prior agreements require that it
18 establish combination exports. And this is just a
19 couple examples. They had to be done through mutual
20 consent of the parties. Well, now they can go and
21 establish extra boards if they want to without mutual
22 consent. And we're excluding the T&P and I-GN, that's
23 a separate dispute just so you know.

24 This provision really under Article 6,
25 7, that really enables Carrier to right size where

1 their extra boards are at. When you implement
2 self-supporting pools, your needs for that extra board
3 may change at a location. So you may need to change
4 an extra board from this starting point to this
5 starting point, because it protected pool service from
6 here and a regular service that's primarily over here.
7 So maybe you need to do some minor shifting at
8 locations. That's what this allows for. That work
9 still has to be protected, the irregular service by
10 the extra boards. Let me get into the vacancy
11 procedures now. Currently on these extra boards, how
12 are vacancy procedures handled?

13 There's a vacancy. It goes from
14 protecting extra board -- I'm sorry. I'm on pool
15 freight. It goes from protecting extra board first.
16 There's vacancy pool freight, it goes protecting extra
17 board, and then it goes to various local agreements.
18 And it does vary across the UP system. We provided
19 some examples of those in our exhibits just to show
20 you how much of it is. So when you go through and
21 simplify this and make it all one, that's a huge, huge
22 gain for Carrier when it comes to administering these
23 boards.

24 Under the two different proposals, how
25 these proposed pool break vacancy procedures look,

1 well, both sides protect within the pool
2 self-supporting. We agree on that. It's going to be
3 protected within the pool. We acknowledge Carrier has
4 it right. It's just how is it administered after
5 that? We say made up terms. Smart TD has made up
6 term with protecting export employee. So if there's
7 no employees available in that pool to cover that
8 vacancy, it's saying it's exhausted. You'll use a
9 made up term. The extra board is still there for
10 those situations.

11 And then your next step is a pool
12 employee from a different pool in that same location.
13 A lot of terminals. Most terminals around here have
14 more than one pool. So it only makes sense that if an
15 extra board is not available, you use another pool
16 freight employee because that would comply and you're
17 protecting your pool freight within the pool. Makes
18 sense, because it applies with the Article Cares
19 proposal. They want to protect within the pool. Then
20 they want to go to a made up term, protected by, I
21 don't know, assigned or unassigned service. Who's
22 that? If that's not the extra board, is it taking
23 someone off a regular job who has regular days off and
24 saying you're going to go out of town now; I know you
25 work Monday through Friday on this local, but you're

1 going to go out of town now and protect this job.

2 That creates uncertainty for these
3 locals assignments. What quality of life do they have
4 now that we're disrupting other assignments to fill
5 this vacancy? They're not used to that roadwork. So
6 why would we cause more churn and turbulence?

7 And if there's no one available then,
8 who do we go to? Any qualified employees, which
9 includes managers. And I will get into that at the
10 end.

11 Current and regular service vacancy
12 procedures.

13 MR. MCKINLEY: Luke, what's irregular
14 service?

15 MR. EDINGTON: Irregular service. So
16 vacancies on -- like we have the hours for service
17 relief I talked about. Then we have a lot of areas
18 where there's green facilities, ethenol facilities
19 that are outside of the terminal. The switchyard
20 that's handled by road crews, they'll take whole
21 trains at a time. And so when they release those
22 trains, they'll typically call what we call short
23 turnaround crew. It's exactly what the name says,
24 it's called to go out short distance, pick up a train,
25 do some specific work at a facility and come back.

1 Pretty short turnaround service. That handles
2 multiple things.

3 Work train service, irregular work
4 train service is in there, And protecting different
5 local assignments for that protecting export as well.
6 They cover vacancies on those. So it's a plethora of
7 things in regular services.

8 So current vacancy procedures are
9 protecting export. Makes sense. That's what they get
10 their guarantee for, followed by where they do exist,
11 the supplemental boards, and then by just various
12 local agreements. It really varies across the Carrier
13 system.

14 Now, the proposed irregular service
15 vacancy procedures, Smart TD protecting road extra
16 board, keep that work in the extra board. Because
17 it's so up and down, you don't need to introduce that
18 uncertainty to the pools. It's not allowed, for one,
19 under public law, but it would just cause a constant
20 churn if you did. But let's keep it in the protecting
21 road extra board, followed by the yard extra board
22 list for supplemental work. They're an extra board as
23 well. Use extra boards first, and then the yard extra
24 board. So we're going to hit the people in the yard
25 that want to work extra off that extra board and

1 signed up for it. If there's nobody signed up, you're
2 going to use the yard extra board. That's one thing
3 that we proposed on the vacancy procedures. The
4 Organization gave them broader use of their yard extra
5 boards to cover road service, which they didn't have
6 before, or their road boards to cover yard service.
7 They did not have that before. There's a demarcation.
8 There are boards that exist on Carrier's property that
9 do cover both. They pay a higher guarantee. So
10 typically Carrier will have those separated at many
11 locations and have what we call an extra switchman's
12 board. A yard board pays a lot lower rate of pay.
13 It's based off yard days of pay. And the road
14 guarantee, which covers road work, those kind of
15 hybrid extra boards that we have, they can do both.
16 They can do road and yard. But at many locations it's
17 separated. Where they're separated and they want to
18 keep them separated, we're saying the two will cross
19 protect each other. Ensures the service is protected.
20 So pretty simple process. Keeps it all within the
21 extra boards. Doesn't disrupt any assignments. Let's
22 look at what Carrier proposes.
23 Pool freight. Irregular service goes
24 to pool freight. So in addition to the starts,
25 they're going to be grabbing, going out of town. Now

1 they've got to protect all this irregular service.
2 They don't know when it's going to occur, how often,
3 if it's going to mess up their rest days, their
4 vacation days they have planned. What's after that?
5 Yard crews.

6 Yard crews then an extra board? If
7 it's not abolished at that location. Local service.
8 And none of these were any specific order; they just
9 had them listed straight out. They didn't have a one,
10 two, three order like the Organization. And then
11 after that, again, we're just going to go to any
12 qualified employee they can find.

13 MR. MCKINLEY: Luke, when we talk about
14 irregular service and pool freight, what does that do
15 to a freight pool when they're required to pick up a
16 regular service?

17 MR. EDINGTON: Well, it disrupts their
18 home time, for one. And those starts -- I'm going to
19 get into a lot of that with the regulation piece on
20 how it's really going to affect their pay and their
21 time at home, and I've got some nice examples of a
22 calendar to show that. Because if an employee in pool
23 freight, when they work that irregular under Carrier's
24 proposal, they go first out. As soon as they get done
25 with that irregular service, they're placed at the top

1 of the board and they're going to be called right
2 after their ten hours rest to go right back to work
3 again. So if they get another irregular service job,
4 got unlucky, they can just work those just over and
5 over and over again until maybe they hit that rest.

6 Current yard service vacancy
7 procedures. Now, this one was one when we looked at
8 it, and we looked at the various agreements that are
9 out there, the Organization wanted to propose
10 something to help the Carrier streamline this. This
11 is a give on our part to make this process easier.

12 Protecting the extra board first.
13 You've got a vacancy and yard service fee, you call
14 the extra board. After that, yard employees on rest
15 days. After that, various local agreements. This is
16 the current process. So they vary across the system,
17 it just depends where you're at. How do we get rid of
18 those various agreements? Well, let's look at what
19 Smart TD proposed.

20 Yard extra board will be the first
21 step. And then we go to the regularly signed yard
22 employees on rest days that have a request for extra
23 work. Because there's employees that they want to
24 work extra. They want to pick up that time and a half
25 they get on working their rest days. So they'll put

1 their name on the list to be called. Makes sense to
2 use the people who want to be called if the extra
3 board is exhausted.

4 After that, like I said, cross
5 protecting of the two boards. You can use the road
6 extra board. And that's the supplemental work -- just
7 for the supplemental work where applicable where they
8 have their request. Now, if you don't have it where
9 they can request, you just go right to the road extra
10 board. So keep it all within the road extra board.
11 Don't disrupt other assignments. Don't disrupt pools,
12 locals, anything else. Keep it simple. The KISS
13 method. Carrier, how do we do it?

14 Well, they use a net and yard edge for
15 if it's not abolished. Yard employees on rest days
16 don't know if they have to have their bid in or not or
17 they'll just call them, the junior employee in yard
18 service who may be on an assigned job. So you're
19 going to take him up his assigned job and create
20 another vacancy. And if there's none of them, that
21 person's already working. You have nobody you call,
22 any qualified employee, including management. So
23 let's get into the any qualified employee. Is that
24 allowed? If they desire to use a Carrier officer to
25 fill a vacancy, why can't they do that? Say,

1 Mr. Edington, why is that prohibited?

2 Let's take a look. 1984 Crew Consist

3 Agreement, Exhibit 46, Section 4.

4 No Carrier supervisor official

5 non-craft employees, including yardmasters, shall be

6 used as a plan or substitute in the exclusive work of

7 any trained or yard crew working under UTU, which is

8 now Smart CMT agreements.

9 So any of our people working, you can't

10 use any management or anybody else to perform our

11 work. It's very exclusive to us.

12 You say, well, did the crew consist

13 change? Is this still here? Did the Carriers seek

14 that at PEB? Yes, they did. They did seek changes

15 before the PEB Board, right. What did the Board say

16 on that?

17 Exhibit 14, Page 43.

18 Board recommends that the Carriers

19 withdraw their proposal with respect to crew consist.

20 They were not going to touch it. So

21 those agreements remained intact in this regard.

22 I'm up to a break, unless you have any

23 questions.

24 ARBITRATOR: I do not.

25 MR. EDINGTON: Okay.

1 ARBITRATOR: Let's take ten minutes.
2 (Whereupon, a break was taken at 9:44
3 a.m.)
4 (On the record at 9:55 a.m.)
5 ARBITRATOR: So the question was asked,
6 am I having difficulty hearing? I am not.
7 Is anyone having difficulty hearing?
8 Fine.
9 MR. EDINGTON: Next up, President --
10 Smart Transportation Division President,
11 Jeremy Ferguson. We'd like to swear him in.
12 ARBITRATOR: Absolutely.
13 THE WITNESS: Good morning.
14 (Witness sworn.)
15 BY MR. EDINGTON:
16 Q. Mr. Ferguson, can you state your name
17 for the record?
18 A. Yes. Jeremy Ferguson. J-E-R-E-M-Y,
19 F-E-R-G-U-S-O-N.
20 Q. Current employer?
21 A. I am the president of
22 Smart Transportation Division. So Smart Union would
23 be my employer currently.
24 Q. Prior to TD president, did you hold any
25 other union offices?

1 A. Yes. I've held a variety from the
2 local level. Local chairman, general committee,
3 various positions there. Vice president for the
4 international and now my current position.

5 Q. Prior to that, were you employed by
6 Bayer Air?

7 A. Yes. I hold seniority as a conductor
8 and as an engineer for CSX Transportation. And I
9 operated for approximately 17 years, predominantly or
10 mostly as an engineer.

11 Q. What does the president of
12 Smart Transportation do?

13 A. Well, I'm the -- mainly the chief
14 negotiator for two separate agreements at the national
15 level, along with handling the financial
16 responsibilities and the -- the other responsibilities
17 of an international union.

18 Q. As part of those duties, what was your
19 role in 2019, national negotiations?

20 A. I was the chief negotiator for the
21 union for, like I said, two separate agreements. One
22 would be for the trainman craft and the other would be
23 for our yardmaster crafts.

24 Q. What was the result of those
25 negotiations for the trainmen?

1 A. Well, for the trainmen, obviously, the
2 final act was Congress and the President of the
3 United States imposing the recommendations of PEB 250
4 as modified by the negotiations of the Organization
5 and the Carriers.

6 Q. Are you familiar with the
7 recommendations of PEB 250 then?

8 A. More than I ever cared to be.

9 Q. Okay. What happened after the
10 recommendation came out? Can you explain that process
11 just a little bit more?

12 A. Yes. The initial recommendation came
13 out from the PEB, which of course started a, you know,
14 30-day period. So we attempted to sit down and come
15 to a number of resolutions based on those
16 recommendations. It became very difficult to do so
17 with the other side. So the final hours before we
18 were going to call for a strike action, we were
19 summoned to the Department of Labor in Washington,
20 D.C. we were basically locked in. And Secretary of
21 Labor, Marty Walsh, his assistant, Julie Hsu; there
22 was a number of others at play that we finally worked
23 out an amicable, tentative agreement that could be put
24 out for ratification, and that included, you know,
25 getting our Q&As and everything else done.

1 And then subsequently after that,
2 though, the trainmen failed ratification. Now, the
3 BLE was there with us. They passed theirs. Our
4 yardmasters, they passed theirs. So it was
5 interesting events that took place.

6 Q. So the Q and As, you said that those
7 were worked out between the parties?

8 A. Yes. As you're well aware of, Luke,
9 the Q and As, they're a requirement of our union's
10 constitution. They have been historically through our
11 predecessor unions. We've always done an extensive
12 Q and A process with any national agreement. And we
13 did so here, because we did have a tentative agreement
14 that was a result of PEB. So the BLE was present with
15 us there, the engineers' union. And so we worked
16 collectively with carriers and the BLE to get all
17 these Q and As done quickly and move it out for
18 ratification.

19 Q. So the Q and As that are included in
20 this public law, those were over Articles 5, 6 and 7?
21 Those were what was worked out in that tentative
22 agreement?

23 A. You are correct.

24 Q. Okay. So after the voluntary agreement
25 failed ratification, you said it was enacted by

1 Congress?

2 Okay. In your opinion, what did
3 PEB 250 mean when it stated Articles 5 through 7 would
4 be a win-win?

5 A. I never heard the -- or I never seen
6 the PEB, the Board itself, state that was a win-win.
7 That is a quote the PEB used of what the Carrier
8 stated, if I'm correct.

9 Q. Yeah. Do you recall the wage increase
10 proposal that was made by the Organization?

11 A. Which one would you like, Luke? Would
12 we like to go back to our negotiations before we
13 started mediation, or --

14 Q. Let's talk about PEB 250, what we
15 present to PEB 250 for wage proposal.

16 A. Us?

17 Q. Yes.

18 A. Approximately 28.

19 Q. Twenty-eight percent?

20 A. Twenty-eight percent, yes.

21 Q. The Carrier's proposed 16 percent; Is
22 that correct?

23 A. Yes. That is correct.

24 Q. And then ultimately the Board
25 recommended 22 percent?

1 A. Correct.

2 Q. Kind of a splitting of the baby, so to
3 speak?

4 A. I would say so. I think it was based
5 on fact, though. If we go pull the minutes of the PEB
6 hearing, there was at least a good day, day and a half
7 of, you know, testimony that was garnered on the
8 inflationary rates, GDP, cost of living, so on and so
9 forth. Economists for both sides went back and forth.
10 I think, you know, PEB did a good job
11 in grounding their decision based on the economic
12 conditions of the country and where we were as a whole
13 for all of rail labor.

14 Q. Moving to quid pro quo.
15 Are you familiar with the quid pro quo?

16 A. Yes.

17 Q. Okay. Was the wage recommendation of
18 22 percent in PEB 250, was that part of the quid pro
19 quo for six and seven, Article 6 and 7? Are they tied
20 together?

21 A. Absolutely not.

22 Q. Is a quid pro quo contained within 5, 6
23 and 7 by itself?

24 A. No.

25 Can I ask a question?

1 Where was the idea that the quid pro
2 quo was involved in a 22 percent pay increase?

3 Q. It was suggested Carrier's submission
4 that it was part of it.

5 A. Okay. For the record, I would like to
6 state that there was 11 unions involved in this PEB as
7 a coalition which covered 12 crafts, all of which
8 received a 22 percent compounded to 24 percent pay
9 increase, and most of the other unions had no work
10 rule changes; meaning, they did not have an Article 5,
11 6, and 7 contained within their agreements or their
12 awards from the PEB. 5, 6, and 7 was strictly
13 training engine service. And our yardmasters, which
14 I'm signatory to, they had no work rule changes and
15 they got the same pay increase that we did for
16 transfers.

17 Q. It was even across the board?

18 A. Even across the board, absolutely.

19 Q. All right. Let me move on to
20 Union Pacific and BNSF. Are you familiar? Was BNSF
21 party to Public Law 117 and the PEB?

22 A. Yes.

23 Q. Yes? Okay.

24 Are you familiar with BNSF operations.

25 A. Absolutely. It was probably the BNSF

1 that got us into the PEB to start with, so...

2 ARBITRATOR: I'm sorry. That did what?

3 THE WITNESS: It was probably the BNSF

4 that got us started into the PEB process, because

5 of -- if you'd like the short history, I'd like to

6 give it. It's an interesting story.

7 ARBITRATOR: Brief history, yes.

8 THE WITNESS: Brief history.

9 We were going into San Diego,

10 California for basically our first time in person,

11 negotiations following COVID. And 72 hours before we

12 got there, after we had been working on some work rule

13 changes, some of the issues about quality of life,

14 back and forth, the BNSF rolled out a new attendance

15 policy. And it was, we'll call it, draconian,

16 basically saying, too bad you don't have any rest

17 days, but now you gotta stay marked up 29 out of

18 30 days a month. You're getting no time off. So

19 we're gonna go, you know, down the precision scheduled

20 railroad theme of more with less.

21 So that's what happened right before we

22 got in as a coalition, meaning all the unions

23 basically were there. That hit the table, and we had

24 serious heartburn about that. And then that coincided

25 with the very small wage increase that they proposed

1 at the negotiating table, and we filed for mediation

2 within hours of arriving in San Diego and sitting

3 down. So it was a -- it was -- I'll leave it at that.

4 It was difficult times.

5 BY MR. EDINGTON:

6 Q. So is BNSF, are they a direct

7 competitor with UP?

8 A. Yes, they are.

9 Q. Cover the same territory? Operate in
10 the same areas across the US? Same customer base,
11 essentially?

12 A. Basically, yes.

13 Q. Okay. Did PEB 250, did that favor any
14 one union over the other when it came to Articles 5,
15 6, and 7?

16 A. Any one union or --

17 Q. Yeah.

18 A. -- or anyone --

19 Q. That was party to it.

20 A. No.

21 Q. No.

22 A. But there was only two unions that had
23 5, 6, 7.

24 Q. Yeah. Did it favor any one Carrier --

25 A. No.

1 Q. -- PEB 250? No?

2 A. Absolutely not.

3 Q. So both sides were treated equally in

4 that respect?

5 A. Yes.

6 Q. Okay. If UP was -- have you seen UP's

7 proposal presented here?

8 A. Yes.

9 Q. Now, in their proposal, do you feel

10 that if they obtained that it would give them a

11 distinct competitive advantage over BNSF with manpower

12 efficiencies?

13 A. It'd be my opinion it probably would,

14 yes.

15 Q. So you testified earlier you're

16 involved with the PEB process and you're familiar with

17 the recommendations, correct?

18 A. Yes.

19 Q. Okay. Are you familiar with their

20 proposal? I ask you that, but how about just

21 specifically in the respect of combining your pool

22 freight in a regular service? The work the extra

23 board does, moving it to pool freight; you're familiar

24 with that proposal?

25 A. Yes.

1 Q. How would you describe irregular
2 service as it's handled across the railroads?

3 A. Irregular would be the key word,
4 meaning there's no predictable schedule to it.
5 There's no way to predict your rest as a trainman or
6 engineer; meaning, when you go to bed, when the
7 phone's going to ring, you're on a two-hour call. So
8 it's -- you're at the whim of the railroad or the
9 customer when they're going to need a train moved or
10 something's going to go down. So there is no
11 predictability; hence, irregular.

12 Q. So employees, the extra boards protect
13 that irregular service?

14 A. Yes.

15 Q. So is it difficult for them to plan for
16 anything then if they're waiting for a call?

17 A. Absolutely.

18 Q. So if they're sitting on an extra
19 board -- let's say hypothetically they're on an extra
20 board first out, does that employee have any idea when
21 they're going to go to work?

22 A. No. Usually they don't, unless they
23 get a lineup from a chief dispatcher or a yardmaster,
24 somebody that's got inside knowledge or a
25 computer-based system.

1 But, yeah, I worked the extra board for
2 15 years; I'm very familiar.

3 Q. Did you miss a lot of your kid's
4 events?

5 A. Absolutely.

6 Q. Doctor's appointments?

7 A. Absolutely.

8 Q. Were you able to plan your rest
9 accordingly properly?

10 A. Not all the time.

11 Q. So predictability would be good on that
12 extra port --

13 A. Yes.

14 Q. -- knowing when you have days off?

15 A. Yes. That was the whole intent of what
16 we argued for with Article 5 is the ability to have
17 scheduled days off, predictability.

18 Q. What about pool freight? Are you
19 familiar with pool freight?

20 A. Yes.

21 Q. Okay. Did the PEB recommendation or
22 the public law include anything about shifting your
23 regular service into pool freight, or was it strictly
24 that the pool should self-protect itself?

25 A. Just that the pool would self-protect

1 itself --

2 Q. Yeah.

3 A. -- right. And take the extra board out
4 of the equation for the most part.

5 Q. Yeah. So the extra board would still
6 protect all irregular services.

7 So is it then your opinion that the
8 railroad's proposal to combine and eliminate extra
9 boards and put that work into the pool, is that
10 outside of the public law then?

11 A. Yes, in my opinion.

12 Q. Are you familiar with the rest days
13 that we propose?

14 A. For the most part, yes.

15 Q. And you're familiar with voluntary
16 versus mandatory rest days?

17 A. I am very familiar with the voluntary
18 versus mandatory, yes.

19 Q. Okay. Did the Organization's proposal
20 at PEB 250, was it voluntary or was it mandatory?

21 A. Voluntary.

22 Q. Okay. What model was it? At the
23 PEB 250, what model did we -- did the Organization
24 present?

25 A. Basically you're saying a five and two

1 voluntary model, yes. And it was us that argued for
2 the volunteer, because there's a win-win for that also
3 for the Organization and for the Carrier. Because if
4 you make it mandatory, that takes everybody out of the
5 equation; some that want to stay marked up and work,
6 some of those that the pool may not have turned enough
7 and they don't have enough starts, whatnot. So by
8 making it voluntary, you put more able bodies into the
9 availability column versus the unavailable.

10 But if the person has doctor's
11 appointments or is fatigued or whatever, he can make
12 sure he or she has those scheduled for that week,
13 meaning voluntarily take those days off, have them
14 available.

15 Q. Now, you saw a slide earlier about the
16 voluntary versus mandatory, the question and answer.

17 And it says, may a model be mandatory
18 under -- imposed in our interest arbitration?

19 ARBITRATOR: Would you repeat that
20 question, please.

21 MR. EDINGTON: Yeah. I got myself
22 mixed up on that.

23 BY MR. EDINGTON:

24 Q. The question and answer -- and I can
25 flip back to it too.

1 Are you familiar with this question and
2 answer right here, Mr. Ferguson?

3 A. Yes.

4 Q. Carriers agree to that?

5 A. Yes.

6 Q. Was there any confusion about the
7 intent that mandatory days off could not be imposed
8 arbitration? Was there any confusion from them --

9 A. There was no confusion whatsoever.

10 Q. Okay.

11 A. There was a lot of people that went
12 over these Q and As on both sides, a lot of lawyers,
13 every word, every dot, comma, T, I, you want to --
14 you, you name it, it was meticulously gone over.

15 Q. But it did give the parties latitude
16 under a voluntary agreement to agree to mandatory?

17 A. Absolutely.

18 Q. Okay. Get into rest, if that's all
19 right.

20 Are you familiar with the RSIA,
21 Rail Safety Improvement Act 2008?

22 A. Yes.

23 Q. Okay. Can you briefly explain the
24 intent of that? How did that come about?

25 A. The issue of fatigue in the rail

1 industry for the running trades for training engine
2 service was a big problem at the time. There was a
3 lot of wrecks and issues going on. So Congress
4 stepped in and made these changes. And that took into
5 a time -- into account a lot of time we spent on the
6 rail, maybe not running the train, but in wait status
7 for a cab, like you talked about earlier, where
8 just -- for the arbitrator's understanding that we can
9 operate the train for 12 hours and then we have to
10 stop. We may be on duty another six, eight, ten hours
11 depending on what's going on. So now we've got
12 20-some hours on duty.

13 Well, this law said you're going to
14 take all that time that you were on duty and have
15 you -- have that as off time, right.

16 So you get back home or get to the
17 hotel, you had 14 hours on duty total, you're going to
18 have 14 hours off duty. So it took into account that.

19 It also took into the fatigue building
20 up over long periods of time, like, i.e., working
21 29 or 30 days straight. So it said if you had five
22 consecutive days worked, you had to have a day off.
23 Six consecutive days worked, you had to have two. And
24 God help you, if you had to work seven straight days,
25 you were going to be looking at three.

1 So Congress was trying to eliminate the
2 accrual fatigue over longer periods of time, including
3 putting on a cap for the month; how many hours can be
4 worked and how many hours can be in other service.

5 Does that clarify that?

6 Q. Yeah. Yes.

7 Were you operating as an engineer prior
8 to this at any time?

9 A. Oh, yes.

10 Q. Can you describe, maybe give us --
11 paint us a little bit of a picture of what it was like
12 working underneath the agreements prior to that where
13 there was no RSIA. Your rest, what was it typically
14 like? So we can kind of understand what life was like
15 before and then after.

16 A. My terminal was very busy. We had a
17 lot of, you know, irregular pool service, right; extra
18 service and unassigned pool service. We went various
19 places like Chicago, Detroit, Toledo. And we always
20 refer to it before the RSIA was turning and burning;
21 meaning, you would work 16 hours down to Chicago,
22 12 hours running the train. It took two to four hours
23 to get you to a hotel after you yarded all the issues
24 that went on. You had six or eight rest in the hotel,
25 meaning six hours undisturbed. The phone would ring,

1 you'd have to be on duty with eight hours only off,
2 and you'd work the same thing back home.

3 Q. Hold on. That six hours, that included
4 your time to get your food?

5 A. Get a shower, get into bed, and, you
6 know, close your eyes. And there was no schedule. So
7 it wasn't like you were working every day at 8:00 a.m.
8 It was -- your shifts were constantly changing. Your
9 start times were always, always off, right.

10 Q. So RSIA helped fix that. So you at
11 least got some rest in between your on-duty times.

12 A. Yes.

13 Q. It was still unpredictable, because you
14 didn't know when -- if or when you'd have those five
15 consecutive starts. You might go -- still go several
16 days because there is no predictability on when you'll
17 accumulate those starts?

18 A. Right.

19 Q. Now, the Carrier's proposal, you said
20 you're familiar with. When we're looking at rest
21 outside of RSIA as listed in Article 7 of the
22 public law, aside from the trade turn option, which is
23 pretty vague in nature of how it operates, they didn't
24 include any other rest opportunities outside of that,
25 did they not?

1 A. Correct.

2 Q. And if Carrier's proposal on the
3 exports implements smart rest, as they call it, which
4 is mandatory five and one, would you feel that's
5 trying to sidestep with that mandatory rest, sidestep
6 RSIA so that they can avoid employees going into
7 federal rest --

8 A. Absolutely.

9 Q. -- RSIA?

10 A. Yeah, so you don't hit that six start.

11 MR. EDINGTON: Okay. That's all I
12 have, unless you have any questions.

13 ARBITRATOR: I'm still trying to
14 discern your last question. Would you please restate
15 it if you don't mind.

16 MR. EDINGTON: Yeah, I can. I'll think
17 of another -- I'm just thinking of another way to say
18 it.

19 BY MR. EDINGTON:

20 Q. So the smart rest, the five and one
21 mandatory for extra boards where you have to take
22 24 hours off after five starts, does that try to
23 sidestep the RSIA to avoid employees from triggering
24 federal arrest, which is a two days off after six
25 starts? Is that their intent?

1 A. And my answer was yes. Now, is it five
2 starts or five days you're having a mandatory one?

3 Q. It's five starts.

4 A. Okay. So I answered correctly.

5 ARBITRATOR: I have nothing further.

6 MR. EDINGTON: Okay. We're going to
7 get in now -- next item that impacts -- hold on.

8 The next item that impacts pool freight
9 employees is regulation. So what is regulation? What
10 does the public law say about regulation? What should
11 it do? How do we calculate it?

12 Pool service will be regulated based on
13 a target number of starts that takes the length of the
14 run into consideration. The length of the run.
15 Remember earlier we talked about we have different
16 runs with different mileage. Longer ones don't get as
17 many starts, lower ones get more, right. So we have
18 to take into consideration when we talk about how many
19 people we're going to have on that board to ensure
20 there's always someone to operate trains, not just at
21 home, but if you're waiting in the terminal as well.

22 Now, the Organization, we took a very
23 practical approach to this. We took the length of the
24 run into consideration. We used a look ahead factor,
25 look behind factor. So you could project with pretty

1 good accuracy how many people you're going to need on
2 that pool so it is the right size and you have the
3 accurate number, and they're still obtaining the
4 starts they need because it's very important to
5 maintain those earnings for people.

6 Now, the Carrier's regulation, it
7 doesn't take the length of run into consideration. It
8 reduces pool freight earnings, their stars,
9 dramatically, and it forces them to rely on the
10 irregular service, which is highly volatile. You
11 don't know if it's going to be a lot this week or none
12 with no financial regularity or predictability. They
13 essentially create a feast or famine scenario. You'll
14 have employees who may have one half where they're
15 making the bare minimum on the starts and then the
16 next half where they have a bunch of hours of service
17 relief or irregular service that they get called for;
18 they're working in between trips and constantly going.
19 So there's no irregular pattern like there is in
20 today's world for pool freight, what these employees
21 endure; what they're used to and what they enjoy and
22 what the contract requires.

23 So we're going to look at examples of
24 current mileage agreements. And I think this is
25 important, because we talk about the length of run and

1 consideration. How have they been regulated in the
2 past? What did the parties endeavor to do in the past
3 that we should be continuing out? The intent of pool
4 regulation says pool freight crews will be permitted
5 to make 30 to 50 to 4,000 miles per month on districts
6 where it can be made. It can be increased when
7 business justifies, other crews aren't available.

8 Also says that when traffic becomes so
9 light that reasonable wages, the equivalent of
10 4200 miles cannot be obtained, the number of crews be
11 reduced until the employees left can make reasonable
12 wages. That's important. Reasonable wages. Remember
13 that term. It's very important, especially as we move
14 forward.

15 So Carrier, we got a -- we've had a
16 dispute going on for a long time, and it really reared
17 its head during COVID. And we included it in
18 Exhibit 42 to give you a good example of when the
19 extra boards are exhausted. There's not enough people
20 on the extra board. What happens? Who covers that
21 work on the extra boards when they're exhausted
22 predominantly across the UP system? The pool freight
23 employees. So they're at home waiting, working their
24 way up that board so they can take a train to the
25 away-from-home terminal. The extra board's exhausted.

1 There's an hour's of service call. They can't call
2 the extra board. They call the pool. So that pool
3 now has to go and perform that work instead of taking
4 the train out of town, come back, and still cover the
5 regular terms that are on that pool.

6 So when that occurs, the miles, because
7 we calculate everything in these boards up in miles,
8 the miles from that hours of service shows up on the
9 mileage report for that extra board because that
10 mileage is tracked as well as ZZ miles. And that is
11 work performed by employees not assigned to that extra
12 board. And here's an example.

13 This is a local chairperson's example
14 that he sent in to crew management services. They do
15 weekly regulations in this location. And he goes
16 through the calculation of what is going on, the
17 issues he's having with his boards and what it's doing
18 to him. So this particular one, Exhibit 42, is from
19 North Cloud, Nebraska.

20 Now, the XCO2, that's an extra
21 conductor's board. That's how you decipher these:
22 XC, extra conductors; O2 is the second district.
23 That's your seniority district. This is inadequate
24 manpower on this. XCO2 has caused other boards to be
25 disrupted. It's really interesting when you get down

1 to the bold print.

2 Over the past ten days, Carrier's
3 called 86 employees not assigned to that extra board.
4 So they're pool frame employees to work assignments
5 that are covered by the extra board. 86 times in ten
6 days at that one location they disrupted those pools.
7 So it's not like it's -- Carrier's, like, oh, it's not
8 that much work. It's a lot of work. The registered
9 miles were 62,000 miles; they registered in that.

10 Now, when that occurs and those
11 employees are off working that irregular service, what
12 that does to those boards is for them to get the next
13 people. They'll have some unavailable people at the
14 top of the board on the pool because they're working
15 off of their assignment. They remain on the board.
16 They just show OA, they're working other assignment.
17 And perhaps there's some people behind them that are
18 not rested, they're on vacation, they're laid off
19 sick. To get to the people below them that are
20 actually okay to work, they have to take those turns
21 that are not available to have somebody on them and
22 drop them to the bottom. That shifts the whole pool
23 up. So all those people that may have been five to
24 ten times out thinking, I'm not going to work for a
25 while, are first out, and they're called work. So

1 that's called dropping turns every time they do that.

2 So he tracks those drop turns during this ten-day
3 period, which is crazy.

4 If you look, they dropped 627 turns on
5 one pool board alone, 17 on another, and then seven on
6 the last one just in a 10-day time. That's how
7 disruptive this can be to pool boards with that
8 irregular freight, how much churn it can cause.

9 Now, the Organization's proposal avoids
10 this mess. All right. It keeps structure to it. It
11 keeps predictability for pool freight and
12 predictability for extra boards.

13 Now, remember I talked about reasonable
14 wages. I said that's an important term. Why is it
15 important? Well, when the former CEO of
16 Union Pacific, Lance Fritz, he was testifying on an
17 embargo hearing before the STB, Service Transportation
18 Board, Marty Huberman was interviewing him, he was
19 talking about issues he had with manpower, what he had
20 to do to fix that; his staffing. And he talks about
21 his pool boards, how they have high miles, high turns.
22 The issue that he's having with these pools working
23 more than they should, more than they're supposed to
24 under the contract because we didn't have enough
25 people. And he says, we've got to balance that out.

1 We've got to balance that out so employees earn the
2 expected wages that they hired for year after year.

3 In addition, he pointed out, we need to
4 do the work and quality of life for our employees.

5 I applaud him for this. He recognized
6 what was there. He recognized the problem, and he
7 wanted to do something about it. Unfortunately, no
8 longer CEO. Changed. He wasn't CEO during
9 negotiations. That's important key. So let's pop in
10 and let's look at what does this look like, the pull
11 factor under each proposal? What does it actually do
12 to earnings for these employees? I think it's
13 interesting.

14 So despite his former -- CEO's former
15 acknowledgement or his acknowledgement of the STB,
16 Carrier's proposal, if you look at it, look at the
17 regulation factor. On the left, you have current
18 starts. That's what they get today. Your short
19 mileage pool. They need 30 to make their starts.
20 They never make it. It's impossible for those guys to
21 make their starts because of RSIA. The most they can
22 get is 24.

23 MR. MCKINLEY: When you say, impossible
24 to make their starts, can you clarify what you mean by
25 that?

1 MR. EDINGTON: Yeah. So because of the
2 regulation, the regulation will call for 30. But
3 because of RSIA, work six off two. When you expand
4 that schedule out through a month, there's only 24
5 possible work events they could have, 24 days they
6 could work.

7 So the current starts on the left
8 column. And these are actual pools from our
9 Exhibit 42. These are actual mileage pools. So I'm
10 not just making these up. These are real.

11 So the current starts. If you look,
12 we'll just go on the first one, 130 miles. Smart TD,
13 what do we propose? 22 to 24. We heard our members.
14 We know what they want. They want to be able to earn
15 their money, earn their paycheck.

16 Carrier, 18.3 to 19.9. So they
17 regulate at the bottom end of their proposal, and
18 they're going to reduce their wages by 24 percent.

19 How about 166 miles? Even bigger
20 disparity. 23 is what they currently get. You'll get
21 Smart TDs. We propose 20 to 22. That's where this
22 would fit in that particular range. Carrier's is 16.6
23 to 18.3. So if they run on the bottom end of their
24 regulation, again, 28 percent reduction in pay. And
25 it just keeps going. More and more reductions, even

1 the longer pools, less reductions. Why? Why would
2 Carrier want to do this? Why would they propose
3 lowering this regulation factor? I'll tell you why.
4 It's so they can account for the irregular service.
5 They're going to ensure these employees remain marked
6 up. Essentially start them out so they work the
7 regular service. And it also helps with their
8 evaluation on head count when they do their cost
9 analysis, because they're saying we're not getting rid
10 of anybody. Well, it's because they're artificially
11 inflating their pool. You need more manpower. People
12 are working less, you need more people in that pool.
13 So they're hiding their reduction numbers through the
14 regulation.

15 So Organization, annual review of
16 regulation. We recognize converting the starts in
17 that mileage table, either part can do it; and to do
18 it perfectly and ensure it works perfectly, nothing's
19 ever perfect, right? So we needed a mechanism so the
20 parties could get together and have an annual review.
21 Is it meeting? Is that agreement the regulation
22 factor meeting the intent of both sides? Are the
23 employees happy with their earnings? Is the Carrier
24 happier with the productivity? Are we getting --
25 let's look at the different thing. Does it meet the

1 operational obligations in comparison with current
2 agreements? Okay. Pretty common sense. Does it
3 achieve manpower stability and prevent cross
4 utilization of pools? Remember I say that if a
5 vacancy and a pool can't be filled, it could go the
6 extra board and then to another pool. So if we're
7 cross-utilizing, using another pool to supplant,
8 robbing Peter to pay Paul scenario, are we doing that
9 a lot? So maybe we need to adjust that factor so that
10 doesn't happen. We don't want to disrupt other pools.

11 So does it provide employees with
12 sufficient home cycle time between trips? So they
13 give them some time off between each trip, and it's
14 not just day after day after day grind and not having
15 time at home. Come home, get your ten hours, go right
16 back out. We don't want to create those scenarios
17 across all the pools, especially one pool they
18 shouldn't have done. And the earnings. Are we
19 ensuring that they're making their proper earnings?
20 So it addresses both sides. It's an important thing
21 that the Board should consider, because nothing will
22 be perfect.

23 So we're going to get into guarantee,
24 Article 5 and Article 7. What is the Q and As for
25 both say? Article 5 will observing voluntary assigned

1 days off result in a deduction of monetary guarantees
2 in situations where pools and or extra boards provide
3 such a guarantee?

4 It just says it's subject to
5 on-property bargaining. It doesn't say it can't be
6 modified by the Board. It just says it's up to
7 on-property bargaining.

8 How about the next one, Number 12.
9 When the self-supporting pools are established
10 pursuing Article 7, will those pools include a
11 monetary or mileage guarantee? Same thing. It just
12 says it's up to mutual negotiations. If not, it
13 doesn't prohibit the Board from imposing such. So why
14 are these two important?

15 First off, Carrier made many assertions
16 in his submission about the guaranteed pools, how they
17 want to treat them differently if they get voluntary
18 days off. Those pool employees have the same life
19 demands that non-guaranteed pool employees have. We
20 should not treat them separately. We should not carve
21 them out. Carrier did not ask for them to be carved
22 out and say no, no guarantee changes will be made for
23 guaranteed pools. It doesn't say that. So it's only
24 right that they get treated in the same manner as
25 everybody else. And it would be unfair to those

1 employees if they were treated otherwise.

2 And then also just guaranteeing the
3 earnings. Yeah, we did propose that if you can't make
4 your starts and it's no fault of that employee's own
5 for not acquiring that because the board was
6 mismanaged with starts, and we're talking about
7 instances where reductions should have been made and
8 they weren't because the regulation was done wrong, do
9 we want to ensure that employee has a consistent
10 paycheck? Yeah. They have bills to pay just like
11 everybody else. We want to make sure they keep their
12 consistent earnings.

13 Now, the annual review will help
14 address that. If there's situations where the Carrier
15 is like, man, we had a couple pools with a regulation
16 factor there. They're a 220-mile pool and we don't
17 like how much we're having to pay on this; we need to
18 adjust it. The parties can meet, fix that. It's how
19 these things all work together for the greater good.

20 We can take a break here if you'd like
21 or we can keep going.

22 ARBITRATOR: Okay. Let's continue.

23 MR. EDINGTON: Good roll.

24 All right. So I took some pools out of
25 our Exhibit 43, and I put together what voluntary

1 agreement Smart team used, the short pool. So short
2 pools, even today in today's world, there's several
3 across the system that have a four-in-one system,
4 WordPress system, and they like it because they can
5 obtain their starts with it. Right? Because they
6 have that 22 to 24 start range. So they want to be
7 able to accrue their starts. So that's what this is.
8 This is Smart's. This first slide is just an overview
9 to make it simple.

10 The next one shows the breakdown of
11 call times on this so you have a greater idea of that
12 variability they have of when they go to work, when
13 they tie up, how long they spend in the hotel, how
14 long they actually get at home. So in this pool,
15 those guys are churning. They're constantly moving.
16 Those boards churn quicker because it's a short
17 mileage pool because they have more starts, hop, hop,
18 hop. So you look, first, second; they take a pool
19 trip out. Get home, they'll have their rest, take
20 another one, observe a rest day. Four in one. If
21 they want him. If they don't want him, they can keep
22 working through. Put some examples in here as you go
23 through, like they can hit. The predictability on
24 these short pulls works really well, because they can
25 typically hit their voluntary rest days if they're

1 just taking trips out of town. I'll do a comparison
2 of the carriers to show you the difference.

3 The next slide, as you can see, it
4 shows actual call times. So you can get an idea of
5 how they work, what it's actually like for them. You
6 kind of imagine what it would be like going to work at
7 these different times, getting home at these different
8 times, what that would actually give you time at home
9 with your wife, your kids, your husband, whatever that
10 may be.

11 Carrier, we're going to do a voluntary
12 four in one pool freight, what it would look like.
13 Now, keep in mind, same pool but now we got irregular
14 service introduced into it. How does that change the
15 dynamic of that pool? Let's look.

16 So first and second, hey, got a pool
17 trip. Great. That's what we're supposed to be
18 working this pool trip. Get home, boom; I'm hit with
19 an irregular service start. Dang. Okay. I tie up
20 from that. I go first down again. Under Carrier's
21 proposal, you go first out.

22 MR. MCKINLEY: What do you mean by,
23 first out?

24 MR. EDINGTON: You go to the top of the
25 board, you're the next one to be called. So I get

1 another one. Oh, man, this really stinks, because now
2 I don't know if I'm going to get my voluntary rest
3 day. They do. They lucked out. They tie up from
4 that. They're able to observe it. Good. Worked out
5 this time. Let's see how it plays out the rest of the
6 half. So they mark up from their rest day, go to
7 work, go to a pool trip, get home. Sunday hits. Oh,
8 got another dog catch for you, another hour's of
9 service relief. All right. I guess I'm home tonight.
10 Thought I was going to be out of town, but I guess I'm
11 home. Alright. That's alright. Tie up. What do
12 they do during their rest day? They get called out
13 before their rest day starts so they can't observe it
14 and they're gone for it. So they miss it.
15 So when they get home, they're
16 thinking, man, I don't want to get a couple rest,
17 because I want to get my start, so I want those two
18 days. So I'm going to see if I can get a vacation
19 day. So they take a vacation day. Probably more
20 planning on it. They don't want it, but they don't
21 want that RSIA because they're kind of planning on
22 that day off. And that -- you can see how that cycle
23 just continues to go. There's no predictability
24 whatsoever on what days they'll be home, if they'll be
25 able to observe.

1 ARBITRATOR: What's going on on the 9th
2 here?

3 MR. EDINGTON: The 9th? So the 9th,
4 they get called out. Sometimes these trips will last.
5 So you get called out like in an afternoon on -- like
6 in this particular instance on Monday, you get called
7 out in the afternoon on Monday -- and, here, I'll put
8 this next slide up. I'll show you because it's in
9 greater detail.

10 They got called out at 1 o'clock in the
11 afternoon. They tied up their Wakemo Terminal, 11:30.
12 So they had a long trip but it wasn't all 12. They
13 did alright. Then they get tied up to wait from home.
14 Then they get called out again on the 10th, Tuesday,
15 to come back home. They get called out at 1 o'clock
16 in the afternoon to come home. So not a bad layover.
17 This is actually a pretty quick trip. But then they
18 don't get home until 1:00 in the morning on Wednesday.
19 So you can see how those trips can drag into parts of
20 three days. That just shows kind of the variability
21 that they have to live.

22 MR. MCKINLEY: Luke, when employees go
23 to an away-from-home terminal, how long are they
24 there? I mean, what does that time range look like
25 when they're at their away-from-home terminal?

1 MR. EDINGTON: Okay. So that can vary
2 greatly. Now, if you worked under 12 hours, you don't
3 have additional rest, they could call you right out
4 after ten hours away from home. That's possible. So
5 it doesn't happen a lot. Depends on traffic. See, we
6 get into traffic across the system. In some
7 locations, you're heavy one direction and light the
8 other direction. So they get these imbalances between
9 their away-from-home and home terminals. And Carrier
10 has to do what we call a deadhead. And deadhead's
11 where they just put you in a van and drive you back to
12 your home terminal or vice versa. If they're
13 deadheading you, you don't perform any service; you
14 just get in the van and ride and tie it up. So that's
15 how they kind of balance out that if you're taking ten
16 trains east and five trains west, you're going to have
17 the imbalance of crews eventually. So lots of times
18 when that happens, you'll have a bunch of crews end up
19 at that far terminal and there's not enough traffic to
20 bring them back and there'll be a big delay to getting
21 a van call to bring them home. So they get a lot of
22 held-away. These crews might get 10, 15 hours of
23 held-away pay which doesn't start till after 16 hours.
24 So they could be there for a day and a half in the
25 hotel just waiting to go to work, or they could just

1 be there for 14 hours. It just really varies.
2 Any other questions on that one? If
3 you need me to slow down too, by all means.
4 Okay. Let's look at a 180 mile pool.
5 So 180 mile pool, five and two would work really well
6 in this. Like I said, we have these different options
7 to work for the different lengths of pool, five and
8 two on 180 miles. So this is Smart TD's proposal,
9 RT12. This should get 20 to 22 starts. And you'll
10 notice the starts in these examples as well. So same
11 thing, only in this one because it's a little bit
12 longer pool, you'll notice on the first and second,
13 they take a trip. And because of the natural cycle
14 time, they don't need as many starts as that short
15 pull did. They're going to get some little breaks in
16 between their trips. So the third, hey, man; they
17 still have to answer the phone if it rings, right.
18 They're still on call. They're not off. They still
19 have to answer the phone but they're not working. You
20 can kind of plan, you know. You just have to be close
21 enough that if you're at Owen's basketball game it's
22 not too far away where you can't grab your grip and
23 report to work within an hour and a half or two hours.
24 So they're very limited on what they can do during
25 that time. It's not true off time. So you can see

1 how that kind of carries through and how it works well
2 within this pool so they can observe a voluntary rest
3 day. And I showed that they observed one on the 12th
4 and 13th, the hypothetical pool. And, hey, things --
5 things went pretty quick. We had that weekend of the
6 14th and 15th, volumes are pretty high on the weekend.
7 Maybe we had some extra people observe rest days, some
8 vacation days got popped in there. So it turned
9 faster. That's normal. It happens on the weekends
10 across the system.

11 So they go right back to work on the
12 15th -- or 16th and 17th. So they're looking, man, I
13 got four starts. Things still aren't quite cleaned
14 up; it's still got a quick churn to it. I want to
15 break -- I want to hit six because I got four starts.
16 I'll take that earned day off. I'm going to break
17 that cycle. Then they're right back on the board and
18 they -- it worked out pretty well. They worked the
19 20th, 21st, had the 22nd off, and they're back in
20 their rotation again. So they can still utilize that
21 to get time off when they need it. And maybe they won
22 that day off.

23 Next slide is just greater detail of
24 that, give you a picture of what it's like. And
25 they're still hitting their target. So this employee

1 took vacation day, earned rest day, and observed two
2 voluntary rest days. So you got the extra day off,
3 vacation day, and two voluntary rest days and still
4 hit his 20 starts. Works pretty well.

5 MR. MCKINLEY: And, Luke, to be clear,
6 you've identified days that are highlighted that are
7 voluntary rest days, but sometimes they're working on
8 those days. Why is that?

9 MR. EDINGTON: Yeah, because we have
10 noticed, and we are going to get into what the
11 findings have where rest days are implemented of how
12 productivity actually goes up. A lot of employees
13 choose to forego those. They'll observe them when
14 they need them. When it comes to these proof rate
15 employees, they want to make their money. They want
16 to make their money and they know those starts there,
17 they're going to take them. But if they have things
18 that they want to plan for those rest days or their
19 wife wants to -- I want to plan a dinner with you or I
20 want you to attend the kids' function and your rest
21 day falls on that function, please take it or take
22 your earned day off. So give them greater access to
23 that time off will give that flexibility so they have
24 it and then remain marked up for the rest of the half
25 without having to take a non-comp that's not planned,

1 so you don't have to worry about it. All these can be
2 put in the system preplanned.

3 Let's do the same pool under the
4 Carrier's model. And remember these, under our model,
5 they hit their 20 starts still. Carrier's model, five
6 and one, again, self-protecting with all irregular
7 service included, which isn't accounted for in their
8 regulation factor. So what happens to this employee?

9 Well, in total, he ends up with only
10 16 starts in full range. He's just under the
11 regulation range, because he ended up with five
12 additional start starts in your regular service for
13 21. Could have made this 100 different ways. He
14 could have had all irregular starts if he was really
15 unfortunate. He just doesn't know.

16 So in this instance, though, they went
17 through their -- they got a trip, got called for an
18 hour's service relief in the third, kind of followed
19 through. They were able to observe a voluntary rest
20 day. But even with that, one, two, three, four, five;
21 they have five available rest days for the month, if
22 they're lucky to get them. Which I flipped to the
23 previous slide, two, four, six, eight available days.
24 So we have a greater chance for an employee to have
25 something fall on a rest day that they can observe

1 under the Smart TD proposal than under Carrier's
2 proposal, which is the whole point of the PEB
3 recommendation. Let's improve the quality of life for
4 these folks.

5 Next slide is just greater detail on
6 that. Going to get in a little bit longer pool. I
7 want to give you kind of a broad spectrum, right. We
8 went from short pool, medium pool. Now on the next
9 slide.

10 So in this one it's a 221 mile pool.
11 Now, in this one, a voluntary six and two would work
12 pretty well. So the regulation range is 19 to 21.
13 And in this example, it's very, very feasible for them
14 to get 20 starts, because they're just going within
15 the pool. They don't have the regular service to mess
16 up. So if you like this employee, they have one, two,
17 three, four, five, six available rest days that they
18 could observe throughout the half. Chooses to work
19 the first ones on the 7th and 9th. Okay. Normal,
20 because he's getting the day off. Second time he's
21 going, pretty good.

22 Now, come the 14th, he's like, man, I
23 got something planned; I really need that 14th off.
24 Puts in for earned day off. Worked out well. Marked
25 up, went to work on his rest days. He just had that

1 day off. He only needed that one day off. He didn't
2 need the two days off. And they didn't fall right
3 anyway, so we had to do something for it. Earned day
4 off is a great tool for that. And then he gets back
5 into the normal cycle and is able to observe his
6 voluntary rest days at the end of the month as well.
7 So he still gets the time off between the trips as we
8 described in our submission about the normal cycle
9 time. He's still getting the time off between the
10 trips, but he now has the option to take earned days
11 off, vacation days, or rest days. Still makes his
12 starts, or her. Again, more detail.

13 Okay. Carrier model, five in one.
14 Same pool, turn 21 mile pool. Their range is 15.8 and
15 17.4. How many starts did they get on this one?
16 Let's see. They only got 14. Good thing, they got
17 seven starts in a regular service. So see how that
18 works. They took their two starts right at the
19 beginning of the month, pool freight, worked
20 back-to-back starts, boards were short. They observed
21 their rest day, they got lucky, and then they get
22 called for a regular service. And this is where I say
23 it can really mess up a person's schedule on these
24 boards, is the irregular service starts first out
25 again, three times in a row, which is boom, boom,

1 boom, 10 hours off between each run, a little bit
2 more. Then they get a pool start. Now they missed
3 their day off, vacation day. You see, same pattern as
4 in the other ones, other models, and still only one,
5 two, three, four, five days that they could observe in
6 that whole month for voluntary rest days if they're
7 lucky enough to do so.

8 Here's the point I'm at a break, unless
9 you have questions.

10 ARBITRATOR: No, I do not.

11 MR. EDINGTON: All right. Then I'm --
12 I'm ready for just a quick break.

13 ARBITRATOR: Yeah, sure. 10 minutes,
14 please.

15 (Whereupon, a break was taken at 10:51
16 a.m.)

17 (On the record at 11:08 a.m.)

18 ARBITRATOR: Mr. Edington, you're back
19 on the record.

20 MR. EDINGTON: Okay. We just left off
21 and we went over the comparison of pool freight
22 underneath each party's proposal, Smart's being one of
23 just self-supporting protecting pool vacancies within
24 the pooling in accordance with the public law versus
25 Carrier's incorporation of irregular service. So

1 that's where we just left off.

2 We're going to move now into observing
3 rest outside of the RSIA. So to further recognize the
4 need for additional rest opportunities, the PEB did
5 recommend options in Article 7. They were observing
6 rest outside of RSIA, training assignments, and
7 procedure for prearranged layoffs. Now, the
8 Organization recognized these important provisions and
9 proposed a system breach that would work in harmony
10 with worker as the day schedules. And we'll go
11 through these.

12 Smart TD on the left, Carrier on the
13 right. Preserve turn rest where it exists today. So
14 turn rest is one of our exhibits. It's our extra rest
15 rule we call it. That's for employees. It's a great
16 tool for employees to utilize if they need rest. And
17 they need to be on duty at least eight hours in order
18 to activate it. And they can add hours to their rest
19 and maintain their spot on the board as they rotate
20 up. But it gives them an extra rest opportunity when
21 they need it. So it allows them to personally manage
22 a rest. It's only on select locations across the
23 system, but it's a great tool. It's there. Carrier
24 wants to eliminate that and take that ability away
25 from them, thus, depriving them of an ability to

1 obtain rest.

2 MR. MCKINLEY: Luke, are you able to
3 provide like an example of how turn rest works?

4 MR. EDINGTON: Yes. So in turn rest,
5 let's say I was on a pool that normally gets that last
6 pool -- we'll back up on this one right here.

7 So let's say that on the 1st and 2nd,
8 okay, we had that pool freight trip and that employee
9 was on a long trip. Let's say he was at the
10 away-from-home, and we're doing hypothetical in this
11 scenario, right? He was at the away-from-home for
12 30 plus hours and he had a 14-hour trip home. He was
13 wiped out because it's hard to be rested for the trip
14 home. It ended up being a really long trip on the
15 train because they expired on their hours of service;
16 they had to wait for a ride and a relief crew to come
17 get them. They finally make it to the home terminal,
18 employee's wiped out. Like I need a few hours of
19 extra rest in addition to those given to me in the
20 RSIA. So they can bump in for an extra four hours,
21 five hours, ten hours of rest, up to 23 and -- 22 and
22 a half total. So that's how the rule works. So he
23 can take that rest. No, I'm not going to have to
24 answer the phone for those extra few hours so I can
25 get some sleep that I need. Pretty simple. So -- and

1 that is Exhibit 41. I list it in there so you can
2 easily look at it. It's a simple rule, pretty
3 self-explanatory.

4 Non-compensated day off. The earned
5 day off. That is only for perfect attendance. So
6 employees non-guaranteed pool freight, they get one
7 per pay period in non-guaranteed pool freight, if they
8 have perfect attendance. Look at our provision for
9 that. We did account for high mandates. It's right
10 in our provision of that article, that they cannot be
11 taken on high demand days. And it's the same high
12 demand days that are listed in the time off for
13 illness and wellness agreement or paid sick day
14 agreement. That's also an exhibit. It's the exact
15 same high demand days. That's the ones that Carrier
16 identified in those negotiations, which are very
17 recent, agreements recent. That they wanted
18 employees. Okay. They can't take them on these less
19 demand power laps. So we took all that into
20 consideration. So they don't have employees sitting
21 among those high demand days.

22 Guaranteed pool freight. Again, we
23 recognize it's a guaranteed board. They only get one
24 for 30 days, perfect attendance. Because the Carrier
25 does control complete regulation on those guaranteed

1 pools. Same as the extra board. Extra boards, the
2 Carrier has full right and regulation on those.
3 Granted, some extra boards have minimum percentages,
4 others do not. It's not a standard across the system,
5 which is what's got them in a lot of trouble as we saw
6 earlier with depleted extra boards. And then on extra
7 boards, none. We didn't feel that they needed them as
8 they would be home each night with the irregular
9 service, and they would be in a five and two voluntary
10 schedule with greater access to their compensated time
11 off and minimum staffing requirements on those extra
12 boards. So the staffing requirements we looked at is
13 just positions of assignments that they would fill,
14 which is -- unassigned service would be left and then
15 irregular service. So there'd still be significant
16 reductions in those extra boards, because there may
17 only be ten assigned jobs that they protect. So
18 30 percent of 10 isn't much when they used to protect
19 a couple pools that had 30, 40 each. So still great
20 reductions on their extra board.

21 ARBITRATOR: To be clear, what's the --
22 what's the regularity of this non-compensated day off?

23 MR. EDINGTON: The regularity?

24 ARBITRATOR: Yeah. How frequent?

25 MR. EDINGTON: So every half that they

1 have perfect attendance on non-guaranteed, each pay
2 period that they have, they would earn one of those
3 days. So if you have -- you don't layoff any
4 non-compensated for that entire pay period, you credit
5 one. But guarantee, same thing. You have to be
6 perfect attendance the entire month, you obtain one.

7 Carrier, they want to eliminate that
8 turn rest system wide, take that away, and no interest
9 in the earn day off for perfect attendance.

10 Trading assignments. Okay. We both
11 want to do that. You can see at the beginning. We
12 both want to create one. That's similar. So it's
13 great we agree on something. But let's get into the
14 details on it.

15 They want to limit the trades to 12 per
16 year. We see no issue with having a no limit. If
17 employees need to trade, they still need to find
18 someone to trade with that will accept it. And the
19 Carrier is going to be filling that assignment. Same
20 works' there. They're still going to have a body on
21 it. They're still going to have someone taking that
22 train out of town. So there's no impact on it. It
23 just works well for the employees so they can get
24 those few extra hours off.

25 Now, we propose specific guardrails for

1 that trade; how it's executed as far as the employee
2 putting the request in, a specific time period that
3 request is out there to the other employee, the
4 specific time that employee has to respond. We want
5 that handled with some specific rules. Some employees
6 know what to expect and it's not just whatever may
7 occur, right.

8 Carrier, they want both employees to be
9 available and rested. We view that as you could
10 actually hamper an opportunity for someone to trade
11 terms. So let's say that an employee is ahead. You
12 have -- I had a longer trip -- let's say I just tied
13 up my own terminal. I'm going to give you a
14 real-world example. And I had a long trip, so it was
15 like 16 hours long. So I had extra rest added on.
16 And because of that, I rotated up the board and I'm
17 not rested. Well, I got an employee below me that is
18 rested and available because they didn't have as long
19 a trip. They only needed the minimum RSIA rest. I
20 can trade with that employee so they get someone at
21 the top that's rested. That guy moved up because
22 they're rested; they got in before me, and I can go
23 below and get those few extra hours off. I had a long
24 trip, I need a little extra rest. So that's a way to
25 do that. They still have somebody immediately

1 available to go. No harm to them. That person stays
2 marked up to trade them. Works well for everybody.
3 Now, we do put a guardrail around
4 employee with a preapproved layoff scheduled in
5 24 hours. We don't want them traded. We don't want
6 an employee trading and then taking a vacation day.
7 In our opinion, if you're trading, you're trading for
8 a reason, and then you need to go to work after you
9 trade. We require that. Carrier doesn't put that in
10 there. We think it's an important guardrail to have.
11 So you don't create a vacancy because of a trade. It
12 stops. If there's sharpshooting that would occur,
13 that would be it, and we take that out.
14 Sharpshooting, what we refer to is an employee finds a
15 way to work a rule to get some extra time off. In
16 this instance, we didn't want that to occur.
17 Prearranged days. That's the next
18 subject. Ability to schedule. Smart TD, again, left;
19 Carrier right. We want the ability to prearrange,
20 both sides do. We said six months, 180 days; same
21 thing. We want to increase those thresholds. And it
22 needs to be a significant increase to the thresholds;
23 because if you look at pools of 20 to 30 people,
24 Carrier's proposal, going from 4 to 5 percent would
25 not increase the number of people off per day at all.

1 It'd have zero impact on operations, zero impact for
2 the employees. So you need to have a high enough
3 percentage. We propose 25 to 20. 25 on the pool,
4 20 for the extra boards. Give enough change that it
5 actually makes a difference for the people. Not
6 everyone can take -- give you a scenario.

7 If all the employees took all their
8 time off that they could every single day, they would
9 all be out on vacation within the first quarter of the
10 year. So that is spread out. So it just ensures the
11 current prearranged system today. Employees go in
12 there to look and most of the calendar is red because
13 the threshold is sold so low. And so if they want a
14 prearranged day, good luck getting it. Many times
15 they have to find one that's somewhat close to the day
16 they want in hopes of scheduling it in. So this would
17 fix that.

18 Now, we have guardrails around
19 cancellation of prearranged days so they don't mess
20 with regulation, because the last thing you want is to
21 create a regulation factor and staff for your pool
22 that next week and then have someone say, oh, the day
23 before, after you did regulation, oh, I don't want it.
24 Well, now you've got too many people on that pool. So
25 we don't allow them to do that. If they're going to

1 cancel, they've got to do it before we regulate that
2 board each week on Sunday so it don't mess with that.
3 So we have guardrails around that to ensure the pools
4 are -- we want the pay right.

5 ARBITRATOR: Explain guardrails.

6 MR. EDINGTON: That is a canceling it
7 before the regulation. That is the guardrail for the
8 employee, so they don't mess up the regulation factor.

9 ARBITRATOR: So it's a protection?

10 MR. EDINGTON: Yeah.

11 ARBITRATOR: Or is it additional
12 precautionary language?

13 MR. EDINGTON: It's precautionary, yes,
14 in a sense. So I'll explain it another way.

15 Let's say that I'm on a pool and I went
16 in and scheduled -- five months ago I scheduled next
17 Wednesday for a vacation day. Regulation on that
18 board is done on Sunday. Now, when you look at the
19 look at it -- the factor, you're going to say how many
20 people have scheduled days off for that week. So if
21 my day is in there, maybe you got two days. I got
22 those in there. We account for those days. Okay.
23 Someone's going to have to work. So we put that in
24 the calculation so we have the right amount of people
25 to cover those that are off on prearrange days.

1 So if I get up to Tuesday next week, my
2 day starts on Wednesday and I say, you know what, I
3 don't want this day after all, I'm going to cancel it,
4 we've already regulated the board to account for me
5 being off and I'm not off anymore. Now we caused
6 everyone else -- we may cause someone to get short of
7 mileage, and we don't want that. So if I'm going to
8 cancel, I gotta do it before regulation occurs on
9 Sunday. So that is the guardrail to protect the
10 regulation factor. Clear?

11 ARBITRATOR: Thank you.

12 MR. EDINGTON: Okay. Thank you.

13 Automated bid scheduling. I'm going to
14 get into some stuff here, especially on daily
15 preference boards. First I'm gonna talk, what is ABS,
16 the automated bid scheduling? What does the public
17 law say about that?

18 Well, it says that it'll serve as a
19 primary method to assign employees on a regular basis.
20 Okay. So that'll be done regular based on seniority,
21 qualifications, and job preferences. So job
22 preferences and seniority happen on a regular basis.
23 Okay.

24 Then when it comes to job assignments,
25 all employee assignments will be assigned based upon

1 the individual preferences employees submit on their
2 automated bid applications. Carrier's proposal
3 includes elimination of daily preference boards.

4 Now, daily preference boards were never
5 mentioned at PEB 250. It wasn't included in this
6 article. I don't see it anywhere. Probably because
7 they already function that way.

8 Now, daily preference boards, I got
9 some intimate knowledge on these, but I'll tell you
10 how they function and they're in our exhibits. They
11 fall underneath their own agreement for daily
12 preference and the five-day workweek period. So I'm
13 going to elaborate just briefly on how they operate,
14 because they seem complicated but they're actually
15 very simple.

16 So employees assign all these boards,
17 they bid rest days. Once they're awarded those rest
18 days, they've got to look at all the jobs in that
19 yard, and they list the preference from top to bottom,
20 most desired to least desired, the assignments. The
21 Carrier will then go each day, each morning they'll
22 run the list of assignments. They'll look in
23 seniority order; senior person, first choice, place
24 them on that job; second person, first choice; what
25 can they hold, place them on that job. They run the

1 list all off their job preference. It's run through a
2 system automatically. List everybody down the line on
3 their assignments for the following day. Those are
4 posted electronically in their system for employees to
5 see the afternoon before so they know what they're
6 working the following day. If there's vacancies the
7 next day, an employee lays off, the first person they
8 call is what they call a ripple. A ripple is, I may
9 be scheduled for an afternoon shift; the first shift
10 is being called, there's a vacancy and I have that on
11 my bid sheet. And I'm the senior person will say,
12 hey, Mr. Edington, you want to work this switch engine
13 at 8 o'clock instead of working here at 4 o'clock?
14 Yeah, sure; I'll take that.

15 I ripple down to that first shift. So
16 the extra board is seldom used unless -- even extra
17 assignments are operated that way. So it just keeps
18 going that way. So your extra board used a lot for
19 the third trick, third shift. And that's how it
20 operates.

21 Now, let's say, for instance, that I
22 schedule a day in my daily preference. I prefer my
23 workweek, because I can move it around, I have a
24 daylight maybe on my Monday. I work an 8 o'clock job.
25 But the next day I got a doctor's appointment at 8:00.

1 I know that. I know I can hold an afternoon
2 assignment, 4 o'clock assignment. So I'll bid that
3 the next day. I'll change it so I can make that
4 assignment without having to miss work. Right?
5 Because I'll still be working. So I'll work that
6 4 o'clock assignment, and then I'll move back to an
7 8 o'clock the following day.

8 Now, if I'm not rested for that
9 assignment the next day, I don't just sit idle. I
10 actually go on what we call an overflow board under
11 the agreement. Now, that overflow board puts me on
12 top of the extra board. So the next vacancy when they
13 do that ripple, there's a vacant assignment, I'm the
14 first one to be called ahead of the extra board,
15 because the five day work workweek agreement requires
16 that I get my five stars. So I'm going to be used
17 ahead of the extra board to get those five stars each
18 week. That's how -- any questions now? Hope it
19 clarifies it a little bit. So that's how those
20 operates. So they're based completely off seniority,
21 job preferences, and qualifications, and they're run
22 daily on a regular basis. So there's no need for
23 modification. It's something that they're seeking
24 after the fact and they shouldn't be granted. Okay.
25 We're going to get into -- this is a busy one. Wish

1 my new glasses were in. Just joking.

2 So ABS. Yeah, I made a good schedule.

3 Let's look at existing assignments. Kind of

4 comparison of Smart TDs to Carrier's. Existing

5 assignments, standing bid process. Smart's proposing

6 it's run daily at 10 o'clock. Now, existing

7 assignments we list specifically in our first section

8 that that does not include all pools and extra boards.

9 Only if you're adding new assignments to those boards

10 will they be listed. So this is all when you're

11 adding new assignments, it's all like a local, or

12 maybe you're adding a pool turner; you are adding a

13 position to extra board. That bid process, this is

14 where it comes into play. They'll look at who has a

15 standing bid that's senior for that. It's run at

16 10 o'clock every day and the people are put on there

17 automatically. Employees like this. This is similar

18 to what is at some locations. They like it because it

19 puts them on that assignment meeting.

20 Now, Carrier, their standard bid

21 process, they really don't have a specified date or

22 time. They just say you'll operate. New assignments,

23 now, here's where we get into local stuff. The

24 assigned jobs.

25 ARBITRATOR: What's the advantage of 10

1 o'clock daily?

2 MR. EDINGTON: So it's right -- you
3 know when you're going to go to work. You know when
4 it's going to be awarded. If you have variable times,
5 you don't know when a job's awarded, you don't know
6 when to expect it. If you're going to -- you want to
7 know if I'm going to get that assignment or not,
8 right? You've put your bid in, you don't know when
9 you're going to get it. It's kind of nice to have
10 that on a regular basis so you know when to expect
11 that phone call and when you can move to that new
12 assignment, because then they're also moved to that
13 new assignment at 10 o'clock the following day. So it
14 keeps that.

15 ARBITRATOR: Is there anything
16 significant about 10 o'clock?

17 MR. EDINGTON: No. It's just a time
18 that works well. That's what we have currently on one
19 location that functions really well. So if it -- if
20 it's not broke, don't fix it type scenario.

21 ARBITRATOR: I'm sorry. What currently
22 happens at 10:00?

23 MR. EDINGTON: It currently happens
24 right now, you know. So that's why if it's not broke,
25 don't fix it is what I said. You know, you keep with

1 what employees are used to.

2 So new assignments we have required
3 criteria in there. Why would we have required
4 criteria? Well, if you're going to bid on an
5 assignment and it's new, you want to know when it's
6 going to go to work. You're going to want to know
7 what you're going to be doing, what the limits are.
8 Maybe it's a local and it operates between point A and
9 point B; it's an over-the-road local. And you want to
10 know exactly am I going to layover at the far
11 terminal, am I going to be back home that night; how
12 many miles is it going to pay? Just basic information
13 that you need to know before you bid on assignment,
14 decide if you want it. Last thing you want is putting
15 minimum information employee bidding to that
16 assignment, not liking it, and leaving it and creating
17 a churn of employees through that assignment. So we
18 put criteria around that, what needs to be included.

19 MR. MCKINLEY: So, Luke, what's a
20 bulletin in this instance?

21 MR. EDINGTON: So bulletin in the
22 electronic system that Carrier utilizes is something
23 that employees can access, and it'll show the
24 location, the job ID, and then the description of the
25 assignment below. And then they can bid on that

1 assignment using their bid process currently.
2 So then it's Bolton -- under Smart TD,
3 Bolton for 72 hours. Similar to Carrier, except for
4 they don't want the criteria that we have in the
5 bulletin which could harm employees because they
6 wouldn't know what the assignment does and they don't
7 want any limit on extra assignments and yards, which
8 is odd. And they say there's no basis for it to exist
9 because it was an issue that the dispute that had been
10 on the property and was resolved through arbitration,
11 and we're just retaining that arbitration report. And
12 it does require that extra yard assignments called
13 three days in a row must be bolted as a regular
14 assignment.

15 And that's important, because extra
16 assignments, you know, they cause disruption. It's
17 better to have people on a regular assignment if
18 you're needing -- if you're having that much extra
19 work rather than just cycling through an extra board,
20 you know, it's a better quality of life on a regular
21 assignment, for one. But it's also very reliable for
22 Carrier to get someone that's always on that
23 assignment. You don't have to worry about filling it
24 from the extra board because maybe you got some other
25 circumstance, maybe in this we said we could use

1 cross-utilization of the yard and road extra boards to
2 cover each other as we proposed. Perhaps that yard
3 board got used up for hours of service relief because
4 the road extra board was depleted. Well, now you
5 can't run your yard assignment. So putting things as
6 a regular assignment in this criteria is nothing
7 that's new. It's what exists today.

8 Get into rebulletined assignments. So
9 what happens that requires them to rebulletin the
10 current assignment?

11 Well, under Smart, we have specific
12 criteria that triggers, and Carrier does too, but just
13 not as specific.

14 Now, we feel there needs to be more
15 items than this. So if an employee is working an
16 assignment and Carrier decides to change the limits,
17 maybe they want to change a class of service, they
18 want to change a start time two hours or more for a
19 road job or any change in the yards. So when the
20 employee goes to work, they're on and off duty points.
21 That's a big one. Am I going to have to drive further
22 to work or a different location? That doesn't work
23 for me, and I'm going to go to something else. Work
24 days or rest days, those change. That's important for
25 quality of life. And straightaway or turnaround. So

1 am I going to be home every night or is it an
2 assignment that's going to go and stay at a hotel and
3 come back the next day. So if any of those things
4 have changed, they got to revolt in the job.

5 Carrier's is just if there's a change
6 in mileage, they want it two hours in the road,
7 similar to us, then they want one hour cumulative
8 within one year for yard and then just workdays or
9 rest days and change the terminal point. Not too far
10 off from that. We just want more specific items.
11 Directly affect the employees' off time and earnings.

12 ARBITRATOR: So just to be clear, these
13 rebulletin items, they've already been bulleted, but
14 you're proposing that if any of these changes take
15 place, they should have -- they should be
16 rebulletined.

17 MR. EDINGTON: Yes. Just as --
18 Carriers's doing the same, just with not as many
19 criteria.

20 ARBITRATOR: I understand that. But
21 only in the event of changes.

22 MR. EDINGTON: Yes. Correct.

23 ARBITRATOR: Thank you.

24 MR. EDINGTON: Okay. Next slide.

25 Bidding process. So Organization, we

1 ask the peer to provide a list of all assignments to
2 employees. They don't propose this. We feel this is
3 important. Especially with the amount of newer
4 employees that have been hired in recent years. There
5 is no particular list. It's hard to find. We feel
6 that publishing that so those employees know what
7 assignments are out there for them to exercise
8 seniority to in an easy manner is appropriate. You
9 gotta know where you can work, where you can bid,
10 especially if you're going to have adequate bids on
11 your sheet. You want to know what's available to you.

12 We say that employees must maintain
13 their bid list for assignments. So based off the
14 sheet they're provided, they can look at that, list
15 the assignments they want. We have nonaccess
16 provisions just as Carrier does too, returning from
17 leave absence. And then we want to return the
18 current -- or retain the current rules for leave.
19 You're on an approved leave or improper leave. The
20 current rules work well. Carrier wants to go to a
21 leave for superior seniority if they're absent without
22 proper authority for 15 days. Had many instances
23 where employees were -- notified someone, but it
24 wasn't the right Carrier officer or the right
25 department and they were dismissed and we've had to

1 undo those improper terminations. We still need the
2 current rules in place so those things can be
3 addressed.

4 Now, Carriers want a bid list as well.
5 Employees must maintain it. And once awarded, all
6 their bids will be cleared. I don't know why you do
7 that. To me, there's no need to clear the bids in
8 their system; because now if their employee gets
9 awarded an assignment and maybe it's a pool freight
10 assignment and they're the junior employee, they're
11 the youngest seniority in that pool and they're only
12 on it for one week and they get cut, as soon as they
13 get after that, they need to go in and redo their
14 whole bid sheet all over again. So leaving those bids
15 in there, they're on their highest desire. So leave
16 them in there so that they can not have to do that
17 work over and over again. This is something that
18 really affects the junior seniority employees. A
19 nonaccess provision that I talked about similar, and
20 we already went over the forfeiture.

21 Now, insufficient bids. This is an
22 interesting one. So Smart TD, ours is the least
23 harmful method. So this is when there's not enough
24 bids. Employees out there working, they don't have
25 enough bids on their bid sheet. What happens to them?

1 So Smart, we propose they go to a vacant position,
2 anyone, at that location, at the employee's location.
3 If they -- no vacant positions there, they're going to
4 go to the extra board. Seniority committee, they can
5 hold it. If they can't hold it, go to the next step.

6 Next step is junior employee in the
7 terminal. Now, through the normal course of
8 displacement, that junior employee in the terminal, if
9 they get bumped out, yeah, they would have to exercise
10 beyond there. Their options would be different. And
11 then beyond that, if maybe they are the junior
12 employee, keep with the current CBA rules, and those
13 provisions allow for -- there's an AWGS board that's
14 like an auxiliary work board, part-time board.

15 Stay-at-home provision. Stay-at-home
16 provisions that we have currently or the employee's
17 not needed at another location, they can sell
18 furlough. So they don't want to have to travel
19 400 miles to the end of a hub where their scenario
20 goes; the railroad don't need them there. They're
21 like, you know what? I don't want that hardship. I'm
22 just going to stay home and furlough. When they need
23 me, I'll come back.

24 Carrier's, any open position anywhere,
25 I guess, and then displace junior trained person in

1 the hub. And we described some scenarios, described
2 one in Salt Lake hub. Salt Lake hub is large, large
3 hub. We got a few of those. So seniority there
4 travels from Grand Junction, Colorado; Ogden, Utah;
5 Elko, Nevada; Las Vegas, Nevada; Milford, Utah. So
6 you've got several, several hundred miles across that
7 seniority hub. So what they're saying here is I could
8 be an employee whose working assignment, the example I
9 gave was Ogden, Utah. The junior person hub is down
10 in Las Vegas and it's a local assignment nobody wants.
11 That's why the junior person's on it. It doesn't pay
12 much. Under Carrier's proposal, that employee,
13 regardless of seniority just because they have
14 insufficient bids; you may have a lot of seniority,
15 doesn't matter, you're now forced several hundred
16 miles down there until the reports work on that
17 assignment. No pay for travel. No pay for lodging.
18 Nothing. Just go. This has caused a lot of junior
19 employees. A lot of people want to get forced like
20 that -- I'll get into it later -- to just resign.
21 Exit camp.

22 MR. MCKINLEY: Luke, when you're
23 talking about insufficient bids, you're talking about
24 the bid sheet, right, that the employee puts together?

25 MR. EDINGTON: Mm-hmm.

1 MR. MCKINLEY: And is that where an
2 employee lists X number of bids, but they don't have
3 the seniority to hold any of those positions, and this
4 is what happens to them in that event?

5 MR. EDINGTON: Yes.

6 MR. MCKINLEY: Okay.

7 MR. EDINGTON: Or they don't have any
8 bids at all, because they were cleared out and they
9 didn't have time to put them in again.

10 MR. MCKINLEY: Right. And under the
11 proposal by the Carrier, they would clear out all
12 those bids; and if they were, you know, removed from
13 their current assignment, this might happen to them?

14 MR. EDINGTON: Correct. Yeah. Sets
15 them up for failure --

16 MR. MCKINLEY: Okay.

17 MR. EDINGTON: -- what I'm saying.

18 Okay. No bid assignments. So this is
19 an assignment Carrier provokes now. Nobody bids on
20 it. How do you fill that assignment? Nobody wants
21 this thing, must be a bad job. This happens a lot.
22 What do you do?

23 So under the Organization's proposal,
24 we'll take the employee with an expired bump. The
25 same class of service, same terminal. So if it's a

1 road job, a window bid, it would be a road employee.
2 Yard would be yard at the same terminal. There's none
3 of them, employee with the expired bump and a
4 different class of service. So now you go -- it's a
5 road vacancy. You go to yard, vice versa.

6 Then you look at the junior employee on
7 a protecting extra board, force them to it. Or if you
8 can't do that, you go with the employee with expired
9 bump at the next closest terminal. So, again, least
10 impactful. Let's just go to the nearest terminal so
11 they have the least travel time compared to going
12 across the hub.

13 So previous example of Ogden.
14 Salt Lake is 45 minutes away. You would go to
15 Salt Lake just 45 minutes away, get somebody from
16 there. Makes sense. And then junior employee got an
17 extra board at the next closest location, same
18 example. Not a hardship on that employee. They can
19 still make that commute each day. Carrier, junior
20 employee with expired bump, and then they go to the
21 junior employee in the hub or on an extra board at the
22 location. They're choosing. So that poor junior
23 employee doesn't know if they're going to be on their
24 assignment or if they're going to get forced who knows
25 where when there's no bid assignment.

1 Temping, riding bulletins, pass ups.
2 Definitely railroad terms here. Some railroad slang
3 that we use. Temping. So the temp rules today,
4 temporary. That's when there's a temporary vacancy,
5 an employee's vacation, two-weeks vacation or
6 something. You can bid on that vacation and ride that
7 assignment, work that assignment while that employee's
8 on vacation. You kind of own it for that temporary
9 time is what it means. We have no change to that;
10 except if it's going to be over 15 days, you're going
11 to bulletin it. So it actually helps the Carrier in
12 that respect. So incumbents of assignments
13 rebulletin. We're talking about writing. So if an
14 assignment's rebulletin, the incumbent may continue to
15 ride the assignment, work the assignment, seniority
16 permitting, until the bulletin closes. That keeps
17 someone on that job while it's bulletined. Carrier,
18 you don't have to worry about filling it off the extra
19 board each day. You keep a regular person on it. You
20 know you have somebody there. You're not going to
21 have to worry about filling that each day. Easier to
22 administer.

23 Bump and displacement. Right after
24 holding the same assignment for 30 days. That's the
25 pass up. They can pass up their assignments. I'm

1 going to give this up. This is important. When you
2 look at seniority, look at Article 6. They want to
3 have the right to bid jobs based off their preference
4 and seniority on a regular basis. What do you do --
5 this is a question that we ask ourselves. What do we
6 do for the pool freight extra boards? Let's say we
7 have senior employees on those. Those jobs aren't put
8 up for bid, just new assignments to those boards. So
9 what do you do for those employees if maybe they want
10 to get off that job? I'm tired of going over the
11 road. I'm tired of that pool being out of town all
12 the time. My kid's got baseball coming up. I want to
13 be able to move to a job that just stays home. Maybe
14 I want to go to a yard job. I want to do something
15 where I have days off every day. I'm home every day.
16 I'm in my bed every night. I can actually plan and go
17 to the daily preference board, work it out that way so
18 I can make all the games. What do you do?

19 Well, if they've been on an assignment
20 for over 30 days, they can say, I'm going to give this
21 up and display some of that assignment. Allows them
22 to go to the job preference of their choice using
23 seniority. Exactly what's stated in the article.
24 Carrier, no temping to write in bulletins and
25 elimination of all passive rules. So they want to

1 eliminate all that. Essentially limit all the tools
2 that employees have to exercise their seniority.
3 Okay. Automated bid schedule.
4 Smart TD on the notification piece. We maintain that
5 the current notification process, it works fine.
6 Don't see an issue to change it. The chronic issue of
7 employees avoiding notification, it's actually quite
8 the opposite while employees accept notification. But
9 many junior employees have no assignment they can
10 displace to, so they are left in what we call an
11 EA status, abating assignment. They have nothing even
12 in their entire hub they can hold, and they just sit
13 there and wait for an assignment to open up or be
14 created so they can exercise seniority to. That's not
15 in accordance with the rules. Many times the
16 Organization has to intervene and make sure those
17 employees are furloughed if there's no assignment for
18 them to work. Because while they're in EA, they're
19 not able to apply for unemployment benefits, they're
20 not accruing starts in any manner for their
21 retirement. Nothing. So they're left with no
22 paycheck, no right to be in unemployment under the
23 prayer of retirement. So it's important that that's
24 executed, right. So it's actually the opposite of
25 what we got going on. So we maintain that current

1 process of right. Carrier wants it automatic after
2 eight hours, no answer required, and alternative
3 contact methods may be used, phone, text, portal
4 message, etc. Reporting time.

5 ARBITRATOR: Is this the -- is this
6 notification of the opportunity to bid?

7 MR. EDINGTON: No. This is if you are
8 displaced.

9 ARBITRATOR: Okay.

10 MR. EDINGTON: So you're bumped off
11 your job. Somebody in this previously on the pass up,
12 that senior guy bumps and I'm the one that got bumped,
13 this is me getting a phone call from the railroad
14 saying --

15 ARBITRATOR: This is notice to the bump
16 B basically.

17 MR. EDINGTON: Yeah.

18 ARBITRATOR: Oh, I see.

19 MR. EDINGTON: Correct.

20 ARBITRATOR: Thank you.

21 MR. EDINGTON: Reporting time. This
22 one's very important. So once you get notified that
23 you're on the cycle, you get forced to something,
24 what's your reporting time? How long do you have?

25 Carrier, it's upon notification. They

1 get ahold of an employee today, and they say, hey,
2 you're forced to assignment out of -- let's stick with
3 our example in Ogden. You're forced to this job down
4 in Las Vegas, starts at 8 o'clock tomorrow; be there.
5 Okay. I guess, I'm jumping in the car and driving
6 several hours to get there, and I won't be back for I
7 don't know how long, so not much time to get my
8 affairs in order, right.

9 Smart proposes a realistic approach to
10 this. Gives these employees some time, right. A lot
11 of current rules allow if you're bumped outside of
12 your terminal up to five days. So we actually
13 conceded on this to a point of bringing it down to
14 96 hours. So less than 100 miles, pretty simple. We
15 agree. Okay. There's -- upon notification, that's
16 fine. A person can drive that in today's world;
17 that's fine. A hundred to 199, we're getting far
18 enough out now they need a couple days to get their
19 stuff in order. They may not be able, especially in
20 metropolitan area where 150 miles there may take you
21 four to five hours, you're not going to be able to
22 work from home and still drive that with your call,
23 hour-and-a-half, two-hour, three-hour call. So you
24 need an opportunity to get to that location, find a
25 place to stay, whether it's a hotel, apartment,

1 whatever you can rent. Same with 200 miles or
2 greater. They still have their families at home.
3 They have to support that. They need some time to get
4 their life in order, get there, find a place to live,
5 get rested again and go to work.
6 Okay. Equalizing ABS when it gets to
7 equalizing manpower. Smart TD, this is when they need
8 people at one location and they can afford to let some
9 go out of another location. But how do we execute
10 that when you don't quite have a balance? It may be
11 higher at point A, but we don't have the new hires
12 marked up yet. So how do we cover those assignments
13 to balance this manpower? So we propose to do it
14 through a bulletin. Currently, today, if they've got
15 to balance manpower outside of an employee seniority
16 district, they're done through bulletins. And in
17 those bulletins, they offer many things, travel time,
18 pay for meals, they offer all these things. But it's
19 outside of their seniority district, right. And they
20 offer pay on top of that. That's in addition to their
21 earnings. So those things are used. They're in use
22 today, in fact, in L.A. So it's a process that is
23 highly effective and works well. We give people who
24 want to be there and will stay there as long as
25 they're needed. So we say, put a bulletin out, let it

1 be off seniority. Let these employees exercise this
2 seniority. So put a bulletin out. If you don't give
3 away, you go from the nearest buffer board. Forced
4 from the nearest buffer board, AWTTS. Then force for
5 the nearest surplus extra board. This is if you don't
6 get any bulletins, right; go in order.

7 Now, in all instances, depending which
8 one you have, we're going to give them auto mileage.
9 Going to give them travel time to and from. Makes
10 sense if they've got to drive their own car there and
11 incur meals. This is all away from their home.
12 They're already paying bills on it. And we ask that
13 it all be over, guaranteed. If they're going to be
14 there, then they're going to get something for that
15 time. That's what's done today in that balancing, and
16 we feel it's appropriate here. Because when you
17 don't, what we see in today's world is these junior
18 employees being forced, not being able to afford a
19 home up there. There's no lodging provided to them.
20 There's no travel expense. They're just starting out
21 with the Carrier, so they have little money saved up
22 and they resign. And we'll get into that retention
23 data later on with Kurt Christensen's witness
24 testimony. So we're going to talk about that. But
25 that's why it's important. Get the people that want

1 to be there and compensate them appropriately for
2 their inconvenience to being away from their family
3 for months on end. Carrier doesn't want to provide
4 any of that. They just want to force the junior sign
5 and say, too bad. Enjoy driving across the hub at
6 your own expense, living on your own expense;
7 appreciate you working for us.

8 I could break here. We could keep
9 going. I don't know if you want to break right before
10 lunch. This might take us just a little bit past.
11 Either/or is fine with me.

12 ARBITRATOR: (Discussing with chair).

13 Lunch is not available yet. So, yeah,
14 why don't we continue. Lunch is not available yet.
15 If you don't -- unless there's a necessary or obvious
16 break here for you.

17 MR. EDINGTON: No, I'm --

18 ARBITRATOR: Okay, let's continue.

19 MR. EDINGTON: I want to make sure it's
20 convenient for everyone.

21 ARBITRATOR: Thank you.

22 MR. EDINGTON: I'm going to look at
23 work/rule concessions in Carrier proposal.

24 So these concessions, though, Carrier
25 said in their submission, they're not seeking the

1 BLET, that's the opposing Organization for engineers,
2 they're not seeking their 11 and 4 work/rest agreement
3 which guaranteed all their pool freight boards. Put a
4 regular service in them, gave them four pay days off
5 each, 96 paid days off a year minimum. Could be well
6 over 100. They didn't offer any of that. But they
7 are seeking the concessions that they obtained through
8 doing that. So let's go through these.

9 First one, and this is out of their
10 proposal, just so you know. So Article 5.1, Note 3,
11 they're seeking the elimination of turn rest. Like I
12 said, Exhibit 41, I went over this. That's an
13 important tool that our people use, and it's something
14 that we're required to provide, actually. Team
15 mitigation outside of RSIA in the public law. We want
16 to get rid of that rest option outside of RSIA. Feel
17 that's not appropriate. Article 5-2C, suspend
18 guarantee for use of paid sick days.

19 Well, our rebuttal submission,
20 Exhibit 2, that's that time off for illness and pay
21 sick agreement, we call it, it's barely over a year
22 old. And the Carrier agreed that that will not be
23 used. If someone's sick and they've got to take a
24 paid sick day, that's not going to be used against
25 their guarantee. That's in their agreement. They're

1 seeking a concession from that agreement not even a
2 year after -- just over a year after we agreed to it.
3 Now, please don't abuse this -- high
4 usage. Is there high usage on it? Absolutely.
5 Because they need it. They have no other days off
6 right now. In fact, the recent blizzard that just
7 went through Kansas, every road closure, every road in
8 the state of Kansas was closed on the eastern end;
9 yet, employees calling in to layoff for weather, a
10 weather event, were instructed to layoff. Paid sick
11 even though they're not sick. So Carrier's
12 capitalizing on that with those employees making them
13 burn those for no reason. Article 5C.

14 MR. MCKINLEY: Luke, what do you mean
15 by suspended guarantee?

16 MR. EDINGTON: They're not going to get
17 guarantee. It'll be deducted from it. It'll harm
18 them.

19 ARBITRATOR: Sorry. Speak into the
20 mic.

21 MR. EDINGTON: Oh, sorry.

22 It'll harm their guarantee. They're
23 suspending it. They're going to use it as an
24 occurrence toward their guarantee. It'll take that
25 guarantee payment away for that day.

1 MR. MCKINLEY: They're paid sick leave
2 days, yes?

3 MR. EDINGTON: Yeah, they're paid sick
4 leave days and possibly forfeited on that. I'm not
5 sure based off the proposal, but I assume they want
6 forfeiture of guarantee as well for a paid sick day.

7 MR. MCKINLEY: So they would lose money
8 by using a paid sick day?

9 MR. EDINGTON: Yes. Yes, they would.

10 MR. MCKINLEY: A paid sick day?

11 MR. EDINGTON: A paid sick day.

12 MR. MCKINLEY: Okay.

13 MR. EDINGTON: Correct.

14 So we talked about this one, use of
15 qualified employee to fill vacancies. That's not
16 allowed on crew consist. That provision hasn't been
17 changed. It wasn't changed by the PEB. It wasn't
18 changed in public law. They can't use any qualified
19 employee, including a manager in this instance, to do
20 our work. That's exclusive to Smart TD.

21 Last one on this page, a few pages of
22 these. Article 6D. The elimination date of
23 preference. We went over that. It's kind of a
24 summary of what we did. It wasn't included. No
25 modification needed, because it meets every criteria

1 in the article already.

2 Forfeiting seniority of absent more
3 than 15 days. We also feel this is improper. It's
4 not included in there that it should be addressed, and
5 it would inadvertently harm employees. The temping,
6 bold heading, vacancies or passive rules; can we
7 discuss that? That's restrictions of seniority for
8 these employees. We're not here to restrict
9 seniority. We're here to allow it in a controlled
10 manner.

11 Then the notification rules reduces the
12 bump time to 24 hours eliminating travel time. Talk
13 about how harmful that is to our employees, especially
14 the junior ones. Should not be entertained by the
15 Board.

16 Last one and then we're at lunch.

17 ARBITRATOR: Before you get there, you
18 may have explained this earlier and I missed it.
19 What's old heading?

20 MR. EDINGTON: Old heading? Tampering
21 or old headings. Same as a temporary.

22 ARBITRATOR: Oh, it's the same?

23 MR. EDINGTON: It's the same thing,
24 just railroad terminology. They had old heading in
25 there. So I included it, so bringing some clarity.

1 Okay. Last one. Made up turn
2 protected by RSIA available trained person and
3 assigned or unassigned service. This one, this goes
4 back to our vacancy procedures. Remember when I was
5 talking about that and how if they don't have a pool
6 person, a person in the pool to protect the vacancy,
7 they're going to go to assigned service, unassigned.
8 These people who are on rest days, not subject to call
9 because they have regular start times, regular days
10 off, now they will be. So their quality life's out
11 the window because now they've got to protect pool
12 freight along with their regular assignment. So admin
13 leave and sacks, we're here to improve quality of
14 life, not reduce it for people. So drop terms,
15 step-ups, make holds, or any other provisions
16 providing for additional allowances. Penalty
17 payments, like the performing hours of service, if
18 applicable, are eliminated. So what they're talking
19 about is
20 Smart TD's, the agreements and what we proposed if one
21 pool protects another. In today's world, employees
22 protect another pool at certain locations. If those
23 employees get a 65-mile payment for working outside of
24 their pool doing work that's not contained within
25 their pool, working off assignment, they get a 65-mile

1 penalty for doing that along with make whole
2 30 earnings they may have lost, because they're
3 missing their regular assignment by working this extra
4 service. So they want all that eliminated. Even --
5 that would also include the provisions where a pool
6 crew is called to get a train and perhaps it hasn't
7 reached their terminal and they want them to -- there
8 is locations where they can go in the opposite
9 direction of their pool run, with it up to 25 miles,
10 get on that train and relieve that inbound crew and
11 run through the terminal and go to their far terminal.

12 When they do that, they get paid
13 65 miles. Now, if they stay on that far side of the
14 terminal for more than four hours, because 65 miles
15 equates to half a day, half an eight-hour day, they
16 accrue time on top. So instead of 65 miles, they may
17 have seven hours they spend over there relieving that
18 train and running through the terminal. They get
19 that. So it could be even greater. They want to
20 eliminate all those provisions. And those provisions
21 come into play during a lot of hub agreements. That
22 was something they gave because they could not provide
23 hours of service relief through the pool had it come
24 from the extra board.

25 MR. MCKINLEY: Luke, you mentioned

1 penalty payments; is that what it is?

2 MR. EDINGTON: Mm-hmm.

3 MR. MCKINLEY: Who's the penalty
4 against?

5 MR. EDINGTON: The Carrier for not
6 having enough extra board employees.

7

8 MR. MCKINLEY: Right. And so the
9 purpose behind those payments is what?

10 MR. EDINGTON: To ensure there's enough
11 people on the extra board.

12 MR. MCKINLEY: So if you eliminate
13 that, then what could happen?

14 MR. EDINGTON: Then they're not going
15 to staff the extra board. They're just going to use
16 the pool without any worry of the Organization
17 enforcing anything, because there's no rule to
18 enforce.

19 Okay. Eliminate rules prohibiting the
20 use of local service or road traveling switchers to
21 perform hours of service relief. They can do that for
22 their own training. They can't provide it for hours
23 of service relief and pool freight. There's been
24 multiple boards that decided that as well. But
25 Carrier wants to eliminate all those rules and be able

1 to use those locals now. So what does that do to
2 local assignments when instead of servicing the
3 customers that they're supposed to be servicing each
4 day, they're using them to go out and provide hours of
5 service relief for a pool. Now these customers aren't
6 getting service. So we see that as a major disruption
7 to their operations. That's going to cause issues.
8 It's going to cause extra assignments to be called to
9 complete that work. And it's like a daisy chain of
10 events that occur that just extrapolate their manpower
11 issue. We're trying to avoid that, trying to fix
12 those things.

13 Last one, impose rights to unilaterally
14 establish vacancy procedures for newly established
15 extra boards. Let's say they don't eliminate all
16 their supports, which we're opposed to; but if they do
17 establish one, they want to have rights to decide how
18 the vacancy procedures on that works. That's not
19 right, those vacancy procedures. That's why we
20 propose in terms, okay, you want to establish one, you
21 can do it. You just have to give us notice. 30 days.
22 So that gives us ample time to sit down and talk, say,
23 what are the terms of this extra board going to be?
24 How is it going to operate? How is it going to work?
25 What work is it going to cover? The basics to make

1 sure it functions properly. They want to have free
2 reign. We adamantly oppose.

3 With that, I'm ready for a break.

4 ARBITRATOR: Good time for a break.

5 We're going to take a -- excuse me -- 12:45 we'll
6 reconvene. Thank you.

7 (Whereupon, a break was taken at 12:01
8 p.m.)

9 (On the record at 12:47 p.m.)

10 ARBITRATOR: Welcome back from lunch.

11 Mr. Edington, whenever you're ready,
12 you can.

13 MR. EDINGTON: Thank you, Madam Chair.

14 We'll need Kurt Christensen, the senior
15 vice chairman for the Organization, sworn in to
16 provide testimony on the next slide.

17 ARBITRATOR: Thank you.

18 THE WITNESS: Hello.

19 (Witness sworn.)

20 ARBITRATOR: Thank you. Could you
21 repeat your name for the record?

22 THE WITNESS: Kurt Christensen.

23 ARBITRATOR: Thank you.

24

25

1 EXAMINATION

2 BY MR. EDINGTON:

3 Q. Mr. Christensen, can you say -- you
4 said your name for the record.

5 Can you tell us a little bit about your
6 background with the Union and at Union Pacific.

7 A. Well, with the Union, I'm a senior vice
8 general chairperson. I represent Union Pacific
9 employees. And today I'll be testifying to the
10 negotiations that I and the other general chairpersons
11 had with Union Pacific over Articles 5, 6, and 7,
12 along with data from Exhibits 43 and 45 from our
13 opening submission and Exhibit 12 from our rebuttal
14 submission. Been a union officer for 17 years.
15 Performed general committee work for the past
16 14 years. Been a full-time union officer for the last
17 four years. I hold seniority on the Union Pacific and
18 I'm in my 21st year with them.

19 Q. Now, tell me a little bit about your
20 experience when you were working on property as well.

21 Do you have any experience working on
22 property under the current agreements?

23 A. On property, I was a conductor and
24 brakeman in pool freight service, local freight
25 service, extra board service, and I was also a

1 switchman and conductor and yard service. We have a
2 smaller terminal, about 20 trainmen and 18 engineers.
3 More service terminal for the grain lines in northern
4 Iowa and southern Minnesota.

5 In all classes of service that I've
6 worked, I observed the inability to utilize
7 compensated time off under the current agreements when
8 I needed to use it. And mainly those were in
9 reference to personal quality of life issues.
10 Carrier's common response being that there was
11 insufficient manpower to permit the layoff at that
12 time.

13 And in particular to pool freight and
14 extra board service, there's an unpredictable work
15 schedule which governs your life both at work and away
16 from work. There is erratic ordering times covering
17 your time spent awaiting the call to work. When
18 you're both at the home terminal and the
19 away-from-home terminal, it makes it very difficult to
20 plan what you're able to do.

21 Q. Okay. Kurt, you said you compiled the
22 data for the exhibits and the slides we see in 43 and
23 45 and 12. What was your process for that? Would you
24 mind just walking us through these slides?

25 A. When I was tasked with calculating a

1 quid pro quo for self-supporting pool freight which
2 the Carrier proffered in PEB 250, it was incumbent
3 upon the Organization to calculate a proper valuation
4 for purposes of comparison and to ensure a balanced
5 quid pro quo was obtained. This process was begun
6 during negotiations wherein various self-supporting
7 pool freight models were being discussed and
8 developed. The data I generated was based upon three
9 of the regulation models we were discussing at the
10 time. And to accomplish the task, I utilized
11 information conferred by the Carrier during
12 negotiations that included Carrier's costing of our
13 proposals. And they had told us during negotiations
14 they cost of those at 250 to 300 million dollars. I
15 used data from the union -- various union and Carrier
16 resources also for those things. Like I mentioned,
17 initial step was data collection. I used train and
18 mileage reports and pool freight crew board
19 reportings. Those were available to us in the
20 Carrier's online crew management and timekeeping
21 system. And for extra boards, I utilize an extra
22 board snapshot report which the Carrier has programmed
23 to take a picture of the snap of the particular crew
24 board at a particular time of day, just lets us see
25 how many people are assigned to the crew board. And

1 we'll look at examples of both of those shortly.

2 Q. Next slide?

3 A. Sure, please. Slide Number 60.

4 Step one was really tabulating how many
5 pool freight employees we have. And of the 218 total
6 crew boards for pool freight on the Union Pacific, I
7 used data from all 164 active crew boards. I did not
8 identify inactive crew boards. They have no employees
9 staffed to them and there's no regulation needed on
10 them because they do no work. Crew boards from each
11 general committee of varying run miles were selected
12 to demonstrate the varying nature of pool freight
13 service. And so I ran regulation calculations
14 comparing the actual current staffing levels under a
15 five and two, six and three and earned day off model.
16 And these totals were then compared, and the amount of
17 employee gain or loss expected under each model was
18 determined to value a quid pro quo. I then utilized
19 an expected earnings for a pool freight employee at
20 about \$124,000 per year and fringe benefits of \$77,000
21 per year. And I believe fringe benefits chart is on
22 the next slide, if you flip to that, please.

23 Slide Number 61 is an example of the
24 annual breakdown made by the Organization of an
25 employee's annual fringe benefits, and these are real

1 costs to the Carrier that they have to maintain an
2 employee's health and welfare, retirement and payroll
3 taxes, and compensated time off. They're all germane
4 to the valuation of the quid pro quo.

5 Next, please.

6 I better ask, are there any questions,
7 Madam Chair?

8 MR. EDINGTON: Is there any questions?

9 ARBITRATOR: Not at this point. Thank
10 you.

11 THE WITNESS: Slide Number 62
12 demonstrates the gains and losses calculated that were
13 applicable to pool freight crew boards under the
14 respected models. We found that a five and two model
15 across the system would gain 579 employees, that's
16 22 percent increase; a six on/three off model would
17 gain 658 employees, a 25 percent increase, and the
18 earned day off model would generate a loss of 263 pool
19 employees, about 10 percent loss.

20 BY MR. EDINGTON:

21 Q. Kurt, the EDO model, was that a
22 Form 151 similar to what sent Carrier's proposal
23 before the Board?

24 A. Yes, it is.

25 Q. Okay. So that would reflect the actual

1 lost employees in the pool freight?

2 A. Correct.

3 Q. Under the regulation factor proposed by
4 the Organization, correct?

5 A. Correct.

6 ARBITRATOR: EDO, is that earned days
7 off?

8 MR. EDINGTON: Yes, it is.

9 THE WITNESS: Slide 63. This was the
10 total in our -- total exhibit of Number 43. We have
11 each committee broken down. This is a compilation of
12 all. And the left column would be the general
13 chairperson. Next column, current pool freight
14 employees. We tabulated 2,633 employees. And to give
15 you an estimate for your comparison, as the Board will
16 be helping to determine a model for self-supporting
17 pool freight, a 10 percent loss of staffing, a 10
18 percent gain, a 15 percent gain, 20 and 25 percent
19 gains, what the amount of employee gain or loss is in
20 blue below; and then the bottom, the valuation of
21 having those employees costed out, and then the
22 respective savings or cost to the Carrier with the
23 various gains or losses.

24 Q. So this is just your calculation of
25 pool freight only at this time?

1 A. That's correct. Yeah. Only pool
2 freight.

3 And Number 64 demonstrates the formula
4 we used in these calculations. And these were all in
5 our proposals, and they would be found in the various
6 exhibits throughout our exhibit pack. The models were
7 each developed during our formal negotiations.

8 For example, you have the five and two
9 pool model on the left. It takes the real number of
10 starts of a pool freight crew board over a 20-day
11 period and multiplies it by 1.5 to reach a
12 representative 30-day review. We would divide the mid
13 factor of expected starts for a pool's run mileage,
14 and we'll look at that better in just a moment in the
15 following slide, and then you multiply that by the
16 rest day factor of 1.29. And I know the Carrier
17 mentioned this exact number yesterday, but 1.29 is
18 calculated by two days off in a seven total day
19 period. That's 29 percent. So we're factoring in the
20 unavailability of employees on their off days. So
21 that's included in regulation.

22 Q. Okay. So the 1.5 we have a look behind
23 and a look ahead factor in this calculation?

24 A. Correct. And then the same was done,
25 similar formula for a six and three. The rest day

1 factor for that is 1.33, three unavailable days out of
2 nine. And then the earned day off model we do not
3 have a rest day factor in, because we had various
4 other models that are on our chart with earned day
5 off.

6 Slide Number 65 was the pool mileage
7 factor chart utilized jointly by parties during
8 bargaining since March of 2024. And I know it was
9 discussed earlier, but it represents the number of
10 starts a pool of a specific mileage is expected to
11 reach during a month. A shorter run pool, first line
12 of up to 150 miles, should have between 22 and 24
13 starts, and a pool run of 291 miles or greater, the
14 last line, between 14 and 16 starts per month.

15 ARBITRATOR: Before you leave that
16 page -- or Page 64, you indicated that in your
17 estimation, you and the Carrier are in sync with
18 respect to the rest day factor of 1.29 in the 5:2 pool
19 model. Is the same true for the 6:3 pool model and
20 the EDO pool model?

21 THE WITNESS: Yes. We were just
22 actively discussing those during negotiations, yes.

23 ARBITRATOR: And if you would like to
24 use one, you certainly can. I don't know if the
25 witness from yesterday is still here or not. And of

1 course, Mr. Munro, you can respond as well when we get
2 back to you. But I'm just curious to what extent the
3 parties actually were able to discuss any of these
4 factors in the costing in order to reach agreements.
5 And you may be able to address that generally or you
6 may not be able to address it.

7 THE WITNESS: Costing-wise, I think we
8 probably more were looking at more of a 10,000-foot
9 level and didn't get in on the -- zoomed in on a
10 costing aspect, particularly -- we did, it was very
11 superficial, and from a 10,000-foot view. We never
12 really zoomed into that 100-foot view of this would
13 cost this much. That would have been done behind the
14 scenes more.

15 ARBITRATOR: By each side separately?

16 THE WITNESS: Yes.

17 MR. EDINGTON: But we did agree on the
18 factors. This is what was discussed during bargaining
19 and was said during voluntary negotiations has changed
20 since moderately. But, yeah, this is -- so that's why
21 we costed at the time of what was going on in
22 negotiation.

23 ARBITRATOR: Thank you.

24 THE WITNESS: Slide Number 66 simply
25 demonstrates the portions of the formula as we

1 discussed previously. The left portion usage of the
2 20-day review is representative of a real 30-day
3 period. The middle -- defining the mid factor of
4 expected start range based on the miles run by a pool,
5 and on the right, the rest state factor used in two of
6 the models.

7 Next slide, Number 67, exhibits the
8 results of applying each of the three models under a
9 specific crew board, and this data was taken from the
10 Boone, Iowa NZ335RT3.5 pool. And for your reference,
11 when it's -- NZ335 is like a railroad universal ZIP
12 Code. NZ335 across the country is Boone, Iowa. Every
13 city and terminal has a specific number. And then
14 RT3.5 would be the rotary train and pool of the
15 specific seniority district, and that's pool five and
16 district three.

17 But this pool we can show you in a few
18 minutes is also referenced on Page 24 of Exhibit 43.
19 That will bring that up shortly. But current pool
20 freight staffing level of this pool was 16 employees,
21 and that would be for June, July 2024. When we ran
22 them through the models, the five and two model
23 required 20 employees. The six and three model
24 required 21 employees. So some increases to those.
25 And the earned day off model on this pool called for

1 16 employees. So it stayed steady. And slide
2 Number 68 just averages our tabulations out. Now
3 we're looking at road extra board data so that we can
4 do the proper comparison. We tabulated all road extra
5 boards at 1,921. That was an average of the staffing
6 between two months. We used two months of an average
7 to avoid any outliers. During negotiations, cuts to
8 the extra board above 60 and 80 percent were presented
9 to us.

10 BY MR. EDINGTON:

11 Q. Mr. Christensen, when you say during
12 negotiations on that, I have a question for you.

13 Were you present for the negotiations,
14 formal negotiations?

15 A. Yes, I was.

16 Q. Did the Carrier ever state in
17 negotiations that extra boards would be reduced when
18 self-supporting pools were implemented?

19 A. They did, multiple times, yes.

20 Q. Okay. Did they say a percentage?

21 A. I guess it was 60 to 80 percent.

22 Q. So based off what they told the
23 Organization, informal negotiations is 68 percent --
24 60 to 80 percent reductions guaranteed -- guaranteed
25 extra boards. Did you use that to calculate these

1 numbers then?

2 A. Yes, I did. That's correct.

3 Q. Okay. All right. We'll continue.

4 A. So 1,921 total extra board employees at
5 the time, a 60 percent cut would mean a loss of 1,159
6 extra board positions, and an 80 percent cut would
7 result in a loss of 1,536 extra board positions.

8 Then I assigned valuation to them based
9 on annual expected earnings of \$135,000 and then the
10 \$77,000 in fringe benefits.

11 Q. So the road extra boards that you
12 looked at, those were road extra boards that just
13 protected pool freight service currently, not yard
14 extra boards?

15 A. Correct. They did not protect yard
16 service.

17 Q. Okay. All right. Thank you.

18 A. Then slide 69 is the -- again, like I
19 did with pool freight, this is just the breakdown per
20 general committee. And then at the bottom, a total
21 average extra board started with 1,921 people. The
22 projected losses and relative to the 60 and 80 percent
23 cuts with just salary and then with salary and the
24 fringe benefits.

25 You have any other questions?

1 I guess if I could say one more thing
2 about the previous slide, I'd appreciate that.

3 The figures on that chart would wind up
4 with an 80 percent cut, a loss of 1,536 employees and
5 a cost savings to the Carrier of \$325.6 million per
6 year.

7 Q. And that is before you offset any gains
8 that would need to be added to in the pool freight?

9 A. That's correct.

10 Q. This is just what they would save in
11 extra boards by cutting the staffing on those boards?

12 A. Correct.

13 Slide Number 70, in the same manner for
14 road extra boards. Supplemental boards we tabulated
15 at 54 employees on a handful of supplemental boards on
16 two committees. Supplemental board cuts were
17 calculated again at 60 and 80 percent. A 60 percent
18 cut would lose 33 percent of those employees, and an
19 80 percent cut would lose 43 of the employees. And
20 then, again, valuations were established; \$77,000 for
21 fringe benefits and \$108,000 for annual salary.

22 A supplemental board is kind of a last
23 resort call for a -- it's the extra, extra board. So
24 there's less of an earning component there. There's
25 less wage expectation because they really work less.

1 And then for that -- 80 percent to the supplemental
2 boards would be a net loss of 43 employees, and via
3 savings to the Carrier, just under \$8 million.

4 I put together lots of charts during
5 the process of this and I took two simple ones. The
6 other ones were all complex, and I decided that simple
7 was best for here.

8 On the left, pool freight staffing.
9 The completion of this process. Currently have 2,633
10 pool freight employees. That would give you a
11 respective change, increase or loss based on
12 whatever -- on some pool freight models that we worked
13 up that were all part of discussion during
14 negotiation.

15 Q. So it's saying that the current is
16 2633. But if a five and two model was put across the
17 system, it would increase to 3212 in pool freight?

18 A. Correct. We'd have about a
19 600-person gain.

20 Q. Okay. And then a 6 and 3 would
21 increase a little bit more.

22 A. Yes.

23 Q. 3291. And an EDO model, what Carrier
24 is presenting essentially is 2370. So a reduction in
25 pool freight?

1 A. Reduction in pool freight, yes.

2 Q. Okay. All right. Continue.

3 A. And then on the right side, current
4 extra board staffing of 1,921. Following this formal
5 process, an 80 percent cut or a 60 percent cut would
6 be a large, large amount of employees displaced; down
7 to 385 from 1921. So this is pretty much just a
8 summation of future crew board staffing levels based
9 upon our calculations.

10 Number 73, I utilized the 5 and 2 model
11 as it was the theoretical model proposed to the
12 parties in PEB 250, applied the increase of employees
13 of 579 pool freight employees, and then removed
14 80 percent of all road extra and supplemental extra
15 boards to get a quid pro quo, a total quid pro quo
16 valuation. And in this five and two pool break model
17 with gain of 579 employees, that's a cost to the
18 Carrier about 116 million. A cut of 80 percent of
19 extra and supplemental boards eliminates
20 1600 employees, saving the Carrier 333 million. We
21 valued that then cost savings to the Carrier at
22 PEB 250, \$217.2 million.

23 Q. Mr. Christensen, does that include the
24 efficiencies they gained through the ABS, Article 6,
25 the bid system efficiencies, or is this just Article 5

1 and self-supporting pools?

2 A. No. This is strictly self-supporting
3 pool freight from Article 7. We don't have the
4 ability to calculate any savings contained in
5 Article 6.

6 Q. So those would be in addition to the
7 savings in the right box?

8 A. That is correct. Let's see, where are
9 we at. This is 74.

10 These are examples of the crew boards
11 that I mentioned a few minutes ago. On the left, we
12 have a rotary trainman's mileage report, and that's
13 how I got the mileage for Boone, Iowa. On the top, it
14 says, NZ335 is the Circ 7. That's the ZIP Code for
15 the location. The board is RT35. And it says,
16 trained and mileage report. Below it is a bunch of
17 numbers. And essentially on the left column, is the
18 total number of trips handled by that pool during the
19 period. The period for here is, I should have
20 mentioned that. One of the top rows gives it a from
21 and to. It was from July 1, 2024 to July 20, 2024, so
22 that we could look at the 20-day forecast needed for
23 those models earlier. So we're getting in that 20-day
24 period, each of those pools worked the amount of turns
25 on the left column. The next column is either an MU,

1 that's a makeup turn; I know those were discussed
2 earlier and yesterday. And then the P001 through
3 P019, those are the specific pool turns. If I bid a
4 pool today, I could bid pool 19 or go to pool one.
5 Whatever I was on, that would carry through the month.

6 And the main information there that we
7 use is the total number of starts for the month, and
8 we do have ability to look at basic miles run for the
9 previous forms of regulation. And the other chart on
10 the right column is the extra board snapshot report,
11 again, same ZIP Code, NZ335. The protecting extra
12 board is the XK30. It's an extra combination
13 conductor board. And seniority district is number
14 three. And on the right side, a highlighted number of
15 crew IDs there, is 29. So at the time that this
16 snapshot was taken, there were 29 employees set to
17 that pool. And this would just give the list of where
18 each employee stood on the crew board at that time.

19 Q. So you pulled this information from
20 CMTS crew management system?

21 A. Yes.

22 Q. For every board. And then used that
23 information to do your tabulations?

24 A. Correct. Hundreds of boards,
25 several-month period, and I took the information from

1 that, yes.

2 Q. Okay. Any questions on that before we
3 move to the staff?

4 Okay. You also compiled some stuff for
5 the Organization on staffing. What work did you do on
6 that?

7 A. I worked with the local committees
8 under jurisdiction of General Committee 953. And I
9 often work with the other four general chairmen
10 tracking the numbers of furloughed employees and
11 employees borrowed out from their home terminal to
12 another seniority district on the UP system.

13 A borrow out, if I could define that
14 for you, please, ma'am, would be a crew bulletin is
15 posted for a specific number of manpower to go to
16 another site. And, essentially, the railroad may be
17 short crews in Chicago and have a surplus of crews in
18 Denver. So they could put a bulletin up in Denver
19 requesting ten people go to Chicago for a specific
20 time, and there's costs associated with that, travel
21 cost. There's usually an additional amount of pay per
22 day, stipends, and things like that.

23 Q. So my employee receives all those
24 items; if they are a successful bidder on that, they
25 get awarded one of those? They get paid those items?

1 A. That's correct. I track those across
2 the UP system. I also track monthly communications
3 for extra board and pool freight regulations between
4 local committees and Carrier's crew management
5 department. I do look at those weekly. That includes
6 tracking and intervening, if necessary, issues with
7 crew board staffing. And I follow the data provided
8 by the Carrier to the Surface Transportation Board and
9 other public regulatory agencies, like the
10 Federal Railroad Administration and watch data
11 procured by the Carrier's online system and data
12 provided to us by the Carrier, and generally that is a
13 monthly hiring and attrition reports.

14 Q. So those reports that you get monthly,
15 what do those list? Do those list everyone that's
16 been hired across the system and everyone that is
17 exited, whether it's through resignation or
18 termination, retirement --

19 A. -- it encompasses all -- every employee
20 hired across the system and every employee who's been
21 removed from the seniority roster by retirement,
22 disability, termination.

23 Q. Okay. So what did you find from that?
24 When you took that, what were your findings when you
25 compared? Can you explain this slide a bit, what this

1 represents?

2 A. Well, this is from 2023. I went
3 back -- for some reason, my office was not provided
4 with any hire/fire reports prior to 2023. They were
5 just missing us for some reason. So I had to start
6 there. But we did this for 2023. And then to date
7 when we made the report, I believe was through August
8 of '24, I -- to say that right, I better look. We had
9 data through August of 2024, yes.

10 The right column, total TE&Y per
11 Service Transportation Board. TE&Y is train, engine,
12 and yard employees. And what that throws is that the
13 railroad reported to the Service Transportation Board
14 their monthly totals of train, engine, and yard
15 employees. So in January 2023, the total was 13,989.
16 And in December of 2023, they had 14,938 which
17 represented a net gain through the year of
18 949 employees. And these reportings are a matter of
19 public record; you can find them on the STB site.

20 But in contrast, the hiring and
21 attrition reports provided to the general committees,
22 January through November of 2023, the data shows that
23 1,129 employees were hired while 1,240 were untried,
24 demonstrating a loss of 111 employees.

25 Q. Did You find anything to account for

1 this discrepancy?

2 A. It's clear that employees were exiting
3 Union Pacific faster than UP could hire them by the
4 data that's provided, but I cannot explain why the
5 data provided to us is different than that to the STB.

6 And just so everyone's aware, in the
7 December of 2023, there was zero employees listed on
8 the hire and termination reports. We did ask for a
9 clarification and more accurate data and none was ever
10 provided.

11 Q. And is this just the same but for 2024?

12 A. Yes. This was through 2024. What we
13 had, the report, the not available report in August to
14 the STB was just a delay in reporting. They'll report
15 their numbers to the STB and they have since. But,
16 similarly -- slide 7 is 76? Yes.

17 Where attrition exceeds hiring by
18 63 employees, yet the Carrier reported to the STB a
19 gain of 71 employees between January and July. So I
20 can't explain why there are different numbers.

21 Q. But from what they're providing to the
22 Organization, we have an issue retaining employees,
23 what this data says?

24 A. Yeah. That's correct.

25 Q. Okay. Did you also compile data on

1 time and employee dedicates to UP overall?

2 A. I did, yes.

3 Q. Okay. How did you compile it and what
4 does this tell us?

5 A. I found a report in the UP CMTS system.
6 We procured FRA reportable data and, essentially, at
7 the end of a -- when an employee clocks out for the
8 day, ties up -- I think that word's probably been used
9 for the past few years days here. But when they -- it
10 essentially means when they clock out, one of the
11 entries they need to make is an accurate reporting to
12 the Federal Railroad Administration of all their
13 duties during that time.

14 So I procured the data from the hours
15 of service log with reference to any related work
16 histories if we needed an example. And a work history
17 is just the crew caller's log of everything that that
18 employee has ever done. So we utilized the same pool
19 freight boards from across the system that we looked
20 at earlier in our Exhibit 43. We found short pools,
21 turnaround pools, medium length pools, long pools. We
22 totaled an employee's reported hours of service
23 reportings for the months of September and October
24 2024. And then this report reflects the total time
25 from an employee's initial reporting for service at

1 their home terminal, the time spent at the
2 away-from-home terminal until ordered again, and the
3 time spent home on the return trip. And it shows a
4 considerably greater time dedicated to the railroad
5 and being away from your home, family, and medical
6 professionals than an employee on an 8-day hour -- or,
7 sorry, an 8-hour daily, 40-hour workweek work
8 schedule. And the totals for the pool freight
9 employees do not include the ten-hour rest period at
10 the home terminal after they return home, after they
11 clock out, or the hour-and-a-half to three-hour call
12 time which encompasses their commute time to work when
13 they're next ordered.

14 Q. And so when you pull this data, you
15 have to look at each employee's full history, and you
16 try to do so in a way that it encompassed a respective
17 representation of what goes on in the system.

18 A. That's correct. And then summation; an
19 eight-hour regular assignment, employees working eight
20 hours a day, five days a week, spending about
21 24 percent of their time with the railroad pool.
22 Freight employees are spending a considerable more
23 percentage of their time. The first line, the Dupo,
24 Illinois to Jefferson City, Missouri pool. Those
25 employees are spending 49 percent of their time

1 dedicated to the railroad from the time they take the
2 call at home -- from the time they report to work at
3 home, excuse me, until the time they tie up at the
4 home terminal again.

5 Q. So this captures all the time they're
6 away from home --

7 A. Correct.

8 Q. -- is what this is telling us? Because
9 while they're at the hotel, they can't -- they're just
10 at the behest of security; they're waiting call.
11 They're not at home --

12 A. That's correct. Not that I get my ten
13 hours of rest at the away-from-home terminal and
14 there's a magical train sitting there waiting for me
15 to take it home.

16 Q. Okay. Thank you.

17 Now, did you also look at the Carrier's
18 cost analysis they provided in their submission?

19 A. Yes. We reviewed those exhibits, yes.

20 Q. Okay. Did you find any discrepancies
21 with that?

22 A. We did.

23 Q. Give us an example.

24 A. An example would be their analysis of
25 Appendix B, Article 9, held-away-from-home terminal

1 pay. That was Page 13 of their Exhibit 42.

2 The difference between future hours
3 paid, which were 739,125 and the current hours paid,
4 593,688 is 145,437 hours. And if you take that,
5 multiply that by the hourly rate which the Carrier had
6 posted in the exhibit, \$40.92 per hour, that rate
7 equals \$5.95 million. But the Carrier miscalculated
8 that total at \$30.2 million when they neglected to
9 recognize the needed difference between current and
10 future hours, leaving a discrepancy of \$24.3 million
11 favorable to them on this one issue alone.

12 ARBITRATOR: Could you repeat the site
13 of your reference?

14 THE WITNESS: That was from -- that was
15 from Page 13 of their Exhibit 42.

16 ARBITRATOR: Thank you.

17 MR. EDINGTON: Anything else you'd like
18 to add, Kurt.

19 THE WITNESS: No. Not now.

20 MR. EDINGTON: Okay. I've got a few
21 more slides, just a few, and then we'll take a quick
22 break and cycle some witnesses into place.

23 ARBITRATOR: Sure.

24 MR. EDINGTON: Okay. We're going to
25 get into compensated time off, what the Organization

1 proposed. Smart TD opening submission Zip 30. Float
2 week. Why is the float week important.
3 Now, it was included in the Carrier's
4 final proposal board, bargaining. That should be
5 noted, involuntary bargaining outfit in this exhibit
6 for the float week. Smart TD, we proposed a float
7 week where employees that would allow them to not have
8 a week scheduled during the normal scheduling process.
9 That week would float throughout the year for the
10 employee to use at any time. That is beneficial to
11 junior employees as their seniority is lower. They
12 will get scheduled for their vacation in the first few
13 months of the year; January, February. Most of the
14 time they're lucky to make March. So if they're
15 scheduled for those times, they're forced to take that
16 vacation whether they want it or not, leaving them no
17 vacation for the balance of the year until the next
18 January rolls around. So the float week essentially
19 does not schedule that. It allows it to float
20 throughout the year. There is guardrails around that.
21 They have to schedule it by a point in August, have it
22 prearranged. And if they don't, it goes into a bank.
23 That way they can't just all save it up for the end of
24 the year ticket at the same time. So there's a
25 guardrail around that. But it allows them access to

1 that one week of vacation to use throughout the year
2 as they need, rather than just having it right at the
3 beginning of the year.

4 And it also goes along with that float
5 week, proposed no forcing in January and February.
6 This isn't an increase to the vacation allotments.
7 This is just saying we're not going to force anyone to
8 take a vacation in January or February. They can bid
9 it if they so choose. They want to have it off. Some
10 people want to go watch football games January 1st.
11 They can do it. And it happens a lot. But we're not
12 going to force anybody to do that. You'll see a lot
13 of senior employees will volunteer to do it, but it's
14 still the same amount of vacations. It's just
15 allocated a different way. The calculation is based
16 right in our proposal, so you can determine how many
17 vacation allocations will be allotted each month.
18 Very simple. No increase.

19 Personal leave days. We're talking
20 about ways to get flexibility, flexibility within
21 these pools that work with the work/rest system. So
22 if you're going to give flexibility and you want to
23 encourage employees, especially on the Carrier side,
24 to forego their rest days and keep working, give them
25 greater access to those vacation days so they can take

1 them when they need them.

2 Now, you've got to add days in order to
3 do that. Your junior employees with less than five
4 years only get two personal leave days. Now, personal
5 leave days are tied in with holiday payment. That
6 same employee was not on an assignment that had
7 personal leave day, that employee would get all
8 11 paid holidays. So we're just equalizing it out.
9 The personal leave days are on a scale where they have
10 to earn them over several years. So we're going to
11 equalize that out, give them greater access to time
12 off that they can use when they need it to improve
13 their quality of life. They all help bridge the gap
14 for these junior employees and retain them. You can
15 see through the data that Carrier provides to us on
16 staffing, they're having trouble retaining these
17 people. And we're talking about a balanced quality of
18 life to the employees. They need access to time off
19 and adequate time off to use.

20 MR. MCKINLEY: Luke, I have some
21 questions about that.

22 MR. EDINGTON: Yeah.

23 MR. MCKINLEY: How does an employee
24 accrue vacation time?

25 MR. EDINGTON: Through years -- okay.

1 Vacation is calculated off mileage. You have to earn
2 24,000 miles a year. So they have to work and earn
3 that. So if an employee's hired, say, in October or
4 September, they're not going to be able to work that
5 many miles. I work 17 years myself on the road. I
6 had just over a million miles. And I was an expert, I
7 worked all the time. But there's a lot of employees
8 that are way under that. You look at -- they're
9 accumulating 3,850 to 4,000 miles per month on a pool.
10 So it takes some time. You're not going to have
11 enough time in the year to actually accumulate those.
12 So we presented a matrix that accounts for that for
13 those junior people. And, coincidentally, it's the
14 same matrix that we use for the time off and illness
15 wellness agreement, the paid sick day agreement. It's
16 very, very similar to that. So the Carrier agrees
17 that that's appropriate for that, but they're opposed
18 to it in this venue.

19 MR. MCKINLEY: When you get vacation,
20 is it one day of vacation, or is it calculated by how
21 many miles you work? How is the amount calculated?

22 MR. EDINGTON: Okay. The amounts --
23 once you qualify for vacation in that particular year,
24 the first couple years, you get one week, and then it
25 escalates as you go after that. And you reach the

1 pinnacle of your vacation in this industry after
2 25 years at Union Pacific. 25 years of service, you
3 get five weeks. You have four weeks after 17.

4 MR. MCKINLEY: And when you take
5 vacation, how is that scheduled?

6 MR. EDINGTON: It's scheduled so
7 everyone -- it's a seniority-based system. So
8 everyone puts in a bid. Bid process, again, that's
9 what we're used to in this industry. Everyone submits
10 a bid to the local chairperson of what the preferences
11 they have. If they have a couple weeks of vacation,
12 then they'll list as many weeks. As they know they
13 don't have much seniority, they're going to list
14 almost every week they can on the allotments. I want
15 January 8th, I want January 16th, because I want to
16 watch this. Maybe I don't. Maybe I want to try for
17 December. Open a prayer as a junior employee to get
18 that. So they have to list all those. And then you
19 just go and see where you order. Senior person first,
20 take their weeks, fill them in. Second person, what's
21 left over for the junior employee? She or he, who
22 knows; it'll most likely be January.

23 MR. MCKINLEY: Okay. And we talk about
24 this is seniority based. So there are employees who
25 want to take a vacation a certain time and they can't

1 because they don't have seniority?

2 MR. EDINGTON: Yes. Correct.

3 MR. MCKINLEY: Right. And we say they
4 can't. Is that due to manpower issues?

5 MR. EDINGTON: Yes. The common thing
6 that you hear is manpower issues. And we address that
7 later on about the attendance policy. Carrier
8 controls the regulation on the extra boards, which are
9 there to provide reasonable layoff privileges for
10 employees.

11 MR. MCKINLEY: Right. And so when
12 there's a vacation, it doesn't mean that you're going
13 to get to take it when you want it.

14 Are there scenarios where you maybe
15 don't get to take your vacation at all?

16 MR. EDINGTON: If it's scheduled solid
17 block, you will be forced to take it that time. So
18 I'll give you a hypothetical scenario.

19 I have vacation scheduled, a week
20 scheduled in May. I don't need to request any through
21 January/February, but come March and April, I'm
22 requesting single days. I want to use some. And they
23 say, no, not enough manpower; you don't get those.
24 You don't get those. Not enough manpower. It keeps
25 getting pushed until May. When it finally hits May,

1 I've got to take that whole week. So I couldn't use
2 those single days when I needed them because they
3 didn't have the manpower to do so. That's why
4 increasing the threshold is important. That way you
5 can allow the greater usage of that when you need it
6 and not be forced to take it off at one time.

7 MR. MCKINLEY: Right. So you would say
8 that access to your vacation time is difficult, and
9 the union's proposal is trying to make that more
10 accessible to employees?

11 MR. EDINGTON: Yes. A lot more
12 accessible.

13 MR. MCKINLEY: And then how does an
14 employee earn personal leave days?

15 MR. EDINGTON: Years of service. That
16 is based on years of service under the SMART
17 agreements.

18 MR. MCKINLEY: So how does one exercise
19 their ability to use a personal leave day?

20 MR. EDINGTON: So you have to go to an
21 assignment that provides personal leave days, such as
22 the extra board, pool freight, certain local
23 assignments that don't have a mileage component -- or
24 do have a mileage component, I'm sorry, yes.

25 MR. MCKINLEY: And when you try to use

1 a personal leave day, is that automatically granted?

2 MR. EDINGTON: Same criteria as a
3 vacation day, all compensated days are treated the
4 same in --

5 ARBITRATOR: Could you repeat that? I
6 heard a cough.

7 MR. EDINGTON: It's the same as a
8 vacation day. Now, it can be denied all throughout
9 the year, a personal leave day could. And if they are
10 and you have days remaining, there is a system to bank
11 those now under the time off for illness and wellness
12 agreement. So those days would just be put into a
13 bank. Now, that bank maxes out at 60 and has criteria
14 on cashing out and using it in times of severe
15 illness, and so on and so forth.

16 MR. MCKINLEY: And so like vacation,
17 you don't get to necessarily just use a personal need
18 day whenever you want?

19 MR. EDINGTON: No, you don't.

20 MR. MCKINLEY: And so the proposal here
21 is addressed in mind with addressing more flexibility
22 and able -- to be able to use that?

23 MR. EDINGTON: Yes, it is. And those
24 junior employees, giving them more days, you're going
25 to eliminate -- I'll give you another scenario because

1 it happens a lot.

2 We have new employees that come in,
3 they have no vacation time, they have no personal
4 leave time because they're hired early on in a year,
5 say, right now. So they have nothing. So they go the
6 entire year. If they want time off, they need time
7 off to get to something, a personal matter, aside from
8 paid sick time they have, that they fall underneath
9 that chart, that is it for the year. So if they need
10 to be off for anything else, they're truly sick, they
11 get the flu, those days are gone because they're
12 bedridden. If anybody else had the flu here recently,
13 it's bad. You're bedridden for several days. You're
14 gone. Now, the rest of the year, what do you do? You
15 layoff noncompensated. Layoff sick. Layoff sickness
16 and family. We're gonna get into how the attendance
17 policy addresses that, what it does do to people.

18 MR. MCKINLEY: I'm done badgering you
19 now.

20 MR. EDINGTON: Thank you.

21 Here we are. Okay. So I thought it
22 appropriate, because Carrier's submissions, they made
23 a lot of references that, oh, noncompensated; we allow
24 for reasonable noncompensated layoffs. I just gave
25 you a couple examples here and we included several in

1 Exhibit 11. There's numerous awards in there about
2 the Carrier's policy not being reasonable. And in
3 this one, this employee is taking care of their
4 mother, weren't eligible for FMLA, unfortunately,
5 tried to get help. This is a many efforts,
6 considerable efforts to reach out to managers and
7 others who might help them navigate the crisis to no
8 avail.

9 We do have, and in our proposal we want
10 to preserve the automatic markup agreement. There's a
11 side letter that says, consideration must be given in
12 times of superior illness for the employee or for
13 their family member. Here's where this applies.
14 Great example of it. Because the arbitrator addressed
15 this specifically, the claimant's situation.

16 Verified by valid documentation,
17 presents the type of attendance dilemma that the
18 parties contemplated in the automatic markup
19 agreement. And the Carrier failed to work together
20 with the Organization to avoid discipline as the
21 agreement provides. And they put him back to work,
22 reinstated him.

23 The next one, this is Page 39, same
24 exhibit, these same awards. Different award in this
25 instance. It says, As such, consistent with past

1 awards, the Board further concludes that it was
2 unreasonable, an abuse of discretion by the Carrier to
3 rely on reasonable and justified or medically
4 excusable absences to put the claimant on track for a
5 path of criminal dismissal. Discipline. Sorry.
6 Including termination.

7 So we're talking about the
8 unreasonableness. There's reason I include these,
9 because we handle hundreds of these over the past few
10 years and have been extremely successful in
11 arbitration proving that they're not reasonable.

12 Which leads to bereavement leave. This
13 will be the last slide before we take a break. So
14 bereavement leave, another one that ties in pool
15 freight to work/rest systems and improving quality of
16 life. So change is necessary. The rule does not fit
17 with today's family unit, let's face it. This is a
18 very old, old rule. And this -- the newer generation
19 regulars that we're trying to track, trying to keep,
20 trying to provide for time off in instances where you
21 have a family crisis such as this needs to be adopted
22 so they can observe that, because it goes in with the
23 attendance policy. We've had many employees that
24 were -- needed time off to attend a funeral, but
25 because they didn't qualify that specific family

1 member, were disciplined. And that's not right. You
2 know, and we have to address that and work it out with
3 the Carrier and trying to avoid that, so that when
4 they need this time off, let's clean it up and make it
5 a little bit clearer.

6 So I gave you the current provision at
7 the top is three calendar days, and it's just
8 following the death, and it lists the different
9 relatives. Now, we just expanded that to fit today's
10 family unit. Still three days; we didn't change that.
11 But we added it so they could take it within 30,
12 because we also realize that many of the new employees
13 that are being hired, and even those that are out
14 there currently, they need to be off. The rest days
15 that they get in a work/rest model won't always
16 coincide with the days they need to attend a funeral,
17 especially if they have family that lives several
18 states away. So allowing for this, three days used
19 within 30, typically, funeral services are held within
20 30 days. So it gives them that flexibility they need
21 to schedule that and go to it, and even handle some
22 affairs afterwards with the estate. But just still
23 three days. We don't change the time frame. We just
24 want to adapt it to today's family.

25 So unless there's any questions, we're

1 ready for just a short break. And then we can --

2 ARBITRATOR: I have no questions at
3 this point. Ten minutes?

4 MR. EDINGTON: Ten minutes is adequate,
5 yes. We'll have two witnesses to swear in when we
6 come back, and then that'll be our -- this will be our
7 final piece.

8 (Whereupon, a break was taken
9 at 1:40 p.m.)

10 (On the record at 1:54 p.m.)

11 ARBITRATOR: Okay. Back on the record.

12 MR. EDINGTON: Thank you.

13 I'm going to go through these two
14 slides, and we can swear in the witnesses, if that's
15 fine.

16 ARBITRATOR: That's fine.

17 MR. EDINGTON: Next we're going to go
18 over -- these are in our open submission,
19 Exhibits 38 and 39. Now, in these, these are the BNSF
20 and NS agreements, and these were voluntarily
21 negotiated and ratified as a membership. We're going
22 to see what they provided for Articles 5, 6, 7.

23 MR. MCKINLEY: Well, Luke, real quick.

24 I think we talked about BNSF before. Who's BNSF?

25 MR. EDINGTON: Burlington Northern

1 Santa Fe. So they cover the same territory as

2 Eden Pacific does, same business.

3 MR. MCKINLEY: Okay.

4 MR. EDINGTON: Very, very, very similar

5 model of railroad.

6 MR. MCKINLEY: And when you say NS, who

7 are we talking about?

8 MR. EDINGTON: Norfolk Southern.

9 MR. MCKINLEY: They're another

10 railroad?

11 MR. EDINGTON: Yeah, they're another

12 class one just to the east of BN and UP.

13 MR. MCKINLEY: Okay. So these are

14 agreements covering these topics with -- one with the

15 BNSF, one with NS?

16 MR. EDINGTON: Correct. These are the

17 two railroads, what they agreed to, how they

18 recognized the quid pro quo, and what was related to

19 those articles in 5, 6, and 7. So let's look at what

20 they did at the top.

21 BN, they maintained separation of yard

22 and road. Now, they do have a provision similar to

23 what Smart proposed here today that allows the road to

24 protect yard, yard to protect road, the extra boards;

25 that cross protection that I was talking about,

1 supporting each other. They have that similar
2 provision. They saw the value in that.

3 NS did not do that. They just kept the
4 division between yard and road. Enhanced bid system,
5 BN, they got an electronic process for submitting,
6 administering bids. So does NS. A standing bid
7 process. They do theirs at 11 o'clock daily. They
8 realized it works well. Now, keep in mind, these
9 agreements have ratified, have been in place, and
10 they've been working good.

11 Now, the NS, they want to do one where
12 it assigns on a weekly cycle; assigned on Saturday,
13 effective on Monday. So they got theirs once a week
14 that they run. And then BN also did enhanced vacancy
15 procedures, similar to what we proposed.

16 Now, additionally, BN, they recognize
17 vacation was -- extra vacation was needed. Quality of
18 life assurance in these pools with the WordPress
19 cycles. So they allow to float two weeks of vacation
20 and a sixth week after 25 years or more. And then NS,
21 ability to accumulate personal leave days. That's
22 important to employees to bank those days. Kind of
23 like our paid sick day agreement, that time off for
24 illness and wellness agreement, you can bank personal
25 leave days. There's some employees that choose to do

1 that. When they save them up, come for a rainy day
2 fund, as what we call it. You have to have a surgery,
3 unexpected surgery. Especially as you get older in
4 years, you may have some issue you need to have taken
5 care of. You can use your bank days to cover that.
6 So that was important to them, important to their
7 employees.

8 Next, you got the pre-layoff for all
9 single PL vacation and weekly vacation and earned days
10 off. So these employees, they got something to
11 schedule, they can be put in a pre-status, like
12 pre-vacation to ensure they can observe that vacation
13 day. So, for instance, you know, I'm on a pool term
14 and I'm getting -- my vacation is scheduled to start
15 on Friday and I may be getting -- saying, oh, I might
16 be called on Thursday to go out of town; I'm going to
17 miss my vacation. I can be put in a pre-status so I
18 start that vacation early and I'm able to observe it
19 and have that time and plan for it. So they accounted
20 for that.

21 NS did a similar model. They can
22 commence their scheduled vacation early, they can move
23 it up; or they can reposition themselves lower down
24 the board so they won't get called so they can observe
25 their vacation. They both achieve the same objective

1 allowing the employee to get that vacation time when
2 they planned it. They also got earned days off. They
3 have one per quarter for perfect attendance for all
4 trainmen, full freight and extra boards. We were just
5 seeking for pool freight. Extra boards we already
6 had. So that's why we added more.

7 NS, additional payday from the public
8 law that we got is an extra personal leave day, extra
9 day off. They just agreed to be able to schedule it
10 in the same manner as personal leave days are now so
11 they can prearrange it. That come into public law
12 with a -- kind of a funky way that you would schedule
13 it, could be on your birthday or you could observe it
14 another way. So it's up to the parties to determine
15 how it would be administered. They took care of that
16 here.

17 The held-away. Held-away is an
18 important piece. I'm going to talk a little bit on
19 this one. So BN, they agreed continuous after 16
20 hours. NS, they said after 15 hours. Why is that
21 important? Why is held-away tied into this?
22 Mr. Edington, what does this have to do -- what does
23 held-away have to do with work/rest cycles and starts,
24 regulation, how items see the connection? Well, I'll
25 tell you the connection.

1 If you sit at your away-from-home
2 terminal, and you're there and you accumulate 20 hours
3 and you're doing that every trip; instead of getting
4 out on your rest and returning -- or close to your
5 rest, 12 to 14 hours and getting back home back from
6 the board back in rotation to accumulate your start,
7 you're spending all that time at the away-from-home
8 terminal. That's time, not just away from your family
9 but also time at your home board working up to get
10 your next start. So you can delay your starts. That
11 carries on over and over again throughout the month.
12 That will accumulate and mess up your regulation time.
13 So let's put something in there to ensure that that
14 board keeps in the proper rotation and keeps balanced
15 at both ends, both home and away. That's the
16 mechanism that is used to get Carrier to regulate that
17 properly.

18 I'll continue on, away-from-home
19 terminal meals. BN realized we want to freeze those.
20 They're now subject to GWIs. NS, they increased it
21 from \$8 to 14. Our proposals also didn't increase it.
22 We realized that \$8 is not enough if you're spending
23 20-plus hours at the away-from-home for your meals,
24 and it also contributes to your time spent there. If
25 you're going to be penalized to be there and cover all

1 your own meal expenses, let's protect against that so
2 they have time to buy their -- or have money to buy
3 their meals. It's far short of what the IRS rates
4 are, not even close to that, and we're seeking well
5 below what the IRS rates are.

6 Bereavement leave. BN, they included
7 additional family members and flexibility when
8 bereavement can be observed, three days within 30 days
9 following date of death.

10 Same with Smart's They recognized
11 family unit change and flexibility needed to be in
12 there to work with the work/rest model. So they
13 addressed it.

14 NS did not do that, but they did
15 provide differential pay for nights and weekends; \$45
16 per start in the pool freight, 22 if the pool doesn't
17 layover, if it doesn't stay the night somewhere. If
18 you're back home again, not like your short turnaround
19 pools that are home every day, and then \$15 for all
20 other services. So they recognize the sacrifices
21 their employees make having to work weird, weird
22 schedules of nights one day, days the next. Business
23 is always busy on the weekends, right? So if you want
24 to have people ensure your proper rotation is going to
25 your board, your people remain marked up, recognize

1 what they're doing on the weekends and nights. Give
2 them something. So they did. They recognized that.
3 BM also eliminated the entry rate
4 provisions for new hires. Very important for
5 retaining employees. You want to keep your new hires,
6 you've got to pay them right.
7 NS, they escalated the payment of
8 service recognition bonus. That was in the national
9 agreement, the public law, that they get \$1,000 every
10 year. They just paid that out early to their
11 employees.
12 Now BN continues to go on. Now
13 remember BN's very, very large class one, same
14 territory as UP, same type of operations, switching
15 through freight local, so on and so forth. They also
16 provide an additional five weeks of training. So they
17 wanted to make sure their new hires not only where
18 they paid better, they had more training, their weeks
19 increased and the amount of time they had training,
20 and then they had more training for RCO, remote
21 control operations. When they learn those, they want
22 to make sure those people are trained, ready to go so
23 they can retain them, so they know their job is
24 essentially what this comes down to. You don't want
25 people out there that are unsure, end up getting

1 themselves in trouble for rule violations, maybe they
2 have accidents because they're unsure of where they're
3 going, they're unsure of their job; they're not
4 trained properly. So they want to make sure they have
5 a skilled workforce ready to go.

6 Tied in with that is the student
7 instructor training coordinator pay rate increases.
8 So those that are -- if you're training someone, they
9 talk about what the trainees get paid. They increase
10 that to ensure those new people got adequate
11 compensation. They also give one-time travel expense
12 money to those people and meals, \$65 per day meals.
13 Instructors get additional pay. Training coordinator
14 gets additional pay. They want to make sure the
15 training program and their workforce is skilled. They
16 retain employees. They realize that it's important
17 moving ahead in the future.

18 And certification pay is their last
19 one. They unfroze those rates, made them subject to
20 future GWIs. So they recognize that certification pay
21 that we receive for every start as a conductor in pool
22 freight or any other certified position is increased.
23 Because now we're based -- our regulation is based on
24 starts; thus, for every start, the pay that's
25 associated with certification to that start should

1 also be increased.

2 Okay. Now we're ready for our
3 witnesses. Up first is Mr. Roy Davis. We can swear
4 them both in, if that's all right.

5 ARBITRATOR: Absolutely.

6 (Witnesses Sworn.)

7 EXAMINATION

8 BY MR. EDINGTON:

9 Q. Mr. Davis, can you tell us what your
10 position is with the union and why you're here to
11 testify?

12 A. I am the general chairperson
13 representing Union Pacific and BNSF employees out of
14 my committee and will be testifying to the
15 negotiations I know the general chairperson had first
16 with the BNSFs over Articles 5, 6, and 7 where we
17 reached a voluntary agreement. And then I'll testify
18 to some of the negotiations we had with the
19 Union Pacific Railroad.

20 Q. How long have you been employed as a
21 full-time general chairperson?

22 A. Been a full-time general chairperson
23 since January 2013, so 11. I worked three years prior
24 to that as a full-time general secretary in the
25 office.

1 Q. So you've been around a while?

2 A. Yes.

3 Q. What other positions have you held?

4 A. I started my union career in 2002 as a
5 local chairperson and maintained that office until I
6 went into a full-time position in the union office.

7 Q. Did you work at the railroad prior to
8 that and as the local chairperson part-time?

9 A. Yes. I hired out on Union Pacific in
10 1994. So I'm just June of 94, so about almost
11 31 years now.

12 Q. What positions did you hold while you
13 were there?

14 A. Conductor, brakeman, switchman. Mainly
15 trained service positions. I never got qualified as
16 an engineer.

17 Q. You worked the pool service very much?

18 A. Yeah. I worked pool service probably
19 the majority of the time. You know, there were times
20 where I worked assigned service. But my regular run
21 back in those days was from Houston to Shreveport.
22 It's a 290-mile run that leaves out of Houston, goes
23 to Shreveport, plays over, and then it comes down a
24 little different route. It's a 248-mile run coming
25 back. So very familiar with pool freight service.

1 Q. And the issues associated therewith?

2 A. Absolutely.

3 Q. Okay. Do you have any issues when you
4 worked in that pool?

5 A. Well, other than, you know, at the
6 time, I had a young boy that I missed most of his
7 life, because I spent all my time on the railroad, you
8 know, and away from home, so...

9 Q. Like many others.

10 Okay. Now, I'm going to ask you
11 something. Did Carrier ever acknowledge -- I'm going
12 to talk -- we're going to talk first about the
13 negotiations with UP, then we'll get into BN. I'm
14 going to change it up. Okay?

15 A. Okay.

16 Q. Did Carrier ever acknowledge 60 to
17 80 percent of extra board work is protecting pool
18 freight vacancies and formal bargaining?

19 A. Yes. That --

20 ARBITRATOR: Can you repeat that
21 question, please. I'm sorry.

22 MR. EDINGTON: I ask him if Carrier
23 ever acknowledged informal bargaining, that 60 to 80
24 percent of the extra board's work is protecting pool
25 freight vacancies.

1 ARBITRATOR: Thank you.

2 THE WITNESS: Yes. That was brought up
3 several times. Actually, one of my questions in one
4 of the meetings, I believe it was in Dallas to
5 Ms. Parkerson was, is it Union Pacific's intention to
6 do away with the extra boards? And her answer to that
7 was yes. That's where we started going down the road
8 of you'll see it later; Buddy will testify to it. The
9 I-GN and the TP crew comp says a moratorium clause
10 that we take issue with.

11 BY MR EDINGTON:

12 Q. Because that was a concern to you about
13 those properties?

14 A. Yes.

15 Q. But they did express they were going to
16 cut the extra board staffing by 60 to 80 percent with
17 self-supporting pool freight?

18 A. That was brought up multiple occasions,
19 yes.

20 Q. No question in your mind was asked,
21 what's their intent?

22 A. No. That's what set me off mostly.

23 Q. Okay. Well, what happened? The last
24 meeting in Las Vegas, that June 3rd meeting, Carrier
25 also mentioned during that meeting, their desire to

1 cut 60 to 80 percent of the extra boards.

2 A. Yeah. There was -- it -- I wouldn't
3 say it got heated, heated, but I mean, it was a
4 contentious meeting. And the problem with a lot of
5 that was, is that, you know, we would gain some ground
6 in some of these meetings. But then we kept -- like
7 Mr. Garrison came in, they introduced Mr. Garrison.
8 Before that it was Mr. Piland. Just about every time
9 we had a meeting, it seemed like there was a new
10 person added into the mix and it kind of changed the
11 way those negotiations went. But this particular
12 meeting, I think it was Garrison that was there. And
13 we got into this discussion again and we got into the
14 one and done forfeiture guarantee.

15 In other words, if you took a paid sick
16 day, a guy forfeited all of his guarantee, you know,
17 for that half or something. Anyway, we were just
18 basically bumping heads.

19 And I remember distinctly Mr. Crest and
20 Mr. Parkinson -- Ms. Parkinson going out in the
21 hallway there, and they had a discussion and then came
22 back in and you had told us, Gary, that we're done,
23 we're done for this meeting. Everybody's going to go
24 home and cool off. So that's kind of how that ended.
25 It wasn't a walkout by the union as -- basically is

1 what --

2 Q. Mutually agreed end to --

3 A. Yes. Absolutely.

4 Q. Okay. So what happened after that
5 meeting? Did the union respond with anything in
6 writing to Carrier about the upcoming meeting?

7 A. Yes. We had a meeting scheduled in
8 Dallas in the following month a few weeks later. We
9 did what we normally do. We sent a proposal to them
10 and then we sent a letter to them, which is marked I
11 believe as Union Exhibit 32, kind of explaining our
12 where we were with a lot of the agreement. And I
13 remember the last line saying, we look forward to
14 meeting with you in Dallas.

15 Q. So that letter was intended to
16 hopefully clarify the issues that were causing the
17 negotiations to kind of stall at the moment?

18 A. Yes, it did. It addressed them. Yes.

19 Q. Yes.

20 A. Absolutely.

21 Q. So hopefully it would explain it a
22 little bit better so that a productive meeting could
23 be had in Dallas?

24 A. Correct.

25 Q. Okay.

1 A. That's the way I took it.

2 Q. Did the Carrier respond to that?

3 A. No. We didn't get a response.

4 Q. Were they present at that meeting in

5 Dallas?

6 A. No. They didn't show.

7 Q. They didn't say that they weren't going

8 to be there?

9 A. No. We got no notification that they

10 weren't going to be there.

11 Q. Okay. All right. Let's move on to the

12 BN.

13 So does your committee -- you said you

14 represent BNSF employees?

15 A. Yes, I do.

16 Q. Okay. Were you -- were your committee

17 and yourself involved in the negotiations for

18 Article 6 and 7 over there?

19 A. I was -- I was there every -- every

20 time we met.

21 Q. Okay. How long did those negotiations

22 last before y'all reached a voluntary agreement?

23 A. It took us about 10 to 11 months to get

24 that agreement made.

25 Q. Ten to 11 months. So you must have

1 mutually agreed to extend the bargaining period?

2 A. We did. We did two different

3 occasions.

4 Q. On two?

5 A. Yes.

6 Q. Okay. And that allowed you time to get

7 there and get an agreement.

8 Now, did that agreement ratify?

9 A. It actually did. It didn't ratify it

10 by much, but it did ratify.

11 Q. Okay. Are you familiar with the

12 concept of quid pro quo?

13 A. Absolutely.

14 Q. Okay. Maybe explain that a little bit.

15 A. Well, I probably agree with

16 Mr. Munro's statement; it's something for something.

17 In other words, you know, the efficiencies in cost

18 savings that you're getting through implementing some

19 of these rule changes, automatic bid, self-supporting

20 pools, all of that. For instance, I mean, a quid pro

21 quo to me is if you cut the extra board by 80 percent,

22 that's guaranteed pay. You force those people to a

23 pool that is a non-guaranteed pool, so now you're not

24 obligated to pay that guarantee. So that dollar

25 amount that you're gaining in that transaction by just

1 self-supporting pools, you calculate that guaranteed
2 savings, we expect something in return for that
3 savings. So, I mean, that's the way I would sum it
4 up.

5 Q. Now, did BNSF on those quid pro quos,
6 was that discussed in those negotiations?

7 A. Absolutely. That's why I was -- I
8 guess I was amazed -- you know, a lot of these -- a
9 lot of this proposal that we initially sent to the
10 Union Pacific Railroad was based off of my
11 negotiations with the BNSF Railway because they were
12 similar. They're Class 1 railroads; they're competing
13 for the same business. So, you know, I thought, well,
14 this was a -- this was a successful agreement over on
15 the BNSF, and why would it not then apply to the
16 Union Pacific property? I mean, Union Pacific may be
17 a little bit -- well, I know they're a little bit
18 bigger railroad, their revenue is higher. So it
19 should be apples for apples, basically.

20 In other words, so that it doesn't give
21 Union Pacific a distinct competitive advantage over
22 the BNSF.

23 Q. Well, what were some of those quid pro
24 quos that BNSF agreed to and items that they thought
25 were directly tied?

1 A. Well, you addressed a few of them in
2 your slides. But we -- so as far as guaranteed extra
3 boards now, bear in mind that you're reducing under
4 self-supporting pools, you're reducing those extra
5 board head counts. So you're reducing the guarantee.
6 But they didn't reduce any of the guarantee amounts.
7 And so I noticed on Page 77, the Carrier's exhibit,
8 they made mention that their guarantees were higher
9 than that of the Union Pacific. It's on Page 77 of
10 Carrier's exhibit. They use it. They outline it as
11 an excuse why it won't work on the Union Pacific. But
12 I know for a fact that's not a true statement.

13 The road guarantee on a -- for road
14 employees on a BNSF Railway is 6310. The road
15 guarantee for an extra board on my property is 5346, I
16 think.

17 Q. Under UP?

18 A. Under UP.

19 In the yard, the yard guarantee is 3-
20 or \$400 per half. Higher, it's 3940-something on the
21 BNSF Railway. It's 3600-and-something on the
22 Union Pacific Railway. But they didn't -- they didn't
23 agree to -- they didn't want to take away the money,
24 basically. They wanted to leave those guarantee
25 amounts.

1 Now, what they did do was compress it.
2 So we get paid -- guarantee day, you get paid for a
3 day -- for a day that you're available. So if I'm
4 available all 15 days, then I get paid 15 days, I'm
5 guaranteed. They put five and two -- we agreed to
6 mandatory days off in the yard. So they put a five
7 and two model for yard employees where they work five,
8 they get two off; you bid on those days off basically
9 on an extra board. They didn't reduce the amount of
10 guarantee. But if you took off one of the days that
11 you were required to report for work, then, you know,
12 by purpose of them condensing that guarantee or
13 compressing that guarantee, that day cost you a great
14 deal more money. So it was -- it penalized the
15 employee for taking a day off when he was supposed to
16 protect a lot more than just a regular guarantee day.

17 Q. Which is similar to what Smart
18 proposed --

19 A. Yeah.

20 Q. -- In regards to guarantee?

21 A. Yes.

22 Q. Anything else in there that they
23 provided you?

24 A. Oh, yeah. There was quite a bit,
25 actually. So they agreed to leave all of the extra

1 boards intact as they are today. In other words, they
2 would not combine any extra board. They would not
3 eliminate any extra boards. They would have the
4 right, moving forward, to add an extra board at a
5 location and make it, say, a road yard combo board.
6 In other words, they could make the road and the yard
7 together. They agreed to that.

8 ARBITRATOR: I'm sorry. Just to be
9 clear, you continue to use the word they. Who is it
10 you're referring to?

11 THE WITNESS: BNSF. I'm sorry. The
12 BNSF.

13 ARBITRATOR: Oh, BNSF.

14 THE WITNESS: The BNSF.

15 ARBITRATOR: Okay.

16 THE WITNESS: Yeah, I always want to
17 say they, but it's going to be BNSF Railway.

18 ARBITRATOR: Okay.

19 THE WITNESS: But I'll try to correct
20 that.

21 ARBITRATOR: No. That's fine.

22 THE WITNESS: So all of the extra
23 boards are on all of our committee's property. There
24 were seven of us general chairmen on the BNSF Railway.
25 So some of them were from the former Santa Fe

1 railroad, some of them were the former BNSF railroad.
2 They had different agreements. And I think, you know,
3 as a discussion for quid pro quos I think, and I don't
4 know, we might have brought it up, but there's a
5 distinct -- they realize there's a distinct advantage
6 to having what we call a system agreement. In other
7 words, the rules are the same across all the
8 properties. You don't have to keep up with, the ATS
9 over here has got this particular agreement when it
10 comes to this stuff; the BN's got this particular
11 agreement. So they realize the value, because you
12 need less head count at the corporate office to take
13 care of all this stuff. You need less head count and
14 labor relations to take care of all of this stuff. So
15 they realize the value in that, number one.

16 And I was actually amazed. I didn't
17 know there was two different calculators, as far as
18 figuring out how much quid pro quo was worth on the BN
19 as opposed to the Union Pacific Railroad, but
20 evidently there's a lot. But the pool and extra
21 boards would be regulated starts rather than miles.
22 We jointly regulate the boards over there. We
23 don't -- the Carrier doesn't have sole regulation on
24 the BNSF property. They increased the guaranteed pay
25 on extra board for supplementation from yard to road,

1 and vice versa, road to yard. I'll explain that.

2 So if I am on a yard extra board that
3 is a reduced guarantee, like I've already said, \$3600
4 half board and I work one -- on the BNSF, and I work
5 one time on the road, then I paid that entire half the
6 road rate of guarantee. So my guarantee jumps from
7 36-something to 6300-something, if they use me from
8 yard to road.

9 If I'm used from road to yard, then
10 let's say I come in to work a switcher in the yard,
11 which they have -- we gave them access to that. In
12 other words, we'll give you -- yard protects road,
13 road protects yard, but here's the quid pro quos for
14 that. So when they do that from road to yard, then if
15 that guy was assigned to a pool or a pool extra board,
16 if he missed a pool round trip, then the BNSF would
17 pay them those earnings for working that one day in
18 the yard. So that was a quid pro quo allowing them to
19 use across the board.

20 You discussed prescheduled and
21 prearranged layoffs. That is for a compensated day.
22 Any of those days started -- on the BNSF, they started
23 900 every morning, 0900. So if I'm on an extra board
24 or a pool at midnight and I'm first out, they lay you
25 off in a pre-layoff, that way you won't get called and

1 you're guaranteed to get the day off.

2 In other words, because if you have an
3 appointment, doctor appointment for that day, you
4 know, in our world like we know it now or how I
5 worked, if you got -- if you were first out at
6 midnight, you had one choice not to miss that, you
7 know, doctor's appointment. That was -- you layoff
8 and you lose a round trip earnings or you go to work
9 and miss the appointment. I mean, that -- you just
10 can't schedule any kind of live function around that.
11 So from midnight 01 to 0900, they would put you in
12 what we call a pre-layoff. That's what they do today.

13 We made an agreement for earned days
14 off per quarter. You can earn a day off per quarter
15 with perfect attendance, similar to what we -- what we
16 offered in our proposal. There's a lot of committees
17 or properties up there across the whole BN, and I'm
18 sure it is on the UP that don't have continuous
19 held-away after 16 hours; you talked about that. And
20 let me explain what it was when I worked underneath
21 that.

22 So if I went to the away-from-home
23 terminal and I got to 16 hours held-away-from-home
24 terminal, then they would pay me a certain period of
25 held-away. Well, then I had to go another 16 hours

1 before I can get more pay out of that. Because I
2 remember working some rock jobs out of Taylor, Texas,
3 and I spent 50, you know, upwards of 50, 56, 58 hours
4 in the away-home terminals, you know, before I got a
5 call to go back, you know. And then I was much like
6 Jeremy Ferguson was back in the day, you know, back
7 then we got a -- you were off six hours because you
8 had a two-hour call. So when you got home -- from the
9 time you tied up at the depot, you had six hours
10 before they were ringing your phone again and you were
11 back at work because you had to be back on the
12 property at eight hours. So the ten hours did resolve
13 a little bit of that. But -- so they -- everybody
14 across the whole system now gets continuous held-away
15 after 16 hours on the BNSF road.

16 They added an additional float week of
17 vacation for employees. We had one. They gave us an
18 additional week, two, and that's to address some of
19 the concerns you talked about earlier that, you know,
20 you, these younger people that -- you know, they may
21 have only had one week or two weeks. And so that
22 allows them to keep that vacation. Floating means
23 it's never scheduled. You just keep that vacation
24 throughout the year and use it when you actually need
25 it. But there again, you have to have access to that

1 to use it, you know. You have to have a means to get
2 that day off, you know, when you really want it. So
3 they gave us an additional float week.

4 They did enhance bereavement leave.
5 They added some additional qualifying family members.
6 Most of that was around grandchildren and stuff like
7 that, grandparent/grandchildren, that kind of stuff.

8 The certification pay you were talking
9 about, the \$5, they unfroze that \$5. We did get the
10 pass up, the 30-day pass up, which a lot of our
11 properties have today -- or some of them do. Some
12 don't on the UP. But that was the same way on the BN,
13 you know, they didn't have a uniform code of that to
14 where I could give up my job after 30 days of working
15 the assignment and go -- you know, if I wanted to go
16 from the pool into the yard to have a more structured
17 deal because I got things planned for that next month.
18 So they unfroze the certification pay. The \$5 is
19 subject to general wage increases moving forward.

20 The held-away-from-home meals were not
21 increased, but they were unfrozen. But on the BN they
22 were \$12. So they run frozen. So that goes up, you
23 know, with inflation and all that stuff. They
24 eliminated rate progressions on the BNSF.

25 And I don't know, maybe I can explain

1 rate progression to you or do you understand that,
2 Madam Chair?

3 ARBITRATOR: I do but feel free.

4 THE WITNESS: Rate progression?

5 ARBITRATOR: Yes.

6 THE WITNESS: Okay. All right.

7 ARBITRATOR: For new employees?

8 THE WITNESS: Yes.

9 ARBITRATOR: Yes. I'm familiar.

10 THE WITNESS: Okay. And then they paid
11 familiarization pay for people that come into a new
12 territory that's never traversed the territory. You
13 know, that was an antiquated thing, you know, you
14 were -- if you moved voluntarily to a new territory,
15 you were basically on your own time to familiarize
16 yourself on some properties. But -- so they agreed to
17 pay, you know, straight across the board. Everybody
18 gets familiar as you pay. They added -- we made a
19 similar paid sick day agreement. But they agreed when
20 we first started that if we could get to a voluntary
21 agreement, we will give you an additional paid sick
22 day if we could reach that agreement. So that was --
23 that was basically it. I mean, there may be a few
24 things I missed.

25 BY MR. EDINGTON:

1 Q. Well, that's a lot. I mean, why would
2 BNSF agree to all that? Did they recognize the
3 savings?

4 A. Yeah, absolutely. I mean, quid pro
5 quos were talked about a lot with BNSF, you know, and
6 what, you know, what was expected out of PEB 250, you
7 know. They understood that to mean, pretty much as
8 Jeremy was explaining it, evidently the
9 Norfolk Southern does too. So they realized the
10 benefits and enhancement of savings.

11 Q. So let me ask you this: So once that
12 was all implemented, did they end up needing to hire
13 employees or did they furlough employees?

14 A. No. Actually, oddly enough, on the BN,
15 they actually cut. Now, take in mind, we made
16 agreements that -- all of our days off were voluntary.
17 I'm sure you might ask me that question in a minute.
18 But all of the days -- most of the days -- there's
19 probably 80 percent all the days, we agreed to
20 mandatory days off. And some existing agreements have
21 mandatory days off. And in the yard, they wanted to
22 put mandatory days off on the export, but you could
23 actually opt out of it. You could opt out of those
24 mandatory days.

25 And then on the extra boards for the

1 road and the pools, they agreed to a six and three

2 voluntary day off model. And like I said, 80 percent,

3 about 80 percent of the property is covered under

4 voluntary days off.

5 Q. Okay. So if the mandatory -- on the

6 mandatory days off, was there an issue with mandatory

7 days off at BN?

8 A. Yes. Actually, there was. When they

9 introduced those mandatory days off, they noticed that

10 you were forcing somebody to take the mandatory days

11 off. Well, they compressed that guarantee, right. So

12 guarantee rates, they were paying more out in

13 guarantee than they were receiving in productivity,

14 because they were forcing everybody to take those days

15 off.

16 Q. Is that reflected in --

17 A. Yes. That's the deal. Yeah, that's

18 what I sent you. So it shows where the guarantee --

19 what levels of guarantee rates were at during the

20 months they had the mandatory days off. So they came

21 back to us asking us if we would agree to make those

22 days voluntary because they saw less in guarantee

23 payments for voluntary days off.

24 Q. Yeah. They put right in their slide.

25 Then this is what they gave to the general

1 chairpersons of there?

2 A. Correct.

3 Q. That guarantee has been on a steady
4 decline -- since going voluntary, it's returning to
5 normal guaranteed levels.

6 A. Correct.

7 Q. Then the next slide talks about the
8 productivity and shows that the voluntary puts
9 productivity back up.

10 A. Correct.

11 Yeah, not everybody. You know, it's
12 very hard to make agreements. You know, we live in a
13 world where I would say the newer generation values a
14 lot more time off than, say, my generation did. My
15 generation wanted to make all the money in the world
16 they could make. We still have that in today's world.
17 So having, you know, a balance, a mixture to where you
18 can kind of appease both sides of that is the way.
19 And we think that's done through voluntary days off.
20 That way something -- you know, those who want them,
21 can take them. Those who don't want them, don't have
22 to take them. And, you know, overall, it's much like
23 this model here. You're going to see productivity
24 increase when you don't make people take days off,
25 when they don't really want to. You know, some do,

1 some don't. So -- and that was the case with the BN.

2 Q. An employee's going to use them when
3 they need it.

4 A. Absolutely. You know, that's the key
5 to it, is that, you know, if you have a kid's baseball
6 game or, you know, any of that kind of stuff, a
7 doctor's appointment at all, all you really want -- I
8 mean, you still have to make your money. All you
9 really want to do is be off when you need to be off.
10 And a lot of our proposals address that type of stuff
11 where we could call in. That's why you saw the
12 increases in allocations from 5 percent to 20 percent
13 or 25 percent. That's to open up those allocations
14 where people can actually use the day off when they
15 actually need the day off. And, you know -- but
16 anyway, that -- I could go on and on about that
17 particular piece because I live it, so...

18 Q. Okay. During negotiations, formal
19 negotiations, when we're talking about 5, 6 and 7 with
20 Union Pacific, did they ever express that they don't
21 compare with BN?

22 A. Oh, they let us know that off the bat,
23 because I think they realized right off the bat when
24 we sent the proposal, it was much -- much of the BN
25 stuff was in that proposal that we did offer them in a

1 draft. And, you know, they basically told us right
2 upfront that we're not interested in what other
3 railroads do. So it was a -- you know, we bargained
4 18 months and got nowhere on the UP. We bargained
5 ten, 11 months on BNSF and had a ratified agreement.
6 So that might tell you how difficult the bargaining
7 process was.

8 Q. This just further illustrates kind of
9 the network. So I want you to look at this slide and
10 then also the next one. This is Union Pacific's
11 network off their website. It goes from Chicago down
12 to Texas, California, Seattle, Portland, and then BN's
13 website have a much busier schedule than UP's. But
14 same thing, we go to the same ports, Chicago, Texas.

15 Does it represent the same --

16 A. Yes.

17 Q. Same network? Same area?

18 A. Yes. What I know, the BNSF, yes.

19 Q. Okay. All right.

20 A. They actually compete for the same
21 territory -- I mean, same thing. In other words, they
22 compete in rock and intermodal, aggregate, chemical.
23 You know, all across the board, they compete for the
24 same business. So that's why I said it's my personal
25 opinion. And I don't think it's -- it may be

1 everybody's opinion, but, you know, if they pay
2 nothing for quid pro quos, then that is a gain and
3 competitive advantage over another class one railroad.

4 Q. Thank you.

5 Do you mind if we take just five
6 minutes before we go to the next witness, because once
7 we do, Charles Piland --

8 ARBITRATOR: I do not. I do have a
9 question, though.

10 MR. EDINGTON: Yeah, fine.

11 ARBITRATOR: Page 85. What is this
12 representing? This is something you submitted?
13 Page 85, couple pages back.

14 MR. EDINGTON: It's the BNSF guarantee.

15 THE WITNESS: Yes. That's actually
16 when they sent this data to us telling us that,
17 look --

18 ARBITRATOR: I'm sorry. Who sent it to
19 you?

20 THE WITNESS: BNSF. I'm sorry.

21 ARBITRATOR: No, no problem.

22 THE WITNESS: BNSF Railway sent this to
23 all -- there's seven general chairmen. They sent that
24 to all seven general chairmen where we had a section
25 three model mandatory of days off on extra boards on

1 the BNSF Railway. They wanted to go from the
2 mandatory days off to voluntary days off because they
3 were paying an absorbent amount of guarantee to
4 provide those -- to make everybody take mandatory days
5 off. In other words, they were trying to get more
6 starts out of the employee. So in essence, pretty
7 much everybody agreed to go to the voluntary. That's
8 what we advocated for in the beginning. But they
9 wanted certain things to be mandatory, and some of the
10 general chairmen agreed to them, some did not. So
11 this is reflective of the territories where the
12 guarantee exploded as a result to mandatory days off.

13 ARBITRATOR: Thank you.

14 THE WITNESS: Yes, ma'am.

15 MR. EDINGTON: Okay with a ten-minute
16 break real quick?

17 ARBITRATOR: Yes. Sure.

18 MR. EDINGTON: We're only about 30
19 minutes after this and then we should be wrapped up.

20 ARBITRATOR: Ten minutes, please.

21 (Whereupon, a break was taken
22 at 2:36 p.m.)

23 (On the record at 2:48 p.m.)

24 ARBITRATOR: Mr. Edington, whenever you
25 are ready.

1 MR. EDINGTON: Okay. Thank you,
2 Madam Chair.

3 And for the record, we took a brief
4 recess. We identified an error on one of our slides.
5 It was slide 75. And I'm going to recall
6 Mr. Christensen, who's still under oath, to clarify
7 that date.

8 ARBITRATOR: Proceed. Yes. Thank you.

9 THE WITNESS: Regarding slide 75, just
10 as a point of clarification and to be transparent
11 here, the hires per UP and attrition per UP columns,
12 the totals at the bottom only imported in the data
13 from the Carrier's northern region. It erroneously
14 didn't include the southern region. So the totals at
15 the bottom should read 2705 hired, 2705, and 2008
16 attrited, which still leaves a discrepancy of
17 332 employees, not the 1060 stated previously.

18 ARBITRATOR: Anything further?

19 MR. EDINGTON: No. Nothing further.

20 THE WITNESS: Thank you.

21 ARBITRATOR: Thank you.

22 Call your next witness.

23 MR. EDINGTON: Thank you. The next
24 witness is Charles Piland.

25 ARBITRATOR: I think you've already

1 sworn him.

2 THE WITNESS: Yes, ma'am.

3 ARBITRATOR: Proceed.

4 EXAMINATION

5 BY MR. EDINGTON:

6 Q. Mr. Piland, you've already stated your
7 name.

8 Can you tell us what your position is
9 with the union and what you're here to testify to.

10 A. Yes. I'm the general secretary for
11 GO-577 work for Roy. We represent Union Pacific and
12 BNSF employees, and I'm here to testify about the
13 negotiations that I was present with the rest of the
14 general chairmen with the Union Pacific Railroad on
15 Articles 5, 6, and 7.

16 Q. And then you also have intimate
17 knowledge on the T&P and I-GN?

18 A. Moratorium, correct.

19 Q. Okay. How long you been employed as a
20 full-time union officer?

21 A. Well, I've been a local chairman now
22 for nearly 20 years, and I've been a full-time union
23 general committee officer for 13 years.

24 Q. What's your total time at UP?

25 A. In June, it will be 29 years.

1 Q. Twenty-nine years?

2 A. Yes, sir.

3 Q. What positions -- give me a little
4 background. What positions have you worked?

5 A. So conductor, switchman, brakeman;
6 primarily, though, all road jobs. The first three
7 years we -- I was an on-the-road pool freight service,
8 local service, turnaround local. During the meltdown,
9 so I experienced the work every eight hours on your
10 rest for about 18 months straight.

11 Q. What experience do you have with that?
12 How did it affect your family? That's what I'd like
13 to know.

14 A. Yeah, I had young children at that
15 point. That meltdown period, the UP/SP merger and
16 that time was enough for me to realize that the money
17 on the road was really good, but I would rather work
18 in assigned service with -- so when I knew when the
19 phone was going to ring and what time I was going to
20 work and where I was going to work. So I spent the
21 rest of my time -- in that case, I took a pay cut to
22 do that, but that meant a lot to me. And so -- but to
23 stay off of extra boards and that stuff. And that --
24 vice versa, there's a lot of people that do the
25 opposite.

1 Q. They make that sacrifice?

2 A. Absolutely.

3 Q. Let's get into the I-GN and the T&P,
4 and we're going to be talking about this LaRocco Award
5 here soon. But let's talk about that. Are you
6 familiar with moratorium provisions and the collective
7 bargaining agreements for the T&P and I-GN?

8 A. I am.

9 Q. What is a moratorium? Can you explain
10 that for us so we understand?

11 A. Yeah. So a moratorium is an agreement
12 mechanism in the construction of agreements that
13 identifies a certain topic that can't be negotiated
14 for a period of time and it's agreed to by both
15 parties.

16 Q. What are the moratoriums? Do the T&P
17 and I-GN, do they have moratoriums?

18 A. Yes. Both of them have crew consist
19 moratorium specifically.

20 Q. Okay. What do the -- what do those
21 moratoriums cover?

22 A. In our case, on both properties, the
23 T&P and the I-GN, they cover the 1993 and '96 crew
24 consist agreements, the moratoriums specifically. All
25 of our crew consist agreements had moratoriums, but

1 what we're specifically addressing now is the '93 and
2 '96 crew consist moratorium.

3 Q. The most recent?

4 A. Yes. That's correct.

5 Q. Okay. Can you explain why those
6 moratorium provisions were included in the '93 and '96
7 agreements for the I-GN and T&P.

8 A. Yeah. So the crew consist moratoriums
9 on the I-GN and T&P are unique. With this -- the --
10 all railroads since the late '70s and early '80s have
11 had some form of crew consist agreements, and they've
12 all had different moratoriums. Our moratorium has
13 evolved over the years, and specifically in '93 and
14 '96 they became unique to the industry.

15 Both the I-GN and TP did something none
16 of the other properties did, is that we agreed to
17 allow the Carrier to run conductor only in all classes
18 of service without restriction. That was 29 years ago
19 in the '96 agreement that we did that. And in
20 exchange for that or the quid pro quo, we've talked a
21 lot about that, in exchange for that, what we received
22 was a moratorium where the parties agreed that our
23 moratorium would run into perpetuity, right; there's
24 no time limit to that, and that it can own the
25 provisions of our crew consist agreements, can only be

1 changed by mutual agreement.

2 Q. So how does that differ from the other
3 moratoriums? Because other crew consists have
4 moratoriums.

5 A. Right. The other --

6 Q. How is this one specific?

7 A. The other moratoriums have a fixed time
8 limit. Typically it was the attrition of the last
9 protected employee. So they did have a sunset clause
10 built into them that said --

11 Q. So what -- hold on. What's a protected
12 employee?

13 A. So a protected employee would have been
14 a pre-1985 employee who, when we had full crews on the
15 railroad, meaning we would run an engineer, a
16 conductor, a head brakeman and a rear brakeman, and a
17 lot of times firemen. The firemen have tried it out.
18 But any employees, pre-1985 employees, they were
19 considered protected employees. They received certain
20 benefits under those early crew consist agreements.

21 Q. So you're saying any employee that was
22 on that property when that agreement was signed,
23 you're referencing the 1985, but when they're on
24 property, had seniority working, those in 1985 became
25 protected.

1 A. That's correct.

2 Q. Okay. All right. So with that, I'll
3 let you continue.

4 How does this differ than moratorium
5 here compared to those.

6 A. So, again, what we did none of the
7 other properties did. So the T&P and I-GN, again,
8 agreed to allow the Carrier to run conductor only in
9 all classes of service without restriction. The other
10 property still maintained crew consist agreements that
11 required certain staffing levels on certain trains up
12 until just the last couple of years.

13 Q. So is it just your opinion that the
14 I-GN and the T&P moratorium provisions exist in
15 perpetuity?

16 A. No. In PLB 7960, Arbitrator LaRocco
17 ruled and interpreted the moratorium to be a perpetual
18 agreement that could only be changed by mutual
19 agreement of the parties.

20 Q. Is this his ruling for those
21 properties?

22 A. That is correct.

23 Q. So it says the T&P moratorium governs
24 the entire agreement. So it doesn't just cover like
25 crew consists. It covers the entire agreement. That

1 was his ruling. It does not fix a condition of
2 entered time for its expiration.

3 A. Correct. Over time, and specifically
4 on our properties at T&P and I-GN, guaranteed extra
5 boards and guaranteed supplemental boards were a part
6 of our crew consist agreement. If you reference the
7 1996 Extra Board Agreement, the preamble of that
8 agreement says the changes made in this agreement are
9 mutual by the parties in accordance with crew consist.

10 Q. Force and effect. So the '96; is that
11 what you're referencing?

12 A. Correct.

13 Q. Okay. So the extra boards were all
14 included. Supplemental boards were all part of that
15 agreement?

16 A. Correct.

17 Q. And as LaRocco ruled on this, yeah,
18 these cannot be changed. No provision contained
19 therein.

20 A. Correct.

21 Q. Which is what the agreement states?

22 A. That's true.

23 Q. Not just your opinion?

24 A. No. That's what --

25 Q. That's LaRocco's opinion as well?

1 A. That's been upheld in arbitration.

2 Q. Now, what led to that arbitration? How
3 did we get to arbitrate that before LaRocca? Can you
4 give us some background on that?

5 A. Yeah. In 2019, the Carrier served
6 Section 6 notice and tried to force national handling
7 of crew consist -- Again, it's just something that's
8 happened in the past. PEB 219 ruled that they in
9 1991, '92 time frame, in their ruling, they said,
10 listen, crew consist is a for-local handling. It's
11 not a national handling topic. PEB 250 declined to
12 touch crew consist as well; and said, hey, listen,
13 that's out of scope. That's for local handling.
14 Federal courts have upheld the same thing.

15 But the Carrier in the process, from
16 2019, in the process of getting there, they said,
17 well, look, we want to go to arbitration and
18 understand this moratorium. Once and for all, we want
19 this settled. What can we do under the crew consist
20 moratoriums and agreements? And so that's how we
21 ended up in arbitration under 7960 and all properties.
22 There were four boards in total.

23 Q. So what did the LaRocco award really
24 determine regarding moratorium protections? I know
25 you've talked on it. But what does he really mean?

1 Just put it in simpleton terms. What does he say? I

2 know he's pretty clear, but what does he say?

3 A. He says that on the I-GN and the T&P

4 properties, that the crew consist agreements cannot be

5 altered except by mutual agreement, and that runs in

6 the perpetuity. There is no timeline. There is no

7 condition. There is nothing except mutual consent

8 that allows modification of those agreements on our

9 properties.

10 Q. So you say, mutual consent, like with

11 respect to changing extra boards and supplemental

12 boards. What does that mean? What does mutual

13 consent mean?

14 A. Mutual consent would be the active and

15 explicit agreement between the parties. So between

16 the I-GN and -- general committee, between the T&P

17 general committee, and the Union Pacific Railroad on

18 our -- on a provision of crew consist; in this case,

19 extra board and supplemental.

20 Q. Okay. It takes mutual consent. Was

21 there mutual consent here?

22 A. No. There's definitely no mutual

23 consent. We've made it clear. The Organization has

24 made it clear from the beginning of these negotiations

25 that on our properties that wasn't up for -- Roy

1 touched on it earlier. He said that he had asked that
2 question pointedly at one of our meetings, I believe
3 in Dallas. It was answered the intent is yes, to do
4 away with that, and his response was that that's not
5 going to happen on our property. That can't happen on
6 our property.

7 Q. Because of the moratorium?

8 A. Because of the moratorium; that's
9 correct.

10 Q. Okay. So does public law then, 117216,
11 does that override the moratorium protections then on
12 the I-GN and T&P?

13 A. No. Public law was imposed upon us
14 when the agreement failed to ratify the national
15 agreement. But the moratorium on our property says --
16 the '96 moratorium specifically says that our
17 agreement cannot be altered in national negotiations
18 or any form or Board appointed thereof.

19 Q. Okay. The last sentence up there,
20 right?

21 A. Correct.

22 Q. Okay. So what about the argument on
23 Side Letter 5? They say Side Letter 5 says that gave
24 them a right to make these modifications.

25 Does that claim hold any merit?

1 A. No. Side Letter 5, again, is part of
2 the public law. Again, nothing we agreed to in that
3 sense that was imposed upon us. Side Letter 5 simply
4 dictates when they can serve notice. And they address
5 this carve out for the KCS. It's obvious that the KCS
6 doesn't have that -- they lost the crew consist
7 argument at the POV. Their moratorium does not
8 protect them in the same way ours does. And so any
9 carve out on there that they did was obviously agreed
10 to by them. But there is no carve out. We don't
11 require a carve out because our moratorium, our
12 moratorium expressly or explicitly requires mutual
13 consent, and then we've given no mutual consent.

14 Q. There should have been mutual consent
15 included in Side Letter 5?

16 A. That's correct.

17 Q. Okay. So what is the intent in
18 prohibiting national agreements from changing true
19 consist agreements then? Say that's been upheld, then
20 what's -- why is that?

21 A. That's because historically crew
22 consist, again, if you look -- and we've talked a lot
23 about it here from the BN or the UP or any of these.
24 From property to property to property, the agreements
25 are different, right, based on historical context and

1 operational context. Crew consist agreements need to
2 be rigid enough to accomplish intent but flexible
3 enough to be applied to the property. And that's why
4 it's always been remanded back to local handling to
5 make sure that they fit the context of the property.

6 Q. So they can only crew consist
7 agreements, T&P, what we're talking about here today,
8 that can only be modified through local handling?

9 A. That's correct.

10 Q. Okay. When you say that local handling
11 is necessary, is that just your opinion --

12 A. No. That's --

13 Q. -- or Did the PEB address that?

14 A. Yeah, the PEB 250. Again, PEB 219,
15 both of them said, listen, this is not a topic for
16 national handling. This is a topic for local
17 handling.

18 Q. Okay. Then what is the Carrier trying
19 to gain by changing the extra boards in this crew
20 consist agreement and the exports and supplemental
21 boards; what are they attempting to gain in that?

22 A. Well, they're trying to gain access to
23 what they couldn't get access to under the crew
24 consist agreements when they took us to arbitration
25 under 7960.

1 Q. So they're trying to subvert --

2 A. They're trying to subvert --

3 Q. -- the moratorium --

4 A. -- The moratorium and the

5 interpretation of that by LaRocco in 79 --

6 Arbitrator LaRocco in 7960.

7 Q. Okay. So during the formal

8 negotiations -- we'll move on.

9 So during those, were you present for

10 all those negotiations with the new Civic on 5 through

11 7?

12 A. I was.

13 Q. Okay. Did Carrier ever acknowledge

14 that 60 percent to 80 percent of an extra board's work

15 is protecting pool freight vacancies?

16 A. That's correct. Yes.

17 Q. Okay. If the 60 to 80 percent of an

18 extra board's work is protecting vacancies and pool

19 freight, would a self-supporting pool that protects

20 its own vacancies that work, would that affect an

21 extra board staffing?

22 A. Absolutely. You would remove 60 to

23 80 percent of the starts on that extra board and,

24 therefore -- on our property, the extra board has a

25 regulation factor of 30 percent of protected

1 positions. Okay. So that means if there's ten spots
2 on the pool and they're protecting out-of-service
3 relief or vacancies on that pool, that's ten spots.
4 So they have to maintain a certain percentage. If --
5 and I believe Mr. Svatos touched on that. But even
6 under their scenario, if you reduce those protected
7 positions -- so all ten of those spots underneath the
8 self-protecting pool, they're going to come off the
9 extra board. So that automatically changed even with
10 a regulation that we have that changes how many people
11 are going to be on the extra board, because those ten
12 protected positions have been eliminated.

13 Q. So you're saying that self-supporting
14 pool, since it's not protected by the extra board
15 anymore, the extra board's staffing levels will
16 automatically be reduced --

17 A. Automatically.

18 Q. -- Because you're taking away the
19 protected slots on the pool?

20 A. Correct.

21 Q. Okay. So it's just doing a regular
22 service at this point?

23 A. Correct.

24 Q. Okay. Let me ask this: Did the
25 Carrier ever state their desire to eliminate extra

1 boards?

2 A. Yes.

3 Q. Yeah. Okay.

4 What happened in the last meeting when
5 the parties were together on June 3rd? Do they again
6 affirm 60 to 80 percent of the extra board's work was
7 that and they're going to cut the extra boards by 60,
8 80 percent?

9 A. It did that. We came to that meeting,
10 I believe, hopeful that we were getting close to
11 something. There was a couple -- in my opinion, there
12 was a couple of hang ups that we've talked about here,
13 one and done guaranteed forfeiture and hours of
14 service relief being protected by the pool versus the
15 extra board. That seemed to be to me the two major
16 sticking points. And that meeting we had a new
17 individual, he'd been to the previous meeting, and
18 he -- Mr. Garrison, and it just --

19 Q. For the Union Pacific?

20 A. Yes, for the Union Pacific. And it
21 just seemed to introduce that that meeting begin to
22 degrade and get -- it was very tension filled, and I
23 felt like we got to a place that we weren't being
24 constructive, right. And I felt like that was the
25 rest of the room.

1 Now, and that seemed to be that it
2 reached a point that it was agreed. Listen, we're not
3 going to meet tomorrow -- because we were in the
4 second day of the meeting, then we had a third half
5 day schedule. Listen, we're not going to meet
6 tomorrow. So it's just -- we're getting nowhere
7 because of the tension in here. It's not
8 constructive. We're not meeting tomorrow.

9 MR. EDINGTON: Thank you.

10 Any questions for Mr. Piland?

11 ARBITRATOR: No. Thank you.

12 MR. EDINGTON: With that, that's the
13 end of our presentation.

14 So we can move to Carrier's witness,
15 Mr. Branon, if you wish. I don't know if we need a
16 break for that to set that up.

17 ARBITRATOR: Mr. Munro?

18 MR. MUNRO: Yes, ma'am. I believe
19 we'll need a few minutes to set up, just have the tech
20 person come back and -- she should be here
21 momentarily.

22 ARBITRATOR: Okay. Let's take a
23 ten-minute break.

24 MR. MUNRO: Thank you.

25 ARBITRATOR: Thank you.

1 (3:07 - 3:27).

2 ARBITRATOR: Good afternoon.

3 MR. MUNRO: Can you hear the
4 arbitrator, Brendan?

5 THE WITNESS: You're the only person I
6 can hear.

7 MR. MUNRO: All right. Hang on a
8 second.

9 ARBITRATOR: Good afternoon. My name
10 is Earlene Bagget-Hayes. Can you hear me?

11 THE WITNESS: Yes. I can hear you,
12 Mrs. Arbitrator.

13 ARBITRATOR: Yes. Would you please
14 raise your right hand? This is a Zoom hearing and we
15 can't see you, but we can certainly hear you.

16 Do you have your right hand raised?

17 THE WITNESS: I do.

18 (Witness sworn.)

19 ARBITRATOR: Okay. Thank you. You can
20 lower your hand. This is a Zoom hearing, and you're
21 going to be asked questions by probably two separate
22 advocates. If at any point you don't hear or
23 understand any -- excuse me -- by one advocate today.

24 If you don't hear or understand what's
25 being said, please let Mr. Munro know.

1 THE WITNESS: Certainly. Thank you.

2 ARBITRATOR: You're welcome. Thank
3 you.

4 EXAMINATION

5 BY MR. MUNRO:

6 Q. Okay. Could you please state your name
7 for the record?

8 A. Brendan M. Branon.

9 Q. Mr. Branon, what is your connection to
10 the railroad industry?

11 A. Well, for a period of almost six years,
12 between -- beginning of 2019 to near the end of 2024,
13 I served as chairman of the National Railway Labor
14 Conference. And in that role, I also served as
15 chairman of the National Carriers Conference
16 Committee.

17 Q. And in that capacity, did you have any
18 involvement in the negotiation of the terms of the
19 2022 National Agreement with Smart TD?

20 A. Yes. I was very involved. I was the
21 principal spokesperson for the freight rail industry
22 in the national negotiations. That was a core
23 function of my role as chairman of the NRLC and
24 chairman of the NCCC. And so I am -- I was centrally
25 involved in everything related to the national

1 negotiations and subsequent agreements and resolution
2 of the bargaining round.

3 Q. When you say the national bargaining
4 round, do you mean that you were negotiating with
5 Smart TD, or were there other parties involved?

6 A. We were negotiating with all of the
7 rail unions that participated in what we refer to as
8 national handling. So that, of course, included
9 Smart TD as the representative of trainmen and
10 conductors along with the other operating craft, the
11 Brotherhood of Locomotive Engineers Entrainment, and
12 the then other national rail unions representing the
13 nonoperating and other crafts. So it was all the rail
14 unions collectively.

15 Q. And on the rail side, was Union Pacific
16 one of the carriers that you were representing?

17 A. Yes. Union Pacific has been a member
18 of the National Carriers Conference Committee and was
19 one of the principal railroads involved in the
20 national bargaining rail.

21 Q. Who was your counterpart as the
22 principal spokesperson on the union side?

23 A. For Smart TD, in particular, it was the
24 national president, Jeremy Ferguson. And with respect
25 to issues relating to the operating crafts, so

1 inclusive of the Smart TD represented employees and
2 the BLET represented employees, Dennis Pierce also
3 functioned. He is the president of the BLET or was at
4 the time, rather, as the principal spokesperson. So
5 as it related to operating craft issues, Jeremy and
6 Dennis served as the principal spokespersons for their
7 respective members.

8 Q. Now, in the 2012 National Agreement,
9 are you familiar with the provisions of Articles 5, 6,
10 and 7?

11 A. Yes. I am very familiar with them.

12 Q. What's your understanding of the
13 general intent of those provisions?

14 A. So the general intent of those
15 provisions was to incorporate into the respective
16 national agreements for Smart TD and BLET, the
17 proposals that the Carriers had made to the operating
18 craft unions and that the operating craft unions, in
19 turn, had made to the Carriers relating to what we
20 refer to as scheduling issues. And in particular, the
21 respective proposals were addressed in the PEB
22 recommendations and Articles 5, 6, and 7 were of the
23 parties eventual formulation as to how to incorporate
24 the proposals relating to scheduling issues that had
25 been made to the PEB and the PEB's recommendations as

1 to how to address those issues in a subsequent
2 national agreement.

3 Q. Was there any specific quid pro quo
4 that was negotiated by the parties with respect to the
5 scheduling issues that you just referenced?

6 A. Well, the quid pro quo was, in effect,
7 the incorporation of the parties respective proposals.
8 So we had made on behalf of the Carrier's proposals
9 relating to automated bid systems and pool regulation
10 and self-sustaining pools, the unions had made
11 proposals with respect to scheduled rest days,
12 scheduled off days. The two respective sets of
13 proposals were the quid pro quo.

14 Q. So you treated assigned rest days under
15 Article 5 for the provisions in Article 6 and 7?

16 A. Correct.

17 Q. Was your understanding that Article 5,
18 Article 5 in particular, provided any opportunity for
19 the union parties to seek additional leave beyond
20 assigned rest days?

21 A. No. That was not contemplated by
22 Article 5.

23 Q. Did Article 5 provide any opportunity
24 for the union parties to seek additional pay increases
25 or other forms of compensation?

1 A. No.

2 Q. What's your -- what's the specific
3 basis for that understanding or interpretation?

4 A. Well, there were separate provisions of
5 the PEB recommendation and of the national agreements
6 that resulted therefrom relating to compensation. And
7 so the compensation related aspects of the agreements
8 were contained in those provisions. And in
9 particular, during the course of the parties
10 negotiations between the issuance of the PEB
11 recommendation in mid August of 2022 and the
12 subsequent agreements that were reached in mid
13 September, there were specific discussions about the
14 compensation provisions and statements from union
15 representatives for both Operating Craft, Smart TD,
16 and BLET that they were fined or otherwise were not
17 seeking to adjust or change the terms of the
18 compensation provisions that were included in the PEB
19 recommendation.

20 Q. Do you recall the provisions for
21 arbitration in Articles 5, 6, and 7?

22 A. Yes.

23 Q. What was your understanding of the
24 scope of an arbitration board's jurisdiction should
25 those matters need to progress to arbitration?

1 A. The arbitration related provisions in
2 Articles 5, 6, and 7 were very specifically intended
3 and drafted to provide a process for resolution of the
4 negotiation of those provisions that were contained in
5 Articles 5, 6, and 7, and that an arbitration process
6 would be specifically limited and delineated by the
7 content of Articles 5, 6, and 7. It was intended to
8 provide a one-shot process for the parties to conclude
9 at a Carrier level the terms of the provisions that
10 would apply with respect to scheduled rest days,
11 self-supporting pools and related pool regulation, and
12 automated bid systems.

13 Q. Were the parties entitled to negotiate
14 other subjects on a voluntary basis outside of those
15 subjects?

16 A. Well, as is the case in any real set of
17 negotiations, you can agree on anything that you want
18 to agree upon. And so there wasn't any specific
19 limitation as to what could be negotiated, but there
20 was a very specific intent and contemplation of what
21 would be subject to arbitration in the absence of an
22 agreement on these provisions, and it was limited to
23 the content of Articles 5, 6, and 7.

24 Q. Okay. I'd like to just run briefly
25 through a list of items and ask you whether each of

1 them are, as you understand it, within or outside the
2 scope of the Board's jurisdiction under Articles 5, 6,
3 and 7. And if I refer to a topic and you're not sure
4 what I'm referring to, you know, please ask me to
5 clarify. So I've got, I've got a list of 13 items,
6 and just tell me --

7 MR. MCKINLEY: Madam Chairwoman, sorry,
8 can I -- The scope of this is supposed to be limited.
9 I know we don't have objections. So I just want to
10 make matter for the record. The scope of this
11 supposed to be limited to what he says in his
12 declaration. Mr. Munro is going to go through all
13 these 13 points. That's not part of his declaration.
14 I just wanted to make a note of that in the record.

15 MR. MUNRO: I'm not asking the witness
16 to read his declaration of the record, because that
17 would be duplicative and a waste of this Board's time.
18 This is a subject that is addressed. He addresses
19 specifically the scope of jurisdiction as the parties
20 understood it. That's the main point of his
21 declaration. So it is certainly encompassed within
22 the topics that are identified in that declaration.

23 ARBITRATOR: Okay. We've been through
24 this arbitration without hearing objections, and that
25 will continue. Going to hear the testimony.

1 MR. MUNRO: Thank you.

2 Okay. Mr. Brannan, let me just --

3 THE WITNESS: If I can just interject

4 so that you're aware and others are aware.

5 Don, you're the only person I can hear.

6 So to the extent that there's any conversation from

7 other counsel or the arbitrator, I can't hear any of

8 that.

9 MR. MUNRO: Understood. Understood.

10 ARBITRATOR: You can indicate to him

11 that I've authorized him to respond to your question.

12 BY MR. MUNRO:

13 Q. The chair has indicated that you may
14 proceed and answer the question that I'm posing to
15 you. So let me go ahead and list off these items.

16 And, again, the question is: Are they
17 within or outside the scope of the Board's
18 jurisdiction under Articles 5, 6, and 7?

19 Number one, earned days off.

20 A. Outside the scope.

21 Q. The usage of vacation, and in
22 particular, when it can be used or is not required to
23 be used?

24 A. Outside the scope.

25 Q. Expanded vacation for new hires?

1 A. Outside the school.

2 Q. Expansion of personal leave?

3 A. Outside the scope.

4 Q. Expand --

5 A. Separate provisions relating to
6 personal leave.

7 Q. Separate provision in the national
8 agreement?

9 A. Yes.

10 Q. How about expansion of bereavement
11 leave?

12 A. Outside the scope.

13 Q. Pay for employees when held-away from
14 their home terminal?

15 A. Outside the scope.

16 Q. Expansion or increases in meal
17 allowances?

18 A. Outside the scope. And in particular,
19 there was an effort to include meal allowance language
20 in an agreement that was rejected.

21 Q. How about pay differentials for work on
22 nights, holidays, or weekends?

23 A. Outside the scope.

24 Q. Increases in overtime pay?

25 A. Outside the scope.

1 Q. Elimination of step rates for new
2 hires?

3 A. Outside the scope.

4 Q. Penalties for delays in obtaining
5 lodging at the away-from-home terminal?

6 A. Outside the scope.

7 Q. Increases in certification pay?

8 A. Outside the scope.

9 Q. And increases in remote control
10 allowances?

11 A. Outside the scope.

12 Q. What about scheduled rest days? Were
13 they within or outside the scope of any of the
14 articles?

15 A. That's, in effect, the content of
16 Article 5, schedule off, I believe is the title.

17 Q. So that is a subject within the Board's
18 jurisdiction?

19 A. Yes.

20 Q. How about rules for filling vacancies
21 or automated bid rules?

22 A. That's part of Article 6.

23 Q. How about rules to establish
24 self-supporting pools?

25 A. That is Article 7.

1 Q. What about prearranged layoffs?

2 A. That would be part of the scheduling
3 related provisions within and related to Articles 6
4 and 7.

5 Q. How about --

6 A. And, frankly, 5 as well on how it's
7 structured.

8 Q. How about trading shifts or trading
9 turns?

10 A. That's part of the scheduling and
11 waiting provisions encompassed within Articles 5, 6,
12 7.

13 Q. Mr. Brannan, were there any side
14 letters associated with Articles 5, 6 and 7 in the
15 national agreement?

16 A. Well, one very much in particular that
17 was, you know, really critical to the resolution of
18 the negotiation over these provisions, which
19 eventually incorporated his side letter five in both
20 the Smart TD and the BLET agreement. There were some
21 minor differences between the two versions, but, in
22 effect, they are the same substantive side letter.

23 Q. And what is the purpose of that side
24 letter?

25 A. So the purpose of side letter five, and

1 this was a critical issue that came about in that
2 period of time following the PEB recommendation and
3 the eventual tentative agreements that were reached in
4 mid September, was to delineate the Carriers and
5 properties upon which negotiations under Articles 5,
6 6, and 7 could move forward if the party is so
7 elected, and to specifically delineate the Carriers
8 and their properties where the parties were agreeing
9 that there would be no Article 5, 6, and 7 mandatory
10 negotiations and arbitration if necessary thereafter.
11 And so, in effect, what it did, was it prescribed
12 where these sets of proposals would apply and where
13 they would not across the industry.

14 Q. Okay. Thank you.

15 Did Smart TD ask or bargain to exclude
16 any specific properties from service of notices under
17 Articles 5, 6, or 7?

18 A. Yes.

19 Q. Did any of those properties extend to
20 portions of the Union Pacific?

21 A. No.

22 Q. Did Smart TD raise request to exclude
23 the I-GN and/or the Texas and Pacific properties from
24 side letter five?

25 A. No.

1 Q. Did they have the opportunity to do so?

2 A. There would have been ample opportunity
3 in the course of those discussions between mid August
4 and mid September. And there was no discussion about
5 excluding, to my recollection, any specific
6 Union Pacific property.

7 Q. Mr. Branon, are you familiar with the
8 LaRocco Award?

9 A. Yes. I'm very familiar with it.

10 Q. Why is that?

11 A. Well, it was the result of an -- I
12 guess technically multiple arbitrations that were
13 combined into a single proceeding during my tenure as
14 chairman of the NRLC and chairman of the NCCC. I
15 believe it was maybe resolved in 2021. And the
16 arbitrations were conducted or at least directed by
17 the NRLC, and so I was a principal in that process.

18 Q. What's your understanding of what those
19 awards provide?

20 A. So those awards deal very specifically
21 with the question of the bargain ability of the
22 Carrier's respective proposals to amend crew size
23 provisions and Smart TD's objection at the beginning
24 of the bargaining round to the proposals that the
25 Carriers made on the basis that the proposals

1 themselves were barred by property specific moratorium
2 provisions that were in Smart TD agreements throughout
3 the industry. So the question presented and the
4 entirety of that collective process dealt with, in
5 effect, the application of moratorium provisions to --
6 Carrier proposals to amend crew size provisions in
7 Smart TD agreements and the permissibility of the
8 Carriers even making the proposals.

9 Q. Was there any question presented to
10 Arbitrator LaRocco about whether Smart TD had, in
11 fact, agreed to modify those older agreements?

12 A. No. That was not within the ambit or
13 the scope of that arbitration. It was just whether
14 the proposals and bargaining, thereunder, was
15 permitted.

16 Q. And did the LaRocco Award address
17 anything about limits on negotiating other provisions,
18 such as extra board rules?

19 A. Not in my recollection, no.

20 MR. MUNRO: Madam Arbitrator, that is
21 the extent of my direct examination. If the Board
22 chair has any questions, I can bring up the mic;
23 otherwise --

24 ARBITRATOR: I do not have any
25 questions.

1 MR. MUNRO: The chair does not have any
2 questions, Mr. Branon. So I believe we are concluded.

3 ARBITRATOR: Thank you.

4 MR. MUNRO: Thank you for your time.

5 THE WITNESS: Okay. Thank you.

6 ARBITRATOR: You've concluded your
7 case, chief?

8 MR. MUNRO: Yes, ma'am.

9 ARBITRATOR: And you concluded as well.

10 So -- well, first and foremost, we're
11 going to be back here tomorrow. Did the parties
12 discuss which side they're going to be sitting on?

13 MR. EDINGTON: We'll flip a coin.

14 ARBITRATOR: No, seriously. What are
15 you going to do tomorrow?

16 MR. EDINGTON: Any presentation on the
17 slides?

18 MR. MUNRO: Probably. I mean, my
19 understanding is that both sides will have an
20 opportunity to put on rebuttal?

21 ARBITRATOR: That's correct.

22 MR. MUNRO: And so --

23 ARBITRATOR: Will you be using slides?

24 MR. MUNRO: Yeah. I think it's likely
25 we will. So maybe we should just flip again. And

1 then if you want to reverse again when it's your turn,
2 we can do that.

3 MR. EDINGTON: Okay.

4 ARBITRATOR: Okay. So we'll be in
5 reverse in the morning because you'll be on first.

6 MR. MUNRO: Yes, ma'am.

7 ARBITRATOR: Okay. And after the
8 rebuttals -- and regarding the rebuttals, the question
9 has been asked, will there be opportunity for sur
10 rebuttals? A little bit of back and forth may be
11 allowed, but not -- I mean, we're not a circus act
12 here, quite frankly. You know, just trying to -- and
13 in your rebuttals if you would -- if you have
14 something to say, please address what was raised in a
15 previous -- in the previous rebuttal. Okay. So we're
16 not over the top.

17 What I meant to say last week or I
18 meant to say five rebuttals ago, you know, if we could
19 restrict ourselves rebuttals to what was previously
20 said, I think we can get through this a lot more
21 smoothly if we can talk about that. Okay?

22 After which, there will be, I may or
23 may not have questions, but then, of course, we'll
24 provide for closing, closing statements.

25 And there will be no closing statements

1 in writing, only oral. Everyone's in agreement on
2 that?

3 Okay. Anything else?

4 All right. Thank you for joining for
5 today, and we'll be back here tomorrow at 9 o'clock.

6 (Whereupon, proceedings concluded
7 at 3:49 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 5th day of February, 2025.

MACY THOMPSON

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